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<td>Michael “Mike” Folk (R)</td>
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<td>Jill Upson (R)</td>
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<td>Former Retail Manager / Student</td>
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<td>Paul Espinosa (R)</td>
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<td>General Manager, Frontier Communications</td>
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<td>Sixty-seventh.</td>
<td>Stephen Skinner (D)</td>
<td>Shepherdstown</td>
<td>Attorney</td>
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## 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*

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<th>Occupation or Profession</th>
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<tr>
<td>First</td>
<td>Ryan Ferns (R).</td>
<td>Wheeling</td>
<td>Physical Therapist</td>
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<td>Jack Yost (D).</td>
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<td>(House 76th - 78th); 79th - 82nd</td>
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<td>Kent Leonhardt (R).</td>
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<td>Attorney/CPA</td>
<td>82nd</td>
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<td>Douglas Facemire (D)</td>
<td>Sutton</td>
<td>Grocery Chain Owner</td>
<td>79th - 82nd</td>
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<td>Robert D. Beach (D)</td>
<td>Morgantown</td>
<td>Executive Director of College Foundation</td>
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<td>Fourteenth</td>
<td>Dave Sypolt (R)</td>
<td>Kingwood</td>
<td>Professional Land Surveyor</td>
<td>78th - 82nd</td>
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<td>Fifteenth</td>
<td>Bob Williams (D)</td>
<td>Grafton</td>
<td>Real Estate Appraiser</td>
<td>79th - 82nd</td>
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<td>Craig P. Blair (R)</td>
<td>Martinsburg</td>
<td>Businessman</td>
<td>(House 76th - 79th); 81st - 82nd</td>
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<td>Charles S. Trump IV</td>
<td>Berkeley Springs</td>
<td>Lawyer</td>
<td>(House 71st - 78th); 82nd</td>
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<tr>
<td>Sixteenth</td>
<td>Herb Snyder (D)</td>
<td>Shenandoah Junction</td>
<td>Director, Environmental Chemistry</td>
<td>73rd - 76th; 79th - 82nd</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>
<td>(House 76th - 79th); 78th</td>
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<td>Tom Takubo (R)</td>
<td>Charleston</td>
<td>Physician</td>
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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

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HOUSE OF DELEGATES COMMITTEES

ENERGY

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

ENROLLED BILLS

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

FINANCE

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

GOVERNMENT ORGANIZATION

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

HEALTH and HUMAN RESOURCES

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

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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

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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

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HOUSE OF DELEGATES COMMITTEES

VETERANS’ AFFAIRS and HOMELAND SECURITY

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

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SENATE COMMITTEES

ENROLLED BILLS

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

FINANCE

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

GOVERNMENT ORGANIZATION

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

HEALTH AND HUMAN RESOURCES

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

INTERSTATE COOPERATION

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

JUDICIARY

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

LABOR

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

MILITARY

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

NATURAL RESOURCES

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

PENSIONS

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

RULES

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

TRANSPORTATION AND INFRASTRUCTURE

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

[XXXII]
AN ACT to amend and reenact §22-5-20 of the Code of West Virginia, 1931, as amended, relating to the development of a state plan under Section 111(d) of the Clean Air Act; setting forth legislative findings; prohibiting submission of a state plan without authority; requiring the Department of Environmental Protection to study the feasibility of a state plan; requiring the Department of Environmental Protection to submit a report to the Legislature determining whether a state plan is feasible; allowing for the development of a proposed state plan; requiring the state plan to be on a unit-specific basis; allowing for the plan to be on either a rate-based or meter-based standard; allowing for legislative review and consideration prior to submission of a state plan to the Environmental Protection Agency; and creating exceptions to the legal effect of the state plan.

Be it enacted by the Legislature of West Virginia:

That §22-5-20 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

§22-5-20. Development of a state plan relating to carbon dioxide emissions from existing fossil fuel-fired electric generating units.

(a) Legislative Findings-
(1) The United States Environmental Protection Agency has proposed a Federal Rule pursuant to Section 111(d) of the Clean Air Act, 42 U.S.C. § 7411(d), to regulate carbon dioxide emissions from electric generating units.

(2) The Rule is expected to go into effect on or about June 30, 2015, and will require each state to submit a state plan pursuant to Section 111(d) that sets forth laws, policies and regulations that will be enacted by the State to meet the federal guidelines in the Rule.

(3) The creation of this state plan necessitates establishment and creation of law affecting the economy and energy policy of this State.

(4) The Environmental Protection Agency has stated that any state plan it ultimately approves shall become enforceable federal law upon that State.

(5) The State disputes the jurisdiction and purported binding nature asserted by the Environmental Protection Agency through this Rule, and reserves to itself those rights and responsibilities properly reserved to the State of West Virginia.

(6) Given the economic impact and potentially legally binding nature of the submission of a State Plan, there is a compelling state interest to require appropriate legislative review and passage of law prior to submission, if any, of a state plan pursuant to Section 111(d) of the Clean Air Act.

(b) **Submission of a State Plan**- Absent specific legislative enactment granting such powers or rulemaking authority, the Department of Environmental Protection or any other agency or officer of state government is not authorized to submit to the Environmental Protection Agency a state plan under this section, or otherwise pursuant to Section 111(d) of the Clean Air Act: *Provided, however,* the Department of Environmental Protection,
in consultation with the Department of Environmental Protection Advisory Council and other necessary and appropriate agencies and entities, may develop a proposed state plan in accordance with this section.

(c) Development of a Proposed State Plan- (1) The Department of Environmental Protection shall, no later than one hundred eighty days after a rule is finalized by the Environmental Protection Agency that requires the state to submit a state plan under Section 111(d) of the Clean Air Act, 42 U.S.C. § 7411(d), submit to the Legislature a report regarding the feasibility of the state’s compliance with the Section 111(d) Rule. The report must include a comprehensive analysis of the effect of the Section 111(d) Rule on the state, including, but not limited to, the need for legislative or other changes to state law, and the factors referenced in subsection (g) of this section. The report must make at least two feasibility determinations: (i) Whether the creation of a state plan is feasible based on the comprehensive analysis; and (ii) whether the creation of a state plan is feasible before the deadline to submit a state plan to Environmental Protection Agency under the Section 111(d) Rule, assuming no extensions of time are granted by Environmental Protection Agency. If the department determines that a state plan is or is not feasible under clause (i) of this subsection, the report must explain why. If the department determines that a state plan is not feasible under clause (ii) of this subsection, it shall explain how long it requires to create a state plan and then endeavor to submit such a state plan to the Legislature as soon as practicable. Such state plan shall be on a unit-specific performance basis and shall be based upon either a rate-based model or a meter-based model.

(2) If the department determines that the creation of a state plan is feasible, it shall develop and submit the proposed state plan to the Legislature sitting in Regular Session, or in an extraordinary session convened for the purpose of consideration
of the state plan, in sufficient time to allow for the consideration
of the state plan prior to the deadline for submission to the
Environmental Protection Agency.

(3) In addition to submitting the proposed state plan to the
Legislature, the department shall publish the report and any
proposed state plan on its website.

(d) If the department proposes a state plan to the Legislature
in accordance with subsection (c) of this section, the department
shall propose separate standards of performance for carbon
dioxide emissions from existing coal-fired electric generating
units in accordance with subsection (e) of this section and from
existing natural gas-fired electric generating units in accordance
with subsection (f) of this section. The standards of performance
developed and proposed under any state plan to comply with
Section 111 of the Clean Air Act should allow for greater
flexibility and take into consideration the additional factors set
forth in subsection (g) of this section as a part of any state plan
to achieve targeted reductions in greenhouse gas emissions
which are equivalent or comparable to the goals and marks
established by federal guidelines.

(e) Standards of performance for existing coal-fired electric
generating units. – Except as provided under subsection (g) of
this section, the standard of performance proposed for existing
coal-fired electric generating units under subsection (c) of this
section may be based upon:

(1) The best system of emission reduction which, taking into
account the cost of achieving the reduction and any nonair
quality health and environmental impact and energy
requirements, has been adequately demonstrated for coal-fired
electric generating units that are subject to the standard of
performance;
(2) Reductions in emissions of carbon dioxide that can reasonably be achieved through measures undertaken at each coal-fired electric generating unit; and

(3) Efficiency and other measures that can be undertaken at each coal-fired electric generating unit to reduce carbon dioxide emissions from the unit without switching from coal to other fuels or limiting the economic utilization of the unit.

(f) Standards of performance for existing natural gas-fired electric generating units. – Except as provided in subsection (g) of this section, the standard of performance proposed for existing gas-fired electric generating units under subsection (c) of this section, may be based upon:

(1) The best system of emission reduction which, taking into account the cost of achieving the reduction and any nonair quality health and environmental impact and energy requirements, has been adequately demonstrated for natural gas-fired electric generating units that are subject to the standard of performance;

(2) Reductions in emissions of carbon dioxide that can reasonably be achieved through measures at each natural gas-fired electric generating unit; and

(3) Efficiency and other measures that can be undertaken at the unit to reduce carbon dioxide emissions from the unit without switching from natural gas to other lower-carbon fuels or limiting the economic utilization of the unit.

(g) Flexibility in establishing standards of performance. – In developing a flexible state plan to achieve targeted reductions in greenhouse gas emissions, the department shall endeavor to establish an achievable standard of performance for any existing fossil fuel-fired electric generating unit, and examine whether less stringent performance standards
or longer compliance schedules may be implemented or adopted
for existing fossil fuel-fired electric generating units in
comparison to the performance standards established for new,
modified or reconstructed generating units, based on the
following:

(1) Consumer impacts, including any disproportionate
impacts of energy price increases on lower income populations;

(2) Nonair quality health and environmental impacts;

(3) Projected energy requirements;

(4) Market-based considerations in achieving performance
standards;

(5) The costs of achieving emission reductions due to factors
such as plant age, location or basic process design;

(6) Physical difficulties with or any apparent inability to
feasibly implement certain emission reduction measures;

(7) The absolute cost of applying the performance standard
to the unit;

(8) The expected remaining useful life of the unit;

(9) The impacts of closing the unit, including economic
consequences such as expected job losses at the unit and
throughout the state in fossil fuel production areas including
areas of coal production and natural gas production and the
associated losses to the economy of those areas and the state, if
the unit is unable to comply with the performance standard;

(10) Impacts on the reliability of the system; and

(11) Any other factors specific to the unit that make
application of a modified or less stringent standard or a longer
compliance schedule more reasonable.
Section 111(d) of the Clean Air Act. – (1) If the department submits a proposed state plan to the Legislature under this section, the Legislature may by act, including presentment to the Governor, (i) authorize the department to submit the proposed state plan to the Environmental Protection Agency, (ii) authorize the department to submit the state plan with amendment, or (iii) not grant such rulemaking or other authority to the department for submission and implementation of the state plan.

(2) If the Legislature fails to enact or approve all or part of the proposed state plan, the department may propose a new or modified state plan to the Legislature in accordance with the requirements of this section.

(3) If the Environmental Protection Agency does not approve the state plan, in whole or in part, the department shall as soon as practicable propose a modified state plan to the Legislature in accordance with the requirements of this section.

(i) Legal effect. – Any obligation created by this section and any state plan submitted to the Environmental Protection Act pursuant to this section shall have no legal effect if:

(1) the Environmental Protection Agency fails to issue, or withdraws, its federal rules or guidelines for reducing carbon dioxide emissions from existing fossil fuel-fired electrical generating units under 42 U.S.C. §7411(d); or,

(2) a court of competent jurisdiction invalidates the Environmental Protection Agency’s federal rules or guidelines issued to regulate emissions of carbon dioxide from existing fossil fuel-fired electrical generating units under 42 U.S.C. §7411(d).

(j) Effective date. — All provisions of this section are effective immediately upon passage.
AN ACT to amend and reenact §22-6A-7 of the Code of West Virginia, 1931, as amended, relating to allowing transfer of well work permits upon prior written approval of the Secretary of the Department of Environmental Protection; providing for forms prescribed by the secretary; requiring transferee to give notice of transfer; requiring transferee to update their emergency point of contact; and providing for permit transfer fee.

Be it enacted by the Legislature of West Virginia:

That §22-6A-7 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 6A. NATURAL GAS HORIZONTAL WELL CONTROL ACT.

§22-6A-7. Horizontal well permit required; permit fee; application; soil erosion control plan; well site safety plan; site construction plan; water management plan; permit fee; installation of permit number; suspension and transfer of a permit.

1 (a) It is unlawful for any person to commence any well work, including site preparation work which involves any
disturbance of land, for a horizontal well without first securing
from the secretary a well work permit pursuant to this article.

(b) Every permit application filed under this section shall be
on a form as may be prescribed by the secretary, shall be verified
and shall contain the following information:

1. The names and addresses of: (i) The well operator; (ii)
   the agent required to be designated under subsection (h) of this
   section; and (iii) every person whom the applicant shall notify
   under any section of this article, together with a certification and
   evidence that a copy of the application and all other required
   documentation has been delivered to all such persons;

2. The names and addresses of every coal operator
   operating coal seams under the tract of land on which the well is
   or may be located, and the coal seam owner of record and lessee
   of record required to be given notice by subdivision (6),
   subsection (a), section five of this article, if any, if the owner or
   lessee is not yet operating the coal seams;

3. The number of the well or other identification the
   secretary may require;

4. The well work for which a permit is requested;

5. The approximate total depth to which the well is to be
   drilled or deepened, or the actual depth if the well has been
   drilled; the proposed angle and direction of the well; the actual
   depth or the approximate depth at which the well to be drilled
   deviates from vertical, the angle and direction of the nonvertical
   well bore until the well reaches its total target depth or its actual
   final depth; and the length and direction of any actual or
   proposed horizontal lateral or well bore;

6. Each formation in which the well will be completed if
   applicable;
(7) A description of any means used to stimulate the well;

(8) If the proposed well work will require casing or tubing to be set, the entire casing program for the well, including the size of each string of pipe, the starting point and depth to which each string is to be set and the extent to which each such string is to be cemented;

(9) If the proposed well work is to convert an existing well, all information required by this section, all formations from which production is anticipated and any plans to plug any portion of the well;

(10) If the proposed well work is to plug or replug the well, all information necessary to demonstrate compliance with the legislative rules promulgated by the secretary in accordance with section thirteen of this article;

(11) If the proposed well work is to stimulate a horizontal well, all information necessary to demonstrate compliance with the requirements of subdivision (7), subsection (a), section five of this article;

(12) The erosion and sediment control plan required under subsection (c) of this section for applications for permits to drill;

(13) A well site safety plan to address proper safety measures to be employed for the protection of persons on the site as well as the general public. The plan shall encompass all aspects of the operation, including the actual well work for which the permit was obtained, completion activities and production activities, and shall provide an emergency point of contact for the well operator. The well operator shall provide a copy of the well site safety plan to the local emergency planning committee established pursuant to section seven, article five-a, chapter fifteen of this code for the emergency planning district in which the well work will occur at least seven days before
commencement of well work or site preparation work that involves any disturbance of land;

(14) A certification from the operator that: (i) It has provided the owners of the surface described in subdivisions (1), (2) and (4), subsection (b), section ten of this article, the information required by subsections (b) and (c), section sixteen of this article; (ii) that the requirement was deemed satisfied as a result of giving the surface owner notice of entry to survey pursuant to subsection (a), section ten of this article; or (iii) the notice requirements of subsection (b), section sixteen of this article were waived in writing by the surface owner; and

(15) Any other relevant information which the secretary may reasonably require.

(c) (1) An erosion and sediment control plan shall accompany each application for a well work permit under this article. The plan shall contain methods of stabilization and drainage, including a map of the project area indicating the amount of acreage disturbed. The erosion and sediment control plan shall meet the minimum requirements of the West Virginia Erosion and Sediment Control Manual as adopted and from time to time amended by the department. The erosion and sediment control plan shall become part of the terms and conditions of any well work permit that is issued pursuant to this article and the provisions of the plan shall be carried out where applicable in the operation. The erosion and sediment control plan shall set out the proposed method of reclamation which shall comply with the requirements of section fourteen of this article.

(2) For well sites that disturb three acres or more of surface, excluding pipelines, gathering lines and roads, the erosion and sediment control plan submitted in accordance with this section shall be certified by a registered professional engineer.
(d) For well sites that disturb three acres or more of surface, excluding pipelines, gathering lines and roads, the operator shall submit a site construction plan that shall be certified by a registered professional engineer and contains information that the secretary may require by rule.

(e) In addition to the other requirements of this section, if the drilling, fracturing or stimulating of the horizontal well requires the use of water obtained by withdrawals from waters of this state in amounts that exceed two hundred ten thousand gallons during any thirty-day period, the application for a well work permit shall include a water management plan, which may be submitted on an individual well basis or on a watershed basis, and which shall include the following information:

1. The type of water source, such as surface or groundwater, the county of each source to be used by the operation for water withdrawals and the latitude and longitude of each anticipated withdrawal location;

2. The anticipated volume of each water withdrawal;

3. The anticipated months when water withdrawals will be made;

4. The planned management and disposition of wastewater after completion from fracturing, refracturing, stimulation and production activities;

5. A listing of the anticipated additives that may be used in water utilized for fracturing or stimulating the well. Upon well completion, a listing of the additives that were actually used in the fracturing or stimulating of the well shall be submitted as part of the completion log or report required by subdivision (14), subsection (a), section five of this article;
(6) For all surface water withdrawals, a water management plan that includes the information requested in subdivisions (1) through (5) of this subsection and the following:

(A) Identification of the current designated and existing water uses, including any public water intakes within one mile downstream of the withdrawal location;

(B) For surface waters, a demonstration, using methods acceptable to the secretary, that sufficient in-stream flow will be available immediately downstream of the point of withdrawal. A sufficient in-stream flow is maintained when a pass-by flow that is protective of the identified use of the stream is preserved immediately downstream of the point of withdrawal; and

(C) Methods to be used for surface water withdrawal to minimize adverse impact to aquatic life; and

(7) This subsection is intended to be consistent with and does not supersede, revise, repeal or otherwise modify article eleven, twelve or twenty-six of this chapter and does not revise, repeal or otherwise modify the common law doctrine of riparian rights in West Virginia law.

(f) An application may propose and a permit may approve two or more activities defined as well work; however, a separate permit shall be obtained for each horizontal well drilled.

(g) The application for a permit under this section shall be accompanied by the applicable bond as required by section fifteen of this article, the applicable plat required by subdivision (6), subsection (a), section five of this article and a permit fee of $10,000 for the initial horizontal well drilled at a location and a permit fee of $5,000 for each additional horizontal well drilled on a single well pad at the same location.
(h) The well operator named in the application shall designate the name and address of an agent for the operator who is the attorney-in-fact for the operator and who is a resident of the State of West Virginia upon whom notices, orders or other communications issued pursuant to this article or article eleven of this chapter may be served, and upon whom process may be served. Every well operator required to designate an agent under this section shall, within five days after the termination of the designation, notify the secretary of the termination and designate a new agent.

(i) The well owner or operator shall install the permit number as issued by the secretary and a contact telephone number for the operator in a legible and permanent manner to the well upon completion of any permitted work. The dimensions, specifications and manner of installation shall be in accordance with the rules of the secretary.

(j) The secretary may waive the requirements of this section and sections eight, ten, eleven and twenty-four of this article in any emergency situation if the secretary considers the action necessary. In that case the secretary may issue an emergency permit which is effective for not more than thirty days, unless reissued by the secretary.

(k) The secretary shall deny the issuance of a permit if the secretary determines that the applicant has committed a substantial violation of a previously issued permit for a horizontal well, including the applicable erosion and sediment control plan associated with the previously issued permit, or a substantial violation of one or more of the rules promulgated under this article, and in each instance has failed to abate or seek review of the violation within the time prescribed by the secretary pursuant to the provisions of subdivisions (1) and (2),
subsection (a), section five of this article and the rules promulgated hereunder, which time may not be unreasonable.

(l) If the secretary finds that a substantial violation has occurred and that the operator has failed to abate or seek review of the violation in the time prescribed, the secretary may suspend the permit on which the violation exists, after which suspension the operator shall forthwith cease all well work being conducted under the permit. However, the secretary may reinstate the permit without further notice, at which time the well work may be continued. The secretary shall make written findings of the suspension and may enforce the same in the circuit courts of this state. The operator may appeal a suspension pursuant to the provisions of subdivision (23), subsection (a), section five of this article. The secretary shall make a written finding of any such determination.

(m) Any well work permit issued in accordance with this section may be transferred with the prior written approval of the secretary upon his or her finding that the proposed transferee meets all requirements for holding a well work permit, notwithstanding any other provision of this article or rule adopted pursuant to this article. Application for the transfer of any well work permit shall be upon forms prescribed by the secretary and submitted with a permit transfer fee of $500. Within ninety days of the receipt of approval by the secretary, the transferee shall give notice of the transfer to those persons entitled to notice in subsection (b), section ten of this article by personal service or by registered mail or by any method of delivery that requires a receipt or signature confirmation, and shall further update the emergency point of contact provided pursuant to subdivision (13), subsection (b) of this section.
AN ACT to amend and reenact §22-2-4 of the Code of West Virginia, 1931, as amended, relating to use of the Abandoned Land Reclamation Fund.

Be it enacted by the Legislature of West Virginia:

That §22-2-4 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 2. ABANDONED MINE LANDS AND RECLAMATION ACT.

§22-2-4. Abandoned land reclamation fund and objectives of fund; lands eligible for reclamation.

(a) All abandoned land reclamation funds available under Title IV of the federal Surface Mining Control and Reclamation Act of 1977, as amended, private donations received, any state appropriated or transferred funds, or funds received from the sale of land by the secretary under this article shall be deposited with the Treasurer of the State of West Virginia to the credit of the abandoned land reclamation fund heretofore created, and expended pursuant to the requirements of this article.

(b) Moneys in the fund may be used by the secretary for the following:
(1) Reclamation and restoration of land and water resources adversely affected by past coal surface-mining operations, including, but not limited to, reclamation and restoration of abandoned surface mine areas, abandoned coal processing areas and abandoned coal processing waste areas; sealing and filling abandoned deep mine entries and voids; planting of land adversely affected by past coal surface-mining operations to prevent erosion and sedimentation; prevention, abatement, treatment and control of water pollution created by coal mine drainage, including restoration of stream beds and construction and operation of water treatment plants; prevention, abatement and control of burning coal processing waste areas and burning coal in situ; prevention, abatement and control of coal mine subsidence; and payment of administrative expenses and all other necessary expenses incurred to accomplish the purpose of this article: Provided, That all expenditures from this fund shall reflect the following priorities in the order stated:

(A) The protection of public health, safety, general welfare and property from extreme danger of adverse effects of past surface-mining practices;

(B) The protection of public health, safety and general welfare from adverse effects of past coal surface-mining practices;

(C) The restoration of land and water resources and environment previously degraded by adverse effects of past coal surface-mining practices, including measures for the conservation and development of soil, water (excluding channelization), woodland, fish and wildlife, recreation resources and agricultural productivity;

(D) Research and demonstration projects relating to the development of surface-mining reclamation and water quality control program methods and techniques;
(E) The protection, repair, replacement, construction or enhancement of public facilities such as utilities, roads, recreation and conservation facilities adversely affected by past coal surface-mining practices; and

(F) The development of publicly owned land adversely affected by past coal surface-mining practices, including land acquired as provided in this article for recreation and historic purposes, conservation and reclamation purposes and open space benefits.

(2) (A) The secretary may expend the funds allocated to the state in any year through the grants made available under paragraphs (1) and (5), subsection (g) of Section 402 of the federal Surface Mining Control and Reclamation Act of 1977, as amended, for the purpose of protecting, repairing, replacing, constructing or enhancing facilities relating to water supply, including water distribution facilities and treatment plants, to replace water supplies adversely affected by coal surface-mining practices.

(B) If the adverse effects on water supplies referred to in this subdivision occurred both prior to and after the August 3, 1977, subsection (c) of this section does not prohibit the state from using funds for the purposes of this subdivision if the secretary determines that the adverse effects occurred predominantly prior to August 3, 1977.

(3) The secretary may receive and retain up to thirty percent of the total of the grants made annually to the state under paragraphs (1) and (5), subsection (g) of Section 402 of the federal Surface Mining Control and Reclamation Act of 1977, as amended, if the amounts are deposited to the credit of either:

(A) The special account in the State Treasury designated the “Reclamation and Restoration Fund” is hereby continued.
Moneys in the fund may be expended by the secretary to achieve the priorities stated in subdivision (1) of this subsection after September 30, 1995 and for associated administrative and personnel expenses; or

(B) The special account in the State Treasury designated the “Acid Mine Drainage Abatement and Treatment Fund” is hereby continued. Moneys in the fund may be expended by the secretary to implement, in consultation with the United States soil conservation service, acid mine drainage abatement and treatment plans approved by the secretary of the United States department of interior and for associated administrative and personnel expenses. The plans shall provide for the comprehensive abatement of the causes and treatment of the effects of acid mine drainage within qualified hydrologic units affected by coal surface-mining practices. The moneys accrued in this fund, any earnings thereon, and yield from investments by the State Treasurer or West Virginia Investment Management Board are reserved solely and exclusively for the purposes set forth in this section of the code. Any interest accrued on any moneys deposited into the Acid Mine Drainage Abatement and Treatment Fund which previously defaulted from that account into general revenue shall be credited back to the fund on or before July 1, 2014.

(c) Except as provided for in this subsection, lands and water eligible for reclamation or drainage abatement expenditures under this article are those which were mined for coal or which were affected by the mining, wastebanks, coal processing or other coal mining processes, and abandoned or left in an inadequate reclamation status prior to August 3, 1977, and for which there is no continuing reclamation responsibility: Provided, That moneys from the funds made available by the secretary of the United States department of interior pursuant to paragraphs (1) and (5), subsection (g), Section 402 of the federal Surface Mining Control and Reclamation Act of 1977, as
amended, may be expended for the reclamation or drainage abatement of a site that: (1) The surface-mining operation occurred during the period beginning on August 4, 1977, and ending on or before January 21, 1981, and that any funds for reclamation or abatement which are available pursuant to a bond or other financial guarantee or from any other source, and not sufficient to provide for adequate reclamation or abatement of the site; or (2) the surface-mining operation occurred during the period beginning on August 4, 1977, and ending on or before November 5, 1990, and that the surety of the surface-mining operation became insolvent during that period, and as of November 5, 1990, funds immediately available from proceeding relating to the insolvency or from any financial guarantees or other sources are not sufficient to provide for adequate reclamation of the site: Provided, however, That the secretary, with the concurrence of the secretary of the United States department of interior, makes either of the above-stated findings, and that the site is eligible, or more urgent than the reclamation priorities set forth in paragraphs (A) and (B), subdivision (1), subsection (b) of this section.

(d) One purpose of this article is to provide additional and cumulative remedies to abate the pollution of the waters of the state, and nothing contained in this article abridges or alters rights of action or remedies now or hereafter existing, nor do any provisions in this article or any act done by virtue of this article estop the state, municipalities, public health officers or persons as riparian owners or otherwise in the exercise of their rights to suppress nuisances or to abate any pollution now or hereafter existing or to recover damages.

(e) Where the Governor certifies that the above objectives of the fund have been achieved and there is a need for construction of specific public facilities in communities impacted by coal development, and other sources of federal funds are inadequate and the secretary of the United States department of interior
CHAPTER 112

(H. B. 2625 - By Delegate(s) Ashley and Ireland)
[By Request of the Environmental Protection, Department of]

[Passed March 12, 2015; in effect ninety days from passage.]
[Approved by the Governor on March 27, 2015.]


Be it enacted by the Legislature of West Virginia:

That §22-18-22 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 18. HAZARDOUS WASTE MANAGEMENT ACT.


1 (a) The net proceeds of all fines, penalties and forfeitures collected under this article shall be appropriated as directed by section five, article XII of the Constitution of West Virginia. For the purposes of this section, the net proceeds of the fines, penalties and forfeitures are considered the proceeds remaining after deducting therefrom those sums appropriated by the Legislature for defraying the cost of administering this article.

8 All permit application fees collected under this article shall be...
paid into the State Treasury into a special fund designated the Hazardous Waste Management Fund. In making the appropriation for defraying the cost of administering this article, the Legislature shall first take into account the sums included in that special fund prior to deducting additional sums as may be needed from the fines, penalties and forfeitures collected pursuant to this article.

(b) Effective on July 1, 2003, there is imposed an annual certification fee for facilities that manage hazardous waste, as defined by the federal Resource Conservation and Recovery Act, as amended. The secretary shall propose a rule for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code to establish the certification fee. The rule shall be a product of a negotiated rule-making process with the facilities subject to the rule. The rule shall, at a minimum, establish different fee rates for facilities based on criteria established in the rule. The total amount of fees generated raise no more funds than are necessary and adequate to meet the matching requirements for all federal grants which support the hazardous waste management program, but shall not exceed $700,000 per year.

(c) The revenues collected from the annual certification fee shall be deposited in the State Treasury to the credit of the Hazardous Waste Management Fee Fund, which is continued. Moneys of the fund, together with any interest or other return earned on the fund, shall be expended to meet the matching requirements of federal grant programs which support the hazardous waste management program. Expenditures from the fund are for the purposes set forth in this article 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. Amounts collected which
are found, from time to time, to exceed the funds needed for purposes set forth in this article may be transferred to other accounts by appropriation of the Legislature.

(d) The fee provided in subsection (b) of this section and the fund established in subsection (c) of this section shall terminate on June 30, 2020. The department shall, by December 31 of each year, report to the Joint Committee on Government and Finance regarding moneys collected into the Hazardous Waste Management Fee Fund and expenditures by the agency, including any federal matching moneys received and providing an accounting on the collection of the fee by type of permit activity, funds being expended and current and future projected balances of the fund.

CHAPTER 113

(Com. Sub. for H. B. 2266 - By Delegate(s) Shott, Ellington and Gearheart)

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

AN ACT to repeal §44-2-2 and §44-2-3 of the Code of West Virginia, 1931, as amended; to amend said code by adding thereto a new section, designated §16-5-9a; to amend and reenact §44-1-14a of said code; to amend said code by adding thereto a new section, designated §44-1-30; and to amend and reenact §44-2-1 of said code, all relating generally to administration of estates; repealing provision requiring fiduciary commissioner to publish notice of time for receiving claims against decedents’ estates; changing requirements for publication by county clerk; requiring legal residences to be included on certificates of death; reducing
creditors claim period from ninety to sixty days; increasing value of estates for which a fiduciary commissioner need not be appointed; and authorizing clerk of the county commission to require a certified copy of a decedent’s certificate of death or other proof of death and residence.

Be it enacted by the Legislature of West Virginia:

That §44-2-2 and §44-2-3 of the Code of West Virginia, 1931, as amended, be repealed; that said code be amended by adding thereto a new section, designated §16-5-9a; that §44-1-14a of said code be amended and reenacted; that said code be amended by adding thereto a new section, designated §44-1-30; and that §44-2-1 of said code be amended and reenacted, all to read as follows:

CHAPTER 16. PUBLIC HEALTH.

ARTICLE 5. VITAL STATISTICS.

§16-5-9a. Legal residences to be included on certificates of death.

1 In order to assist clerks of county commission fulfill their responsibilities under chapter forty-four of this code, the State Registrar shall require persons completing certificates of death, to include any known legal residences of the decedent, if different than the place of death.

CHAPTER 44. ADMINISTRATION OF ESTATES AND TRUSTS.

ARTICLE 1. PERSONAL REPRESENTATIVES.

§44-1-14a. Notice of administration of estate; time limits for filing of objections; liability of personal representative.

1 (a) Within thirty days of the filing of the appraisement of any estate or within one hundred twenty days of the date of
qualification of the personal representative if an appraisement is not filed as required in section fourteen of this article, the clerk of the county commission shall publish, once a week for two successive weeks, in a newspaper of general circulation within the county of the administration of the estate, a notice, which is to include:

(1) The name of the decedent;

(2) The name and address of the county commission before whom the proceedings are pending;

(3) The name and address of the personal representative;

(4) The name and address of any attorney representing the personal representative;

(5) The name and address of the fiduciary commissioner, if any;

(6) The date of first publication;

(7) A statement that claims against the estate must be filed within sixty days of the date of first publication in accordance with article two or article three-a of this chapter;

(8) A statement that any person seeking to impeach or establish a will must make a complaint in accordance with section eleven, twelve or thirteen, article five, chapter forty-one of this code;

(9) A statement that an interested person objecting to the qualifications of the personal representative or the venue or jurisdiction of the court must be filed with the county commission within sixty days after the date of first publication or thirty days of service of the notice, whichever is later; and
(10) If the appraisement of the assets of the estate shows the value to be $200,000 or less, exclusive of real estate specifically devised and nonprobate assets, or, if it appears to the clerk that there is only one beneficiary of the probate estate and that the beneficiary is competent at law, a statement substantially as follows: “Settlement of the estate of the following named decedents will proceed without reference to a fiduciary commissioner unless within sixty days from the first publication of this notice a reference is requested by a party in interest or an unpaid creditor files a claim and good cause is shown to support reference to a fiduciary commissioner”. If a party in interest requests the fiduciary commissioner to conclude the administration of the estate or an unpaid creditor files a claim, no further notice to creditors shall be published in the newspaper, and the personal representative shall be required to pay no further fees, except to the fiduciary commissioner for conducting any hearings, or performing any other duty as a fiduciary commissioner. The time period for filing claims against the estate shall expire upon the time period set out in the notice to creditors published by the clerk of the county commission as required in this subsection (a). If an unpaid creditor files a claim, the fiduciary commissioner shall conduct a hearing on the claim filed by the creditor, otherwise, the fiduciary commissioner shall conclude the administration of the estate as requested by the interested party.

(11) This notice shall be published as a Class II legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code. The publication of such notice shall be equivalent to personal service on creditors, distributees and legatees.

(b) If no appraisement is filed within the time period established pursuant to section fourteen of this article, the county clerk shall send a notice to the personal representative by first class mail, postage prepaid, indicating that the appraisement has not been filed.
(c) The personal representative shall promptly make a diligent search to determine the names and addresses of creditors of the decedent who are reasonably ascertainable.

(d) The personal representative shall, within sixty days after the date of first publication, serve a copy of the notice, published pursuant to subsection (a) of this section, by first class mail, postage prepaid, or by personal service on the following persons:

(1) If the personal representative is not the decedent’s surviving spouse and not the sole beneficiary or sole heir, the decedent’s surviving spouse, if any;

(2) If there is a will and the personal representative is not the sole beneficiary, any beneficiaries;

(3) If there is not a will and the personal representative is not the sole heir, any heirs;

(4) The trustee of any trust in which the decedent was a grantor, if any; and

(5) All creditors identified under subsection (c) of this section, other than a creditor who filed a claim as provided in article two of this chapter or a creditor whose claim has been paid in full.

(e) Any person interested in the estate who objects to the qualifications of the personal representative or the venue or jurisdiction of the court, shall file notice of an objection with the county commission within ninety days after the date of the first publication as required in subsection (a) of this section or within thirty days after service of the notice as required by subsection (d) of this section, whichever is later. If an objection is not timely filed, the objection is forever barred.

(f) A personal representative acting in good faith is not personally liable for serving notice under this section,
notwithstanding a determination that notice was not required by
this section. A personal representative acting in good faith who
fails to serve the notice required by this section is not personally
liable. The service of the notice in accordance with this
subsection may not be construed to admit the validity or
enforceability of a claim.

(g) The clerk of the county commission shall collect a fee of
$20 for the publication of the notice required in this section.

(h) For purposes of this section, the term beneficiary means
a person designated in a will to receive real or personal property.

§44-1-30. Death certificate or other proof of death and residence
may be required.

The clerk of the county commission may require a certified
copy of a decedents death certificate or other proof of death and
residence prior to fulfilling the clerk’s responsibilities under this
chapter.

ARTICLE 2. PROOF AND ALLOWANCE OF CLAIMS
AGAINST ESTATES OF DECEDENTS.

§44-2-1. Reference of decedents’ estates; proceedings thereon.

(a) Upon the return of the appraisement by the personal
representative to the county clerk, the estate of his or her
decedent, by order of the county commission, must be referred
to a fiduciary commissioner for proof and determination of debts
and claims, establishment of their priority, determination of the
amount of the respective shares of the legatees and distributes,
and any other matter necessary for the settlement of the estate:
Provided, That in counties where there are two or more
commissioners, the estates of decedents must be referred to the
commissioners in rotation, so there may be an equal division of
the work. Notwithstanding any other provision of this code to the
contrary, a fiduciary commissioner may not charge to the estate a fee greater than $300 and expenses for the settlement of an estate, except upon: (i) Approval of the personal representative; or (ii) a determination by the county commission that the fee is based upon the actual time spent and actual services rendered pursuant to a schedule of fees or rate of compensation for fiduciary commissioners promulgated by the commission in accordance with the provisions of section nine, article one, chapter fifty-nine of this code.

(b) If the personal representative delivers to the clerk an appraisement of the assets of the estate showing their value to be $200,000 or less, exclusive of real estate specifically devised and nonprobate assets, or if it appears to the clerk that there is only one beneficiary of the probate estate and that the beneficiary is competent at law, the clerk shall record the appraisement. If an unpaid creditor files a claim against the estate, the personal representative has twenty days after the date of the filing of a claim against the estate of the decedent to approve or reject the claim before the estate is referred to a fiduciary commissioner. If the personal representative approves all claims as filed, then no reference may be made.

The personal representative shall, within a reasonable time after the date of recordation of the appraisement: (i) File a waiver of final settlement in accordance with the provisions of section twenty-nine of this article; or (ii) make a report to the clerk of his or her receipts, disbursements and distribution and submit an affidavit stating that all claims against the estate for expenses of administration, taxes and debts of the decedent have been paid in full. Upon receipt of the waiver of final settlement or report, the clerk shall record the waiver or report and mail copies to each beneficiary and creditor by first-class mail, postage prepaid. The clerk shall retain the report for ten days to allow any beneficiary or creditor to appear before the county commission to request reference to a fiduciary commissioner.
The clerk shall collect a fee of $10 for recording and mailing the 
waiver of final settlement or report.

If no request or objection is made to the clerk or to the 
county commission, the county commission may confirm the 
report of the personal representative, the personal representative 
and his or her surety shall be discharged; but if an objection or 
request is made, the county commission may confirm and record 
the accounting or may refer the estate to its fiduciary 
commissioners: Provided, That the personal representative has 
twenty days after the date of the filing of a claim against the 
estate of the decedent to approve or reject the claim before the 
estate is referred to a fiduciary commissioner and if all claims 
are approved as filed, then no reference may be made.

(c) For purposes of this section, the term beneficiary means 
a person designated in a will to receive real or personal property.
That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new article, designated §19-35-1, §19-35-2, §19-35-3 and §19-35-4, all to read as follows:

ARTICLE 35. FARMERS MARKETS.

§19-35-1. Legislative findings.

(a) Farmers markets are critical incubators for small farm and food businesses because they offer an inexpensive, accessible, entry-level market for reaching consumers directly, though research has shown that the average vendor makes only a nominal dollar amount in sales on any given market day;

(b) The number of farmers markets and the variety of products sold at farmers markets has increased significantly in the past ten years, adding millions of dollars to the state’s economy;

(c) Encouraging locally grown and raised food is important to the health and welfare of the citizens of West Virginia;

(d) Permit fees and requirements for farmers market vendors can vary widely from county to county and from one regulatory official to the other. Current food permit categories are not designed for farmers markets and their vendors, but rather for restaurants, grocery stores or concessioners;

(e) Food permits required for farmers market vendors are currently not recognized across county lines.


For purposes of this article:

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

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

c) “Farmers market” means:

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

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

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

(4) A consignment farmers market.

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

§19-35-3. Farmers market vendor permit; scope.

(a) Vendors at a farmers market selling farm and food products that require a food establishment permit shall apply for a uniform farmers market vendor permit and pay the annual permit fee to the local health department in the jurisdiction in which the farmers market is located. The permit is valid in all counties in this state, and vendors are not required to apply to more than one local health department for a uniform farmers
market vendor permit. The uniform farmers market vendor permit shall be required in lieu of the food establishment permit, notwithstanding any other provisions of code or rule that require a food establishment permit or any other permit from a local health department.

(b) The application must include any other farmers market locations under the jurisdiction of another local health department that the vendor will sell farm and food products subject to the permit. The local health department which approves the application for the uniform farmers market vendor permit shall provide notice of the approval to any other local health departments that the vendor will be subject to, as indicated on the application.

(c) (1) The annual permit fee for the uniform farmers market vendor permit is as follows:

(A) For vendors selling farm and food products under the jurisdiction of only one local health department, the annual fee is $15.

(B) For vendors selling farm and food products under the jurisdiction of more than one local health department, the annual fee is $25.

(2) The annual permit fee shall be collected and deposited in accordance with subsection (6), section eleven, article two, chapter sixteen of this code.

(d) The following vendors are exempt from the requirements of the uniform farmers market vendor permit:

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

(2) Vendors selling fresh, uncut produce or other any other farm and food product not subject to a permit by a local health department through rule or regulation.
(e) A consignment farmers market shall obtain a food establishment permit issued by the local health department.

(f) Every uniform farmers market vendor permit shall be displayed in a conspicuous manner.

(g) Notwithstanding the provisions of article two, chapter sixteen of this code, a local health department has the right to inspect and suspend the uniform farmers market vendor permit for violation of rules or the local health department regulations of a vendor at any farmers market in its jurisdiction, or at the vendor’s home or business address, if it is in the inspecting local health department’s jurisdiction, regardless of what local health department issued the uniform farmers market vendor permit.

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


(a) The West Virginia 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 for the purposes of implementing this article.

(b) The West Virginia Department of Health and Human Resources shall consult with the West Virginia Department of Agriculture and shall consider the guidelines established in the Farmers Market Vendor Guide and Memorandum F-16, Food Permits at Farmers Markets in promulgating the rules.
AN ACT to amend and reenact §29B-1-2 and §29B-1-3 of the Code of West Virginia, 1931, as amended; to amend said code by adding thereto a new section, designated §29B-1-3a; to amend and reenact §29B-1-4 of said code; and to amend and reenact §61-7-4 of said code, all relating to the Freedom of Information Act; redefining the term “public record”; defining and exempting certain fees and costs for reproduction of records; directing the Secretary of State to establish a database of Freedom of Information requests and publication on the Secretary of State’s website; directing public bodies to report Freedom of Information request information to the Secretary of State; authorizing emergency and legislative rule-making authority to the Secretary of State; establishing a presumption of public accessibility to public records; exempting information contained in a concealed weapon permit application from the Freedom of Information Act; authorizing disclosure of exempt information to law enforcement agency; protecting the confidentiality of information collected in an application for a concealed weapon permit; and providing criminal penalties.

Be it enacted by the Legislature of West Virginia:

That §29B-1-2 and §29B-1-3 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 §29B-1-3a; that §29B-1-4 of said code be amended and reenacted, and that §61-7-4 of said code be amended and reenacted, all to read as follows:
CHAPTER 29B. FREEDOM OF INFORMATION.

ARTICLE 1. PUBLIC RECORDS.

§29B-1-2. Definitions.

As used in this article:

(1) “Custodian” means the elected or appointed official charged with administering a public body.

(2) “Person” includes any natural person, corporation, partnership, firm or association.

(3) “Public body” means every state officer, agency, department, including the executive, legislative and judicial departments, division, bureau, board and commission; every county and city governing body, school district, special district, municipal corporation, and any board, department, commission council or agency thereof; and any other body which is created by state or local authority or which is primarily funded by the state or local authority.

(4) “Public record” includes any writing containing information prepared or received by a public body, the content or context of which, judged either by content or context, relates to the conduct of the public’s business.

(5) “Writing” includes any books, papers, maps, photographs, cards, tapes, recordings or other documentary materials regardless of physical form or characteristics.

§29B-1-3. Inspection and copying of public record; requests of Freedom of Information Act requests registry.

(a) Every person has a right to inspect or copy any public record of a public body in this state, except as otherwise expressly provided by section four of this article.
(b) A request to inspect or copy any public record of a public body shall be made directly to the custodian of such public record.

(c) The custodian of any public records, unless otherwise expressly provided by statute, shall furnish proper and reasonable opportunities for inspection and examination of the records in his or her office and reasonable facilities for making memoranda or abstracts therefrom, during the usual business hours, to all persons having occasion to make examination of them. The custodian of the records may make reasonable rules and regulations necessary for the protection of the records and to prevent interference with the regular discharge of his or her duties. If the records requested exist in magnetic, electronic or computer form, the custodian of the records shall make copies available on magnetic or electronic media, if so requested.

(d) All requests for information must state with reasonable specificity the information sought. The custodian, upon demand for records made under this statute, shall as soon as is practicable but within a maximum of five days not including Saturdays, Sundays or legal holidays:

(1) Furnish copies of the requested information;

(2) Advise the person making the request of the time and place at which he or she may inspect and copy the materials; or

(3) Deny the request stating in writing the reasons for such denial. A denial shall indicate that the responsibility of the custodian of any public records or public body to produce the requested records or documents is at an end, and shall afford the person requesting them the opportunity to institute proceedings for injunctive or declaratory relief in the circuit court in the county where the public record is kept.
(e) The public body may establish fees reasonably calculated to reimburse it for its actual cost in making reproductions of records. A public body may not charge a search or retrieval fee or otherwise seek reimbursement based on a man-hour basis as part of costs associated with making reproduction of records.

(f) The Secretary of State shall maintain an electronic data base of notices of requests as required by section three-a of this article. The database shall be made available to the public via the Internet and shall list each freedom of information request received and the outcome of the request. The Secretary of State shall provide on the website a form for use by a public body to report the results of the freedom of information request, providing the nature of the request and the public body’s response thereto, whether the request was granted, and if not, the exemption asserted under section four of this article to deny the request.

§29B-1-3a. Reports to Secretary of State by public bodies.

(a) Beginning January 1, 2016, each public body that is in receipt of a freedom of information request shall provide information to the Secretary of State relating to, at a minimum, the nature of the request, the nature of the public body’s response, the time-frame that was necessary to comply in full with the request; and the amount of reimbursement charged to the requester for the freedom of information request: Provided, That the public body shall not provide to the Secretary of State the public records that were the subject of the FOIA request.

(b) Pursuant to article three, chapter twenty-nine-a of this code, the Secretary of State shall propose rules and emergency rules for legislative approval relating to the creation and maintenance of a publically accessible database available on the Secretary of State’s website; the establishment of forms and procedures for submission of information to the Secretary of
§29B-1-4. Exemptions.

(a) There is a presumption of public accessibility to all public records, subject only to the following categories of information which are specifically exempt from disclosure under the provisions of this article:

(1) Trade secrets, as used in this section, which may include, but are not limited to, any formula, plan pattern, process, tool, mechanism, compound, procedure, production data or compilation of information which is not patented which is known only to certain individuals within a commercial concern who are using it to fabricate, produce or compound an article or trade or a service or to locate minerals or other substances, having commercial value, and which gives its users an opportunity to obtain business advantage over competitors;

(2) Information of a personal nature such as that kept in a personal, medical or similar file, if the public disclosure of the information would constitute an unreasonable invasion of privacy, unless the public interest by clear and convincing evidence requires disclosure in this particular instance: Provided, That this article does not preclude an individual from inspecting or copying his or her own personal, medical or similar file;

(3) Test questions, scoring keys and other examination data used to administer a licensing examination, examination for employment or academic examination;

(4) Records of law-enforcement agencies that deal with the detection and investigation of crime and the internal records and notations of such law-enforcement agencies which are maintained for internal use in matters relating to law enforcement;
(5) Information specifically exempted from disclosure by statute;

(6) Records, archives, documents or manuscripts describing the location of undeveloped historic, prehistoric, archaeological, paleontological and battlefield sites or constituting gifts to any public body upon which the donor has attached restrictions on usage or the handling of which could irreparably damage the record, archive, document or manuscript;

(7) Information contained in or related to examination, operating or condition reports prepared by, or on behalf of, or for the use of any agency responsible for the regulation or supervision of financial institutions, except those reports which are by law required to be published in newspapers;

(8) Internal memoranda or letters received or prepared by any public body;

(9) Records assembled, prepared or maintained to prevent, mitigate or respond to terrorist acts or the threat of terrorist acts, the public disclosure of which threaten the public safety or the public health;

(10) Those portions of records containing specific or unique vulnerability assessments or specific or unique response plans, data, databases and inventories of goods or materials collected or assembled to respond to terrorist acts; and communication codes or deployment plans of law-enforcement or emergency response personnel;

(11) Specific intelligence information and specific investigative records dealing with terrorist acts or the threat of a terrorist act shared by and between federal and international law-enforcement agencies, state and local law-enforcement and other agencies within the Department of Military Affairs and Public Safety;
(12) National security records classified under federal executive order and not subject to public disclosure under federal law that are shared by federal agencies and other records related to national security briefings to assist state and local government with domestic preparedness for acts of terrorism;

(13) Computing, telecommunications and network security records, passwords, security codes or programs used to respond to or plan against acts of terrorism which may be the subject of a terrorist act;

(14) Security or disaster recovery plans, risk assessments, tests or the results of those tests;

(15) Architectural or infrastructure designs, maps or other records that show the location or layout of the facilities where computing, telecommunications or network infrastructure used to plan against or respond to terrorism are located or planned to be located;

(16) Codes for facility security systems; or codes for secure applications for facilities referred to in subdivision (15) of this subsection;

(17) Specific engineering plans and descriptions of existing public utility plants and equipment;

(18) Customer proprietary network information of other telecommunications carriers, equipment manufacturers and individual customers, consistent with 47 U.S.C. §222;

(19) Records of the Division of Corrections, Regional Jail and Correctional Facility Authority and the Division of Juvenile Services relating to design of corrections, jail and detention facilities owned or operated by the agency, and the policy directives and operational procedures of personnel relating to the safe and secure management of inmates or residents, that if
(20) Information related to applications under section four, article seven, chapter sixty-one of this code, including applications, supporting documents, permits, renewals, or any other information that would identify an applicant for or holder of a concealed weapon permit: Provided: That information in the aggregate that does not identify any permit holder other than by county or municipality is not exempted: Provided, however, That information or other records exempted under this subdivision may be disclosed to a law enforcement agency or officer: (i) to determine the validity of a permit, (ii) to assist in a criminal investigation or prosecution, or (iii) for other lawful law-enforcement purposes.

(b) As used in subdivisions (9) through (16), inclusive, subsection (a) of this section, the term “terrorist act” means an act that is likely to result in serious bodily injury or damage to property or the environment and is intended to:

(1) Intimidate or coerce the civilian population;

(2) Influence the policy of a branch or level of government by intimidation or coercion;

(3) Affect the conduct of a branch or level of government by intimidation or coercion; or

(4) Retaliate against a branch or level of government for a policy or conduct of the government.

(c) The provisions of subdivisions (9) through (16), inclusive, subsection (a) of this section do not make subject to the provisions of this chapter any evidence of an immediate threat to public health or safety unrelated to a terrorist act or the
CHAPTER 61. CRIMES AND THEIR PUNISHMENT.

ARTICLE 7. DANGEROUS WEAPONS.

§61-7-4. License to carry deadly weapons; how obtained.

(a) Except as provided in subsection (h) of this section, any person desiring to obtain a state license to carry a concealed deadly weapon shall apply to the sheriff of his or her county for the license, and pay to the sheriff, at the time of application, a fee of $75, of which $15 of that amount shall be deposited in the Courthouse Facilities Improvement Fund created by section six, article twenty-six, chapter twenty-nine of this code. Concealed weapons permits may only be issued for pistols or revolvers. Each applicant shall file with the sheriff a complete application, as prepared by the Superintendent of the West Virginia State Police, in writing, duly verified, which sets forth only the following licensing requirements:

1. The applicant’s full name, date of birth, Social Security number, a description of the applicant’s physical features, the applicant’s place of birth, the applicant’s country of citizenship and, if the applicant is not a United States citizen, any alien or admission number issued by the United States Bureau of Immigration and Customs Enforcement, and any basis, if applicable, for an exception to the prohibitions of 18 U. S. C. § 922(g)(5)(B);

2. That, on the date the application is made, the applicant is a bona fide resident of this state and of the county in which the application is made and has a valid driver’s license or other state-issued photo identification showing the residence;
(3) That the applicant is twenty-one years of age or older:
Provided, That any individual who is less than twenty-one years
of age and possesses a properly issued concealed weapons
license as of the effective date of this article shall be licensed to
maintain his or her concealed weapons license notwithstanding
the provisions of this section requiring new applicants to be at
least twenty-one years of age: Provided, however, That upon a
showing of any applicant who is eighteen years of age or older
that he or she is required to carry a concealed weapon as a
condition for employment, and presents satisfactory proof to the
sheriff thereof, then he or she shall be issued a license upon
meeting all other conditions of this section. Upon discontinuance
of employment that requires the concealed weapons license, if
the individual issued the license is not yet twenty-one years of
age, then the individual issued the license is no longer eligible
and must return his or her license to the issuing sheriff;

(4) That the applicant is not addicted to alcohol, a controlled
substance or a drug and is not an unlawful user thereof as
evidenced by either of the following within the three years
immediately prior to the application:

(A) Residential or court-ordered treatment for alcoholism or
alcohol detoxification or drug treatment; or

(B) Two or more convictions for driving while under the
influence or driving while impaired;

(5) That the applicant has not been convicted of a felony
unless the conviction has been expunged or set aside or the
applicant’s civil rights have been restored or the applicant has
been unconditionally pardoned for the offense;

(6) That the applicant has not been convicted of a
misdemeanor crime of violence other than an offense set forth in
subsection (7) of this section in the five years immediately
preceding the application;
(7) That the applicant has not been convicted of a misdemeanor crime of domestic violence as defined in 18 U. S. C. § 921(a)(33), or a misdemeanor offense of assault or battery either under the provisions of section twenty-eight, article two of this chapter or the provisions of subsection (b) or (c), section nine, article two of this chapter in which the victim was a current or former spouse, current or former sexual or intimate partner, person with whom the defendant cohabits or has cohabited, a parent or guardian, the defendant’s child or ward or a member of the defendant’s household at the time of the offense, or a misdemeanor offense with similar essential elements in a jurisdiction other than this state;

(8) That the applicant is not under indictment for a felony offense or is not currently serving a sentence of confinement, parole, probation or other court-ordered supervision imposed by a court of any jurisdiction or is the subject of an emergency or temporary domestic violence protective order or is the subject of a final domestic violence protective order entered by a court of any jurisdiction;

(9) That the applicant has not been adjudicated to be mentally incompetent or involuntarily committed to a mental institution. If the applicant has been adjudicated mentally incompetent or involuntarily committed the applicant must provide a court order reflecting that the applicant is no longer under such disability and the applicant’s right to possess or receive a firearm has been restored;

(10) That the applicant is not prohibited under the provisions of section seven of this article or federal law, including 18 U.S.C. § 922(g) or (n), from receiving, possessing or transporting a firearm;

(11) That the applicant has qualified under the minimum requirements set forth in subsection (d) of this section for
handling and firing the weapon: *Provided*, That this requirement shall be waived in the case of a renewal applicant who has previously qualified; and

(12) That the applicant authorizes the sheriff of the county, or his or her designee, to conduct an investigation relative to the information contained in the application.

(b) For both initial and renewal applications, the sheriff shall conduct an investigation including a nationwide criminal background check consisting of inquiries of the National Instant Criminal Background Check System, the West Virginia criminal history record responses and the National Interstate Identification Index and shall review the information received in order to verify that the information required in subsection (a) of this section is true and correct. A license may not be issued unless the issuing sheriff has verified through the National Instant Criminal Background Check System that the information available to him or her does not indicate that receipt or possession of a firearm by the applicant would be in violation of the provisions of section seven of this article or federal law, including 18 U.S.C. § 922(g) or (n).

(c) Sixty dollars of the application fee and any fees for replacement of lost or stolen licenses received by the sheriff shall be deposited by the sheriff into a concealed weapons license administration fund. The fund shall be administered by the sheriff and shall take the form of an interest-bearing account with any interest earned to be compounded to the fund. Any funds deposited in this concealed weapon license administration fund are to be expended by the sheriff to pay the costs associated with issuing concealed weapons licenses. Any surplus in the fund on hand at the end of each fiscal year may be expended for other law-enforcement purposes or operating needs of the sheriff’s office, as the sheriff considers appropriate.
(d) All persons applying for a license must complete a training course in handling and firing a handgun. The successful completion of any of the following courses fulfills this training requirement:

1. Any official National Rifle Association handgun safety or training course;

2. Any handgun safety or training course or class available to the general public offered by an official law-enforcement organization, community college, junior college, college or private or public institution or organization or handgun training school utilizing instructors certified by the institution;

3. Any handgun training or safety course or class conducted by a handgun instructor certified as such by the state or by the National Rifle Association;

4. Any handgun training or safety course or class conducted by any branch of the United States Military, Reserve or National Guard or proof of other handgun qualification received while serving in any branch of the United States Military, Reserve or National Guard.

A photocopy of a certificate of completion of any of the courses or classes or an affidavit from the instructor, school, club, organization or group that conducted or taught the course or class attesting to the successful completion of the course or class by the applicant or a copy of any document which shows successful completion of the course or class is evidence of qualification under this section.

(e) All concealed weapons license applications must be notarized by a notary public duly licensed under article four, chapter twenty-nine of this code. Falsification of any portion of the application constitutes false swearing and is punishable under the provisions of section two, article five, chapter sixty-one of this code.
(f) The sheriff shall issue a license unless he or she determines that the application is incomplete, that it contains statements that are materially false or incorrect or that applicant otherwise does not meet the requirements set forth in this section. The sheriff shall issue, reissue or deny the license within forty-five days after the application is filed if all required background checks authorized by this section are completed.

(g) Before any approved license is issued or is effective, the applicant shall pay to the sheriff a fee in the amount of $25 which the sheriff shall forward to the Superintendent of the West Virginia State Police within thirty days of receipt. The license is valid for five years throughout the state, unless sooner revoked.

(h) Each license shall contain the full name and address of the licensee and a space upon which the signature of the licensee shall be signed with pen and ink. The issuing sheriff shall sign and attach his or her seal to all license cards. The sheriff shall provide to each new licensee a duplicate license card, in size similar to other state identification cards and licenses, suitable for carrying in a wallet, and the license card is considered a license for the purposes of this section.

(i) The Superintendent of the West Virginia State Police shall prepare uniform applications for licenses and license cards showing that the license has been granted and shall do any other act required to be done to protect the state and see to the enforcement of this section.

(j) If an application is denied, the specific reasons for the denial shall be stated by the sheriff denying the application. Any person denied a license may file, in the circuit court of the county in which the application was made, a petition seeking review of the denial. The petition shall be filed within thirty days of the denial. The court shall then determine whether the applicant is entitled to the issuance of a license under the criteria set forth in this section. The applicant may be represented by
186 counsel, but in no case is the court required to appoint counsel
187 for an applicant. The final order of the court shall include the
188 court’s findings of fact and conclusions of law. If the final order
189 upholds the denial, the applicant may file an appeal in
190 accordance with the Rules of Appellate Procedure of the
191 Supreme Court of Appeals. If the findings of fact and
192 conclusions of law of the court fail to uphold the denial, the
193 applicant may be entitled to reasonable costs and attorney’s fees,
194 payable by the sheriff’s office which issued the denial.

195 (k) If a license is lost or destroyed, the person to whom the
196 license was issued may obtain a duplicate or substitute license
197 for a fee of $5 by filing a notarized statement with the sheriff
198 indicating that the license has been lost or destroyed.

199 (l) Whenever any person after applying for and receiving a
200 concealed handgun license moves from the address named in the
201 application to another county within the state, the license
202 remains valid for the remainder of the five years unless the
203 sheriff of the new county has determined that the person is no
204 longer eligible for a concealed deadly weapon license under this
205 article, and the sheriff shall issue a new license bearing the
206 person’s new address and the original expiration date for a fee
207 not to exceed $5: Provided, That the licensee within twenty days
208 thereafter notifies the sheriff in the new county of residence in
209 writing of the old and new addresses.

210 (m) The sheriff shall, immediately after the license is
211 granted as aforesaid, furnish the Superintendent of the West
212 Virginia State Police a certified copy of the approved
213 application. The sheriff shall furnish to the Superintendent of the
214 West Virginia State Police at any time so requested a certified
215 list of all licenses issued in the county. The Superintendent of the
216 West Virginia State Police shall maintain a registry of all
217 persons who have been issued concealed weapons licenses.
(n) The sheriff shall deny any application or revoke any existing license upon determination that any of the licensing application requirements established in this section have been violated by the licensee.

(o) A person who is engaged in the receipt, review or in the issuance or revocation of a concealed weapon license does not incur any civil liability as the result of the lawful performance of his or her duties under this article.

(p) Notwithstanding the provisions of subsection (a) of this section, with respect to application by a former law-enforcement officer honorably retired from agencies governed by article fourteen, chapter seven of this code; article fourteen, chapter eight of this code; article two, chapter fifteen of this code; and article seven, chapter twenty of this code, an honorably retired officer is exempt from payment of fees and costs as otherwise required by this section. All other application and background check requirements set forth in this shall be applicable to these applicants.

(q) Information collected under this section, including applications, supporting documents, permits, renewals, or any other information that would identify an applicant for or holder of a concealed weapon permit, is confidential: Provided, That such information may be disclosed to a law enforcement agency or officer: (i) To determine the validity of a permit; (ii) to assist in a criminal investigation or prosecution; or (iii) for other lawful law-enforcement purposes. A person who violates this subsection is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than $50 or more than $200 for each offense.

(r) Except as restricted or prohibited by the provisions of this article or as otherwise prohibited by law, the issuance of a concealed weapon permit issued in accordance with the provisions of this section authorizes the holder of the permit to
AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §5-22-3, relating to establishing the Fair and Open Competition in Governmental Construction Act; providing legislative findings; defining terms; prohibiting project labor agreements from being part of the competitive bid process on governmental construction projects; prohibiting project labor agreements from being a condition for receiving a grant, tax abatement or tax credit for construction projects; providing exclusions; and establishing a process for an exemption.

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 §5-22-3, to read as follows:

ARTICLE 22. GOVERNMENT CONSTRUCTION CONTRACTS.

§5-22-3. Certain labor requirements not to be imposed on contractor or subcontractor.

(a) This section may be known and cited as The Fair and Open Competition in Governmental Construction Act.
(b) Legislative findings. — The Legislature finds that to promote and ensure fair competition on governmental, governmental funded or governmental assisted construction projects that open competition in governmental construction contracts is necessary. The Legislature also finds that when a governmental entity awards a grant, tax abatement or tax credit that it should be an open and fair process. Therefore, to prevent discrimination against governmental bidders, offerors, contractors or subcontractors based upon labor affiliation or the lack thereof, the Legislature declares that project labor agreements should not be part of the competitive bid process or be a condition for a grant, tax abatement or tax credit.

(c) Definitions. — For purposes of this section:

(1) “Construction” means the act, trade or process of building, erecting, constructing, adding, repairing, remodeling, rehabilitating, reconstructing, altering, converting, improving, expanding or demolishing of a building, structure, facility, road or highway, and includes the planning, designing and financing of a specific construction project.

(2) “Governmental entity” means the state, a political subdivision or any agency or spending unit thereof.

(3) “Project labor agreement” means any pre-hire collective bargaining agreement with one or more labor organizations that establishes the terms and conditions of employment for a specific construction project.

(d) Prohibition - Competitive bid. — Commencing July 1, 2015, a governmental entity or a construction manager acting on behalf of a governmental entity, seeking a construction bid solicitation, awarding a construction contract or obligating funds to a construction contract, shall not include the following in the bid specifications, bid requests, project agreements or any other controlling documents for the construction project:
A requirement or prohibition that a bidder, offeror, contractor or subcontractor must enter into or adhere to a project labor agreement;

(2) A term, clause or statement that infers, either directly or indirectly, that a bidder, offeror, contractor or subcontractor must enter into or adhere to a project labor agreement;

(3) A term, clause or statement that rewards or punishes a bidder, offeror, contractor or subcontractor for becoming or remaining, or refusing to become or remain a signatory to, or for adhering or refusing to adhere to, a project labor agreement; or

(4) Any other provision dealing with project labor agreements.

Prohibition - Grant, tax abatement or tax credit. — Commencing July 1, 2015, a governmental entity may not award a grant, tax abatement or tax credit for construction that is conditioned upon a requirement that the awardee include any prohibited provision set out in subsection (d) of this section.

Exclusions. — This section does not:

(1) Prohibit a governmental entity from awarding a contract, grant, tax abatement or tax credit to a private owner, bidder, contractor or subcontractor who enters into or who is party to an agreement with a labor organization, if being or becoming a party or adhering to an agreement with a labor organization is not a condition for award of the contract, grant, tax abatement or tax credit, and if the governmental entity does not discriminate against a private owner, bidder, contractor or subcontractor in the awarding of that contract, grant, tax abatement or tax credit based upon the status as being or becoming, or the willingness or refusal to become, a party to an agreement with a labor organization.
(2) Prohibit a private owner, bidder, contractor or subcontractor from voluntarily entering into or complying with an agreement entered into with one or more labor organizations in regard to a contract with a governmental entity or funded, in whole or in part, from a grant, tax abatement or tax credit from the governmental entity.

(3) Prohibit employers or other parties from entering into agreements or engaging in any other activity protected by the National Labor Relations Act, 29 U. S. C. §§151 to 169.

(4) Interfere with labor relations of parties that are left unregulated under the National Labor Relations Act, 29 U. S. C. §§151 to 169.

(g) Exemptions. — The head of a governmental entity may exempt a particular project, contract, subcontract, grant, tax abatement or tax credit from the requirements of any or all of the provisions of subsections (d) and (e) of this section if the governmental unit finds, after public notice and a hearing, that special circumstances require an exemption to avert an imminent threat to public health or safety. A finding of special circumstances under this subsection may not be based on the possibility or presence of a labor dispute concerning the use of contractors or subcontractors who are nonsignatories to, or otherwise do not adhere to, agreements with one or more labor organizations or concerning employees on the project who are not members of or affiliated with a labor organization.
AN ACT to repeal §20-14-6 and §20-14-7 of the Code of West Virginia, 1931, as amended; to amend and reenact §15-10-3 and §15-10-4 of said code; to amend and reenact §20-7-1 of said code; to amend and reenact §20-14-1, §20-14-2, §20-14-3, §20-14-4, §20-14-5, §20-14-8 and §20-14-9 of said code; to amend said code by adding thereto four new sections, designated §20-14-4a, §20-14-10, §20-14-11 and §20-14-12; to amend and reenact §20-15-2 and §20-15-5 of said code; to amend and reenact §30-29-1 of said code; and to amend and reenact §61-7-6 of said code, all relating to reorganization of Hatfield-McCoy Regional Recreation Authority; removing rangers as law-enforcement officers; providing for law-enforcement services to be provided by natural resources police officers under reimbursement by authority; converting authority to a joint development entity of counties; altering composition of authority’s board; removing authorization to issue revenue bonds and create security interests; providing for financial review and oversight of public funds; defining prohibited uses and conduct in recreation area; establishing requirements for bidding and purchasing; prohibiting conflicts of interest; creating criminal penalties and civil remedies; and declaring responsibilities of participants to landowners and lessors in the recreation area.
Be it enacted by the Legislature of West Virginia:

That §20-14-6 and §20-14-7 of the Code of West Virginia, 1931, as amended, be repealed; that §15-10-3 and §15-10-4 of said code be amended and reenacted; that §20-7-1 of said code be amended and reenacted; that §20-14-1, §20-14-2, §20-14-3, §20-14-4, §20-14-5, §20-14-8 and §20-14-9 of said code be amended and reenacted; that said code be amended by adding thereto four new sections, designated §20-14-4a, §20-14-10, §20-14-11 and §20-14-12; that §20-15-2 and §20-15-5 of said code be amended and reenacted; that §30-29-1 of said code be amended and reenacted; and that §61-7-6 of said code be amended and reenacted, all to read as follows:

CHAPTER 15. PUBLIC SAFETY.

ARTICLE 10. COOPERATION BETWEEN LAW-ENFORCEMENT AGENCIES.

§15-10-3. Definitions.

For purposes of this article only, and unless a different meaning plainly is required:

(1) “Criminal justice enforcement personnel” means those persons within the state criminal justice system who are actually employed as members of the State Police, members of the Division of Protective Services, natural resources police officers, chiefs of police and police of incorporated municipalities, and county sheriffs and their deputies and whose primary duties are the investigation of crime and the apprehension of criminals.

(2) “Head of a law-enforcement agency” means the Superintendent of the State Police, the Director of the Division of Protective Services, the chief natural resources police officer of the Division of Natural Resources, a chief of police of an incorporated municipality, a county sheriff or the Director of the Division of Forestry.
(3) “State or local law-enforcement officer” means any duly authorized member of a law-enforcement agency who is authorized to maintain public peace and order, prevent and detect crime, make arrests and enforce the laws of the state or any county or municipality thereof, other than parking ordinances, and includes persons employed as campus police officers at state institutions of higher education in accordance with the provisions of section five, article four, chapter eighteen-b of this code, although those institutions may not be considered law-enforcement agencies.

(4) “Head of campus police” means the superintendent or administrative head of state or local law-enforcement officers employed as campus police officers at state institutions of higher education in accordance with the provisions of section five, article four, chapter eighteen-b of this code.

§15-10-4. Cooperation between law-enforcement agencies and other groups of state or local law-enforcement officers.

(a) The head of any law-enforcement agency, or the head of any campus police, as those terms are defined in section three of this article, may temporarily provide assistance and cooperation to another agency of the state criminal justice system or to a federal law-enforcement agency in investigating crimes or possible criminal activity if requested to do so in writing by the head of another law-enforcement agency or federal law-enforcement agency. Such assistance may also be provided upon the request of the head of the law-enforcement agency or federal law-enforcement agency without first being reduced to writing in emergency situations involving the imminent risk of loss of life or serious bodily injury. The assistance may include, but is not limited to, entering into a multijurisdictional task force agreement to integrate federal, state, county and municipal
law-enforcement agencies or other groups of state or local
law-enforcement officers, or any combination thereof, for the
purpose of enhancing interagency coordination, intelligence
gathering, facilitating multijurisdictional investigations,
providing criminal justice enforcement personnel of the
law-enforcement agency to work temporarily with personnel of
another agency, including in an undercover capacity, and making
available equipment, training, technical assistance and
information systems for the more efficient investigation,
apprehension and adjudication of persons who violate the
criminal laws of this state or the United States and to assist the
victims of such crimes. When providing the assistance under this
article, a head of a law-enforcement agency shall comply with all
applicable statutes, ordinances, rules, policies or guidelines
officially adopted by the state or the governing body of the city
or county by which he or she is employed and any conditions or
restrictions included therein.

(b) While temporarily assigned to work with another
law-enforcement agency or agencies, criminal justice
enforcement personnel and other state and local law-enforcement
officers shall have the same jurisdiction, powers, privileges and
immunities, including those relating to the defense of civil
actions, as such criminal justice enforcement personnel would
enjoy if actually employed by the agency to which they are
assigned, in addition to any corresponding or varying
jurisdiction, powers, privileges and immunities conferred by
virtue of their continued employment with the assisting agency.

(c) While assigned to another agency or to a
multijurisdictional task force, criminal justice enforcement
personnel and other state and local law-enforcement officers
shall be subject to the lawful operational commands of the
superior officers of the agency or task force to which they are
assigned, but for personnel and administrative purposes,
including compensation, they shall remain under the control of the assisting agency. These assigned personnel shall continue to be covered by all employee rights and benefits provided by the assisting agency, including workers’ compensation, to the same extent as though such personnel were functioning within the normal scope of their duties.

(d) No request or agreement between the heads of law-enforcement agencies, or the heads of campus police, made or entered into pursuant to this article shall remain in force or effect until a copy of said request or agreement is filed with the office of the circuit clerk of the county or counties in which the law-enforcement agencies, or the campus police, involved operate. Agreements made pursuant to this article shall remain in effect unless and until the agreement is changed or withdrawn in writing by the head of one of the law-enforcement agencies. Upon filing, the requests or agreements may be sealed, subject to disclosure pursuant to an order of a circuit court directing disclosure for good cause. Nothing in this article shall be construed to limit the authority of the head of a law-enforcement agency or the head of campus police to withdraw from any agreement at any time.

(e) Nothing contained in this article shall be construed so as to grant, increase, decrease or in any manner affect the civil service protection or the applicability of civil service laws as to any criminal justice enforcement personnel, or as to any state or local law-enforcement officer or agency operating under the authority of this article, nor shall this article in any way reduce or increase the jurisdiction or authority of any criminal justice enforcement personnel, or of any state or local law-enforcement officer or agency, except as specifically provided herein.

(f) Nothing contained in this article shall be construed so as to authorize the permanent consolidation or merger or the
elimination of operations of participating federal, state, county
and municipal law-enforcement agencies, or other groups of
state and local law-enforcement officers, or campus police.

CHAPTER 20. NATURAL RESOURCES.

ARTICLE 7. LAW ENFORCEMENT, MOTORBOATING,
LITTER.

§20-7-1. Chief natural resources police officer; natural resources
police officers; special and emergency natural
resources police officers; subsistence allowance; expenses.

(a) The division’s law-enforcement policies, practices and
programs are under the immediate supervision and direction of
the division law-enforcement officer selected by the director and
designated as chief natural resources police officer as provided
in section thirteen, article one of this chapter.

(b) Under the supervision of the director, the chief natural
resources police officer shall organize, develop and maintain
law-enforcement practices, means and methods geared, timed
and adjustable to seasonal, emergency and other needs and
requirements of the division’s comprehensive natural resources
program. All division personnel detailed and assigned to
law-enforcement duties and services under this section shall be
known and designated as natural resources police officers and
are under the immediate supervision and direction of the chief
natural resources police officer except as otherwise provided. All
natural resources police officers shall be trained, equipped and
conditioned for duty and services wherever and whenever
required by division law-enforcement needs. The chief natural
resources police officer may also assign natural resources police
officers to perform law-enforcement duties on any trail, grounds,
appurtenant facility or other areas accessible to the public within the Hatfield-McCoy Recreation Area, under agreement that the Hatfield-McCoy Regional Recreation Authority, created pursuant to article fourteen of this chapter, shall reimburse the division for salaries paid to the officers and shall either pay directly or reimburse the division for all other expenses of the officers in accordance with actual or estimated costs determined by the chief natural resources police officer.

(c) The chief natural resources police officer, acting under supervision of the director, is authorized to select and appoint emergency natural resources police officers for a limited period for effective enforcement of the provisions of this chapter when considered necessary because of emergency or other unusual circumstances. The emergency natural resources police officers shall be selected from qualified civil service personnel of the division, except in emergency situations and circumstances when the director may designate officers, without regard to civil service requirements and qualifications, to meet law-enforcement needs. Emergency natural resources police officers shall exercise all powers and duties prescribed in section four of this article for full-time salaried natural resources police officers except the provisions of subdivision (8), subsection (b) of said section.

(d) The chief natural resources police officer, acting under supervision of the director, is also authorized to select and appoint as special natural resources police officers any full-time civil service employee who is assigned to, and has direct responsibility for management of, an area owned, leased or under the control of the division and who has satisfactorily completed a course of training established and administered by the chief natural resources police officer, when the action is considered necessary because of law-enforcement needs. The powers and duties of a special natural resources police officer,
appointed under this provision, is the same within his or her assigned area as prescribed for full-time salaried natural resources police officers. The jurisdiction of the person appointed as a special natural resources police officer, under this provision, shall be limited to the division area or areas to which he or she is assigned and directly manages.

(e) The Director of the Division of Forestry is authorized to appoint and revoke Division of Forestry special natural resources police officers who are full-time civil service personnel who have satisfactorily completed a course of training as required by the Director of the Division of Forestry. The jurisdiction, powers and duties of Division of Forestry special natural resources police officers are set forth by the Director of the Division of Forestry pursuant to article three of this chapter and articles one-a and one-b, chapter nineteen of this code.

(f) The chief natural resources police officer, with the approval of the director, has the power and authority to revoke any appointment of an emergency natural resources police officer or of a special natural resources police officer at any time.

(g) Natural resources police officers are subject to seasonal or other assignment and detail to duty whenever and wherever required by the functions, services and needs of the division.

(h) The chief natural resources police officer shall designate the area of primary residence of each natural resources police officer, including himself or herself. Since the area of business activity of the division is actually anywhere within the territorial confines of the state of West Virginia, actual expenses incurred shall be paid whenever the duties are performed outside the area of primary assignment and still within the state.

(i) Natural resources police officers shall receive, in addition to their base pay salary, a minimum monthly subsistence
allowance for their required telephone service, dry cleaning or required uniforms, and meal expenses while performing their regular duties in their area of primary assignment in the amount of $130 each month. This subsistence allowance does not apply to special or emergency natural resources police officers appointed under this section.

(j) After June 30, 2010, all those full-time law-enforcement officers employed by the Division of Natural Resources as conservation officers shall be titled and known as natural resources police officers. Wherever used in this code the term “conservation officer”, or its plural, means “natural resources police officer”, or its plural, respectively.

(k) Notwithstanding any provision of this code to the contrary, the provisions of subdivision (6), subsection c, section twelve, article twenty-one, chapter eleven of this code are inapplicable to pensions of natural resources police officers paid through the Public Employees Retirement System.

ARTICLE 14. HATFIELD-MCCOY REGIONAL RECREATION AUTHORITY.

§20-14-1. Legislative findings.

The West Virginia Legislature finds that there is a significant need within the state and throughout the eastern United States for well-managed facilities for trail-oriented recreation for off-highway motor vehicle enthusiasts. The Legislature further finds that under an appropriate contractual and management scheme, well-managed, trail-oriented recreation facilities could exist on private property without diminishing the landowner’s interest, control or profitability in the land and without increasing the landowner’s exposure to liability.
The Legislature further finds that, with the cooperation of private landowners, there is an opportunity to provide trail-oriented recreation facilities primarily on private property in the mountainous terrain of southern West Virginia and that the facilities will provide significant economic and recreational benefits to the state and to the communities in southern West Virginia through increased tourism in the same manner as whitewater rafting and snow skiing benefit the state and communities surrounding those activities.

The Legislature further finds that the creation and empowering of a joint development entity to work with the landowners, county officials and community leaders, state and federal government agencies, recreational user groups and other interested parties to enable and facilitate the implementation of the facilities will greatly assist in the realization of these potential benefits.

The Legislature further finds that it is in the best interests of the state to encourage private landowners to make available for public use through the Hatfield-McCoy Regional Recreation Authority land for these recreational purposes by limiting their liability for injury to persons entering thereon, by limiting their liability for injury to the property of persons entering thereon and by limiting their liability to persons who may be injured or otherwise damaged by the acts or omissions of persons entering thereon.

§20-14-2. Definitions.

Unless the context clearly requires a different meaning, the terms used in this section have the following meanings:

(a) “Authority” means the Hatfield-McCoy Regional Recreational Authority;
(b) “Board” means the board of the Hatfield-McCoy Regional Recreation Authority;

(c) “Charge” means, for purposes of limiting liability for recreational purposes set forth in 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 as set by the authority: Provided, That the authority may set charges in differing amounts for different categories of participants, including, but not limited to, in-state and out-of-state participants, as the authority sees fit;

(d) “Hatfield-McCoy Recreation Area” means a system of recreational trails and appurtenant facilities, including trail head centers, parking areas, camping facilities, picnic areas, recreational areas, historic or cultural interpretive sites and other facilities that are a part of the system;

(e) “Land” includes, but is not limited to, roads, water, watercourses, private ways and buildings, structures and machinery or equipment thereon when attached to the realty;

(f) “Owner” means those vested with title to real estate and those with the ability to exercise control over real estate and includes, but is not limited to, tenant, lessee, licensee, holder of a dominant estate or other lawful occupant;;

(g) “Participant” means any person using the land, trails and facilities of the Hatfield-McCoy Recreation Area;

(h) “Participating county or counties” means the counties of Boone, Kanawha, Lincoln, Logan, McDowell, Mercer, Mingo, Wayne and Wyoming that have agreed to operate the Hatfield-McCoy Regional Recreation Authority as a joint development entity and to participate in its governance; and
“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 motor vehicle driving and riding, bicycling, horseback riding, nature study, water skiing, winter sports and visiting, viewing or enjoying historical, archaeological, scenic or scientific sites or otherwise using land for purposes of the user.

§20-14-3. Creation; appointment of board; terms.

(a) The public corporation, the Hatfield-McCoy Regional Recreation Authority, previously created by this section is hereby converted to a new public corporation created as a joint development entity of the participating counties for the purpose of enabling and facilitating the development and operation of a system of trail-oriented recreation facilities for use by off-highway motor vehicle enthusiasts. This recreational trail system shall be located in the counties of Boone, Kanawha, Lincoln, Logan, McDowell, Mercer, Mingo, Wayne and Wyoming with significant portions of the recreational trail system being located on private property made available for use through lease, license, easement or other appropriate legal form by a willing landowner.

(b) The authority shall be governed by a board of no more than eighteen members who shall be representative of the various interests involved in the Hatfield-McCoy Recreation Area project in the participating counties and who shall be appointed as follows:

(1) The county commission of each participating county, as defined in section two of this article, shall appoint two members of the board as follows:

(A) One member who represents and is associated with a corporation or individual landowner whose land is being used or
is expected to be used in the future as part of the Hatfield-McCoy Recreation Area project or their designee. This member shall be appointed to a four-year term.

(B) One member who represents and is associated with travel and tourism or economic development efforts within the county or who is associated with a mining, logging, natural gas or other resource-extraction industry or who is a licensed land surveyor or licensed professional engineer. The initial appointment shall be for a two-year term, but all subsequent appointments shall be for a four-year term.

Any appointed member whose term has expired shall serve until his or her successor has been duly appointed and qualified. Any person appointed to fill a vacancy shall serve only for the unexpired term. Any appointed member is eligible for reappointment. The terms of the members serving as of the date of enactment of the amendments of this section made during the 2015 regular session of the Legislature shall expire on June 30, 2015, and each participating county shall appoint two members to the board of the newly converted public corporation with terms to commence on July 1, 2015. Members of the board are not entitled to compensation for services performed as members but are entitled to reimbursement for all reasonable and necessary expenses actually incurred in the performance of their duties.

(c) The conversion of the Hatfield-McCoy Regional Recreation Authority to a joint development entity does not terminate or interrupt its status as a public corporation. The amendments to this article made during the 2015 regular session of the Legislature do not alter the debts, liabilities, responsibilities or other obligations of any party with regard to this public corporation.
(d) The Hatfield-McCoy Regional Recreation Authority is a “public body” for purposes of the West Virginia Freedom of Information Act, as provided in article one, chapter twenty-nine-b of this code.

§20-14-4. Board; quorum; executive director; expenses.

1  The board is the governing body of the authority and the board shall exercise all the powers given the authority in this article.

4  The board shall meet quarterly, unless a special meeting is called by its chairman: Provided, That at the first meeting of each fiscal year beginning in an odd-numbered year, or as soon thereafter as feasible, the board shall elect a chairman, secretary and treasurer from among its own members.

9  A majority of the members of the board constitutes a quorum and a quorum shall be present for the board to conduct business.

12  The board may prescribe, amend and repeal bylaws and rules governing the manner in which the business of the authority is conducted, rules governing the use of the trail system and the safety of participants and shall review and approve an annual budget. The fiscal year for the authority begins on July 1 and ends on the thirtieth day of the following June.

17  The board shall appoint an executive director to act as its chief executive officer, to serve at the will and pleasure of the board. The board, acting through its executive director, may employ any other personnel considered necessary and may appoint counsel and legal staff for the authority and retain such temporary engineering, financial and other consultants or technicians as may be required for any special study or survey consistent with the provisions of this article. The executive director shall carry out plans to implement the provisions of this
article and to exercise those powers enumerated in the bylaws. The executive director shall prepare annually a budget to be submitted to the board for its review and approval prior to the commencement of each fiscal year. The budget shall contain a detailed account of all planned and proposed revenue and expenditures for the authority for the upcoming fiscal year, including a detailed list of employees by title, salary, cost of projected benefits and total compensation. Before August 15 the executive director shall provide to the board and the county commission for each participating county a detailed list of actual expenditures and revenue by account and recipient name for the previous fiscal year and a copy of the approved budget for the current fiscal year.

All costs incidental to the administration of the authority, including office expenses, personal services expense and current expense, shall be paid in accordance with guidelines issued by the board from funds accruing to the authority.

All expenses incurred in carrying out the provisions of this article shall be payable solely from funds provided under the authority of this article and no liability or obligation may be incurred by the authority under this article beyond the extent to which moneys have been provided under the authority of this article.

§20-14-4a. Financial review and oversight.

(a) The authority shall contract for and obtain an annual financial audit to be conducted by a private accounting firm in compliance with generally accepted government auditing standards. When complete, the audit shall be transmitted to the board, the president of the county commission of each participating county and the Legislative Auditor. The cost of the audit shall be paid by the authority.
(b) If the authority receives any funds from the Legislature by appropriation or grant, the Legislative Auditor shall have the power and authority to examine the revenues, expenditures and performance of the Hatfield-McCoy Regional Recreation Authority and for these purposes shall have the power to inspect the properties, equipment, facilities of the authority and to request, inspect and obtain copies of any records of the authority. For each fiscal year in which the authority receives any funds from the Legislature by appropriation or grant, the executive director shall provide to the Legislative Auditor and Secretary of Revenue a detailed list of actual expenditures and revenue by account and recipient name for the previous fiscal year within forty-five days of the close of that fiscal year.

§20-14-5. Powers of authority.

The authority, as a public corporation and joint development entity, may exercise all powers necessary or appropriate to carry out the purposes of this article, including, but not limited to, the power:

(1) To acquire, own, hold and dispose of property, real and personal, tangible and intangible;

(2) To lease property, whether as lessee or lessor, and to acquire or grant through easement, license or other appropriate legal form, the right to develop and use property and open it to the use of the public;

(3) To mortgage or otherwise grant security interests in its property;

(4) To procure insurance against any losses in connection with its property, license or easements, contracts, including hold-harmless agreements, operations or assets in such amounts and from such insurers as the authority considers desirable;
(5) To maintain such sinking funds and reserves as the board determines appropriate for the purposes of meeting future monetary obligations and needs of the authority;

(6) To sue and be sued, implead and be impleaded and complain and defend in any court;

(7) To contract for the provision of legal services by private counsel and, notwithstanding the provisions of article three, chapter five of this code, the counsel may, in addition to the provisions of other legal services, represent the authority in court, negotiate contracts and other agreements on behalf of the authority, render advice to the authority on any matter relating to the authority, prepare contracts and other agreements and provide such other legal services as may be requested by the authority;

(8) To adopt, use and alter at will a corporate seal;

(9) To make, amend, repeal and adopt bylaws for the management and regulation of its affairs;

(10) To appoint officers, agents and employees and to contract for and engage the services of consultants;

(11) To make contracts of every kind and nature and to execute all instruments necessary or convenient for carrying on its business, including contracts with any other governmental agency of this state or of the federal government or with any person, individual, partnership or corporation to effect any or all of the purposes of this article;

(12) Without in any way limiting any other subdivision of this section, to accept grants and loans from, and enter into contracts and other transactions with, any federal agency;
(13) To maintain an office at such places within the state as it may designate;

(14) To borrow money and to issue notes and to provide for the payment of notes and to provide for the rights of the holders of the notes and to purchase, hold and dispose of any of its notes;

(15) To issue notes payable solely from the revenues or other funds available to the authority, and the authority may issue its notes in such principal amounts as it considers necessary to provide funds for any purpose under this article, including:

(A) The payment, funding or refunding of the principal of, interest on or redemption premiums on notes issued by it whether the notes or interest to be funded or refunded have or have not become due;

(B) The establishment or increase of reserves to secure or to pay notes or the interest on the notes and all other costs or expenses of the authority incident to and necessary or convenient to carry out its corporate purposes and powers. Notes may be additionally secured by a pledge of any revenues, funds, assets or moneys of the authority from any source whatsoever;

(16) To issue renewal notes, except that no renewal notes may be issued to mature more than ten years from the date of issuance of the notes renewed;

(17) To apply the proceeds from the sale of renewal notes to the purchase, redemption or payment of the notes to be refunded;

(18) To accept gifts or grants of property, funds, security interests, money, materials, labor, supplies or services from the federal government or from any governmental unit or any person, firm or corporation and to carry out the terms or provisions of or make agreements with respect to or pledge any gifts or grants and to do any and all things necessary, useful,
(19) To the extent permitted under its contracts with the holders of notes of the authority, to consent to any modification of the rate of interest, time of payment of any installment of principal or interest, security or any other term of any note, contract or agreement of any kind to which the authority is a party;

(20) To construct, reconstruct, improve, maintain, repair, operate and manage the Hatfield-McCoy Recreation Area at the locations within the participating counties as may be determined by the authority;

(21) To enter into an agreement with the West Virginia Division of Natural Resources for natural resources police officers to provide law-enforcement services within the Hatfield-McCoy Recreation Area and to reimburse the Division of Natural Resources for its costs therefor;

(22) To exercise all power and authority provided in this article necessary and convenient to plan, finance, construct, renovate, maintain and operate or oversee the operation of the Hatfield-McCoy Recreation Area at such locations within the participating counties as may be determined by the authority;

(23) To exercise such other and additional powers as may be necessary or appropriate for the exercise of the powers conferred in this section;

(24) To exercise all of the powers which a corporation may lawfully exercise under the laws of this state;

(25) To develop, maintain and operate or to contract for the development, maintenance and operation of the Hatfield-McCoy Recreation Area;
(26) To enter into contract with landowners and other persons holding an interest in the land being used for its recreational facilities to hold those landowners and other persons harmless with respect to any claim in tort growing out of the use of the land for recreational purposes or growing out of the recreational activities operated or managed by the authority from any claim except a claim for damages proximately caused by the willful or malicious conduct of the landowner or other person or any of his or her agents or employees;

(27) To assess and collect a reasonable fee from those persons who use the trails, parking facilities, visitor centers or other facilities which are part of the Hatfield-McCoy Recreation Area and to retain and utilize that revenue for any purposes consistent with this article;

(28) To enter into contracts or other appropriate legal arrangements with landowners under which their land is made available for use as part of the Hatfield-McCoy Recreation Area; and

(29) To directly operate and manage recreation activities and facilities within the Hatfield-McCoy Recreation Area.


(a) A person may not enter or remain upon the Hatfield-McCoy Recreation Area without a valid, nontransferable user permit issued by the authority and properly displayed, except properly identified landowners or leaseholders or their officers, employees or agents while on the land that the person owns or leases for purposes related to the ownership or lease of the land and not for recreational purposes;

(b) A person may not consume or possess any alcoholic liquor at any time or any location within the Hatfield-McCoy Recreation Area.
(c) The operator or passenger of a motor vehicle within the Hatfield-McCoy Recreation Area shall wear size-appropriate protective helmets at all times. All operators and passengers shall wear helmets that meet the current performance specifications established by the American National Standards Institute standard, z 90.1, the United States Department of Transportation Federal Motor Vehicle Safety Standard no. 218 or Snell Memorial Foundation safety standards for protective headgear for vehicle users.

(d) Each trail user shall obey all traffic laws, traffic-control devices and signs within the Hatfield-McCoy Recreation Area, including those which restrict trails to certain types of motor vehicles, motorcycles or those equipped with roll cages.

(e) Each trail user shall at all times remain within and on a designated and marked trail while within the Hatfield-McCoy Recreation Area.

(f) A person may not be on any trail within the Hatfield-McCoy Recreation Area at any time from one-half hour after sunset until one-half hour before sunrise, except in an emergency.

(g) Every person within the Hatfield-McCoy Recreation Area who is under sixteen years of age shall at all times be under the immediate supervision of, and within sight of, a person who is at least eighteen years of age and who either is a parent or guardian of the youth or has the express permission of a parent or guardian to supervise the youth. No parent, guardian or supervising adult may allow a child under the age of sixteen years to leave that person’s sight and supervision within the Hatfield-McCoy Recreation Area.

(h) A person may not ignite or maintain any fire within the Hatfield-McCoy Recreation Area except at a clearly marked location at a trailhead center.
(i) A person within the Hatfield-McCoy Recreation Area may not operate a motor vehicle in any competition or exhibition of speed, acceleration, racing, test of physical endurance or climbing ability unless in an event sanctioned by the authority.

(j) Every person operating a motor vehicle within the Hatfield-McCoy Recreation Area shall be subject to all of the duties applicable to the driver of a motor vehicle by the provisions of chapter seventeen-c of this code except where inconsistent with the provisions of this article and except as to those provisions of chapter seventeen-c of this code which by their nature can have no application and may not operate a motor vehicle in violation of those duties.

(k) A person may not possess a glass container while riding on a motor vehicle within the Hatfield-McCoy Recreation Area.

(l) A person may not operate or ride in a utility terrain vehicle, as defined in article one, chapter seventeen-f of this code, or any other motor vehicle with bench or bucket seating and a steering wheel for control unless equipped with seat belts meeting at a minimum federal motor vehicle safety standards and properly worn by the driver and all passengers.

(m) A person who violates any provision of this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than $100. Prosecution or conviction for the misdemeanor described in this subsection shall not prevent or disqualify any other civil or criminal remedies for the conduct prohibited by this section.


(a) An owner of land used by, or for the stated purposes of, the Hatfield-McCoy Regional Recreation Authority, whether with or without charge, owes no duty of care to keep the
(b) Unless otherwise agreed in writing, an owner who grants a lease, easement or license of land to the authority for recreational purposes, whether with or without charge, owes no duty of care to keep that land safe for entry or use by others or to give warning to persons entering or going upon the land of any dangerous or hazardous conditions, uses, structures or activities thereon. An owner who grants a lease, easement or license of land to the authority for recreational purposes does not by giving a lease, easement or license: (1) Extend any assurance to any person using the land that the premises are safe for any purpose; (2) confer upon those persons the legal status of an invitee or licensee to whom a duty of care is owed; or (3) assume responsibility for or incur liability for any injury to person or property caused by an act or omission of a person who enters upon the leased land. The provisions of this section apply whether the person entering upon the land is an invitee, licensee, trespasser or otherwise.

(c) Nothing herein limits in any way any liability which otherwise exists for deliberate, willful or malicious infliction of injury to persons or property: Provided, That nothing herein limits in any way the obligation of a person entering upon or using the land of another for recreational purposes to exercise due care in his or her use of the land and in his or her activities thereon, so as to prevent the creation of hazards or the commission of waste by himself or herself.

§20-14-10. Purchasing and bidding procedures.

(a) Whenever the authority proposes to purchase or contract for commodities or services reasonably anticipated to equal or
exceed $2,500 in cost, the purchase or contract shall be based on competitive bids. Where the purchase of particular commodities or services is reasonably anticipated to be $25,000 or less, the executive director may, on behalf of the authority, solicit bids or price quotes in any manner that the executive director deems appropriate and the authority shall obtain its commodities or services by the lowest bid. In lieu of seeking bids or quotes for commodities or services in this price range, the authority may purchase those commodities and services pursuant to state master contracts as provided in section ten-e, article three, chapter five-a of this code.

(b) Where the cost for the purchase of commodities or services is reasonably anticipated to exceed $25,000, the executive director shall solicit sealed bids for the commodities or services to be provided: Provided, That the executive director may permit bids by electronic transmission be accepted in lieu of sealed bids. Bids shall be solicited by public notice. The notice shall be published as a Class II legal advertisement in all participating counties in compliance with the provisions of article three, chapter fifty-nine of this code and by such other means as the executive director deems appropriate. The notice shall state the general character of the work and general character of the materials to be furnished, the place where plans and specifications therefor may be examined and the time and place of receiving bids. After all bids are received, the authority shall enter into a written contract with the lowest responsible bidder; however, the authority may reject any or all bids that fail to meet the specifications required by the authority or that exceed the authority’s budget estimation for those commodities or services. If the executive director determines in writing that there is only one responsive and responsible bidder and that there has been sufficient public notice to attract competitive bids, he or she may negotiate the price for a noncompetitive award or
the specifications for a noncompetitive award based solely on the original purpose of the solicitation.

(c) For any contract that exceeds $25,000 in total cost, the authority shall require the vendors to post a bond, with form and surety to be approved by the authority, in an amount equal to at least fifty percent of the contract price conditioned upon faithful performance and completion of the contract.

(d) The bidding requirements specified in this section do not apply to any leases for real property upon which the authority makes improvements for public access to the recreation area, information distribution and welcome centers. This exemption does not apply to leases for offices, vehicle and heavy equipment storage or administrative facilities.

(e) Any person who violates a provision of this section is guilty of a misdemeanor and, upon conviction thereof, shall be confined in jail not less than ten days nor more than one year, or fined not less than $10 nor more than $1000, or both confined and fined.

§20-14-11. Conflicts of interest prohibiting certain contracts.

(a) No contract, change order to a prior contract or renewal of any contract may be awarded or entered by the authority to any vendor or prospective vendor when the vendor or prospective vendor is a member of the board or an employee of the authority, or a spouse, sibling, child or parent of a member of the board or an employee of the authority or to any vendor or prospective vendor in which a member of the board or employee of the authority, or a spouse, sibling, child or parent of a member of the board or an employee of the authority has an ownership interest of greater than five percent.

(b) No contract, change order to a prior contract or renewal of any contract may be awarded or entered by the authority to
any vendor or prospective vendor when the vendor or prospective vendor is a member of the West Virginia Legislature, or a spouse, sibling, child or parent of a member of the Legislature, or to any vendor or prospective vendor in which a member of the Legislature or a spouse, sibling, child or parent of a member of the Legislature, has an ownership interest of greater than five percent.

(c) All responses to bid solicitations, requests for quotation, requests for proposal, contracts, change orders and contract renewals with the authority submitted or approved under the provisions of this article shall include an affidavit that the vendor or prospective vendor is not in violation of this section.

(d) Any person who violates a provision of this section is guilty of a misdemeanor and, upon conviction thereof, shall be confined in jail not less than ten days nor more than one year, or fined not less than $10 nor more than $1000, or both confined and fined.

§20-14-12. Civil remedies for unlawful purchasing and contracts.

The county commission of any participating county may challenge the validity of any contract or purchase entered, solicited or proposed by the authority in violation of section ten or eleven of this article by seeking declaratory or injunctive relief in the circuit court of the county of the challenging party. If the court finds by a preponderance of evidence that the provisions of section ten or eleven of this article have been violated, the court may declare the contract or purchase to be void and may grant any injunctive relief necessary to correct the violations and protect the funds of the authority as a joint development entity.
ARTICLE 15. ATV RESPONSIBILITY ACT.


The terms in this article have the following meaning, unless the context clearly requires a different meaning:

(1) “All-terrain vehicle” or “ATV” means any motor vehicle designed for off-highway use and designed to travel on not less than three low-pressure tires, having a seat designed to be straddled by the operator and handlebars for steering control and intended by the manufacturer to be used by a single operator or by an operator and no more than one passenger.

(2) “Authorized outfitter” or “licensee” means a commercial outfitter, which is a person, partnership, limited liability company (LLC), corporation, other organization, or any combination thereof, licensed by the Hatfield-McCoy Regional Recreation Authority, who operates from any temporary or permanent camp, private or public lodge, or private home, who provides guided tours or the rental of all-terrain vehicles, utility-terrain vehicles or motorcycles for use on assigned lands for monetary profit or gain.

(3) “Low-pressure tire” means every tire in which twenty pounds per square inch or less of compressed air is designed to support the load.

(4) “Motorcycle” means any motor vehicle manufactured with no more than two wheels and having a seat or saddle for the use of the operator.

(5) “Participant” means any person using the land, trails and facilities of the Hatfield-McCoy Regional Recreation Authority.

(6) “Utility-terrain vehicle” or “UTV” means any motor vehicle with four or more low-pressure tires designed for
§20-15-5. Duties of participants.

(a) All participants:

(1) Shall comply with any requirements established by law, including those in section one, article one, chapter seventeen-f of this code, which defines those acts prohibited by operators of all-terrain vehicles;

(2) Shall comply with the rules or regulations established for use of the Hatfield-McCoy Recreation Area;

(3) Shall, as to the Hatfield-McCoy Regional Recreation Authority or to any recreation area landowner, lessor, authorized outfitter or licensee, expressly assume the risk of and legal responsibility for any injury, loss or damage to person or property which results from participation in operating an all-terrain vehicle, utility-terrain vehicle or motorcycle, and caused by any of the following:

(A) Variations in terrain, slope or angle of terrain;

(B) Surface or subsurface conditions, including rocks, trees or other forms of forest growth or debris;

(C) Collisions with signs, markers, width restrictors, culverts, bridges, pipes, equipment, vehicles or any other objects or fixtures used in trail management, maintenance, construction or development;

(D) Collisions with signs, markers, pipes, equipment, vehicles or any component thereof used in natural resource maintenance, development or extraction;
(E) Collisions with electrical transmission poles, towers, lines, guy wires or any component thereof;

(4) Shall obey all rules or instructions announced by the Hatfield-McCoy Regional Recreation Authority, authorized outfitter or licensee with regard to the operation of the all-terrain vehicle or motorcycle he or she is operating; and

(5) Shall wear all safety equipment provided by the authorized outfitter or licensee, or which might otherwise be required by law.

(b) Each participant shall have the sole individual responsibility for:

(1) Knowing the range of his or her own ability to negotiate any slope or trail;

(2) Operating the ATV, UTV or motorcycle within the limits of the participant’s own ability;

(3) Maintaining reasonable control of speed and course at all times;

(4) Heeding all posted warnings;

(5) Operating only on trails designated by the Hatfield-McCoy Regional Recreation Authority; and

(6) Refraining from acting in a manner which a reasonable person would believe to be likely to cause or contribute to the injury of any person.

(c) If while riding an ATV, UTV or motorcycle any participant collides with any object or person, the responsibility for the collision shall be solely that of the participant or
participants involved and not that of the Hatfield-McCoy Regional Recreation Authority, any recreation area landowner, lessor, authorized outfitter or licensee unless the Hatfield-McCoy Regional Recreation Authority, recreation area landowner, lessor, authorized outfitter or licensee or their agent caused the collision in a tortious manner.

(d) After an accident, a participant may not leave the area where the accident took place without:

(1) Leaving personal identification, including his or her name and address;

(2) Notifying the proper authorities; and

(3) Obtaining assistance when he or she knows or reasonably should know that any other person involved in the accident is in need of medical or other assistance.

(e) Where a participant is a lawful passenger, that participant may not distract or perform any act which might interfere with the safe operation of the all-terrain vehicle, utility-terrain vehicle or motorcycle of which he or she is a passenger.

(f) Any person under the age of sixteen years shall remain under the direct supervision and within sight of a parent or guardian both of whom must otherwise comply with state or federal laws and any rules or regulations promulgated thereunder.

(g) A participant may not make any alterations or tamper with the all-terrain vehicle, utility-terrain vehicle or motorcycle he or she is operating or of which he or she is a passenger in any way which would interfere with the continued safe operation of that machine.
ARTICLE 29. LAW-ENFORCEMENT TRAINING AND CERTIFICATION.

§30-29-1. Definitions.

For the purposes of this article, unless a different meaning clearly appears in the context:

(1) “Approved law-enforcement training academy” means any training facility which is approved and authorized to conduct law-enforcement training as provided in this article;

(2) “Chief executive” means the Superintendent of the State Police; the chief natural resources police officer of the Division of Natural Resources; the sheriff of any West Virginia county; any administrative deputy appointed by the chief natural resources police officer of the Division of Natural Resources; or the chief of any West Virginia municipal law-enforcement agency;

(3) “County” means the fifty-five major political subdivisions of the state;

(4) “Exempt rank” means any noncommissioned or commissioned rank of sergeant or above;

(5) “Governor’s Committee on Crime, Delinquency and Correction” or “Governor’s committee” means the Governor’s Committee on Crime, Delinquency and Correction established as a state planning agency pursuant to section one, article nine, chapter fifteen of this code;

(6) “Law-enforcement officer” means any duly authorized member of a law-enforcement agency who is authorized to
maintain public peace and order, prevent and detect crime, make
arrests and enforce the laws of the state or any county or
municipality thereof, other than parking ordinances, and includes
those persons employed as campus police officers at state
institutions of higher education in accordance with the
provisions of section five, article four, chapter eighteen-b of this
code, and persons employed by the Public Service Commission
as motor carrier inspectors and weight enforcement officers
charged with enforcing commercial motor vehicle safety and
weight restriction laws although those institutions and agencies
may not be considered law-enforcement agencies. The term also
includes those persons employed as rangers by resort area
districts in accordance with the provisions of section
twenty-three, article twenty-five, chapter seven of this code,
although no resort area district may be considered a
law-enforcement agency: Provided, That the subject rangers
shall pay the tuition and costs of training. As used in this article,
the term “law-enforcement officer” does not apply to the chief
executive of any West Virginia law-enforcement agency or any
watchman or special natural resources police officer;

(7) “Law-enforcement official” means the duly appointed
chief administrator of a designated law-enforcement agency or
a duly authorized designee;

(8) “Municipality” means any incorporated town or city
whose boundaries lie within the geographic boundaries of the
state;

(9) “Subcommittee” or “law-enforcement professional
standards subcommittee” means the subcommittee of the
Governor’s Committee on Crime, Delinquency and Correction
created by section two of this article; and

(10) “West Virginia law-enforcement agency” means any
duly authorized state, county or municipal organization
employing one or more persons whose responsibility is the
enforcement of laws of the state or any county or municipality
thereof: Provided, That neither the Public Service Commission
nor any state institution of higher education nor any resort area
district is a law-enforcement agency.

CHAPTER 61. CRIMES AND THEIR PUNISHMENT.

ARTICLE 7. DANGEROUS WEAPONS.

§61-7-6. Exceptions as to prohibitions against carrying concealed
handguns; exemptions from licensing fees.

(a) The licensure provisions set forth in this article do not
apply to:

(1) Any person:

(A) Carrying a deadly weapon upon his or her own premises;

(B) Carrying a firearm, unloaded, from the place of purchase
to his or her home, residence or place of business or to a place of
repair and back to his or her home, residence or place of
business; or

(C) Possessing a firearm while hunting in a lawful manner
or while traveling from his or her home, residence or place of
business to a hunting site and returning to his or her home,
residence or place of business;

(2) Any person who is a member of a properly organized
target-shooting club authorized by law to obtain firearms by
purchase or requisition from this state or from the United States
for the purpose of target practice from carrying any pistol, as
defined in this article, unloaded, from his or her home, residence
or place of business to a place of target practice and from any
place of target practice back to his or her home, residence or
place of business, for using any such weapon at a place of target
practice in training and improving his or her skill in the use of
the weapons;

(3) Any law-enforcement officer or law-enforcement official
as defined in section one, article twenty-nine, chapter thirty of
this code;

(4) Any employee of the West Virginia Division of
Corrections duly appointed pursuant to the provisions of section
eleven-c, article one, chapter twenty-five of this code while the
employee is on duty;

(5) Any member of the armed forces of the United States or
the militia of this state while the member is on duty;

(6) Any resident of another state who holds a valid permit or
license to possess or carry a handgun issued by a state or a
political subdivision subject to the provisions and limitations set
forth in section six-a of this article;

(7) Any federal law-enforcement officer or federal police
officer authorized to carry a weapon in the performance of the
officer’s duty; and

(8) Any parole officer appointed pursuant to section
fourteen, article twelve, chapter sixty-two of this code in the
performance of their duties.

(b) On and after July 1, 2013, the following judicial officers
and prosecutors and staff shall be exempted from paying any
application fees or licensure fees required under this article.
However, on and after that same date, they shall be required to
make application and satisfy all licensure and handgun safety
and training requirements set forth in section four of this article before carrying a concealed handgun in this state:

(1) Any justice of the Supreme Court of Appeals of West Virginia;

(2) Any circuit judge;

(3) Any retired justice or retired circuit judge designated senior status by the Supreme Court of Appeals of West Virginia;

(4) Any family court judge;

(5) Any magistrate;

(6) Any prosecuting attorney;

(7) Any assistant prosecuting attorney; or

(8) Any duly appointed investigator employed by a prosecuting attorney.

CHAPTER 118

(H. B. 2595 - By Delegate(s) McGeehan and Canterbury)

[Passed March 12, 2015; in effect ninety days from passage.]
[Approved by the Governor on April 1, 2015.]

AN ACT to amend and reenact §16-2D-2 and §16-2D-6 of the Code of West Virginia, 1931, as amended, relating to certificates of need for the development of health facilities in this state; eliminating out-of-state health care facilities or providers from the definition
of “affected persons” and from consideration in the state agency’s evaluation process.

Be it enacted by the Legislature of West Virginia:

That §16-2D-2 and §16-2D-6 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 2D. CERTIFICATE OF NEED.

§16-2D-2. Definitions.

Definitions of words and terms defined in articles five-f and twenty-nine-b of this chapter are incorporated in this section unless this section has different definitions.

As used in this article, unless otherwise indicated by the context:

(a) “Affected person” means:

(1) The applicant;

(2) An agency or organization representing consumers;

(3) Any individual residing within the geographic area served or to be served by the applicant;

(4) Any individual who regularly uses the health care facilities within that geographic area;

(5) The health care facilities located within this state which provide services similar to the services of the facility under review and which will be significantly affected by the proposed project;

(6) The health care facilities located within this state which, before receipt by the state agency of the proposal being
(7) Third-party payors who reimburse health care facilities within this state similar to those proposed for services;

(8) Any agency that establishes rates for health care facilities within this state similar to those proposed; or

(9) Organizations representing health care providers.

(b) “Ambulatory health care facility” means a free-standing facility that provides health care to noninstitutionalized and nonhomebound persons on an outpatient basis. For purposes of this definition, a free-standing facility is not located on the campus of an existing health care facility. This definition does not include any facility engaged solely in the provision of lithotripsy services or the private office practice of any one or more health professionals licensed to practice in this state pursuant to the provisions of chapter thirty of this code: Provided, That this exemption from review may not be construed to include practices where major medical equipment otherwise subject to review under the provisions of this article is acquired, offered or developed: Provided, however, That this exemption from review may not be construed to include certain health services otherwise subject to review under the provisions of subdivision (1), subsection (a), section four of this article.

(c) “Ambulatory surgical facility” means a free-standing facility that provides surgical treatment to patients not requiring hospitalization. For purposes of this definition, a free-standing facility is not physically attached to a health care facility. This definition does not include the private office practice of any one or more health professionals licensed to practice surgery in this state pursuant to the provisions of chapter thirty of this code: Provided, That this exemption from review may not be construed
to include practices where major medical equipment otherwise subject to review under the provisions of this article is acquired, offered or developed: Provided, however, That this exemption from review may not be construed to include health services otherwise subject to review under the provisions of subdivision (1), subsection (a), section four of this article.

(d) “Applicant” means: (1) The governing body or the person proposing a new institutional health service who is, or will be, the health care facility licensee wherein the new institutional health service is proposed to be located; and (2) in the case of a proposed new institutional health service not to be located in a licensed health care facility, the governing body or the person proposing to provide the new institutional health service. Incorporators or promoters who will not constitute the governing body or persons responsible for the new institutional health service may not be an applicant.

(e) “Bed capacity” means the number of beds licensed to a health care facility or the number of adult and pediatric beds permanently staffed and maintained for immediate use by inpatients in patient rooms or wards in an unlicensed facility.

(f) “Campus” means the adjacent grounds and buildings, or grounds and buildings not separated by more than a public right-of-way, of a health care facility.

(g) “Capital expenditure” means:

(1) An expenditure made by or on behalf of a health care facility, which:

(A) (i) Under generally accepted accounting principles is not properly chargeable as an expense of operation and maintenance; or (ii) is made to obtain either by lease or comparable arrangement any facility or part thereof or any equipment for a facility or part; and
(B) (i) Exceeds the expenditure minimum; (ii) is a substantial change to the bed capacity of the facility with respect to which the expenditure is made; or (iii) is a substantial change to the services of such facility;

(2) The donation of equipment or facilities to a health care facility, which if acquired directly by that facility would be subject to review;

(3) The transfer of equipment or facilities for less than fair market value if the transfer of the equipment or facilities at fair market value would be subject to review; or

(4) A series of expenditures, if the sum total exceeds the expenditure minimum and if determined by the state agency to be a single capital expenditure subject to review. In making this determination, the state agency shall consider: Whether the expenditures are for components of a system which is required to accomplish a single purpose; whether the expenditures are to be made over a two-year period and are directed towards the accomplishment of a single goal within the health care facility’s long-range plan; or whether the expenditures are to be made within a two-year period within a single department such that they will constitute a significant modernization of the department.

(h) “Expenditure minimum” means $2,700,000 for the calendar year 2009. The state agency shall adjust the expenditure minimum annually and publish an update of the amount on or before December 31, of each year. The expenditure minimum adjustment shall be based on the DRI inflation index published in the Global Insight DRI/WEFA Health Care Cost Review, or its successor or appropriate replacement index. This amount shall include the cost of any studies, surveys, designs, plans, working drawings, specifications and other activities, including staff effort and consulting and other services essential to the
acquisition, improvement, expansion or replacement of any plant
or equipment.

(i) “Health”, used as a term, includes physical and mental
health.

(j) “Health care facility” means a publicly or privately
owned facility, agency or entity that offers or provides health
care services, whether a for-profit or nonprofit entity and
whether or not licensed, or required to be licensed, in whole or
in part, and includes, but is not limited to, hospitals; skilled
nursing facilities; kidney disease treatment centers, including
free-standing hemodialysis units; intermediate care facilities;
ambulatory health care facilities; ambulatory surgical facilities;
home health agencies; hospice agencies; rehabilitation facilities;
health maintenance organizations; and community mental health
and intellectual disability facilities. For purposes of this
definition, “community mental health and intellectual disability
facility” means a private facility which provides such
comprehensive services and continuity of care as emergency,
outpatient, partial hospitalization, inpatient or consultation and
education for individuals with mental illness, intellectual
disability or drug or alcohol addiction.

(k) “Health care provider” means a person, partnership,
corporation, facility, hospital or institution licensed or certified
or authorized by law to provide professional health care service
in this state to an individual during that individual’s medical,
remedial or behavioral health care, treatment or confinement.

(l) “Health maintenance organization” means a public or
private organization which:

(1) Is required to have a certificate of authority to operate in
this state pursuant to section three, article twenty-five-a, chapter
thirty-three of this code; or
(2) (A) Provides or otherwise makes available to enrolled participants health care services, including substantially the following basic health care services: Usual physician services, hospitalization, laboratory, X ray, emergency and preventive services and out-of-area coverage;

(B) Is compensated except for copayments for the provision of the basic health care services listed in paragraph (A) of this subdivision to enrolled participants on a predetermined periodic rate basis without regard to the date the health care services are provided and which is fixed without regard to the frequency, extent or kind of health service actually provided; and

(C) Provides physicians’ services: (i) Directly through physicians who are either employees or partners of the organization; or (ii) through arrangements with individual physicians or one or more groups of physicians organized on a group practice or individual practice basis.

(m) “Health services” means clinically related preventive, diagnostic, treatment or rehabilitative services, including alcohol, drug abuse and mental health services.

(n) “Home health agency” means an organization primarily engaged in providing professional nursing services either directly or through contract arrangements and at least one of the following services: Home health aide services, other therapeutic services, physical therapy, speech therapy, occupational therapy, nutritional services or medical social services to persons in their place of residence on a part-time or intermittent basis.

(o) “Hospice agency” means a private or public agency or organization licensed in West Virginia for the administration or provision of hospice care services to terminally ill persons in the persons’ temporary or permanent residences by using an interdisciplinary team, including, at a minimum, persons
qualified to perform nursing services; social work services; the
general practice of medicine or osteopathy; and pastoral or
spiritual counseling.

(p) “Hospital” means a facility licensed as such pursuant to
the provisions of article five-b of this chapter, and any acute care
facility operated by the state government, that primarily provides
inpatient diagnostic, treatment or rehabilitative services to
injured, disabled or sick persons under the supervision of
physicians and includes psychiatric and tuberculosis hospitals.

(q) “Intermediate care facility” means an institution that
provides health-related services to individuals with mental or
physical conditions that require services above the level of room
and board, but do not require the degree of services provided in
a hospital or skilled-nursing facility.

(r) “Long-range plan” means a document formally adopted
by the legally constituted governing body of an existing health
care facility or by a person proposing a new institutional health
service which contains the information required by the state
agency in rules adopted pursuant to section eight of this article.

(s) “Major medical equipment” means a single unit of
medical equipment or a single system of components with
related functions which is used for the provision of medical and
other health services and costs in excess of $2,700,000 in the
calendar year 2009. The state agency shall adjust the dollar
amount specified in this subsection annually and publish an
update of the amount on or before December 31, of each year.
The adjustment of the dollar amount shall be based on the DRI
inflation index published in the Global Insight DRI/WEFA
Health Care Cost Review or its successor or appropriate
replacement index. This term does not include medical
equipment acquired by or on behalf of a clinical laboratory to
provide clinical laboratory services if the clinical laboratory is
independent of a physician’s office and a hospital and it has been
determined under Title XVIII of the Social Security Act to meet
the requirements of paragraphs ten and eleven, Section 1861(s)
of such act, Title 42 U.S.C. §1395x. In determining whether
medical equipment is major medical equipment, the cost of
studies, surveys, designs, plans, working drawings,
specifications and other activities essential to the acquisition of
such equipment shall be included. If the equipment is acquired
for less than fair market value, the term “cost” includes the fair
market value.

(t) “Medically underserved population” means the
population of an area designated by the state agency as having a
shortage of personal health services. The state agency may
consider unusual local conditions that are a barrier to
accessibility or availability of health services. The designation
shall be in rules adopted by the state agency pursuant to section
eight of this article, and the population so designated may
include the state’s medically underserved population designated
by the federal Secretary of Health and Human Services under
Section 330(b)(3) of the Public Health Service Act, as amended,
Title 42 U.S.C. §254.

(u) “New institutional health service” means any service as
described in section three of this article.

(v) “Nonhealth-related project” means a capital expenditure
for the benefit of patients, visitors, staff or employees of a health
care facility and not directly related to preventive, diagnostic,
treatment or rehabilitative services offered by the health care
facility. This includes, but is not limited to, chapels, gift shops,
news stands, computer and information technology systems,
educational, conference and meeting facilities, but excluding
medical school facilities, student housing, dining areas,
administration and volunteer offices, modernization of structural
components, boiler repair or replacement, vehicle maintenance
and storage facilities, parking facilities, mechanical systems for heating, ventilation systems, air conditioning systems and loading docks.

(w) “Offer”, when used in connection with health services, means that the health care facility or health maintenance organization holds itself out as capable of providing, or as having the means to provide, specified health services.

(x) “Person” means an individual, trust, estate, partnership, committee, corporation, association and other organizations such as joint-stock companies and insurance companies, a state or a political subdivision or instrumentality thereof or any legal entity recognized by the state.

(y) “Physician” means a doctor of medicine or osteopathy legally authorized to practice by the state.

(z) “Proposed new institutional health service” means any service as described in section three of this article.

(aa) “Psychiatric hospital” means an institution that primarily provides to inpatients, by or under the supervision of a physician, specialized services for the diagnosis, treatment and rehabilitation of mentally ill and emotionally disturbed persons.

(bb) “Rehabilitation facility” means an inpatient facility operated for the primary purpose of assisting in the rehabilitation of disabled persons through an integrated program of medical and other services which are provided under competent professional supervision.

(cc) “Review agency” means an agency of the state, designated by the Governor as the agency for the review of state agency decisions.

(dd) “Skilled nursing facility” means an institution, or a distinct part of an institution, that primarily provides inpatient
skilled nursing care and related services, or rehabilitation
services, to injured, disabled or sick persons.

(ee) “State agency” means the Health Care Authority
created, established and continued pursuant to article twenty-
nine-b of this chapter.

(ff) “State health plan” means the document approved by the
Governor after preparation by the former statewide health
coordinating council or that document as approved by the
Governor after amendment by the former health care planning
council or the state agency.

(gg) “Substantial change to the bed capacity” of a health care
facility means any change, associated with a capital expenditure,
that increases or decreases the bed capacity or relocates beds
from one physical facility or site to another, but does not include
a change by which a health care facility reassigns existing beds
as swing beds between acute care and long-term care categories:
Provided, That a decrease in bed capacity in response to federal
rural health initiatives is excluded from this definition.

(hh) “Substantial change to the health services” of a health
care facility means: (1) The addition of a health service offered
by or on behalf of the health care facility which was not offered
by or on behalf of the facility within the twelve-month period
before the month in which the service is first offered; or (2) the
termination of a health service offered by or on behalf of the
facility: Provided, That “substantial change to the health
services” does not include the providing of ambulance service,
wellness centers or programs, adult day care or respite care by
acute care facilities.

(ii) “To develop”, when used in connection with health
services, means to undertake those activities which upon their
completion will result in the offer of a new institutional health
service or the incurring of a financial obligation in relation to the offering of such a service.

§16-2D-6. Minimum criteria for certificate of need reviews.

1 (a) Except as provided in subsection (f), section nine of this article, in making its determination as to whether a certificate of need shall be issued, the state agency shall, at a minimum, consider all of the following criteria that are applicable: Provided, That the criteria set forth in subsection (f) of this section apply to all hospitals, nursing homes and health care facilities when ventilator services are to be provided for any nursing facility bed:

9 (1) The relationship of the health services being reviewed to the state health plan;

11 (2) The relationship of services reviewed to the long-range development plan of the person providing or proposing the services;

14 (3) The need that the population served or to be served by the services has for the services proposed to be offered or expanded, and the extent to which all residents of the area, and in particular low income persons, racial and ethnic minorities, women, handicapped persons, other medically underserved population and the elderly, are likely to have access to those services;

21 (4) The availability within this state of less costly or more effective alternative methods of providing the services to be offered, expanded, reduced, relocated or eliminated;

24 (5) The immediate and long-term financial feasibility of the proposal as well as the probable impact of the proposal on the costs of and charges for providing health services by the person proposing the new institutional health service;
(6) The relationship of the services proposed to the existing health care system of the area within this state in which the services are proposed to be provided;

(7) In the case of health services proposed to be provided, the availability of resources within this state, including health care providers, management personnel, and funds for capital and operating needs, for the provision of the services proposed to be provided and the need for alternative uses of these resources as identified by the state health plan and other applicable plans;

(8) The appropriate and nondiscriminatory utilization of existing and available health care providers within this state;

(9) The relationship, including the organizational relationship, of the health services proposed to be provided to ancillary or support services;

(10) Special needs and circumstances of those entities within this state which provide a substantial portion of their services or resources, or both, to individuals not residing in the health service areas in which the entities are located or in adjacent health service areas. The entities may include medical and other health professional schools, multidisciplinary clinics and specialty centers;

(11) In the case of a reduction or elimination of a service, including the relocation of a facility or a service, the need that the population presently served has for the service, the extent to which that need will be met adequately by the proposed relocation or by alternative arrangements, and the effect of the reduction, elimination or relocation of the service on the ability of low income persons, racial and ethnic minorities, women, handicapped persons, other medically underserved population and the elderly, to obtain needed health care;
(12) In the case of a construction project: (A) The cost and methods of the proposed construction, including the costs and methods of energy provision; and (B) the probable impact of the construction project reviewed on the costs of providing health services by the person proposing the construction project and on the costs and charges to the public of providing health services by other persons within this state;

(13) In the case of health services proposed to be provided, the effect of the means proposed for the delivery of proposed health services on the clinical needs of health professional training programs in the area within this state in which the services are to be provided;

(14) In the case of health services proposed to be provided, if the services are to be available in a limited number of facilities, the extent to which the schools in the area within this state for health professions will have access to the services for training purposes;

(15) In the case of health services proposed to be provided, the extent to which the proposed services will be accessible to all the residents of the area to be served by the services;

(16) In accordance with section five of this article, the factors influencing the effect of competition on the supply of the health services being reviewed;

(17) Improvements or innovations in the financing and delivery of health services which foster competition, in accordance with section five of this article, and serve to promote quality assurance and cost effectiveness;

(18) In the case of health services or facilities proposed to be provided, the efficiency and appropriateness of the use of existing services and facilities within this state similar to those proposed;
(19) In the case of existing services or facilities, the quality of care provided by the services or facilities in the past;

(20) In the case where an application is made by an osteopathic or allopathic facility for a certificate of need to construct, expand or modernize a health care facility, acquire major medical equipment or add services, the need for that construction, expansion, modernization, acquisition of equipment or addition of services shall be considered on the basis of the need for and the availability in the community of services and facilities within this state for osteopathic and allopathic physicians and their patients. The state agency shall consider the application in terms of its impact on existing and proposed institutional training programs within this state for doctors of osteopathy and medicine at the student, internship and residency training levels;

(21) The special circumstances of health care facilities within this state with respect to the need for conserving energy;

(22) The contribution of the proposed service in meeting the health-related needs of members of medically underserved populations which have traditionally experienced difficulties in obtaining equal access to health services, particularly those needs identified in the state health plan as deserving of priority. For the purpose of determining the extent to which the proposed service will be accessible, the state agency shall consider:

(A) The extent to which medically underserved populations currently use the applicant’s services in comparison to the percentage of the population in the applicant’s service area which is medically underserved, and the extent to which medically underserved populations are expected to use the proposed services if approved;

(B) The performance of the applicant in meeting its obligation, if any, under any applicable federal regulations
requiring provision of uncompensated care, community service
or access by minorities and handicapped persons to programs
receiving federal financial assistance, including the existence of
any civil rights access complaints against the applicant;

(C) The extent to which Medicare, Medicaid and medically
indigent patients are served by the applicant; and

(D) The extent to which the applicant offers a range of
means by which a person will have access to its services, including, but not limited to, outpatient services, admission by
a house staff and admission by personal physician;

(23) The existence of a mechanism for soliciting consumer
input into the health care facility’s decision-making process.

(b) The state agency may include additional criteria which
it prescribes by rules adopted pursuant to section eight of this
article: Provided, That the state agency will not consider the
services or interests of out-of-state facilities or providers in
reviewing an application for a certificate of need.

(c) Criteria for reviews may vary according to the purpose
for which a particular review is being conducted or the types of
health services being reviewed.

(d) An application for a certificate of need may not be made
subject to any criterion not contained in this article, in rules
adopted pursuant to section eight of this article or in the
certificate of need standards approved pursuant to section five of
this article.

(e) In the case of any proposed new institutional health
service, the state agency may not grant a certificate of need
under its certificate of need program unless, after consideration
of the appropriateness of the use of existing facilities within this
state providing services similar to those being proposed, the state
agency makes, in addition to findings required in section nine of this article, each of the following findings in writing: (1) That superior alternatives to the services in terms of cost, efficiency and appropriateness do not exist within this state and the development of alternatives is not practicable; (2) that existing facilities providing services within this state similar to those proposed are being used in an appropriate and efficient manner; (3) that in the case of new construction, alternatives to new construction, such as modernization or sharing arrangements, have been considered and have been implemented to the maximum extent practicable; (4) that patients will experience serious problems in obtaining care within this state of the type proposed in the absence of the proposed new service; and (5) that in the case of a proposal for the addition of beds for the provision of skilled nursing or intermediate care services, the addition will be consistent with the plans of other agencies of the state responsible for the provision and financing of long-term care facilities or services including home health services.

(f) In the case where an application is made by a hospital, nursing home or other health care facility to provide ventilator services which have not previously been provided for a nursing facility bed, the state agency shall consider the application in terms of the need for the service and whether the cost exceeds the level of current Medicaid services. No facility may, by providing ventilator services, provide a higher level of service for a nursing facility bed without demonstrating that the change in level of service by provision of the additional ventilator services will result in no additional fiscal burden to the state.

(g) In the case where application is made by any person or entity to provide personal care services which are to be billed for Medicaid reimbursement, the state agency shall consider the application in terms of the need for the service and whether the cost exceeds the level of the cost of current Medicaid services. No person or entity may provide personal care services to be billed for Medicaid reimbursement without demonstrating that
the provision of the personal care service will result in no additional fiscal burden to the state: *Provided,* That a certificate of need is not required for a person providing specialized foster care personal care services to one individual and those services are delivered in the provider’s home. The state agency shall also consider the total fiscal liability to the state for all applications which have been submitted.

CHAPTER 119

(Com. Sub. for S. B. 88 - By Senators Stollings and Plymale)

[Passed March 14, 2015; in effect ninety days from passage.]
[Approved by the Governor on April 2, 2015.]

AN ACT to amend and reenact §15-2-24 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new article, designated §16-49-1, §16-49-2, §16-49-3, §16-49-4, §16-49-5, §16-49-6, §16-49-7, §16-49-8 and §16-49-9, all relating to requiring background checks for individuals who have direct access to residents, members or beneficiaries of covered providers participating in the West Virginia Clearance for Access: Registry and Employment Screening program; defining terms; requiring the Secretary of the Department of Health and Human Resources to develop a plan and a program for conducting background checks; requiring centralized database to maintain criminal history record information and results; establishing prescreening process conducted by covered providers; requiring applicants to provide fingerprints and undergo criminal background check; authorizing the State Police to assess a fee for conducting the criminal background check; providing for deposit of State Police collected fees into a nonappropriated special revenue fund; directing notification to be given to applicants regarding the retention of fingerprints; establishing procedures and criteria for obtaining and
reviewing criminal history record information; establishing criteria for approving applicants as covered individuals; authorizing contractors and fees; creating special revenue account for administrative fees; providing for protests of the secretary’s decisions and permitting variances; creating exceptions; authorizing legislative rules; providing monetary penalties; and providing civil and criminal immunity.

Be it enacted by the Legislature of West Virginia:

That §15-2-24 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that said code be amended by adding thereto a new article, designated §16-49-1, §16-49-2, §16-49-3, §16-49-4, §16-49-5, §16-49-6, §16-49-7, §16-49-8 and §16-49-9, all to read as follows:

CHAPTER 15. PUBLIC SAFETY

ARTICLE 2. WEST VIRGINIA STATE POLICE.

§15-2-24. Criminal Identification Bureau; establishment; supervision; purpose; fingerprints, photographs, records and other information; reports by courts and prosecuting attorneys; offenses and penalties.

1 (a) The superintendent of the department shall establish, equip and maintain at the departmental headquarters a Criminal Identification Bureau, for the purpose of receiving and filing fingerprints, photographs, records and other information pertaining to the investigation of crime and the apprehension of criminals, as hereinafter provided. The superintendent shall appoint or designate a supervisor to be in charge of the Criminal Identification Bureau and such supervisor shall be responsible to the superintendent for the affairs of the bureau. Members of the department assigned to the Criminal Identification Bureau shall carry out their duties and assignments in accordance with internal management rules and regulations pertaining thereto promulgated by the superintendent.
(b) The Criminal Identification Bureau shall cooperate with identification bureaus of other states and of the United States to develop and carry on a complete interstate, national and international system of criminal identification.

(c) The Criminal Identification Bureau may furnish fingerprints, photographs, records or other information to authorized law-enforcement and governmental agencies of the United States and its territories, of foreign countries duly authorized to receive the same, of other states within the United States and of the State of West Virginia upon proper request stating that the fingerprints, photographs, records or other information requested are necessary in the interest of and will be used solely in the administration of official duties and the criminal laws.

(d) The Criminal Identification Bureau may furnish, with the approval of the superintendent, fingerprints, photographs, records or other information to any private or public agency, person, firm, association, corporation or other organization, other than a law-enforcement or governmental agency as to which the provisions of subsection (c) of this section shall govern and control, but all requests under the provisions of this subsection for such fingerprints, photographs, records or other information must be accompanied by a written authorization signed and acknowledged by the person whose fingerprints, photographs, records or other information is to be released.

(e) The Criminal Identification Bureau may furnish fingerprints, photographs, records and other information of persons arrested or sought to be arrested in this state to the identification bureau of the United States government and to other states for the purpose of aiding law enforcement.

(f) Persons in charge of any penal or correctional institution, including any city or county jail in this state, shall take, or cause to be taken, the fingerprints and description of all persons
lawfully committed thereto or confined therein and furnish the
same in duplicate to the Criminal Identification Bureau,
Department of Public Safety. Such fingerprints shall be taken on
forms approved by the superintendent of the Department of
Public Safety. All such officials as herein named may, when
possible to do so, furnish photographs to the Criminal
Identification Bureau of such persons so fingerprinted.

(g) Members of the Department of Public Safety, and all
other state law-enforcement officials, sheriffs, deputy sheriffs
and each and every peace officer in this state, shall take or cause
to be taken the fingerprints and description of all persons
arrested or detained by them, charged with any crime or offense
in this state, in which the penalty provided therefor is
confinement in any penal or correctional institution, or of any
person who they have reason to believe is a fugitive from justice
or a habitual criminal, and furnish the same in duplicate to the
Criminal Identification Bureau of the Department of Public
Safety on forms approved by the superintendent of said
department. All such officials as herein named may, when
possible to do so, furnish to the Criminal Identification Bureau,
photographs of such persons so fingerprinted. For the purpose of
obtaining data for the preparation and submission to the
Governor and the Legislature by the Department of Public Safety
of an annual statistical report on crime conditions in the state, the
clerk of any court of record, the magistrate of any magistrate
court and the mayor or clerk of any municipal court before
which a person appears on any criminal charge shall report to the
Criminal Identification Bureau the sentence of the court or other
disposition of the charge and the prosecuting attorney of every
county shall report to the Criminal Identification Bureau such
additional information as the bureau may require for such
purpose, and all such reports shall be on forms prepared and
distributed by the Department of Public Safety, shall be
submitted monthly and shall cover the period of the preceding
month.
(h) All persons arrested or detained pursuant to the requirements of this article shall give fingerprints and information required by subsections (f) and (g) of this section. Any person who has been fingerprinted or photographed in accordance with the provisions of this section who is acquitted of the charges upon which he or she was arrested and who has no previous criminal record may, upon the presentation of satisfactory proof to the department, have such fingerprints or photographs, or both, returned to them.

(i) All state, county and municipal law-enforcement agencies shall submit to the bureau uniform crime reports setting forth their activities in connection with law enforcement. It shall be the duty of the bureau to adopt and promulgate rules and regulations prescribing the form, general content, time and manner of submission of such uniform crime reports. Willful or repeated failure by any state, county or municipal law-enforcement official to submit the uniform crime reports required by this article shall constitute neglect of duty in public office. The bureau shall correlate the reports submitted to it and shall compile and submit to the Governor and the Legislature semiannual reports based on such reports. A copy of such reports shall be furnished to all prosecuting attorneys and law-enforcement agencies.

(j) Neglect or refusal of any person mentioned in this section to make the report required herein, or to do or perform any act on his or her part to be done or performed in connection with the operation of this section, shall constitute a misdemeanor and, such person shall, upon conviction thereof, be punished by a fine of not less than $25 nor more than $200, or by imprisonment in the county jail for a period of not more than sixty days, or both. Such neglect shall constitute misfeasance in office and subject such persons to removal from office. Any person who willfully removes, destroys or mutilates any of the fingerprints, photographs, records or other information of the Department of
Public Safety shall be guilty of a misdemeanor and such person shall, upon conviction thereof, be punished by a fine of not more than $100, or by imprisonment in the county jail for a period of not more than six months, or both.

(k) The Criminal Identification Bureau (CIB) and the Federal Bureau of Investigation (FBI) shall retain applicant fingerprints for the purpose of participating in the Rap Back Program to determine suitability or fitness for a permit, license or employment. Agencies participating in the program shall notify applicants and employees subject to a criminal history check that their fingerprint shall be retained by the CIB and the FBI. Notification shall also be given to the applicant and employee subject to the Rap Back Program.

(l) The State Police may assess a fee to applicants, covered providers or covered contractors for conducting the criminal background check and for collecting and retaining fingerprints for Rap Back as authorized under article forty-six, chapter sixteen of this code. The assessment shall be deposited into a nonappropriated special revenue account within the State Treasurer’s office to be known as the WVSP Criminal History Account. Expenditures from this account shall be made by the superintendent for purposes set forth in this article and are authorized from collections. The account shall be administered by the superintendent and may not be deemed a part of the general revenue of the state.

CHAPTER 16. PUBLIC HEALTH.

ARTICLE 49. WEST VIRGINIA CLEARANCE FOR ACCESS: REGISTRY AND EMPLOYMENT SCREENING ACT.

§16-49-1. Definitions.

As used in this article:
(1) “Applicant” means an individual who is being considered for employment or engagement with a covered provider or covered contractor.

(2) “Background check” means a prescreening of registries specified by the secretary by rule and a fingerprint-based search of state and federal criminal history record information.

(3) “Covered contractor” means an individual or entity, including their employees and subcontractors, that contracts with a covered provider to perform services that include any direct access services.

(4) “Covered provider” means the following facilities or providers:

(i) A skilled nursing facility;

(ii) A nursing facility;

(iii) A home health agency;

(iv) A provider of hospice care;

(v) A long-term care hospital;

(vi) A provider of personal care services;

(vii) A provider of adult day care;

(viii) A residential care provider that arranges for, or directly provides, long-term care services, including an assisted living facility;

(ix) An intermediate care facility for individuals with intellectual disabilities; and

(x) Any other facility or provider required to participate in the West Virginia Clearance for Access: Registry and
Employment Screening program as determined by the secretary by legislative rule.

(5) “Department” means the Department of Health and Human Resources. (6) “Direct access” means physical contact with a resident, member, beneficiary or client of a covered provider, or access to their property, personally identifiable information, protected health information or financial information.

(7) “Direct access personnel” means an individual who has direct access by virtue of ownership, employment, engagement or agreement with a covered provider or covered contractor. Direct access personnel does not include volunteers or students performing irregular or supervised functions or contractors performing repairs, deliveries, installations or similar services for the covered provider. The secretary shall determine by legislative rule whether the position in question involves direct access.

(8) “Disqualifying offense” means:

(A) A conviction of any crime described in 42 U. S. C. §1320a-7(a); or

(B) A conviction of any other crime specified by the secretary in rule, which shall include crimes against care-dependent or vulnerable individuals, crimes of violence, sexual offenses and financial crimes.

(9) “Negative finding” means a finding in the prescreening that excludes an applicant from direct access personnel positions.

(10) “Notice of ineligibility” means a notice pursuant to section three of this article that the secretary’s review of the applicant’s criminal history record information reveals a disqualifying offense.
(11) “Prescreening” means a mandatory search of databases and registries specified by the secretary in legislative rule for exclusions and licensure status prior to the submission of fingerprints for a criminal history record information check.

(12) “Rap back” means the notification to the department when an individual who has undergone a fingerprint-based, state or federal criminal history record information check has a subsequent state or federal criminal history event.

(13) “Secretary” means the Secretary of the West Virginia Department of Health and Human Resources, or his or her designee.

(14) “State Police” means the West Virginia State Police Criminal Identification Bureau.

§16-49-2. Background check program for covered providers and covered contractors.

(a) The secretary shall create and implement a background check program to facilitate the processing and analysis of the criminal history and background of applicants to covered providers and covered contractors with direct access. This program shall be called the West Virginia Clearance for Access: Registry and Employment Screening.

(b) The purpose of the program is to protect West Virginia’s vulnerable populations by requiring registry and criminal background checks for all direct access personnel of covered providers and covered contractors.

(c) The program shall include:

(1) A centralized Internet-based system of registries to allow covered providers and covered contractors to perform a mandatory prescreening of applicants;
(2) Fingerprint-based state and federal criminal background checks on all direct access personnel; and

(3) An integrated Rap Back Program with the State Police to allow retention of fingerprints and updates of state and federal criminal information on all direct access personnel until such time as the individual is no longer employed or engaged by the covered provider or covered contractor.

(d) The department shall notify applicants subject to a criminal history record check that their fingerprints shall be retained by the State Police Criminal Identification Bureau and the Federal Bureau of Investigation.

§16-49-3. Prescreening and criminal background checks.

(a) Except as otherwise permitted in this article, the covered provider or covered contractor may not employ or engage an applicant prior to completing the background check process.

(b) If the applicant has a negative finding on any required prescreening registry or database, the employer shall notify the individual of such finding.

(c) If the applicant has a negative finding on any required prescreening registry or database, that individual may not immediately be engaged by a covered provider or covered contractor. However, that individual or the employer may apply for a variance pursuant to section five of this article.

(d) If the applicant does not have a negative finding in the prescreening process, the applicant shall submit to fingerprinting for a state and federal criminal history record information check.

(e) The State Police shall notify the secretary of the results of the criminal history record information check.

(f) If the secretary’s review of the criminal history record information reveals that the applicant does not have a
disqualifying offense, the secretary shall provide written notice
to the covered provider or covered contractor that the individual
may be engaged.

§16-49-4. Notice of ineligibility; prohibited participation as direct
access personnel.

(a) If the secretary’s review of the applicant’s criminal
history record information reveals a disqualifying offense, the
secretary shall provide written notice to the covered provider or
covered contractor advising that the applicant is ineligible for
work. The secretary may not disseminate the criminal history
record information.

(b) The covered provider or covered contractor may not
engage an applicant with a disqualifying offense as direct access
personnel. If the applicant has been provisionally employed
pursuant to section six of this article, the employer shall
terminate the provisional employment upon receipt of the notice.

§16-49-5. Variance; appeals.

(a) If the prescreening process reveals a negative finding, or
if the secretary issues a notice of ineligibility, the applicant, or
the employer on the applicant’s behalf, may file a written request
for a variance with the secretary not later than thirty days after
the date of the notice required by sections three or four of this
article.

(b) The secretary may grant a variance if:

(1) Mitigating circumstances surrounding the negative
finding or disqualifying offense is provided; and

(2) The secretary finds that the individual will not pose a
danger or threat to residents, members and their property.

(c) The secretary shall establish in legislative rule factors
that qualify as mitigating circumstances.
(d) The secretary shall mail to the applicant and the covered provider or covered contractor a written decision within ninety days of receipt of the request indicating whether a variance has been granted or denied.

(e) If an applicant believes that their criminal history record information within this state is incorrect or incomplete, they may challenge the accuracy of such information by writing to the State Police for a personal review. However, if the discrepancies are at the charge or final disposition level, the applicant must address this with the court or arresting agency that submitted the record to the State Police.

(f) If an applicant believes that their criminal history record information outside this state is incorrect or incomplete, they may appeal the accuracy of such information by contacting the Federal Bureau of Investigation for instructions.

(g) If any changes, corrections, or updates are made in the criminal history record information, the State Police shall notify the secretary that the applicant has appealed the accuracy of the criminal history records and provide the secretary with the updated results of the criminal history record information check, which the secretary shall review de novo in accordance with the provisions of this article.

§16-49-6. Provisional employment pending completion of background check.

(a) A covered provider or covered contractor may permit an applicant to work on a provisional basis for not more than sixty days pending notification from the secretary regarding the results of the criminal background check if:

(1) The applicant is subject to direct on-site supervision, as specified in rule by the secretary, during the course of the provisional period; and
(2) In a signed statement the applicant:

(A) Affirms that he or she has not committed a disqualifying offense;

(B) Acknowledges that a disqualifying offense reported in the required criminal history record information check shall constitute good cause for termination; and

(C) Acknowledges that the covered provider or covered contractor may terminate the individual if a disqualifying offense is reported in the background check.

(b) Provisional employees who have requested a variance shall not be required to sign such a statement. A covered provider or covered contractor may continue to employ an applicant if an applicant applies for a variance of his or her fitness determination until the variance is resolved.

§16-49-7. Clearance for subsequent employment.

(a) An applicant is not required to submit to fingerprinting and a criminal background check if:

(1) The individual previously submitted to fingerprinting and a full criminal background check as required by this article;

(2) The prior criminal background check confirmed that the individual did not have a disqualifying offense or the individual received prior approval from the secretary to work for or with the same type of covered provider or covered contractor; and

(3) The Rap Back Program has not identified any criminal activity that constitutes a disqualifying offense.

(b) The secretary shall provide notice of prior clearance for direct access status upon request by a subsequent covered provider or covered contractor.

1 In order to enforce the requirements and intent of this article, the following fees may be charged:

2 (1) The State Police may assess a fee to applicants, covered providers or covered contractors for conducting the criminal background check and for collecting and retaining fingerprints for Rap Back as authorized under this article.

3 (2) The secretary may assess a fee to applicants, covered providers or covered contractors for the maintenance of the Internet-based system required by this article. The assessment shall be deposited into a special revenue account within the State Treasurer’s office to be known as the DHHR Criminal Background Administration Account. Expenditures from the account shall be made by the secretary for purposes set forth in this article and are authorized from collections. The account shall be administered by the secretary and may not be deemed a part of the general revenue of the state.

§16-49-9. Rules; penalties; confidentiality; immunity.

1 (a) The secretary shall propose rules for legislative approval in accordance with article three, chapter twenty-nine-a of this code to implement the provisions of this article. The secretary may promulgate emergency rules, if justified, pursuant to section fifteen, article three, chapter twenty-nine-a of this code as may be required.

2 (b) Failure of a covered provider or covered contractor to ensure proper completion of the background check process for each individual employed as direct access personnel may result in the imposition of monetary civil penalties. In addition, engaging individuals knowing that they are ineligible to work may subject the employer to monetary civil penalties.
(c) The secretary shall treat and maintain any criminal background search information obtained under this article as confidential. The secretary shall limit the use of records solely to the purposes authorized in this article. The criminal history record information in the custody of the secretary is not subject to subpoena, other than one issued in a criminal action or investigation; is confidential by law and privileged; and is not subject to discovery or admissible in evidence in any private civil action.

(d) The secretary, the department and its employees are immune from liability, civil or criminal, that might otherwise be incurred or imposed for good faith conduct in determining eligibility or granting variances permitted by this article.

CHAPTER 120

(Com. Sub. for H. B. 2999 - By Delegate(s) Miller, Hicks, Hornbuckle, Reynolds, Rohrbach, Rodighiero, Perdue, Campbell, Sobonya, Pushkin and Frich)

[Passed March 9, 2015; in effect ninety days from passage.]
[Approved by the Governor on April 2, 2015.]

AN ACT to amend and reenact §16-2D-5 of the Code of West Virginia, 1931, as amended; to amend said code by adding thereto a new section, designated §16-2D-5f; to amend said code by adding thereto a new article, designated §16-2N-1, §16-2N-2 and §16-2N-3, all relating to neonatal abstinence centers; authorizing neonatal abstinence centers; requiring the secretary to promulgate and emergency rules; requiring the rules to set out a licensing procedure by July 1, 2015; requiring the rules to set minimum standards of operation for neonatal abstinence centers; clarifying
that the provision of the rules on relate to specified facilities; requiring the state agency to consider neonatal abstinence care as a unique service in conducting certificate of need review; exempting neonatal abstinence centers from moratoriums on certain nursing facilities; prohibiting the Health Care Authority from ordering a moratorium on skilled nursing facilities providing services for children under one year of age suffering from Neonatal Abstinence Syndrome; and exempting such facilities from current moratoriums.

Be it enacted by the Legislature of West Virginia:

That §16-2D-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 §16-2D-5f; and that said code be amended by adding thereto a new article, designated §16-2N-1, §16-2N-2 and §16-2N-3, all to read as follows:

ARTICLE 2D. CERTIFICATE OF NEED.

§16-2D-5. Powers and duties of state agency.

(a) The state agency shall administer the certificate of need program as provided by this article.

(b) The state agency is responsible for coordinating and developing the health planning research efforts of the state and for amending and modifying the state health plan which includes the certificate of need standards. The state agency shall review the state health plan, including the certificate of need standards and make any necessary amendments and modifications. The state agency shall also review the cost effectiveness of the certificate of need program. The state agency may form task forces to assist it in addressing these issues. The task forces shall be composed of representatives of consumers, business, providers, payers and state agencies.
(c) The state agency may seek advice and assistance of other persons, organizations and other state agencies in the performance of the state agency’s responsibilities under this article.

(d) For health services for which competition appropriately allocates supply consistent with the state health plan, the state agency shall, in the performance of its functions under this article, give priority, where appropriate to advance the purposes of quality assurance, cost effectiveness and access, to actions which would strengthen the effect of competition on the supply of the services.

(e) For health services for which competition does not or will not appropriately allocate supply consistent with the state health plan, the state agency shall, in the exercise of its functions under this article, take actions, where appropriate to advance the purposes of quality assurance, cost effectiveness and access and the other purposes of this article, to allocate the supply of the services.

(f) Notwithstanding the provisions of section seven of this article, the state agency may charge a fee for the filing of any application, the filing of any notice in lieu of an application, the filing of any exemption determination request or the filing of any request for a declaratory ruling. The fees charged may vary according to the type of matter involved, the type of health service or facility involved or the amount of capital expenditure involved: Provided, That any fee charged pursuant to this subsection may not exceed a dollar amount to be established by procedural rule. The state agency shall evaluate and amend any procedural rule promulgated prior to the amendments to this subsection made during the 2009 regular session of the Legislature. The fees charged shall be deposited into a special fund known as the Certificate of Need Program Fund to be expended for the purposes of this article.
(g) A hospital, nursing home or other health care facility may not add any intermediate care or skilled nursing beds to its current licensed bed complement. This prohibition also applies to the conversion of acute care or other types of beds to intermediate care or skilled nursing beds: Provided, That hospitals eligible under the provisions of section four-a of this article and subsection (i) of this section may convert acute care beds to skilled nursing beds in accordance with the provisions of these sections, upon approval by the state agency. Furthermore, a certificate of need may not be granted for the construction or addition of any intermediate care or skilled nursing beds except in the case of facilities designed to replace existing beds in unsafe existing facilities. A health care facility in receipt of a certificate of need for the construction or addition of intermediate care or skilled nursing beds which was approved prior to the effective date of this section shall incur an obligation for a capital expenditure within twelve months of the date of issuance of the certificate of need. Extensions may not be granted beyond the twelve-month period. The state agency shall establish a task force or utilize an existing task force to study the need for additional nursing facility beds in this state. The study shall include a review of the current moratorium on the development of nursing facility beds; the exemption for the conversion of acute care beds to skilled nursing facility beds; the development of a methodology to assess the need for additional nursing facility beds; and certification of new beds both by Medicare and Medicaid. The task force shall be composed of representatives of consumers, business, providers, payers and government agencies.

(h) No additional intermediate care facility for individuals with an intellectual disability (ICF/ID) beds may be granted a certificate of need, except that prohibition does not apply to ICF/MR beds approved under the Kanawha County circuit court order of August 3, 1989, civil action number MISC-81-585

(i) Notwithstanding the provisions of subsection (g) of this section and further notwithstanding the provisions of subsection (b), section three of this article, an existing acute care hospital may apply to the Health Care Authority for a certificate of need to convert acute care beds to skilled nursing beds: Provided, That the proposed skilled nursing beds are Medicare-certified only: Provided, however, That any hospital which converts acute care beds to Medicare-certified only skilled nursing beds shall not bill for any Medicaid reimbursement for any converted beds. In converting beds, the hospital shall convert a minimum of one acute care bed into one Medicare-certified only skilled nursing bed. The Health Care Authority may require a hospital to convert up to and including three acute care beds for each Medicare certified only skilled nursing bed: Provided further, That a hospital designated or provisionally designated by the state agency as a rural primary care hospital may convert up to thirty beds to a distinct-part nursing facility, including skilled nursing beds and intermediate care beds, on a one-for-one basis if the rural primary care hospital is located in a county without a certified freestanding nursing facility and the hospital may bill for Medicaid reimbursement for the converted beds: And provided further, That if the hospital rejects the designation as a rural primary care hospital, then the hospital may not bill for Medicaid reimbursement. The Health Care Authority shall adopt rules to implement this subsection which require that:

(1) All acute care beds converted shall be permanently deleted from the hospital’s acute care bed complement and the hospital may not thereafter add, by conversion or otherwise, acute care beds to its bed complement without satisfying the requirements of subsection (b), section three of this article for which purposes an addition, whether by conversion or otherwise, shall be considered a substantial change to the bed capacity of
the hospital notwithstanding the definition of that term found in subsection (ff), section two of this article.

(2) The hospital shall meet all federal and state licensing certification and operational requirements applicable to nursing homes including a requirement that all skilled care beds created under this subsection shall be located in distinct-part, long-term care units.

(3) The hospital shall demonstrate a need for the project.

(4) The hospital shall use existing space for the Medicare-certified only skilled nursing beds. Under no circumstances shall the hospital construct, lease or acquire additional space for purposes of this section.

(5) The hospital shall notify the acute care patient, prior to discharge, of facilities with skilled nursing beds which are located in or near the patient’s county of residence. Nothing in this subsection negatively affects the rights of inspection and certification which are otherwise required by federal law or regulations or by this code or duly adopted rules of an authorized state entity.

(j) (1) Notwithstanding the provisions of subsection (g) of this section, a retirement life care center with no skilled nursing beds may apply to the Health Care Authority for a certificate of need for up to sixty skilled nursing beds provided the proposed skilled beds are Medicare-certified only. On a statewide basis, a maximum of one hundred eighty skilled beds which are Medicare-certified only may be developed pursuant to this subsection. The state health plan is not applicable to projects submitted under this subsection. The Health Care Authority shall adopt rules to implement this subsection which shall include a requirement that:
(A) The one hundred eighty beds are to be distributed on a statewide basis;

(B) There be a minimum of twenty beds and a maximum of sixty beds in each approved unit;

(C) The unit developed by the retirement life care center meets all federal and state licensing certification and operational requirements applicable to nursing homes;

(D) The retirement center demonstrates a need for the project;

(E) The retirement center offers personal care, home health services and other lower levels of care to its residents; and

(F) The retirement center demonstrates both short- and long-term financial feasibility.

(2) Nothing in this subsection negatively affects the rights of inspection and certification which are otherwise required by federal law or regulations or by this code or duly adopted rules of an authorized state entity.

(k) The state agency may order a moratorium upon the offering or development of a new institutional health service when criteria and guidelines for evaluating the need for the new institutional health service have not yet been adopted or are obsolete. The state agency may also order a moratorium on the offering or development of a health service, notwithstanding the provisions of subdivision (5), subsection (b), section three of this article, when it determines that the proliferation of the service may cause an adverse impact on the cost of health care or the health status of the public. A moratorium shall be declared by a written order which shall detail the circumstances requiring the moratorium. Upon the adoption of criteria for evaluating the need for the health service affected by the moratorium, or one
hundred eighty days from the declaration of a moratorium, whichever is less, the moratorium shall be declared to be over and applications for certificates of need are processed pursuant to section six of this article: Provided, That the state agency may not order a moratorium upon the offering or development of skilled nursing facilities providing services for the treatment of children under one year of age suffering from Neonatal Abstinence Syndrome.

(l) (1) The state agency shall coordinate the collection of information needed to allow the state agency to develop recommended modifications to certificate of need standards as required in this article. When the state agency proposes amendments or modifications to the certificate of need standards, it shall file with the Secretary of State, for publication in the State Register, a notice of proposed action, including the text of all proposed amendments and modifications, and a date, time and place for receipt of general public comment. To comply with the public comment requirement of this section, the state agency may hold a public hearing or schedule a public comment period for the receipt of written statements or documents.

(2) When amending and modifying the certificate of need standards, the state agency shall identify relevant criteria contained in section six of this article or rules adopted pursuant to section eight of this article and apply those relevant criteria to the proposed new institutional health service in a manner that promotes the public policy goals and legislative findings contained in section one of this article. In doing so, the state agency may consult with or rely upon learned treatises in health planning, recommendations and practices of other health planning agencies and organizations, recommendations from consumers, recommendations from health care providers, recommendations from third-party payors, materials reflecting the standard of care, the state agency’s own developed expertise in health planning, data accumulated by the state agency or other
local, state or federal agency or organization and any other
source deemed relevant to the certificate of need standards
proposed for amendment or modification.

(3) All proposed amendments and modifications to the
certificate of need standards, with a record of the public hearing
or written statements and documents received pursuant to a
public comment period, shall be presented to the Governor.
Within thirty days of receiving the proposed amendments or
modifications, the Governor shall either approve or disapprove
all or part of the amendments and modifications and, for any
portion of amendments or modifications not approved, shall
specify the reason or reasons for nonapproval. Any portions of
the amendments or modifications not approved by the Governor
may be revised and resubmitted.

(4) The certificate of need standards adopted pursuant to this
section which are applicable to the provisions of this article are
not subject to article three, chapter twenty-nine-a of this code.
The state agency shall follow the provisions set forth in this
subsection for giving notice to the public of its actions, holding
hearings or receiving comments on the certificate of need
standards. The certificate of need standards in effect on
November 29, 2005, and all prior versions promulgated and
adopted in accordance with the provisions of this section are and
have been in full force and effect from each of their respective
dates of approval by the Governor.

(m) The state agency may exempt from or expedite rate
review, certificate of need and annual assessment requirements
and issue grants and loans to financially vulnerable health care
facilities located in underserved areas that the state agency and
the Office of Community and Rural Health Services determine
are collaborating with other providers in the service area to
provide cost effective health care services.
§16-2D-5f. Exception for facilities treating infants with Neonatal Abstinence Syndrome.

(a) Notwithstanding any other provision of this code, the establishment or offering of a skilled nursing facility providing skilled nursing services for children under one year of age suffering from Neonatal Abstinence Syndrome shall be exempt from the nursing home bed moratorium pursuant to subsection (g), section five of this article and any other moratoriums contained in this code or ordered by the state agency.

(b) Any facility or services developed and offered pursuant to this section shall be subject to all certificate of need laws and rules as they pertain to any transactions subsequent to the development and commencement of operation of such skilled nursing facility.

ARTICLE 2N. NEONATAL ABSTINENCE CENTERS.

§16-2N-1. Neonatal Abstinence Centers authorized; licensure required.

Neonatal abstinence centers are a distinct type of medical facility, providing unique medical services in the state. Neonatal abstinence centers may provide treatment for infants under one year of age suffering from Neonatal Abstinence Syndrome, including, but not limited to, the following services:

(1) Administration of medications;
(2) Pain management;
(3) Scoring, analysis and monitoring of symptoms;
(4) Nursing care;
(5) Plan of care;

(a) The secretary shall promulgate emergency rules pursuant to the provisions of section fifteen, article three, chapter twenty-two of this code to carry out the purpose of this article. These rules shall include at a minimum:

(1) Licensing procedures for neonatal abstinence centers. These procedures shall be in place by July 1, 2015;

(2) The minimum standards of operation for neonatal abstinence facilities including the following:

(A) Minimum numbers of administrators, medical directors, nurses, aides and other personnel according to the occupancy of the facility;

(B) Qualifications of facility’s administrators, medical directors, nurses, aides and other personnel;

(C) Safety requirements;

(D) Sanitation requirements;

(E) Therapeutic services to be provided;

(F) Medical records;

(G) Pharmacy services;
19 (H) Nursing services;
20 (I) Medical services;
21 (J) Physical facility;
22 (K) Visitation privileges; and
23 (L) Admission, transfer and discharge policies.
24 (b) The provisions of the rules promulgated pursuant to this
25 section shall apply only to those facilities regulated pursuant to
26 section five, article two-d of this chapter and shall not apply to
27 a hospital-based acute care unit.

§16-2N-3. Certificate of need; exemption from moratorium.
1 Notwithstanding any other provision of this code, the Health
2 Care Authority shall consider neonatal abstinence services
3 provided in neonatal abstinence care centers as a unique and
4 distinct medical service in conducting a certificate of need
5 review.

CHAPTER 121

(Com. Sub. for S. B. 60 - By Senators Williams and Sypolt)

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

AN ACT to amend the Code of West Virginia, 1931, as amended, by
adding thereto a new section, designated §16-2-16, relating to the
regulation of food handlers; permitting the issuance of a food
handler’s card; permitting the issuance of the food handler’s
permit; requiring a food handler’s card to be valid for a certain time frame; requiring a food handler’s permit to be valid for a certain time frame; permitting the food handler’s card to be valid in all counties subject to payment of an additional fee; permitting the food handler’s permit to be valid in all counties subject to payment of an additional fee; requiring a food handler’s card to be obtained within thirty days of being hired; requiring a food handler’s permit to be obtained within thirty days of being hired; requiring the Bureau for Public Health to develop minimum training guidelines; permitting a local health department to adopt certain training programs.

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 §16-2-16, to read as follows:

ARTICLE 2. LOCAL BOARDS OF HEALTH.

§16-2-16. Food handler examinations and cards.

1 A food handler permit or card issued pursuant to the procedures put in place by a local county health department shall be valid for at least one year but not longer than three years. The permit or card shall be valid in all counties of this state, if the applicant pays an additional fee not to exceed $10. If required, a permit or card shall be obtained within thirty days of a person being hired in a restaurant or other applicable food establishment. The Bureau for Public Health shall develop minimum guidelines for training programs for individuals seeking a food handler permit or card that may be adopted by local county health departments. In lieu of state guidelines a local health department may use training courses developed by the American National Standards Institute or other nationally recognized entities for food safety training.
AN ACT to amend and reenact §16-3D-2 and §16-3D-3 of the Code of West Virginia, 1931, as amended, all relating to compulsory tuberculosis testing; defining terms; removing requirement for compulsory tuberculosis testing for school children transferring from outside this state; removing the requirement for recording test results, immediate evaluations by a physician of positive reactors, and X rays upon a positive test; omitting the requirement for all school personnel to have one tuberculin test at the time of employment; and eliminating the requirement that local health officers be responsible for arranging follow-up of school personnel and students who are not able to get a physician evaluation for a positive tuberculin skin test.

Be it enacted by the Legislature of West Virginia:

That §16-3D-2 and §16-3D-3 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 3D. TUBERCULOSIS TESTING, CONTROL, TREATMENT AND COMMITMENT.

§16-3D-2. Definitions.

1 As used in this article:

2 (1) “Active Tuberculosis” or “Tuberculosis” means a communicable disease caused by the bacteria, Mycobacterium tuberculosis, which is demonstrated by clinical, bacteriological,
radiographic or epidemiological evidence. An infected person
whose tuberculosis has progressed to active disease may
experience symptoms such as coughing, fever, fatigue, loss of
appetite and weight loss and is capable of spreading the disease
to others if the tuberculosis germs are active in the lungs or
throat.

(2) “Bureau” means the Bureau for Public Health in the
Department of Health and Human Resources;

(3) “Commissioner” means the Commissioner of the Bureau
for Public Health, who is the state health officer;

(4) “Local board of health,” “local board” or “board” means
a board of health serving one or more counties or one or more
municipalities or a combination thereof;

(5) “Local health department” means the staff of the local
board of health; and

(6) “Local health officer” means the individual physician
with a current West Virginia license to practice medicine who
supervises and directs the activities of the local health
department services, staff and facilities and is appointed by the
local board of health with approval by the commissioner.

(7) “Tuberculosis suspect” means a person who is suspected
of having tuberculosis disease due to any or all of the following
medical factors: the presence of symptoms, the result of a
positive skin test, risk factors for tuberculosis, or findings on an
abnormal chest x ray, during the time period when an active
tuberculosis disease diagnosis is pending.

§16-3D-3. Compulsory testing for tuberculosis of school children
and school personnel; commissioner to approve the
test; X rays required for reactors; suspension from
school or employment for pupils and personnel found
to have tuberculosis.
(a) Pupils found or suspected to have active tuberculosis shall be temporarily removed from school while their case is reviewed and evaluated by their personal physician and the local health officer. Pupils shall return to school when their personal physician and the local health officer, in consultation with the commissioner, indicate that it is safe and appropriate for them to return.

(b) School personnel found or suspected to have active tuberculosis shall have their employment suspended until the local health officer, in consultation with the commissioner, approves a return to work.

(c) The commissioner may require selective testing of students and school personnel for tuberculosis when there is reason to believe that they may have been exposed to the tuberculosis organism or they have signs and symptoms indicative of the disease. School nurses shall identify and refer any students or school personnel to the local health department in instances where they have reason to suspect that the individual has been exposed to tuberculosis or has symptoms indicative of the disease.

CHAPTER 123

(Com. Sub. for S. B. 286 - By Senators Ferns, Trump, D. Hall, Blair, Boley, Gaunch, Leonhardt, Mullins and Karnes)

[Amended and again passed March 18, 2015, as a result of the objections of the Governor; in effect ninety days from passage.]

[Approved by the Governor on March 31, 2015.]
requiring immunizations in public, private and parochial schools; requiring immunizations in state-regulated day care centers; providing medical exemptions from mandatory immunizations for children; allowing for provisional enrollment; requiring parents and guardians to provide a certificate from the Commissioner of the Bureau for Public Health; providing that certificate be provided before exemption applies; requiring that a request for a medical exemption must be accompanied with a certificate from a licensed physician indicating immunization is medically contraindicated; providing that county health departments shall provide immunizations when families attest they cannot afford them; allowing Commissioner of the Bureau for Public Health to grant, renew, condition, deny, suspend or revoke exemptions when not medically indicated; allowing for appointment by Commissioner of the Bureau for Public Health of an immunization officer who must be a physician; allowing for immunization officer to make determinations regarding exemptions; providing for an appeal procedure for determinations by the immunization officer or the state health officer; modifying Immunization Advisory Committee; establishing a chair of the committee; and setting forth ethical limitations for committee members.

Be it enacted by the Legislature of West Virginia:

That §16-3-4 and §16-3-5 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 3. PREVENTION AND CONTROL OF COMMUNICABLE AND OTHER INFECTIOUS DISEASES.

§16-3-4. Compulsory immunization of school children; information disseminated; offenses; penalties.

(a) Whenever a resident birth occurs, the commissioner shall promptly provide parents of the newborn child with information on immunizations mandated by this state or required for
admission to a public, private and parochial school in this state or a state-regulated child care center.

(b) Except as hereinafter provided, a child entering school or a state-regulated child care center in this state must be immunized against chickenpox, hepatitis-b, measles, meningitis, mumps, diphtheria, polio, rubella, tetanus and whooping cough.

(c) No child or person may be admitted or received in any of the schools of the state or a state-regulated child care center until he or she has been immunized against chickenpox, hepatitis-b, measles, meningitis, mumps, diphtheria, polio, rubella, tetanus and whooping cough or produces a certificate from the commissioner granting the child or person an exemption from the compulsory immunization requirements of this section.

(d) Any school or state-regulated child care center personnel having information concerning any person who attempts to be enrolled in a school or state-regulated child care center without having been immunized against chickenpox, hepatitis-b, measles, meningitis, mumps, diphtheria, polio, rubella, tetanus and whooping cough shall report the names of all such persons to the commissioner.

(e) Persons may be provisionally enrolled under minimum criteria established by the commissioner so that the person’s immunization may be completed while missing a minimum amount of school. No person shall be allowed to enter school without at least one dose of each required vaccine.

(f) County health departments shall furnish the biologicals for this immunization for children of parents or guardians who attest that they cannot afford or otherwise access vaccines elsewhere.

(g) Health officers and physicians who provide vaccinations must present the person vaccinated with a certificate free of
charge showing that they have been immunized against chickenpox, hepatitis-b, measles, meningitis, mumps, diphtheria, polio, rubella, tetanus and whooping cough, or he or she may give the certificate to any person or child whom he or she knows to have been immunized against chickenpox, hepatitis-b, measles, meningitis, mumps, diphtheria, polio, rubella, tetanus and whooping cough.

(h) The commissioner is authorized to grant, renew, condition, deny, suspend or revoke exemptions to the compulsory immunization requirements of this section, on a statewide basis, upon sufficient medical evidence that immunization is contraindicated or there exists a specific precaution to a particular vaccine.

(1) A request for an exemption to the compulsory immunization requirements of this section must be accompanied by the certification of a licensed physician stating that the physical condition of the child is such that immunization is contraindicated or there exists a specific precaution to a particular vaccine.

(2) The commissioner is authorized to appoint and employ an Immunization Officer to make determinations on request for an exemption to the compulsory immunization requirements of this section, on a statewide basis, and delegate to the Immunization Officer the authority granted to the commissioner by this subsection.

(3) A person appointed and employed as the Immunization Officer must be a physician licensed under the laws of this state to practice medicine.

(4) The Immunization Officer’s decision on a request for an exemption to the compulsory immunization requirements of this section may be appealed to the State Health Officer.
(5) The final determination of the State Health Officer is subject to a right of appeal pursuant to the provisions of article five, chapter twenty-nine a of this code.

(i) A physician who provides any person with a false certificate of immunization against chickenpox, hepatitis-b, measles, meningitis, mumps, diphtheria, polio,, rubella, tetanus and whooping cough is guilty of a misdemeanor and, upon conviction, shall be fined not less than $25 nor more than $100.

§16-3-5. Distribution of free vaccine preventives of disease.

(a) Declaration of legislative findings and purpose. — The Legislature finds and declares that early immunization for preventable diseases represents one of the most cost-effective means of disease prevention. The savings which can be realized from immunization, compared to the cost of health care necessary to treat the illness and lost productivity, are substantial. Immunization of children at an early age serves as a preventive measure both in time and money and is essential to maintain our children’s health and well-being. The costs of childhood immunizations should not be allowed to preclude the benefits available from a comprehensive, medically supervised child immunization service.

(b) The Commissioner of the Bureau for Public Health shall acquire vaccine for the prevention of polio, measles, meningitis, mumps, rubella, chickenpox, diphtheria, pertussis, tetanus, hepatitis-b, haemophilus influenzae-b and other vaccine preventable diseases as considered necessary or required by law and shall distribute the same, free of charge, in quantities he or she considers necessary, to public and private providers, to be used by them for the benefit of citizens to check contagions and control epidemics.

(c) The Commissioner of the Bureau for Public Health, through the immunization program, has the responsibility to
ensure the distribution, free of charge, of federally supplied vaccines to public and private providers to be used to check contagions and control epidemics: *Provided,* That the public and private providers may not make a charge for the vaccine itself when administering it to a patient. The Commissioner of the Bureau for Public Health, through the immunization program, shall keep an accurate record of any vaccine delivered as provided in this section.

(d) The commissioner is charged with establishing an Immunization Advisory Committee. The advisory committee is to make recommendations on the distribution of vaccines acquired pursuant to this section, advise the secretary on the changing needs and opportunities for immunization from known diseases for all persons across their life span and track immunization compliance in accordance with federal and state laws. Members of the Immunization Advisory Committee shall be designated and appointed by the commissioner no later than July 1, 2015. The advisory committee shall be comprised of representatives from the following groups: Public health nursing, public health officers, primary health care providers, pediatricians, family practice physicians, health care administrators, pharmacists, the Commissioner of the Bureau for Medical Services, or his or her designee, the health insurance industry, the Director of the Public Employees Insurance Agency, or his or her designee, the self-insured industry and a minimum of three consumers. The state epidemiologist serves as an advisor to the committee. The commissioner, or his or her designee, serves as the chair of the advisory committee. Members of the advisory committee serve four-year terms.

(e) An advisory committee member may not participate in a matter involving specific parties that will have a direct and predicable effect on their financial interest. An effect will not be direct in instances where the chain of causation is attenuated or is contingent upon the occurrence of events that are speculative.
(f) All health insurance policies and prepaid care policies issued in this state which provide coverage for the children of the insured shall provide coverage for child immunization services to include the cost of the vaccine, if incurred by the health care provider, and all costs of administration from birth through age eighteen years. These services are exempt from any deductible, per-visit charge and/or copayment provisions which may be in force in these policies or contracts. This section does not exempt other health care services provided at the time of immunization from any deductible or copayment provisions.

(g) Attending physicians, midwives, nurse practitioners, hospitals, birthing centers, clinics and other appropriate health care providers shall provide parents of newborns and preschool age children with information on the following immunizations: Diphtheria, polio, mumps, meningitis, measles, rubella, tetanus, hepatitis-b, haemophilus influenzae-b, chickenpox and whooping cough. This information should include the availability of free immunization services for children.

CHAPTER 124

(H. B. 2100 - By Delegate(s) Williams, Campbell, Ellington, Hamilton, Rowan and Fleischauer)

[Passed March 10, 2015; in effect ninety days from passage.]
[Approved by the Governor on March 27, 2015.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §16-5X-1, §16-5X-2, §16-5X-3, §16-5X-4, §16-5X-5 and §16-5X-6, all relating to permitting hospital patients to designate a lay caregiver; providing definitions; requiring patient consent; requiring certain notation in
medical records; permitting modifications to the lay caregiver designations; requiring certain notices to a lay caregiver; requiring hospital to consult with a lay caregiver to prepare for aftercare and to issue discharge plan; providing for circumstances in which hospital is unable to contact a lay caregiver; providing immunity; and prohibiting use of state or federal funds for payment of a lay caregiver.

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 §16-5X-1, §16-5X-2, §16-5X-3, §16-5X-4, §16-5X-5 and §16-5X-6, all to read as follows:

ARTICLE 5X. CAREGIVER ADVISE, RECORD AND ENABLE ACT.

§16-5X-1. Definitions.

For purpose of this article:

(1) “Aftercare” means any assistance provided by a designated lay caregiver to an individual under this article after the patient’s discharge from a hospital. Assistance may include tasks that are limited to the patient’s condition at the time of discharge that do not require a licensed professional;

(2) “Discharge” means a patient’s exit or release from a hospital to the patient’s residence following an inpatient stay;

(3) “Hospital” means a facility licensed pursuant to article five-b, chapter sixteen of this code and any acute care facility operated by state government;

(4) “Lay caregiver” means any individual eighteen years of age or older designated as a lay caregiver pursuant to the provisions of this article who provides aftercare assistance to a patient in the patient’s residence; and
(5) “Residence” means a dwelling considered by a patient to be his or her home, not including a hospital or, a nursing home or group home, as defined by section two, article five-c, chapter sixteen of this code.

§16-5X-2. Caregiver designation.

(a) (1) A hospital shall provide a patient or the patient’s legal guardian with an opportunity to designate one lay caregiver following the patient’s admission into a hospital.

(2) If the patient is unconscious or otherwise incapacitated upon admission to the hospital, the hospital shall provide the patient’s legal guardian with an opportunity to designate a lay caregiver following the patient’s recovery of consciousness or capacity, so long as the designation or lack of a designation does not interfere with, delay or otherwise affect the medical care provided to the patient.

(3) If the patient or the patient’s legal guardian declines to designate a lay caregiver under this article, the hospital shall promptly document that in the patient’s medical record, and the hospital is considered to have complied with the provisions of this article.

(4) If the patient or the patient’s legal guardian designates an individual as a lay caregiver under this article, the hospital shall promptly request the written consent of the patient or the patient’s legal guardian to release medical information to the patient’s designated lay caregiver pursuant to the hospital’s established procedures for releasing personal health information and in compliance with applicable state and federal law.

(5) If the patient or the patient’s legal guardian declines to consent to the release of medical information to the patient’s designated lay caregiver, the hospital shall promptly document that in the patient’s medical record, and the hospital is considered to have complied with the provisions of this article.
(6) The hospital shall record the patient’s designation of a lay caregiver, the relationship of the lay caregiver to the patient, and the name and contact information of the patient’s designated lay caregiver in the patient’s medical record.

(b) A patient may elect to change his or her designated lay caregiver in the event that the originally designated lay caregiver becomes unavailable, unwilling or unable to care for the patient.

(c) Designation of a lay caregiver by a patient or a patient’s legal guardian pursuant to the provisions of this article does not obligate any individual to perform any aftercare tasks for the patient.

(d) This article does not require a patient or a patient’s legal guardian to designate any individual as a lay caregiver as defined by this article.


If a patient has designated a lay caregiver, a hospital shall notify the patient’s designated lay caregiver of the patient’s discharge to the patient’s residence as soon as possible. If the hospital is unable to contact the designated lay caregiver, the lack of contact may not interfere with, delay or otherwise affect the medical care provided to the patient, or an appropriate discharge of the patient. The hospital shall promptly document that in the patient’s medical record, and the hospital is considered to have complied with the provisions of this section.

§16-5X-4. Discharge.

(a) As soon as possible and, in any event, upon issuance of a discharge order by the patient’s attending physician, the hospital shall consult with the designated lay caregiver along with the patient regarding the lay caregiver’s capabilities and limitations and issue a discharge plan that describes a patient’s
after-care needs at his or her residence. At minimum, a discharge plan shall include:

(1) The name and contact information of the lay caregiver designated under this article;

(2) A description of all after-care tasks necessary to maintain the patient’s ability to reside at home, taking into account the capabilities and limitations of the lay caregiver; and

(3) Contact information for any health care, community resources and long-term services and supports necessary to successfully carry out the patient’s discharge plan.

(b) The hospital issuing the discharge plan shall provide the lay caregiver with instruction in all after-care tasks described in the discharge plan. At minimum, the instruction shall include:

(1) Education and instruction of the lay caregiver by a hospital employee or individual with whom the hospital has a contractual relationship authorized to perform the after care task in a manner that is consistent with current accepted practices and is based on an assessment of the lay caregiver’s learning needs;

(2) An opportunity for the lay caregiver and patient to ask questions about the after-care tasks; and

(3) Answers to the lay caregiver’s and patient’s questions provided in a competent manner and in accordance with the hospital’s requirements to provide language access services under state and federal law.

(c) Any instruction required under this article shall be documented in the patient’s medical record, including, at minimum, the date, time, and contents of the instruction.
§16-5X-5. Exceptions and immunity.

(a) This article may not be construed to interfere with the rights of a person legally authorized to make health care decisions as provided in article thirty, chapter sixteen of this code.

(b) Nothing in this act shall be construed to create a private right of action against a hospital, hospital employee, a duly authorized agent of the hospital or any consultants or contractors with whom the hospital has a contractual relationship.

(c) A hospital, a hospital employee or any consultants or contractors with whom a hospital has a contractual relationship shall not be held liable in any way for services rendered or not rendered by the lay caregiver.

§16-5X-6. Funding.

State or federal dollars may not be used for payment to any lay caregiver as defined in this article after discharge from a hospital. No state or federal program funding shall be impacted by this article.

CHAPTER 125

(Com. Sub. for H. B. 2652 - By Delegates Ellington, Householder, Ashley, Boggs, Folk, Hamilton, Howell, McGeehan, Storch and Zatezalo)

[Passed March 12, 2015; in effect from passage.]
[Approved by the Governor on March 27, 2015.]

AN ACT to amend and reenact §16-29B-8 of the Code of West Virginia, 1931, as amended, relating to annual assessments on
hospitals by the West Virginia Health Care Authority; and changing the basis for the annual assessment.

Be it enacted by the Legislature of West Virginia:

That §16-29B-8 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 29B. HEALTH CARE AUTHORITY.

§16-29B-8. Powers generally; budget expenses of the board.

(a) In addition to the powers granted to the board elsewhere in this article, the board may:

(1) Adopt, amend and repeal necessary, appropriate and lawful policy guidelines and rules in accordance with article three, chapter twenty-nine-a of this code: Provided, That subsequent amendments and modifications to any rule promulgated pursuant to this article and not exempt from the provisions of article three, chapter twenty-nine-a of this code may be implemented by emergency rule;

(2) Hold public hearings, conduct investigations and require the filing of information relating to matters affecting the costs of health care services subject to the provisions of this article and may subpoena witnesses, papers, records, documents and all other data in connection therewith. The board may administer oaths or affirmations in any hearing or investigation;

(3) Apply for, receive and accept gifts, payments and other funds and advances from the United States, the state or any other governmental body, agency or agencies or from any other private or public corporation or person (with the exception of hospitals subject to the provisions of this article, or associations representing them, doing business in the state of West Virginia, except in accordance with subsection (c) of this section), and
enter into agreements with respect thereto, including the
undertaking of studies, plans, demonstrations or projects. Any
such gifts or payments that may be received or any such
agreements that may be entered into shall be used or formulated
only so as to pursue legitimate, lawful purposes of the board, and
shall in no respect inure to the private benefit of a board
member, staff member, donor or contracting party;

(4) Lease, rent, acquire, purchase, own, hold, construct,
equip, maintain, operate, sell, encumber and assign rights or
dispose of any property, real or personal, consistent with the
objectives of the board as set forth in this article: Provided, That
such acquisition or purchase of real property or construction of
facilities shall be consistent with planning by the state building
commissioner and subject to the approval of the Legislature;

(5) Contract and be contracted with and execute all
instruments necessary or convenient in carrying out the board’s
functions and duties; and

(6) Exercise, subject to limitations or restrictions herein
imposed, all other powers which are reasonably necessary or
essential to effect the express objectives and purposes of this
article.

(b) The board shall annually prepare a budget for the next
fiscal year for submission to the governor and the Legislature
which shall include all sums necessary to support the activities
of the board and its staff.

(c) Each hospital subject to the provisions of this article shall
be assessed by the board on a pro rata basis using the net patient
revenue, as defined under generally accepted accounting
principles, of each hospital as reported under the authority of
section eighteen of this article as the measure of the hospital’s
obligation. The amount of such fee shall be determined by the
board except that in no case shall the hospital’s obligation exceed one tenth of one percent of its net patient revenue. Such fees shall be paid on or before the first day of July in each year and shall be paid into the state treasury and kept as a special revolving fund designated “health care cost review fund”, with the moneys in such fund being expendable after appropriation by the Legislature for purposes consistent with this article. Any balance remaining in said fund at the end of any fiscal year shall not revert to the treasury, but shall remain in said fund and such moneys shall be expendable after appropriation by the Legislature in ensuing fiscal years.

(d) Each hospital’s assessment shall be treated as an allowable expense by the board.

(e) The board is empowered to withhold rate approvals, certificates of need and rural health system loans and grants if any such fees remain unpaid, unless exempted under subsection (g), section four, article two-d of this chapter.

CHAPTER 126

(Com. Sub. for S. B. 336 - By Senators Ferns and Takubo)

[Passed March 11, 2015; in effect from passage.]
[Approved by the Governor on March 24, 2015.]

AN ACT to amend and reenact §16-29B-19 of the Code of West Virginia, 1931, as amended, relating generally to powers and duties of Health Care Authority; and eliminating power of Health Care Authority to apply penalties held in abeyance to any future rate applications filed with the authority.
Be it enacted by the Legislature of West Virginia:

That §16-29B-19 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 29B. HEALTH CARE AUTHORITY.

§16-29B-19. Rate-setting powers generally.

(a) The board shall have power: (1) To initiate reviews and investigations of hospital rates and establish and approve such rates; (2) to initiate reviews and investigations of hospital rates for specific services and the component factors which determine such rates; (3) to initiate reviews and investigations of hospital budgets and the specific components of such budgets; and (4) to approve or disapprove hospital rates and budgets taking into consideration the criteria set forth in section twenty of this article: Provided, That the board may not apply penalties held in abeyance to any future rate applications filed with the authority effective May 31, 2015, forward: Provided, however, That the board shall waive all penalties held in abeyance by May 31, 2015.

(b) In the interest of promoting the most efficient and effective use of hospital service, the board may adopt and approve alternative methods of rate determination. The board may also adopt methods of charges and payments of an experimental nature which are in the public interest and consistent with the purpose of this article.

(c) The board shall examine the need for an alternative to the current rate-setting method as a means of controlling hospital costs and submit the findings, recommendations and any proposed drafts of legislation, if necessary, in a report to the Legislative Oversight Commission on Health and Human Resources Accountability and the Governor on or before August 1, 1998.
CHAPTER 127

(Com. Sub. for S. B. 335 - By Senators Cole (Mr. President) and Kessler)
[By Request of the Executive]

[Amended and again passed February 26, 2015, as a result of the objections of the Governor; in effect ninety days from passage.]
[Approved by the Governor on March 9, 2015.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §16-46-1, §16-46-2, §16-46-3, §16-46-4, §16-46-5 and §16-46-6; and to amend and reenact §30-1-7a of said code, all relating generally to accessing and administering opioid antagonists in overdose situations; defining terms; establishing objectives and purpose; allowing licensed health care providers to prescribe opioid antagonist to initial responders and certain individuals; allowing initial responders to possess and administer opioid antagonists; providing for limited liability for initial responders; providing for limited liability for licensed health care providers who prescribe opioid antagonist in accordance with this article; providing for limited liability for anyone who possesses and administers an opioid antagonist; establishing responsibility of licensed health care providers to provide educational materials on overdose prevention and administration of opioid antagonist; providing for data collection and reporting; providing for training requirements; and providing for rule-making authority.

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 §16-46-1, §16-46-2, §16-46-3, §16-46-4, §16-46-5 and §16-46-6; and that §30-1-7a of said code be amended and reenacted, all to read as follows:
CHAPTER 16. PUBLIC HEALTH.

ARTICLE 46. ACCESS TO OPIOID ANTAGONISTS ACT.

§16-46-1. Purpose and findings.

(a) The purpose of this article is to prevent deaths in circumstances involving individuals who have overdosed on opiates.

(b) The Legislature finds that permitting licensed health care providers to prescribe opioid antagonists to initial responders as well as individuals at risk of experiencing an overdose, their relatives, friends or caregivers may prevent accidental deaths as a result of opiate-related overdoses.


As used in this article:

1. “Initial responder” means emergency medical service personnel, as defined in subdivision (g), section three, article four-c of this chapter, including, but not limited to, a member of the West Virginia State Police, a sheriff, a deputy sheriff, a municipal police officer, a volunteer or paid firefighter and any other person acting under color of law who responds to emergencies.

2. “Licensed health care provider” means a person, partnership, corporation, professional limited liability company, health care facility or institution licensed by or certified in this state to provide health care or professional health care services. This includes, but is not limited to, medical physicians, allopathic and osteopathic physicians, pharmacists, physician assistants or osteopathic physician assistants who hold a certificate to prescribe drugs, advanced nurse practitioners who hold a certificate to prescribe drugs, hospitals, emergency service agencies and others as allowed by law to prescribed drugs.
“Opiates” or “opioid drugs” means drugs that are members of the natural and synthetic opium family, including, but not limited to, heroin, morphine, codeine, methadone, oxycodone, hydrocodone, fentanyl and hydromorphone.

(4) “Opioid antagonist” means a federal Food and Drug Administration-approved drug for the treatment of an opiate-related overdose, such as naloxone hydrochloride or other substance, that, when administered, negates or neutralizes, in whole or in part, the pharmacological effects of an opioid in the body.

(5) “Opioid overdose prevention and treatment training program” or “program” means any program operated or approved by the Office of Emergency Medical Services as set forth in rules promulgated pursuant to this article.

(6) “Overdose” means an acute condition, including, but not limited to, life-threatening physical illness, coma, mania, hysteria or death, which is the result of the consumption or use of opioid drugs.

(7) “Standing order” means a written document containing rules, policies, procedures, regulations and orders for the conduct of patient care, including the condition being treated, the action to be taken and the dosage and route of administration for the drug prescribed.

§16-46-3. Licensed health care providers may prescribe opioid antagonists to initial responders and certain individuals; required educational materials; limited liability.

(a) All licensed health care providers in the course of their professional practice may offer to initial responders a
(b) All licensed health care providers in the course of their professional practice may offer to a person considered by the licensed health care provider to be at risk of experiencing an opiate-related overdose, or to a relative, friend, caregiver or person in a position to assist a person at risk of experiencing an opiate-related overdose, a prescription for an opioid antagonist.

(c) All licensed health care providers who prescribe an opioid antagonist under this section shall provide educational materials to any person or entity receiving such a prescription on opiate-related overdose prevention and treatment programs, as well as materials on administering the prescribed opioid antagonist.

(d) Any person who possesses an opioid antagonist and administers it to a person whom they believe to be suffering from an opioid-related overdose and who is acting in good faith is not, as a result of his or her actions or omissions, subject to criminal prosecution arising from the possession of an opioid antagonist or subject to any civil liability with respect to the administration of or failure to administer the opioid antagonist unless the act or failure to act was the result of gross negligence or willful misconduct.

(e) Any person who administers an opioid antagonist to a person whom they believe to be suffering from an opioid-related overdose is required to seek additional medical treatment at a medical facility for that person immediately following the administration of the opioid antagonist to avoid further complications as a result of suspected opioid-related overdose.
§16-46-4. Possession and administration of an opioid antagonist by an initial responder; limited liability.

(a) An initial responder who is not otherwise authorized to administer opioid antagonists may possess opioid antagonists in the course of his or her professional duties as an initial responder and administer an opioid antagonist in an emergency situation if:

(1) The initial responder has successfully completed the training required by subsection (b), section six of this article; and

(2) The administration thereof is done after consultation with medical command, as defined in subdivision (k), section three, article four-c of this chapter: Provided, That an initial responder may administer an opioid antagonist without consulting medical command if he or she is unable to so consult due to an inability to contact medical command because of circumstances outside the control of the initial responder or if there is insufficient time for the consultation based upon the emergency conditions presented.

(b) An initial responder who meets the requirements of subsection (a) of this section, acting in good faith, is not, as a result of his or her actions or omissions, subject to civil liability or criminal prosecution arising from or relating to the administration of the opioid antagonist unless the actions or omissions were the result of the initial responder’s gross negligence or willful misconduct.

§16-46-5. Licensed health care providers’ limited liability related to opioid antagonist prescriptions.

(a) A licensed health care provider who is permitted by law to prescribe drugs, including opioid antagonists, may, if acting in good faith, prescribe and subsequently dispense or distribute an opioid antagonist without being subject to civil liability or criminal prosecution unless prescribing the opioid antagonist
was the result of the licensed health care provider’s gross
negligence or willful misconduct.

(b) For purposes of this chapter and chapter sixty-a, any
prescription written, as described in section three of this article,
shall be presumed as being issued for a legitimate medical
purpose in the usual course of professional practice unless the
presumption is rebutted by a preponderance of the evidence.

§16-46-6. Data collection and reporting requirements; training.

(a) Beginning March 1, 2016, and annually thereafter the
following reports shall be compiled:

(1) The Office of Emergency Medical Services shall collect
data regarding each administration of an opioid antagonist by an
initial responder. The Office of Emergency Medical Services
shall report this information to the Legislative Oversight
Commission on Health and Human Resources Accountability
and the West Virginia Bureau for Behavioral Health and Health
Facilities. The data collected and reported shall include:

(A) The number of training programs operating in an Office
of Emergency Medical Services- designated training center;

(B) The number of individuals who received training to
administer an opioid antagonist;

(C) The number of individuals who received an opioid
antagonist administered by an initial responder;

(D) The number of individuals who received an opioid
antagonist administered by an initial responder who were
revived;

(E) The number of individuals who received an opioid
antagonist administered by an initial responder who were not
revived; and
(F) The cause of death of individuals who received an opioid antagonist administered by an initial responder and were not revived.

(2) Each licensed health care provider shall submit data to the West Virginia Board of Pharmacy by February 1 of each calendar year, excluding any personally identifiable information, regarding the number of opioid antagonist prescriptions written in accordance with this article in the preceding calendar year. The licensed health care provider shall indicate whether the prescription was written to an individual in the following categories: An initial responder; an individual at risk of opiate-related overdose; a relative of a person at risk of experiencing an opiate-related overdose; a friend of a person at risk of experiencing an opiate-related overdose; or a caregiver or person in a position to assist a person at risk of experiencing an opiate-related overdose.

(3) The West Virginia Board of Pharmacy shall compile all data described in subdivision (2) of this section and any additional data maintained by the Board of Pharmacy related to prescriptions of opioid antagonists. By March 1 and annually thereafter, the Board of Pharmacy shall provide a report of this information to the Legislative Oversight Commission on Health and Human Resources Accountability and the West Virginia Bureau for Behavioral Health and Health Facilities.

(b) To implement the provisions of this article, including establishing the standards for certification and approval of opioid overdose prevention and treatment training programs and protocols regarding a refusal to transport, the Office of Emergency Medical Services may promulgate emergency rules pursuant to the provisions of section fifteen, article three, chapter twenty-nine-a of this code and shall propose rules for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code.
§30-1-7a. Continuing education.

(a) Each board referred to in this chapter shall establish continuing education requirements as a prerequisite to license renewal. Each board shall develop continuing education criteria appropriate to its discipline, which shall include, but not be limited to, course content, course approval, hours required and reporting periods.

(b) Notwithstanding any other provision of this code or the provision of any rule to the contrary, each person issued a license to practice medicine and surgery or a license to practice podiatry or licensed as a physician assistant by the West Virginia Board of Medicine, each person issued a license to practice dentistry by the West Virginia Board of Dental Examiners, each person issued a license to practice optometry by the West Virginia Board of Optometry, each person licensed as a pharmacist by the West Virginia Board of Pharmacy, each person licensed to practice registered professional nursing or licensed as an advanced nurse practitioner by the West Virginia Board of Examiners for Registered Professional Nurses, each person licensed as a licensed practical nurse by the West Virginia State Board of Examiners for Licensed Practical Nurses and each person licensed to practice medicine and surgery as an osteopathc physician and surgeon or licensed or certified as an osteopathic physician assistant by the West Virginia Board of Osteopathy shall complete drug diversion training, best-practice prescribing of controlled substances training and training on prescribing and administration of an opioid antagonist, as the
trainings are established by his or her respective licensing board, if that person prescribes, administers or dispenses a controlled substance, as that term is defined in section one hundred one, article one, chapter sixty-a of this code.

(1) Notwithstanding any other provision of this code or the provision of any rule to the contrary, the West Virginia Board of Medicine, the West Virginia Board of Dental Examiners, the West Virginia Board of Optometry, the West Virginia Board of Pharmacy, the West Virginia Board of Examiners for Registered Professional Nurses, the West Virginia State Board of Examiners for Licensed Practical Nurses and the West Virginia Board of Osteopathy shall establish continuing education requirements and criteria appropriate to their respective discipline on the subject of drug diversion training, best-practice prescribing of controlled substances training and prescribing and administration of an opioid antagonist training for each person issued a license or certificate by their respective board who prescribes, administers or dispenses a controlled substance, as that term is defined in section one hundred one, article one, chapter sixty-a of this code, and shall develop a certification form pursuant to subdivision (b)(2) of this section.

(2) Each person who receives his or her initial license or certificate from any of the boards set forth in subsection (b) of this section shall complete the continuing education requirements set forth in subsection (b) of this section within one year of receiving his or her initial license from that board and each person licensed or certified by any of the boards set forth in subsection (b) of this section who has held his or her license or certificate for longer than one year shall complete the continuing education requirements set forth in subsection (b) of this section as a prerequisite to each license renewal: Provided, That a person subject to subsection (b) of this section may waive the continuing education requirements for license renewal set forth in subsection (b) of this section if he or she completes and
submits to his or her licensing board a certification form
developed by his or her licensing board attesting that he or she
has not prescribed, administered or dispensed a controlled
substance, as that term is defined in section one hundred one,
article one, chapter sixty-a of this code, during the entire
applicable reporting period.

(c) Notwithstanding any other provision of this code or the
provision of any rule to the contrary, each person licensed to
practice registered professional nursing or licensed as an
advanced nurse practitioner by the West Virginia Board of
Examiners for Registered Professional Nurses, each person
licensed as a licensed practical nurse by the West Virginia State
Board of Examiners for Licensed Practical Nurses, each person
issued a license to practice midwifery as a nurse-midwife by the
West Virginia Board of Examiners for Registered Professional
Nurses, each person issued a license to practice chiropractic by
the West Virginia Board of Chiropractic, each person licensed to
practice psychology by the Board of Examiners of Psychologists,
each person licensed to practice social work by the West
Virginia Board of Social Work and each person licensed to
practice professional counseling by the West Virginia Board of
Examiners in Counseling shall complete two hours of continuing
education for each reporting period on mental health conditions
common to veterans and family members of veterans, as the
continuing education is established or approved by his or her
respective licensing board. The two hours shall be part of the
total hours of continuing education required by each board and
not two additional hours.

(1) Notwithstanding any other provision of this code or the
provision of any rule to the contrary, on or before July 1, 2015,
the boards referred to in this subsection shall establish
continuing education requirements and criteria and approve
continuing education coursework appropriate to their respective
discipline on the subject of mental health conditions common to
veterans and family members of veterans, in cooperation with
the Secretary of the Department of Veterans’ Assistance. The
continuing education shall include training on inquiring about
whether the patients are veterans or family members of veterans,
and screening for conditions such as post-traumatic stress
disorder, risk of suicide, depression and grief and prevention of
suicide.

(2) On or after July 1, 2017, each person licensed by any of
the boards set forth in this subsection shall complete the
continuing education described herein as a prerequisite to his or
her next license renewal.

CHAPTER 128

(Com. Sub. for S. B. 523 - By Senators Cole (Mr. President)
and Kessler)
[By Request of the Executive]

[Passed March 14, 2015; in effect ninety days from passage.]
[Approved by the Governor on April 2, 2015.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by
adding thereto a new article, designated §16-47-1, §16-47-2,
§16-47-3, §16-47-4, §16-47-5 and §16-47-6, all relating to
obtaining emergency medical assistance for persons who may be
experiencing alcohol or drug overdose; establishing short title;
stating legislative findings; defining terms; providing immunity
from prosecution in limited circumstances for persons who call for
emergency medical assistance for person who reasonably appears
to be experiencing drug or alcohol overdose; specifying required
actions to be eligible for immunity from prosecution for certain
misdemeanor offenses; providing seeking emergency medical
assistance may be raised as mitigating factor at sentencing in certain criminal proceedings; providing limited immunity does not preclude civil claims based on violations of exempted misdemeanor criminal statutes; providing option of limited immunity from prosecution; providing deferred prosecution, pretrial diversion, adjudication in drug court and other clemency options for the court to consider for persons who experienced drug or alcohol overdose for whom emergency medical assistance was sought; allowing persons to plead guilty to certain exempted criminal offenses if desired; and providing law-enforcement personnel limited civil immunity in arresting or issuing citations, except in cases of willful, wanton and reckless misconduct.

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 §16-47-1, §16-47-2, §16-47-3, §16-47-4, §16-47-5 and §16-47-6, all to read as follows:

ARTICLE 47. ALCOHOL AND DRUG OVERDOSE PREVENTION AND CLEMENCY ACT.

§16-47-1. Short title.

1 This article is known as and may be cited as the Alcohol and Drug Overdose Prevention and Clemency Act.

§16-47-2. Legislative findings.

1 (a) West Virginia currently has the highest drug overdose mortality rate in the United States. Since 1999, the number of drug overdose deaths in West Virginia has increased by over six hundred percent. Similarly, the age-adjusted death rate from alcohol-related overdoses has significantly increased in West Virginia, and throughout the United States, in the past ten years.
(b) The Legislature finds it is in the public interest to encourage citizens to intervene in drug and alcohol overdose situations by seeking potentially life-saving emergency medical assistance for others without fear of being subject to certain criminal penalties.

§16-47-3. Definitions.

As used in this article:

(1) “Overdose” means an acute condition, including, but not limited to, life-threatening physical illness, coma, mania, hysteria or death, which is the result of the consumption or use of a controlled substance or alcohol.

(2) “Emergency medical assistance” means medical services provided to a person who may be experiencing an overdose by a health care professional licensed, registered or certified under chapter thirty or chapter sixteen of this code acting within his or her lawful scope of practice.

§16-47-4. Limited immunity from prosecution.

(a) Subject to the requirements of subsection (c) of this section, a person who, in good faith and in a timely manner, seeks emergency medical assistance for a person who reasonably appears to be experiencing an overdose may not be held criminally responsible for a violation of the following:

(1) Purchasing, consuming or possessing wine or other alcoholic liquor by someone under age twenty-one as prohibited by subsection (a), section twenty-a, article eight, chapter sixty of this code;

(2) Purchasing wine or other alcoholic liquors from a licensee through misrepresentation of age, presenting or offering any written evidence of age which is false, fraudulent or not actually one’s own, or illegally attempting to purchase wine or
other alcoholic liquors as prohibited by subsection (b), section twenty-a, article eight, chapter sixty of this code;

(3) Purchasing, consuming or possessing alcoholic liquor by someone under age twenty-one as prohibited by subdivision (1), subsection (a), section twenty-four, article three-a, chapter sixty of this code;

(4) Purchasing liquor from a retail licensee through misrepresentation of age, presenting or offering any written evidence of age which is false, fraudulent or not actually one’s own or illegally attempting to purchase liquor from a retail licensee as prohibited by subsection (b), section twenty-four, article three-a, chapter sixty of this code;

(5) Ordering, paying for, sharing the cost of, purchasing, consuming or possessing nonintoxicating beer, wine or alcoholic liquor by someone under age twenty-one as prohibited by subsection (a), section twelve-a, article seven, chapter sixty of this code;

(6) Purchasing nonintoxicating beer, wine or alcoholic liquors from a licensee through misrepresentation of age, presenting or offering any written evidence of age which is false, fraudulent or not actually one’s own or illegally attempting to purchase nonintoxicating beer, wine or alcoholic liquors from a licensee as prohibited by subsection (b), section twelve-a, article seven, chapter sixty of this code;

(7) Purchasing, consuming or possessing nonintoxicating beer by someone under age twenty-one as prohibited by subdivision (1), subsection (a), section nineteen, article sixteen, chapter eleven of this code;

(8) Purchasing nonintoxicating beer through misrepresentation of age, presenting or offering any written evidence of age which is false, fraudulent or not actually one’s
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own or illegally attempting to purchase nonintoxicating beer as prohibited by subsection (b), section nineteen, article sixteen, chapter eleven;

(9) Knowingly or intentionally possessing a controlled substance or imitation controlled substance without a prescription, as prohibited by subsection (c), section four hundred one, article four, chapter sixty-a of this code; or

(10) Appearing in a public place in an intoxicated condition; drinking alcoholic liquor in a public place; drinking alcoholic liquor in a motor vehicle on a highway, street, alley or in a public garage; tendering a drink of alcoholic liquor to another person in a public place; or possessing alcoholic liquor which was manufactured or acquired in violation of the provisions of chapter sixty of this code, as prohibited by subdivisions (1), (2), (3), (4) and (6), subsection (a), section nine, article six, chapter sixty of this code.

(b) The immunity provided in subsection (a) of this section shall not apply to the following offenses:

(1) Selling or serving wine or other alcoholic liquor by someone under age twenty-one as prohibited by subsection (a), section twenty-a, article eight, chapter sixty of this code;

(2) Selling or serving alcoholic liquor by someone under age twenty-one as prohibited by subdivision (1), subsection (a), section twenty-four, article three-a, chapter sixty of this code; or

(3) Selling or serving nonintoxicating beer by someone under age twenty-one as prohibited by subdivision (1), subsection (a), section nineteen, article sixteen, chapter eleven of this code.

(c) A person may only be eligible for immunity under subsection (a) of this section if he or she:
(1) Remains with the person who reasonably appears to be in need of emergency medical assistance due to an overdose until such assistance is provided;

(2) Identifies himself or herself, if requested by emergency medical assistance personnel or law-enforcement officers; and

(3) Cooperates with and provides any relevant information requested by emergency medical assistance personnel or law-enforcement officers needed to treat the person reasonably believed to be experiencing an overdose.

(d) Evidence of seeking emergency medical assistance for a person who reasonably appears to be experiencing an overdose may be considered by a court or jury as a mitigating factor in the sentencing phase of a criminal proceeding in a prosecution for which immunity is not granted in subsection (a) of this section: Provided, That the criminal proceeding was instituted based on conduct or evidence obtained as the result of the defendant seeking emergency medical assistance as described in subsections (a) and (c) of this section.

(e) Notwithstanding any other provision of this section to the contrary, a person who acts pursuant to subsections (a) and (c) of this section and is charged with an offense not exempted by subsection (a) of this section may nevertheless enter a plea of guilty to an offense exempted by subsection (a) of this section if the person, after consultation with his or her attorney, so desires.

(f) The limited immunity provided by this section does not preclude claims asserted in a civil action based on violation of the statutes set forth in subsection (a) of this section, even if immunity is provided in a criminal proceeding.

(g) A person who seeks assistance pursuant to subsection (a) of this section is not subject to any sanction for a violation of a condition of pretrial release, probation, furlough or parole.
§16-47-5. Immunity, alternative sentencing and clemency options for a person for whom emergency medical assistance was sought.

(a) The immunity provisions in subsection (a), section four of this article extend to the person for whom emergency medical assistance was sought if, subsequent to receiving emergency medical assistance, the person participates in, complies with and completes a substance abuse treatment or recovery program approved by the court. Alternatively, a court may consider the following alternative sentencing and clemency options:

1. Deferred prosecution under section twenty-six, article six, chapter sixty of this code or under section four hundred seven, article four, chapter sixty-a of this code;

2. Pretrial diversion under section twenty-two, article eleven, chapter sixty-one of this code;

3. Adjudication in drug court under article fifteen, chapter sixty-two of this code or under section two-b, article five, chapter forty-nine of this code; or

4. Any other appropriate form of alternative sentencing or rehabilitation permitted by this code, including, but not limited to:

   A. Probation;

   B. Conditional discharge under section twenty-six, article six, chapter sixty of this code; or

   C. The weekend jail program, the work program or the community service program under section one-a, article eleven-a, chapter sixty-two of this code.

(b) Notwithstanding any other provision of this section to the contrary, a person who may seek immunity or clemency pursuant
to subsection (a) of this section and is charged with an offense not exempted by subsection (a), section four of this article may enter a plea of guilty to an offense exempted by subsection (a), section four of this article if the person, after consultation with his or her attorney, so desires.


1 Except in cases of willful, wanton or reckless misconduct, law-enforcement personnel are immune from civil liability for citing or arresting a person who is later determined to qualify for immunity under this article.

CHAPTER 129

(Com. Sub. for H. B. 2648 - By Delegate(s) Pasdon, Stansbury, Ellington, Statler, Kurcaba, Householder, Fleischauer and Rohrbach)

[Amended and again passed March 18, 2015; as a result of the objections of the Governor; in effect ninety days from passage.]
[Approved by the Governor on April 2, 2015.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §16-50-1, §16-50-2, §16-50-3, §16-50-4 and §16-50-5, all relating to availability and use of epinephrine auto-injectors; providing definitions; providing for legislative rules; providing for training; providing prescriptive authority to health care practitioners in certain circumstances; providing authority to pharmacists to dispense epinephrine auto-injectors in certain circumstances; providing for the storage and emergency use of epinephrine auto-injectors; providing that in certain circumstances the use of epinephrine auto-injectors is not the practice of medicine; providing that in certain circumstances
one authorized to prescribe, possess or train regarding epinephrine auto-injectors is not liable for civil damages; and providing that certain individuals who administer or provide an epinephrine auto-injector to a person is immune from liability for civil action unless the act or omission was grossly negligent or willful misconduct.

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 §16-50-1, §16-50-2, §16-50-3, §16-50-4 and §16-50-5, all to read as follows:

ARTICLE 50. EPINEPHRINE AUTO-INJECTOR AVAILABILITY AND USE.

§16-50-1. Definitions.

As used in this article the term:

(1) “Administer” means to directly apply an epinephrine auto-injector to the body of an individual.

(2) “Authorized entity” means an entity or organization where allergens capable of causing a severe allergic reaction may be present.

(3) “Authorized health care practitioner” means an allopathic physician licensed to practice pursuant to the provisions of article three, chapter thirty of this code and an osteopathic physician licensed to practice pursuant to the provisions of article fourteen, chapter thirty of this code.

(4) “Department” means the Department of Health and Human Resources.

(5) “Epinephrine auto-injector” means a single-use device used for the automatic injection of a premeasured dose of epinephrine into the human body.
“Self-administration” means an individual’s discretionary administration of an epinephrine auto-injector on herself or himself.

§16-50-2. Authority.

The department may:

(1) Propose legislative rules for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code, necessary to administer this article; and

(2) Conduct and approve education training programs.

§16-50-3. Educational training programs.

Educational training programs shall be conducted by a nationally recognized organization experienced in training laypersons in emergency health treatment or an entity or individual approved by the department. The curriculum shall include at a minimum:

(1) Recognition of the symptoms of allergic reactions to food, insect stings and other allergens; and

(2) The proper administration of a subcutaneous injection of epinephrine auto-injector.

§16-50-4. Prescriptive authority for epinephrine auto-injectors; emergency administration.

(a) An authorized health care practitioner may prescribe an epinephrine injector to an authorized entity. A pharmacist may dispense an epinephrine auto-injectors pursuant to a prescription issued in the name of an authorized entity.

(b) An authorized entity may acquire and stock a supply of epinephrine auto-injectors pursuant to a prescription issued in
accordance with this section. The epinephrine auto-injectors shall be stored in accordance with the epinephrine auto-injector’s instructions. An authorized entity shall designate employees or agents who are trained pursuant to section three of this article to be responsible for the storage, maintenance and general oversight of epinephrine auto-injectors.

(c) An individual trained pursuant to section three of this article may, on the premises of or in connection with the authorized entity, use epinephrine auto-injectors to:

(1) Provide an epinephrine auto-injector to a person who the trained individual in good faith believes is experiencing a severe allergic reaction for that person’s immediate self-administration, regardless of whether the person has a prescription for an epinephrine auto-injector or has previously been diagnosed with an allergy; or

(2) Administer an epinephrine auto-injector to a person who the trained individual in good faith believes is experiencing a severe allergic reaction, regardless of whether the person has a prescription for an epinephrine auto-injector or has previously been diagnosed with an allergy.

§16-50-5. Not practice of medicine; limits on liability.

(a) The administration of an epinephrine auto-injector in accordance with this article is not the practice of medicine.

(b) An authorized health care practitioner who prescribes epinephrine auto-injectors to an authorized entity; an authorized entity that possesses and makes available epinephrine auto-injectors; and, an entity or person that conducts the training under section three of this article are not liable for civil damages that result from the administration or self-administration of an epinephrine auto-injector, the failure to administer an
An individual employed by an authorized entity who administers or provides an epinephrine auto-injection to a person as provided in this article is immune from liability for any civil action arising out of an act or omission resulting from the administration of the epinephrine auto-injection unless the act or omission was the result of the individual’s gross negligence or willful misconduct.

CHAPTER 130

(H. B. 2780 - By Delegate(s) Pasdon, Statler, Kurcaba, Duke, Sobonya, Espinosa, Rohrbach, Fleischauer, Miller and Morgan)

[Passed March 12, 2015; in effect ninety days from passage.]
[Approved by the Governor on March 25, 2015.]
Be it enacted by the Legislature of West Virginia:

That §18B-4-5 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that §30-29-8 of said code be amended and reenacted, all to read as follows:

CHAPTER 18B. HIGHER EDUCATION.

ARTICLE 4. GENERAL ADMINISTRATION.

§18B-4-5. Campus police officers; appointment; qualifications; authority; compensation and removal; law enforcement grants.

(a) The governing boards may appoint bona fide residents of this state to serve as campus police officers upon any premises owned or leased by the State of West Virginia and under the jurisdiction of the governing boards, subject to the conditions and restrictions established in this section.

(1) A person who previously was qualified for employment as a law-enforcement officer for a state agency or political subdivision of the state is considered certified for appointment as a campus police officer at the state institutions of higher education under the jurisdiction of the governing boards of Marshall University and West Virginia University.

(2) Before performing duties as a campus police officer in any county, a person shall qualify as is required of county police officers by:

(A) Taking and filing an oath of office as required by article one, chapter six of this code; and

(B) Posting an official bond as required by article two, chapter six of this code.
(b) A campus police officer may carry a gun and any other dangerous weapon while on duty if the officer fulfills the certification requirement for law-enforcement officers under section five, article twenty-nine, chapter thirty of this code or meets the requirements of subsection (a) of this section.

(c) It is the duty of a campus police officer to preserve law and order:

(1) On the premises under the jurisdiction of the governing board; and

(2) On any street, road or thoroughfare, except controlled access and open country highways, immediately adjacent to or passing through premises, to which the officer is assigned by the president of the institution.

(A) For the purpose of this subdivision, the campus police officer is a law-enforcement officer pursuant to the provisions of section one, article twenty-nine, chapter thirty of this code.

(B) The officer has and may exercise all the powers and authority of a law-enforcement officer as to offenses committed within the area assigned;

(C) The officer is subject to all the requirements and responsibilities of a law-enforcement officer;

(D) Authority assigned pursuant to this subdivision does not supersede in any way the authority or duty of other law-enforcement officers to preserve law and order on such premises.

(E) Campus police officers may assist a local law-enforcement agency on public highways. The assistance may be provided to control traffic in and around premises owned by the state when:
(i) Traffic is generated as a result of athletic or other activities conducted or sponsored by the institution; and

(ii) The assistance has been requested by the local law-enforcement agency; and

(F) Campus police officers may assist a local law-enforcement agency in any location under the agency’s jurisdiction at the request of the agency.

(d) The salary of a campus police officer is paid by the employing governing board. A state institution may furnish each campus police officer with a firearm and an official uniform to be worn while on duty. The institution shall furnish and require each officer while on duty to wear a shield with an appropriate inscription and to carry credentials certifying the person’s identity and authority as a campus police officer.

(e) A governing board may at its pleasure revoke the authority of any campus police officer and such officers serve at the will and pleasure of the governing board. The president of the state institution shall report the termination of employment of a campus police officer by filing a notice to that effect in the office of the clerk of each county in which the campus police officer’s oath of office was filed.

(f) Notwithstanding any other provisions of this code to the contrary, and for purposes of enhancing the ability of campus police officers to perform their duties, a governing board may apply for and receive any public or private grant or other financial award that is available to other law-enforcement agencies in the state.

CHAPTER 30. PROFESSIONS AND OCCUPATIONS.

ARTICLE 29. LAW-ENFORCEMENT TRAINING AND CERTIFICATION.
§30-29-8. Compensation for employees attending law-enforcement training academy; limitations; agreements to reimburse employers for wages and expenses of employees trained but not continuing employment.

(a) A West Virginia law-enforcement agency shall, and a governing board may, pay compensation to employees, including wages, salaries, benefits, tuition and expenses, for the employees’ attendance at a law-enforcement training academy. The compensation paid to the employees for such attendance may not include overtime compensation under the provisions of section three, article five-c, chapter twenty-one of this code and shall be at the regular rate to which each employee would be entitled for a workweek of forty hours in regular employment with the employer.

(b) In consideration for such compensation, the governing board, county commission or municipal government may require each employee to enter into a written agreement in advance of such attendance that obligates the employee to repay the employer if he or she voluntarily discontinues employment within one year immediately following completion of the training curriculum. The amount of repayment shall be a pro rata portion of the total compensation which is equal to the portion of the year which the employee chose not to remain employed.

(c) As used in this section, “governing board” has the meaning ascribed in section two, article one, chapter eighteen-b of this code.
AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §18B-14-2, relating to providing for recommendations regarding expanded transfer of course credits among higher education institutions in the state; requiring higher education policy commission and council for community and technical college education to report the recommendations to Legislative Oversight Commission on Education Accountability.

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 §18B-14-2, to read as follows:

ARTICLE 14. MISCELLANEOUS.

§18B-14-2. Transfer of credit for courses completed.

1 (a) The Legislature finds that:

2 (1) The state has an increasing need for individuals with a post-secondary credential or degree;

3 (2) Post-secondary education institutions offering programs primarily below the baccalaureate level often are a more affordable option for students; and

4 (3) Implementing a seamless education system with uniform transfer of credits among post-secondary institutions in the state would greatly benefit students.
(b) The commission and council jointly shall develop recommendations for implementing course credit transfer among private and public higher education institutions in the state. When developing policy regarding transfer affecting private institutions, the commission and council shall consult with at least two representatives from the private higher education institutions. The commission and council shall report the recommendations on public higher education institutions to the Legislative Oversight Commission on Education Accountability by December 1, 2015. The commission and council shall report the recommendations on private higher education institutions to the Legislative Oversight Commission on Education Accountability by December 1, 2017. The recommendations shall address the following:

(1) Providing a uniform method for transferring credit between institutions for a course successfully completed by a student if:

(A) The course curriculum of the sending institution is at least seventy percent the same or similar to that of the receiving institution;

(B) The sending institution validates that the student successfully competed the course for which credit will be transferred; and

(C) The sending institution is accredited by a regional, national, programmatic or other accrediting body recognized by the U.S. Department of Education under the Higher Education Act of 1965, as amended;

(2) Establishing a uniform method for each institution to provide clear and specific details of course content for each course it offers in a manner that allows a sending institution to determine:
(A) Whether its course is at least seventy percent the same or similar to the receiving institution; and if not,

(B) What changes to its course curriculum is needed to achieve the seventy percent level;

(3) Providing to the student and sending institution clear and specific details regarding:

(A) Reasons that a receiving institution denies course credit transfer; and

(B) Additional information or actions, if any, necessary to permit the transfer; and

(4) Allowing a student to resubmit a course credit transfer request following denial.

CHAPTER 132

(H. B. 2884 - By Delegate(s) Pasdon and Perry)

[Passed March 12, 2015; in effect ninety days from passage.]
[Approved by the Governor on March 27, 2015.]

AN ACT to amend and reenact §18B-1D-9 of the Code of West Virginia, 1931, as amended, relating to modifying training and development requirement for certain members of Higher Education Policy Commission, council for community and technical college education and institutional governing boards.

Be it enacted by the Legislature of West Virginia:

That §18B-1D-9 of the Code of West Virginia, 1931, as amended, be amended and reenacted, to read as follows:
ARTICLE 1D. HIGHER EDUCATION ACCOUNTABILITY.

§18B-1D-9. Commission, council and institutional governing board training and development; training and development requirements, applicability and exceptions.

(a) The commission and council, either jointly or separately, shall coordinate periodic training and development opportunities for members of the commission, council and institutional governing boards as provided in this section.

The training and development shall address the following topics:

(1) State goals, objectives and priorities for higher education;

(2) The accountability system for higher education set forth in this article;

(3) The general powers and duties of members; and

(4) Ethical considerations arising from board membership.

(b) Training and development is required as follows:

(1) A member newly appointed to the commission, council or a governing board shall complete three hours of training and development by the end of the first fiscal year of service if the appointment is made in the first half of a fiscal year. If the appointment is made in the second half of a fiscal year the member shall complete three hours of training and development by the end of the first half of the second fiscal year.

(2) With the exception of the ex officio members of the commission and the council and the student member of a
governing board, each member shall complete at least six hours
of training and development related to his or her duties within
two fiscal years of beginning service and within every two fiscal
years of service thereafter.

(c) Annually, by July 31, the chair of the commission,
council and each governing board shall certify to the commission
or council, as appropriate, the number of hours of training and
development that each member received during the preceding
fiscal year.

(d) If the certification indicates that a board member has not
completed the training and development required by this section,
the commission or council, as appropriate, shall send a notice to
the affected board member, and to the Governor and the
Secretary of State or to the institutional appointing entity that the
board member is disqualified from continued service
notwithstanding the provisions of sections five and six, article
six, chapter six of this code. The commission or council, as
appropriate, shall request the Governor or appointing entity to
appoint a replacement for that board member.

(e) Annually, by September 30, the commission and council
shall report to the Legislative Oversight Commission on
Education Accountability on the training and development that
members of the commission and council and the governing
boards under their respective jurisdictions have received during
the preceding fiscal year. This information shall be included in
the institutional and statewide report cards provided in section
eight of this article.

(f) As used in this section, “member” means all members of
the commission, council and the governing boards unless a
specific exception is provided in this section.
AN ACT to amend and reenact §18B-17-2 and §18B-17-3 of the Code of West Virginia, 1931, as amended, all relating to authorizing certain legislative rules regarding higher education; authorizing legislative rules for the Higher Education Policy Commission regarding capital project management, Underwood-Smith Teacher Scholarship Program and Nursing Scholarship Program; and authorizing legislative rule for the Council for Community and Technical College Education regarding capital project management.

Be it enacted by the Legislature of West Virginia:

That §18B-17-2 and §18B-17-3 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 17. LEGISLATIVE RULES.


1 (a) The legislative rule filed in the State Register on October 15, 2004, relating to the Higher Education Policy Commission (Underwood-Smith Teacher Scholarship Program rule) is authorized.

2 (b) The legislative rule filed in the State Register on October 15, 2004, relating to the Higher Education Policy Commission
(West Virginia Engineering, Science and Technology Scholarship Program rule) is authorized.

(c) The legislative rule filed in the State Register on October 15, 2004, relating to the Higher Education Policy Commission (Medical Education Fee and Medical Student Loan Program rule) is authorized.

(d) The legislative rule filed in the State Register on October 27, 2005, relating to the Higher Education Policy Commission (Authorization of degree-granting institutions) is authorized.

(e) The legislative rule filed in the State Register on August 23, 2006, relating to the Higher Education Policy Commission (West Virginia Higher Education Grant Program) is authorized.

(f) The legislative rule filed in the State Register on January 4, 2008, relating to the Higher Education Policy Commission (Providing Real Opportunities for Maximizing In-state Student Excellence - PROMISE) is authorized.

(g) The legislative rule filed in the State Register on August 25, 2008, relating to the Higher Education Policy Commission (Research Trust Program) is authorized.

(h) The legislative rule filed in the State Register on January 8, 2009, relating to the Higher Education Policy Commission (Guidelines for Governing Boards in Employing and Evaluating Presidents) is authorized.

(i) The legislative rule filed in the State Register on September 10, 2008, relating to the Higher Education Policy Commission (Medical Student Loan Program) is authorized, with the following amendment:

On page 2, subsection 5.1, following the words “financial aid office” by inserting a new subdivision 5.1.3 to read as follows:
“United States citizenship or legal immigrant status while actively pursuing United States citizenship.”

(j) The legislative rule filed in the State Register on December 1, 2008, relating to the Higher Education Policy Commission (West Virginia Higher Education Grant Program) is authorized.

(k) The legislative rule filed in the State Register on January 26, 2009, relating to the Higher Education Policy Commission (Accountability System) is authorized.

(l) The legislative rule filed in the State Register on May 20, 2009, relating to the Higher Education Policy Commission (Energy and Water Savings Revolving Loan Fund Program) is authorized.

(m) The legislative rule filed in the State Register on January 27, 2010, relating to the Higher Education Policy Commission (Providing Real Opportunities for Maximizing In-state Student Excellence - PROMISE) is authorized.

(n) The legislative rule filed in the State Register on December 8, 2010, relating to the Higher Education Policy Commission (Authorization of Degree Granting Institutions) is authorized.

On page 28, subsection 9.1.b, following the words “Good cause shall consist of” by inserting the words “any one or more of the following”.

(o) The legislative rule filed in the State Register on December 12, 2011, relating to the Higher Education Policy Commission (Tuition and Fee Policy) is authorized.

(p) The legislative rule filed in the State Register on August 10, 2012, relating to the Higher Education Policy Commission (Authorization of Degree Granting Institutions) is authorized.
(q) The legislative rule filed in the State Register on August 10, 2012, relating to the Higher Education Policy Commission (Annual Reauthorization of Degree Granting Institutions) is authorized.

(r) The legislative rule filed in the State Register on March 20, 2013, relating to the Higher Education Policy Commission (Human Resources Administration) is authorized.

(s) The legislative rule filed in the State Register on January 24, 2014, relating to the Higher Education Policy Commission (Capital Project Management) is authorized.

(t) The legislative rule filed in the State Register on April 4, 2014, relating to the Higher Education Policy Commission (Underwood-Smith Teacher Scholarship Program) is authorized.

(u) The legislative rule filed in the State Register on August 4, 2014, relating to the Higher Education Policy Commission (Nursing Scholarship Program) is authorized.

§18B-17-3. Authorizing rules of the Council for Community and Technical College Education.

(a) The legislative rule filed in the State Register on September 29, 2004, relating to the West Virginia Council for Community and Technical College Education (performance indicators) is authorized.

(b) The legislative rule filed in the State Register on October 13, 2005, relating to the West Virginia Council for Community and Technical College Education (Authorization of degree-granting institutions) is authorized.

(c) The legislative rule filed in the State Register on October 30, 2006, relating to the West Virginia Council for Community and Technical College Education (Workforce Development Initiative Program) is authorized.
(d) The legislative rule filed in the State Register on December 4, 2008, relating to the West Virginia Council for Community and Technical College Education (Employing and Evaluating Presidents) is authorized.

(e) The legislative rule filed in the State Register on December 23, 2008, relating to the West Virginia Council for Community and Technical College Education (Performance Indicators) is authorized.

(f) The legislative rule filed in the State Register on February 5, 2009, relating to the West Virginia Council for Community and Technical College Education (Finance) is authorized.

(g) The legislative rule filed in the State Register on February 5, 2009, relating to the West Virginia Council for Community and Technical College Education (Accountability System) is authorized.

(h) The legislative rule filed in the State Register on June 15, 2011, relating to the West Virginia Council for Community and Technical College Education (Workforce Development Initiative Program) is authorized.

(i) The legislative rule filed in the State Register on October 26, 2011, relating to the West Virginia Council for Community and Technical College Education (Tuition and Fees) is authorized.

(j) The legislative rule filed in the State Register on October 17, 2012, relating to the West Virginia Council for Community and Technical College Education (Authorization of Degree Granting Institutions) is authorized.

(k) The legislative rule filed in the State Register on October 17, 2012, relating to the West Virginia Council for Community and Technical College Education (Annual Reauthorization of Degree Granting Institutions) is authorized.
(l) The legislative rule filed in the State Register on March 21, 2013, relating to the West Virginia Council for Community and Technical College Education (Human Resources Administration) is authorized.

(m) The legislative rule filed in the State Register on August 21, 2012, relating to the West Virginia Council for Community and Technical College Education (West Virginia EDGE Program) is authorized.

(n) The legislative rule filed in the State Register on January 28, 2014, relating to the West Virginia Council for Community and Technical College Education (Capital Project Management) is authorized.

CHAPTER 134

(Com. Sub. for S. B. 455 - By Senators Prezioso, Carmichael, D. Hall, Kessler, Leonhardt, Plymale, Walters, Williams, Palumbo and Stollings)

[Passed March 14, 2015; in effect ninety days from passage.]
[Approved by the Governor on March 18, 2015.]

AN ACT to amend and reenact §12-3A-6 of the Code of West Virginia, 1931, as amended; to amend and reenact §18B-1F-4 of said code; to amend and reenact §18B-5-4, §18B-5-6 and §18B-5-7 of said code; and to amend said code by adding thereto a new section, designated §18B-5-4a, all relating to public higher education procurement and payment generally; modifying receipting of certain electronic commerce purchases; increasing monetary threshold for certain required bids and surety; modifying notification of certain required bids; exempting purchases by certain higher education institutions from requirement to be
encumbered; providing certain exemptions from certain design-build procurement requirements; increasing time period for certain required audits; authorizing Higher Education Policy Commission to issue certain revenue bonds; and modifying requirements for disposition of certain items and the reporting requirements therefor.

Be it enacted by the Legislature of West Virginia:

That §12-3A-6 of the Code of West Virginia, 1931, as amended, be amended and reenacted; that §18B-1F-4 of said code be amended and reenacted; that §18B-5-4, §18B-5-6 and §18B-5-7 of said code be amended and reenacted; and that said code be amended by adding thereto a new section, designated §18B-5-4a, all to read as follows:

CHAPTER 12. PUBLIC MONEYS AND SECURITIES.

ARTICLE 3A. FINANCIAL ELECTRONIC COMMERCE.

§12-3A-6. Receipting of electronic commerce purchases.

(a) The state treasurer may establish a system for acceptance of credit card and other payment methods for electronic commerce purchases from spending units. Notwithstanding any other provision of this code to the contrary, each spending unit utilizing WEB commerce, electronic commerce or other method that offers products or services for sale shall utilize the state Treasurer’s system for acceptance of payments except as provided in subsection (b) of this section.

(b) A state institution of higher education may receive credit card payments from systems of acceptance other than that provided by the state Treasurer if:

(1) The proposed alternate system is compliant with the payment card industry data security standards for acceptance of payments, and the institution is proposing to use the alternate system for the sole purpose of:
(A) Processing the payment of academic transcripts; or

(B) Accepting payment for applications for admission if necessary to participate in a national or regional program for applications for admission; or

(2) The institution certifies that the use of the alternate system will not cause a reduction in the volume of credit card revenues by more than ten percent as compared to previous credit card revenues processed on behalf of the institution during the previous fiscal year and the state Treasurer consents to the use.

(c) To facilitate electronic commerce, the state Treasurer may charge a spending unit for the banking and other expenses incurred by the Treasurer on behalf of the spending unit and for any work performed, including, without limitation, assisting in the development of a website and utilization of the Treasurer’s payment gateway. A special revenue account, entitled the Treasurer’s Financial Electronic Commerce Fund, is created in the state treasury to receive the amounts charged by the Treasurer. The Treasurer may expend the funds received in the Treasurer’s Financial Electronic Commerce Fund only for the purposes of this article and for other purposes as determined by the Legislature.

(d) The state Treasurer may authorize a spending unit to assess and collect a fee to recover or pay the cost of accepting bank, charge, check, credit or debit cards from amounts collected.

(e) Upon written request from a political subdivision, the state Treasurer may provide services of his or her office to a political subdivision and charge for the services.

(f) The state Treasurer shall propose legislative rules for promulgation in accordance with the provisions of article three,
chapter twenty-nine-a of this code to implement the provisions
of this section.

CHAPTER 18B. HIGHER EDUCATION.

ARTICLE 1F. MANAGEMENT AGREEMENTS FOR THE
HIGHER EDUCATION POLICY
COMMISSION.

§18B-1F-4. Powers and duties of board of directors and
corporation.

(a) The primary responsibility of the corporation is to
manage the day-to-day operations of the technology park
through collaboration agreements with the commission. To that
end, the board of directors has the following powers and duties:

(1) To employ an executive director subject to the provisions
of section five of this article;

(2) To approve employment of other staff recommended by
the executive director as being necessary and appropriate to
carry out the purposes of this article and subject to agreements
with the commission;

(3) To serve as fiscal agent and provide additional services,
including, but not limited to, property management, human
resources management and purchasing;

(4) To meet as a governing body. A corporation created
under this article is exempt from the provisions of section three,
article nine-a, chapter six of this code and from the provisions of
article one, chapter twenty-nine-b of this code;

(5) To receive, purchase, hold, lease, use, sell and dispose of
real and personal property of all classes, subject to the provisions
of subdivision (8) of this subsection and section eight of this
article;

(6) To receive from any source whatsoever grants to be
expended in accomplishing the objectives of this article;

(7) To receive from any source whatsoever aid or
contributions of money, property or other things of value to be
held, used and applied only for the purposes for which the aid or
contributions may be made;

(8) To accept and expend any gift, grant, contribution,
bequest, endowment or other money for the purposes of this
article. Any transfer of endowment or other assets by the
commission to the corporation or by the corporation to the
commission for management shall be formalized in a
memorandum of agreement to assure, at a minimum, that any
restrictions governing the future disposition of funds are
preserved. The commission may not transfer ownership of the
technology park property to the corporation;

(9) To make, amend and repeal bylaws, rules and its
governing documents consistent with the provisions of this
article to effectuate the purpose and scope of the corporation;

(10) To alter the purpose or scope of the corporation; and

(11) To delegate the exercise of any of its powers except for
the power to approve budgets to the executive director, subject
to the directions and limitations contained in its governing
documents.

(b) In addition to the powers and duties provided for in this
section and any other powers and duties that may be assigned to
it by law or agreement, the corporation has other powers and
duties necessary to accomplish the objectives of this article or as
provided by law.
ARTICLE 5. HIGHER EDUCATION BUDGETS AND EXPENDITURES.

§18B-5-4. Purchase or acquisition of materials, supplies, equipment, services and printing.

(a) The council, commission and each governing board shall purchase or acquire all materials, supplies, equipment, services and printing required for that governing board or the council or commission, as appropriate, and the state institutions of higher education under their jurisdiction, except the governing boards of Marshall University and West Virginia University, respectively, are subject to subsection (d) of this section.

(b) The commission and council jointly shall adopt rules governing and controlling acquisitions and purchases in accordance with this section. The rules shall ensure that the following procedures are followed:

(1) No person is precluded from participating and making sales thereof to the council, commission or governing board except as otherwise provided in section five of this article. Providing consulting services such as strategic planning services does not preclude or inhibit the governing boards, council or commission from considering a qualified bid or response for delivery of a product or a commodity from the individual providing the services;

(2) Specifications are established and prescribed for materials, supplies, equipment, services and printing to be purchased;

(3) Purchase order, requisition or other forms as may be required are adopted and prescribed;

(4) Purchases and acquisitions in such quantities, at such times and under contract, are negotiated for and made in the
open market or through other accepted methods of governmental purchasing as may be practicable in accordance with general law;

(5) Bids are advertised on all purchases exceeding $50,000 and made by means of sealed or electronically submitted bids and competitive bidding or advantageous purchases effected through other accepted governmental methods and practices. Competitive bids are not required for purchases of $50,000 or less.

(6) Notices for acquisitions and purchases for which competitive bids are being solicited are posted either in the purchasing office of the specified institution involved in the purchase or by electronic means available to the public at least five days prior to making the purchases. The rules shall ensure that the notice is available to the public during business hours;

(7) Purchases are made in the open market;

(8) Vendors are notified of bid solicitation and emergency purchasing; and

(9) No fewer than three bids are obtained when bidding is required, except if fewer than three bids are submitted, an award may be made from among those received.

(c) When a state institution of higher education submits a contract, agreement or other document to the Attorney General for approval as to form as required by this chapter, the following conditions apply:

(1) “Form” means compliance with the constitution and statutes of the state of West Virginia;

(2) The Attorney General does not have the authority to reject a contract, agreement or other document based on the
56 substantive provisions in the contract, agreement or document or
57 any extrinsic matter as long as it complies with the constitution
58 and statutes of this state;

59 (3) Within fifteen days of receipt, the Attorney General shall
60 notify the appropriate state institution of higher education in
61 writing that the contract, agreement or other document is
62 approved or disapproved as to form. If the contract, agreement
63 or other document is disapproved as to form, the notice of
64 disapproval shall identify each defect that supports the
65 disapproval; and

66 (4) If the state institution elects to challenge the disapproval
67 by filing a writ of mandamus or other action and prevails, then
68 the Attorney General shall pay reasonable attorney fees and costs
69 incurred.

70 (d) Pursuant to this subsection, the governing boards of
71 Marshall University and West Virginia University, respectively,
72 may carry out the following actions:

73 (1) Purchase or acquire all materials, supplies, equipment,
74 services and printing required for the governing board without
75 approval from the commission or the Vice Chancellor for
76 Administration and may issue checks in advance to cover
77 postage as provided in subsection (f) of this section;

78 (2) Purchase from cooperative buying groups, consortia, the
79 federal government or from federal government contracts if the
80 materials, supplies, services, equipment or printing to be
81 purchased is available from these groups and if this would be the
82 most financially advantageous manner of making the purchase;

83 (3) Select and acquire by contract or lease all grounds,
84 buildings, office space or other space, and capital improvements,
85 including equipment, if the rental is necessarily required by the
86 governing board; and
(4) Use purchase cards under terms approved for the commission, the council and governing boards of state institutions of higher education and participate in any expanded program of use as provided in subsection (u) of this section.

(e) The governing boards shall adopt sufficient accounting and auditing procedures and promulgate and adopt appropriate rules subject to section six, article one of this chapter to govern and control acquisitions, purchases, leases and other instruments for grounds, buildings, office or other space, and capital improvements, including equipment, or lease-purchase agreements.

(f) The council, commission or each governing board may issue a check in advance to a company supplying postage meters for postage used by that board, the council or commission and by the state institutions of higher education under their jurisdiction.

(g) When a purchase is to be made by bid, any or all bids may be rejected. However, all purchases based on advertised bid requests shall be awarded to the lowest responsible bidder taking into consideration the qualities of the articles to be supplied, their conformity with specifications, their suitability to the requirements of the governing boards, council or commission and delivery terms. The preference for resident vendors as provided in section thirty-seven, article three, chapter five-a of this code applies to the competitive bids made pursuant to this section.

(h) The governing boards, council and commission shall maintain a purchase file, which shall be a public record and open for public inspection.

(1) After the award of the order or contract, the governing boards, council and commission shall indicate upon the successful bid the following information:
(A) Designation as the successful bid;

(B) The reason any bids were rejected; and

(C) The reason for rejection, if the mathematical low vendor was not awarded the order or contract.

(2) A record in the purchase file may not be destroyed without the written consent of the Legislative Auditor. Those files in which the original documentation has been held for at least one year and in which the original documents have been reproduced and archived on microfilm or other equivalent method of duplication may be destroyed without the written consent of the Legislative Auditor.

(3) All files, no matter the storage method, shall be open for inspection by the Legislative Auditor upon request.

(i) The commission and council, also jointly, shall promulgate rules to prescribe qualifications to be met by any person who is to be employed as a buyer pursuant to this section. These rules shall require that a person may not be employed as a buyer unless that person, at the time of employment, has one of the following qualifications:

(1) Is a graduate of an accredited college or university; or

(2) Has at least four years’ experience in purchasing for any unit of government or for any business, commercial or industrial enterprise.

(j) Any person making purchases and acquisitions pursuant to this section shall execute a bond in the penalty of $50,000, payable to the state of West Virginia, with a corporate bonding or surety company authorized to do business in this state as surety thereon, in form prescribed by the Attorney General and conditioned upon the faithful performance of all duties in
accordance with this section and sections five through eight, inclusive, of this article and the rules of the governing board and the council and commission. In lieu of separate bonds for these buyers, a blanket surety bond may be obtained. The bond shall be filed with the Secretary of State and the cost of the bond shall be paid from funds appropriated to the applicable governing board or the council or commission.

(k) All purchases and acquisitions shall be made in consideration and within limits of available appropriations and funds and in accordance with applicable provisions of article two, chapter five-a of this code relating to expenditure schedules and quarterly allotments of funds. Notwithstanding any other provision of this code to the contrary, only those purchases exceeding the dollar amount for competitive sealed bids in this section are required to be encumbered. Such purchases may be entered into the state’s centralized accounting system by the staff of the commission, council or governing boards to satisfy the requirements of article two, chapter five-a of this code to determine whether the amount of the purchase is within the quarterly allotment of the commission, council or governing board, is in accordance with the approved expenditure schedule and otherwise conforms to the article: Provided, That, notwithstanding the foregoing provisions of this subsection or any other provision of this code to the contrary, purchases by Marshall University or West Virginia University are not required to be encumbered.

(l) The governing boards, council and commission may make requisitions upon the state Auditor for a sum to be known as an advance allowance account, not to exceed five percent of the total of the appropriations for the governing board, council or commission, and the state Auditor shall draw a warrant upon the Treasurer for those accounts. All advance allowance accounts shall be accounted for by the applicable governing
board or the council or commission once every thirty days or
more often if required by the state Auditor.

(m) Contracts entered into pursuant to this section shall be
signed by the applicable governing board or the council or
commission in the name of the state and shall be approved as to
form by the Attorney General. A contract which requires
approval as to form by the Attorney General is considered
approved if the Attorney General has not responded within
fifteen days of presentation of the contract. A contract or a
change order for that contract and notwithstanding any other
provision of this code to the contrary, associated documents such
as performance and labor/material payments, bonds and
certificates of insurance which use terms and conditions or
standardized forms previously approved by the Attorney General
and do not make substantive changes in the terms and conditions
of the contract do not require approval as to form by the
Attorney General. The Attorney General shall make a list of
those changes which he or she considers to be substantive and
the list, and any changes to the list, shall be published in the
State Register. A contract that exceeds the dollar amount
requiring competitive sealed bids in this section shall be filed
with the state Auditor. If requested to do so, the governing
boards, council or commission shall make all contracts available
for inspection by the state Auditor. The governing board, council
or commission, as appropriate, shall prescribe the amount of
deposit or bond to be submitted with a bid or contract, if any,
and the amount of deposit or bond to be given for the faithful
performance of a contract.

(n) If the governing board, council or commission purchases
or contracts for materials, supplies, equipment, services and
printing contrary to sections four through seven, inclusive, of
this article or the rules pursuant to this article, the purchase or
contract is void and of no effect.
(o) A governing board or the council or commission, as appropriate, may request the director of purchasing to make available the facilities and services of that department to the governing boards, council or commission in the purchase and acquisition of materials, supplies, equipment, services and printing. The director of purchasing shall cooperate with that governing board, council or commission, as appropriate, in all such purchases and acquisitions upon that request.

(p) Each governing board or the council or commission, as appropriate, may permit private institutions of higher education to join as purchasers on purchase contracts for materials, supplies, services and equipment entered into by that governing board or the council or commission. A private institution desiring to join as purchaser on purchase contracts shall file with that governing board or the council or commission, as appropriate, an affidavit signed by the president or designee of the private institution requesting that it be authorized to join as purchaser on purchase contracts of that governing board or the council or commission, as appropriate. The private institution shall agree that it is bound by such terms and conditions as that governing board or the council or commission may prescribe and that it will be responsible for payment directly to the vendor under each purchase contract.

(q) Notwithstanding any other provision of this code to the contrary, the governing boards, council and commission, as appropriate, may make purchases from cooperative buying groups, consortia, the federal government or from federal government contracts if the materials, supplies, services, equipment or printing to be purchased is available from that source, and purchasing from that source would be the most financially advantageous manner of making the purchase.

(r) An independent performance audit of all purchasing functions and duties which are performed at any state institution
of higher education shall be performed at least once in each three-year period. The Joint Committee on Government and Finance shall conduct the performance audit and the governing boards, council and commission, as appropriate, are responsible for paying the cost of the audit from funds appropriated to the governing boards, council or commission.

(1) The governing board shall provide for independent performance audits of all purchasing functions and duties on its campus at least once in each three-year period.

(2) Each audit shall be inclusive of the entire time period that has elapsed since the date of the preceding audit.

(3) Copies of all appropriate documents relating to any audit performed by a governing board shall be furnished to the Joint Committee on Government and Finance and the Legislative Oversight Commission on Education Accountability within thirty days of the date the audit report is completed.

(s) The governing boards shall require each institution under their respective jurisdictions to notify and inform every vendor doing business with that institution of section fifty-four, article three, chapter five-a of this code, also known as the Prompt Pay Act of 1990.

(t) Consultant services, such as strategic planning services, do not preclude or inhibit the governing boards, council or commission from considering any qualified bid or response for delivery of a product or a commodity because of the rendering of those consultant services.

(u) Purchasing card use may be expanded by the council, commission and state institutions of higher education pursuant to this subsection.

(1) The council and commission jointly shall establish procedures to be implemented by the council, commission and
any institution under their respective jurisdictions using purchasing cards. The procedures shall ensure that each meets the following conditions:

(A) Appropriate use of the purchasing card system;

(B) Full compliance with article three, chapter twelve of this code relating to the purchasing card program; and

(C) Sufficient accounting and auditing procedures for all purchasing card transactions.

(2) Notwithstanding any other provision of this code to the contrary, the council, commission and any institution authorized pursuant to subdivision (3) of this subsection may use purchasing cards for the following purposes:

(A) Payment of travel expenses directly related to the job duties of the traveling employee, including, but not limited to, fuel and food; and

(B) Payment of any routine, regularly scheduled payment, including, but not limited to, utility payments and real property rental fees.

(3) The commission and council each shall evaluate the capacity of each institution under its jurisdiction for complying with the procedures established pursuant to subdivision (2) of this subsection. The commission and council each shall authorize expanded use of purchasing cards pursuant to that subdivision for any institution it determines has the capacity to comply.

§18B-5-4a. Construction projects.

Notwithstanding any other provision of this code to the contrary, and specifically section one, article twenty-two, chapter five of this code, a state institution of higher education
§18B-5-6. Other code provisions relating to purchasing and
design-build procurement not controlling; exceptions; criminal provisions and penalties; financial interest of governing boards, etc.; receiving anything of value from interested party and penalties therefor; application of bribery statute.

The provisions of article three, chapter five-a of this code
and section five, article twenty-two-a, chapter five of this code
do not control or govern design-build procurement or the
purchase, acquisition or other disposition of any equipment,
materials, supplies, services or printing by the commission or the
governing boards, except as provided in sections four through
seven, inclusive, of this article. Sections twenty-nine, thirty and
thirty-one, article three, chapter five-a of this code apply to all
purchasing activities of the commission and the governing
boards.

Neither the commission, the governing boards, nor any
employee of the commission or governing boards may be
financially interested, or have any beneficial personal interest,
directly or indirectly, in the purchase of any equipment,
materials, supplies, services or printing, nor in any firm,
partnership, corporation or association furnishing them, except
as may be authorized by the provisions of chapter six-b of this
code. Neither the commission, the governing boards nor any
employee of the commission or governing boards may accept or
receive directly or indirectly from any person, firm or
corporation, known by the commission, governing boards or
such employee to be interested in any bid, contract or purchase,
by rebate, gift or otherwise, any money or other thing of value
whatsoever or any promise, obligation or contract for future
reward or compensation, except as may be authorized by the
provisions of chapter six-b of this code.

A person who violates any of the provisions of this section
is guilty of a misdemeanor and, upon conviction thereof, shall be
imprisoned in jail not less than three months nor more than one
year, or fined not less than $50 nor more than $1,000, or both
imprisoned and fined, in the discretion of the court. Any person
who violates any provisions of this section by receiving money
or other thing of value under circumstances constituting the
crime of bribery under the provisions of section three, article
five-a, chapter sixty-one of this code shall, upon conviction of
bribery, be punished as provided in section nine of said article.

§18B-5-7. Disposition of obsolete and unusable equipment, surplus
supplies and other unneeded materials.

(a) The commission, the council and the governing boards
shall dispose of obsolete and unusable equipment, surplus
supplies and other unneeded materials, either by transfer to other
governmental agencies or institutions, by exchange or trade, or
by sale as junk or otherwise. The commission, the council and
each governing board shall adopt rules governing and controlling
the disposition of all such equipment, supplies and materials.
The rules shall provide for disposition of the equipment, supplies
and materials as sound business practices warrant under existing
circumstances and conditions and for adequate prior notice to the
public of the disposition.

(b) The commission, council or governing board, as
appropriate, shall report biannually to the Legislative Auditor all
sales of commodities made during the preceding biennium. The
report shall include a description of the commodities sold, the
name of the buyer to whom each commodity was sold, the price
paid by the buyer.
(c) The proceeds of sales or transfers shall be deposited in the state treasury to the credit on a pro rata basis of the fund or funds from which the purchase of the particular commodities or expendable commodities was made. The commission, council or governing board, as appropriate, may charge and assess fees reasonably related to the costs of care and handling with respect to the transfer, warehousing, sale and distribution of state property that is disposed of or sold pursuant to the provisions of this section.

(d) Notwithstanding the provisions of this section, the commission, council or a governing board may donate equipment, supplies and materials with the approval of the commission, council or governing board or their designee, as appropriate.

CHAPTER 135


[Passed March 14, 2015; in effect ninety days from passage.]
[Approved by the Governor on April 1, 2015.]

AN ACT to amend and reenact §18B-4-2a of the Code of West Virginia, 1931, as amended; to amend and reenact §18B-7-1, §18B-7-2, §18B-7-8, §18B-7-9, §18B-7-11 and §18B-7-16 of said code; to amend and reenact §18B-9-1 and §18B-9-2 of said code; to amend and reenact §18B-9A-1, §18B-9A-2, §18B-9A-3, §18B-9A-4, §18B-9A-5, §18B-9A-6 and §18B-9A-7 of said code; and to amend said code by adding thereto a new section, designated §18B-9A-5a, all relating to public higher education
personnel generally; clarifying roles and certain responsibilities of Higher Education Policy Commission, Council for Community and Technical College Education and state organizations of higher education; modifying legislative purposes and intent for higher education personnel, classification and compensation system, and classified employee salary schedule; defining terms and modifying defined terms; modifying and clarifying duties of Vice Chancellor for Human Resources of the Higher Education Policy Commission; eliminating outdated and redundant reporting, rule and review requirements; requiring certain personnel provisions be created and specifying responsibilities; modifying certain reporting requirements; providing for evaluation and reviews of organizations for certain human resource deficiencies, best practices and compliance with state higher education personnel laws; modifying percentages and criteria of percentages of employees designated as “nonclassified”; modifying requirements for study of employment practices; expanding applicability of certain salary schedule provisions and flexibilities; clarifying that certain provisions are only applicable to classified employees; modifying and clarifying powers and duties of the Job Classification Committee and Compensation Planning and Review Committee; eliminating certain approval of members of Job Classification Committee and Compensation Planning and Review Committee; eliminating requirement that salary schedules fall within relative market equity; clarifying role and considerations of the Higher Education Policy Commission and Community and Technical College Council in developing salary schedules for classified employees; requiring classification and compensation rules; deleting obsolete provisions; and making technical corrections.

Be it enacted by the Legislature of West Virginia:

That §18B-4-2a of the Code of West Virginia, 1931, as amended, be amended and reenacted; that §18B-7-1, §18B-7-2, §18B-7-8, §18B-7-9, §18B-7-11 and §18B-7-16 of said code be amended and reenacted;
that §18B-9-1 and §18B-9-2 of said code be amended and reenacted; that §18B-9A-1, §18B-9A-2, §18B-9A-3, §18B-9A-4, §18B-9A-5, §18B-9A-6 and §18B-9A-7 of said code be amended and reenacted; and that said code be amended by adding thereto a new section, designated §18B-9A-5a, all to read as follows:

ARTICLE 4. GENERAL ADMINISTRATION.

§18B-4-2a. Employment of Vice Chancellor for Human Resources; powers and duties generally; staff; office.

(a) By and with the advice and consent of the Council for Community and Technical College Education, the commission shall employ a Vice Chancellor for Human Resources who may not be dismissed without the consent of the council. Any vacancy occurring in this position shall be filled in accordance with this section.

(b) The successful candidate for the position of vice chancellor provides vision, leadership and direction to ensure the human resources system for employees of the commission, council and governing boards is effective, efficient and aligned with industry best practices. The successful candidate possesses the following minimum qualifications:

(1) A master’s degree in human resources or a related field; and

(2) Thorough knowledge of and experience administering employment laws and regulations, recruiting and selection techniques, employee relations techniques and methodologies, legal reporting and compliance requirements.

(c) The vice chancellor, in consultation with the chancellors, performs functions, tasks and responsibilities necessary to carry out the policy directives of the council and commission and any other duties prescribed by law. The vice chancellor oversees and
monitors all issues related to the personnel system for higher education employees and provides advice and technical support to organizations as directed or requested on all issues related to the design, development, implementation and administration of the personnel system established by this chapter and by duly promulgated rules.

(d) The vice chancellor supervises employees at the commission offices involved in human resources functions, including the professional, administrative, clerical and other employees necessary to carry out assigned powers and duties. In consultation with the Vice Chancellor for Administration and the chancellors, the vice chancellor shall delineate staff responsibilities as considered desirable and appropriate.

(e) The vice chancellor provides support to the chancellors and organizations on a highly diverse range of issues, including assisting them to develop a culture of constant improvement in a rapidly changing, complex market. Duties of the position include, but are not limited to, the following:

(1) Developing and implementing business-related initiatives involving organizational design, labor cost management, executive recruitment and compensation, leadership and management development, human resources data and technology, and compensation and benefits programs;

(2) Chairing, or designating a qualified designee to chair the Job Classification Committee and the Compensation Planning and Review Committee established by sections four and five, article nine-a of this chapter.

(3) Assuming responsibility for coordinating benefits programs for all employees, including designing these programs, and for supporting each higher education organization in implementing the programs;
(4) Assuming responsibility for coordinating classification and compensation programs for classified employees, including designing these programs, and for supporting each higher education organization in implementing the programs;

(5) Assisting, as directed or requested, organizations with classification and/or compensation programs for faculty and/or nonclassified employees, including, as appropriate, design and implementation of the programs;

(6) Maintaining consistent human resources information systems and selecting and supervising benefits consultants, brokers, trustees and necessary legal assistants;

(7) Maintaining the classified employee classification system by providing for regular review of jobs to determine whether the current job description accurately reflects the duties and responsibilities and whether the job is properly classified or needs to be modified or deleted. Every job shall be reviewed at least once within each five-year period;

(8) Ensuring that market comparison studies are conducted for classified employees and providing a report annually from data collected from each organization on the status of compensation among the employee classifications.

(9) As requested by organizations, assist with carrying out the following duties related to training and development:

(A) Analyzing and determining training needs of organization employees and formulating and developing plans, procedures and programs to meet specific training needs and problems.

(B) Developing, constructing, maintaining and revising training manuals and training aids or supervising development of these materials by outside suppliers;
(C) Planning, conducting and coordinating management inventories, appraisals, placement, counseling and training;

(D) Coordinating participation by all employees in training programs developed internally or provided by outside contractors; and

(E) Administering and analyzing annual training and development needs surveys. The survey may coincide with the completion of the annual performance review process.

(10) As requested, assisting boards of governors and/or presidents in conducting performance reviews of personnel who administer human resources functions at each organization in relation to best practices pursuant to articles seven, eight, nine and nine-a of this chapter and rules of the commission and council. Human resources personnel at each organization shall be evaluated at least once within each three-year period. Copies of evaluations will be submitted to the Vice Chancellor who shall analyze the results of these evaluations and target training and professional development to identified areas of deficiency.

(f) To assist in performing the duties of vice chancellor, the commission, with the consent of the council, shall create the following positions, and fill the positions beginning July 1, 2016, with well qualified and appropriately credentialed individuals who will report to the Vice Chancellor for Human Resources and work collaboratively with governing boards and their employees at all levels:

(1) A Generalist/Manager who is responsible for a wide range of human resources management, the Human Resources Information System, reporting and program development activities;

(2) A Director of Classification and Compensation who is responsible for maintaining job classification systems, assisting
organizations with classification and compensation matters, coordinating compensation studies with the compensation planning and review committee and external vendors, and conducting annual compensation program updates or market reviews;

(3) A Training and Development Specialist who is responsible for assessing training needs, and for planning, designing, developing, implementing and/or coordinating delivery of training and development programs and activities as required in subdivision (9), subsection (e) of this section and section six, article seven of this chapter.

ARTICLE 7. PERSONNEL GENERALLY.

§18B-7-1. Legislative intent and purpose.

(a) The intent of the Legislature in enacting this article and articles eight, nine and nine-a of this chapter is to establish a statewide, integrated higher education human resources system capable of, but not limited to, meeting the following objectives:

(1) Providing benefits to the citizens of the State of West Virginia by supporting the public policy agenda as articulated by state policymakers;

(2) Assuring fiscal responsibility by making the best use of scarce resources;

(3) Promoting fairness, accountability, credibility, and transparency in personnel decisionmaking;

(4) Reducing or, wherever possible, eliminating arbitrary and capricious decisions affecting employees of higher education organizations as defined in section two, article nine-a of this chapter;
(5) Creating a stable, self-regulating human resources system capable of evolving to meet changing needs;

(6) Providing for institutional flexibility with meaningful accountability;

(7) Adhering to federal and state laws;

(8) Adhering to duly promulgated and adopted rules; and

(9) Implementing best practices throughout the state higher education system.

(10) Providing current, reliable data to governing boards, the commission, the council, the Governor and the Legislature to inform the decision-making process of these policymakers.

(b) To accomplish these goals, the Legislature encourages organizations to pursue a human resources strategy which provides monetary and nonmonetary returns to employees in exchange for their time, talents and efforts to meet articulated goals, objectives and priorities of the state, the commission and council, and the organization. The system should maximize the recruitment, motivation and retention of highly qualified employees, ensure satisfaction and engagement of employees with their jobs, ensure job performance and achieve desired results.

(c) It is the intent of the Legislature to establish a human resources strategy that is fair, accountable, credible, transparent and systematic. In recognition of the importance of these qualities, the human resources strategy outlined in this article, together with articles eight, nine and nine-a of this chapter, is designated and may be cited as “FACTS for Higher Education”.

(d) It is the intent of the Legislature to require each higher education organization to achieve full funding of the salary
schedule established in section three, article nine of this chapter. A higher education organization, as defined in section two, article nine-a of this chapter, is subject to the provisions of article nine of this chapter until full funding is reached.

(e) It is further the intent of the Legislature to encourage strongly that each organization dedicate a portion of future tuition increases to fund the classified salary schedule, and after full funding of the salary schedule is achieved, to move toward meeting salary goals for faculty, classified and nonclassified employees.

§18B-7-2. Definitions.

For the purposes of this article and articles eight, nine and nine-a of this chapter, the following words have the meanings ascribed to them unless the context clearly indicates a different meaning:

(1) “Benefits” means programs that an employer uses to supplement the cash compensation of employees and includes health and welfare plans, retirement plans, pay for time not worked and other employee perquisites.

(2) “Compensation” means cash provided by an employer to an employee for services rendered.

(3) “Compensatory time” and “compensatory time off” mean hours during which the employee is not working, which are not counted as hours worked during the applicable work week or other work period for purposes of overtime compensation and for which the employee is compensated at the employee’s regular rate of pay.

(4) “Employee classification” or “employee class” means those employees designated as classified employees; nonclassified employees, including presidents, chief executives
and top level administrators and faculty, as these terms are defined in this article and articles eight, nine and nine-a of this chapter.

(5) “Full-time” means an employee whose employment, if continued, accumulates to a minimum total of one thousand forty hours during a calendar year and extends over at least nine months of a calendar year.

(6) “Health and welfare benefit plan” means an arrangement which provides any of the following: Medical, dental, visual, psychiatric or long-term health care, life insurance, accidental death or dismemberment benefits, disability benefits or comparable benefits.

§18B-7-8. Reporting.

(a) Annual personnel reports. —

(1) No later than December 1, 2013, and annually thereafter, the commission and council shall report to the Legislative Oversight Commission on Education Accountability addressing the following issues:

(A) Progress made by organizations toward achieving full funding of the temporary classified employees’ salary schedule pursuant to section three, article nine of this chapter; and

(B) Detailed data disaggregated by organization and employee category or classification, comparing funding for salaries of faculty, classified employees and nonclassified employees as a percentage of the average funding for each of these classes or categories of employees among the organization’s state, region or national markets, as appropriate, and among similar organizations within the state systems of public higher education.
The commission and council shall prepare a human resources report card summarizing the performance of organizations on key human resources measures established by the commission and council. The report card shall be presented to the Legislative Oversight Commission on Education Accountability annually and shall be made available to the general public. At a minimum, the human resources report card shall contain the following data:

(A) Human resources department metrics by organization:

(i) Number of human resources staff;

(ii) Ratio of human resources staff to total number of full-time equivalent employees;

(iii) Percentage of human resources staff functioning in supervisory roles and percentage in administrative roles;

(iv) Number of positions reporting to the head of human resources;

(v) Areas of human resources functions outsourced to external entities;

(vi) Total expenses per full-time equivalent employee; and

(vii) Tuition revenue per full-time equivalent employee.

(B) Human resources expense data:

(i) Ratio of human resources expenses to operating expenses;

(ii) Ratio of human resources expenses to number of full-time equivalent employees; and

(iii) Total human resources expense per organization employee.
(C) Compensation data:

(i) Average amount of annual salary increase per full-time equivalent organization employee;

(ii) Total amount of organization employee salaries as a percent of operating expenses; and

(iii) Total amount of organization employee benefit costs as a percent of cash compensation.

(D) System metrics:

(i) Comparisons of faculty salaries at each organization to market averages; and

(ii) Comparisons of classified and nonclassified employee salaries at each organization to current market averages;

(E) An account of the total amount, type of training or professional development provided, the number of employees who participated and the overall cost of the training and professional development provided to employees pursuant to section six of this article; and

(F) Other measures the commission or council considers appropriate to assist policymakers in evaluating the degree of success in implementing best human resources practices by higher education organizations.

(b) Job classification system report. —

By July 1, 2016, and at least once within each five-year period thereafter, the commission and council jointly shall review the effectiveness of the system for classifying jobs and submit an in-depth report to the Legislative Oversight Commission on Education Accountability. The report shall
include, but is not limited to, findings, recommendations and supporting documentation regarding the following job classification issues:

(1) The effectiveness of the point factor methodology and a determination of whether it should be maintained; and

(2) The status of the job evaluation plan, including the factors used to classify jobs or their relative values, and a determination of whether the plan should be adjusted.

c) It is the responsibility of the head of human resources for each organization to prepare and submit to the president or chief executive officer all human resources data requested by the commission and council. The president or executive officer of each organization shall submit the requested data at times established by the commission and council.

d) In meeting reporting requirements established by this article and articles eight, nine and nine-a of this chapter:

(1) The commission and council shall use the most recent data available and, as appropriate, shall benchmark it against best practices and appropriate labor markets; and

(2) With the exception of the annual human resources report card and any other report designated as due no later than a date certain, the commission and council may combine two or more personnel reports if the dates on which they are due to the Legislature fall within a sixty-day period.

§18B-7-9. Human resources reviews.

(a) The commission and council jointly shall conduct an initial human resources review of each organization to be carried out, subject to legislative appropriation, by an external vendor possessing experience and expertise in conducting these reviews.
The initial review shall be completed by October 1, 2011, and shall be designed to compare current human resources practices at each organization to best practices to identify areas of strength or deficiency, to identify functions that should be the responsibility of the human resources department, but are incorrectly assigned or carried out by other offices within each organization, to assist in targeting employee training and development, to determine the degree to which organizations are adhering to state and federal laws related to human resources administration and to provide data necessary to guide policymakers in developing personnel rules and implementing the classification and compensation system.

(b) Following completion of the initial human resources review, the commission and council jointly shall conduct a systematic human resources review of each organization at least once within each five-year period.

(1) The review shall focus on compliance with statutory mandates contained in this article and articles eight, nine and nine-a of this chapter and on adherence to personnel rules of the commission and council.

(2) In the absence of special circumstances, the commission and council shall provide organizations with reasonable notice prior to conducting a human resources review and shall identify the subjects to be examined in the review.

§18B-7-11. Employees designated as nonclassified; limits; reports required.

(a) Notwithstanding any provision of this code to the contrary, by July 1, 2016, the percentage of personnel placed in the category of nonclassified at a higher education organization may not exceed twenty-five percent of the total number of classified and nonclassified employees of that organization as
those terms are defined in section two, article nine-a of this
chapter and who are eligible for membership in a state retirement
system of the State of West Virginia or other retirement plan
authorized by the state. An institution may not have more than
ten percent of its total number of classified and nonclassified
employees in positions considered by the president to be critical
to the institution pursuant to said section two, article nine-a of
this chapter.

A higher education organization which has more than
twenty-five percent of its employees placed in the nonclassified
category as defined by this subsection on July 1, 2015, shall
reduce the number of nonclassified employees to no more than
twenty-five percent by July 1, 2016.

(b) For the purpose of determining the ratio of nonclassified
employees pursuant to this section, the following conditions
apply:

(1) Organizations shall count faculty or classified
employees, respectively, who retain the right to return to faculty
or classified employee positions, in the employee category they
are serving in at the time of reporting as required by subsections
(a) and (b), section eight of this article. Such employees will be
counted in their original category at such time as they exercise
their return rights.

(2) Athletic coaches are excluded from calculation of the
ratio. The commission and the council shall include
consideration of this employee category in each review required
by section nine of this article and shall monitor organizations’
use of this category and include this information in the report
required by (a), section eight of this article.

(c) Powers and duties of commission and council regarding
nonclassified staff ratios. –
(1) The commission and council shall provide advice and technical assistance to organizations under their respective jurisdictions in collecting and interpreting data to ensure that they fulfill the requirements established by this section. Consideration of these issues shall be made part of each review required by section nine of this article and information from the review included in the report required by subsection (a), section eight of this article;

(2) The chancellors shall monitor the progress of the organizations in meeting the deadlines established in this section and shall report such in the annual human resources report card.

(d) The current annual salary of a nonclassified employee may not be reduced if his or her position is redefined as a classified position solely to meet the requirements of this section. If such a nonclassified employee is reclassified, his or her salary does not constitute evidence of inequitable compensation in comparison to other employees in the same pay grade.

(e) For the purposes of this section only the commission and council are not considered higher education organizations.

§18B-7-16. Study of employment practices.

(a) The commission and council shall study the following issues relating to employment practices:

(1) Developing a fair and rational policy based upon best human resources practices for covering reductions in force, furloughs and other issues relating to seniority, including determining how employees shall be treated whose salaries are derived from funds other than state appropriations;

(2) Determining the advantages and disadvantages of maintaining the internal preferences for hiring, promoting and transferring classified employees;
(3) Determining the appropriate definition of a “nonclassified” position, recommending a best practice criteria for designating positions as nonclassified and recommending the appropriate number or ratio of nonclassified positions for commission and council organizations.

(4) Recommending a rational, uniform policy to determine the status of employees whose positions are funded, in whole or in part, by an external grant or contract from a federal, state or local government or a private entity.

(b) The commission and council shall complete the work and report their findings, conclusions and recommendations, together with drafts of any legislation necessary to effectuate the recommendations, to the Legislative Oversight Commission on Education Accountability upon completion, but no later than January 1, 2018.

ARTICLE 9. TEMPORARY CLASSIFIED EMPLOYEE SALARY SCHEDULE; CLASSIFICATION AND COMPENSATION SYSTEM.

§18B-9-1. Legislative purpose and intent.

The purpose of the Legislature in enacting this article is to require the commission and council jointly to implement, control, supervise and manage a complete, uniform system of personnel classification and compensation in accordance with the provisions of this article for classified employees at higher education organizations.


The following words have the meanings ascribed to them unless the context clearly indicates a different meaning:

(1) “Classified employee” or “employee” means a regular full-time or regular part-time employee of an organization who
holds a position that is assigned a particular job title and pay
grade in accordance with the personnel classification and
compensation system established by this article or by the
commission and council;

(2) “Salary” means the amount of compensation paid
through the State Treasury per annum, excluding those payments
made pursuant to section two, article five, chapter five of this
code, to an organization employee;

(3) “Schedule” or “salary schedule” means the grid of annual
salary figures established in section three of this article; and

(4) “Years of experience” means the number of years a
person has been an employee of the State of West Virginia and
refers to the horizontal column heading of the salary schedule
established in section three of this article. For the purpose of
placement on the salary schedule, employment for nine months
or more equals one year of experience, but a classified employee
may not accrue more than one year of experience during any
given fiscal year. Employment for less than full time or for fewer
than nine months during any fiscal year shall be prorated. In
accordance with rules established by the commission and council
jointly, a classified employee may be granted additional years of
experience not to exceed the actual number of years of prior,
relevant work or experience at accredited institutions of higher
education other than state institutions of higher education.

ARTICLE 9A. CLASSIFICATION AND COMPENSATION
SYSTEM.

§18B-9A-1. Legislative intent and purpose.

(a) The intent of the Legislature in enacting this article is to
establish the classification and compensation system for certain
employees of higher education organizations and apply
recognized best human resources practices in order to use
available resources in the most effective and efficient manner for the benefit of the citizens of West Virginia.

(b) In furtherance of the principles described in subsection (a) of this section, the chief purposes of the classified classification and compensation system are to accomplish the following objectives:

(1) Develop and implement a classification and compensation system that is fair, transparent, understandable, simple to administer, self-regulating and adaptable to meet future goals and priorities;

(2) Compensate employees within an organization fairly in relation to one another;

(3) Compensate employees across organizations who are performing similar work at similar wage rates;

(4) Compensate employees at levels that are competitive with appropriate external markets and are fiscally responsible; and

(5) Improve the process for evaluating jobs, including, but not limited to, mandating training and development in best human resources practices and directing that key terms, job titles and evaluation forms are consistent across organizations.

(c) It is further the intent of the Legislature to ensure that regular compensation analyses are performed to determine how organization compensation for all classes of employees compares to compensation in relevant external markets.


As used in this article and articles seven, eight and nine of this chapter, the following words have the meanings ascribed to them unless the context clearly indicates a different meaning:
(1) “Classification system” means the process by which jobs, job titles, career ladders and assignment to pay grades are determined.

(2) “Classified employee” or “employee” means a regular full-time or regular part-time employee of an organization who holds a position that is assigned a particular job title and pay grade in accordance with the personnel classification and compensation system established by this article or by the commission and council.

(3) “Job” means the total collection of tasks, duties and responsibilities assigned to one or more individuals whose work is of the same nature and level.

(4) “Job description” or “position description” means a summary of the most important features of a job, including the general nature and level of the work performed.

(5) “Job evaluation” means a systematic way of determining the value/worth of a job in relation to other jobs in an organization by analyzing weighted compensable factors resulting in the assignment of a job title and pay grade to a position described by a position information questionnaire.

(6) “Job family” means a group of jobs having the same nature of work, but requiring different levels of skill, effort, responsibility or working conditions.

(7) “Job specification” means the generic description of a group of jobs assigned a common job title in the classification system. The job specification contains a brief summary of the purpose of the job; the most common duties and responsibilities performed by positions holding the title; knowledge, skills and abilities necessary to perform the work; and minimum qualifications required for positions assigned the title.
(8) “Job title” means the descriptive name for the total collection of tasks, duties and responsibilities assigned to one or more individuals whose positions have the same nature of work performed at the same level.

(9) “Job worth hierarchy” means the perceived internal value of jobs in relation to each other within an organization.

(10) “Midpoint differential” means the difference in wage rates paid in the midpoints of two adjacent pay grades. A midpoint differential is calculated by taking the difference between the two adjacent midpoints as a percentage of the lower of the midpoints.

(11) “Nonclassified employee” means an employee of an organization who holds a position that is not assigned a particular job and job title within the classification system established by this article and article nine of this chapter, and by duly promulgated and adopted rules of the commission and council and who meets one or more of the following criteria:

(A) Holds a direct policy-making position at the department or organization level;

(B) Reports directly to the president or chief executive officer of the organization; or

(C) Is in a position considered by the president to be critical to the institution pursuant to policies adopted by the governing board.

(12) “Organization” means the commission, the council, an agency or entity under the respective jurisdiction of the commission or the council or a state institution of higher education as defined in section two, article one of this chapter.

(13) “Pay grade” means the level to which a job is assigned within a job worth hierarchy as a result of job evaluation.
(14) “Point factor methodology” means a quantitative job evaluation process in which elements of a job are given a factor value and each factor is weighted according to its importance.

(15) “Position information questionnaire” or “PIQ” means a tool used to gather specific job information for a specific position held by an individual, and used for the purposes of evaluating the position for determination of job title and pay grade. The PIQ is used to gather information used to assess the compensable factors of knowledge, experience, complexity and problem solving, freedom of action, scope and effect, breadth of responsibility, intra-systems contacts, external contacts, direct supervision of personnel, indirect supervision of personnel and health, safety and physical considerations.

(16) “Pay range spread” means the difference in the minimum and maximum rate of pay for a pay grade expressed as a percentage.


Until the commission or council, as appropriate, has certified that an organization has achieved full funding of the temporary classified employee annual salary schedule or is making appropriate progress toward attaining full funding as defined by section three, article nine of this chapter, the organization is subject to article nine of this chapter and may not exercise flexibility provisions in any area of human resources identified in this chapter or in commission and council rule. Flexibility provisions include paying classified employees in excess of the salary established for their pay grade and years of experience indicated on the temporary classified employee annual salary schedule established by section three, article nine of this chapter. Additional flexibility provisions, such as the ability to modify the classified salary schedule at the organization level are identified and governed in section four, article nine of this chapter.
§18B-9A-4. Job classification system; job classification committee established; membership; meetings; powers and duties.

(a) The commission and council jointly shall maintain a uniform system for classifying jobs and positions of organization classified employees.

(b) Pursuant to the rule authorized in section seven of this article, the commission and council jointly shall establish and maintain a job classification committee.

The rule shall contain the following provisions related to the job classification committee:

(1) A systematic method for appointing committee members who are representative of all the higher education organizations and affected constituent groups, including specifically providing for membership selections to be made from nominations from these higher education organizations and affected constituent groups;

(2) A requirement that an organization may have no more than two members serving on the committee at any time and the combined membership representing various groups or divisions within or affiliated with an organization in total may not constitute a majority of the membership; and

(3) A requirement that committee members serve staggered terms. One third of the initial appointments shall be for two years, one third for three years and one third for four years. Thereafter, the term is four years. A member may not serve more than four years consecutively.

(c) Powers and duties of the committee include, but are not limited to, the following:
(1) Modifying and deleting jobs and assigning job titles;

(2) Reviewing and revising job titles to make them consistent among organizations, including adopting consistent title abbreviations;

(3) Establishing job worth hierarchies and data lines for each job title;

(4) Classifying jobs, establishing proper pay grades and placing jobs in pay grades consistent with the job evaluation plan;

(5) Determining when new job titles are needed and creating new job titles within the system;

(6) Recommending base pay enhancements for jobs for which the application of point factor methodology produces significantly lower salaries than external market pricing. The committee may exercise this authority only if it reevaluates each job annually to make a determination whether the enhancement should be continued;

(7) Recommending a procedure for performing job family reviews;

(8) Determining appropriate career ladders within the classification system and establishing criteria for career progression; and

(9) Hearing job classification appeals prior to commencement of the formal grievance process pursuant to commission and council rule.

(d) The committee shall meet monthly if there is business to conduct and also may meet more frequently at the call of the chair. A majority of the voting members serving on the
committee at a given time constitutes a quorum for the purpose of conducting business.

(e) The commission and council shall use an appropriate methodology to classify jobs. The commission and council jointly may adjust the job evaluation plan, including the factors used to classify jobs and their relative values, at any time.

(f) No later than July 1, 2012, the commission and council shall have in place an up-to-date job description for every classified job.

(g) The commission and council shall develop a position information questionnaire to be used by all organizations to gather data necessary for classification of positions within the job worth hierarchy.

§18B-9A-5. Compensation planning and review committee established; membership; meetings; powers and duties.

(a) Pursuant to the rule authorized in section seven of this article, the commission and council jointly shall establish and maintain a compensation planning and review committee.

(b) Within the guidelines established in this article and articles seven, eight and nine of this chapter, the committee shall manage all aspects of compensation planning and review that the commission and council jointly delegate to it.

The rule shall contain the following requirements related to the compensation planning and review committee:

1. A systematic method for appointing committee members who are representative of all the higher education organizations and affected constituent groups, including specifically providing for membership selections to be made from nominations from
these higher education organizations and affected constituent groups; and

(2) A requirement that an organization may have no more than two members serving on the committee at any time and the combined membership representing various groups or divisions within or affiliated with an organization in total may not constitute a majority of the membership; and

(3) A requirement that committee members serve staggered terms. One third of the initial appointments shall be for two years, one third for three years and one third for four years. Thereafter, the term is four years. A member may not serve more than four years consecutively.

(c) The committee shall meet at least quarterly and at other times at the call of the chair. A majority of the voting members serving on the committee at a given time constitutes a quorum for the purpose of conducting business.

(d) An institution may not have a majority of the committee members, and the combined membership representing various groups or divisions within or affiliated with an organization in total may not constitute a majority of the membership.

(e) The Compensation Planning and Review Committee has powers and duties related to classified employee compensation programs which include, but are not limited to, the following:

(1) Making annual recommendations for revisions in the system classified compensation plan, based on existing economic, budgetary and fiscal conditions or on market study data.

(2) Overseeing the five-year market salary study conducted by an external vendor pursuant to section six of this article;
(3) Overseeing the annual internal market review;

(4) Meeting at least annually with the Job Classification Committee to discuss benchmark jobs to be included in salary surveys, market “hot jobs” that may require a temporary salary adjustment, results of job family reviews and assessment of matches and other issues as the Vice Chancellor for Human Resources, in consultation with the chancellors, determines to be appropriate; and

(5) Performing other duties as assigned by the commission and council or as necessary or expedient to maintain an effective classification and compensation system.

(f) The commission and council may allow the committee to collapse the three lowest pay grades into a single pay grade and provide for employees to be paid at rates appropriate to the highest of the three lowest pay grades.

§18B-9A-5a. Restriction on duties of job classification committee and compensation planning and review committee.

The commission and council may not delegate any of the following duties to the Compensation Planning and Review Committee or the Job Classification Committee:

(1) Approval of a classification and compensation rule;

(2) Approval of the job evaluation plan; and

(3) Approval of the annual classified salary schedule.


(a) The commission and council shall develop and maintain a classified salary schedule and ensure that all organizations
under their respective jurisdictions adhere to state and federal laws and duly promulgated and adopted organization rules.

(b) The classified salary schedule serves as the basis for the following activities:

(1) Evaluating compensation of classified employees in relation to appropriate external markets; and

(2) Developing the minimum salary per pay grade to be adopted by the commission and council.

(c) The classified salary schedule shall meet the following criteria:

(1) Sets forth the number of pay grades to be included in the structure;

(2) Includes a midpoint value for each pay grade which represents the average market rate of pay for jobs in that pay grade. The commission and council may choose a midpoint value that is not based exclusively on market salary data; and

(3) Includes minimum and maximum pay range values based on an established range spread.

(d) The commission and council jointly shall contract with an external vendor to conduct a classified employee market salary study. The study shall be completed by January 31, 2016, and on January 31 every fifth year thereafter. At the conclusion of each study, or for good cause, the commission and council, in consultation with the Compensation Planning and Review Committee, may take any combination of the following actions:

(1) Adjust the number of pay grades and the point values necessary to validate the result of the classification system and the job worth hierarchy with the market;
(2) Adjust the midpoint differentials between pay grades better to reflect market conditions; or

(3) Adjust the range spread for any pay grade.

(e) The commission and council jointly may perform an annual review of market salary data to determine how salaries have changed in the external market. Based on data collected, the commission and council jointly, in consultation with the Compensation Planning and Review Committee, shall adjust the classified salary schedule if changes are supported by the data.

(f) Annually, the commission and council may approve a minimum salary amount that sets forth a compensation level for each pay grade below which no organization employee may be paid.

(1) The minimum salary amount for each pay grade on the classified salary schedule is determined by applying a percentage determined after analysis of the market and existing compensation levels to the annual market salary data. The commission and council may take into consideration other factors they consider appropriate.

(2) The salary of an employee working fewer than thirty-seven and one-half hours per week shall be prorated.

(g) The organization rule promulgated pursuant to subsection (c), section seven of this article may provide for differential pay for certain employees who work different shifts, weekends or holidays.


(a) Notwithstanding any provision of law or rule to the contrary, the commission and council jointly shall design, develop, implement and administer the classified personnel
system of classification and compensation pursuant to this article and articles seven, eight and nine of this chapter.

(b) System rule. —

The commission and council shall propose a joint rule or rules for legislative approval in accordance with article three-a, chapter twenty-nine-a of this code to implement the provisions of this article and articles seven, eight and nine of this chapter. The rule shall establish a classified employee classification and compensation system that incorporates best human resources practices.

(1) Organization accountability. —

The commission and council shall propose a joint system rule that provides a procedure for correcting deficiencies identified in the human resources reviews conducted pursuant to section nine, article seven of this chapter. The procedure shall include, but is not limited to, the following components:

(A) Specifying a reasonable time for organizations to correct deficiencies uncovered by a review;

(B) Applying sanctions when major deficiencies are not corrected within the allotted time:

(i) For purposes of this subsection, a major deficiency means an organization has failed to comply with federal or state law or with personnel rules of the commission and council.

(ii) When a major deficiency is identified, the commission or council, as appropriate, shall notify the governing board of the institution in writing, giving particulars of the deficiency and outlining steps the governing board is required to take to correct the deficiency.
(iii) The governing board shall correct the major deficiency within four months or longer provided the length of time is agreed upon by the governing board and the commission or council as applicable, and shall notify the commission or council, as appropriate, when the deficiency has been corrected.

(iv) If the governing boards fail to correct the major deficiency or fail to notify the commission or council, as appropriate, that the deficiency has been corrected within the agreed upon period, the commission or council shall apply sanctions.

Sanctions may include, but are not limited to, suspending new hiring by the organization and prohibiting compensation increases for key administrators who have authority over the areas of major deficiency until the identified deficiencies are corrected.

(2) **Classified employee classification and compensation.** — The classified employee classification and compensation system rule shall establish a classification and compensation system to accomplish the following objectives:

(A) Allowing for performance and other objective, measurable factors such as technical expertise, education, years of experience in higher education and experience above position requirements to be considered in compensation decisions;

(B) Achieving and maintaining appropriate levels of employee dispersion through a pay range;

(C) The rule shall provide that the salary of a current employee may not be reduced by a job reclassification, a modification of the market salary schedule or other conditions that the commission and the council consider appropriate and reasonable;
(D) Establishing a job worth hierarchy and identifying the factors to be used to classify jobs and their relative values and determining the number of points that are necessary to assign a job to a particular pay grade;

(E) Establishing an objective standard to be used in determining when a job description or a position description is up-to-date;

(F) Providing a procedure whereby a classified employee or a supervisor who believes that changes in the job duties and responsibilities of the employee justify a position review may request that a review be done at any time;

(G) Specifying that the acceptable period that may elapse between the time when an employee files a formal request for a position review and the time when the review is completed may not exceed forty-five days. An organization that fails to complete a review within the specified time shall provide the employee back pay from the date the request for review was received if the review, when completed, produces a reclassification of the position into a job in a higher pay grade;

(H) Providing a procedure by which employees may file appeals of job classification decisions for review by the Job Classification Committee prior to filing a formal grievance. The committee shall render a decision within sixty days of the date the appeal is filed with the commission or the council;

(I) Providing for recommendations from the Compensation Planning and Review Committee and the Job Classification Committee to be considered by the commission and the council and to be included in the legislative reporting process pursuant to section eight, article seven of this chapter; and

(J) Establishing and maintaining the job classification committee mandated in section four of this article.
(3) **Performance evaluations.** — The system rule shall provide for developing and implementing a consistent, objective performance evaluation model and shall mandate that training in conducting performance evaluations be provided for all organization personnel who hold supervisory positions.

(c) **Organization rules.** —

(1) Each organization shall promulgate and adopt a rule or rules in accordance with the provisions of section six, article one of this chapter to implement requirements contained in the classification and compensation system rule or rules of the commission and council. The commission and council shall provide a model personnel rule for the organizations under their jurisdiction and shall provide technical assistance in rulemaking as requested.

(2) The initial organization rule shall be adopted not later than six months following the date on which the commission and council receive approval to implement the emergency rule promulgated pursuant to this section. Additionally, each organization shall amend its rule to comply with mandated changes not later than six months after the effective date of any change in statute or rules, unless a different compliance date is specified within the statute or rule containing the requirements or mandate.

(3) An organization may not adopt a rule under this section until it has consulted with the appropriate employee class affected by the rule’s provisions.

(4) If an organization fails to adopt a rule or rules as mandated by this subsection, the commission and council may prohibit it from exercising any flexibility or implementing any discretionary provision relating to human resources contained in statute or in a commission or council rule until the organization’s rule requirements have been met.
(5) Additional flexibility or areas of operational discretion identified in the system rule or rules may be exercised only by an organization which meets the following requirements:

(A) Receives certification from the commission or council, as appropriate, that the organization has achieved full funding of the temporary salary schedule or is making appropriate progress toward achieving full funding pursuant to section three, article nine of this chapter;

(B) Promulgates a comprehensive classification and compensation rule as required by this section;

(C) Receives approval for the classification and compensation rule from the appropriate chancellor in accordance with this section; and

(D) Adopts the rule by vote of the organization’s governing board.

(6) Notwithstanding any provision of this code to the contrary, each chancellor, or his or her designee, has the authority and the duty to review each classification and compensation rule promulgated by an organization under his or her jurisdiction and to recommend changes to the rule to bring it into compliance with state and federal law, commission and council rules or legislative, commission and council intent. Each chancellor may reject or disapprove any rule, in whole or in part, if he or she determines that it is not in compliance with law or rule or if it is inconsistent with legislative, commission and council intent.
CHAPTER 136

(H. B. 2976 - By Delegate(s) Pasdon, Perry, Rohrbach, Campbell and Ellington)

[Passed March 12, 2015; in effect from passage.]
[Approved by the Governor on March 27, 2015.]

AN ACT to amend and reenact §18C-3-4 of the Code of West Virginia, 1931, as amended, relating to expanding the eligible master’s and doctoral level programs for which a Nursing Scholarship may be awarded.

Be it enacted by the Legislature of West Virginia:

That §18C-3-4 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 3. HEALTH PROFESSIONALS STUDENT LOAN PROGRAMS.

§18C-3-4. Nursing Scholarship Program; Center for Nursing Fund; administration; scholarship awards; service requirements.

1 (a) There is continued in the State Treasury a special revenue account known as the “Center for Nursing Fund” to be administered by the commission to implement the provisions of this section and article seven-b, chapter thirty of this code. Any moneys in the account on the effective date of this section are transferred to the commission’s administrative authority. Balances remaining in the fund at the end of the fiscal year do not expire or revert to the general revenue. All costs associated with the administration of this section and article seven-b, chapter thirty of this code shall be paid from the Center for
Nursing Fund under the direction of the Vice Chancellor for Administration. Administrative costs are to be minimized and the maximum amount feasible is to be used to fund awards for students in nursing programs.

(b) The account is funded from the following sources:

(1) A supplemental licensure fee, not to exceed $10 per year, to be paid by all nurses licensed by the Board of Examiners for Registered Professional Nurses, pursuant to section eight-a, article seven, chapter thirty of this code, and the Board of Examiners for Licensed Practical Nurses, pursuant to section seven-a, article seven-a, chapter thirty of this code;

(2) Repayments, including interest as set by the Vice Chancellor for Administration, collected from recipients who fail to practice or teach in West Virginia under the terms of the scholarship agreement; and

(3) Any other funds from any source as may be added to the account.

(c) In consultation with the board of directors of the West Virginia Center for Nursing, established pursuant to article seven-b, chapter thirty of this code, the commission shall administer a scholarship, designated the “Nursing Scholarship Program”, designed to benefit nurses who practice in hospitals and other health care institutions or teach in state nursing programs.

(1) Awards are available for students enrolled in accredited nursing programs in West Virginia. A recipient shall execute an agreement to fulfill a service requirement or repay the amount of any award received.

(2) Awards are made as follows, subject to the rule required by this section:
(A) An award for any student may not exceed the full cost of education for program completion;

(B) An award of up to $3,000 is available for a student in a licensed practical nurse education program. A recipient is required to practice nursing in West Virginia for one year following program completion;

(C) An award of up to $7,500 is available for a student who has completed one-half of a registered nurse education program. A recipient is required to teach or practice nursing in West Virginia for two years following program completion.

(D) An award of up to $15,000 is available to a student in a nursing master’s degree program or a doctoral nursing or education program. A recipient is required to teach in West Virginia for two years following program completion.

(E) An award of up to $1,000 per year is available for a student obtaining a licensed practical nurse teaching certificate. A recipient is required to teach in West Virginia for one year per award received.

(d) An award recipient shall satisfy one of the following conditions:

(1) Fulfill the service requirement pursuant to this section and the legislative rule; or

(2) Repay the commission for the amount awarded, together with accrued interest as stipulated in the service agreement.

(e) The commission shall promulgate a rule for legislative approval pursuant to article three-a, chapter twenty-nine-a of this code to implement and administer this section. The rule shall provide for the following:
(1) Eligibility and selection criteria for program participation;

(2) Terms of a service agreement which a recipient shall execute as a condition of receiving an award;

(3) Repayment provisions for a recipient who fails to fulfill the service requirement;

(4) Forgiveness options for death or disability of a recipient;

(5) An appeal process for students denied participation or ordered to repay awards; and

(6) Additional provisions as necessary to implement this section.

(f) The commission shall report annually by December 1, to the Legislative Oversight Commission on Health and Human Resources Accountability and the Legislative Oversight Commission on Education Accountability on the number of award recipients and all other matters relevant to the provisions of this section.
Health and Human Resources Board of Review and the Bureau for Medical Services affecting applicants, recipients or providers of state or federal assistance programs.

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 §9-2-13, to read as follows:

ARTICLE 2. COMMISSIONER OF HUMAN SERVICES; POWERS, DUTIES AND RESPONSIBILITIES GENERALLY.


(a) For purposes of this section:

(1) “Agency” means the Board of Review or the Bureau for Medical Services, as the case may be, that has been named as a party to any proceeding on appeal made pursuant to the provisions of this section.

(2) “Board of Review” or “Board” means the West Virginia Department of Health and Human Resources Board of Review operating pursuant to the provisions of subdivision (13), section six of this article.

(3) “Bureau” means the Department of Health and Human Resources’ Bureau for Medical Services which is the single state agency for Medicaid services in West Virginia.

(b) The board shall provide a fair, impartial and expeditious grievance and appeal process to applicants or recipients of state assistance, federal assistance, federal-state assistance or welfare assistance, as defined in article one of this chapter. The bureau shall provide a fair, impartial and expeditious grievance and appeal process to providers of Medicaid services.
(c) Any party adversely affected or aggrieved by a final decision or order of the agency may seek judicial review of that decision.

(d) Proceedings for review shall be instituted by filing a petition, at the election of the petitioner, in either the circuit court of Kanawha County, West Virginia, or in the circuit court of the county in which the petitioner or any one of the petitioners resides or does business, or with the judge thereof in vacation, within thirty days after the date upon which such party received notice of the final order or decision of the agency. A copy of the petition shall be served upon the agency and all other parties of record by registered or certified mail. The petition shall state whether the appeal is taken on questions of law or questions of fact, not both. No appeal bond is required to effect any such appeal.

(e) The filing of the petition for appeal does not stay or supersede enforcement of the final decision or order of the agency. The agency may voluntarily stay such enforcement and the appellant, at any time after the filing of the petition for appeal, may apply to the circuit court of Kanawha County, or in the circuit court of the county in which the petitioner or any one of the petitioners resides or does business, for a stay of or to supersede the final decision or order. Pending the appeal, the circuit court may grant a stay or supersede the order upon such terms as it considers proper.

(f) Within fifteen days after receipt of a copy of the petition by the agency, or within such further time as the court may allow, the agency shall prepare and transmit to the circuit court of Kanawha County, or in the circuit court of the county in which the petitioner or any one of the petitioners resides or does business, the original or a certified copy of the entire record of the proceeding under review: Provided, That all records prepared and transmitted that involve a minor shall be filed under seal.
This shall include a transcript of all reported testimony and all exhibits, papers, motions, documents, evidence, records, agency staff memoranda and data used in consideration of the case, all briefs, memoranda, papers and records considered by the agency in the underlying proceeding and a statement of matters officially noted. By stipulation of the parties, the record may be shortened. In the event the complete record is not filed with the court within the time provided for in this section, the appellant may apply to the court to have the case docketed and the court shall order the agency to file the record.

(g) The cost of preparing the official record shall be assessed as part of the costs of the appeal. The appellant shall provide security for costs satisfactory to the court. Any party unreasonably refusing to stipulate to limit the record may be assessed by the court for the additional costs involved. Upon demand by any party to the appeal, the agency shall furnish, at cost to the requesting party, a copy of the official record.

(h) The court shall hear appeals upon assignments of error filed in the petition or set out in the briefs filed by the parties. The court, it its discretion, may disregard errors not argued by brief or may consider errors that are not assigned or argued. The court shall fix a date and time for the hearing on the petition. Unless otherwise agreed by the parties, the court shall not schedule the hearing sooner than ten days after the filing of the petition for appeal. The petitioner shall provide notice of the date and time of the hearing to the agency.

(i) In cases involving alleged irregularities in procedure before the agency that are not shown in the record, the court may take additional testimony. Otherwise, the circuit court shall review the appeal without a jury and may only consider the official record provided pursuant to the requirements of this section. The court may hear oral arguments and require written briefs.
(j) The court may affirm the final decision or order of the agency or remand the matter for further proceedings. The court may reverse, vacate or modify the final decision or order of the agency only if the substantial rights of the petitioner have been prejudiced because the administrative findings, inferences, conclusions, decision or order are:

(1) In violation of constitutional or statutory provisions;

(2) In excess of the statutory authority or jurisdiction of the agency;

(3) Made upon unlawful procedures;

(4) Affected by other error of law;

(5) Clearly wrong in view of the reliable, probative and substantial evidence on the whole record; or

(6) Arbitrary or capricious or characterized by an abuse of discretion or clearly unwarranted exercise of discretion.

(k) The judgment of the circuit court is final unless reversed, vacated or modified on appeal to the West Virginia Supreme Court of Appeals.

(l) The process established by this section is the exclusive remedy for judicial review of final decisions of the Board of Review and the Bureau for Medical Services.
AN ACT to amend and reenact §9-9-11 of the Code of West Virginia, 1931, as amended, relating to Temporary Assistance for Needy Families program; directing Secretary of Department of Health and Human Resources promulgate emergency and legislative rules setting forth schedule of sanctions; identifying certain factors and goals that secretary is to consider when setting schedule of sanctions; directing secretary promulgate legislative rules governing what constitutes de minimis violations and those violations subject to sanctions and maximum penalties; setting forth reporting requirement to Legislative Oversight Commission on Health and Human Resources Accountability regarding sanctions; and providing copies of reports be provided to President of the Senate and Speaker of the House.

Be it enacted by the Legislature of West Virginia:

That §9-9-11 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 9. WEST VIRGINIA WORKS PROGRAM.


(a) The department may terminate cash assistance benefits to an at-risk family if it finds any of the following:
(1) Fraud or deception by the beneficiary in applying for or receiving program benefits;

(2) A substantial breach by the beneficiary of the requirements and obligations set forth in the personal responsibility contract and any amendments or addenda to the contract; or

(3) A violation by the beneficiary of any provision of the personal responsibility contract or any amendments or addenda to the contract, this article, or any rule or policy promulgated by the secretary pursuant to this article.

(b) In the event the department determines that benefits received by the beneficiary are subject to reduction or termination, written notice of the reduction or termination and the reason for the reduction or termination shall be deposited in the United States mail, postage prepaid and addressed to the beneficiary at his or her last-known address at least thirteen days prior to the termination or reduction. The notice shall state the action being taken by the department and grant to the beneficiary a reasonable opportunity to be heard at a fair and impartial hearing before the department in accordance with administrative procedures established by the department and due process of law.

(c) In any hearing conducted pursuant to the provisions of this section, the beneficiary has the burden of proving that his or her benefits were improperly reduced or terminated and shall bear his or her own costs, including attorneys’ fees.

(d) The secretary shall promulgate emergency rules and propose for legislative promulgation legislative rules, pursuant to article three, chapter twenty-nine-a of this code, setting forth the schedule of sanctions to be imposed when a beneficiary has violated any provision of this article, of his or her personal responsibility contract or any amendment or addendum to the
contract, or any applicable department rule. In developing these
rules, the secretary is directed to make those sanctions graduated
and sufficiently stringent, when compared to those of contiguous
states, so as to discourage persons from moving from such states
to this state to take advantage of lesser sanctions being imposed
for the same or similar violations by the secretary. The secretary
shall also promulgate legislative rules setting forth what
constitutes de minimis violations and those violations subject to
sanctions and maximum penalties.

(e) The department shall provide an annual report regarding
the sanctions relating to the Temporary Assistance to Needy
Families program, including their relative stringency when
compared to those of contiguous states, frequency of imposition
and the overall success of those sanctions at deterring individuals
from taking advantage of the Temporary Assistance to Needy
Families program and accomplishing the overall purposes of the
program, to the Legislative Oversight Commission on Health
and Human Resources Accountability on January 1 of each year.
Copies of that report shall also be furnished to the President of
the Senate and Speaker of the House.

 CHAPTER 139

(H. B. 2213 - By Mr. Speaker, (Mr. Armstead)
and Miley)
[By Request of the Executive]

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

AN ACT to amend and reenact §29-22-18d of the Code of West
Virginia, 1931, as amended, relating to the West Virginia
Infrastructure Fund; reducing the distributions to the West Virginia Infrastructure Fund from the State Excess Lottery Revenue Fund to $30 million for fiscal year 2016; and increasing the percentage of funds available annually for grants from the West Virginia Infrastructure Fund.

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

That §29-22-18d of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

**ARTICLE 22. STATE LOTTERY ACT.**

§29-22-18d. Increase in allocation to West Virginia Infrastructure Fund from State Excess Lottery Revenue Fund.

1 Notwithstanding any provision of subsection (d), section eighteen-a of this article to the contrary, the deposit of $40 million into the West Virginia Infrastructure Fund set forth above is for the fiscal year beginning July 1, 2010, only. For the fiscal year beginning July 1, 2011, and each fiscal year thereafter, in lieu of the deposits required under subdivision (5), subsection (d), section eighteen-a of this article, the commission shall, first, deposit $6 million into the West Virginia Infrastructure Lottery Revenue Debt Service Fund created in subsection (h), section nine, article fifteen-a, chapter thirty-one of this code, to be spent in accordance with the provisions of that subsection, and, second deposit $40 million into the West Virginia Infrastructure Fund created in subsection (a), section nine, article fifteen-a, chapter thirty-one of this code, to be spent in accordance with the provisions of that article: *Provided, That* for the fiscal year beginning July 1, 2014, the deposit to the West Virginia Infrastructure Fund shall be $20 million: *Provided, however, That* notwithstanding the provisions of subsection (a), section ten, article fifteen-a, chapter thirty-one of this code, for
the fiscal year beginning July 1, 2014, any moneys disbursed from the West Virginia Infrastructure Fund in the form of grants may not exceed fifty percent of the total funds available for the funding of projects: Provided further, That for the fiscal year beginning July 1, 2015, the deposit to the West Virginia Infrastructure Fund shall be $30 million: And provided further, That notwithstanding the provisions of subsection (a), section ten, article fifteen-a, chapter thirty-one of this code, for the fiscal year beginning July 1, 2015, any moneys disbursed from the West Virginia Infrastructure Fund in the form of grants may not exceed fifty percent of the total funds available for the funding of projects.

CHAPTER 140

(H. B. 2212 - By Mr. Speaker, (Mr. Armstead and Miley)
[By Request of the Executive]

[Passed February 25, 2015; in effect from passage.]
[Approved by the Governor on March 3, 2015.]

AN ACT to amend and reenact §31-15A-16 of the Code of West Virginia, 1931, as amended, relating to dedication of severance tax proceeds to the West Virginia Infrastructure General Obligation Debt Service Fund; specifying reduction of the amount of severance tax proceeds dedicated to the West Virginia Infrastructure General Obligation Debt Service Fund.

Be it enacted by the Legislature of West Virginia:

That §31-15A-16 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:
ARTICLE 15A. WEST VIRGINIA INFRASTRUCTURE AND JOBS DEVELOPMENT COUNCIL.


(a) There shall be dedicated an annual amount from the collections of the tax collected pursuant to article thirteen-a, chapter eleven of this code for the construction, extension, expansion, rehabilitation, repair and improvement of water supply and sewage treatment systems and for the acquisition, preparation, construction and improvement of sites for economic development in this state as provided in this article.

(b) Notwithstanding any other provision of this code to the contrary, beginning on July 1, 1995, the first $16 million of the tax collected pursuant to article thirteen-a, chapter eleven of this code shall be deposited to the credit of the West Virginia Infrastructure General Obligation Debt Service Fund created pursuant to section three, article fifteen-b of this chapter:

Provided, That beginning on July 1, 1998, the first $24 million of the tax annually collected pursuant to article thirteen-a of this code shall be deposited to the credit of the West Virginia Infrastructure General Obligation Debt Service Fund created pursuant to section three, article fifteen-b of this chapter:

Provided, however, That subject to the conditions, limitations, exclusions and constraints prescribed by subsection (c) of this section, beginning on July 1, 2013, the amount deposited under this subsection to the credit of the West Virginia Infrastructure General Obligation Debt Service Fund created pursuant to section three, article fifteen-b of this chapter shall be the first $23 million of the tax annually collected pursuant to article thirteen-a, chapter eleven of this code:

Provided further, That subject to the conditions, limitations, exclusions and constraints prescribed by subsection (c) of this section, beginning on July 1, 2015, the amount deposited under this subsection to the credit of the West Virginia Infrastructure General Obligation Debt
Service Fund created pursuant to section three, article fifteen-b of this chapter shall be the first $22.5 million of the tax annually collected pursuant to article thirteen-a, chapter eleven of this code.

(c) Notwithstanding any provision of subsection (b) of this section to the contrary: (1) None of the collections from the tax imposed pursuant to section six, article thirteen-a, chapter eleven of this code shall be so dedicated or deposited; and (2) the portion of the tax imposed by article thirteen-a, chapter eleven and dedicated for purposes of Medicaid and the Division of Forestry pursuant to section twenty-a of said article thirteen-a shall remain dedicated for the purposes set forth in that section twenty-a.

(d) On or before May 1 of each year, commencing May 1, 1995, the council, by resolution, shall certify to the Treasurer and the Water Development Authority the principal and interest coverage ratio and amount for the following fiscal year on any infrastructure general obligation bonds issued pursuant to the provisions of article fifteen-b of this chapter.

CHAPTER 141

(Com. Sub. for H. B. 2790 - By Delegate(s) Westfall, Waxman, Shott and Frich)

[Passed March 11, 2015; in effect ninety days from passage.]
[Approved by the Governor on April 1, 2015.]

AN ACT to amend and reenact §17D-4-2, §17D-4-7 and §17D-4-12 of the Code of West Virginia, 1931, as amended; to amend and reenact §33-6-31 and §33-6-31d of said code; and to amend said code by adding thereto a new section, designated §33-6-31h, all
relating to proof of financial responsibility limits for motor vehicles; increasing the minimum amounts of proof required; providing that insurers are not required to offer new or increased uninsured or underinsured motor vehicle coverage when coverage is increased to meet the increased requirements of proof of financial responsibility; providing that insurers who issue policies with named driver exclusions are not required to provide any coverage upon an insured vehicle covering the excluded driver, notwithstanding the requirements of proof of financial responsibility.

Be it enacted by the Legislature of West Virginia:

That §17D-4-2, §17D-4-7 and §17D-4-12 of the Code of West Virginia, 1931, as amended, be amended and reenacted; that §33-6-31 and §33-6-31d of said code be amended and reenacted; and that said code be amended by adding thereto a new section, designated §33-6-31h, all to read as follows:

CHAPTER 17D. MOTOR VEHICLE SAFETY RESPONSIBILITY LAW.

ARTICLE 4. PROOF OF FINANCIAL RESPONSIBILITY FOR THE FUTURE.

§17D-4-2. “Proof of financial responsibility” defined.

1 As used in this chapter:

2 (a)“Proof of financial responsibility” means proof of ability to respond in damages for liability, on account of accident occurring subsequent to the effective date of the proof, arising out of the ownership, operation, maintenance or use of a motor vehicle, trailer or semitrailer in the amount of $20,000 because of bodily injury to or death of one person in any one accident, and, subject to the limit for one person, in the amount of $40,000 because of bodily injury to or death of two or more persons in
any one accident, and in the amount of $10,000 because of injury 
to or destruction of property of others in any one accident.

(b) Beginning January 1, 2016, “proof of financial 
responsibility” means proof of ability to respond in damages for 
liability, on account of accident occurring subsequent to the 
effective date of the proof, arising out of the ownership, 
operation, maintenance, or use of a motor vehicle, trailer or 
semitrailer in the amount of $25,000 because of bodily injury to 
or death of one person in any one accident, and, subject to the 
limit for one person, in the amount of $50,000 because of bodily 
injury to or death of two or more persons in any one accident, 
and in the amount of $25,000 because of injury to or destruction 
of property of others in any one accident: Provided, That proof 
of financial responsibility provided by an insurance policy in 
effect on December 31, 2015 in the minimum amounts required 
in subdivision (a) of this section shall continue to provide 
adequate proof of financial responsibility required by this 
chapter until the policy expires or is renewed.

§17D-4-7. Payments sufficient to satisfy requirements.

(a) Judgments herein referred to shall, for the purpose of this 
chapter only, are deemed satisfied:

(1) When $20,000 has been credited upon any judgment or 
judgments rendered in excess of that amount because of bodily 
injury to or death of one person as the result of any one accident; or

(2) When, subject to such limit of $20,000 because of bodily 
injury to or death of one person, the sum of $40,000 has been 
credited upon any judgment or judgments rendered in excess of 
that amount because of bodily injury to or death of two or more 
persons as the result of any one accident; or

(3) When $10,000 has been credited upon any judgment or 
judgments rendered in excess of that amount because of injury
to or destruction of property of others as a result of any one accident.

(b) Notwithstanding the provisions of subsection (a) of this section, judgments herein referred to that are rendered upon a cause of action that arose on or after January 1, 2016, for the purpose of this chapter only, are deemed satisfied:

(1) When $25,000 has been credited upon any judgment or judgments rendered in excess of that amount because of bodily injury to or death of one person as the result of any one accident; or

(2) When, subject to such limit of $25,000 because of bodily injury to or death of one person, the sum of $50,000 has been credited upon any judgment or judgments rendered in excess of that amount because of bodily injury to or death of two or more persons as the result of any one accident; or

(3) When $25,000 has been credited upon any judgment or judgments rendered in excess of that amount because of injury to or destruction of property of others as a result of any one accident.

(c) Payments made in settlement of any claims because of bodily injury, death or property damage arising from such accident shall be credited in reduction of the amounts provided for in this section.

§17D-4-12. “Motor vehicle liability policy” defined; scope and provisions of policy.

(a) A “motor vehicle liability policy” as the term is used in this chapter means an “owner’s policy” or an “operator’s policy” of liability insurance certified as provided in section ten or section eleven of this article as proof of financial responsibility, and issued, except as otherwise provided in section eleven, by an
insurance carrier duly authorized to transact business in this state, to or for the benefit of the person named therein as insured.

(b) Such owner’s policy of liability insurance:

(1) Shall designate by explicit description or by appropriate reference all vehicles with respect to which coverage is thereby to be granted; and

(2) Shall insure the person named therein and any other person, as insured, using any such vehicle or vehicles with the express or implied permission of such named insured, against loss from the liability imposed by law for damages arising out of the ownership, operation, maintenance or use of such vehicle or vehicles within the United States of America or the Dominion of Canada, subject to limits exclusive of interest and costs, with respect to each such vehicle, in the amounts required in section two of this article.

(c) Such operator’s policy of liability insurance shall insure the person named as insured therein against loss from the liability imposed upon him or her by law for damages arising out of the use by him or her of any motor vehicle not owned by him or her, within the same territorial limits and subject to the same limits of liability as are set forth above with respect to an owner’s policy of liability insurance.

(d) Such motor vehicle liability policy shall state the name and address of the named insured, the coverage afforded by the policy, the premium charged therefor, the policy period, and the limits of liability, and shall contain an agreement or be endorsed that insurance is provided thereunder in accordance with the coverage defined in this chapter as respects bodily injury and death or property damage, or both, and is subject to all the provisions of this chapter.
(e) Such motor vehicle liability policy need not insure any liability under any workers’ compensation law nor any liability on account of bodily injury to or death of an employee of the insured while engaged in the employment, other than domestic, of the insured, or while engaged in the operation, maintenance or repair of any such vehicle nor any liability for damage to property owned by, rented to, in charge of or transported by the insured.

(f) Every motor vehicle liability policy is subject to the following provisions which need not be contained therein:

(1) The liability of the insurance carrier with respect to the insurance required by this chapter shall become absolute whenever injury or damage covered by said motor vehicle liability policy occurs; the policy may not be canceled or annulled as to such liability by an agreement between the insurance carrier and the insured after the occurrence of the injury or damage; no statement made by the insured or on his or her behalf and no violation of the policy defeats or voids the policy.

(2) The satisfaction by the insured of a judgment for such injury or damage is not a condition precedent to the right or duty of the insurance carrier to make payment on account of such injury or damage.

(3) The insurance carrier may settle any claim covered by the policy, and if such settlement is made in good faith, the amount thereof shall be deductible from the limits of liability specified in subdivision (2), subsection (b) of this section.

(4) The policy, the written application therefor, if any, and any rider or endorsement which does not conflict with the provisions of this chapter constitutes the entire contract between parties.
(g) Any policy which grants the coverage required for a motor vehicle liability policy may also grant any lawful coverage in excess of or in addition to the coverage specified for a motor vehicle liability policy and such excess or additional coverage is not subject to the provisions of this chapter. With respect to a policy which grants such excess or additional coverage, the term “motor vehicle liability policy” applies only to that part of the coverage which is required by this section.

(h) Any motor vehicle liability policy may provide that the insured shall reimburse the insurance carrier for any payment the insurance carrier would not have been obligated to make under the terms of the policy except for the provisions of this chapter.

(i) Any motor vehicle liability policy may provide for the prorating of the insurance thereunder with other valid and collectible insurance.

(j) The requirements for a motor vehicle liability policy may be fulfilled by the policies of one or more insurance carriers which policies together meet such requirements.

(k) Any binder issued pending the issuance of a motor vehicle policy fulfills the requirements for such a policy.

CHAPTER 33. INSURANCE.

ARTICLE 6. THE INSURANCE POLICY.

§33-6-31. Motor vehicle policy; omnibus clause; uninsured and underinsured motorists’ coverage; conditions for recovery under endorsement; rights and liabilities of insurer.

(a) No policy or contract of bodily injury liability insurance, or of property damage liability insurance, covering liability arising from the ownership, maintenance or use of any motor
vehicle, may be issued or delivered in this state to the owner of
such vehicle, or may be issued or delivered by any insurer
licensed in this state upon any motor vehicle for which a
certificate of title has been issued by the Division of Motor
Vehicles of this state, unless it contains a provision insuring the
named insured and any other person, except a bailee for hire and
any persons specifically excluded by any restrictive endorsement
attached to the policy, responsible for the use of or using the
motor vehicle with the consent, expressed or implied, of the
named insured or his or her spouse against liability for death or
bodily injury sustained or loss or damage occasioned within the
coverage of the policy or contract as a result of negligence in the
operation or use of such vehicle by the named insured or by such
person: Provided, That in any such automobile liability
insurance policy or contract, or endorsement thereto, if coverage
resulting from the use of a nonowned automobile is conditioned
upon the consent of the owner of such motor vehicle, the word
“owner” shall be construed to include the custodian of such
nonowned motor vehicles. Notwithstanding any other provision
of this code, if the owner of a policy receives a notice of
cancellation pursuant to article six-a of this chapter and the
reason for the cancellation is a violation of law by a person
insured under the policy, said owner may by restrictive
endorsement specifically exclude the person who violated the
law and the restrictive endorsement shall be effective in regard
to the total liability coverage provided under the policy,
including coverage provided pursuant to the mandatory liability
requirements of section two, article four, chapter seventeen-d of
this code, but nothing in such restrictive endorsement may be
construed to abrogate the “family purpose doctrine”.

(b) Nor may any such policy or contract be so issued or
delivered unless it contains an endorsement or provisions
undertaking to pay the insured all sums which he or she is
legally entitled to recover as damages from the owner or
operator of an uninsured motor vehicle, within limits which shall
be no less than the requirements of section two, article four, chapter seventeen-d of this code, as amended from time to time: Provided, That such policy or contract shall provide an option to the insured with appropriately adjusted premiums to pay the insured all sums which he or she shall be legally entitled to recover as damages from the owner or operator of an uninsured motor vehicle up to an amount of $100,000 because of bodily injury to or death of one person in any one accident and, subject to said limit for one person, in the amount of $300,000 because of bodily injury to or death of two or more persons in any one accident and in the amount of $50,000 because of injury to or destruction of property of others in any one accident: Provided, however, That such endorsement or provisions may exclude the first $300 of property damage resulting from the negligence of an uninsured motorist: Provided further, That such policy or contract shall provide an option to the insured with appropriately adjusted premiums to pay the insured all sums which he or she is legally entitled to recover as damages from the owner or operator of an uninsured or underinsured motor vehicle up to an amount not less than limits of bodily injury liability insurance and property damage liability insurance purchased by the insured without set off against the insured’s policy or any other policy. Regardless of whether motor vehicle coverage is offered and provided to an insured through a multiple vehicle insurance policy or contract, or in separate single vehicle insurance policies or contracts, no insurer or insurance company providing a bargained for discount for multiple motor vehicles with respect to underinsured motor vehicle coverage may be treated differently from any other insurer or insurance company utilizing a single insurance policy or contract for multiple covered vehicles for purposes of determining the total amount of coverage available to an insured. “Underinsured motor vehicle” means a motor vehicle with respect to the ownership, operation or use of which there is liability insurance applicable at the time of the accident, but the limits of that insurance are either: (i)
Less than limits the insured carried for underinsured motorists’ coverage; or (ii) has been reduced by payments to others injured in the accident to limits less than limits the insured carried for underinsured motorists’ coverage. No sums payable as a result of underinsured motorists’ coverage may be reduced by payments made under the insured’s policy or any other policy.

(c) As used in this section, the term “bodily injury” includes death resulting therefrom and the term “named insured” means the person named as such in the declarations of the policy or contract and also includes such person’s spouse if a resident of the same household and the term “insured” means the named insured and, while resident of the same household, the spouse of any such named insured and relatives of either, while in a motor vehicle or otherwise, and any person, except a bailee for hire, who uses, with the consent, expressed or implied, of the named insured, the motor vehicle to which the policy applies or the personal representative of any of the above; and the term “uninsured motor vehicle” means a motor vehicle as to which there is no: (i) Bodily injury liability insurance and property damage liability insurance both in the amounts specified by section two, article four, chapter seventeen-d of this code, as amended from time to time; (ii) there is such insurance, but the insurance company writing the same denies coverage thereunder; or (iii) there is no certificate of self-insurance issued in accordance with the provisions of said section. A motor vehicle shall be deemed to be uninsured if the owner or operator thereof be unknown: Provided, That recovery under the endorsement or provisions is subject to the conditions hereinafter set forth.

(d) Any insured intending to rely on the coverage required by subsection (b) of this section shall, if any action be instituted against the owner or operator of an uninsured or underinsured motor vehicle, cause a copy of the summons and a copy of the complaint to be served upon the insurance company issuing the policy, in the manner prescribed by law, as though such
insurance company were a named party defendant; such company shall thereafter have the right to file pleadings and to take other action allowable by law in the name of the owner, or operator, or both, of the uninsured or underinsured motor vehicle or in its own name.

Nothing in this subsection prevents such owner or operator from employing counsel of his or her own choice and taking any action in his or her own interest in connection with such proceeding.

(e) If the owner or operator of any motor vehicle which causes bodily injury or property damage to the insured is unknown, the insured, or someone in his or her behalf, in order for the insured to recover under the uninsured motorist endorsement or provision, shall:

(1) Within twenty-four hours after the insured discover, and being physically able to report the occurrence of such accident, the insured, or someone in his or her behalf, reports the accident to a police, peace or to a judicial officer, unless the accident has already been investigated by a police officer;

(2) Notify the insurance company, within sixty days after such accident, that the insured or his or her legal representative has a cause or causes of action arising out of such accident for damages against a person or persons whose identity is unknown and setting forth the facts in support thereof; and, upon written request of the insurance company communicated to the insured not later than five days after receipt of such statement, make available for inspection the motor vehicle which the insured was occupying at the time of the accident; and

(3) Upon trial establish that the motor vehicle, which caused the bodily injury or property damage, whose operator is unknown, was a “hit and run” motor vehicle, meaning a motor
vehicle which causes damage to the property of the insured
arising out of physical contact of such motor vehicle therewith,
or which causes bodily injury to the insured arising out of
physical contact of such motor vehicle with the insured or with
a motor vehicle which the insured was occupying at the time of
the accident. If the owner or operator of any motor vehicle
causing bodily injury or property damage be unknown, an action
may be instituted against the unknown defendant as “John Doe”,
in the county in which the accident took place or in any other
county in which such action would be proper under the
provisions of article one, chapter fifty-six of this code; service of
process may be made by delivery of a copy of the complaint and
summons or other pleadings to the clerk of the court in which the
action is brought, and service upon the insurance company
issuing the policy shall be made as prescribed by law as though
such insurance company were a party defendant. The insurance
company has the right to file pleadings and take other action
allowable by law in the name of John Doe.

(f) An insurer paying a claim under the endorsement or
provisions required by subsection (b) of this section is
subrogated to the rights of the insured to whom such claim was
paid against the person causing such injury, death or damage to
the extent that payment was made. The bringing of an action
against the unknown owner or operator as John Doe or the
conclusion of such an action does not constitute a bar to the
insured, if the identity of the owner or operator who caused the
injury or damages complained of, becomes known, from
bringing an action against the owner or operator theretofore
proceeded against as John Doe. Any recovery against such
owner or operator shall be paid to the insurance company to the
extent that such insurance company has paid the insured in the
action brought against such owner or operator as John Doe,
except that such insurance company shall pay its proportionate
part of any reasonable costs and expenses incurred in connection
therewith, including reasonable attorney’s fees. Nothing in an
endorsement or provision made under this subsection, nor any other provision of law, operates to prevent the joining, in an action against John Doe, of the owner or operator of the motor vehicle causing injury as a party defendant, and such joinder is hereby specifically authorized.

(g) No such endorsement or provisions may contain any provision requiring arbitration of any claim arising under any such endorsement or provision, nor may anything be required of the insured except the establishment of legal liability, nor may the insured be restricted or prevented in any manner from employing legal counsel or instituting legal proceedings.

(h) The provisions of subsections (a) and (b) of this section do not apply to any policy of insurance to the extent that it covers the liability of an employer to his or her employees under any workers’ compensation law.

(i) The commissioner of insurance shall formulate and require the use of standard policy provisions for the insurance required by this section, but use of such standard policy provisions may be waived by the commissioner in the circumstances set forth in section ten of this article.

(j) A motor vehicle is uninsured within the meaning of this section, if there has been a valid bodily injury or property damage liability policy issued upon such vehicle, but which policy is uncollectible, in whole or in part, by reason of the insurance company issuing such policy upon such vehicle being insolvent or having been placed in receivership. The right of subrogation granted insurers under the provisions of subsection (f) of this section does not apply as against any person or persons who is or becomes an uninsured motorist for the reasons set forth in this subsection.

(k) Nothing contained herein prevents any insurer from also offering benefits and limits other than those prescribed herein,
nor does this section prevent any insurer from incorporating in such terms, conditions and exclusions as may be consistent with the premium charged.

(l) The Insurance Commissioner shall review on an annual basis the rate structure for uninsured and underinsured motorists’ coverage as set forth in subsection (b) of this section and shall report to the Legislature on said rate structure on or before January 15, 1983, and on or before January 15, of each of the next two succeeding years.

(m) For insurance policies in effect on December 31, 2015, including motor vehicle insurance policies and liability policies that are of an excess or umbrella type that cover automobile liability, insurers are not required to make a new offer of uninsured and underinsured motor vehicle coverage upon the renewal if the liability coverage is increased solely to meet the requirements of the increased minimum required financial responsibility limits set forth in subdivision (b), section two, article four, chapter seventeen-d of this code. Those insurers that have issued policies that carry limits of coverage below the minimum required financial responsibility limits in effect on December 31, 2015 shall increase such limits to an amount equal to or above the new minimum required financial responsibility limits when the policy is renewed but not later than December 31, 2016.

§33-6-31d. Form for making offer of optional uninsured and underinsured coverage.

(a) Optional limits of uninsured motor vehicle coverage and underinsured motor vehicle coverage required by section thirty-one of this article shall be made available to the named insured at the time of initial application for liability coverage and upon any request of the named insured on a form prepared and made available by the Insurance Commissioner. The contents of
the form shall be as prescribed by the commissioner and shall specifically inform the named insured of the coverage offered and the rate calculation therefor, including, but not limited to, all levels and amounts of such coverage available and the number of vehicles which will be subject to the coverage. The form shall be made available for use on or before the effective date of this section. The form shall allow any named insured to waive any or all of the coverage offered.

(b) Any insurer who issues a motor vehicle insurance policy in this state shall provide the form to each person who applies for the issuance of such policy by delivering the form to the applicant or by mailing the form to the applicant together with the applicant’s initial premium notice. The applicant shall complete, date and sign the form and return the form to the insurer within thirty days after receipt thereof. No insurer or agent thereof is liable for payment of any damages applicable under any optional uninsured or underinsured coverage authorized by section thirty-one of this article for any incident which occurs from the date the form was mailed or delivered to the applicant until the insurer receives the form and accepts payment of the appropriate premium for the coverage requested therein from the applicant: Provided, That if prior to the insurer’s receipt of the executed form the insurer issues a policy to the applicant which provides for such optional uninsured or underinsured coverage, the insurer is liable for payment of claims against such optional coverage up to the limits provided therefor in such policy. The contents of a form described in this section which has been signed by an applicant creates a presumption that such applicant and all named insureds received an effective offer of the optional coverages described in this section and that such applicant exercised a knowing and intelligent election or rejection, as the case may be, of such offer as specified in the form. Such election or rejection is binding on all persons insured under the policy.
(c) Any insurer who has issued a motor vehicle insurance policy in this state which is in effect on the effective date of this section shall mail or otherwise deliver the form to any person who is designated in the policy as a named insured. A named insured shall complete, date and sign the form and return the form to the insurer within thirty days after receipt thereof. No insurer or agent thereof is liable for payment of any damages in any amount greater than any limits of such coverage, if any, provided by the policy in effect on the date the form was mailed or delivered to such named insured for any incident which occurs from the date the form was mailed or delivered to such named insured until the insurer receives the form and accepts payment of the appropriate premium for the coverage requested therein from the applicant. The contents of a form described in this section which has been signed by any named insured creates a presumption that all named insureds under the policy received an effective offer of the optional coverages described in this section and that all such named insured exercised a knowing and intelligent election or rejection, as the case may be, of such offer as specified in the form. Such election or rejection is binding on all persons insured under the policy.

(d) Failure of the applicant or a named insured to return the form described in this section to the insurer as required by this section within the time periods specified in this section creates a presumption that such person received an effective offer of the optional coverages described in this section and that such person exercised a knowing and intelligent rejection of such offer. Such rejection is binding on all persons insured under the policy.

(e) The insurer shall make such forms available to any named insured who requests different coverage limits on or after the effective date of this section. No insurer is required to make such form available or notify any person of the availability of such optional coverages authorized by this section except as required by this section.
§33-6-31h. Excluded drivers; definitions; legislative findings; restrictive endorsements.

(a) For purposes of this section, the following definitions apply:

(1) A “motor vehicle liability policy” means an “owner’s policy” or an “operator’s policy” of liability insurance certified as provided in section twelve, article four, chapter seventeen-d of this code.

(2) “Excluded driver” means any driver specifically excluded from coverage under section thirty-one, article six, chapter thirty-three of this code.

(3) “Minimum financial responsibility limits” means those limits defined in section two, article four, chapter seventeen-d of this code.

(b) The Legislature finds that:

(1) The explicit, plain language of a motor vehicle liability policy between an insurer and its insureds should control its effect;

(2) Where insurers are required by the common law to provide minimum financial responsibility limits coverage for
(3) The decision of the Supreme Court of Appeals of West Virginia in Jones v. Motorists Mutual Insurance Company, 177 W. Va. 763 (1987) interpreted chapter seventeen-d of this code to require insurers to provide minimum financial responsibility limits of coverage to excluded drivers; and

(4) It is not the intent of the legislature to require insurers to provide minimum financial responsibility limits of coverage to excluded drivers.

(c) When any person is specifically excluded from coverage under the provisions of a motor vehicle liability policy by any restrictive endorsement to the policy, the insurer is not required to provide any coverage, including both the duty to indemnify and the duty to defend, for damages arising out of the operation, maintenance or use of any motor vehicle by the excluded driver, notwithstanding the provisions of chapter seventeen-d of this code.

CHAPTER 142

(S. B. 514 - By Senators Gaunch and Plymale)

[Passed March 13, 2015; in effect ninety days from passage.]
[Approved by the Governor on March 24, 2015.]

AN ACT to amend and reenact §33-3-14d of the Code of West Virginia, 1931, as amended, relating to investments by local policemen’s and firemen’s pension and relief fund boards; requiring annual review of investment performance; requiring investment with the Investment Management Board in certain
Be it enacted by the Legislature of West Virginia:

That §33-3-14d of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 3. LICENSING, FEES AND TAXATION OF INSURERS.

§33-3-14d. Additional fire and casualty insurance premium tax; allocation of proceeds; effective date.

(a) (1) For the purpose of providing additional revenue for municipal policemen’s and firemen’s pension and relief funds and the Teachers Retirement System Reserve Fund and for volunteer and part-volunteer fire companies and departments, there is hereby levied and imposed an additional premium tax equal to one percent of taxable premiums for fire insurance and casualty insurance policies. For purposes of this section, casualty insurance does not include insurance on the life of a debtor pursuant to or in connection with a specific loan or other credit transaction or insurance on a debtor to provide indemnity for payments becoming due on a specific loan or other credit transaction while the debtor is disabled as defined in the policy.

(2) All moneys collected from this additional tax shall be received by the commissioner and paid by him or her into a special account in the State Treasury, designated the Municipal Pensions and Protection Fund: Provided, That on or after January 1, 2010, the commissioner shall pay ten percent of the amount collected to the Teachers Retirement System Reserve Fund created in section eighteen, article seven-a, chapter eighteen of this code, twenty-five percent of the amount collected to the Fire Protection Fund created in section thirty-three of this article for allocation by the Treasurer to
volunteer and part-volunteer fire companies and departments and sixty-five percent of the amount collected to the Municipal Pensions and Protection Fund: *Provided, however, That upon notification by the Municipal Pensions Oversight Board pursuant to the provisions of section eighteen-b, article twenty-two, chapter eight of this code, on or after January 1, 2010, or as soon thereafter as the Municipal Pensions Oversight Board is prepared to receive the funds, sixty-five percent of the amount collected by the commissioner shall be deposited in the Municipal Pensions Security Fund created in section eighteen-b, article twenty-two, chapter eight of this code. The net proceeds of this tax after appropriation thereof by the Legislature is distributed in accordance with the provisions of this section, except for distribution from proceeds pursuant to subsection (d), section eighteen-a, article twenty-two, chapter eight of this code.

(b) (1) Before August 1 of each year, the treasurer of each municipality in which a municipal policemen’s or firemen’s pension and relief fund is established shall report to the State Treasurer the average monthly number of members who worked at least one hundred hours per month and the average monthly number of retired members of municipal policemen’s or firemen’s pension and relief fund or the Municipal Police Officers and Firefighters Retirement System during the preceding fiscal year: *Provided, That beginning in the year 2010 and continuing thereafter, the report shall be made to the oversight board created in section eighteen-a, article twenty-two, chapter eight of this code. These reports received by the oversight board shall be provided annually to the State Treasurer by September 1.

(2) Before September 1 of each calendar year, the State Treasurer, or the Municipal Pensions Oversight Board, once in operation, shall allocate and authorize for distribution the revenues in the Municipal Pensions and Protection Fund which were collected during the preceding calendar year for the
purposes set forth in this section. Before September 1 of each
calendar year and after the Municipal Pensions Oversight Board
has notified the Treasurer and commissioner pursuant to section
eighteen-b, article twenty-two, chapter eight of this code, the
Municipal Pensions Oversight Board shall allocate and authorize
for distribution the revenues in the Municipal Pensions Security
Fund which were collected during the preceding calendar year
for the purposes set forth in this section. In any year the actuarial
report required by section twenty, article twenty-two, chapter
eight of this code indicates no actuarial deficiency in the
municipal policemen’s or firemen’s pension and relief fund, no
revenues may be allocated from the Municipal Pensions and
Protection Fund or the Municipal Pensions Security Fund to that
fund. The revenues from the Municipal Pensions and Protection
Fund shall then be allocated to all other pension and relief funds
which have an actuarial deficiency.

(3) The Municipal Pensions Oversight Board shall annually
review the investment performance of each municipal
policemen’s or firemen’s pension and relief fund. If the
municipal pension and relief fund’s board fails for three
consecutive years to comply with the investment provisions
established by section twenty-two-a, article twenty-two, chapter
eight of this code, the oversight board may require the municipal
policemen’s or firemen’s pension and relief fund to invest with
the Investment Management Board to continue to receive its
allocation of funds from the premium tax. If the municipal
pension and relief fund fails to move its investments to the
Investment Management Fund within the eighteen-month
drawdown period, provided in subsection (e), section nineteen,
article twenty-two, chapter eight of this code, the revenues shall
be reallocated to all other municipal policemen’s or firemen’s
pension and relief funds that have drawn down one hundred
percent of their allocations.
(4) The moneys, and the interest earned thereon, in the Municipal Pensions and Protection Fund allocated to volunteer and part-volunteer fire companies and departments shall be allocated and distributed quarterly to the volunteer fire companies and departments. Before each distribution date, the State Fire Marshal shall report to the State Treasurer the names and addresses of all volunteer and part-volunteer fire companies and departments within the state which meet the eligibility requirements established in section eight-a, article fifteen, chapter eight of this code.

(c) (1) Each municipal pension and relief fund shall have allocated and authorized for distribution a pro rata share of the revenues allocated to municipal policemen’s and firemen’s pension and relief funds based on the corresponding municipality’s average monthly number of police officers and firefighters who worked at least one hundred hours per month during the preceding fiscal year. On and after July 1, 1997, from the growth in any moneys collected pursuant to the tax imposed by this section and interest thereon there shall be allocated and authorized for distribution to each municipal pension and relief fund, a pro rata share of the revenues allocated to municipal policemen’s and firemen’s pension and relief funds based on the corresponding municipality’s average number of police officers and firefighters who worked at least one hundred hours per month and average monthly number of retired police officers and firefighters. For the purposes of this subsection, the growth in moneys collected from the tax collected pursuant to this section is determined by subtracting the amount of the tax collected during the fiscal year ending June 30, 1996, from the tax collected during the fiscal year for which the allocation is being made and interest thereon. All moneys received by municipal pension and relief funds under this section may be expended only for those purposes described in sections sixteen through twenty-eight, inclusive, article twenty-two, chapter eight of this code.
(2) Each volunteer fire company or department shall receive an equal share of the revenues allocated for volunteer and part-volunteer fire companies and departments.

(3) In addition to the share allocated and distributed in accordance with subdivision (1) of this subsection, each municipal fire department composed of full-time paid members and volunteers and part-volunteer fire companies and departments shall receive a share equal to the share distributed to volunteer fire companies under subdivision (2) of this subsection reduced by an amount equal to the share multiplied by the ratio of the number of full-time paid fire department members who are also members of a municipal firemen’s pension and relief fund or the Municipal Police Officers and Firefighters Retirement System to the total number of members of the fire department.

(d) The allocation and distribution of revenues provided in this section are subject to the provisions of section twenty, article twenty-two, chapter eight of this code and sections eight-a and eight-b, article fifteen of said chapter.

(e) Based upon the findings of an audit by the Treasurer, the Legislature hereby finds and declares that during the period of 1982 through April 27, 2012, allocations from the Municipal Pensions and Protection Fund were miscalculated and errors were made in amounts transferred, resulting in overpayments and underpayments to the relief and pension funds and to the Teachers Retirement System, and that the relief and pension funds and the Teachers Retirement System were not at fault for any of the overpayments and underpayments. The Legislature hereby further finds and declares that any attempt by the Municipal Pension Oversight Board or other entity to recover any of the overpayments would be unjust and create economic hardship for the entities that received overpayments. No entity, including, without limitation, the Municipal Pension Oversight
Board, may seek to recover from a relief or pension fund, the Teachers Retirement System or the state any overpayments received from the Municipal Pensions and Protection Fund and the overpayments are not subject to recovery, offset or litigation. Pursuant to the audit by the Treasurer, the amount of $3,631,846.55 is determined owed to specific relief and pension funds through the period of April 27, 2012. The Treasurer is hereby authorized to transfer the amount of $3,631,846.55 from the Unclaimed Property Trust Fund to the Municipal Pensions and Protection Fund, which is hereby reopened for the sole purpose of the transfer and remittances pursuant to this subsection, and to use the amount transferred to remit the amounts due to the pension and relief funds. The payment of $3,631,846.55 to the pension and relief funds is complete satisfaction of any amounts due and no entity, including, without limitation, the Municipal Pension Oversight Board and any pension or relief fund, may seek to recover any further amounts.

CHAPTER 143

(Com. Sub. for H. B. 2557 - By Delegate(s) Walters, Westfall, Pasdon, Moffatt, Morgan, Perry, Hartman, McCuskey, Frich, Storch and H. White)

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

AN ACT to amend and reenact §33-6-29 of the Code of West Virginia, 1931, as amended, relating generally to security and insurance coverage provided for rented or leased motor vehicles; providing that security maintained on any motor vehicle owned by any person, firm or corporation engaged in the business of renting or leasing the motor vehicle is secondary to coverage under certain
motor vehicle liability insurance or other form of security that is available and in effect for an individual with respect to the renting, leasing, operation, maintenance or use of the motor vehicle; and providing that any liability insurance purchased for additional consideration from the rental or leasing company shall be primary to other available insurance.

Be it enacted by the Legislature of West Virginia:

That §33-6-29 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE  6. THE INSURANCE POLICY.

§33-6-29. Motor vehicle policy; injuries to guest passengers; coverage for loaned or leased motor vehicles; exceptions.

(a) An insurer may not issue any policy of bodily injury or property damage liability insurance which excludes coverage to the owner or operator of a motor vehicle on account of bodily injury or property damage to any guest or invitee who is a passenger in such motor vehicle.

(b) Every policy or contract of liability insurance which insures a motor vehicle licensed in this state with collision, comprehensive, property or bodily injury coverage shall extend these coverages to cover the insured individual while operating a motor vehicle which he or she is permitted to use by a person, firm or corporation that owns the vehicle and is engaged in the business of selling, repairing, leasing or servicing motor vehicles. Coverage under any motor vehicle insurance policy available to such insured individual shall be primary, and any collision, comprehensive, property or bodily injury insurance coverage owned or obtained by a person, firm or corporation that owns the motor vehicle and is engaged in the business of selling, repairing, leasing or servicing motor vehicles shall be secondary.
Recovery under the motor vehicle owner’s insurance policy shall not be permitted until the insured individual has exhausted the limits of all other insurance policies available to him or her: Provided, That the following conditions are met: (1) No separate consideration is paid by or on behalf of the insured individual at the time of his or her use of the vehicle; and (2) the insured individual is operating the vehicle with the business owner’s permission as a replacement vehicle provided to the insured individual while his or her vehicle is out of use because it is being repaired or serviced by the business owner or another person with the permission of the business owner.

(c) Notwithstanding any provision of this section to the contrary, any insurance coverage available to the insured individual as described in subsection (b) of this section shall be secondary to any motor vehicle liability insurance owned or obtained by the person, firm or corporation engaged in the business of selling, repairing, leasing or servicing motor vehicles, if the insured individual is an employee of the business owner and is operating the motor vehicle with the permission of the business owner while acting within the scope of his or her employment or the insured individual is testing the vehicle for possible purchase or for a lease with more than a thirty-day term.

(d) Notwithstanding any provision of this code to the contrary, security maintained as required by section three, article two-a and section two, article four, chapter seventeen-d of this code on any motor vehicle owned by any person, firm or corporation engaged in the business of renting or leasing the motor vehicle is secondary to coverage under any motor vehicle liability insurance or other form of security meeting or exceeding the requirements in chapter seventeen-d of this code that is available and in effect for an individual with respect to the renting, leasing, operation, maintenance, or use of the motor vehicle: Provided, That any liability insurance purchased for additional consideration from the rental or leasing company shall be primary to other available insurance.
AN ACT to amend and reenact §33-10-4 and §33-10-26 of the Code of West Virginia, 1931, as amended, all relating to delinquency proceedings of insurers; issuance of injunctions or orders following the commencement of a rehabilitation or liquidation proceeding of an insurer; and providing limitations on the avoidance of a transfer to a federal home loan bank in a liquidation proceeding of an insurer-member of the federal home loan bank.

Be it enacted by the Legislature of West Virginia:

That §33-10-4 and §33-10-26 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 10. REHABILITATION AND LIQUIDATION.

§33-10-4. Injunctions and other orders.

(a) Upon application by the commissioner for an order under this article:

(1) The court may without notice issue an injunction restraining the insurer, its officers, directors, stockholders, members, subscribers, agents and all other persons from the transaction of its business or the waste or disposition of its property until further order of the court.
(2) The court may at any time during a proceeding under this article issue other injunctions or orders as may be considered necessary to prevent interference with the commissioner or the proceeding, or waste of the assets of the insurer, or the commencement or prosecution of any actions, or the obtaining of preferences, judgments, attachments or other liens, or the making of any levy against the insurer or against its assets or any part thereof.

(3) The court may order any managing general agent or attorney-in-fact to release to the commissioner any books, records, accounts, documents or other writings relating to the business of such person: Provided, That any of the same or the property of an agent or attorney shall be returned when no longer necessary to the commissioner or at any time the court after notice and hearing shall so direct.

(b) Any person having possession of and refusing to deliver any of the books, records or assets of an insurer against whom a seizure order has been issued by the court is guilty of a misdemeanor and, shall be punished by a fine not exceeding $1,000 or confined in jail not more than one year, or both fined and confined.

(c) Whenever the commissioner makes any seizure as provided in section three of this article, it is the duty of the sheriff of any county of this state, and of the police department of any municipality therein, to furnish the commissioner, upon demand, with deputies, patrolmen or officers necessary to assist the commissioner in making and enforcing the seizure.

(d) Notwithstanding any other provision of law, no bond is required of the commissioner as a prerequisite for the issuance of any injunction or restraining order pursuant to this section.

(e) Notwithstanding subsections (a) through (d) of this section or any other provision of this chapter, the
§33-10-26. Voidable preferences and liens.

(a) A preference is a transfer of any of the property of an insurer to or for the benefit of a creditor, for or on account of an antecedent debt, made or suffered by the insurer within one year before the filing of a successful petition for liquidation under this article, the effect of which transfer may be to enable the creditor to obtain a greater percentage of this debt than another creditor of the same class would have otherwise received. If a liquidation order is entered while the insurer is already subject to a rehabilitation order, then the transfers are preferences if made or suffered within one year before the filing of the successful petition for rehabilitation, or within two years before the filing of the successful petition for liquidation, whichever time is shorter.

(b) Any preference may be avoided by the liquidator if the insurer was insolvent at the time of the transfer; and

(1) The transfer was made within four months before the filing of the petition; or

(2) The creditor receiving it or to be benefitted thereby or his or her agent acting with reference thereto had, at the time when the transfer was made, reasonable cause to believe that the insurer was insolvent or was about to become insolvent; or

(3) The creditor receiving it was an officer, or any employee or attorney or other person who was in fact in a position of comparable influence in the insurer to an officer whether or not he or she held such position, or any shareholder holding directly or indirectly more than five percent of any class of any equity
security issued by the insurer, or any other person, firm, corporation, association or aggregation of persons with whom the insurer did not deal at arm’s length.

(c) (1) Notwithstanding subsections (a) and (b) of this section or any other provision of this chapter, the receiver for an insurer-member subject to a delinquency proceeding may not void a transfer made to a federal home loan bank in the ordinary course of business within four months of the commencement of the delinquency proceedings or which received prior approval of the receiver: Provided, That a transfer may be voided under this section if the transfer was made with actual intent to hinder, delay or defraud the insurer-member, a receiver appointed for the insurer-member or existing or future creditors.

(2) Following the appointment of a receiver for an insurer-member and upon request of the receiver, the federal home loan bank shall, within ten days of the request, provide a process and establish timing for:

(A) The release of collateral that exceeds the lending value, as determined in accordance with the advance agreement with the federal home loan bank, required to support secured obligations remaining after any repayment of advances;

(B) The release of any collateral remaining in the federal home loan bank’s possession following repayment of all outstanding secured obligations in full;

(C) The payment of fees and the operation of deposits and other accounts with the federal home loan bank; and

(D) The possible redemption or repurchase of federal home loan bank stock or excess stock of any class that an insurer-member is required to own.

(3) Upon the request of the receiver for an insurer-member, the federal home loan bank shall provide any available options
for the insurer-member to renew or restructure an advance to
defer associated prepayment fees, to the extent that market
conditions, the terms of the advance outstanding to the insurer-
member, the applicable policies of the federal home loan bank
and compliance with the Federal Home Loan Bank Act and
corresponding regulations permit.

(4) Nothing in this subsection affects the receiver’s rights
pursuant to 12 C.F.R. § 1266.4 regarding advances to an insurer-
member in delinquency proceedings.

(d) Where the preference is voidable, the liquidator may
recover the property or, if it has been converted, its value from
any person who has received or converted the property; except
where a bona fide purchaser or lienor has given less than fair
equivalent value, the purchaser or lienor shall have a lien upon
the property to the extent of the consideration actually given.
Where a preference by way of lien or security title is voidable,
the court may on due notice order the lien or title to be preserved
for the benefit of the estate, in which event the lien or title shall
pass to the liquidator.

(e) A transfer under this section is considered to have been
made as follows:

(1) A transfer of property other than real property is made or
suffered when it becomes so far perfected that no subsequent
lien obtainable by legal or equitable proceedings on a simple
contract could become superior to the rights of the transferee.

(2) A transfer of real property is made or suffered when it
becomes so far perfected that no subsequent bona fide purchaser
from the insurer could obtain rights superior to the rights of the
transferee.

(3) A transfer which creates an equitable lien is not perfected
if there are available means by which a legal lien could be
created.
(4) A transfer not perfected prior to the filing of a petition for liquidation is made immediately before the filing of the successful petition.

(5) The provisions of this subsection apply whether or not there are or were creditors who might have obtained liens or persons who might have become bona fide purchasers.

(f) (1) A lien obtainable by legal or equitable proceedings upon a simple contract is one arising in the ordinary course of the proceedings upon the entry or docketing of a judgment or decree, or upon attachment, garnishment, execution or like process, whether before, upon or after judgment or decree and whether before or upon levy. It does not include liens which under applicable law are given a special priority over other liens which are prior in time.

(2) A lien obtainable by legal or equitable proceedings becomes superior to the rights of a transferee, or a purchaser obtains rights superior to the rights of a transferee within the meaning of subsection(e) of this section, if the consequences follow only from the lien or purchase itself, or from the lien or purchase followed by any step wholly within the control of the respective lienholder or purchaser, with or without the aid of ministerial action by public officials. A lien does not, however, become superior and the purchase does not create superior rights for the purpose of subsection(e) of this section through any acts subsequent to the obtaining of the lien or subsequent to the purchase which require the agreement or concurrence of any third party or which require any further judicial action or ruling.

(g) A transfer of property for or on account of a new and contemporaneous consideration which is considered under subsection (e) of this section to be made or suffered after the transfer because of delay in perfecting it does not thereby become a transfer for or on account of an antecedent debt if any
acts required by the applicable law to be performed in order to
perfect the transfer as against liens or bona fide purchasers’
rights are performed within twenty-one days or any period
expressly allowed by the law, whichever is less. A transfer to
secure a future loan, if the loan is actually made, or a transfer
which becomes security for a future loan, has the same effect as
a transfer for or on account of a new and contemporaneous
consideration.

(h) If any lien that is voidable under subsection (b) of this
section has been dissolved by the furnishing of a bond or other
obligation, the surety on which has been indemnified directly or
indirectly by the transfer of or the creation of a lien upon any
property of an insurer before the filing of a petition under this
article which results in a liquidation order, the indemnifying
transfer or lien is also considered voidable.

(i) The property affected by any lien considered voidable
under subsections (a), (b) and (h) of this section shall be
discharged from the lien and that property and any of the
indemnifying property transferred to or for the benefit of a surety
shall pass to the liquidator, except that the court may on due
notice order the lien to be preserved for the benefit of the estate
and the court may direct that the conveyance be executed as may
be proper or adequate to evidence the title of the liquidator.

(j) The circuit court has summary jurisdiction of any
proceeding by the liquidator to hear and determine the rights of
any parties under this section. Reasonable notice of any hearing
in the proceeding shall be given to all parties in interest,
including the obligee of a releasing bond or other like obligation.
Where an order is entered for the recovery of indemnifying
property in kind or for the avoidance of an indemnifying lien the
court, upon application of any party in interest, shall in the same
proceeding ascertain the value of the property or lien and if the
value is less than the amount for which the property is indemnity
or than the amount of the lien, the transferee or lienholder may
elect to retain the property or lien upon payment of its value, as
ascertained by the court, to the liquidator within reasonable
times the court fixes.

(k) The liability of the surety under a releasing bond or other
like obligation is discharged to the extent of the value of the
indemnifying property recovered or the indemnifying lien
nullified and avoided by the liquidator or where the property is
retained under subsection (j) of this section to the extent of the
amount paid to the liquidator.

(l) If a creditor has been preferred, and afterward in good
faith gives the insurer further credit without security of any kind,
for property which becomes a part of the insurer’s estate, the
amount of the new credit remaining unpaid at the time of the
petition may be set off against the preference which would
otherwise be recoverable from him or her.

(m) If an insurer, directly or indirectly, within four months
before the filing of a successful petition for liquidation under this
article, or at any time in contemplation of a proceeding to
liquidate it, pays money or transfers property to an attorney-at-
law for services rendered or to be rendered, the transactions may
be examined by the court on its own motion or shall be examined
by the court on petition of the liquidator and may be held valid
only to the extent of a reasonable amount to be determined by
the court and the excess may be recovered by the liquidator for
the benefits of the estate provided that where the attorney is in a
position of influence in the insurer or an affiliate thereof
payment of any money or the transfer of any property to the
attorney-at-law for services rendered or to be rendered shall be
governed by the provision of subdivision (3), subsection (b) of
this section.

(n) (1) Every officer, manager, employee, shareholder,
member, subscriber, attorney or any other person acting on
behalve of the insurer who knowingly participates in giving any
preference when he or she has reasonable cause to believe the
insurer is or is about to become insolvent at the time of the
preference is personally liable to the liquidator for the amount of
the preference. It is permissible to infer that there is a reasonable
cause to so believe if the transfer was made within four months
before the date of filing of this successful petition for
liquidation.

(2) Every person receiving any property from the insurer or
the benefit thereof as a preference voidable under subsections (a)
and (b) of this section is personally liable therefor and is bound
to account to the liquidator.

(3) Nothing in this subsection prejudices any other claim by
the liquidator against any person.

CHAPTER 145

(Com. Sub. for H. B. 2536 - By Delegate(s) Westfall, Walters,
B. White, Ashley, Frich and Kurcaba)

[Passed March 12, 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 §33-12-32b, relating to
tavel insurance limited lines producers; defining terms;
authorizing the Commissioner of Insurance to issue travel
insurance entity producer license; establishing fees, fines, and
penalties; requiring licensee to maintain register of travel retailers
offering insurance on its behalf and designate a responsible
individual producer; authorizing travel retailer to offer travel
insurance and receive compensation under certain conditions; requiring training of travel retailer employees offering travel insurance; exempting travel insurance entity producers and travel retailers and employees from examination and continuing education requirements; requiring travel retailer employees offering travel insurance to provide certain information; providing for enforcement; and permitting the Commissioner of Insurance to propose rules for legislative approval.

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 §33-12-32b, to read as follows:

ARTICLE 12. INSURANCE PRODUCERS AND SOLICITORS.

§33-12-32b. Travel Insurance Entity Producer Limited License Act.

1 (a) Definitions. – For purposes of this section:

2 (1) A “group policy” means a policy issued to:

3 (A) A railroad company, steamship company, carrier by air, public bus carrier or other common carrier of passengers, which is considered the policyholder, where the policy insures its passengers; or

7 (B) Any other group if the commissioner has determined by rule that the members are engaged in a common enterprise or have an economic or social affinity or relationship, and that issuance of the policy would not be contrary to the best interests of the public.

12 (2) “Offer and disseminate” means providing general information, including descriptions of coverage and price,
processing applications, collecting premiums and performing other activities permitted in this state without a license issued by the commissioner.

(3) “Travel insurance” means:

(A) An individual or group policy of insurance that provides coverage for personal risks incident to planned travel, including, but not limited to:

(i) Interruption or cancellation of a trip or event;

(ii) Loss of baggage or personal effects;

(iii) Damages to accommodations or rental vehicles; or

(iv) Sickness, accident, disability or death occurring during travel.

(B) “Travel insurance” does not include major medical plans that provide comprehensive medical protection for travelers with trips lasting six months or longer, including, but not limited to, those working overseas as expatriates or military personnel deployed overseas.

(4) “Travel insurance entity producer” means an entity which is licensed under this section, is appointed by an insurer, and has the duties set forth in subsection (d) of this section.

(5) “Travel retailer” means an entity that makes, arranges or offers travel services, which may offer and disseminate travel insurance on behalf of and under the direction of a travel insurance entity producer.

(b) License requirements. – Notwithstanding any other provision of law:

(1) The commissioner may issue a travel insurance entity producer license, which authorizes the sale, solicitation or
negotiation of travel insurance issued by a licensed insurer, to a
person meeting the requirements of this section.

(2) An entity seeking a license under this section shall apply
on a form and in a manner prescribed by the commissioner.

(3) The annual fee for a travel insurance entity producer
license is $200.

(c) Conditions for travel retailers. – A travel retailer may
offer and disseminate travel insurance policies under a license
issued to a travel insurance entity producer only if all of the
following conditions are met:

(1) The travel retailer agrees that it is bound by all applicable
provisions of this section and that no employee or authorized
representative, who is not licensed as an individual insurance
producer, may:

(A) Evaluate or interpret the technical terms, benefits, and
conditions of the offered travel insurance coverage;

(B) Evaluate or provide advice concerning a prospective
purchaser’s existing insurance coverage; or

(C) Hold himself or herself out as a licensed insurer,
licensed producer, or insurance expert.

(2) The travel retailer makes available to prospective
purchasers brochures or other written materials that:

(A) State the identity and contact information of the insurer
and the travel insurance entity producer;

(B) Describe the material terms, or contain the actual
material terms, of the travel insurance coverage;

(C) Describe the process for filing a claim under the travel
insurance policy;
(D) Describe the review and cancellation processes for the travel insurance policy;

(E) Explain that the purchase of travel insurance is not required in order to purchase any other product or service from the travel retailer; and

(F) Explain that a travel retailer not licensed by the commissioner may provide general information about the travel insurance offered, including a description of the coverage and price, but is not qualified or authorized to answer technical questions about the travel insurance or to evaluate the adequacy of a prospective purchaser’s existing insurance coverage.

(3) The travel retailer ensures that each employee and authorized representative of the travel retailer whose duties include offering and disseminating travel insurance successfully completed the training required by this section.

(d) Conditions for travel insurance entity producers. – A travel insurance entity producer may offer and disseminate travel insurance policies through a travel retailer only if all of the following conditions are met:

(1) On a form prescribed by the commissioner, the travel insurance entity producer establishes, maintains and updates annually a register of all travel retailers that offer travel insurance on behalf of the travel insurance entity producer:

(A) The register shall include the name, address, and contact information of each travel retailer and of the person who directs or controls the travel retailer’s operations, and the travel retailer’s federal tax identification number;

(B) The travel insurance entity producer shall certify that the register complies with 18 U.S.C. §1033; and
(C) The travel insurance entity producer shall submit the register to the commissioner within thirty days upon request.

(2) The travel insurance entity producer designates one of its employees who is a licensed individual producer as the responsible producer for the travel insurance entity producer’s compliance with this section and any rules promulgated under this section.

(3) The designated responsible producer, and the president, secretary, treasurer and any other person who directs or controls the travel insurance entity producer’s insurance operations, comply with the fingerprinting requirements applicable to insurance producers in the resident state of the travel insurance entity producer.

(4) The travel insurance entity producer pays all applicable insurance producer licensing fees set forth in this chapter or rules promulgated under this chapter.

(5) The travel insurance entity producer requires each employee and authorized representative of the travel retailer whose duties include offering and disseminating travel insurance to receive a program of instruction or training, which the commissioner may review and approve or disapprove. The training program shall, at a minimum, contain instructions on the types of insurance offered, ethical sales practices and required disclosures to prospective customers.

(e) A licensee under this section, and those registered under its license pursuant to subdivision one, subsection (d) of this section, are exempt from examination under section five of this article and from continuing education requirements under section eight of this article.

(f) A licensee under this section is subject to the provisions of section six-b of this article as if it were an insurance agency.
License renewal. – The commissioner shall annually renew, on the expiration date as provided in this subsection, the license of a licensee who qualifies and applies for renewal on a form prescribed by the commissioner and pays the fee set forth in subdivision three, subsection (b) of this section: Provided, That the commissioner may fix the dates of expiration of travel insurance entity producer licenses as he or she considers advisable for efficient distribution of the workload of his or her office:

(1) If the fixed expiration date would upon first occurrence shorten the period for which a license fee has been paid, no refund of unearned fee shall be made;

(2) If the fixed expiration date would upon first occurrence lengthen the period for which a license fee has been paid, the commissioner shall charge no additional fee for the lengthened period;

(3) If a date is not fixed by the commissioner, each license shall, unless continued as provided in this subsection, expire at midnight on June 30 following issuance; and

(4) A licensee that fails to timely renew its license may reinstate its license, retroactive to the expiration date, upon submission of the renewal application within twelve months after the expiration date and payment of a penalty in the amount of $50.

Appointment. – A travel insurance entity producer may not act as an agent of an insurer unless the insurer appoints the travel insurance entity producer as its agent, as follows:

(1) The insurer shall file, in a format approved by the commissioner, a notice of appointment within fifteen days from the date the agency contract is executed and shall pay a nonrefundable appointment processing fee in the amount of $25:
Provided, That an insurer may elect to appoint a travel insurance entity producer to all or some insurers within the insurer’s holding company system or group by filing a single notice of appointment;

(2) Upon receipt of a notice of appointment, the commissioner shall verify within a reasonable time, not to exceed thirty days, that the travel insurance entity producer is eligible for appointment: Provided, That the commissioner shall notify the insurer within five days of a determination that the travel insurance entity producer is ineligible for appointment; and

(3) The insurer shall remit, no later than midnight on May 31 annually and in a manner prescribed by the commissioner, a renewal appointment fee for each appointed travel insurance entity producer in the amount of $25; and

(4) The insurer shall maintain a current list of travel insurance entity producers appointed to accept applications on behalf of the insurer, and shall make the list available to the commissioner upon reasonable request for purposes of conducting investigations and enforcing the provisions of this chapter.

(i) Effect of registration. – Notwithstanding any other provision of law, if a travel retailer’s insurance-related activities, and those of its employees and authorized representatives, are limited to offering and disseminating travel insurance on behalf of and under the direction of a licensed travel insurance entity producer, the travel retailer may perform those activities and receive related compensation, upon registration by the travel insurance entity producer pursuant to subdivision one, subsection (d) of this section.

(j) Liability. – As the insurer’s appointed agent, the travel insurance entity producer is liable for the acts or omissions of
the travel retailer in offering and disseminating travel insurance
under the travel insurance entity producer’s license and shall use
reasonable means to ensure compliance by the travel retailer
with this section.

(k) Enforcement. – In enforcing the provisions of this
section, the commissioner may use any enforcement mechanisms
in this chapter.

(1) If the commissioner determines that a travel retailer or its
employee has violated this section, the commissioner may after
notice and hearing:

(A) Impose fines not to exceed $500 per violation or $5,000
in the aggregate for the conduct; and

(B) Impose other or additional penalties that the
commissioner considers necessary and reasonable to carry out
the purpose of this section, including, but not limited to:

(i) Suspending or revoking the privilege of offering and
disseminating travel insurance pursuant to this section by
specific business retailers or at specific business retail locations
where violations have occurred;

(ii) Suspending or revoking the privilege of individual
employees of a travel retailer to act under this section; and

(iii) Placing the travel retailer or its employees on probation
under terms and conditions prescribed by the commissioner.

(2) If the commissioner determines that a travel insurance
entity producer has failed to perform its duties under this section
or has otherwise violated this section, the travel insurance entity
producer is subject to the provisions of section twenty-four of
this article.
(l) The commissioner may propose rules for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code to implement this section.

CHAPTER 146


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

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §33-15-4l; to amend said code by adding thereto a new section, designated §33-16-3x; to amend said code by adding thereto a new section, designated §33-24-7m; to amend said code by adding thereto a new section, designated §33-25-8j; and to amend said code by adding thereto a new section, designated §33-25A-8l, all relating to anti-cancer medications; providing accident and sickness insurance cover anti-cancer medications; providing direct health care services that cover anti-cancer medications; prohibiting certain copayments, deductibles or coinsurance for orally administered anti-cancer medications; prohibiting certain acts to comply with the requirements; defining terms; providing an effective date; and allowing cost containment measures.

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 §33-15-4l; that said code be amended by adding thereto a new section, designated §33-16-3x; that said code be amended by adding thereto a new section, designated
§33-24-7m; that said code be amended by adding thereto a new section, designated §33-25-8j; and that said code be amended by adding thereto a new section, designated §33-25A-8l, all to read as follows:

ARTICLE 15. ACCIDENT AND SICKNESS INSURANCE.

§33-15-4l. Deductibles, copayments and coinsurance for anti-cancer medications.

(a) Any accident and sickness insurance policy issued by an insurer pursuant to this article that covers anti-cancer medications that are injected or intravenously administered by a health care provider and patient administered anti-cancer medications, including, but not limited to, those medications orally administered or self-injected, may not require a less favorable basis for a copayment, deductible or coinsurance amount for patient administered anti-cancer medications than it requires for injected or intravenously administered anti-cancer medications, regardless of the formulation or benefit category determination by the policy or plan.

(b) An accident or sickness insurance policy may not comply with subsection (a) of this section by:

(1) Increasing the copayment, deductible or coinsurance amount required for injected or intravenously administered anti-cancer medications that are covered under the policy or plan; or

(2) Reclassifying benefits with respect to anti-cancer medications.

(c) As used in this section, “anti-cancer medication” means a FDA approved medication prescribed by a treating physician who determines that the medication is medically necessary to
kill or slow the growth of cancerous cells in a manner consistent with nationally accepted standards of practice.

(d) This section is effective for policy and plan years beginning on or after January 1, 2016. This section applies to all group accident and sickness insurance policies and plans subject to this article that are delivered, executed, issued, amended, adjusted or renewed in this state, on and after the effective date of this section.

(e) Notwithstanding any other provision in this section to the contrary, in the event that an insurer can demonstrate actuarially to the Insurance Commissioner that its total costs for compliance with this section will exceed or have exceeded two percent of the total costs for all accident and sickness insurance coverage issued by the insurer subject to this article in any experience period, then the insurer may apply whatever cost containment measures may be necessary to maintain costs below two percent of the total costs for the coverage: Provided, That the cost containment measures implemented are applicable only for the plan year or experience period following approval of the request to implement cost containment measures.

(f) For any enrollee that is enrolled in a catastrophic plan as defined in Section 1302(e) of the Affordable Care Act or in a plan that, but for this requirement, would be a High Deductible Health Plan as defined in section 223(c)(2)(A) of the Internal Revenue Code of 1986, and that, in connection with every enrollment, opens and maintains for each enrollee a Health Savings Account as that term is defined in section 223(d) of the Internal Revenue Code of 1986, the cost-sharing limit outlined in subsection (a) of this section shall be applicable only after the minimum annual deductible specified in section 223(c)(2)(A) of the Internal Revenue Code of 1986 is reached. In all other cases, this limit shall be applicable at any point in the benefit design, including before and after any applicable deductible is reached.
ARTICLE 16. GROUP ACCIDENT AND SICKNESS INSURANCE.

§33-16-3x. Deductibles, copayments and coinsurance for anti-cancer medications.

1 (a) Any group accident and sickness insurance policy issued by an insurer pursuant to this article that covers anti-cancer medications that are injected or intravenously administered by a health care provider and patient administered anti-cancer medications, including, but not limited to, those medications orally administered or self-injected, may not require a less favorable basis for a copayment, deductible or coinsurance amount for patient administered anti-cancer medications than it requires for injected or intravenously administered anti-cancer medications, regardless of the formulation or benefit category determination by the policy or plan.

(b) A group accident and sickness insurance policy may not comply with subsection (a) of this section by:

(1) Increasing the copayment, deductible or coinsurance amount required for injected or intravenously administered anti-cancer medications that are covered under the policy or plan; or

(2) Reclassifying benefits with respect to anti-cancer medications.

(c) As used in this section, “anti-cancer medication” means a FDA approved medication prescribed by a treating physician who determines that the medication is medically necessary to kill or slow the growth of cancerous cells in a manner consistent with nationally accepted standards of practice.

(d) This section is effective for policy and plan years beginning on or after January 1, 2016. This section applies to all
group accident and sickness insurance policies and plans subject
to this article that are delivered, executed, issued, amended,
adjusted or renewed in this state, on and after the effective date
of this section.

(e) Notwithstanding any other provision in this section to the
contrary, in the event that an insurer can demonstrate actuarially
to the Insurance Commissioner that its total anticipated costs for
any plan to comply with this section will exceed or have
exceeded two percent of the total costs for such plan in any
experience period, then the insurer may apply whatever cost
containment measures may be necessary to maintain costs below
two percent of the total costs for the plan: Provided, That such
cost containment measures implemented are applicable only for
the plan year following approval of the request to implement
cost containment measures.

(f) For any enrollee that is enrolled in a catastrophic plan as
defined in Section 1302(e) of the Affordable Care Act or in a
plan that, but for this requirement, would be a High Deductible
Health Plan as defined in section 223(c)(2)(A) of the Internal
Revenue Code of 1986, and that, in connection with every
enrollment, opens and maintains for each enrollee a Health
Savings Account as that term is defined in section 223(d) of the
Internal Revenue Code of 1986, the cost-sharing limit outlined
in subsection (a) of this section shall be applicable only after the
minimum annual deductible specified in section 223(c)(2)(A) of
the Internal Revenue Code of 1986 is reached. In all other cases,
this limit shall be applicable at any point in the benefit design,
including before and after any applicable deductible is reached.

ARTICLE 24. HOSPITAL SERVICE CORPORATIONS,
MEDICAL SERVICE CORPORATIONS,
DENTAL SERVICE CORPORATIONS
AND HEALTH SERVICE CORPORATIONS.
§33-24-7m. Deductibles, copayments and coinsurance for anti-cancer medications.

(a) Notwithstanding any provision of any policy, provision, contract, plan or agreement to which this article applies, any group accident and sickness insurance policy, plan, contract or agreement issued by an entity regulated by this article that covers anti-cancer medications that are injected or intravenously administered by a health care provider and patient administered anti-cancer medications, including, but not limited to, those medications orally administered or self-injected, may not require a less favorable basis for a copayment, deductible or coinsurance amount for patient administered anti-cancer medications than it requires for injected or intravenously administered anti-cancer medications, regardless of the formulation or benefit category determination by the policy or plan.

(b) An accident or sickness insurance policy, plan, contract or agreement may not comply with subsection (a) of this section by:

(1) Increasing the copayment, deductible or coinsurance amount required for injected or intravenously administered anti-cancer medications that are covered under the policy or plan; or

(2) Reclassifying benefits with respect to anti-cancer medications.

(c) As used in this section, “anti-cancer medication” means a FDA approved medication prescribed by a treating physician who determines that the medication is medically necessary to kill or slow the growth of cancerous cells in a manner consistent with nationally accepted standards of practice.
(d) This section is effective for policy and plan years beginning on or after January 1, 2016. This section applies to all group accident and sickness insurance policies and plans subject to this article that are delivered, executed, issued, amended, adjusted or renewed in this state, on and after the effective date of this section.

(e) Notwithstanding any other provision in this section to the contrary, in the event that an entity subject to this article can demonstrate actuarially to the Insurance Commissioner that its total anticipated costs for any policy, plan, contract or agreement to comply with this section will exceed or have exceeded two percent of the total costs for such policy, plan, contract or agreement in any experience period, then the entity may apply whatever cost containment measures may be necessary to maintain costs below two percent of the total costs for the policy, plan, contract or agreement: Provided, That such cost containment measures implemented are applicable only for the plan year or experience period following approval of the request to implement cost containment measures.

(f) For any enrollee that is enrolled in a catastrophic plan as defined in Section 1302(e) of the Affordable Care Act or in a plan that, but for this requirement, would be a High Deductible Health Plan as defined in section 223(c)(2)(A) of the Internal Revenue Code of 1986, and that, in connection with every enrollment, opens and maintains for each enrollee a Health Savings Account as that term is defined in section 223(d) of the Internal Revenue Code of 1986, the cost-sharing limit outlined in subsection (a) of this section shall be applicable only after the minimum annual deductible specified in section 223(c)(2)(A) of the Internal Revenue Code of 1986 is reached. In all other cases, this limit shall be applicable at any point in the benefit design, including before and after any applicable deductible is reached.
ARTICLE 25. HEALTH CARE CORPORATIONS.

§33-25-8j. Deductibles, copayments and coinsurance for anti-cancer medications.

(a) Notwithstanding any provision of any policy, contract, plan or agreement to which this article applies, a policy, contract, plan or agreement issued to a member or subscriber by an entity regulated by this article that covers anti-cancer medications that are injected or intravenously administered by a health care provider and patient administered anti-cancer medications, including, but not limited to, those medications orally administered or self-injected, may not require a less favorable basis for a copayment, deductible or coinsurance amount for patient administered anti-cancer medications than it requires for injected or intravenously administered anti-cancer medications, regardless of the formulation or benefit category determination by the policy or plan.

(b) A contract issued to a member or subscriber that is subject to this article may not comply with subsection (a) of this section by:

(1) Increasing the copayment, deductible or coinsurance amount required for injected or intravenously administered anti-cancer medications that are covered under the policy, contract, or plan or agreement; or

(2) Reclassifying benefits with respect to anti-cancer medications.

(c) As used in this section, “anti-cancer medication” means a FDA approved medication prescribed by a treating physician who determines that the medication is medically necessary to kill or slow the growth of cancerous cells in a manner consistent with nationally accepted standards of practice.
(d) This section is effective for policy, plan or agreement years beginning on or after January 1, 2016. This section applies to all policies, plans, contracts or agreements subject to this article that are delivered, executed, issued, amended, adjusted or renewed in this state, on and after the effective date of this section.

(e) Notwithstanding any other provision in this section to the contrary, in the event that an entity subject to this article can demonstrate actuarially to the Insurance Commissioner that its total anticipated costs for benefits to all members or subscribers to comply with this section will exceed or have exceeded two percent of the total costs for all benefits of the policy, plan, contract or agreement in any experience period, then the entity may apply whatever cost containment measures may be necessary to maintain costs below two percent of the total costs for the policy, plan, contract or agreement: Provided, That such cost containment measures implemented are applicable only for the plan year or experience period following approval of the request to implement cost containment measures.

(f) For any enrollee that is enrolled in a catastrophic plan as defined in Section 1302(e) of the Affordable Care Act or in a plan that, but for this requirement, would be a High Deductible Health Plan as defined in section 223(c)(2)(A) of the Internal Revenue Code of 1986, and that, in connection with every enrollment, opens and maintains for each enrollee a Health Savings Account as that term is defined in section 223(d) of the Internal Revenue Code of 1986, the cost-sharing limit outlined in subsection (a) of this section shall be applicable only after the minimum annual deductible specified in section 223(c)(2)(A) of the Internal Revenue Code of 1986 is reached. In all other cases, this limit shall be applicable at any point in the benefit design, including before and after any applicable deductible is reached.
ARTICLE 25A. HEALTH MAINTENANCE ORGANIZATION ACT.

§33-25A-8l. Deductibles, copayments and coinsurance for anti-cancer medications.

(a) Notwithstanding any provision of any policy, contract, plan or agreement to which this article applies, any policy, contract, plan or agreement issued by a health maintenance organization pursuant to this article that covers anti-cancer medications that are injected or intravenously administered by a health care provider and patient administered anti-cancer medications, including, but not limited to, those medications orally administered or self-injected, may not require a less favorable basis for a copayment, deductible or coinsurance amount for patient administered anti-cancer medications than it requires for injected or intravenously administered anti-cancer medications, regardless of the formulation or benefit category determination by the policy or plan.

(b) A policy, contract, plan or agreement or a health maintenance organization may not comply with subsection (a) of this section by:

(1) Increasing the copayment, deductible or coinsurance amount required for injected or intravenously administered anti-cancer medications that are covered under the policy, contract, or plan or agreement; or

(2) Reclassifying benefits with respect to anti-cancer medications.

(c) As used in this section, “anti-cancer medication” means a FDA approved medication prescribed by a treating physician who determines that the medication is medically necessary to kill or slow the growth of cancerous cells in a manner consistent with nationally accepted standards of practice.
This section is effective for policy, contract, plan or agreement beginning on or after January 1, 2016. This section applies to all policies, contracts, plans or agreements subject to this article that are delivered, executed, issued, amended, adjusted or renewed in this state, on and after the effective date of this section.

Notwithstanding any other provision in this section to the contrary, in the event that a health maintenance organization subject to this article can demonstrate actuarially to the Insurance Commissioner that its total anticipated costs for any health maintenance contract to comply with this section will exceed or have exceeded two percent of the total costs for the policy, contract, plan or agreement in any experience period, then the health maintenance organization may apply whatever cost containment measures may be necessary to maintain costs below two percent of the total costs for the policy, contract, plan or agreement: Provided, That such cost containment measures implemented are applicable only for the plan year or experience period following approval of the request to implement cost containment measures.

For any enrollee that is enrolled in a catastrophic plan as defined in Section 1302(e) of the Affordable Care Act or in a plan that, but for this requirement, would be a High Deductible Health Plan as defined in section 223(c)(2)(A) of the Internal Revenue Code of 1986, and that, in connection with every enrollment, opens and maintains for each enrollee a Health Savings Account as that term is defined in section 223(d) of the Internal Revenue Code of 1986, the cost-sharing limit outlined in subsection (a) of this section shall be applicable only after the minimum annual deductible specified in section 223(c)(2)(A) of the Internal Revenue Code of 1986 is reached. In all other cases, this limit shall be applicable at any point in the benefit design, including before and after any applicable deductible is reached.
AN ACT to amend and reenact §33-20F-4 of the Code of West Virginia, 1931, as amended, relating to the Physicians’ Mutual Insurance Company; deleting obsolete provisions regarding the Physicians’ Mutual Insurance Company; and providing that the company need not be organized as a nonprofit corporation.

Be it enacted by the Legislature of West Virginia:

That §33-20F-4 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 20F. PHYSICIANS’ MUTUAL INSURANCE COMPANY.

§33-20F-4. Authorization for creation of company; requirements and limitations.

(a) Subject to the provisions of this article, a Physicians’ Mutual Insurance Company may be created as a domestic, private, nonstock corporation. The company must remain for the duration of its existence a domestic mutual insurance company owned by its policyholders and may not be converted into a stock corporation or any other entity not owned by its policyholders.

(b) For the duration of its existence, the company is not and may not be considered a department, unit, agency, or
instrumentality of the state for any purpose. All debts, claims, obligations, and liabilities of the company, whenever incurred, are the debts, claims, obligations, and liabilities of the company only and not of the state or of any department, unit, agency, instrumentality, officer; or employee of the state.

(c) The moneys of the company are not and may not be considered part of the General Revenue Fund of the state. The debts, claims, obligations, and liabilities of the company are not and may not be considered a debt of the state or a pledge of the credit of the state.

(d) The company is not subject to provisions of article nine-a, chapter six of this code or the provisions of article one, chapter twenty-nine-b of this code.

(e) All premiums collected by the company are subject to the premium taxes, additional premium taxes, additional fire and casualty insurance premium taxes and surcharges contained in sections fourteen, fourteen-a, fourteen-d and thirty-three, article three of this chapter.

CHAPTER 148

(S. B. 425 - By Senators Plymale, M. Hall, Prezioso, Leonhardt, Walters, Williams, Carmichael, Laird, Kessler, Stollings, Miller and D. Hall)

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

AN ACT to amend and reenact §12-1-12d of the Code of West Virginia, 1931, as amended, relating to investments by certain institutions of higher learning.
Be it enacted by the Legislature of West Virginia:

That §12-1-12d of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 1. STATE DEPOSITORIES.

§12-1-12d. Investments by Marshall University, West Virginia University and West Virginia School of Osteopathic Medicine.

(a) Notwithstanding any provision of this article to the contrary, the governing boards of Marshall University, West Virginia University and West Virginia School of Osteopathic Medicine each may invest certain funds with its respective nonprofit foundation that has been established to receive contributions exclusively for that university and which exists on January 1, 2005. The investment is subject to the limitations of this section.

(b) A governing board, through its chief financial officer, may enter into agreements, approved as to form by the State Treasurer, for the investment by its foundation of certain funds subject to their administration. Any interest or earnings on the moneys invested is retained by the investing university.

(c) Moneys of a university that may be invested with its foundation pursuant to this section are those subject to the administrative control of the university and that do not include any funds made available to the university from the state General Revenue Fund or the funds established in section eighteen or eighteen-a, article twenty-two, chapter twenty-nine of this code. Moneys permitted to be invested under this section may be aggregated in an investment fund for investment purposes.

(d) Investments by foundations that are authorized under this section shall be made in accordance with and subject to the
provisions of the Uniform Prudent Investor Act, codified as article six-c, chapter forty-four of this code. As part of its fiduciary responsibilities, each governing board shall establish investment policies in accordance with the Uniform Prudent Investor Act for those moneys invested with its foundation. The governing board shall review, establish and modify, if necessary, the investment objectives as incorporated in its investment policies so as to provide for the financial security of the moneys invested with its foundation. The governing boards shall give consideration to the following:

(1) Preservation of capital;

(2) Diversification;

(3) Risk tolerance;

(4) Rate of return;

(5) Stability;

(6) Turnover;

(7) Liquidity; and

(8) Reasonable cost of fees.

(e) A governing board shall report annually by December 31 to the Governor and to the Joint Committee on Government and Finance on the performance of investments managed by its foundation pursuant to this section.

(f) The amendments to this section in the second extraordinary session of the Legislature in 2010 apply retroactively so that the authority granted by this section shall be construed as if that authority did not expire on July 1, 2010.
AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §12-1-12e, relating to allowing governing boards of certain four-year colleges and universities to invest certain funds with its respective nonprofit foundation that has been established to receive contributions exclusively for that institution and which exists on January 1, 2015.

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 §12-1-12e, to read as follows:

ARTICLE 1. STATE DEPOSITORIES.

§12-1-12e. Investments by state colleges.

(a) Notwithstanding any provision of this article to the contrary, the governing boards of four-year public colleges and universities, with the exception of those schools provided for in section twelve-d of this article, after first consulting with the West Virginia Investment Management Board and the state Board of Treasury Investments to determine what their estimated rate of return on investment, including administrative expenses, would be if the moneys to be invested with the foundation were instead to be invested with the Investment Management Board or the Board of Treasury Investments when compared to any
estimated return on investment, including administrative expenses, provided by the foundation, each may invest certain funds with its respective nonprofit foundation that has been established to receive contributions exclusively for that institution and which exists on January 1, 2015. The investment is subject to the limitations of this section.

(b) A governing board, through its chief financial officer, may enter into agreements, approved as to form by the State Treasurer, for the investment by its foundation of certain funds subject to their administration. Any interest or earnings on the moneys invested is retained by the investing institution.

(c) Moneys of a four-year public college or university that may be invested with its foundation pursuant to this section are those subject to the administrative control of the institution and that do not include any funds made available to the institution from the state General Revenue Fund or the funds established in section eighteen or eighteen-a, article twenty-two, chapter twenty-nine of this code. Moneys permitted to be invested under this section may be aggregated in an investment fund for investment purposes.

(d) Of the moneys authorized for investment by this section, each four-year public college or university that may be invested with its foundation pursuant to this section, may have invested with its foundation at any time no more than $1 million excluding investment gains.

(e) Investments by foundations that are authorized under this section shall be made in accordance with and subject to the provisions of the Uniform Prudent Investor Act, codified as article six-c, chapter forty-four of this code. As part of its fiduciary responsibilities, each governing board shall establish investment policies in accordance with the Uniform Prudent Investor Act for those moneys invested with its foundation. The
governing board shall review, establish and modify, if necessary, the investment objectives as incorporated in its investment policies so as to provide for the financial security of the moneys invested with its foundation. The governing boards shall give consideration to the following:

(1) Preservation of capital;

(2) Diversification;

(3) Risk tolerance;

(4) Rate of return;

(5) Stability;

(6) Turnover;

(7) Liquidity; and

(8) Reasonable cost of fees.

(f) Prior to the initial transfer of funds to a foundation, the four-year public college or university shall submit its plan for the investment of the funds with its foundation to the Higher Education Policy Commission for its review. The purpose of review shall solely be to determine if the plan is financially prudent for the institution. Upon the commission’s written finding that the plan is financially prudent for the institution, the institution is authorized to transfer its funds to the foundation for purposes of investment under this section.

(g) No four-year public college or university may transfer funds to its foundation pursuant to this section unless the college or university has a long-term bond from not less than two of the following rating entities of at least A3 by Moody’s Investors Service, A- by Standard & Poor’s and A- by Fitch Ratings.
70 (h) A governing board shall report annually by December 31
71 to the Governor and to the Joint Committee on Government and
72 Finance on the performance of investments managed by its
73 foundation pursuant to this section.

CHAPTER 150

(Com. Sub. for S. B. 393 - By Senators Cole (Mr. President)
and Kessler)
[By Request of the Executive]

[Passed March 14, 2015; in effect May 17, 2015.]
[Approved by the Governor on April 2, 2015.]

AN ACT to amend and reenact §49-1-206 of the Code of West
Virginia, 1931, as amended; to amend and reenact §49-2-907,
§49-2-1002 and §49-2-1003 of said code; to amend said code by
adding thereto two new sections, designated §49-2-912 and §49-2-
913; to amend and reenact §49-4-403, §49-4-406, §49-4-409,
§49-4-702, §49-4-711, §49-4-712, §49-4-714, §49-4-718 and
§49-4-719 of said code; to amend said code by adding thereto four
new sections, designated §49-4-413, §49-4-702a, §49-4-724 and
§49-4-725; to amend and reenact §49-5-103 of said code; and to
amend said code by adding thereto a new section, designated
§49-5-106, all relating generally to juvenile justice reform;
defining terms; providing that juveniles may only be transferred to
juvenile diagnostic centers under certain circumstances; requiring
dedication of a percentage of funding for community services to
evidence-based practices; establishing criteria for transition to
juvenile’s home setting following out-of-home placement;
providing for cooperative agreements solely between the
Department of Health and Human Resources and private agencies
to house status offenders; establishing community-based youth
reporting centers; establishing Juvenile Justice Reform Oversight Committee; providing for multidisciplinary team meetings; establishing members of multidisciplinary team; providing that multidisciplinary team shall advise court on treatment and rehabilitation plans for juvenile; providing that multidisciplinary team shall monitor juvenile’s progress; requiring aftercare plan for all juvenile out-of-home placements; providing prepetition diversion process for juveniles who commit truancy offenses, status offenses and nonviolent misdemeanor offenses, effective July 1, 2016; providing requirements for prepetition diversion programs; authorizing probation officers to participate in prepetition diversion programs; allowing truancy or treatment programs existing in a judicial circuit as of January 1, 2015, to continue to operate notwithstanding new requirements; establishing prepetition review team; requiring court to consider results of risk and needs assessment of the juvenile prior to dispositional proceedings; requiring inclusion of accepted treatment and rehabilitation plan for juveniles in certain findings of fact; providing that a juvenile adjudicated as a status offender may not be placed in out-of-home placement in certain circumstances; prohibiting placement of a juvenile adjudicated as a status offender within a Division of Juvenile Services facility on or after January 1, 2016; providing that a juvenile adjudicated delinquent for a nonviolent misdemeanor offense may not be placed in out-of-home placement in certain circumstances; providing that time served by a juvenile in a detention center pending adjudication, disposition or transfer be taken into account during sentencing; requiring court to issue certain findings of fact if a juvenile is to be placed in a residential facility; providing for standardized screener to conduct an evaluation of the juvenile in certain circumstances; permitting court to include reasonable and relevant orders to parents in its disposition order for a juvenile; establishing review and modification procedures for probation dispositional orders; authorizing Supreme Court of Appeals to develop community-based juvenile probation sanctions and
incentives; establishing individualized case planning; providing that a juvenile may be referred to a truancy diversion specialist prior to filing of petition; providing for prepetition counsel and advice; providing for adoption of risk and needs assessment and validation; authorizing creation of restorative justice programs; providing for disclosure of juvenile records to Department of Health and Human Resources and Division of Juvenile Services for case planning; providing for data collection related to juvenile justice outcomes and disproportional minority contact; and making technical revisions.

Be it enacted by the Legislature of West Virginia:

That §49-1-206 of the Code of West Virginia, 1931, as amended, be amended and reenacted; that §49-2-907, §49-2-1002 and §49-2-1003 of said code be amended and reenacted; that said code be amended by adding thereto two new sections, designated §49-2-912 and §49-2-913; that §49-4-403, §49-4-406, §49-4-409, §49-4-702, §49-4-711, §49-4-712, §49-4-714, §49-4-718 and §49-4-719 of said code be amended and reenacted; that said code be amended by adding thereto four new sections, designated §49-4-413, §49-4-702a, §49-4-724 and §49-4-725; that §49-5-103 of said code be amended and reenacted; and that said code be amended by adding thereto a new section, designated §49-5-106, all to read as follows:

ARTICLE 1. GENERAL PROVISIONS AND DEFINITIONS.

§49-1-206. Definitions related, but not limited, to child advocacy, care, residential and treatment programs.

1 When used in this chapter, terms defined in this section have
2 the meanings ascribed to them that relate to, but are not limited
3 to, child advocacy, care, residential and treatment programs,
4 except in those instances where a different meaning is provided
5 or the context in which the word is used clearly indicates that a
6 different meaning is intended.
“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, substance abuse and any other treatment or rehabilitation services.

“Community-based juvenile probation sanctions” means any of a continuum of nonresidential accountability measures, programs and sanctions in response to a technical violation of probation, as part of a system of community-based juvenile probation sanctions and incentives, that may include, but are not limited to:

(A) Electronic monitoring;

(B) Drug and alcohol screening, testing or monitoring;

(C) Youth reporting centers;

(D) Reporting and supervision requirements;

(E) Community service; and
(F) Rehabilitative interventions such as family counseling, substance abuse treatment, restorative justice programs and behavioral or mental health treatment.

“Community services” means nonresidential prevention or intervention services or programs that are intended to reduce delinquency and future court involvement.

“Evidence-based practices” means policies, procedures, programs and practices demonstrated by research to reliably produce reductions in the likelihood of reoffending.

“Facility” means a place or residence, including personnel, structures, grounds and equipment used for the care of a child or children on a residential or other basis for any number of hours a day in any shelter or structure maintained for that purpose. Facility does not include any juvenile detention facility or juvenile correctional facility operated by or under contract with the Division of Juvenile Services for the secure housing or holding of juveniles committed to its custody.

“Family child care facility” means any facility which is used to provide nonresidential child care services for compensation for seven to 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 Division 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.

“Nonviolent misdemeanor offense” means a misdemeanor offense that does not include any of the following:

(A) An act resulting in bodily injury or death;

(B) The use of a weapon in the commission of the offense;

(C) A domestic abuse offense involving a significant or likely risk of harm to a family member or household member;

(D) A criminal sexual conduct offense; or

(E) Any offense for driving under the influence of alcohol or drugs.

“Out-of-home placement” means a post-adjudication placement in a foster family home, group home, nonsecure facility, emergency shelter, hospital, psychiatric residential treatment facility, staff-secure facility, hardware secure facility, detention facility or other residential placement other than placement in the home of a parent, custodian or guardian.
“Out-of-school time” means a child care service which offers activities to children before and after school, on school holidays, when school is closed due to emergencies and on school calendar days set aside for teacher activities.

“Placement” means any temporary or permanent placement of a child who is in the custody of the state in any foster home, group home or other facility or residence.

“Pre-adjudicatory community supervision” means supervision provided to a youth prior to adjudication, 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.

“Risk and needs assessment” means a validated, standardized actuarial tool which identifies specific risk factors
that increase the likelihood of reoffending and the factors that, when properly addressed, can reduce the likelihood of reoffending.

“Secure facility” means any public or private residential facility which includes construction fixtures designed to physically restrict the movements and activities of juveniles or other individuals held in lawful custody in such facility.

“Staff-secure facility” means any public or private residential facility characterized by staff restrictions of the movements and activities of individuals held in lawful custody in such facility and which limits its residents’ access to the surrounding community, but is not characterized by construction fixtures designed to physically restrict the movements and activities of residents.

“Standardized screener” means a brief, validated nondiagnostic inventory or questionnaire designed to identify juveniles in need of further assessment for medical, substance abuse, emotional, psychological, behavioral, or educational issues, or other conditions.

“State family support council” means the council established by the Department of Health and Human Resources pursuant to 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.

“Technical violation” means an act that violates the terms or
conditions of probation or a court order that does not constitute
a new delinquent offense.

“Truancy diversion specialist” means a school-based
probation officer or truancy social worker within a school or
schools who, among other responsibilities, identifies truants and
the causes of the truant behavior, and assists in developing a plan
to reduce the truant behavior prior to court involvement.

ARTICLE 2. STATE RESPONSIBILITIES FOR CHILDREN.

*§49-2-907. Examination, diagnosis classification and treatment;
period of custody.

(a) As a part of the disposition for a juvenile who has been
adjudicated delinquent, and who has been determined by a risk
and needs assessment to be high risk or who has committed an
act or acts of violence, 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 thirty days. During
this period, the juvenile shall undergo examination, diagnosis,
classification and a complete medical examination and shall at
all times be kept apart from the general juvenile inmate
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

*NOTE: This section was also amended by H. B. 2200 (Chapter 46),
which passed prior to this act.
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 case 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 thirty 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 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.

§49-2-912. Youth reporting centers.

(a) The Division of Juvenile Services shall operate community-based youth reporting centers to provide services to youth involved in the juvenile justice system as an alternative to detention, corrections or out-of-home placement.

(b) Based upon identifiable need, the Division of Juvenile Services shall operate a total of at least fifteen youth reporting centers by July 1, 2016.

(c) Based upon identifiable need, the Division of Juvenile Services shall operate a total of at least nineteen youth reporting centers by July 1, 2018.
(d) The Division of Juvenile Services shall promulgate guidelines, policies and procedures regarding referrals, assessments, case management, services, education and connection to services in the community.

(e) The Division of Juvenile Services shall collaborate with county boards of education to provide education services to certain youth referred to youth reporting centers, whenever feasible.

(f) The Division of Juvenile Services may convene local or regional advisory boards for youth reporting centers.


(a) The Juvenile Justice Reform Oversight Committee is hereby created to oversee the implementation of reform measures intended to improve the state’s juvenile justice system.

(b) The committee shall be comprised of eighteen members, including the following individuals:

(1) The Governor, or his or her designee, who shall preside as chair of the committee;

(2) Two members from the House of Delegates, appointed by the Speaker of the House of Delegates, who shall serve as nonvoting, ex officio members;

(3) Two members from the Senate, appointed by the President of the Senate, who shall serve as nonvoting, ex officio members;

(4) The Secretary of the Department of Health and Human Resources, or his or her designee;

(5) The Director of the Division of Juvenile Services, or his or her designee;
(6) The Superintendent of the State Board of Education, or his or her designee;

(7) The Administrative Director of the Supreme Court of Appeals, or his or her designee, who shall serve as nonvoting, ex officio member;

(8) The Director of the Division of Probation Services, or his or her designee;

(9) Two circuit court judges, appointed by the Chief Justice of the Supreme Court of Appeals, who shall serve as nonvoting, ex officio members;

(10) One community member juvenile justice stakeholder, appointed by the Governor;

(11) One juvenile crime victim advocate, appointed by the Governor;

(12) One member from the law-enforcement agency, appointed by the Governor;

(13) One member from a county prosecuting attorney’s office, appointed by the Governor; and

(14) The Director of the Juvenile Justice Commission.

(c) The committee shall perform the following duties:

(1) Guide and evaluate the implementation of the provisions adopted in the year 2015 relating to juvenile justice reform;

(2) Obtain and review the juvenile recidivism and program outcome data collected pursuant to section one hundred six, article five of this chapter;

(3) Calculate any state expenditures that have been avoided by reductions in the number of youth placed in out-of-home placements by the Division of Juvenile Services or the
Department of Health and Human Resources as reported under section one hundred six, article five of this chapter; and

(4) Institute a uniform process for developing and reviewing performance measurement and outcome measures through data analysis. The uniform process shall include:

(A) The performance and outcome measures for the court, the Department of Health and Human Resources and the Division of Juvenile Services; and

(B) The deadlines and format for the submission of the performance and outcome measures; and

(5) Ensure system accountability and monitor the fidelity of implementation efforts or programs;

(6) Study any additional topics relating to the continued improvement of the juvenile justice system; and

(7) Issue an annual report to the Governor, the President of the Senate, the Speaker of the House of Delegates and the Chief Justice of the Supreme Court of Appeals of West Virginia on or before November 30th of each year, starting in 2016, which shall include:

(A) An assessment of the progress made in implementation of juvenile justice reform efforts;

(B) A summary of the committee’s efforts in fulfilling its duties as set forth in this section; and

(C) An analysis of the recidivism data obtained by the committee under this section;

(D) A summary of the averted costs calculated by the committee under this section and a recommendation for any reinvestment of the averted costs to fund services or programs to expand West Virginia’s continuum of alternatives for youth who would otherwise be placed in out-of-home placement;
(E) Recommendations for continued improvements to the juvenile justice system.

(d) The Division of Justice and Community Services shall provide staff support for the committee. The committee may request and receive copies of all data, reports, performance measures and other evaluative material regarding juvenile justice submitted from any agency, branch of government or political subdivision to carry out its duties.

(e) The committee shall meet within ninety days after appointment and shall thereafter meet at least quarterly, upon notice by the chair. Eight members shall be considered a quorum.

(f) After initial appointment, members appointed to the committee by the Governor, the President of the Senate, the Speaker of the House of Delegates or the Chief Justice of the Supreme Court of Appeals, pursuant to subsection (b) of this section, shall serve for a term of two years from his or her appointment and shall be eligible for reappointment to that position. All members appointed to the committee shall serve until his or her successor has been duly appointed.

(g) The committee shall sunset on December 31, 2020, unless reauthorized by the Legislature.

*§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.*

*Note: This section was also amended by H. B. 2200 (Chapter 46), which passed prior to this act.*
(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, 24-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 family unit so that the juvenile may be retained in his or her home;

(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 juveniles who are in the custody of the state upon reaching the age of eighteen years.

(b) By January 1, 2017, the department and the Division of Juvenile Services shall allocate at least fifty percent of all community services funding, as defined in section two hundred six, article one of this chapter, either provided directly or by contracted service providers, for the implementation of evidence-based practices, as defined in section two hundred six, article one of this chapter.

(c) (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 pre-adjudicatory 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.
An 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.

For alleged juvenile delinquents and status offenders, an 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.

The department may develop an individualized program of rehabilitation for any juvenile referred for noncustodial counseling under section seven hundred two-a, article four of this chapter or for any juvenile upon the request of a public or private agency.

The individualized program of rehabilitation required by the provisions of subsection (c) of this section shall, for any juvenile in out-of-home placement, include a plan to return the juvenile to his or her home setting and transition the juvenile into community services to continue his or her rehabilitation.

Planning for the transition shall begin upon the juvenile’s entry into the residential facility. The transition process shall begin thirty days after admission to the residential facility and conclude no later than three months after admission.

The Department of Health and Human Resources staff shall, during its monthly site visits at contracted residential facilities, ensure that the individualized programs of rehabilitation include a plan for transition in accordance with this subsection.

If further time in residential placement is necessary and the most effective method of attaining the rehabilitation goals
identified by the rehabilitation individualized plan created under subsection (c) of this section, then the department shall provide information to the multidisciplinary team to substantiate that further time in a residential facility is necessary. The court, in consultation with the multidisciplinary team, may order an extension of time in residential placement prior to the juvenile’s transition to the community if the court finds by clear and convincing evidence that an extension is in the best interest of the child. If the court finds that the evidence does not support an extension, the court shall order that the transition to community services proceed.

(e) 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 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

*NOTE:* This section was also amended by H. B. 2200 (Chapter 46), which passed prior to this act.
12 guidance, training, counseling, substance abuse treatment and
13 other rehabilitative services. The Department of Health and
14 Human Resources shall provide to each status offender
15 committed to the facility a program of treatment and services
16 consistent with the individualized program of rehabilitation
17 developed for the juvenile. In the case of any other juvenile
18 residing at the facility, the department shall provide those
19 programs and services as may be proper in the circumstances
20 including, but not limited to, any programs or services directed
21 to be provided by the court.

22 (c) The board of education of the county in which the facility
23 is located shall provide instruction for juveniles residing at the
24 facility. Residents who can be permitted to do so shall attend
25 local schools and instruction shall otherwise take place at the
26 facility.

27 (d) Facilities established pursuant to this section shall be
28 structured as community-based facilities.

29 (e) The Department of Health and Human Resources may
30 enter into cooperative arrangements and agreements with private
31 agencies or with agencies of the state and its political
32 subdivisions to fulfill its duties under this section: Provided,
33 That after January 1, 2016, the department shall not enter into an
34 agreement with the Division of Juvenile Services to house
35 juvenile status offenders.

ARTICLE 4. COURT ACTIONS.

*§49-4-403. Multidisciplinary treatment planning process;
coordination; access to information.

1 (a) (1) A multidisciplinary treatment planning process for
2 cases initiated pursuant to part six and part seven of article four

*Note: This section was also amended by H. B. 2200 (Chapter 46),
which passed prior to this act.
3 of this chapter 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. In each circuit, the department shall coordinate with the prosecutor’s office, the public defender’s office or other counsel representing juveniles to designate, with the approval of the court, at least one day per month on which multidisciplinary team meetings for that circuit shall be held: Provided, That multidisciplinary team meetings may be held on days other than the designated day or days when necessary. 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.

(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 the provisions of this chapter to convene a multidisciplinary team meeting may seek and receive an order of the circuit court setting such 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 of 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 the provisions of this code or court rules.
§49-4-406. Multidisciplinary treatment process for status offenders or delinquents; requirements; custody; procedure; reports; cooperation; inadmissibility 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, including a risk and needs assessment, 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 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, including a risk and needs assessment, 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 such an

*NOTE: This section was also amended by H. B. 2200 (Chapter 46), which passed prior to this act.*
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, including a
risk and needs assessment, 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 shall 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 shall govern the
procedure for obtaining any assessment of a juvenile, preparing
an individualized service plan and submitting the plan and any
assessment to the court.

(2) In juvenile proceedings conducted pursuant to part seven
of this article, the following representatives shall serve as
members and attend each meeting of the multidisciplinary
treatment team, so long as they receive notice at least seven days
prior to the meeting:

(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, guardian or custodian;

(D) The juvenile’s attorney;

(E) Any attorney representing a member of the
multidisciplinary treatment team;

(F) The prosecuting attorney or his or her designee;

(G) The county school superintendent or the
superintendent’s designee;

(H) A treatment or service provider with training and clinical
experience coordinating behavioral or mental health treatment;

and

(I) 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 multidisciplinary 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. The multidisciplinary treatment team shall also determine and advise the court as to the individual treatment and rehabilitation plan recommended for the child for either out-of-home placement or community supervision. The plan may focus on reducing the likelihood of reoffending, requirements for the child to take responsibility for his or her actions, completion of evidence-based services or programs or any other relevant goal for the child. The plan may also include opportunities to incorporate the family, custodian or guardian into the treatment and rehabilitation process.

(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. The multidisciplinary treatment team shall monitor progress of the plan identified in subdivision (3) of this subsection and review progress of the plan at the regular meetings held at least every three months pursuant to this section, or at shorter intervals, as ordered by the court, and shall
report to the court on the progress of the plan or if additional
modification is necessary.

(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.

*§49-4-409. After-care plans; contents; written comments;
contacts; objections; courts.

(a) Prior to the discharge of a child from any out-of-home
placement to which the juvenile was committed pursuant to this
chapter, the department or the Division of Juvenile Services shall
convene 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 juvenile’s proposed after-care
plan to the court which committed the juvenile. A copy of the
plan shall also be sent to: (1) The child’s parent, guardian or

*NOTE: This section was also amended by H. B. 2200 (Chapter 46),
which passed prior to this act.
(b) The after-care plan shall contain a detailed description of
the education, counseling and treatment which the child received
at the out-of-home placement 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 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 circuit 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 circuit 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.

§49-4-413. Individualized case planning.

(a) For any juvenile ordered to probation supervision pursuant to section seven hundred fourteen, article four of this chapter, the probation officer assigned to the juvenile shall develop and implement an individualized case plan in consultation with the juvenile’s parents, guardian or custodian, and other appropriate parties, and based upon the results of a risk and needs assessment conducted within the last six months prior
to the disposition to probation. The probation officer shall work with the juvenile and his or her family, guardian or custodian to implement the case plan following disposition. At a minimum, the case plan shall:

(1) Identify the actions to be taken by the juvenile and, if appropriate, the juvenile’s parents, guardian or custodian to ensure future lawful conduct and compliance with the court’s disposition order; and

(2) Identify the services to be offered and provided to the juvenile and, if appropriate, the juvenile’s parents, guardian or custodian and may include services to address: Mental health and substance abuse issues; education; individual, group and family counseling services; community restoration; or other relevant concerns identified by the probation officer.

(b) For any juvenile disposed to an out-of-home placement with the department, the department shall ensure that the residential service provider develops and implements an individualized case plan based upon the recommendations of the multidisciplinary team pursuant to section four hundred six, article four of this chapter and the results of a risk and needs assessment. At a minimum, the case plan shall include:

(1) Specific treatment goals and the actions to be taken by the juvenile in order to demonstrate satisfactory attainment of each goal;

(2) The services to be offered and provided by the residential service providers; and

(3) A detailed plan designed to assure appropriate reintegration of the juvenile to his or her family, guardian, school and community following the satisfactory completion of the case plan treatment goals, including a protocol and timeline for engaging the parents, guardians or custodians prior to the release of the juvenile.
(c) For any juvenile committed to the Division of Juvenile Services, the Division of Juvenile Services shall develop and implement an individualized case plan based upon the recommendations made to the court by the multidisciplinary team pursuant to section four hundred six, article four of this chapter and the results of a risk and needs assessment. At a minimum, the case plan shall include:

(1) Specific correctional goals and the actions to be taken by the juvenile to demonstrate satisfactory attainment of each goal;

(2) The services to be offered and provided by the Division of Juvenile Services and any contracted service providers; and

(3) A detailed plan designed to assure appropriate reintegration of the juvenile to his or her family, guardian, school and community following the satisfactory completion of the case plan treatment goals, including a protocol and timeline for engaging the parents, guardians or custodians prior to the release of the juvenile.

*§49-4-702. Prepetition diversion to informal resolution; mandatory prepetition diversion program for status offenses and misdemeanor offenses; prepetition review team.*

(a) Before a juvenile petition is formally filed with the court, the court may refer the matter to a case worker, probation officer or truancy diversion specialist for preliminary inquiry to determine whether the matter can be resolved informally without the formal filing of a petition with the court.

(b) (1) If the matter is for a truancy offense, the prosecutor shall refer the matter to a state department worker, probation
officer or truancy diversion specialist who shall develop a
diversion program pursuant to subsection (d) of this section.

(2) If the matter is for a status offense other than truancy, the
prosecutor shall refer the juvenile to a case worker or probation
officer who shall develop a diversion program pursuant to
subsection (d) of this section.

(3) The prosecutor is not required to refer the juvenile for
development of a diversion program pursuant to subdivision (1)
or (2) of this subsection and may proceed to file a petition with
the court if he or she determines:

(A) The juvenile has a prior adjudication for a status or
delinquency offense; or

(B) There exists a significant and likely risk of harm to the
juvenile, a family member or the public.

(c) If the matter is for a nonviolent misdemeanor offense, the
prosecutor shall determine whether the case can be resolved
informally through a diversion program without the filing of a
petition. If the prosecutor determines that a diversion program is
appropriate, it shall refer the matter to a case worker or probation
officer who shall develop a diversion program pursuant to
subsection (d) of this section.

(d) (1) When developing a diversion program, the case
worker, probation officer or truancy diversion specialist shall:

(A) Conduct an assessment of the juvenile to develop a
diversion agreement;

(B) Create a diversion agreement;

(C) Obtain consent from the juvenile and his or her parent,
guardian or custodian to the terms of the diversion agreement;
(D) Refer the juvenile and, if necessary, his or her parent, guardian or custodian to services in the community pursuant to the diversion agreement.

(2) A diversion agreement may include:

(A) Referral to community services as defined in section two hundred six, article one of this chapter for the juvenile to address the assessed need;

(B) Referral to services for the parent, guardian or custodian of the juvenile;

(C) Referral to one or more community work service programs for the juvenile;

(D) A requirement that the juvenile regularly attend school;

(E) Community-based sanctions to address noncompliance;

or

(F) Any other efforts which may reasonably benefit the community, the juvenile and his or her parent, guardian or custodian.

(3) When a referral to a service provider occurs, the service provider shall make reasonable efforts to contact the juvenile and his or her parent, custodian or guardian within seventy-two hours of the referral.

(4) Upon request by the case worker, probation officer or truancy diversion specialist, the court may enter reasonable and relevant orders to the parent, custodian or guardian of the juvenile who have consented to the diversion agreement as is necessary and proper to carry out the agreement.

(5) If the juvenile and his or her parent, custodian or guardian do not consent to the terms of the diversion agreement
created by the case worker, probation officer or truancy diversion specialist, the petition may be filed with the court.

(6) Referral to a prepetition diversion program shall toll the statute of limitations for status and delinquency offenses.

(7) Probation officers may be authorized by the court to participate in a diversion program.

(e) The case worker, probation officer or truancy diversion specialist shall monitor the juvenile’s compliance with any diversion agreement.

(1) If the juvenile successfully completes the terms of the diversion agreement, a petition shall not be filed with the court and no further action shall be taken.

(2) If the juvenile is unsuccessful in or noncompliant with the diversion agreement, the diversion agreement shall be referred to a prepetition review team convened by the case worker, probation officer or the truancy diversion specialist: Provided, That if a new delinquency offense occurs, a petition may be filed with the court.

(f) (1) The prepetition review team may be a subset of a multidisciplinary team established pursuant to section four hundred six, article four of this chapter.

(2) The prepetition review team may consist of:

(A) A case worker knowledgeable about community services available and authorized to facilitate access to services;

(B) A service provider;

(C) A school superintendent or his or her designee; or

(D) Any other person, agency representative, member of the juvenile’s family, or a custodian or guardian who may assist in
providing recommendations on community services for the particular needs of the juvenile and his or her family.

(3) The prepetition review team shall review the diversion agreement and the service referrals completed and determine whether other appropriate services are available to address the needs of the juvenile and his or her family.

(4) The prepetition review shall occur within fourteen days of referral from the state department worker, probation officer or truancy diversion specialist.

(5) After the prepetition review, the prepetition review team may:

(A) Refer a modified diversion agreement back to the case worker, probation officer or truancy diversion specialist;

(B) Advise the case worker, probation officer or truancy diversion specialist to file a petition with the court; or

(C) Advise the case worker to open an investigation for child abuse or neglect.

(g) The requirements of this section are not mandatory until July 1, 2016: Provided, That nothing in this section prohibits a judicial circuit from continuing to operate a truancy or other juvenile treatment program that existed as of January 1, 2015: Provided, however, That any judicial circuit desiring to create a diversion program after the effective date of this section and prior to July 1, 2016, may only do so pursuant to this section.

§49-4-702a. Noncustodial counseling or community services provided to a juvenile; prepetition counsel and advice.

(a) The court at any time, or the department or other official upon a request from a parent, guardian or custodian, may, before
a petition is filed under this article, refer a juvenile alleged to be
a delinquent or a status offender to a counselor at the department
or a community mental health center, other professional
counselor in the community or to a truancy diversion specialist.
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, setting forth the facts and
stating that a noncustodial order will be sought from the court
directing the juvenile to submit to counseling or community
services. The notice shall set forth the time and place for the
hearing on the matter. The court or referee after a hearing may
direct the juvenile to participate in a noncustodial period of
counseling or community services that may not exceed six
months. Upon recommendation of the department or request by
the juvenile’s parent, custodian or guardian, the court or referee
may allow or require the parent, custodian or guardian to
participate in this noncustodial counseling or community
services. No information obtained as the result of counseling or
community services is admissible in a subsequent proceeding
under this article.

(b) 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.
(c) 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.

*§49-4-711. Adjudication for alleged status offenders and delinquents; mandatory initial disposition of status offenders.*

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 silent, in which event the court shall enter a general denial of all allegations in the petition.

(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.

(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.

(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. The court shall receive and consider the results of the risk and

*NOTE: This section was also amended by H. B. 2200 (Chapter 46), which passed prior to this act.*
needs assessment prior to or at the disposition pursuant to section seven hundred twenty-four, article four of this chapter.

(4) If the allegations in a petition alleging that the juvenile is a status offender are admitted or sustained by clear and convincing evidence, the court shall consider the results of the risk and needs assessment prior to or at the disposition pursuant to section seven hundred twenty-four, article four of this chapter and 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 twelve of this article or dismisses the case from its docket: Provided, That in a judicial circuit operating a 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: Provided, however, That a circuit judge may also refer a truant juvenile to a truancy diversion specialist.

(5) If the allegations in a petition are not sustained by evidence as provided in subsections (c) and (d) 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. The record shall include the treatment and rehabilitation plan the court has adopted after recommendation by the multidisciplinary team as provided for in section four hundred six, article four of this chapter.
§49-4-712. Intervention and services by the department pursuant to initial disposition for status offenders; enforcement; further disposition; detention; out-of-home placement; department custody; least restrictive alternative; appeal; prohibiting placement of status offenders in a Division of Juvenile Services facility on or after January 1, 2016.

(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 juvenile, or his or her parent, guardian or custodian, fails to comply with the services provided in subsection (a) of this section, 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: Provided, That a juvenile adjudicated as a status offender may not be placed in an out-of-home

*NOTE: This section was also amended by H. B. 2200 (Chapter 46), which passed prior to this act.
placement, excluding placements made for abuse and neglect, if that juvenile has had no prior adjudications for a status or delinquency offense, or no prior disposition to a pre-adjudicatory improvement period or probation for the current matter: Provided, however, That if the court finds by clear and convincing evidence the existence of a significant and likely risk of harm to the juvenile, a family member or the public and continued placement in the home is contrary to the best interests of the juvenile, such juvenile may be ordered to an out-of-home placement: Provided further, That the court finds the department has made all reasonable efforts to prevent removal of the juvenile from his or her home, or that such reasonable efforts are not required due to an emergent situation.

(c) In ordering any further disposition under this section, the court is not limited to the relief sought in the department’s petition and shall make reasonable efforts to prevent removal of the juvenile from his or her home or, as an alternative, to place the juvenile in a community-based facility which is the least restrictive alternative appropriate to the needs of the juvenile and the community. The disposition may include reasonable and relevant orders to the parents, guardians or custodians of the juvenile as is necessary and proper to effectuate the disposition.

(d) (1) If the court finds that placement in a residential facility is necessary to provide the services under subsection (a) of this section, except as prohibited by subdivision (2), subsection (b) of this section, the court shall make findings of fact as to the necessity of this placement, stated on the record or reduced to writing and filed with the record or incorporated into the order of the court.

(2) The findings of fact shall include the factors that indicate:

(A) The likely effectiveness of placement in a residential facility for the juvenile; and
(B) The community services which were previously attempted.

(e) 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 not guilty. Any order providing disposition other than mandatory referral to the department for services is subject to appeal to the Supreme Court of Appeals.

(f) 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.

(g) A juvenile adjudicated solely as a status offender on or after January 1, 2016, may not be placed in a Division of Juvenile Services facility.

§49-4-714. Disposition of juvenile delinquents; appeal.

(a) In aid of disposition of juvenile delinquents, the juvenile probation officer assigned to the juvenile 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 the use of a standardized screener, as defined in section two hundred six, article one of this chapter or, if additional information is necessary, a psychological examination of the juvenile. The report of an examination and other investigative and social reports shall not be relied upon the court in making a
determination of adjudication. 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 receive and consider the results of a risk and needs assessment conducted pursuant to section seven hundred twenty-four, article four of this chapter and shall conduct the disposition, giving all parties an opportunity to be heard. The disposition may include reasonable and relevant orders to the parents, custodians or guardians of the juvenile as is necessary and proper to effectuate the disposition. At 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 supervision of a probation officer of the court or of the court of the county where the juvenile has his or her usual place of abode or other person while leaving the juvenile in custody of his or her parent or custodian; and (B) prescribe a program of treatment or therapy or limit the juvenile’s activities under terms which are reasonable and within the child’s ability to perform, including participation in the litter control program established pursuant to section three, article fifteen-a, chapter twenty-two of this code or other appropriate programs of community service;

(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, risk and needs assessment results, medical reports
and evaluations or any other such 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 such maximum allowable term of confinement to be served in a juvenile correctional facility shall 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.

The court shall make all reasonable efforts to place the juvenile in the least restrictive alternative appropriate to the needs of the juvenile and the community: Provided, That a juvenile adjudicated delinquent for a nonviolent misdemeanor offense may not be placed in an out-of-home placement within the Division of Juvenile Services or the department if that juvenile has no prior adjudications as either a status offender or as a delinquent, or no prior dispositions to a pre-adjudicatory
improvement period or probation for the current matter, excluding placements made for abuse or neglect: Provided, however, That if the court finds by clear and convincing evidence that there is a significant and likely risk of harm, as determined by a risk and needs assessment, to the juvenile, a family member or the public and that continued placement in the home is contrary to the best interest of the juvenile, such juvenile may be ordered to an out-of-home placement: Provided further, That the department has made all reasonable efforts to prevent removal of the juvenile from his or her home, or that reasonable efforts are not required due to an emergent situation.

(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 shall not be affected by the fact that the juvenile demanded a trial by jury or made a plea of not guilty. Any disposition 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 shall 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) Following a disposition under subdivision (4), (5) or (6), subsection (b) of this section, the court shall include in the findings of fact the treatment and rehabilitation plan the court has adopted upon recommendation of the multidisciplinary team under section four hundred six, article four of this chapter.
(g) 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.

*§49-4-718. 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

(2) Upon the request of the juvenile or a juvenile’s parent, guardian or custodian who alleges a change of circumstances relating to disposition of the juvenile.

(b) Upon such a motion or request, the court shall conduct a review hearing, 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 hearing shall be given to the juvenile, the juvenile’s parent, guardian or custodian and all counsel not less than seventy-two hours prior to the proceeding. The court shall review the performance of the juvenile, the juvenile’s parent or custodian, the juvenile’s case worker and other persons providing assistance to the juvenile or juvenile’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 disposition order and impose a more restrictive alternative if it finds clear and convincing proof of substantial violation. In the absence of such evidence, the court may decline to modify the dispositional order or may modify the order and impose one of

*NOTE: This section was also amended by H. B. 2200 (Chapter 46), which passed prior to this act.*
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 relief 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.

(d) (1) For dispositional orders that include probation, the juvenile’s probation officer shall submit an overview to the court of the juvenile’s compliance with the conditions of probation and goals of his or her case plan every ninety days.

(2) If the juvenile is compliant and no longer in need of probation supervision, the probation officer shall submit a recommendation for discharge from probation supervision. If the court determines that early termination of the probation term is warranted, it may issue an order discharging the juvenile from probation without conducting a review hearing.

(3) If the juvenile is not compliant with the conditions or has not met his or her goals, the probation officer shall include an accompanying recommendation to the court with additional or changed conditions or goals necessary to achieve compliance. If the court determines that changes to the conditions of probation are warranted, the court shall conduct a review hearing in accordance with subsection (b) of this section.

*§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

* NOTE: This section was also amended by H. B. 2200 (Chapter 46), which passed prior to this act.
the Supreme Court of Appeals, shall appoint one or more
juvenile probation officers and clerical assistants for the circuit.
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 such 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.

(c) (1) The Supreme Court of Appeals may develop a system
of community-based juvenile probation sanctions and incentives
to be used by probation officers in response to violations of
terms and conditions of probation and to award incentives for
positive behavior.
(2) The community-based juvenile probation sanctions and incentives may consist of a continuum of responses from the least restrictive to the most restrictive, designed to respond swiftly, proportionally and consistently to violations of the terms and conditions of probation and to reward compliance therewith.

(3) The purpose of community-based juvenile probation sanctions and incentives is to reduce the amount of resources and time spent by the court addressing probation violations, to reduce the likelihood of a new status or delinquent act, and to encourage and reward positive behavior by the juvenile on probation prior to any attempt to place a juvenile in an out-of-home placement.

§49-4-724. Standardized risk and needs assessment.

(a) The Supreme Court of Appeals is requested to adopt a risk and needs assessment to be used for juvenile dispositions. A validation study of the risk and needs assessment may be conducted at least every three years to ensure that the risk and needs assessment is predictive of the risk of reoffending.

(b) Each juvenile adjudicated for a status or delinquency offense in accordance with this chapter shall undergo a risk and needs assessment prior to disposition to identify specific factors that predict a juvenile’s likelihood of reoffending and, when appropriately addressed, may reduce the likelihood of reoffending. The risk and needs assessment may be conducted by a probation officer, other court official or the state department worker trained to conduct the risk and needs assessment.

(c) Each multidisciplinary team convened pursuant to section four hundred six, article four of this chapter shall receive and consider the results of the risk and needs assessment of the juvenile.
§49-4-725. Restorative justice programs.

(a) The court or prosecuting attorney may divert a juvenile referred to the court for a status offense or for a nonviolent misdemeanor offense to a restorative justice program, where available, prior to adjudication.

(b) A restorative justice program shall:

(1) Emphasize repairing the harm against the victim and the community caused by the juvenile;

(2) Include victim-offender dialogues or family group conferencing attended voluntarily by the victim, the juvenile offender, a facilitator, a victim advocate, community members, or supporters of the victim or the juvenile offender that provide an opportunity for the offender to accept responsibility for the harm caused to those affected by the crime and to participate in setting consequences to repair the harm; and

(3) Implement sanctions for the juvenile, including, but not limited to, restitution to the victim, restitution to the community, services for the victim or the community, or any other sanction intended to provide restitution to the victim or the community.

(c) If a juvenile is referred to, and successfully completes, a restorative justice program, the petition against the juvenile shall be dismissed.

(d) No information obtained as the result of a restorative justice program is admissible in a subsequent proceeding under this article.
ARTICLE 5. RECORDKEEPING AND DATABASE.

*§49-5-103. Confidentiality of juvenile records; permissible disclosures; 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 (b) 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:

*NOTE: This section was also amended by H. B. 2200 (Chapter 46), which passed prior to this act.*
(1) A circuit court judge or magistrate has determined that
there is probable cause to believe that the juvenile committed the
offense as charged;

(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 a preadjudicatory 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 shall 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.
147 (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.

156 (13) If a circuit 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.

163 (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.

177 (d) Notwithstanding the provisions of subsection (b) 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 the provisions of 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 the provisions of 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, 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 shall be 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.

(8) Notwithstanding any other provision of this code, juvenile records shall be disclosed, or copies made available, to the department or the Division of Juvenile Services for purposes of case planning for the juvenile and his or her parents, custodians or guardians.

(e) Any records open to public inspection pursuant to this section are subject to the same requirements governing the disclosure of adult criminal records.
(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 who violates this section is also liable for damages in the amount of $300 or actual damages, whichever is greater.

§49-5-106. Data collection.

(a) The Division of Juvenile Services, the department and the Supreme Court of Appeals shall establish procedures to jointly collect and compile data necessary to calculate juvenile recidivism and the outcome of programs.

(b) For each juvenile who enters into a diversion agreement, is placed on an improvement period, is placed on probation or is placed in an out-of-home placement as defined by section two hundred six, article one of this chapter, the data and procedures developed in subsection (a) shall include:

1. New offense referrals to juvenile court or criminal court within three years of completion of the diversion agreement, release from court jurisdiction or release from agency custody;

2. Adjudications for a delinquent or status offense by a juvenile or a conviction by a criminal court within three years of completion of the diversion agreement, release from court jurisdiction or release from agency custody;

3. Commitments to the Division of Juvenile Services, the department, excluding out-of-home placements made for child welfare or abuse and neglect purposes, or incarceration with the Division of Corrections within three years of completion of the diversion agreement, release from court jurisdiction or release from agency custody; and

4. The number of out-of-home placements ordered where the judge found by clear and convincing evidence the existence
of a significant and likely risk of harm to the juvenile, a family
member or the public.

(c) For youth placed in programs operated or funded by the
Division of Juvenile Services, the department or the Supreme
Court of Appeals, including youth reporting centers, juvenile
drug courts, restorative justice programs and teen courts, the
division, department and Supreme Court shall develop
procedures using, at a minimum, the measures in subsection (b)
of this section to track and record outcomes of each program,
and to demonstrate that the program reduces the likelihood of
reoffending for the youth referred to the program.

(d) For youth referred to truancy diversion specialists or
other truancy diversion programs operated or funded by the
Supreme Court of Appeals, the Division of Juvenile Services, the
Department of Health and Human Resources, the Department of
Education or other political subdivisions, that branch of
government or agency shall develop procedures to track and
record outcomes of each program, and to evaluate the
effectiveness in reducing unexcused absences for the youth
referred to the program. At a minimum, this outcome data shall
include:

(1) The number of youth successfully completing the truancy
diversion program;

(2) The number of youth who are referred to the court
system after failing to complete a truancy diversion program;

(3) The number of youth who, after successfully completing
a truancy diversion program, accumulate five or more unexcused
absences in the current or subsequent school year.

(e) The Supreme Court of Appeals, the Division of Juvenile
Services, the Department of Health and Human Resources and
the Department of Education shall also establish procedures to jointly collect and compile data relating to disproportionate minority contact, which is defined as the proportion of minority youth who come into contact with the juvenile justice system in relation to the proportion of minority youth in the general population, and the compilation shall include data indicating the prevalence of such disproportionality in each county. Data shall include, at a minimum, the race and gender of youth arrested or referred to court, entered into a diversion program, adjudicated and disposed.

CHAPTER 151

(Com. Sub. for H. B. 2217 - By Delegate(s) Overington, Walters, Cowles, Upson, Blair, Espinosa, Deem, R. Phillips, Shott, R. Smith and Sobonya)

[Passed February 10, 2015; in effect ninety days from passage.]
[Approved by the Governor on February 18, 2015.]

AN ACT to amend and reenact §21-1-2 of the Code of West Virginia, 1931, as amended, relating to the qualifications of the Commissioner of Labor; removing language that the commissioner be identified with the labor interests of the state and requiring that the commissioner be identified with and have knowledge and experience in employee issues and interests including employee-employer relations in this state; and removing language generally related to appointment and term of the Commissioner of Labor.

Be it enacted by the Legislature of West Virginia:

That §21-1-2 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:
ARTICLE 1. DIVISION OF LABOR.

§21-1-2. Appointment of Commissioner of Labor; qualifications; term of office; salary.

1 The state Commissioner of Labor shall be appointed by the Governor, by and with the advice and consent of the Senate. He or she shall be a competent person, who is identified with and has knowledge and experience in employee issues and interests including employee-employer relations in this state. The commissioner shall receive an annual salary as provided in section two-a, article seven, chapter six of this code.

CHAPTER 152

(Com. Sub. for S. B. 12 - By Senators Carmichael, Boley, Ferns, Gaunch, D. Hall, M. Hall, Karnes, Mullins, Sypolt, Nohe, Trump, Blair and Cole (Mr. President))

[Passed March 13, 2015; in effect ninety days from passage.]
[Approved by the Governor on March 31, 2015.]

AN ACT to amend and reenact §21-5-1 and §21-5-4 of the Code of West Virginia, 1931, as amended, relating to payment of wages by employers; defining terms; providing for how payments may be made; requiring certain payments by the next regular payday; providing for payments pursuant to certain agreements; reducing amount of liquidated damages available for violation of this section; providing instance when liquidated damages are not available; clarifying that section does not address whether overtime pay is due; authorizing payment by mail if requested by employee; and establishing date paid if payment mailed pursuant to employee request.
Be it enacted by the Legislature of West Virginia:

That §21-5-1 and §21-5-4 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 5. WAGE PAYMENT AND COLLECTION.

§21-5-1. Definitions.

1. As used in this article:

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

3. (b) The term “employee” or “employees” includes any person suffered or permitted to work by a person, firm or corporation.

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

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

6. (e) The term “railroad company” includes any firm or corporation engaged primarily in the business of transportation by rail.
(f) The term “special agreement” means an arrangement filed with and approved by the commissioner whereby a person, firm or corporation is permitted upon a compelling showing of good cause to establish regular paydays less frequently than once in every two weeks: Provided, That in no event shall the employee be paid in full less frequently than once each calendar month on a regularly established schedule.

(g) The term “deductions” includes amounts required by law to be withheld, and amounts authorized for union or club dues, pension plans, payroll savings plans, credit unions, charities and hospitalization and medical insurance.

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

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

(j) The term “construction” means the furnishing of work in the fulfillment of a contract for the construction, alteration, decoration, painting or improvement of a new or existing building, structure, roadway or pipeline, or any part thereof, or for the alteration, improvement or development of real property: Provided, That construction performed for the owner or lessee of a single family dwelling or a family farming enterprise is excluded.

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

(l) The term “fringe benefits” means any benefit provided an employee or group of employees by an employer, or which is required by law, and includes regular vacation, graduated
vacation, floating vacation, holidays, sick leave, personal leave, production incentive bonuses, sickness and accident benefits and benefits relating to medical and pension coverage.

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

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

§21-5-4. Cash orders; employees separated from payroll before paydays.

(a) In lieu of lawful money of the United States, any person, firm or corporation may compensate employees for services by cash order which may include checks, direct deposits or money orders on banks convenient to the place of employment where suitable arrangements have been made for the cashing of the checks by employees or deposit of funds for employees for the full amount of wages.

(b) Whenever a person, firm or corporation discharges an employee, or whenever an employee quits or resigns from employment, the person, firm or corporation shall pay the employee’s wages due for work that the employee performed prior to the separation of employment on or before the next regular payday on which the wages would otherwise be due and payable: Provided, That fringe benefits, as defined in section one of this article, that are provided an employee pursuant to an agreement between the employee and employer and that are due, but pursuant to the terms of the agreement, are to be paid at a future date or upon additional conditions which are ascertainable are not subject to this subsection and are not payable on or before the next regular payday, but shall be paid according to the terms of the agreement. For purposes of this section, “business
"day” means any day other than Saturday, Sunday or any legal holiday as set forth in section one, article two, chapter two of this code.

(c) Payment under this section may be made in person in any manner permissible under section three of this article, through the regular pay channels or, if requested by the employee, by mail. If the employee requests that payment under this section be made by mail, that payment shall be considered to have been made on the date the mailed payment is postmarked.

(d) When work of any employee is suspended as a result of a labor dispute, or when an employee for any reason whatsoever is laid off, the person, firm or corporation shall pay in full to the employee not later than the next regular payday, either through the regular pay channels or by mail if requested by the employee, wages earned at the time of suspension or layoff.

(e) If a person, firm or corporation fails to pay an employee wages as required under this section, the person, firm or corporation, in addition to the amount which was unpaid when due, is liable to the employee for two times that unpaid amount as liquidated damages. This section regulates the timing of wage payments upon separation from employment and not whether overtime pay is due. Liquidated damages that can be awarded under this section are not available to employees claiming they were misclassified as exempt from overtime under state and federal wage and hour laws. Every employee shall have a lien and all other rights and remedies for the protection and enforcement of his or her salary or wages, as he or she would have been entitled to had he or she rendered service therefor in the manner as last employed; except that, for the purpose of liquidated damages, the failure shall not be deemed to continue after the date of the filing of a petition in bankruptcy with respect to the employer if he or she is adjudicated bankrupt upon the petition.
AN ACT to amend and reenact §21-5-3 of the Code of West Virginia, 1931, as amended, relating to payment of wages by employers; and authorizing payment of employees twice a month.

Be it enacted by the Legislature of West Virginia:

That §21-5-3 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 5. WAGE PAYMENT AND COLLECTION.

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

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

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

1. In lawful money of the United States;

2. By cash order as described and required in section four of this article;
(3) By deposit or electronic transfer of immediately available funds into an employee’s payroll card account in a federally insured depository institution. The term “payroll card account” means an account in a federally insured depository institution that is directly or indirectly established through an employer and to which electronic fund transfers of the employee’s wages, salary, commissions or other compensation are made on a recurring basis, whether the account is operated or managed by the employer, a third-party payroll processor, a depository institution or another person. “Payroll card” means a card, code or combination thereof or other means of access to an employee’s payroll card account, by which the employee may initiate electronic fund transfers or use a payroll card to make purchases or payments. Payment of employee compensation by means of a payroll card must be agreed upon in writing by both the person, form or corporation paying the compensation and the person being compensated; or

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

(c) If, at any time of payment, any employee shall be absent from his or her regular place of labor and shall not receive his or her wages through a duly authorized representative, he or she shall be entitled to payment at any time thereafter upon demand upon the proper paymaster at the place where his or her wages are usually paid and where the next pay is due.
(d) Nothing herein contained shall affect the right of an employee to assign part of his or her claim against his or her employer except as in subsection (e) of this section.

(e) No assignment of or order for future wages shall be valid for a period exceeding one year from the date of the assignment or order. An assignment or order shall be acknowledged by the party making the same before a notary public or other officer authorized to take acknowledgments, and any order or assignment shall specify thereon the total amount due and collectible by virtue of the same and three fourths of the periodical earnings or wages of the assignor shall at all times be exempt from such assignment or order and no assignment or order shall be valid which does not so state upon its face: Provided, That no such order or assignment shall be valid unless the written acceptance of the employer of the assignor to the making thereof is endorsed thereon: Provided, however, That nothing herein contained shall be construed as affecting the right of employer and employees to agree between themselves as to deductions to be made from the payroll of employees.

CHAPTER 154

(Com. Sub. for H. B. 2233 - By Delegate(s) Walters, Sobonya, Rohrbach, Ambler, Mr. Speaker (Mr. Armstead), Storch, H. White, R. Phillips, Ireland, Hanshaw and E. Nelson)

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

AN ACT to amend and reenact §29A-3-16 of the Code of West Virginia, 1931, as amended, relating to authorizing the Legislative Rule-Making Review Committee, with the assistance of the
Legislative Auditor’s Office, to review any interpretive, procedural and current legislative rule to determine if it is achieving its purpose; and requiring the Legislative Rule-Making Review Committee to make recommendations to the applicable agency or board and the Joint Committee on Government and Finance for amendment or repeal of the rule.

Be it enacted by the Legislature of West Virginia:

That §29A-3-16 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 3. RULE-MAKING.

§29A-3-16. Legislative review of procedural rules, interpretive legislative rules.

(a) The Legislative Rule-Making Review Committee may, with the assistance of the Legislative Auditor’s Office, review any procedural rule, interpretive rule or existing legislative rule to determine if the rule is achieving its purpose, and based on its determination, if the rule should be continued, amended or repealed.

(b) Following the review, the Legislative Rule-Making Committee shall make recommendations to the agency or board, which promulgated the rule, and to the Joint Committee on Government and Finance.
AN ACT to amend and reenact article 2, chapter 64 of the Code of West Virginia, 1931, as amended, relating generally to promulgation of administrative rules by Department of Administration; legislative mandate or authorization for promulgation of certain legislative rules by various executive or administrative agencies of the state; authorizing certain of the agencies to promulgate certain legislative rules in the form that the rules were filed in the State Register; authorizing certain of the agencies to promulgate certain legislative rules with various modifications presented to and recommended by the Legislative Rule-Making Review Committee; authorizing Department of Administration to promulgate a legislative rule relating to Purchasing Division; authorizing Department of Administration to promulgate a legislative rule relating to state-owned vehicles; authorizing Department of Administration to promulgate a legislative rule relating to the state plan for the operation of the West Virginia State Agency for Surplus Property; authorizing Consolidated Public Retirement Board to promulgate a legislative rule relating to refund, reinstatement, retroactive service, loan and employer error interest factors; authorizing Consolidated Public Retirement Board to promulgate a legislative rule relating to Deputy Sheriffs Retirement System; authorizing Consolidated Public Retirement Board to promulgate a legislative rule relating to service credit for accrued and unused sick and annual leave; and authorizing Office of Technology to promulgate a legislative rule relating to the procedures for sanitization, retirement and disposition of information technology equipment.
Be it enacted by the Legislature of West Virginia:

That article 2, chapter 64 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 2. AUTHORIZATION FOR DEPARTMENT OF ADMINISTRATION TO PROMULGATE LEGISLATIVE RULES.

§64-2-1. Department of Administration.

(a) The legislative rule filed in the State Register on July 30, 2014, authorized under the authority of section four, article three, chapter five-a of this code, modified by the Department of Administration to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on September 16, 2014, relating to the Department of Administration (Purchasing Division, 148 CSR 1), is authorized with the following amendments:

On page two, subsection 3.2, by striking out the proposed word “will” that is underscored and reinstating the word “shall”; and by making such similar strikes of the underscored word “will” and reinstate the word “shall” throughout the rule;

On page thirteen, subdivision 7.2.b.3, after the word “appropriate” and the comma by inserting the word “or”;

On page fourteen, subdivision 7.6.a., after the word “procure” by striking out the words “goods or services” and inserting in lieu thereof the words “specific commodities for immediate delivery”;

On page fourteen, subdivision 7.5.b., after the words “if possible” by striking the comma and the words “and any” and inserting in lieu thereof a period and the word “Any”; and
On page fourteen, subdivision 7.6.c., after the words “procurement of” by striking out the words “goods or services” and inserting in lieu thereof the words “specific commodities for immediate delivery”.

(b) The legislative rule filed in the State Register on July 29, 2014, authorized under the authority of section forty-eight, article three, chapter five-a of this code, modified by the Department of Administration to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on September 16, 2014, relating to the Department of Administration (state owned vehicles, 148 CSR 3), is authorized.

(c) The legislative rule filed in the State Register on July 30, 2014, authorized under the authority of section forty-four, article three, chapter five-a of this code, modified by the Department of Administration to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on September 16, 2014, relating to the Department of Administration (state plan for the operation of the West Virginia State Agency for Surplus Property, 148 CSR 4), is authorized.


(a) The legislative rule filed in the State Register on July 31, 2014, authorized under the authority of section one, article ten-d, chapter five of this code, relating to the Consolidated Public Retirement Board (refund, reinstatement, retroactive service, loan and employer error interest factors, 162 CSR 7), is authorized.

(b) The legislative rule filed in the State Register on July 31, 2014, authorized under the authority of section one, article ten-d, chapter five of this code, relating to the Consolidated Public Retirement Board (Deputy Sheriff Retirement System, 162 CSR 10), is authorized.

The legislative rule filed in the State Register on July 30, 2014, authorized under the authority of section four, article six, chapter five-a of this code, modified by the Office of Technology to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on October 3, 2014, relating to the Office of Technology (procedures for sanitization, retirement and disposition of information technology equipment, 163 CSR 1), is authorized.
Rule-Making Review Committee; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to permits for construction and major modification of major stationary sources for the prevention of significant deterioration of air quality; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to standards of performance for new stationary sources; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to the control of air pollution from hazardous waste treatment, storage and disposal facilities; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to requirements for operating permits; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to emission standards for hazardous air pollutants; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to the awarding of WV Stream Partners Program Grants; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to the hazardous waste management system; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to requirements governing water quality standards; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to the WV/NPDES rule for coal mining facilities; and, authorizing the Department of Environmental Protection to promulgate a legislative rule relating to waste management.

Be it enacted by the Legislature of West Virginia:

That article 3, chapter 64 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 3. AUTHORIZATION FOR DEPARTMENT OF ENVIRONMENTAL PROTECTION TO PROMULGATE LEGISLATIVE RULES.
§64-3-1. Department of Environmental Protection.

(a) The legislative rule filed in the State Register on July 23, 2014, authorized under the authority of section four, article five, chapter twenty-two, of this code, relating to the Department of Environmental Protection (permits for construction and major modification of major stationary sources for the prevention of significant deterioration of air quality, 45 CSR 14), is authorized.

(b) The legislative rule filed in the State Register on July 23, 2014, authorized under the authority of section four, article five, chapter twenty-two of this code, relating to the Department of Environmental Protection (standards of performance for new stationary sources, 45 CSR 16), is authorized.

(c) The legislative rule filed in the State Register on July 23, 2014, authorized under the authority of section four, article five, chapter twenty-two of this code, relating to the Department of Environmental Protection (control of air pollution from hazardous waste treatment, storage or disposal facilities, 45 CSR 25), is authorized.

(d) The legislative rule filed in the State Register on July 23, 2014, authorized under the authority of section four, article five, chapter twenty-two of this code, relating to the Department of Environmental Protection (requirements for operating permits, 45 CSR 30), is authorized.

(e) The legislative rule filed in the State Register on July 25, 2014, authorized under the authority of section four, article five, chapter twenty-two of this code, relating to the Department of Environmental Protection (emission standards for hazardous air pollutants, 45 CSR 34), is authorized.

(f) The legislative rule filed in the State Register on July 29, 2014, authorized under the authority of section four, article thirteen, chapter twenty of this code, relating to the Department
of Environmental Protection (awarding of WV Stream Partners Program Grants, 60 CSR 4), is authorized with the amendment set forth below:

On page two, subsection 4.2, line twenty-two, following the words “furnished by”, by striking out the words “watershed association” and inserting in lieu thereof the word “organization”;

On page two, subsection 4.2, line twenty-five, following the words “in which the”, by striking out the word “entity” and inserting in lieu thereof the word “organization”;

On page three, subdivision 5.2.f, line sixteen, following the words “expenses for”, by striking out the words “watershed association” and inserting in lieu thereof the word “organization”; And,

On page three, subdivision 5.2.g, line seventeen, following the words “support the”, by striking out the words “watershed association’s” and inserting in lieu thereof the word “organization’s”.

(g) The legislative rule filed in the State Register on July 30, 2014, authorized under the authority of section six, article eighteen, chapter twenty-two of this code, relating to the Department of Environmental Protection (hazardous waste management system, 33 CSR 20), is authorized.

(h) The legislative rule filed in the State Register on August 1, 2014, authorized under the authority of section four, article eleven, chapter twenty-two of this code, relating to the Department of Environmental Protection (requirements governing water quality standards, 47 CSR 2), is authorized.

Provided; that the Secretary of the Department of Environmental
Protection shall consider, for the 2017 triennial review, potential alternative applications for the Category A drinking water use designation to the waters of the state, taking into consideration stream flow, depth, and distance to a public water intake.

(i) The legislative rule filed in the State Register on July 28, 2014, authorized under the authority of section three, article one, chapter twenty-two, of this code, relating to the Department of Environmental Protection (WV/NPDES rule for coal mining facilities, 47 CSR 30), is authorized

(j) The legislative rule filed in the State Register on August 12, 2014, authorized under the authority of section eight, article fifteen, chapter twenty-two, of this code, modified by the Department of Environmental Protection to meet the objections of the Legislative Rule-making Review Committee and refiled in the State Register on October 22, 2014, relating to the Department of Environmental Protection (waste management, 33 CSR 1), is authorized with the following amendments:

On page 145, by adding the following new subparagraph:

5.6.b.3.C. Any facility permitted to accept drilling wastes that does not transfer leachate off-site for additional treatment, must sample and analyze the output fluid from on-site leachate treatment systems to include the sampling parameters in Appendix V of this rule on a quarterly basis;

And,

On page 176, by adding two compounds, toluene and xylene, to Appendix V.
AN ACT to amend and reenact article 5, chapter 64 of the Code of West Virginia, 1931, as amended, relating generally to the promulgation of administrative rules by the Department of Health and Human Resources; legislative mandate or authorization for the promulgation of certain legislative rules by various executive or administrative agencies of the state; authorizing certain of the agencies to promulgate certain legislative rules in the form that the rules were filed in the State Register; authorizing certain of the agencies to promulgate certain legislative rules with various modifications presented to and recommended by the Legislative Rule-Making Review Committee; authorizing the Department of Health and Human Resources to promulgate a legislative rule relating to public water systems; authorizing the Department of Health and Human Resources to promulgate a legislative rule relating to chronic pain management clinic licensure; authorizing the Department of Health and Human Resources to promulgate a legislative rule relating to the Fatality and Mortality Review Team; authorizing the Department of Health and Human Resources to promulgate a legislative rule relating to medication administration and performance of health maintenance tasks by approved medication assistive personnel; authorizing the Department of Health and Human Resources to promulgate a legislative rule relating to the nurse aid abuse and neglect registry; authorizing the Department of Health and Human Resources to promulgate a legislative rule relating to nursing home licensure; and authorizing the Department of Health and Human Resources to promulgate a
legislative rule relating to the statewide trauma/emergency care system.

Be it enacted by the Legislature of West Virginia:

That article 5, chapter 64 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 5. AUTHORIZATION FOR DEPARTMENT OF HEALTH AND HUMAN RESOURCES TO PROMULGATE LEGISLATIVE RULES.

§64-5-1. Department of Health and Human Resources.

(a) The legislative rule filed in the State Register on August 1, 2014, authorized under the authority of section four, article one, chapter sixteen of this code, modified by the Department of Health and Human Resources to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on October 23, 2014, relating to the Department of Health and Human Resources (public water systems, 64 CSR 3), is authorized.

(b) The legislative rule filed in the State Register on July 31, 2014, authorized under the authority of section nine, article five-h, chapter sixteen of this code, relating to the Department of Health and Human Resources (chronic pain management clinic licensure, 69 CSR 8), is authorized.

(c) The legislative rule filed in the State Register on July 31, 2014, authorized under the authority of section four, article one, chapter sixteen of this code, modified by the Department of Health and Human Resources to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on October 14, 2014, relating to the Department
20 of Health and Human Resources (Fatality and Mortality Review Team, 64 CSR 29), is authorized.

(d) The legislative rule filed in the State Register on July 31, 2014, authorized under the authority of section eleven, article five-o, chapter sixteen of this code, modified by the Department of Health and Human Resources to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on November 5, 2014, relating to the Department of Health and Human Resources (medication administration and performance of health maintenance tasks by approved medication assistive personnel, 64 CSR 60), is authorized.

(e) The legislative rule filed in the State Register on August 1, 2014, authorized under the authority of section two, article six, chapter nine of this code, modified by the Department of Health and Human Resources to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on November 6, 2014, relating to the Department of Health and Human Resources (nurse aid abuse and neglect registry, 69 CSR 6), is authorized.

(f) The legislative rule filed in the State Register on August 1, 2014, authorized under the authority of section four, article one, chapter sixteen of this code, modified by the Department of Health and Human Resources to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on November 6, 2014, relating to the Department of Health and Human Resources (nursing home licensure, 64 CSR 13), is authorized with the following amendments:

On page 57, subdivision 9.1.b., by striking the entirety of that subdivision and inserting in lieu thereof the following: “9.1.b. The standards for construction, renovations, and alterations are the relevant sections of the 1996-1997 edition of
“The Guidelines for Design and Construction of Hospitals and Health Care Facilities”, as recognized by the American Institute of Architects, Academy of Architecture for Health with assistance from the U.S. Department of Health and Human Services. Beginning on June 1, 2019, the relevant standards for construction, renovations, and alterations will be the latest edition of “The Guidelines for Design and Construction of Hospitals and Health Care Facilities”, according to Facilities Guidelines Institute (FGI) and published by American Society for Healthcare Engineering (ASHE) with assistance from the U.S. Department of Health and Human Services which can be located at www.hhs.gov.”

And,

On page 58, subdivision 9.1.c., immediately following the word “Facilities” by inserting “as adopted by the Centers for Medicare and Medicaid Services (CMS)”

And,

On page 58, subdivision 9.1.d., immediately following the word “Code” by inserting “as adopted by the State Fire Marshal”

And,

On page 62, subdivision 9.7.f. by inserting a period after the word, ‘program’ and striking the words, ‘insecticidal strips are prohibitive’

And,

On page 62, by striking subdivision 9.7.g. and inserting a new subdivision 9.7.g. to read as follows, ‘Pesticides shall be applied only by an applicator certified by the West Virginia Department of Agriculture or a registered technician operating under the supervision of a certified applicator.’
(g) The legislative rule filed in the State Register on July 31, 2014, authorized under the authority of section four, article one, chapter sixteen of this code, modified by the Department of Health and Human Resources to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on October 14, 2014, relating to the Department of Health and Human Resources (statewide trauma/emergency care system, 64 CSR 27), is authorized with the following amendment:

“On page 1, subsection 3.1 by removing the inserted language, ‘in the current edition of’ reinserting the stricken language, ‘edition’; and inserting a colon after the word ‘patient’ and the following, ‘2013.’”

CHAPTER 158

(Com. Sub. for S. B. 182 - By Senator Snyder)

[Passed March 13, 2015; in effect from passage.]
[Approved by the Governor on April 3, 2015.]

AN ACT to amend and reenact article 6, chapter 64 of the Code of West Virginia, 1931, as amended, relating generally to the promulgation of administrative rules by the Department of Military Affairs and Public Safety; legislative mandate or authorization for the promulgation of certain legislative rules by various executive or administrative agencies of the state; authorizing certain of the agencies to promulgate certain legislative rules as amended by the Legislature; authorizing certain of the agencies to promulgate certain legislative rules in the form that the rules were filed in the State Register; authorizing certain of the agencies to promulgate certain legislative rules with various modifications presented to
and recommended by the Legislative Rule-Making Review Committee; authorizing certain of the agencies to promulgate certain legislative rules with various modifications; authorizing State Police to promulgate a legislative rule relating to the regulations and procedures pertaining to the West Virginia DNA databank; authorizing State Fire Commission to promulgate a legislative rule relating to volunteer firefighters’ training, equipment and operating standards; and authorizing State Fire Marshal to promulgate a legislative rule relating to supervision of fire protection work.

Be it enacted by the Legislature of West Virginia:

That article 6, chapter 64 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 6. AUTHORIZATION FOR DEPARTMENT OF MILITARY AFFAIRS AND PUBLIC SAFETY TO PROMULGATE LEGISLATIVE RULES.

§64-6-1. State Police.

The legislative rule filed in the State Register on July 25, 2014, authorized under the authority of section twenty-four, article two, chapter fifteen of this code, modified by the State Police to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on December 30, 2014, relating to the State Police (regulations and procedures pertaining to the West Virginia DNA databank, 81 CSR 9), is authorized with the following amendments:

On page 1, subsection 1.4, by striking out the words “July 1, 2015”;  

On page 3, subdivision 4.1.c., after the word “offender”, by inserting a comma and the words “on or after July 1, 2011,”;
13 And,

14 On page 3, subdivision 4.1.e., after the word “offense”, by inserting a comma and the words “on or after July 1, 2011,”.

§64-6-2. State Fire Commission.

The legislative rule filed in the State Register on July 1, 2014, authorized under the authority of section five-d, article three, chapter twenty-nine of this code, relating to the State Fire Commission (volunteer firefighters’ training, equipment and operating standards, 87 CSR 8), is authorized with the following amendments:

On page 1, subsection 2.4., by striking out the word “May” and inserting in lieu thereof “This person may”;

On page 2, subsection 3.2, by striking out the words “These individuals should also be NIMS compliant.” and inserting in lieu thereof the following: “Additionally, all active members and firefighters shall have the training available to them to allow them to become compliant with the “NIMS Training Guidelines for West Virginia” as established by the West Virginia Division of Homeland Security and Emergency Management.”;

On page 2, subsection 3.5., by striking out the words “These individuals shall also be NIMS compliant.” and inserting in lieu thereof the following: “Additionally, all active members and firefighters shall have the training available to them to allow them to become compliant with the “NIMS Training Guidelines for West Virginia” as established by the West Virginia Division of Homeland Security and Emergency Management.”;

On page 3, subsection 3.6., by striking out the words “These individuals should also be NIMS compliant.” and inserting in lieu thereof the following: “Additionally, all active members and firefighters shall have the training available to them to allow
them to become compliant with the “NIMS Training Guidelines for West Virginia” as established by the West Virginia Division of Homeland Security and Emergency Management.”;


And,

On page 21, by striking out the NIMS Training Matrix in its entirety.

§64-6-3. State Fire Marshal.

The legislative rule filed in the State Register on July 1, 2014, authorized under the authority of section four, article three-d, chapter twenty-nine of this code, modified by the State Fire Marshal to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on December 31, 2014, relating to the State Fire Marshal (supervision of fire protection work, 103 CSR 3), is authorized with the following amendment:

On page six, section seven, subsection seven after the words “Code of West Virginia” by striking out the comma and the remainder of sentence and inserting in lieu thereof the following: “And shall pass a test developed by the state fire marshal on HVAC Fire Safety.”
AN ACT to amend and reenact article 7, chapter 64 of the Code of West Virginia, 1931, as amended, relating generally to the promulgation of administrative rules by the Department of Revenue; legislative mandate or authorization for the promulgation of certain legislative rules by various executive or administrative agencies of the state; authorizing certain of the agencies to promulgate certain legislative rules as amended by the Legislature; authorizing certain of the agencies to promulgate certain legislative rules in the form that the rules were filed in the State Register; authorizing certain of the agencies to promulgate certain legislative rules with various modifications presented to and recommended by the Legislative Rule-Making Review Committee; authorizing Racing Commission to promulgate a legislative rule relating to thoroughbred racing; authorizing State Tax Department to promulgate a legislative rule relating to appointment of special assessors by State Tax Commissioner; authorizing Insurance Commissioner to promulgate a legislative rule relating to recognizing annuity mortality tables for use in determining reserve liabilities for annuities; authorizing Insurance Commissioner to promulgate a legislative rule relating to annuity disclosure; authorizing Alcohol Beverage Control Commission to promulgate a legislative rule relating to nonintoxicating beer licensing and operations procedures; and authorizing Alcohol Beverage Control Commission to promulgate a legislative rule relating to private club licensing.
Be it enacted by the Legislature of West Virginia:

That article 7, chapter 64 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 7. AUTHORIZATION FOR DEPARTMENT OF REVENUE TO PROMULGATE LEGISLATIVE RULES.

§64-7-1. Racing Commission.

1 The legislative rule filed in the State Register on July 29, 2014, authorized under the authority of section two, article twenty-three, chapter nineteen of this code, relating to the Racing Commission (thoroughbred racing, 178 CSR 1), is authorized.

§64-7-2. State Tax Department.

1 The legislative rule filed in the State Register on July 31, 2014, authorized under the authority of section one, article three, chapter eleven of this code, modified by the State Tax Department to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on September 26, 2014, relating to the State Tax Department (appointment of special assessors by the State Tax Commissioner, 110 CSR 1Q), is authorized with the following amendments:

10 On page one, subsection 3.1., after the word “For” by striking the word “all” and inserting in lieu thereof the word “each;”;

13 And,

14 On page one, subsection 3.1., after the words “the Tax Commissioner shall” by striking the remainder of the sentence
and inserting in lieu thereof the following, “notify, on or before
the first day of the following tax year, the assessor and the
county commission for the county from which the assessor is
elected of that failure in writing, and instruct the assessor to
make all necessary corrections;”.

§64-7-3. Insurance Commissioner.

(a) The legislative rule filed in the State Register on August
1, 2014, authorized under the authority of section ten, article
two, chapter thirty-three of this code, relating to the Insurance
Commissioner (recognizing annuity mortality tables for use in
determining reserve liabilities for annuities, 114 CSR 45), is
authorized with the following amendment:

On page two, subsection 3.7., by striking out the word
“Generation” and inserting in lieu thereof the word
“Generational”.

(b) The legislative rule filed in the State Register on August
1, 2014, authorized under the authority of section ten, article
two, chapter thirty-three of this code, modified by the Insurance
Commissioner to meet the objections of the Legislative Rule-
Making Review Committee and refiled in the State Register on
September 15, 2014, related to the Insurance Commissioner
(annuity disclosure, 114 CSR 11E), is authorized.

§64-7-4. Alcohol Beverage Control Commission.

(a) The legislative rule filed in the State Register on August
1, 2014, authorized under the authority of section twenty-two,
article sixteen, chapter eleven of this code, modified by the
Alcohol Beverage Control Commission to meet the objections of
the Legislative Rule-Making Review Committee and refiled in
the State Register on November 6, 2014, related to the Alcohol
Beverage Control Commission (nonintoxicating beer licensing
and operations procedures, 176 CSR 1), is authorized with the amendments set forth below:

On page 3, subsection 2.18., by striking out the following:
“Any container or jug not made of glass, ceramic or metal may be submitted to the Commissioner for review and approval or denial on a case-by-case basis.”;

On page 8, paragraph 3.6.a.2., by striking out the words “the agents or employees” and inserting in lieu thereof “the agents, employees or members”;

And,

On page 24, subdivision 13.2.a, by striking out the following: “A franchise agreement as defined in subsection 2.15., is the agreement, that binds a brewer and a distributor so that an appointed distributor may distribute all of the brewer’s nonintoxicating beer products, brands or family of brands, including line extensions, imported and offered for sale in West Virginia, including, but not limited to: existing brands, new brands and line extensions in the brewer’s approved franchise distributor network and to a distributor’s assigned territory.”

(b) The legislative rule filed in the State Register on August 1, 2014, authorized under the authority of section ten, article seven, chapter sixty of this code, modified by the Alcohol Beverage Control Commission to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on October 29, 2014, relating to the Alcohol Beverage Control Commission (private club licensing, 175 CSR 2), is authorized.
AN ACT to amend and reenact article 8, chapter 64 of the Code of West Virginia, 1931, as amended, relating generally to the promulgation of administrative rules by the Department of Transportation; legislative mandate or authorization for the promulgation of certain legislative rules by various executive or administrative agencies of the state; authorizing certain of the agencies to promulgate certain legislative rules with various modifications presented to and recommended by the Legislative Rule-Making Review Committee and as amended by the Legislature; authorizing the Division of Motor Vehicles to promulgate a legislative rule relating to the examination and issuance of driver’s licenses; and authorizing the Office of Administrative Hearings to promulgate a legislative rule relating to appeal procedures.

Be it enacted by the Legislature of West Virginia:

That article 8, chapter 64 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 8. AUTHORIZATION FOR DEPARTMENT OF TRANSPORTATION TO PROMULGATE LEGISLATIVE RULES.

§64-8-1. Division of Motor Vehicles.

1 The legislative rule filed in the State Register on August 1, 2014, authorized under the authority of section nine, article two,
chapter seventeen-a of this code, modified by the Division of
Motor Vehicles to meet the objections of the Legislative Rule-
Making Review Committee and refiled in the State Register on
December 31, 2014, relating to the Division of Motor Vehicles
(examination and issuance of driver’s licenses, 91 CSR 4), is
authorized with the following amendments:

On page 2, subsection 3.1., lines 8 and 9, by striking out
“§17B-2-8(i)” and inserting in lieu thereof “§17B-2-8(i)”;

On page 6, subdivision 3.11.a., line 6, by striking out “§17B-
2-8(i)” and inserting in lieu thereof “§17B-2-8(i)”;

On page 7, subsection 3.11, after line 2, by adding a new
subdivision 3.11.e to read as follows:

“3.11.e In lieu of a social security card as proof of social
security number, the following documents may be used to obtain
a not for federal use driver’s license or a not for federal use
identification card:

(i) An original or a copy of a certified Military Discharge
Form DD 214 issued by the U.S. Military, with the social
security number; or

(ii) A Medicare card issued in the applicant’s full name,
which contains the applicant’s social security number and the
signature of the applicant as the card holder.”

On page 7, subsection 4.1, line 17, after the word
“Commissioner.” by adding the following:

“The Division shall make available information for driver’s
license and ID applicants that clearly delineates the requirements
for a for federal use driver license or ID and a not for federal use
driver’s license and ID.”;
On page 10, subsection 4.1.f, line 5 after the word “commissioner” by adding the following:

“which form must require and be accompanied by a certification by a medical doctor of the person’s gender.”

On page 21, subsection 7.2, line 6, after the word “record.” by adding the following:

“The renewal form shall clearly delineate the requirements for a for federal use driver license or ID and a not for federal use driver’s license and ID.”;

On page 25, line 8, by adding a new subsection 7A.1.c to read as follows:

“7A.1.c. The Division’s online renewal process shall clearly delineate the requirements for a for federal use driver license or ID and a not for federal use driver’s license and ID.”;

On page 27, subsection 8.2.c, line 1 after the word “commissioner” by adding the following:

“which form must require and be accompanied by a certification by a medical doctor of the person’s gender.”

On page 31, subsection 9.5, line 17 after the word “commissioner” by adding the following:

“which form must require and be accompanied by a certification by a medical doctor of the person’s gender.”

On page 34, subdivision 11.1.b, lines 17 through 19, by striking out all of subdivision 11.1.b and inserting in lieu thereof the following:

“11.1.b. A valid photo driver’s license or identification card expired six months or less issued the Division only on a not for
federal use driver’s license and a not for federal use identification card.”

And by renumbering the remaining subdivisions;

On page 35, subdivision 11.1.d., line one, by striking out “§17B-2-8(I)” and inserting in lieu thereof “§17B-2-8(i), only on a not for federal use driver’s license and a not for federal use identification card “;

On page 36, lines 14 and 15, by striking out all of subdivision 12.2.b. and inserting in lieu thereof a new subdivision 12.2.b. to read as follows:

“12.2.b. A United States passport or passport card, currently valid or expired less than 2 years, only on a not for federal use driver’s license and a not for federal use identification card.”;

On page 47, subdivision 14.7.e, line 15, after the word “endocrinologist” by inserting the words “or primary care physician”;

On page 52, subsection 14.14, line 3, by striking out the word “two” and inserting in lieu thereof the word “three”; And,

On page 52, subsection 14.14, line 6, by striking out the word “two” and inserting in lieu thereof the word “three”.

§64-8-2. Office of Administrative Hearings.

The legislative rule filed in the State Register on July 31, 2014, authorized under the authority of section four-a, article five-c, chapter seventeen-c of this code, modified by the Office of Administrative Hearings to meet the objections of the Legislative Rule-Making Review Committee and refiled in the
State Register on December 23, 2014, relating to the Office of Administrative Hearings (appeal procedures, 105 CSR 1), is authorized with the following amendment:

On page 14, subdivision 16.3.1., by changing the period to a colon and adding the following proviso: Provided, That if a party prevails in its appeal, the OAH shall refund the $50 filing fee.

CHAPTER 161
(Com. Sub. for S. B. 187 - By Senator Snyder)

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

AN ACT to amend and reenact article 9, chapter 64 of the Code of West Virginia, 1931, as amended, relating to authorizing the Conservation Committee to promulgate a legislative rule relating to financial assistance programs.

Be it enacted by the Legislature of West Virginia:

That article 9, chapter 64 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

*ARTICLE 9. AUTHORIZATION FOR MISCELLANEOUS AGENCIES AND BOARDS TO PROMULGATE LEGISLATIVE RULES.

*NOTE: This article was also amended by Com. Sub. for S. B. 199 (Chapter 162) which passed subsequent to this Act.

The legislative rule filed in the State Register on July 28, 2014, authorized under the authority of section four-a, article twenty-one-a, chapter nineteen of this code, modified by the Conservation Committee to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on November 21, 2014, relating to the Conservation Committee (financial assistance programs, 63 CSR 2), is not authorized.

CHAPTER 162

(Com. Sub. for S. B. 199 - By Senator Snyder)

[Passed March 14, 2015; in effect from passage.]
[Approved by the Governor on April 2, 2015.]

AN ACT to amend and reenact article 9, chapter 64 of the Code of West Virginia, 1931, as amended, relating generally to the promulgation of administrative rules by miscellaneous agencies and boards; legislative mandate or authorization for the promulgation of certain legislative rules by various executive or administrative agencies of the state; authorizing certain of the agencies to promulgate certain legislative rules as amended by the Legislature; authorizing certain of the agencies to promulgate certain legislative rules in the form that the rules were filed in the State Register; authorizing certain of the agencies to promulgate certain legislative rules with various modifications presented to and recommended by the Legislative Rule-Making Review Committee; authorizing certain of the agencies to promulgate certain legislative rules with various modifications; authorizing
Board of Registration for Professional Engineers to promulgate a legislative rule relating to the examination, licensure and practice for professional engineers; authorizing Governor’s Committee on Crime, Delinquency and Correction to promulgate a legislative rule relating to law-enforcement training and certification standards; authorizing Real Estate Appraiser Licensing and Certification Board to promulgate a legislative rule relating to requirements for registration and renewal of appraisal management companies; authorizing Board of Medicine to promulgate a legislative rule relating to licensure, disciplinary and complaint procedures, continuing education and physician assistants; authorizing Enterprise Resource Planning Board to promulgate a legislative rule relating to the enterprise resource planning system user fee; authorizing Board of Physical Therapy to promulgate a legislative rule relating to fees for physical therapists and physical therapist assistants; authorizing Board of Osteopathic Medicine to promulgate a legislative rule relating to fees for services rendered by the board; authorizing Board of Osteopathic Medicine to promulgate a legislative rule relating to osteopathic physician assistants; authorizing Board of Pharmacy to promulgate a legislative rule relating to immunizations administered by pharmacists; authorizing Board of Pharmacy to promulgate a legislative rule relating to the registration of pharmacy technicians; authorizing Board of Pharmacy to promulgate a legislative rule relating to controlled substances monitoring; authorizing Board of Pharmacy to promulgate a legislative rule relating to licensure and the practice of pharmacy; authorizing Board of Dental Examiners to promulgate a legislative rule relating to formation and approval of professional limited liability companies; authorizing Board of Dental Examiners to promulgate a legislative rule relating to the board; authorizing Board of Dental Examiners to promulgate a legislative rule relating to dental recovery networks; authorizing Board of Dental Examiners to promulgate a legislative rule relating to the formation and approval of dental corporations and dental
practice ownership; authorizing Commissioner of Agriculture to promulgate a legislative rule relating to frozen desserts and imitation frozen desserts; authorizing Commissioner of Agriculture to promulgate a legislative rule relating to animal disease control; authorizing Commissioner of Agriculture to promulgate a legislative rule relating to auctioneers; authorizing Commissioner of Agriculture to promulgate a legislative rule relating to fee structure for the Pesticide Control Act of 1990; authorizing Commissioner of Agriculture to promulgate a legislative rule relating to the West Virginia Plant Pest Act; authorizing Commissioner of Agriculture to promulgate a legislative rule relating to inspection of meat and poultry; authorizing Commissioner of Agriculture to promulgate a legislative rule relating to the West Virginia Spay Neuter Assistance Program; authorizing Commissioner of Agriculture to promulgate a legislative rule relating to livestock care standards; authorizing Commissioner of Agriculture to promulgate a legislative rule relating to equine rescue facilities; authorizing Commissioner of Agriculture to promulgate a legislative rule relating to the Rural Rehabilitation Loan Program; authorizing Commissioner of Agriculture to promulgate a legislative rule relating to aquaculture importation; authorizing Commissioner of Agriculture to promulgate a legislative rule relating to industrial hemp; authorizing Commissioner of Agriculture to promulgate a legislative rule relating to dangerous wild animals; authorizing Secretary of State to promulgate a legislative rule relating to the procedures for recount of election results; authorizing Secretary of State to promulgate a legislative rule relating to the standards and guidelines for electronic notarization; authorizing Secretary of State to promulgate a legislative rule relating to notaries public; authorizing Secretary of State to promulgate a legislative rule relating to a schedule of fees for notaries public; authorizing Family Protection Services Board to promulgate a legislative rule relating to perpetrator intervention programs licensure; authorizing
Family Protection Services Board to promulgate a legislative rule relating to domestic violence program licensure standards; authorizing Family Protection Services Board to promulgate a legislative rule relating to the Monitored Parenting and Exchange Program certification; authorizing Family Protection Services Board to promulgate a legislative rule relating to the operation of the board; and authorizing Family Protection Services Board to promulgate a legislative rule relating to perpetrator intervention programs licensure for correctional institutions.

Be it enacted by the Legislature of West Virginia:

That article 9, chapter 64 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

*ARTICLE 9. AUTHORIZATION FOR MISCELLANEOUS AGENCIES AND BOARDS TO PROMULGATE LEGISLATIVE RULES.

§64-9-1. Board of Registration for Professional Engineers.

1 The legislative rule filed in the State Register on March 27, 2014, authorized under the authority of section nine, article thirteen, chapter thirty of this code, relating to the Board of Registration for Professional Engineers (examination, licensure and practice for professional engineers, 7 CSR 1), is not authorized.

§64-9-2. Governor’s Committee on Crime, Delinquency and Correction.

1 The legislative rule filed in the State Register on September 9, 2014, authorized under the authority of section two, article

*NOTE: This article was also amended by Com. Sub. for S. B. 195 (Chapter 161) which passed prior to this Act.*
twelve-nine, chapter thirty of this code, modified by the
Governor’s Committee on Crime, Delinquency and Correction
to meet the objections of the Legislative Rule-Making Review
Committee and refiled in the State Register on October 29, 2014,
relating to the Governor’s Committee on Crime, Delinquency
and Correction (law-enforcement training and certification
standards, 149 CSR 2), is authorized.

§64-9-3. Real Estate Appraiser Licensing and Certification Board.

The legislative rule filed in the State Register on August 1,
2014, authorized under the authority of section seven, article
thirty-eight, chapter thirty of this code, modified by the Real
Estate Appraiser Licensing and Certification Board to meet the
objections of the Legislative Rule-Making Review Committee
and refiled in the State Register on December 23, 2014, relating
to the Real Estate Appraiser Licensing and Certification Board
(requirements for registration and renewal of appraisal
management companies, 190 CSR 5), is authorized.

§64-9-4. Board of Medicine.

The legislative rule filed in the State Register on July 22,
2014, authorized under the authority of section three, article
three-e, chapter thirty of this code, modified by the Board of
Medicine to meet the objections of the Legislative Rule-Making
Review Committee and refiled in the State Register on
November 20, 2014, relating to the Board of Medicine
(licensure, disciplinary and complaint procedures, continuing
education and physician assistants, 11 CSR 1B), is authorized.


The legislative rule filed in the State Register on June 26,
2014, authorized under the authority of section two, article six-d,
chapter twelve of this code, relating to the Enterprise Resource
Planning Board (enterprise resource planning system user fee, 213 CSR 1), is authorized.


The legislative rule filed in the State Register on May 9, 2014, authorized under the authority of section six, article twenty, chapter thirty of this code, relating to the Board of Physical Therapy (fees for physical therapists and physical therapist assistants, 16 CSR 4), is authorized.


(a) The legislative rule filed in the State Register on July 31, 2014, authorized under the authority of section six, article one, chapter thirty of this code, relating to the Board of Osteopathic Medicine (fees for services rendered by the board, 24 CSR 5), is authorized.

(b) The legislative rule filed in the State Register on July 31, 2014, authorized under the authority of section three, article fourteen-a, chapter thirty of this code, modified by the Board of Osteopathic Medicine to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on November 25, 2014, relating to the Board of Osteopathic Medicine (osteopathic physician assistants, 24 CSR 2), is authorized.

§64-9-8. Board of Pharmacy.

(a) The legislative rule filed in the State Register on August 1, 2014, authorized under the authority of section seven, article five, chapter thirty of this code, modified by the Board of Pharmacy to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on January
6 8, 2015, relating to the Board of Pharmacy (immunizations
7 administered by pharmacists, 15 CSR 12), is authorized.

8  (b) The legislative rule filed in the State Register on August
9 1, 2013, authorized under the authority of section seven, article
10 five, chapter thirty of this code, modified by the Board of
11 Pharmacy to meet the objections of the Legislative Rule-Making
12 Review Committee and refiled in the State Register on January
13 8, 2015, relating to the Board of Pharmacy (registration of
14 pharmacy technicians, 15 CSR 7), is authorized with the
15 amendment set forth below:

16 On page 11, subsection 5.3, by striking out the word “four”
17 and inserting in lieu thereof the word “four”.

18  (c) The legislative rule filed in the State Register on August
19 1, 2013, authorized under the authority of section seven, article
20 five, chapter thirty of this code, modified by the Board of
21 Pharmacy to meet the objections of the Legislative Rule-Making
22 Review Committee and refiled in the State Register on January
23 8, 2015, relating to the Board of Pharmacy (controlled
24 substances monitoring, 15 CSR 8), is authorized.

25  (d) The legislative rule filed in the State Register on August
26 1, 2014, authorized under the authority of section seven, article
27 five, chapter thirty of this code, modified by the Board of
28 Pharmacy to meet the objections of the Legislative Rule-Making
29 Review Committee and refiled in the State Register on January
30 8, 2015, relating to the Board of Pharmacy (licensure and the
31 practice of pharmacy, 15 CSR 1), is authorized.


1  (a) The legislative rule filed in the State Register on July 25,
2 2014, authorized under the authority of section one thousand
3 three hundred four, article thirteen, chapter thirty-one-b of this
code, relating to the Board of Dental Examiners (formation and approval of professional limited liability companies, 5 CSR 2), is authorized.

(b) The legislative rule filed in the State Register on July 25, 2014, authorized under the authority of section six, article four, chapter thirty of this code, modified by the Board of Dental Examiners to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on December 17, 2014, relating to the Board of Dental Examiners (rule for the West Virginia Board of Dental Examiners, 5 CSR 1), is authorized.

(c) The legislative rule filed in the State Register on July 25, 2014, authorized under the authority of section six, article four, chapter thirty of this code, modified by the Board of Dental Examiners to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on December 17, 2014, relating to the Board of Dental Examiners (dental recovery networks, 5 CSR 15), is authorized.

(d) The legislative rule filed in the State Register on July 25, 2014, authorized under the authority of section six, article four, chapter thirty of this code, relating to the Board of Dental Examiners (formation and approval of dental corporations; and dental practice ownership, 5 CSR 6), is authorized.


(a) The legislative rule filed in the State Register on July 29, 2014, authorized under the authority of section ten, article eleven-b, chapter nineteen of this code, modified by the Commissioner of Agriculture to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on October 30, 2014, relating to the
b) The legislative rule filed in the State Register on August 1, 2014, authorized under the authority of section two, article nine, chapter nineteen of this code, modified by the Commissioner of Agriculture to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on November 19, 2014, relating to the Commissioner of Agriculture (animal disease control, 61 CSR 1), is authorized.

c) The legislative rule filed in the State Register on August 1, 2014, authorized under the authority of section three-a, article two-c, chapter nineteen of this code, modified by the Commissioner of Agriculture to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on November 19, 2014, relating to the Commissioner of Agriculture (auctioneers, 61 CSR 11B), is authorized.

d) The legislative rule filed in the State Register on July 29, 2014, authorized under the authority of section four, article sixteen-a, chapter nineteen of this code, modified by the Commissioner of Agriculture to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on October 30, 2014, relating to the Commissioner of Agriculture (fee structure for the Pesticide Control Act of 1990, 61 CSR 12), is authorized.

e) The legislative rule filed in the State Register on August 1, 2014, authorized under the authority of section three, article twelve, chapter nineteen of this code, modified by the Commissioner of Agriculture to meet the objections of the Legislative Rule-Making Review Committee and refiled in the
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38 State Register on October 30, 2014, relating to the
39 Commissioner of Agriculture (West Virginia Plant Pest Act, 61
40 CSR 14), is authorized.

41 (f) The legislative rule filed in the State Register on July 22,
42 2013, authorized under the authority of section three, article two-
43 b, chapter nineteen of this code, relating to the Commissioner of
44 Agriculture (inspection of meat and poultry, 61 CSR 16), is
45 authorized.

46 (g) The legislative rule filed in the State Register on August
47 1, 2014, authorized under the authority of section three, article
48 twenty-c, chapter nineteen of this code, modified by the
49 Commissioner of Agriculture to meet the objections of the
50 Legislative Rule-Making Review Committee and refiled in the
51 State Register on November 19, 2014, relating to the
52 Commissioner of Agriculture (West Virginia Spay Neuter
53 Assistance Program, 61 CSR 24), is authorized.

54 (h) The legislative rule filed in the State Register on August
55 1, 2014, authorized under the authority of section four, article
56 one-c, chapter nineteen of this code, modified by the
57 Commissioner of Agriculture to meet the objections of the
58 Legislative Rule-Making Review Committee and refiled in the
59 State Register on November 19, 2014, relating to the
60 Commissioner of Agriculture (livestock care standards, 61 CSR
61 31), is authorized.

62 (i) The legislative rule filed in the State Register on August
63 1, 2014, authorized under the authority of section one, article
64 thirty-three, chapter nineteen of this code, modified by the
65 Commissioner of Agriculture to meet the objections of the
66 Legislative Rule-Making Review Committee and refiled in the
67 State Register on December 23, 2014, relating to the
68 Commissioner of Agriculture (equine rescue facilities, 61 CSR
69 32), is authorized with the following amendment:
On page 4, subsection 6.3, by striking the words ‘, and the standards in the AAEP Care Guidelines for Equine Rescue and Retirement Facilities’.

(j) The legislative rule filed in the State Register on August 1, 2014, authorized under the authority of section three, article twelve, chapter nineteen of this code, modified by the Commissioner of Agriculture to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on November 20, 2014, relating to the Commissioner of Agriculture (Rural Rehabilitation Loan Program, 61 CSR 33), is authorized with the following amendment:

On page 3, by striking out all of subsection 4.2, and by renumbering the remaining subsections.

(k) The legislative rule filed in the State Register on August 1, 2014, authorized under the authority of section four, article thirty-two, chapter nineteen of this code, modified by the Commissioner of Agriculture to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on November 19, 2014, relating to the Commissioner of Agriculture (aquaculture importation, 61 CSR 35), is authorized.

(l) The legislative rule filed in the State Register on August 1, 2014, authorized under the authority of section seven, article twelve-e, chapter nineteen of this code, modified by the Department of Agriculture to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on December 30, 2014, relating to the Commissioner of Agriculture (industrial hemp, 61 CSR 29), is authorized.
The legislative rule filed in the State Register on August 1, 2014, authorized under the authority of section three, article thirty-four, chapter nineteen of this code, modified by the Commissioner of Agriculture to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on November 20, 2014, relating to the Commissioner of Agriculture (dangerous wild animals, 61 CSR 30), is authorized with the following amendments:

On page 2, Paragraph 3.1.g.3., after the words “mountain lions;” by adding the word “and”;

On page 2, Paragraph 3.1.g.4., after the word “caracals”, by changing the semicolon to a period and striking out the remainder of Paragraph 3.1.g.4;

On page 2, Paragraph 3.1.g.5., by striking out all of Paragraph 3.1.g.5.;

On page 2, Subdivision 3.1.o, by striking out all of subdivision 3.1.o.;

On page 2, Subdivision 3.1.p, by striking out all of subdivision 3.1.p.;

On page 2, Subdivision 3.1.q, by striking out all of subdivision 3.1.q.;

On page 2, Subdivision 3.1.r, by striking out all of subdivision 3.1.r.;

On pages 2 and 3, Subdivision 3.1.t., by striking out all of subdivision 3.1.t.;

On page 3, Subdivision 3.1.u., by striking out all of Paragraph 3.1.u.;
On page 3, Subdivision 3.1.v., by striking out all of subdivision 3.1.v.;

On pages 3 and 4, Subdivision 3.1.w., by striking out all of subdivision 3.1.w.;

On page 4, Subdivision 3.1.x., by striking out all of subdivision 3.1.x.;

On page 4, Subdivision 3.1.y., by striking out all of subdivision 3.1.y.;

And,

On page 4, Subdivision 3.1.z., by striking out all of subdivision 3.1.z..

§64-9-11. Secretary of State.

(a) The legislative rule filed in the State Register on July 22, 2014, authorized under the authority of section six, article one-a, chapter three of this code, modified by the Secretary of State to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on September 9, 2014, relating to the Secretary of State (procedures for recount of election results, 153 CSR 20), is authorized.

(b) The legislative rule filed in the State Register on August 1, 2014, authorized under the authority of section twenty-five, article four, chapter thirty-nine of this code, modified by the Secretary of State to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on September 9, 2014, relating to the Secretary of State (standards and guidelines for electronic notarization, 153 CSR 45), is authorized with the amendments set forth below:
On page 3, by deleting all of section 8;

And,

By renumbering the remaining subsections.

(c) The legislative rule filed in the State Register on August 1, 2014, authorized under the authority of section twenty-five, article four, chapter thirty-nine of this code, modified by the Secretary of State to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on September 9, 2014, relating to the Secretary of State (notaries public, 153 CSR 46), is authorized.

(d) The legislative rule filed in the State Register on August 1, 2014, authorized under the authority of section twenty-five, article four, chapter thirty-nine of this code, modified by the Secretary of State to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on September 9, 2014, relating to the Secretary of State (schedule of fees for notaries public, 153 CSR 50), is authorized.

§64-9-12. Family Protection Services Board.

(a) The legislative rule filed in the State Register on July 30, 2014, authorized under the authority of section four hundred three, article twenty-six, chapter forty-eight of this code, modified by the Family Protection Services Board to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on December 17, 2014, relating to the Family Protection Services Board (perpetrator intervention programs licensure, 191 CSR 3), is authorized.

(b) The legislative rule filed in the State Register on July 30, 2014, authorized under the authority of section four hundred three, article twenty-six, chapter forty-eight of this code,
modified by the Family Protection Services Board to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on December 17, 2014, relating to the Family Protection Services Board (domestic violence program licensure standards, 191 CSR 2), is authorized.

(c) The legislative rule filed in the State Register on July 30, 2014, authorized under the authority of section four hundred three, article twenty-six, chapter forty-eight of this code, modified by the Family Protection Services Board to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on December 17, 2014, relating to the Family Protection Services Board (Monitored Parenting and Exchange Program Certification, 191 CSR 4), is authorized.

(d) The legislative rule filed in the State Register on July 30, 2014, authorized under the authority of section four hundred three, article twenty-six, chapter forty-eight of this code, modified by the Family Protection Services Board to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on December 30, 2014, relating to the Family Protection Services Board (Operation of the Family Protection Services Board, 191 CSR 1), is authorized.

(e) The legislative rule filed in the State Register on July 30, 2014, authorized under the authority of section four hundred three, article twenty-six, chapter forty-eight of this code, modified by the Family Protection Services Board to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on December 17, 2014, relating to the Family Protection Services Board (perpetrator intervention programs licensure for correctional institutions, 191 CSR 5), is authorized.
AN ACT to amend and reenact article 10, chapter 64 of the Code of West Virginia, 1931, as amended, relating generally to the promulgation of administrative rules by the Bureau of Commerce; legislative mandate or authorization for the promulgation of certain legislative rules by various executive or administrative agencies of the state; authorizing certain of the agencies to promulgate certain legislative rules in the form that the rules were filed in the State Register; authorizing certain of the agencies to promulgate certain legislative rules with various modifications presented to and recommended by the Legislative Rule-Making Review Committee; authorizing certain of the agencies to promulgate certain legislative rules with various modifications and as amended by the Legislature; authorizing Office of Miners’ Health, Safety and Training to promulgate a legislative rule relating to the safety of those employed in and around quarries in West Virginia; authorizing Division of Natural Resources to promulgate a legislative rule relating to defining the terms used in all hunting and trapping rules; authorizing Division of Natural Resources to promulgate a legislative rule relating to hunting, trapping and fishing license and stamp fees; authorizing Division of Natural Resources to promulgate a legislative rule relating to general hunting; authorizing Division of Natural Resources to promulgate a legislative rule relating to lifetime hunting, trapping and fishing licenses; authorizing Division of Natural Resources to promulgate a legislative rule relating to wildlife damage control agents; authorizing Division of Natural Resources to promulgate a
legislative rule relating to special boating; authorizing Division of Natural Resources to promulgate a legislative rule relating to commercial whitewater outfitters; authorizing Division of Labor to promulgate a legislative rule relating to the Amusement Rides and Amusement Attractions Safety Act; authorizing Division of Labor to promulgate a legislative rule relating to child labor; authorizing Division of Labor to promulgate a legislative rule relating to the supervision of plumbing work; authorizing Division of Labor to promulgate a legislative rule relating to verifying the legal employment status of workers; authorizing Division of Labor to promulgate a legislative rule relating to the regulation of heating, venting and cooling work; authorizing Division of Labor to promulgate a legislative rule relating to weights and measures calibration fees; and authorizing Division of Forestry to promulgate a legislative rule relating to ginseng.

Be it enacted by the Legislature of West Virginia:

That article 10, chapter 64 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 10. AUTHORIZATION FOR BUREAU OF COMMERCE TO PROMULGATE LEGISLATIVE RULES.


1 The legislative rule filed in the State Register on July 29, 2014, authorized under the authority of section three, article four, chapter twenty-two-a of this code, modified by the Office of Miners’ Health, Safety and Training to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on September 16, 2014, relating to the Office of Miners’ Health, Safety and Training (rules governing the safety of those employed in and around quarries in West Virginia, 56 CSR 20), is authorized.
§64-10-2. Division of Natural Resources.

(a) The legislative rule filed in the State Register on July 30, 2014, authorized under the authority of section seven, article one, chapter twenty of this code, relating to the Division of Natural Resources (defining the terms used in all hunting and trapping rules, 58 CSR 46), is authorized.

(b) The legislative rule filed in the State Register on July 30, 2014, authorized under the authority of section forty-two, article two, chapter twenty of this code, relating to the Division of Natural Resources (hunting, trapping and fishing license and stamp fees, 58 CSR 71), is not authorized.

(c) The legislative rule filed in the State Register on July 30, 2014, authorized under the authority of section seven, article one, chapter twenty of this code, modified by the Division of Natural Resources to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on November 7, 2014, relating to the Division of Natural Resources (general hunting, 58 CSR 49), is authorized.

(d) The legislative rule filed in the State Register on July 30, 2014, authorized under the authority of section seven, article two-b, chapter twenty of this code, relating to the Division of Natural Resources (lifetime hunting, trapping and fishing licenses, 58 CSR 67), is not authorized.

(e) The legislative rule filed in the State Register on July 30, 2014, authorized under the authority of section seven, article two, chapter twenty of this code, modified by the Division of Natural Resources to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on September 29, 2014, relating to the Division of Natural Resources (wildlife damage control agents, 58 CSR 41), is authorized.
(f) The legislative rule filed in the State Register on July 30, 2014, authorized under the authority of section seven, article one, chapter twenty of this code, relating to the Division of Natural Resources (special boating, 58 CSR 26), is authorized.

(g) The legislative rule filed in the State Register on August 1, 2014, authorized under the authority of section twenty-three-a, article two, chapter twenty of this code, modified by the Division of Natural Resources to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on November 21, 2014, relating to the Division of Natural Resources (commercial whitewater outfitters, 58 CSR 12), is authorized.

§64-10-3. Division of Labor.

(a) The legislative rule filed in the State Register on July 30, 2014, authorized under the authority of section three, article ten, chapter twenty-one of this code, modified by the Division of Labor to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on December 2, 2014, relating to the Division of Labor (Amusement Rides and Amusement Attractions Safety Act, 42 CSR 17), is authorized with the amendments set forth below:

On page 2, subsection 3.14, after the word “guardian” by adding “or their spouses”;

On page 3, subsection 3.25, by striking the words “at least a 20%” and inserting in lieu thereof “any percentage”;

And,

On page 13, after the words “Article 525” by adding the following proviso:

“:Provided, That a three phase four wire system that is grounded at the power source and constructed in accordance
with the NFPA70, 2014 National Electrical Code, Article 522
and Article 525 is approved for any area of the state where a
three phase five wire system is unavailable.”

(b) The legislative rule filed in the State Register on July 30,
2014, authorized under the authority of section eleven, article
six, chapter twenty-one of this code, modified by the Division of
Labor to meet the objections of the Legislative Rule-Making
Review Committee and refiled in the State Register on
December 2, 2014, relating to the Division of Labor (child labor,
42 CSR 9), is authorized.

(c) The legislative rule filed in the State Register on July 30,
2014, authorized under the authority of section four, article
fourteen, chapter twenty-one of this code, modified by the
Division of Labor to meet the objections of the Legislative Rule-
Making Review Committee and refiled in the State Register on
December 2, 2014, relating to the Division of Labor (supervision
of plumbing work, 42 CSR 32), is authorized.

(d) The legislative rule filed in the State Register on July 30,
2014, authorized under the authority of section three, article one-
b, chapter twenty-one of this code, modified by the Division of
Labor to meet the objections of the Legislative Rule-Making
Review Committee and refiled in the State Register on
December 29, 2014, relating to the Division of Labor (Verifying
the Legal Employment Status of Workers, 42 CSR 31), is
authorized with the amendments set forth below:

On page two, subsection 3.7, after the word “work” by
adding the words “for compensation;”;

And

On page three, subsection 4.2, after the word “not” by
inserting the word “knowingly.”.
(e) The legislative rule filed in the State Register on July 30, 2014, authorized under the authority of section five, article sixteen, chapter twenty-one of this code, modified by the Division of Labor to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on December 2, 2014, relating to the Division of Labor (regulation of heating, venting and cooling work, 42 CSR 34), is authorized with the following amendments:

On page 2, subsection 3.6. by striking all of subsection 3.6.;

And,

On page 2, subsection 6.2., after the word “Commissioner”, by striking the word “may” and inserting in lieu thereof the word “shall”;

And,

On page 2, subdivision 6.2.3.a by inserting a period after the word, “program” and striking the remainder of the sentence and subdivision 6.2.3.b;

On page 4, subsection 10.3., after the word “rule” by inserting the following: “that are applicable to the duties and knowledge required by an HVAC technician for the installation, repair and maintenance of HVAC”;  

And,

On page 5, section 11, by striking all of subsections 11.4. and 11.5.;

And,

On page 6, subsection 13.1., after the word “license” by inserting the following:
“Provided, That no fee may be charged for an HVAC technician license for a person who holds an HVAC contractor’s license pursuant to article eleven, chapter twenty-one of the W. Va. Code.”.

(f) The legislative rule filed in the State Register on July 30, 2014, authorized under the authority of section three, article one, chapter forty-seven of this code, modified by the Division of Labor to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on December 2, 2014, relating to the Division of Labor (weights and measures calibration fees, 42 CSR 26), is authorized with the amendment set forth below:

On page five, Appendix A, column one, by striking out “Prover - from 5 to 49 gallons” and inserting in lieu thereof “Prover - from 6 to 49 gallons”.

§64-10-4. Division of Forestry.

The legislative rule filed in the State Register on the August 1, 2014, authorized under the authority of section three-a, article one-a, chapter nineteen of this code, modified by the Division of Forestry to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on September 18, 2014, relating to the Division of Forestry (ginseng, 22 CSR 1), is authorized with the amendments set forth below:

On page four, section ten, by striking out the word “A” and inserting in lieu thereof the word “No”;

On page five, section 12, subsection 12.3, after the word “grower’s” by striking out the word “fee” and inserting in lieu thereof the word “permit”;

And,
On page five, section 12, subsection 12.3, after the word "dealer’s" by striking out the word "fee" and inserting in lieu thereof the word "permit".

CHAPTER 164


[Passed February 28, 2015; in effect ninety days from passage.]
[Approved by the Governor on March 11, 2015.]

AN ACT to amend and reenact §11-8-9 of the Code of West Virginia, 1931, as amended, relating to extending the time of meetings of local levying bodies when meetings are delayed due to circumstances beyond the control of a local levying body; providing the State Auditor is authorized to extend the time of meetings of local levying bodies; authorizing the State Auditor to propose rules to implement this section; requiring that the meeting be held in compliance with chapter six, article nine-a; and authorizing the State Auditor to set the meeting time.

Be it enacted by the Legislature of West Virginia:

That §11-8-9 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 8. LEVIES.

§11-8-9. Meetings of local levying bodies.

(a) Each local levying body shall hold a meeting or meetings between the seventh and twenty-eighth days of March for the
transaction of business generally and particularly for the
business herein required.

(b) When a levy is placed on the ballot for consideration
during a primary election, each local levying body may extend
its time to meet as a levying body until the first day of June of
that year.

(c) The State Auditor shall propose rules for legislative
approval in accordance with article three, chapter twenty-nine-a
of this code to implement the purposes of this subsection. The
proposed rules shall include a procedure for a local levying body
to apply for permission to extend the time to meet as a levying
body, requiring the local levying body to cite the reason a timely
meeting was not held and that the meeting, if approved by the
State Auditor, be held in compliance with article nine-a, chapter
six of this code relating to open governmental proceedings at a
time set by the State Auditor.

(1) The State Auditor shall require all levying bodies to file
a report of their meetings as required in this article with the State
Auditor on or before the first day of April.

(2) The State Auditor shall notify any levying body, which
has not filed a report of their meetings to the State Auditor by the
first day of April, that the levying body must meet and file a
report of that meeting no later than the fifteenth day of April.

(3) For any meeting after the fifteenth day of April, the State
Auditor, may allow a late meeting and late report on or before
the first day of May, if the State Auditor finds good cause to so
allow a meeting and report to be filed after the fifteenth day of
April and not later than the first day of May.
AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §55-7H-1, §55-7H-2, §55-7H-3, §55-7H-4, §55-7H-5 and §55-7H-6, all relating to immunity from civil liability for clinical practice plans and personnel associated with medical and dental schools; providing legislative findings and declarations of public purpose; defining terms; limiting civil liability for clinical practice plans and their directors, officers, employees, agents and contractors; providing for minimum medical professional liability insurance requirements; and determining the applicability and construction of the immunity from civil liability.

*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 §55-7H-1, §55-7H-2, §55-7H-3, §55-7H-4, §55-7H-5 and §55-7H-6, all to read as follows:

**ARTICLE 7H. IMMUNITY FROM CIVIL LIABILITY FOR CLINICAL PRACTICE PLANS AND PERSONNEL ASSOCIATED WITH MEDICAL AND DENTAL SCHOOLS.**

§55-7H-1. Findings and declaration of public purpose.

1 The Legislature finds and declares:
That the citizens of this state have been and should continue to be well served by physicians and dentists educated and trained at the Marshall University School of Medicine, the West Virginia School of Osteopathic Medicine, the West Virginia University School of Medicine and the West Virginia University School of Dentistry;

That the state’s medical and dental schools play a vital role in ensuring an adequate supply of qualified and trained physicians throughout the state;

That the education, training and research provided at the state’s medical and dental schools and state medical school are an essential governmental function in which the state has a substantial and compelling interest;

That the provision of clinical services to patients by faculty members, residents, fellows and students of the state’s medical and dental schools and state medical school, is an inseparable component of the aforementioned education, training and research;

That the provision of the clinical services significantly contributes to the ongoing quality, effectiveness and scope of the state’s health care delivery system;

That the provision of the clinical services also raises the public profile and reputation of the respective institutions both regionally and nationally, thereby facilitating the recruitment of talented faculty, residents, fellows and students to their programs of study;

That the provision of the clinical services generates additional revenues needed to fund faculty salaries and other costs associated with the overall operation of the state medical school and state’s medical and dental schools;
That the continued availability of the revenues to the state medical school and state’s medical and dental schools is necessary to their ongoing operation and delivery of the benefits described above;

That the continued availability of the revenues is compromised by the cost of medical professional liability insurance, the cost of defending medical professional liability claims, and the cost of compensating patients who suffer medical injury or death;

That the state concurrently has an interest in providing a system that makes available adequate and fair compensation to those individual patients who suffer medical injury or death;

That it is the duty and responsibility of the Legislature to balance the rights of individual patients to obtain adequate and fair compensation, with the substantial and compelling state interests set forth herein supporting the need for a financially viable system of medical and dental schools;

That, in balancing these important state interests, the Legislature acknowledges the sovereign immunity set forth in the West Virginia Constitution under Article VI, Section 35, to prevent the diversion of state moneys from legislatively appropriated purposes;

That, in conjunction with the provision of clinical services to patients by faculty members, residents, fellows and students of the state’s medical and dental schools, or state medical school, it is a common practice both here and in other states to create one or more clinical practice plans as nonprofit corporations;

That the clinical practice plans, among other things, administratively support clinical activities by holding real and personal property, offering personnel and financial management, providing billing and collection for services rendered, and
disbursing excess revenues back to the respective medical and
dental schools;

That the clinical practice plans become integrated with their
respective state medical school and state’s medical and dental
schools and exclusively serve the interests of these schools and
their faculty;

That any moneys the clinical practice plans expend for the
defense, settlement, and satisfaction of medical professional
liability claims inevitably result in a shortfall of funds available
to the medical and dental schools for faculty compensation and
other operational purposes, thereby undermining the sovereign
immunity otherwise granted to state institutions by the West
Virginia Constitution;

That it is therefore reasonable and appropriate for the
Legislature to provide immunity from civil liability to clinical
practice plans and their respective directors, officers, employees
and agents given the substantial and compelling state interests
being served; and

That it is further reasonable and appropriate to require the
state’s medical and dental schools to maintain a level of medical
professional liability insurance to adequately and fairly
compensate patients who suffer medical injuries or death.

§55-7H-2. Definitions.

For purposes of this article:

(1) “Clinical practice plan” means any of the nonprofit
corporations that are operated to assist the state medical school
and state’s medical and dental schools in providing clinical
services to patients and which are controlled by governing
boards all the voting members of which are faculty members or
university officials. Clinical practice plans as defined herein
shall be considered agents of the state.
(2) “Contractor” means an independent contractor, whether compensated or not, who is licensed as a health care professional under chapter thirty of this code, who is acting within the scope of his or her authority for a state medical school, state’s medical and dental schools, or a clinical practice plan, and is a member of the faculty of a state’s medical and dental schools or state medical school.

(3) “Employee” means a director, officer, employee, agent or servant, whether compensated or not, who is licensed as a health care professional under chapter thirty of this code and who is acting within the scope of his or her authority or employment for a state’s medical and dental schools, a state medical school or a clinical practice plan.

(4) “Health care” means any act or treatment performed or furnished, or which should have been performed or furnished, by any director, officer, employee, agent or contractor of a state medical school, state’s medical and dental schools, or a clinical practice plan for, to or on behalf of a patient during the patient’s medical care, treatment or confinement.

(5) “Medical injury” means injury or death to a patient arising or resulting from the rendering or failure to render health care.

(6) “Medical professional liability insurance” means a contract of insurance, or any self-insurance retention program established under the provisions of section ten, article five, chapter eighteen-b of this code, that pays for the legal liability arising from a medical injury.

(7) “Patient” means a natural person who receives or should have received health care from a director, officer, employee, agent or contractor of a state medical school, state’s medical and dental schools, or a clinical practice plan under a contract, express or implied.
“Scope of authority or employment” means performance by a director, officer, employee, agent or contractor acting in good faith within the duties of his or her office, employment or contract with a state medical school, state’s medical and dental schools, or a clinical practice plan, but does not include corruption or fraud.

(9) “State’s medical and dental schools” or “state medical school” means the Marshall University School of Medicine, the West Virginia School of Osteopathic Medicine, the West Virginia University School of Medicine and the West Virginia University School of Dentistry.


Notwithstanding any other provision of this code, all clinical practice plans, and all employees and contractors of a state’s medical and dental schools, state medical school or a clinical practice plan, are only liable up to the limits of insurance coverage procured through the State Board of Risk and Insurance Management in accordance with section four, article seven-h, chapter fifty-five of the code, arising from a medical injury to a patient, including death resulting, in whole or in part, from the medical injury, either through act or omission, or whether actual or imputed, while acting within the scope of their authority or employment for a state’s medical and dental schools, state medical school or a clinical practice plan. The provisions of this article apply to the acts and omissions of all full-time, part-time, visiting and volunteer directors, officers, faculty members, residents, fellows, students, employees, agents and contractors of a state’s medical and dental schools, state medical school or a clinical practice plan, regardless of whether the persons are engaged in teaching, research, clinical, administrative or other duties giving rise to the medical injury, regardless of whether the activities were being performed on
behalf of a state’s medical and dental schools, state medical
school or on behalf of a clinical practice plan and regardless of
where the duties were being carried out at the time of the
medical injury.

§55-7H-4. Medical professional liability insurance for state’s
medical and dental schools and state medical
schools.

The State Board of Risk and Insurance Management shall
provide medical professional liability insurance to all of the
state’s medical and dental schools, state medical school, all of
their clinical practice plans and all of their directors, officers,
employees, agents and contractors in an amount to be
determined by the State Board of Risk and Insurance
Management, but in no event less than $1.5 million for each
occurrence after July 1, 2015, to increase to account for inflation
by an amount equal to the Consumer Price Index published by
the United States Department of Labor, up to $2 million for each
occurrence. The clinical practice plans shall pay for this
insurance. The provision of professional liability insurance is not
a waiver of immunity that any of the foregoing entities or
persons may have pursuant to this article or under any other law.
Any judgment obtained for a medical injury to a patient as a
result of health care performed or furnished, or which should
have been performed or furnished, by any employee or
contractor of a state’s medical and dental school, state medical
school or clinical practice plan shall not exceed the limits of
medical professional liability insurance coverage provided by the
State Board of Risk and Insurance Management pursuant to this
section.

§55-7H-5. Applicability of provisions.

The provisions of this article are applicable prospectively to
all claims that occur and are commenced on or after July 1,
2015.
§55-7H-6. Construction.

1 The provisions of this article operate in addition to, and not in derogation of, any of the provisions contained in article seven-b of this chapter.

CHAPTER 166

(S. B. 403 - By Senators Walters and Nohe)

[Passed March 12, 2015; in effect ninety days from passage.]
[Approved by the Governor on March 24, 2015.]

AN ACT to amend and reenact §17A-4A-15 of the Code of West Virginia, 1931, as amended, relating to liens on vehicles; expanding period of time during which a recorded lien on a vehicle is valid; expanding period of time during which a refiled lien on a vehicle is valid; and clarifying that the lienholder may refile a lien or encumbrance without obtaining the owner’s consent.

Be it enacted by the Legislature of West Virginia:

That §17A-4A-15 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 4A. LIENS AND ENCUMBRANCES ON VEHICLES TO BE SHOWN ON CERTIFICATE OF TITLE; NOTICE TO CREDITORS AND PURCHASERS.

§17A-4A-15. Expiration of lien or encumbrance; refiling.

1 The filing of any lien or encumbrance and its recordation upon the face of a certificate of title to any vehicle as provided
in this article is valid for fifteen years only from the date of filing, unless the lienholder refiles the lien or encumbrance in the manner provided in this article for filing and recordation in the first instance, in which event the lien or encumbrance is valid for successive additional periods of five years from the date of each refiling: Provided, That this article does not require the lienholder to obtain the consent of the owner to refile the lien or encumbrance: Provided, however, That in the case of a mobile home or manufactured home, the filing of any lien or encumbrance and its recordation upon the face of a certificate of title to the mobile home or manufactured home is valid for a period of thirty-three years from the date of filing.

When the last lien or encumbrance shown on a certificate of title becomes invalid by the passage of time as provided in this section, the Commissioner of Motor Vehicles is not required to maintain a lien index as to the certificate of title.

CHAPTER 167

(S. B. 418 - By Senators Nohe and Gaunch)

[Passed March 13, 2015; in effect ninety days from passage.]
[Approved by the Governor on March 24, 2015.]

AN ACT to amend and reenact §38-1-7 of the Code of West Virginia, 1931, as amended, relating to providing that a defendant in a civil action to recover a deficiency after a sale under a deed of trust may not assert as a defense that fair market value was not obtained for property sold at foreclosure sale.

Be it enacted by the Legislature of West Virginia:

That §38-1-7 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:
ARTICLE 1. VENDOR’S AND TRUST DEED LIENS.

§38-1-7. Application of proceeds; action to recover a deficiency.

(a) The trustee shall apply the proceeds of sale, first to the payment of expenses attending the execution of the trust, including a commission to the trustee of five percent on the first $300, and two percent on the residue of the proceeds, and shall apply the balance of such proceeds pro rata, or in the order of priority, if any, prescribed by the trust deed, to the payment of the debts secured and the indemnity of the sureties indemnified by the deed, and shall pay the surplus, if any, to the grantor, his, her or its heirs, personal representatives, successors or assigns, as their interests may appear.

(b) A trust deed grantor, the obligor on the debt secured by the deed of trust, including any maker, comaker, guarantor, surety or other accommodation party, or other defendant in a civil action seeking a deficiency judgment on the debt secured by the deed of trust, may not assert as a defense that the fair market value of secured real property was not obtained at a trust deed foreclosure sale conducted in accordance with this article.

CHAPTER 168

(Com. Sub. for S. B. 6 - By Senators Ferns, Boley, Carmichael, Gaunch, Leonhardt, Mullins, Nohe, Trump, Blair, Plymale, Stollings, Cole (Mr. President) and Takubo)

[Amended and again passed March 10, 2015; as a result of the objections of the Governor; in effect from passage.]
[Approved by the Governor on March 18, 2015.]

AN ACT to amend and reenact §55-7B-1, §55-7B-2, §55-7B-7, §55-7B-8, §55-7B-9, §55-7B-9a, §55-7B-9c, §55-7B-10 and §55-7B-11
of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto two new sections, designated §55-7B-7a and §55-7B-9d, all relating to medical professional liability generally; providing additional legislative findings and purposes related to medical professional liability; amending existing definitions of “collateral source”, “health care”, “health care facility”, “health care provider” and “medical professional liability” and creating a new definition for “related entity” all of which expand the scope of the Medical Professional Liability Act; modifying the qualifications for the competency of experts who testify in medical professional liability actions; providing rebuttable presumptions and evidentiary requirements relating to state and federal reports, disciplinary actions, accreditation reports, assessments and staffing; modifying the maximum amount of recovery for, and availability of, noneconomic damages; clarifying amounts of medical professional liability insurance coverage that must exist to receive noneconomic damages limitations; clarifying that a health care provider is not vicariously liable unless the alleged agent does not maintain certain insurance; clarifying eligibility for, and application of, emergency medical services caps; providing a methodology for determining the amount of trauma care caps to account for inflation; providing certain limitations of verdicts for past medical expenses of the plaintiff; establishing effective date; and providing for severability.

Be it enacted by the Legislature of West Virginia:

That §55-7B-1, §55-7B-2, §55-7B-7, §55-7B-8, §55-7B-9, §55-7B-9a, §55-7B-9c, §55-7B-10 and §55-7B-11 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 §55-7B-7a and §55-7B-9d, all to read as follows:

**ARTICLE 7B. MEDICAL PROFESSIONAL LIABILITY.**

§55-7B-1. Legislative findings and declaration of purpose.

1 The Legislature finds and declares that:
The citizens of this state are entitled to the best medical care and facilities available and that health care providers offer an essential and basic service which requires that the public policy of this state encourage and facilitate the provision of such service to our citizens;

As in every human endeavor the possibility of injury or death from negligent conduct commands that protection of the public served by health care providers be recognized as an important state interest;

Our system of litigation is an essential component of this state’s interest in providing adequate and reasonable compensation to those persons who suffer from injury or death as a result of professional negligence, and any limitation placed on this system must be balanced with and considerate of the need to fairly compensate patients who have been injured as a result of negligent and incompetent acts by health care providers;

Liability insurance is a key part of our system of litigation, affording compensation to the injured while fulfilling the need and fairness of spreading the cost of the risks of injury;

A further important component of these protections is the capacity and willingness of health care providers to monitor and effectively control their professional competency, so as to protect the public and ensure to the extent possible the highest quality of care;

It is the duty and responsibility of the Legislature to balance the rights of our individual citizens to adequate and reasonable compensation with the broad public interest in the provision of services by qualified health care providers and health care facilities who can themselves obtain the protection of reasonably priced and extensive liability coverage;
In recent years, the cost of insurance coverage has risen dramatically while the nature and extent of coverage has diminished, leaving the health care providers, the health care facilities and the injured without the full benefit of professional liability insurance coverage;

Many of the factors and reasons contributing to the increased cost and diminished availability of professional liability insurance arise from the historic inability of this state to effectively and fairly regulate the insurance industry so as to guarantee our citizens that rates are appropriate, that purchasers of insurance coverage are not treated arbitrarily and that rates reflect the competency and experience of the insured health care providers and health care facilities;

The unpredictable nature of traumatic injury health care services often results in a greater likelihood of unsatisfactory patient outcomes, a higher degree of patient and patient family dissatisfaction and frequent malpractice claims, creating a financial strain on the trauma care system of our state, increasing costs for all users of the trauma care system and impacting the availability of these services, requires appropriate and balanced limitations on the rights of persons asserting claims against trauma care health care providers, this balance must guarantee availability of trauma care services while mandating that these services meet all national standards of care, to assure that our health care resources are being directed towards providing the best trauma care available;

The cost of liability insurance coverage has continued to rise dramatically, resulting in the state's loss and threatened loss of physicians, which, together with other costs and taxation incurred by health care providers in this state, have created a competitive disadvantage in attracting and retaining qualified physicians and other health care providers;
Medical liability issues have reached critical proportions for the state’s long-term health care facilities, as: (1) Medical liability insurance premiums for nursing homes in West Virginia continue to increase and the number of claims per bed has increased significantly; (2) the cost to the state Medicaid program as a result of such higher premiums has grown considerably in this period; (3) current medical liability premium costs for some nursing homes constitute a significant percentage of the amount of coverage; (4) these high costs are leading some facilities to consider dropping medical liability insurance coverage altogether; and (5) the medical liability insurance crisis for nursing homes may soon result in a reduction of the number of beds available to citizens in need of long-term care; and

The modernization and structure of the health care delivery system necessitate an update of provisions of this article in order to facilitate and continue the objectives of this article which are to control the increase in the cost of liability insurance and to maintain access to affordable health care services for our citizens.

Therefore, the purpose of this article is to provide a comprehensive resolution of the matters and factors which the Legislature finds must be addressed to accomplish the goals set forth in this section. In so doing, the Legislature has determined that reforms in the common law and statutory rights of our citizens must be enacted together as necessary and mutual ingredients of the appropriate legislative response relating to:

(1) Compensation for injury and death;

(2) The regulation of rate making and other practices by the liability insurance industry, including the formation of a physicians’ mutual insurance company and establishment of a fund to assure adequate compensation to victims of malpractice; and
(3) The authority of medical licensing boards to effectively regulate and discipline the health care providers under such board.

§55-7B-2. Definitions.

(a) “Board” means the State Board of Risk and Insurance Management.

(b) “Collateral source” means a source of benefits or advantages for economic loss that the claimant has received from:

(1) Any federal or state act, public program or insurance which provides payments for medical expenses, disability benefits, including workers’ compensation benefits, or other similar benefits. Benefits payable under the Social Security Act and Medicare are not considered payments from collateral sources except for Social Security disability benefits directly attributable to the medical injury in question;

(2) Any contract or agreement of any group, organization, partnership or corporation to provide, pay for or reimburse the cost of medical, hospital, dental, nursing, rehabilitation, therapy or other health care services or provide similar benefits, but excluding any amount that a group, organization, partnership, corporation or health care provider agrees to reduce, discount or write off of a medical bill;

(3) Any group accident, sickness or income disability insurance, any casualty or property insurance, including automobile and homeowners’ insurance, which provides medical benefits, income replacement or disability coverage, or any other similar insurance benefits, except life insurance, to the extent that someone other than the insured, including the insured’s employer, has paid all or part of the premium or made an economic contribution on behalf of the plaintiff; or
(4) Any contractual or voluntary wage continuation plan provided by an employer or otherwise or any other system intended to provide wages during a period of disability.

(c) “Consumer Price Index” means the most recent Consumer Price Index for All Consumers published by the United States Department of Labor.

(d) “Emergency condition” means any acute traumatic injury or acute medical condition which, according to standardized criteria for triage, involves a significant risk of death or the precipitation of significant complications or disabilities, impairment of bodily functions or, with respect to a pregnant woman, a significant risk to the health of the unborn child.

(e) “Health care” means:

(1) Any act, service or treatment provided under, pursuant to or in the furtherance of a physician’s plan of care, a health care facility’s plan of care, medical diagnosis or treatment;

(2) Any act, service or treatment performed or furnished, or which should have been performed or furnished, by any health care provider or person supervised by or acting under the direction of a health care provider or licensed professional for, to or on behalf of a patient during the patient’s medical care, treatment or confinement, including, but not limited to, staffing, medical transport, custodial care or basic care, infection control, positioning, hydration, nutrition and similar patient services; and

(3) The process employed by health care providers and health care facilities for the appointment, employment, contracting, credentialing, privileging and supervision of health care providers.

(f) “Health care facility” means any clinic, hospital, pharmacy, nursing home, assisted living facility, residential care
community, end-stage renal disease facility, home health agency,
child welfare agency, group residential facility, behavioral health
care facility or comprehensive community mental health center,
intellectual/developmental disability center or program, or other
ambulatory health care facility, in and licensed, regulated or
certified by the state of West Virginia under state or federal law
and any state-operated institution or clinic providing health care
and any related entity to the health care facility.

(g) “Health care provider” means a person, partnership,
corporation, professional limited liability company, health care
facility, entity or institution licensed by, or certified in, this state
or another state, to provide health care or professional health
care services, including, but not limited to, a physician,
osteopathic physician, physician assistant, advanced practice
registered nurse, hospital, health care facility, dentist, registered
or licensed practical nurse, optometrist, podiatrist, chiropractor,
physical therapist, speech-language pathologist and audiologist,
occupational therapist, psychologist, pharmacist, technician,
certified nursing assistant, emergency medical service personnel,
emergency medical services authority or agency, any person
supervised by or acting under the direction of a licensed
professional, any person taking actions or providing service or
treatment pursuant to or in furtherance of a physician’s plan of
care, a health care facility’s plan of care, medical diagnosis or
treatment; or an officer, employee or agent of a health care
provider acting in the course and scope of the officer’s,
employee’s or agent’s employment.

(h) “Medical injury” means injury or death to a patient
arising or resulting from the rendering of or failure to render
health care.

(i) “Medical professional liability” means any liability for
damages resulting from the death or injury of a person for any
tort or breach of contract based on health care services rendered,
or which should have been rendered, by a health care provider or
health care facility to a patient. It also means other claims that
may be contemporaneous to or related to the alleged tort or
breach of contract or otherwise provided, all in the context of
rendering health care services.

(j) “Medical professional liability insurance” means a
contract of insurance or any actuarially sound self-funding
program that pays for the legal liability of a health care facility
or health care provider arising from a claim of medical
professional liability. In order to qualify as medical professional
liability insurance for purposes of this article, a self-funding
program for an individual physician must meet the requirements
and minimum standards set forth in section twelve of this article.

(k) “Noneconomic loss” means losses, including, but not
limited to, pain, suffering, mental anguish and grief.

(l) “Patient” means a natural person who receives or should
have received health care from a licensed health care provider
under a contract, expressed or implied.

(m) “Plaintiff” means a patient or representative of a patient
who brings an action for medical professional liability under this
article.

(n) “Related entity” means any corporation, foundation,
partnership, joint venture, professional limited liability company,
limited liability company, trust, affiliate or other entity under
common control or ownership, whether directly or indirectly,
partially or completely, legally, beneficially or constructively,
with a health care provider or health care facility; or which owns
directly, indirectly, beneficially or constructively any part of a
health care provider or health care facility.

(o) “Representative” means the spouse, parent, guardian,
trustee, attorney or other legal agent of another.
§55-7B-7. Testimony of expert witness on standard of care.

(a) The applicable standard of care and a defendant’s failure to meet the standard of care, if at issue, shall be established in medical professional liability cases by the plaintiff by testimony of one or more knowledgeable, competent expert witnesses if required by the court. A proposed expert witness may only be found competent to testify if the foundation for his or her testimony is first laid establishing that: (1) The opinion is actually held by the expert witness; (2) the opinion can be testified to with reasonable medical probability; (3) the expert witness possesses professional knowledge and expertise coupled with knowledge of the applicable standard of care to which his or her expert opinion testimony is addressed; (4) the expert witness’s opinion is grounded on scientifically valid peer-reviewed studies if available; (5) the expert witness maintains a current license to practice medicine with the appropriate licensing authority of any state of the United States: Provided, That the expert witness’s license has not been revoked or suspended in the past year in any state; and (6) the expert witness is engaged or qualified in a medical field in which the practitioner has experience and/or training in diagnosing or treating injuries or conditions similar to those of the patient. If the witness meets all of these qualifications and devoted, at the time of the medical injury, sixty percent of his or her professional time annually to the active clinical practice in his or her medical field or specialty, or to teaching in his or her medical field or speciality in an accredited university, there shall be a rebuttable presumption that the witness is qualified as an expert. The parties shall have the opportunity to impeach any witness’s qualifications as an expert. Financial records of an expert witness are not discoverable or relevant to prove the amount of time the expert witness spends in active practice or teaching in his or her medical field unless good cause can be shown to the court.
(b) Nothing contained in this section limits a trial court’s discretion to determine the competency or lack of competency of a witness on a ground not specifically enumerated in this section.

§55-7B-7a. Admissibility and use of certain information.

(a) In an action brought, there is a rebuttable presumption that the following information may not be introduced unless it applies specifically to the injured person or it involves substantially similar conduct that occurred within one year of the particular incident involved:

1. A state or federal survey, audit, review or other report of a health care provider or health care facility;
2. Disciplinary actions against a health care provider’s license, registration or certification;
3. An accreditation report of a health care provider or health care facility; and
4. An assessment of a civil or criminal penalty.

(b) In any action brought, if the health care facility or health care provider demonstrates compliance with the minimum staffing requirements under state law, the health care facility or health care provider is entitled to a rebuttable presumption that appropriate staffing was provided.

(c) Information under this section may only be introduced in a proceeding if it is otherwise admissible under the West Virginia Rules of Evidence.

§55-7B-8. Limit on liability for noneconomic loss.

(a) In any professional liability action brought against a health care provider pursuant to this article, the maximum
amount recoverable as compensatory damages for noneconomic loss may not exceed $250,000 for each occurrence, regardless of the number of plaintiffs or the number of defendants or, in the case of wrongful death, regardless of the number of distributees, except as provided in subsection (b) of this section.

(b) The plaintiff may recover compensatory damages for noneconomic loss in excess of the limitation described in subsection (a) of this section, but not in excess of $500,000 for each occurrence, regardless of the number of plaintiffs or the number of defendants or, in the case of wrongful death, regardless of the number of distributees, where the damages for noneconomic losses suffered by the plaintiff were for: (1) Wrongful death; (2) permanent and substantial physical deformity, loss of use of a limb or loss of a bodily organ system; or (3) permanent physical or mental functional injury that permanently prevents the injured person from being able to independently care for himself or herself and perform life-sustaining activities.

(c) On January 1, 2004, and in each year thereafter, the limitation for compensatory damages contained in subsections (a) and (b) of this section shall increase to account for inflation by an amount equal to the Consumer Price Index published by the United States Department of Labor, not to exceed one hundred fifty percent of the amounts specified in said subsections. (d) The limitations on noneconomic damages contained in subsections (a), (b), (c) and (e) of this section are not available to any defendant in an action pursuant to this article which does not have medical professional liability insurance in the aggregate amount of at least $1 million for each occurrence covering the medical injury which is the subject of the action.

(e) If subsection (a) or (b) of this section, as enacted during the 2003 regular session of the Legislature, or the application thereof to any person or circumstance, is found by a court of law
to be unconstitutional or otherwise invalid, the maximum
amount recoverable as damages for noneconomic loss in a
professional liability action brought against a health care
provider under this article shall thereafter not exceed $1 million.

§55-7B-9. Several liability.

(a) In the trial of a medical professional liability action under
this article involving multiple defendants, the trier of fact shall
report its findings on a form provided by the court which
contains each of the possible verdicts as determined by the court.
Unless otherwise agreed by all the parties to the action, the jury
shall be instructed to answer special interrogatories, or the court,
acting without a jury, shall make findings as to:

(1) The total amount of compensatory damages recoverable
by the plaintiff;

(2) The portion of the damages that represents damages for
noneconomic loss;

(3) The portion of the damages that represents damages for
each category of economic loss;

(4) The percentage of fault, if any, attributable to each
plaintiff; and

(5) The percentage of fault, if any, attributable to each of the
defendants.

(b) In assessing percentages of fault, the trier of fact shall
consider only the fault of the parties in the litigation at the time
the verdict is rendered and may not consider the fault of any
other person who has settled a claim with the plaintiff arising out
of the same medical injury: Provided, That, upon the creation of
the Patient Injury Compensation Fund provided for in article
twelve-c, chapter twenty-nine of this code, or of some other
mechanism for compensating a plaintiff for any amount of economic damages awarded by the trier of fact which the plaintiff has been unable to collect, the trier of fact shall, in assessing percentages of fault, consider the fault of all alleged parties, including the fault of any person who has settled a claim with the plaintiff arising out of the same medical injury.

(c) If the trier of fact renders a verdict for the plaintiff, the court shall enter judgment of several, but not joint, liability against each defendant in accordance with the percentage of fault attributed to the defendant by the trier of fact.

(d) To determine the amount of judgment to be entered against each defendant, the court shall first, after adjusting the verdict as provided in section nine-a of this article, reduce the adjusted verdict by the amount of any preverdict settlement arising out of the same medical injury. The court shall then, with regard to each defendant, multiply the total amount of damages remaining, with interest, by the percentage of fault attributed to each defendant by the trier of fact. The resulting amount of damages, together with any post-judgment interest accrued, shall be the maximum recoverable against the defendant.

(e) Upon the creation of the Patient Injury Compensation Fund provided for in article twelve-c, chapter twenty-nine of this code, or of some other mechanism for compensating a plaintiff for any amount of economic damages awarded by the trier of fact which the plaintiff has been unable to collect, the court shall, in determining the amount of judgment to be entered against each defendant, first multiply the total amount of damages, with interest, recoverable by the plaintiff by the percentage of each defendant’s fault and that amount, together with any post-judgment interest accrued, is the maximum recoverable against said defendant. Prior to the court’s entry of the final judgment order as to each defendant against whom a verdict was rendered, the court shall reduce the total jury verdict by any amounts
received by a plaintiff in settlement of the action. When any defendant’s percentage of the verdict exceeds the remaining amounts due the plaintiff after the mandatory reductions, each defendant shall be liable only for the defendant’s pro rata share of the remainder of the verdict as calculated by the court from the remaining defendants to the action. The plaintiff’s total award may never exceed the jury’s verdict less any statutory or court-ordered reductions.

(f) 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 in this section.

(g) Nothing in this article is meant to preclude a health care provider from being held responsible for the portion of fault attributed by the trier of fact to any person acting as the health care provider’s agent or servant or to preclude imposition of fault otherwise imputable or attributable to the health care provider under claims of vicarious liability. A health care provider may not be held vicariously liable for the acts of a nonemployee pursuant to a theory of ostensible agency unless the alleged agent does not maintain professional liability insurance covering the medical injury which is the subject of the action in the aggregate amount of at least $1 million for each occurrence.

§55-7B-9a. Reduction in compensatory damages for economic losses for payments from collateral sources for the same injury.

(a) In any action arising after the effective date of this section, a defendant who has been found liable to the plaintiff for damages for medical care, rehabilitation services, lost earnings or other economic losses may present to the court, after the trier of fact has rendered a verdict, but before entry of judgment, evidence of payments the plaintiff has received for the same injury from collateral sources.
(b) In a hearing held pursuant to subsection (a) of this section, the defendant may present evidence of future payments from collateral sources if the court determines that:

(1) There is a preexisting contractual or statutory obligation on the collateral source to pay the benefits;

(2) The benefits, to a reasonable degree of certainty, will be paid to the plaintiff for expenses the trier of fact has determined the plaintiff will incur in the future; and

(3) The amount of the future expenses is readily reducible to a sum certain.

(c) In a hearing held pursuant to subsection (a) of this section, the plaintiff may present evidence of the value of payments or contributions he or she has made to secure the right to the benefits paid by the collateral source.

(d) After hearing the evidence presented by the parties, the court shall make the following findings of fact:

(1) The total amount of damages for economic loss found by the trier of fact;

(2) The total amount of damages for each category of economic loss found by the trier of fact;

(3) The total amount of allowable collateral source payments received or to be received by the plaintiff for the medical injury which was the subject of the verdict in each category of economic loss; and

(4) The total amount of any premiums or contributions paid by the plaintiff in exchange for the collateral source payments in each category of economic loss found by the trier of fact.
(e) The court shall subtract the total premiums the plaintiff was found to have paid in each category of economic loss from the total collateral source benefits the plaintiff received with regard to that category of economic loss to arrive at the net amount of collateral source payments.

(f) The court shall then subtract the net amount of collateral source payments received or to be received by the plaintiff in each category of economic loss from the total amount of damages awarded the plaintiff by the trier of fact for that category of economic loss to arrive at the adjusted verdict.

(g) The court may not reduce the verdict rendered by the trier of fact in any category of economic loss to reflect:

(1) Amounts paid to or on behalf of the plaintiff which the collateral source has a right to recover from the plaintiff through subrogation, lien or reimbursement;

(2) Amounts in excess of benefits actually paid or to be paid on behalf of the plaintiff by a collateral source in a category of economic loss;

(3) The proceeds of any individual disability or income replacement insurance paid for entirely by the plaintiff;

(4) The assets of the plaintiff or the members of the plaintiff’s immediate family; or

(5) A settlement between the plaintiff and another tortfeasor.

(h) After determining the amount of the adjusted verdict, the court shall enter judgment in accordance with the provisions of section nine of this article.

§55-7B-9c. Limit on liability for treatment of emergency conditions for which patient is admitted to a
designated trauma center; exceptions; emergency rules.

(a) In any action brought under this article for injury to or death of a patient as a result of health care services or assistance rendered in good faith and necessitated by an emergency condition for which the patient enters a health care facility designated by the Office of Emergency Medical Services as a trauma center, including health care services or assistance rendered in good faith by a licensed emergency medical services authority or agency, certified emergency medical service personnel or an employee of a licensed emergency medical services authority or agency, the total amount of civil damages recoverable may not exceed $500,000 for each occurrence, exclusive of interest computed from the date of judgment, and regardless of the number of plaintiffs or the number of defendants or, in the case of wrongful death, regardless of the number of distributees.

(b) The limitation of liability in subsection (a) of this section also applies to any act or omission of a health care provider in rendering continued care or assistance in the event that surgery is required as a result of the emergency condition within a reasonable time after the patient’s condition is stabilized.

(c) The limitation on liability provided under subsection (a) of this section does not apply to any act or omission in rendering care or assistance which:

(1) Occurs after the patient’s condition is stabilized and the patient is capable of receiving medical treatment as a nonemergency patient; or

(2) Is unrelated to the original emergency condition.

(d) In the event that: (1) A physician provides follow-up care to a patient to whom the physician rendered care or assistance
pursuant to subsection (a) of this section; and (2) a medical
condition arises during the course of the follow-up care that is
directly related to the original emergency condition for which
care or assistance was rendered pursuant to said subsection, there
is rebuttable presumption that the medical condition was the
result of the original emergency condition and that the limitation
on liability provided by said subsection applies with respect to
that medical condition.

(e) There is a rebuttable presumption that a medical
condition which arises in the course of follow-up care provided
by the designated trauma center health care provider who
rendered good faith care or assistance for the original emergency
condition is directly related to the original emergency condition
where the follow-up care is provided within a reasonable time
after the patient’s admission to the designated trauma center.

(f) The limitation on liability provided under subsection (a)
of this section does not apply where health care or assistance for
the emergency condition is rendered:

   (1) In willful and wanton or reckless disregard of a risk of
       harm to the patient; or

   (2) In clear violation of established written protocols for
       triage and emergency health care procedures developed by the
       Office of Emergency Medical Services in accordance with
       subsection (e) of this section. In the event that the Office of
       Emergency Medical Services has not developed a written triage
       or emergency medical protocol by the effective date of this
       section, the limitation on liability provided under subsection (a)
       of this section does not apply where health care or assistance is
       rendered under this section in violation of nationally recognized
       standards for triage and emergency health care procedures.

(g) The Office of Emergency Medical Services shall, prior
to the effective date of this section, develop a written protocol
specifying recognized and accepted standards for triage and emergency health care procedures for treatment of emergency conditions necessitating admission of the patient to a designated trauma center.

(h) In its discretion, the Office of Emergency Medical Services may grant provisional trauma center status for a period of up to one year to a health care facility applying for designated trauma center status. A facility given provisional trauma center status is eligible for the limitation on liability provided in subsection (a) of this section. If, at the end of the provisional period, the facility has not been approved by the Office of Emergency Medical Services as a designated trauma center, the facility is no longer eligible for the limitation on liability provided in subsection (a) of this section.

(i) The Commissioner of the Bureau for Public Health may grant an applicant for designated trauma center status a one-time only extension of provisional trauma center status, upon submission by the facility of a written request for extension, accompanied by a detailed explanation and plan of action to fulfill the requirements for a designated trauma center. If, at the end of the six-month period, the facility has not been approved by the Office of Emergency Medical Services as a designated trauma center, the facility no longer has the protection of the limitation on liability provided in subsection (a) of this section.

(j) If the Office of Emergency Medical Services determines that a health care facility no longer meets the requirements for a designated trauma center, it shall revoke the designation, at which time the limitation on liability established by subsection (a) of this section ceases to apply to that health care facility for services or treatment rendered thereafter.

(k) The Legislature hereby finds that an emergency exists compelling promulgation of an emergency rule, consistent with
the provisions of this section, governing the criteria for
designation of a facility as a trauma center or provisional trauma
center and implementation of a statewide trauma/emergency care
system. The Legislature therefore directs the Secretary of the
Department of Health and Human Resources to file, on or before
July 1, 2003, emergency rules specifying the criteria for
designation of a facility as a trauma center or provisional trauma
center in accordance with nationally accepted and recognized
standards and governing the implementation of a statewide
trauma/emergency care system. The rules governing the
statewide trauma/emergency care system shall include, but not
be limited to:

(1) System design, organizational structure and operation,
including integration with the existing emergency medical
services system;

(2) Regulation of facility designation, categorization and
credentialing, including the establishment and collection of
reasonable fees for designation; and

(3) System accountability, including medical review and
audit to assure system quality. Any medical review committees
established to assure system quality shall include all levels of
care, including emergency medical service providers, and both
the review committees and the providers shall qualify for all the
rights and protections established in article three-c, chapter thirty
of this code.

(4) On January 1, 2016, and in each year after that, the
limitation for civil damages contained in subsection (a) of this
section shall increase to account for inflation by an amount equal
to the Consumer Price Index published by the United States
Department of Labor, not to exceed one hundred fifty percent of
said subsection.
§55-7B-9d. Adjustment of verdict for past medical expenses.

A verdict for past medical expenses is limited to:

1. The total amount of past medical expenses paid by or on behalf of the plaintiff; and

2. The total amount of past medical expenses incurred but not paid by or on behalf of the plaintiff for which the plaintiff or another person on behalf of the plaintiff is obligated to pay.

§55-7B-10. Effective date; applicability of provisions.

(a) The provisions of House Bill 149, enacted during the first extraordinary session of the Legislature, 1986, shall be effective at the same time that the provisions of Enrolled Senate Bill 714, enacted during the regular session, 1986, become effective, and the provisions of said House Bill 149 shall be deemed to amend the provisions of Enrolled Senate Bill 714. The provisions of this article shall not apply to injuries which occur before the effective date of this said Enrolled Senate Bill 714.

The amendments to this article as provided in House Bill 601, enacted during the sixth extraordinary session of the Legislature, 2001, apply to all causes of action alleging medical professional liability which are filed on or after March 1, 2002.

The amendments to this article provided in Enrolled Committee Substitute for House Bill No. 2122 during the regular session of the Legislature, 2003, apply to all causes of action alleging medical professional liability which are filed on or after July 1, 2003.

(b) The amendments to this article provided in Enrolled Committee Substitute for Senate Bill No. 6 during the regular session of the Legislature, 2015, apply to all causes of action
alleging medical professional liability which are filed on or after July 1, 2015.


(a) If any provision of this article as enacted during the first extraordinary session of the Legislature, 1986, in House Bill 149, or as enacted during the regular session of the Legislature, 1986, in Senate Bill 714, or as enacted during the regular session of the Legislature, 2015, or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this article, and to this end, the provisions of this article are declared to be severable.

(b) If any provision of the amendments to section five of this article, any provision of section six-d of this article or any provision of the amendments to section eleven, article six, chapter fifty-six of this code as provided in House Bill 601, enacted during the sixth extraordinary session of the Legislature, 2001, is held invalid, or the application thereof to any person is held invalid, then, notwithstanding any other provision of law, every other provision of said House Bill 601 shall be deemed invalid and of no further force and effect.

(c) If any provision of the amendments to section six or ten of this article or any provision of section six-a, six-b or six-c of this article as provided in House Bill 601, enacted during the sixth extraordinary session of the Legislature, 2001, is held invalid, the invalidity does not affect other provisions or applications of this article, and to this end, such provisions are deemed severable.
AN ACT to amend and reenact §17A-3-4 of the Code of West Virginia, 1931, as amended; to amend and reenact §18-20-1a of said code; to amend and reenact §28-1-2 of said code; and to amend and reenact §28-5-31 of said code, all relating to changing the term “mentally retarded” to “intellectually disabled;” and changing the term “handicapped” to “disabled.”

Be it enacted by the Legislature of West Virginia:

That §17A-3-4 of the Code of West Virginia, 1931, as amended, be amended and reenacted; that §18-20-1a of said code be amended and reenacted; that §28-1-2 of said code be amended and reenacted; and that §28-5-31 of said code be amended and reenacted, all to read as follows:

CHAPTER 17A. MOTOR VEHICLE ADMINISTRATION, REGISTRATION, CERTIFICATE OF TITLE, AND ANTITHEFT PROVISIONS.

ARTICLE 3. ORIGINAL AND RENEWAL OF REGISTRATION; ISSUANCE OF CERTIFICATES OF TITLE.

§17A-3-4. Application for certificate of title; fees; abolishing privilege tax; prohibition of issuance of certificate of
(a) Certificates of registration of any vehicle or registration plates for the vehicle, whether original issues or duplicates, may not be issued or furnished by the Division of Motor Vehicles or any other officer or agent charged with the duty, unless the applicant already has received, or at the same time makes application for and is granted, an official certificate of title of the vehicle in either an electronic or paper format. The application shall be upon a blank form to be furnished by the Division of Motor Vehicles and shall contain a full description of the vehicle, which description shall contain a manufacturer’s serial or identification number or other number as determined by the commissioner and any distinguishing marks, together with a statement of the applicant’s title and of any liens or encumbrances upon the vehicle, the names and addresses of the holders of the liens and any other information as the Division of Motor Vehicles may require. The application shall be signed and sworn to by the applicant. A duly certified copy of the division’s electronic record of a certificate of title is admissible in any civil, criminal or administrative proceeding in this state as evidence of ownership.

(b) A tax is imposed upon the privilege of effecting the certification of title of each vehicle in the amount equal to five percent of the value of the motor vehicle at the time of the certification, to be assessed as follows:

(1) If the vehicle is new, the actual purchase price or consideration to the purchaser of the vehicle is the value of the vehicle. If the vehicle is a used or secondhand vehicle, the present market value at time of transfer or purchase is the value of the vehicle for the purposes of this section: Provided, That so much of the purchase price or consideration as is represented by the exchange of other vehicles on which the tax imposed by this
section has been paid by the purchaser shall be deducted from
the total actual price or consideration paid for the vehicle,
whether the vehicle be new or secondhand. If the vehicle is
acquired through gift or by any manner whatsoever, unless
specifically exempted in this section, the present market value of
the vehicle at the time of the gift or transfer is the value of the
vehicle for the purposes of this section.

(2) No certificate of title for any vehicle may be issued to
any applicant unless the applicant has paid to the Division of
Motor Vehicles the tax imposed by this section which is five
percent of the true and actual value of the vehicle whether the
vehicle is acquired through purchase, by gift or by any other
manner whatsoever, except gifts between husband and wife or
between parents and children: Provided, That the husband or
wife, or the parents or children, previously have paid the tax on
the vehicles transferred to the State of West Virginia.

(3) The Division of Motor Vehicles may issue a certificate
of registration and title to an applicant if the applicant provides
sufficient proof to the Division of Motor Vehicles that the
applicant has paid the taxes and fees required by this section to
a motor vehicle dealership that has gone out of business or has
filed bankruptcy proceedings in the United States bankruptcy
court and the taxes and fees so required to be paid by the
applicant have not been sent to the division by the motor vehicle
dealership or have been impounded due to the bankruptcy
proceedings: Provided, That the applicant makes an affidavit of
the same and assigns all rights to claims for money the applicant
may have against the motor vehicle dealership to the Division of
Motor Vehicles.

(4) The Division of Motor Vehicles shall issue a certificate
of registration and title to an applicant without payment of the
tax imposed by this section if the applicant is a corporation,
partnership or limited liability company transferring the vehicle
to another corporation, partnership or limited liability company when the entities involved in the transfer are members of the same controlled group and the transferring entity has previously paid the tax on the vehicle transferred. For the purposes of this section, control means ownership, directly or indirectly, of stock or equity interests possessing fifty percent or more of the total combined voting power of all classes of the stock of a corporation or equity interests of a partnership or limited liability company entitled to vote or ownership, directly or indirectly, of stock or equity interests possessing fifty percent or more of the value of the corporation, partnership or limited liability company.

(5) The tax imposed by this section does not apply to vehicles to be registered as Class H vehicles or Class M vehicles, as defined in section one, article ten of this chapter, which are used or to be used in interstate commerce. Nor does the tax imposed by this section apply to the titling of Class B vehicles registered at a gross weight of fifty-five thousand pounds or more, or to the titling of Class C semitrailers, full trailers, pole trailers and converter gear: *Provided,* That if an owner of a vehicle has previously titled the vehicle at a declared gross weight of fifty-five thousand pounds or more and the title was issued without the payment of the tax imposed by this section, then before the owner may obtain registration for the vehicle at a gross weight less than fifty-five thousand pounds, the owner shall surrender to the commissioner the exempted registration, the exempted certificate of title and pay the tax imposed by this section based upon the current market value of the vehicle: *Provided, however,* That notwithstanding the provisions of section nine, article fifteen, chapter eleven of this code, the exemption from tax under this section for Class B vehicles in excess of fifty-five thousand pounds and Class C semitrailers, full trailers, pole trailers and converter gear does not subject the sale or purchase of the vehicles to the consumers sales and service tax.
(6) The tax imposed by this section does not apply to titling of vehicles leased by residents of West Virginia. A tax is imposed upon the monthly payments for the lease of any motor vehicle leased by a resident of West Virginia, which tax is equal to five percent of the amount of the monthly payment, applied to each payment, and continuing for the entire term of the initial lease period. The tax shall be remitted to the Division of Motor Vehicles on a monthly basis by the lessor of the vehicle.

(7) The tax imposed by this section does not apply to titling of vehicles by a registered dealer of this state for resale only, nor does the tax imposed by this section apply to titling of vehicles by this state or any political subdivision thereof, or by any volunteer fire department or duly chartered rescue or ambulance squad organized and incorporated under the laws of this state as a nonprofit corporation for protection of life or property. The total amount of revenue collected by reason of this tax shall be paid into the state Road Fund and expended by the Commissioner of Highways for matching federal funds allocated for West Virginia. In addition to the tax, there is a charge of $5 for each original certificate of title or duplicate certificate of title so issued: Provided, That this state or any political subdivision of this state or any volunteer fire department or duly chartered rescue squad is exempt from payment of the charge.

(8) The certificate is good for the life of the vehicle, so long as the vehicle is owned or held by the original holder of the certificate and need not be renewed annually, or any other time, except as provided in this section.

(9) If, by will or direct inheritance, a person becomes the owner of a motor vehicle and the tax imposed by this section previously has been paid to the Division of Motor Vehicles on that vehicle, he or she is not required to pay the tax.

(10) A person who has paid the tax imposed by this section is not required to pay the tax a second time for the same motor
133 vehicle, but is required to pay a charge of $5 for the certificate
134 of retitle of that motor vehicle, except that the tax shall be paid
135 by the person when the title to the vehicle has been transferred
136 either in this or another state from the person to another person
137 and transferred back to the person.

138 (11) The tax imposed by this section does not apply to any
139 passenger vehicle offered for rent in the normal course of
business by a daily passenger rental car business as licensed
140 under the provisions of article six-d of this chapter. For purposes
141 of this section, a daily passenger car means a Class A motor
vehicle having a gross weight of eight thousand pounds or less
142 and is registered in this state or any other state. In lieu of the tax
143 imposed by this section, there is hereby imposed a tax of not less
144 than $1 nor more than $1.50 for each day or part of the rental
145 period. The commissioner shall propose an emergency rule in
146 accordance with the provisions of article three, chapter
147 twenty-nine-a of this code to establish this tax.

150 (12) The tax imposed by this article does not apply to the
151 titling of any vehicle purchased by a senior citizen service
152 organization which is exempt from the payment of income taxes
153 under the United States Internal Revenue Code, Title 26 U.S.C.
154 §501(c)(3) and which is recognized to be a bona fide senior
155 citizen service organization by the senior services bureau
156 existing under the provisions of article five, chapter sixteen of
157 this code.

158 (13) The tax imposed by this section does not apply to the
159 titling of any vehicle operated by an urban mass transit authority
160 as defined in article twenty-seven, chapter eight of this code or
161 a nonprofit entity exempt from federal and state income tax
162 under the Internal Revenue Code and whose purpose is to
163 provide mass transportation to the public at large designed for
164 the transportation of persons and being operated for the
165 transportation of persons in the public interest.
(14) The tax imposed by this section does not apply to the
transfer of a title to a vehicle owned and titled in the name of a
resident of this state if the applicant:

(A) Was not a resident of this state at the time the applicant
purchased or otherwise acquired ownership of the vehicle;

(B) Presents evidence as the commissioner may require of
having titled the vehicle in the applicant’s previous state of
residence;

(C) Has relocated to this state and can present such evidence
as the commissioner may require to show bona-fide residency in
this state;

(D) Presents an affidavit, completed by the assessor of the
applicant’s county of residence, establishing that the vehicle has
been properly reported and is on record in the office of the
assessor as personal property; and

(E) Makes application to the division for a title and
registration, and pays all other fees required by this chapter
within thirty days of establishing residency in this state as
prescribed in subsection (a), section one-a of this article:
Provided, That a period of amnesty of three months be
established by the commissioner during the calendar year 2007,
during which time any resident of this state, having titled his or
her vehicle in a previous state of residence, may pay without
penalty any fees required by this chapter and transfer the title of
his or her vehicle in accordance with the provisions of this
section.

(c) Notwithstanding any provisions of this code to the
contrary, the owners of trailers, semitrailers, recreational
vehicles and other vehicles not subject to the certificate of title
tax prior to the enactment of this chapter are subject to the
privilege tax imposed by this section: Provided, That the
certification of title of any recreational vehicle owned by the applicant on June 30, 1989, is not subject to the tax imposed by this section: Provided, however, That mobile homes, manufactured homes, modular homes and similar nonmotive propelled vehicles, except recreational vehicles and house trailers, susceptible of being moved upon the highways but primarily designed for habitation and occupancy, rather than for transporting persons or property, or any vehicle operated on a nonprofit basis and used exclusively for the transportation of intellectually disabled or physically disabled children when the application for certificate of registration for the vehicle is accompanied by an affidavit stating that the vehicle will be operated on a nonprofit basis and used exclusively for the transportation of intellectually disabled and physically disabled children, are not subject to the tax imposed by this section, but are taxable under the provisions of articles fifteen and fifteen-a, chapter eleven of this code.

(d) Beginning on July 1, 2008, the tax imposed under this subsection (b) of this section is abolished and after that date no certificate of title for any motor vehicle may be issued to any applicant unless the applicant provides sufficient proof to the Division of Motor Vehicles that the applicant has paid the fees required by this article and the tax imposed under section three-b, article fifteen, chapter eleven of this code.

(e) Any person making any affidavit required under any provision of this section who knowingly swears falsely, or any person who counsels, advises, aids or abets another in the commission of false swearing, or any person, while acting as an agent of the Division of Motor Vehicles, issues a vehicle registration without first collecting the fees and taxes or fails to perform any other duty required by this chapter or chapter eleven of this code to be performed before a vehicle registration is issued is, on the first offense, guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than $500 or be
confined in jail for a period not to exceed six months or, in the discretion of the court, both fined and confined. For a second or any subsequent conviction within five years, that person is guilty of a felony and, upon conviction thereof, shall be fined not more than $5,000 or be imprisoned in a state correctional facility for not less than one year nor more than five years or, in the discretion of the court, both fined and imprisoned.

(f) Notwithstanding any other provisions of this section, any person in the military stationed outside West Virginia or his or her dependents who possess a motor vehicle with valid registration are exempt from the provisions of this article for a period of nine months from the date the person returns to this state or the date his or her dependent returns to this state, whichever is later.

(g) No person may transfer, purchase or sell a factory-built home without a certificate of title issued by the commissioner in accordance with the provisions of this article:

(1) Any person who fails to provide a certificate of title upon the transfer, purchase or sale of a factory-built home is guilty of a misdemeanor and, upon conviction thereof, shall for the first offense be fined not less than $100 nor more than $1,000, or be confined in jail for not more than one year, or both fined and confined. For each subsequent offense, the fine may be increased to not more than $2,000, with confinement in jail not more than one year, or both fined and confined.

(2) Failure of the seller to transfer a certificate of title upon sale or transfer of the factory-built home gives rise to a cause of action, upon prosecution thereof, and allows for the recovery of damages, costs and reasonable attorney fees.

(3) This subsection does not apply to a mobile or manufactured home for which a certificate of title has been canceled pursuant to section twelve-b of this article.
(h) Notwithstanding any other provision to the contrary, whenever reference is made to the application for or issuance of any title or the recordation or release of any lien, it includes the application, transmission, recordation, transfer of ownership and storage of information in an electronic format.

(i) Notwithstanding any other provision contained in this section, nothing herein shall be considered to include modular homes as defined in subsection (i), section two, article fifteen, chapter thirty-seven of this code and built to the state Building Code as established by legislative rules promulgated by the state Fire Commission pursuant to section five-b, article three, chapter twenty-nine of this code.

CHAPTER 18. EDUCATION.

ARTICLE 20. EDUCATION OF EXCEPTIONAL CHILDREN.

§18-20-1a. Preschool programs for severely disabled children; rules and regulations.

(a) During the school year beginning on July 1, 1985, each county board of education shall develop a coordinated service delivery plan in accordance with standards for preschool programs for severely disabled children to be developed by the state Board of Education and begin services where plans are already developed.

(b) Only in any year in which funds are made available by legislative appropriation, and only to the extent of such funding, each county board of education shall establish and maintain a special educational program, including, but not limited to, special classes and home-teaching and visiting-teacher services for all severely disabled children between the ages of three and five according to the following schedule:
(1) By the school year beginning on July 1, 1986, and thereafter, for severely disabled children who are age four before September 1, 1986;

(2) By the school year beginning on July 1, 1987, and thereafter, for severely disabled children who are age three before September 1, 1987.

As used in this section, the term “severely disabled children” means those children who fall in any one of the following categories as defined or to be defined in the state Board of Education standards for the education of exceptional children: Severe behavioral disorders, severely speech and language impaired, deaf-blind, hearing impaired, autistic, physically disabled profoundly intellectually disabled, trainable intellectually disabled or visually impaired.

Before August 1, 1985, the state Board of Education shall adopt rules and regulations to advance and accomplish this program and to assure that an appropriate educational program is available to all such children in the state, including children in mental health facilities, residential institutions and private schools.

This section does not prevent county boards of education from providing special education programs, including, but not limited to, special schools, classes, regular class programs and home-teaching or visiting-teacher services for severely disabled preschool children prior to such times as are required by this section. In addition, county boards of education may provide these services to preschool exceptional children in disability categories other than those listed above.
§28-1-2. Commitment; age limits; physical, educational and psychological examinations; admission; transfer and placement.

(a) Any male youth between the ages of ten and eighteen years may be committed to the custody of the commissioner of corrections by a circuit court of this state in the manner prescribed in article five, chapter forty-nine of this code; and further, any male youth who has been adjudged delinquent pursuant to subdivision (1), section four, article one, chapter forty-nine of this code, who, as a result thereof, was placed on probation and has been found, in a proceeding pursuant to the procedural requirements of article five, chapter forty-nine of this code, to have violated a term of probation, prior to the attainment of his or her twentieth birthday, which constitutes a criminal offense, may be committed to the custody of the commissioner of corrections as a youthful offender.

(b) Every youth committed hereunder shall, following the dispositional proceeding, be transferred to the place or places designated by the commissioner of corrections for complete physical, educational and psychological examinations, including all appropriate tests, to be completed as soon as possible, the completion of the physical examinations to be within twenty days. Such youth shall be housed in a manner so as to prevent the spread of infectious disease. Following disposition and prior to transfer to the custody of the commissioner of corrections, each youth shall be allowed to visit with his or her relatives, without being committed to jail for a period of not less than one hour. The cost of the examinations herein shall be borne by the committing county. The youth shall be provided all treatment and rehabilitation indicated by such examinations.

In lieu of the physical examinations and tests provided for herein, the court may, in the absence of objection, have the county health officer or other local health care facility perform
physical and mental examinations and tests, so long as such
examinations and tests are performed prior to the dispositional
proceeding. Except as otherwise provided by law, no child shall
be committed to a jail following a dispositional proceeding
solely to await a physical, educational or mental examination or
the results thereof.

(c) All such examinations shall be private. No youth who is
mentally ill or significantly intellectually disabled shall be
committed to, or retained by, the commissioner of corrections,
but shall be returned to the committing court for further
disposition. No youth who has a serious infectious disease shall
be retained in the custody of the commissioner of corrections,
but shall be transferred to an appropriate treatment facility.
Detailed medical records shall be kept of every youth.

(d) The results of any such physical, educational and
psychological examinations, together with a copy of the petition,
the adjudicatory order and the dispositional order shall
accompany every youth committed to the commissioner of
corrections, without which such youth shall not be accepted. The
commissioner, or his or her designated representative, shall
review the records of each youth committed to assure that no
youth is illegally detained in an inappropriate facility or
custodial situation.

(e) The commissioner of corrections shall have the authority
to transfer and place such youth in any of the centers or homes
or halfway programs which shall be established, and in less
restrictive settings, whether under his or her jurisdiction or
private nonprofit residential facilities, as he or she may deem
appropriate to promote the rehabilitation of such youth. To the
extent possible, no youth under the age of fifteen shall be in
regular contact with youths between the ages of sixteen and
eighteen.
ARTICLE 5. THE PENITENTIARY.

§28-5-31. Mentally diseased convicts; treatment; transfer between penal and mental health facilities; penal facility procedures.

(a) No person who is, or was considered to be, mentally ill, intellectually disabled or addicted shall be denied parole or a parole hearing based upon such past or present condition. In the event a convicted person is deemed to be an appropriate candidate for parole, but for a condition warranting involuntary hospitalization such person shall be paroled and proceedings instituted pursuant to section four, article five, chapter twenty-seven of this code. Any time spent in such facility shall be considered part of the term, and any person whose sentence expires while receiving treatment for a mental condition shall be discharged unless proceedings have been instituted and a determination made pursuant to section four, article five, chapter twenty-seven of this code.

(b) When a convicted person in a jail, prison, or other facility is believed to be mentally ill, intellectually disabled or addicted, as those terms are defined in article one, chapter twenty-seven of this code, and in need of treatment, training or other services, the facts relating to such illness, shall be presented to the chief administrative officer of the facility. Such facts may be presented by a correctional officer, member of a correctional institution medical staff, relative, or the convicted person. Immediately upon receipt of such facts, the chief administrative officer shall arrange for psychiatric or psychological examination of the person alleged to be so afflicted. If the report of the examination is to the effect that the individual is mentally ill, intellectually disabled, or addicted and that treatment, training or other services are required which cannot reasonably be provided at the correctional facility, the chief administrative officer shall file within twenty days after
presentation of the facts an application for transfer with the clerk
of the circuit court of the county of location of the correctional
facility. Such application for transfer shall include a statement of
the nature of the treatment which the person’s condition warrants
and the facility to which transfer is sought.

Within ten days of receipt of the application from the chief
administrative officer, the mental hygiene commissioner or
circuit judge shall appoint counsel for the convicted person if the
person is indigent.

The clerk of the circuit court shall forthwith notify the
convicted person, by certified mail, return receipt requested,
delivered only to addressee, that such application has been filed,
enclosing therewith a copy of the application with an explanation
of the place and purpose of the transfer and the type of treatment
to be afforded, together with the name, address, and telephone
number of any appointed counsel. The person shall be afforded
reasonable telephone access to his or her counsel. The clerk shall
also notify the superintendent or other chief administrative
officer of the facility to which transfer is sought. Within fifteen
days after receipt of notice, the convicted person, through
counsel, shall file a verified return admitting or denying the
allegations and informing the court or mental hygiene
commissioner as to whether the respondent wishes to oppose the
transfer. Counsel shall file the return only after personal
consultation with the convicted person. The superintendent of
the facility to which transfer is sought shall also file a return
within fifteen days of the receipt of notice, informing the court
or mental hygiene commissioner as to whether the needed
treatment or other services can be provided within that facility.
If said superintendent objects to receiving the convicted person
for treatment or services, the reasons for such objection shall be
specified in detail.
If the transfer is opposed by either the convicted person or by the superintendent of the facility to which transfer is sought, the matter shall forthwith be set for hearing, in no event to exceed thirty days from the date of the return opposing such transfer, and the clerk shall provide to the convicted person, the superintendent of the facility to which transfer is sought, and the superintendent of the correctional facility, at least ten days’ written notice, by certified mail, return receipt requested, of the purpose, time and place of the hearing.

The convicted person shall be present at the hearing, and be afforded an opportunity to testify and to present and cross-examine witnesses. Counsel for the convicted person shall be entitled to copies of all medical reports upon request. The person shall have the right to an examination by an independent expert of the person’s choice and testimony from such expert as a medical witness on the person’s behalf. The cost of providing such medical expert shall be borne by the state if the person is indigent. The person shall not be required to give testimony which is self-incriminating. The circuit court or mental hygiene commissioner shall hear evidence from all parties, in accord with the rules of evidence. A transcript or recording shall be made of all proceedings, and transcript made available to the person within thirty days, if the same is requested for the purpose of further proceedings, and without cost if the person is indigent.

Upon completion of the hearing, and consideration of the evidence presented therein, the circuit court or mental hygiene commissioner shall make findings of facts as to whether or not (1) the individual is mentally ill, intellectually disabled or addicted; (2) the individual because of mental illness, mental retardation or addiction is likely to cause serious harm to self or others; (3) the individual could not obtain the requisite treatment or training at the correctional facility or another appropriate correctional facility; and (4) the designated facility to which transfer is sought could provide such treatment or training with
such security as the court finds appropriate; and, if all such findings are in the affirmative, the circuit court may order the transfer of such person to the appropriate facility. The findings of fact shall be incorporated into the order entered by the circuit court. In all proceedings hereunder, proof of mental condition and of likelihood of serious harm must be established by clear, cogent and convincing evidence, and the likelihood of serious harm must be based upon evidence of recent overt acts.

CHAPTER 170

(H. B. 2224 - By Delegate(s) Howell, Manchin, Rowan, Storch, Canterbury, Stansbury, Zatezalo, Butler, D. Evans, Ambler and Cooper)

[Passed March 13, 2015; in effect from passage.]
[Approved by the Governor on March 25, 2015.]

AN ACT to amend and reenact §15-1F-7 of the Code of West Virginia, 1931, as amended, relating to unlawful military organizations; providing that historical reenactors are not violating the provision prohibiting unlawful military organizations; and providing that individuals or groups of individuals who drill, perform or parade at public ceremonies, including funerals, are not violating the provision prohibiting unlawful military organizations.

Be it enacted by the Legislature of West Virginia:

That §15-1F-7 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 1F. PRIVILEGES AND PROHIBITIONS.

§15-1F-7. Unlawful military organizations.
(a) It is unlawful for any body of individuals other than the regularly organized National Guard or the troops of the United States, to associate themselves together as a military company or organization in this state.

(b) Notwithstanding subsection (a) of this section, the Governor may grant permission to public or private schools of the state to organize themselves into companies of cadets, and may furnish the cadets, under proper restrictions, obsolete ordnance stores and equipment owned by the state that are not in use by the National Guard.

(c) It is not a violation of this section for a group of individuals to associate as a military company or organization for historical, artistic or fictional performances; or, for an individual or group of individuals to drill, perform or parade at public ceremonies, including funerals.

(d) A person who violates subsection (a) of this section, or belongs to or parades with a body of individuals with arms violating subsection (a) of this section, is guilty of a misdemeanor and, upon conviction, shall be fined not more than $100 or confined in jail for not more than six months.

CHAPTER 171

(Com. Sub. for S. B. 486 - By Senators Leonhardt, Boso, D. Hall, Karnes, Maynard, Mullins, Nohe, Romano and Walters)

[Passed March 13, 2015; in effect ninety days from passage.]
[Approved by the Governor on March 27, 2015.]

AN ACT to amend and reenact §17A-3-23 of the Code of West Virginia, 1931, as amended, relating to removing requirement for
vehicles operated by West Virginia Wing of the Civil Air Patrol to display front license plates with white lettering on a green background bearing the words “West Virginia” in one line and the words “State Car” in another line; authorizing special license plates for Civil Air Patrol vehicles; and establishing fee to be paid per special license plate.

Be it enacted by the Legislature of West Virginia:

That §17A-3-23 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 3. ORIGINAL AND RENEWAL OF REGISTRATION; ISSUANCE OF CERTIFICATES OF TITLE.

§17A-3-23. Registration plates to state, county, municipal and other governmental vehicles; use for undercover activities.

(a) Any motor vehicle designed to carry passengers, owned or leased by the state of West Virginia, or any of its departments, bureaus, commissions or institutions, except vehicles used by the Governor, Treasurer, three vehicles per elected office of the Board of Public Works, vehicles operated by the State Police, not to exceed five vehicles operated by the Office of the Secretary of Military Affairs and Public Safety, not to exceed five vehicles operated by the Division of Homeland Security and Emergency Management, vehicles operated by natural resources police officers of the Division of Natural Resources, not to exceed ten vehicles operated by the arson investigators of the Office of State Fire Marshal, not to exceed two vehicles operated by the Division of Protective Services, not to exceed sixteen vehicles operated by inspectors of the Office of the Alcohol Beverage Control Commissioner, vehicles operated by the West Virginia Wing of the Civil Air Patrol and vehicles operated by
probation officers employed under the Supreme Court of Appeals may not be operated or driven by any person unless it has displayed and attached to the front thereof, in the same manner as regular motor vehicle registration plates are attached, a plate of the same size as the regular registration plate, with white lettering on a green background bearing the words “West Virginia” in one line and the words “State Car” in another line and the lettering for the words “State Car” shall be of sufficient size to be plainly readable from a distance of one hundred feet during daylight.

The vehicle shall also have attached to the rear a plate bearing a number and any other words and figures as the Commissioner of Motor Vehicles shall prescribe. The rear plate shall also be green with the number in white.

(b) Registration plates issued to vehicles owned by counties shall be white on red with the word “County” on top of the plate and the words “West Virginia” on the bottom.

(c) Registration plates issued to a city or municipality shall be white on blue with the word “City” on top and the words “West Virginia” on the bottom.

(d) Registration plates issued to a city or municipality law-enforcement department shall include blue lettering on a white background with the words “West Virginia” on top of the plate and shall be further designed by the commissioner to include a law-enforcement shield together with other insignia or lettering sufficient to identify the motor vehicle as a municipal law-enforcement department motor vehicle. The colors may not be reversed and shall be of reflectorized material. The registration plates issued to counties, municipalities and other governmental agencies authorized to receive colored plates hereunder shall be affixed to both the front and rear of the vehicles.
(e) (1) Registration plates issued to vehicles operated by county sheriffs shall be designed by the commissioner in cooperation with the sheriffs’ association with the word “Sheriff” on top of the plate and the words “West Virginia” on the bottom. The plate shall contain a gold shield representing the sheriff’s star and a number assigned to that plate by the commissioner. Every county sheriff shall provide the commissioner with a list of vehicles operated by the sheriff, unless otherwise provided in this section, and a fee of $10 for each vehicle submitted by July 1, 2002.

(2) Registration plates issued to vehicles operated by the West Virginia Wing of the Civil Air Patrol shall be designed by the commissioner in cooperation with the Civil Air Patrol and include the words “Civil Air Patrol” on the plate. The Civil Air Patrol shall provide the commissioner with a list of vehicles operated by the Civil Air Patrol, unless otherwise provided in this section, and a fee of $10 for each new vehicle for which a Civil Air Patrol license plate is requested.

(f) The commissioner is authorized to designate the colors and design of any other registration plates that are issued without charge to any other agency in accordance with the motor vehicle laws.

(g) Upon application, the commissioner is authorized to issue a maximum of five Class A license plates per applicant to be used by county sheriffs and municipalities on law-enforcement vehicles while engaged in undercover investigations.

(h) The commissioner is authorized to issue a maximum of five Class A license plates to be used on vehicles assigned to the Division of Motor Vehicles investigators for commercial driver examination fraud investigation and driver’s license issuance fraud detection and fraud prevention.
(i) The commissioner is authorized to issue an unlimited number of license plates per applicant to authorized drug and violent crime task forces in the state of West Virginia when the chairperson of the control group of a drug and violent crime task force signs a written affidavit stating that the vehicle or vehicles for which the plates are being requested will be used only for official undercover work conducted by a drug and violent crime task force.

(j) The commissioner is authorized to issue twenty Class A license plates to the Criminal Investigation Division of the Department of Revenue for use by its investigators.

(k) The commissioner may issue a maximum of ten Class A license plates to the Division of Natural Resources for use by natural resources police officers. The commissioner shall designate the color and design of the registration plates to be displayed on the front and the rear of all other state-owned vehicles owned by the Division of Natural Resources and operated by natural resources police officers.

(l) The commissioner is authorized to issue an unlimited number of Class A license plates to the Commission on Special Investigations for state-owned vehicles used for official undercover work conducted by the Commission on Special Investigations.

(m) The commissioner is authorized to issue a maximum of two Class A plates to the Division of Protective Services for state-owned vehicles used by the Division of Protective Services in fulfilling its mission.

(n) The commissioner is authorized to issue Class A registration plates for vehicles used by the Medicaid Fraud Control Unit created by section seven, article seven, chapter nine of this code.
(o) The commissioner is authorized to issue Class A registration plates for vehicles used by the West Virginia Insurance Fraud Unit created by section eight, article forty-one, chapter thirty-three of this code.

(p) No other registration plate may be issued for, or attached to, any state-owned vehicle.

(q) The Commissioner of Motor Vehicles shall have a sufficient number of both front and rear plates produced to attach to all state-owned cars. The numbered registration plates for the vehicles shall start with the number five hundred and the commissioner shall issue consecutive numbers for all state-owned cars.

(r) It is the duty of each office, department, bureau, commission or institution furnished any vehicle to have plates as described herein affixed thereto prior to the operation of the vehicle by any official or employee.

(s) The commissioner may issue special registration plates for motor vehicles titled in the name of the Division of Public Transit or in the name of a public transit authority as defined in this subsection and operated by a public transit authority or a public transit provider to transport persons in the public interest. For purposes of this subsection, “public transit authority” means an urban mass transportation authority created pursuant to the provisions of article twenty-seven, chapter eight of this code or a nonprofit entity exempt from federal and state income taxes under the Internal Revenue Code and whose purpose is to provide mass transportation to the public at large. The special registration plate shall be designed by the commissioner and shall display the words “public transit” or words or letters of similar effect to indicate the public purpose of the use of the vehicle. The special registration plate shall be issued without charge.
(t) Any person who violates the provisions of this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than $50 nor more than $100. Magistrates have concurrent jurisdiction with circuit courts for the enforcement of this section.

CHAPTER 172


[Passed March 14, 2015; in effect ninety days from passage.]
[Approved by the Governor on April 3, 2015.]

AN ACT to amend and reenact §17A-6A-1, §17A-6A-3, §17A-6A-4, §17A-6A-5, §17A-6A-6, §17A-6A-8, §17A-6A-8a, §17A-6A-9, §17A-6A-10, §17A-6A-11, §17A-6A-12, §17A-6A-13, §17A-6A-15 and §17A-6A-18 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto five new sections, designated §17A-6A-12a, §17A-6A-14a, §17A-6A-15a, §17A-6A-15b and §17A-6A-15c, all relating generally to motor vehicle dealers, distributors, wholesalers and manufacturers; adopting legislative findings; defining terms; modifying terms relating to cancellations of dealer agreements; modifying circumstances not constituting good cause to cancel an agreement; clarifying the standard of proof in termination, cancellation and nonrenewal disputes; modifying compensation terms when contract is discontinued; setting interest rate where payments to dealers from manufacturers or distributors are untimely; adding conduct which is considered a prohibited practice; increasing to one hundred eighty days the notice period afforded dealers should
a manufacturer or distributor not approve a successor dealer; clarifying that air miles are used to determine distances between dealerships; restricting manufacturer and distributor use of dealership property; modifying obligations under warranties; and clarifying indemnity practices.

Be it enacted by the Legislature of West Virginia:


ARTICLE 6A. MOTOR VEHICLE DEALERS, DISTRIBUTORS, WHOLESALERS AND MANUFACTURERS.

§17A-6A-1. Legislative finding.

The Legislature finds and declares that the distribution and sale of motor vehicles in this state vitally affects the general economy and the public welfare and that in order to promote the public welfare and in exercise of its police power, it is necessary to regulate motor vehicle dealers, manufacturers, distributors and representatives of vehicle manufacturers and distributors doing business in this state in order to avoid undue control of the independent new motor vehicle dealer by the vehicle manufacturer or distributor and to ensure that dealers fulfill their obligations under their franchises and provide adequate and sufficient service to consumers generally, and to protect and preserve the investments and properties of the citizens and motor vehicle dealers of this state.

For the purposes of this article, the words and phrases defined in this section have the meanings ascribed to them, except where the context clearly indicates a different meaning.

(1) “Dealer agreement” means the franchise, agreement or contract in writing between a manufacturer, distributor and a new motor vehicle dealer which purports to establish the legal rights and obligations of the parties to the agreement or contract with regard to the purchase, lease or sale of new motor vehicles, accessories, service and sale of parts for motor vehicles.

(2) “Designated family member” means the spouse, child, grandchild, parent, brother or sister of a deceased new motor vehicle dealer who is entitled to inherit the deceased dealer’s ownership interest in the new motor vehicle dealership under the terms of the dealer’s will, or who has otherwise been designated in writing by a deceased dealer to succeed the deceased dealer in the new motor vehicle dealership, or is entitled to inherit under the laws of intestate succession of this state. With respect to an incapacitated new motor vehicle dealer, the term means the person appointed by a court as the legal representative of the new motor vehicle dealer’s property. The term also includes the appointed and qualified personal representative and the testamentary trustee of a deceased new motor vehicle dealer. However, the term means only that designated successor nominated by the new motor vehicle dealer in a written document filed by the dealer with the manufacturer or distributor, if such a document is filed.

(3) “Distributor” means any person, resident or nonresident who, in whole or in part, offers for sale, sells or distributes any new motor vehicle to a new motor vehicle dealer or who maintains a factor representative, resident or nonresident, or who controls any person, resident or nonresident who, in whole or in
part, offers for sale, sells or distributes any new motor vehicle to a new motor vehicle dealer.

(4) “Established place of business” means a permanent, enclosed commercial building located within this state easily accessible and open to the public at all reasonable times and at which the business of a new motor vehicle dealer, including the display and repair of motor vehicles, may be lawfully carried on in accordance with the terms of all applicable building codes, zoning and other land-use regulatory ordinances and as licensed by the Division of Motor Vehicles.

(5) “Factory branch” means an office maintained by a manufacturer or distributor for the purpose of selling or offering for sale vehicles to a distributor, wholesaler or new motor vehicle dealer, or for directing or supervising, in whole or in part, factory or distributor representatives. The term includes any sales promotion organization maintained by a manufacturer or distributor which is engaged in promoting the sale of a particular make of new motor vehicles in this state to new motor vehicle dealers.

(6) “Factory representative” means an agent or employee of a manufacturer, distributor or factory branch retained or employed for the purpose of making or promoting the sale of new motor vehicles or for supervising or contracting with new motor vehicle dealers or proposed motor vehicle dealers.

(7) “Good faith” means honesty in fact and the observation of reasonable commercial standards of fair dealing in the trade.

(8) “Manufacturer” means any person who manufactures or assembles new motor vehicles; or any distributor, factory branch or factory representative and, in the case of a school bus, truck tractor, road tractor or truck as defined in section one, article one of this chapter, also means a person engaged in the business of
manufacturing a school bus, truck tractor, road tractor or truck, their engines, power trains or rear axles, including when engines, power trains or rear axles are not warranted by the final manufacturer or assembler, and any distributor, factory branch or representative.

(9) “Motor vehicle” means that term as defined in section one, article one of this chapter, including motorcycle, school bus, truck tractor, road tractor, truck, recreational vehicle, all-terrain vehicle and utility terrain vehicle as defined in subsections (c), (d), (f), (h), (l), (nn) and (vv), respectively, of said section, but not including a farm tractor or farm equipment. The term “motor vehicle” also includes a school bus, truck tractor, road tractor, truck, its component parts, including, but not limited to, its engine, transmission or rear axle manufactured for installation in a school bus, truck tractor, road tractor or truck.

(10) “New motor vehicle” means a motor vehicle which is in the possession of the manufacturer, distributor or wholesaler, or has been sold only to a new motor vehicle dealer and on which the original title has not been issued from the new motor vehicle dealer.

(11) “New motor vehicle dealer” means a person who holds a dealer agreement granted by a manufacturer or distributor for the sale of its motor vehicles, who is engaged in the business of purchasing, selling, leasing, exchanging or dealing in new motor vehicles, service of said vehicles, warranty work and sale of parts who has an established place of business in this state and is licensed by the Division of Motor Vehicles.

(12) “Person” means a natural person, partnership, corporation, association, trust, estate or other legal entity.

(13) “Proposed new motor vehicle dealer” means a person who has an application pending for a new dealer agreement with
a manufacturer or distributor. “Proposed motor vehicle dealer” does not include a person whose dealer agreement is being renewed or continued.

(14) “Relevant market area” means the area located within a twenty-air mile radius around an existing same line-make new motor vehicle dealership: Provided, That a fifteen-mile relevant market area as it existed prior to the effective date of this statute shall apply to any proposed new motor vehicle dealership as to which a manufacturer or distributor and the proposed new motor vehicle dealer have executed on or before the effective date of this statute a written agreement, including a letter of intent, performance agreement or commitment letter, concerning the establishment of the proposed new motor vehicle dealership.


(1) Notwithstanding any agreement, a manufacturer or distributor shall not cancel, terminate, fail to renew or refuse to continue any dealer agreement with a new motor vehicle dealer unless the manufacturer or distributor has complied with all of the following:

(a) Satisfied the notice requirement of section seven of this article;

(b) Acted in good faith;

(c) Engaged in full and open communication with franchised dealer; and

(d) Has good cause for the cancellation, termination, nonrenewal or discontinuance.

(2) Notwithstanding any agreement, good cause exists when a manufacturer or distributor can demonstrate termination is necessary due to a material breach of a reasonable term or terms
of the agreement by a dealer when weighed against the interests
of the dealer and the public. The burden of proof is on the
manufacturer to prove good cause by a preponderance of the
evidence. The interests of the dealer and the public shall include
consideration of:

(a) The relationship of the dealer’s sales to the sales in the
relevant market;

(b) The investment and financial obligations of the dealer
under the terms of the franchise agreement;

(c) The effect on the public cancellation of the franchise
agreement would cause;

(d) The adequacy of the dealer’s sales and service facilities,
equipment, parts and personnel in relation to other dealers in the
relevant market;

(e) Whether the dealer is honoring existing warranties;

(f) Whether the dealer is complying, or can comply within
a reasonable time, with reasonable capitalization requirements;
and

(g) The dealer’s overall performance under the reasonable
terms of the franchise agreement. This shall include the overall
fairness of the agreement terms, the enforceability of the
agreement and the relative bargaining power of the parties.

(h) Whether the manufacturer made available the appropriate
volumes and type of motor vehicles to the dealer and a
reasonable opportunity for sales and service training to the
dealer.

(3) In addition to the requirements of subsection (2) of this
section, if the failure by the new motor vehicle dealer to comply
with a provision of the dealer agreement relates to the
performance of the new motor vehicle dealer in sales or service,
good cause exists for the purposes of a termination, cancellation,
nonrenewal or discontinuance under subsection (1) of this
section when the new motor vehicle dealer failed to effectively
carry out the performance provisions of the dealer agreement if
all of the following have occurred:

(a) The new motor vehicle dealer was given written notice
by the manufacturer or distributor of the failure;

(b) The notification stated that the notice of failure of
performance was provided pursuant to this article;

(c) The new motor vehicle dealer was afforded a reasonable
opportunity to exert good faith efforts to carry out the dealer
agreement; and

(d) The failure continued for more than three hundred sixty
days after the date notification was given pursuant to subdivision
(a) of this subsection.

§17A-6A-5. Circumstances not constituting good cause.

Notwithstanding any agreement, the following alone does
not constitute good cause for the termination, cancellation,
nonrenewal or discontinuance of a dealer agreement under
subsection (d), subsection (1), section four of this article:

(a) A change in ownership of the new motor vehicle dealer’s
dealership. This subdivision does not authorize any change in
ownership which would have the effect of a sale or an
assignment of the dealer agreement or a change in the principal
management of the dealership without the manufacturer’s or
distributor’s prior written consent which may not be
unreasonably or untimely withheld.
(b) The refusal of the new motor vehicle dealer to purchase or accept delivery of any new motor vehicle parts, accessories or any other commodity or services not ordered by the new motor vehicle dealer.

(c) The fact that the new motor vehicle dealer owns, has an investment in, participates in the management of, or holds a dealer agreement for the sale of another make or line of new motor vehicles, or that the new motor vehicle dealer has established another make or line of new motor vehicles in the same dealership facilities as those of the manufacturer or distributor: Provided, That the new motor vehicle dealer maintains a reasonable line of credit for each make or line of new motor vehicles, and that the new motor vehicle dealer remains in substantial compliance with the terms and conditions of the dealer agreement and with any reasonable facilities’ requirements of the manufacturer or distributor.

(d) The fact that the new motor vehicle dealer sells or transfers ownership of the dealership or sells or transfers capital stock in the dealership to the new motor vehicle dealer’s spouse, son or daughter: Provided, That the sale or transfer shall not have the effect of a sale or an assignment of the dealer agreement or a change in the principal management of the dealership without the manufacturer’s or distributor’s prior written consent.

(e) This section does not apply to any voluntary agreement entered into after a disagreement or civil action has arisen for which the dealer has accepted separate and valuable consideration. Any prospective agreement is void as a matter of law.


For each termination, cancellation, nonrenewal or discontinuance, the manufacturer or distributor has the burden of
proof by a preponderance of the evidence for showing that he or she has acted in good faith, that the notice requirement has been complied with and that there was good cause by a preponderance of the evidence for the termination, cancellation, nonrenewal or discontinuance.

§17A-6A-8. Reasonable compensation to dealer.

(1) Upon the termination, cancellation, nonrenewal or discontinuance of any dealer agreement, the new motor vehicle dealer shall be allowed fair and reasonable compensation by the manufacturer or distributor for the following:

(a) Any new motor vehicle inventory, manufactured for sale in the United States, purchased from the manufacturer, distributor or other dealers, in the ordinary course of business, which has not been materially altered, substantially damaged or driven for more than one thousand miles, except that for any new motorcycle, new all-terrain vehicle or utility terrain vehicle inventory, including motorhomes and travel trailers, regardless of gross vehicle weight, purchased from the manufacturer or distributor, that inventory must not have been materially altered, substantially damaged or driven for more than fifty miles and for motor vehicles with a rating greater than twenty-six thousand one pounds gross vehicle weight driven no more than five thousand miles. For purposes of a school bus, truck tractor, road tractor or truck, materially altered does not include dealer add-ons, such as, but not limited to, racks, mud flaps, fifth wheel assemblies, dump or tank bodies;

(b) Supplies and parts inventory purchased at the published list price purchased from, or at the direction of, the manufacturer or distributor. Parts shall be restricted to those listed in the manufacturer’s or distributor’s current parts catalog;

(c) Equipment, special tools, furnishings and signs purchased or leased from, or at the direction of, the manufacturer or distributor; and
(d) Special computer software, hardware, license fees and other programs mandated by the manufacturer to provide training or communication with the manufacturer.

(2) Upon the termination, cancellation, nonrenewal or discontinuance of a dealer agreement by the manufacturer or distributor, the manufacturer or distributor shall also pay to the new motor vehicle dealer a sum equal to the current, fair rental value of his or her established place of business for a period of three years from the effective date of termination, cancellation, nonrenewal or discontinuance, or the remainder of the lease, whichever is less. If the dealer, directly or indirectly, owns the dealership facility, the manufacturer shall pay the dealer a sum equal to the reasonable rental value of the dealership premises for three years. However, the dealer shall have the obligation to mitigate his or her damages, including, but not limited to, listing the facility with a commercial real estate agent and other reasonable steps to sell or lease the property. During this three-year period the manufacturer shall have the right to occupy and use the facilities until such time as the dealer is able to otherwise sell or lease the property to another party. The payment required by this subsection does not apply to any termination, cancellation, nonrenewal or discontinuance made pursuant to subsection (c), section seven of this article.

(3) In addition to the items listed in subsections (1) and (2) of this section, the termination, cancellation or nonrenewal where the manufacturer or distributor is discontinuing the sale of a product line, the manufacturer or distributor shall pay or provide to the motor vehicle dealer:

(a) Support of the manufacturer’s or distributor’s warranty obligations by making parts available and compensating dealers for warranty parts and labor for five years: Provided, That the motor vehicle dealer has adequate facilities, trained personnel and equipment to perform warranty repairs;
(b) Any actual damages that can be proven by a dealer by a preponderance of the evidence;

(c) Any costs the dealer incurred for facility upgrades or
alternations required by the manufacturer, distributor or factory branch within the previous five years; and

(d) Within forty-five days after termination, dealer shall submit evidence of items to the manufacturer in accordance with reasonable manufacturer requirements. The manufacturer shall have thirty days from receipt of this evidence to note any objection. If not objected thereto, payment by the manufacturer to the dealer shall be made within thirty days. Thereafter, interest accumulates at the rate of the Fifth Federal Reserve District’s secondary discount rate in effect on January 2 of the year in which payment is due plus five percentage points. If a dispute arises over the sufficiency of any evidence or an amount submitted, when interest begins to accumulate will be determined in accordance with West Virginia common law.

§17A-6A-8a. Compensation to dealers for service rendered.

(1) Every motor vehicle manufacturer, distributor or wholesaler, factory branch or distributor branch, or officer, agent or representative thereof, shall:

(a) Specify in writing to each of its motor vehicle dealers, the dealer’s obligation for delivery, preparation, warranty and factory recall services on its products;

(b) Compensate the motor vehicle dealer for warranty and factory recall service required of the dealer by the manufacturer, distributor or wholesaler, factory branch or distributor branch or officer, agent or representative thereof; and

(c) Provide the dealer the schedule of compensation to be paid the dealer for parts, work and service in connection with
warranty and recall services and the time allowance for the
performance of the work and service.

(2) In no event may:

(a) The schedule of compensation fail to compensate the
dealers for the work and services they are required to perform in
connection with the dealer’s delivery and preparation
obligations, or fail to adequately and fairly compensate the
dealers for labor, parts and other expenses incurred by the dealer
to perform under and comply with manufacturer’s warranty
agreements and factory recalls;

(b) Any manufacturer, distributor or wholesaler, or
representative thereof, pay its dealers an amount of money for
warranty or recall work that is less than that charged by the
dealer to the retail customers of the dealer for nonwarranty and
nonrecall work of the like kind; and

(c) Any manufacturer, distributor or wholesaler, or
representative thereof, compensate for warranty and recall work
based on a flat-rate figure that is less than what the dealer
charges for retail work.

(3) It is a violation of this section for any manufacturer,
distributor, wholesaler or representative to require any dealer to
pay in any manner, surcharges, limited allocation, audits, charge
backs or other retaliation if the dealer seeks to recover its
nonwarranty retail rate for warranty and recall work.

(4) The retail rate charged by the dealer for parts is
established by the dealer submitting to the manufacturer or
distributor one hundred sequential nonwarranty customer-paid
service repair orders that contain warranty-like parts or ninety
consecutive days of nonwarranty customer-paid service repair
orders that contain warranty-like parts covering repairs made no
more than one hundred eighty days before the submission and
declaring the average percentage markup.

(5) The retail rate customarily charged by the dealer for
labor rate must be established using the same process as
provided under subsection (4) of this section and declaring the
average labor rate. The average labor rate must be determined by
dividing the amount of the dealer’s total labor sales by the
number of total hours that generated those sales. If a labor rate
and parts markup rate simultaneously declared by the dealer, the
dealer may use the same repair orders to complete each
calculation as provided under subsection (4) of this section. A
reasonable allowance for labor for diagnostic time shall be either
included in the manufacturer’s labor time allowance or listed as
a separate compensable item. A dealer may request additional
time allowance for either diagnostic or repair time, which
request shall not be unreasonable denied by the manufacturer.

(6) In calculating the retail rate customarily charged by the
dealer for parts and labor, the following work may not be
included in the calculation:

(a) Repairs for manufacturer or distributor special events,
specials or promotional discounts for retain customer repairs;

(b) Parts sold at wholesale;

(c) Routine maintenance not covered under any retail
customer warranty, including fluids, filters and belts not
provided in the course of repairs;

(d) Nuts, bolts fasteners and similar items that do not have
an individual part number;

(e) Tires;

(f) Vehicle reconditioning.
72 (7) The average of the parts markup rates and labor rate is presumed to be reasonable and must go into effect thirty days following the manufacturer’s approval. A manufacturer or distributor may rebut the presumption by a preponderance of the evidence that a rate is unreasonable in light of the practices of all other same line-make franchised motor vehicle dealers in an economically similar area of the state offering the same line-make vehicles, not later than thirty days after submission. If the average parts markup rate or average labor rate is rebutted, or both, the manufacturer or distributor shall propose an adjustment of the average percentage markup based on that rebuttal not later than thirty days after submission.

84 (8) Each manufacturer, in establishing a schedule of compensation for warranty work, shall rely on the vehicle dealer’s declaration of hourly labor rates and parts as stated in subsections (4), (5) and (6) of this section and may not obligate any vehicle dealer to engage in unduly burdensome or time-consuming documentation of rates or parts, including obligating vehicle dealers to engage in transaction-by-transaction or part-by-part calculations.

92 (9) A dealer or manufacturer may demand that the average parts markup or average labor rate be calculated using the process provided under subsections (4) and (5) of this section; however, the demand for the average parts markup may not be made within twelve months of the last parts markup declaration and the demand for the average labor rate may not be made within twelve months of the last labor rate declaration. If a parts markup or labor rate is demanded by the dealer or manufacturer, the dealer shall determine the repair orders to be included in the calculation under subsections (4) and (5) of this section.

102 (10) As it applies to a school bus, truck tractor, road tractor and truck as defined in section one, article one of this chapter, with a gross vehicle weight on excess of twenty-six thousand one
pounds the manufacturer, distributor and/or O. E. M. supplier shall pay the dealer its incurred actual time at the retail labor rate for retrieving a motor vehicle and returning a motor vehicle to dealer’s designated parking area. Dealer shall be paid $50 minimum for each operation that requires the use of each electronic tool (i.e. laptop computer). The manufacturer or distributor may not reduce what is paid to a dealer for this retrieval or return time, or for the electronic tool charge. The dealer is allowed to add to a completed warranty repair order three hours for every twenty-four hours the manufacturer, distributor and/or O. E. M. supplier makes the dealer stop working on a vehicle while the manufacturer, distributor and/or O. E. M. supplier decides how it wants the dealer to proceed with the repairs.

(11) All claims made by motor vehicle dealers pursuant to the section for compensation for delivery, preparation, warranty and recall work, including labor, parts and other expenses, shall be paid by the manufacturer within thirty days after approval and shall be approved or disapproved by the manufacturer within thirty days after receipt. When any claim is disapproved, the dealer shall be notified in writing of the grounds for disapproval. No claim which has been approved and paid may be charged back to the dealer unless it can be shown that the claim was false or fraudulent, that the repairs were not properly made or were unnecessary to correct the defective condition or the dealer failed to reasonable substantiate the claim in accordance with the written requirements of the manufacturer or distributor in effect at the time the claim arose. No charge back may be made until the dealer has had notice and an opportunity to support the claim in question. No otherwise valid reimbursement claims may be denied once properly submitted within manufacturers’ submission guidelines due to a clerical error or omission or based on a different level of technician technical certification or the dealer’s failure to subscribe to any manufacturer’s computerized training programs.
(12) Notwithstanding the terms of a franchise agreement or provision of law in conflict with this section, the dealer’s delivery, preparation, warranty and recall obligations constitutes the dealer’s sole responsibility for product liability as between the dealer and manufacturer and, except for a loss caused by the dealer’s failure to adhere to the obligations, a loss caused by the dealer’s negligence or intentional misconduct or a loss caused by the dealer’s modification of a product without manufacturer authorization, the manufacturer shall reimburse the dealer for all loss incurred by the dealer, including legal fees, court costs and damages, as a result of the dealer having been named a party in a product liability action.


(1) Compensation for new motor vehicle inventory under subdivision (a), subsection (1), section eight of this article shall be paid within sixty days after the effective date of the termination, cancellation, nonrenewal or discontinuance. Compensation for items of personal property required by subdivisions (b), (c) and (d), subsection (1), section eight of this article shall be paid within sixty days after the effective date of the termination, cancellation, nonrenewal or discontinuance. The new motor vehicle dealer will meet all reasonable requirements of the dealer agreement with respect to the return of the repurchased personal property, including providing clear title.

(2) Reasonable compensation pursuant to subdivision (a), subsection (1), section eight of this article may not be less than the new motor vehicle dealer’s net acquisition cost, including any special promotions ordered by the manufacturer, such as advertising charges. Reasonable compensation pursuant to subdivision (b) of said subsection shall be the amount stated in the manufacturer’s or distributor’s current parts price list. Reasonable compensation pursuant to subdivisions (c) and (d) of said subsection shall be the fair market value of the personal
property determined by a five-year straight line depreciation schedule.

(3) In the event payment is not made within ninety days as provided in subsection (1) of this section, interest shall accumulate at the rate of the Fifth Federal Reserve District’s secondary discount rate in effect on January 2 of the year in which payment is due plus five percentage points. In determining when interest begins to accumulate, the court may consider whether the dealer reasonably complied with the reasonable manufacturer’s submission requirements and the reasonableness of the manufacturer’s determinations in refusing or delaying payment to the dealer.


(1) A manufacturer or distributor may not require any new motor vehicle dealer in this state to do any of the following:

(a) Order or accept delivery of any new motor vehicle, part or accessory of the vehicle, equipment or any other commodity not required by law which was not voluntarily ordered by the new motor vehicle dealer. This section does not prevent the manufacturer or distributor from requiring that new motor vehicle dealers carry a reasonable inventory of models offered for sale by the manufacturer or distributor;

(b) Order or accept delivery of any new motor vehicle with special features, accessories or equipment not included in the list price of the new motor vehicle as publicly advertised by the manufacturer or distributor;

(c) Unreasonably participate monetarily in any advertising campaign or contest, or purchase any promotional materials, display devices, display decorations, brand signs and dealer identification, nondiagnostic computer equipment and displays or other materials at the expense of the new motor vehicle dealer;
(d) Enter into any agreement with the manufacturer or distributor or do any other act prejudicial to the new motor vehicle dealer by threatening to terminate a dealer agreement, limit inventory, invoke sales and service warranty or other types of audits or any contractual agreement or understanding existing between the dealer and the manufacturer or distributor. Notice in good faith to any dealer of the dealer’s violation of any terms or provisions of the dealer agreement is not a violation of this article;

(e) Change the capital structure or financial requirements of the new motor vehicle dealership without reasonable business justification in light of the dealer’s market, historical performance and compliance with prior capital structure or financial requirements and business necessity, or the means by or through which the dealer finances the operation of the dealership if the dealership at all times meets any reasonable capital standards determined by the manufacturer in accordance with uniformly applied criteria. The burden of proof is on the manufacturer to prove business justification by a preponderance of the evidence;

(f) Refrain from participation in the management of, investment in or the acquisition of any other line of new motor vehicle or related products, provided that the dealer maintains a reasonable line of credit for each make or line of vehicle, remains in compliance with reasonable facilities requirements and makes no change in the principal management of the dealer. Notwithstanding the terms of any franchise agreement, a manufacturer or distributor may not enforce any requirements, including facility requirements, that a new motor vehicle dealer establish or maintain exclusive facilities, personnel or display space, when the requirements are unreasonable considering current economic conditions and are not otherwise justified by reasonable business considerations. The burden of proving that current economic conditions or reasonable business
considerations justify exclusive facilities is on the manufacturer
or distributor and must be proven by a preponderance of the
evidence;

(g) Change the location of the new motor vehicle dealership
or make any substantial alterations to the dealership premises,
where to do so would be unreasonable. The burden is on the
manufacturer or distributor to prove reasonableness by a
preponderance of the evidence;

(h) Prospectively assent to a waiver of trial by jury release,
 arbitration, assignment, novation, waiver or estoppel which
would relieve any person from liability imposed by this article
or require any controversy between a new motor vehicle dealer
and a manufacturer or distributor to be referred to a person other
than the duly constituted courts of this state or the United States
District Courts of the Northern or Southern Districts of West
Virginia. Nothing in this prevents a motor vehicle dealer, after
a civil action is filed, from entering into any agreement of
settlement, arbitration, assignment or waiver of a trial by jury;

(i) To coerce or require any dealer, whether by agreement,
program, incentive provision or otherwise, to construct
improvements to its facilities or to install new signs or other
franchisor image elements that replace or substantially alter
those improvements, signs or franchisor image elements
completed within the proceeding ten years that were required
and approved by the manufacturer, factory branch, distributor or
distributor branch or one of its affiliates. If a manufacturer,
factory branch, distributor or distributor branch offers incentives
or other payments to a consumer or dealer paid on individual
vehicle sales under a program offered after the effective date of
this subdivision and available to more than one dealer in the state
that are premised, wholly or in part, on dealer facility
improvements or installation of franchiser image elements
required by and approved by the manufacturer, factory branch,
distributor or distributor branch and completed within ten years
preceding the program shall be deemed to be in compliance with
the program requirements pertaining to construction of facilities
or installation of signs or other franchisor image elements that
would replace or substantially alter those previously constructed
or installed with that ten year period. This subdivision shall not
apply to a program that is in effect with more than one dealer in
the state on the effective date of this subsection, nor to any
renewal of such program, nor to a modification that is not a
substantial modification of a material term or condition of such
program;

(j) To condition the award, sale, transfer, relocation or
renewal of a franchise or dealer agreement or to condition sales,
service, parts or finance incentives upon site control or an
agreement to renovate or make substantial improvements to a
facility: Provided, That voluntary and noncoerced acceptance of
such conditions by the dealer in writing, including, but not
limited to, a written agreement for which the dealer has accepted
separate and valuable consideration, does not constitute a
violation;

(k) To enter into a contractual requirement imposed by the
manufacturer, distributor or a captive finance source as follows:

(i) In this section, “captive finance source” means any
financial source that provides automotive-related loans or
purchases retail installment contracts or lease contracts for motor
vehicles in this state and is, directly or indirectly, owned,
operated or controlled by such manufacturer, factory branch,
distributor or distributor branch.

(ii) It shall be unlawful for any manufacturer, factory branch,
captive finance source, distributor or distributor branch, or any
field representative, officer, agent or any representative of them,
notwithstanding the terms, provisions or conditions of any
agreement or franchise, to require any of its franchised dealers
located in this state to agree to any terms, conditions or
requirements in subdivisions (a) through (j), inclusive, of this subsection in order for any such dealer to sell to any captive finance source any retail installment contract, loan or lease of any motor vehicles purchased or leased by any of the dealer’s customers, or to be able to participate in, or otherwise, directly or indirectly, obtain the benefits of the consumer transaction incentive program payable to the consumer or the dealer and offered by or through any captive finance source as to that incentive program.

(iii) The applicability of this section is not affected by a choice of law clause in any agreement, waiver, novation or any other written instrument.

(iv) It shall be unlawful for a manufacturer or distributor to use any subsidiary corporation, affiliated corporation or any other controlled corporation, partnership, association or person to accomplish what would otherwise be illegal conduct under this section on the part of the manufacturer or distributor.

(2) A manufacturer or distributor may not do any of the following:

(a) (i) Fail to deliver new motor vehicles or new motor vehicle parts or accessories within a reasonable time and in reasonable quantities relative to the new motor vehicle dealer’s market area and facilities, unless the failure is caused by acts or occurrences beyond the control of the manufacturer or distributor, or unless the failure results from an order by the new motor vehicle dealer in excess of quantities reasonably and fairly allocated by the manufacturer or distributor. No manufacturer or distributor may penalize a new motor vehicle dealer for an alleged failure to meet sales quotas where the alleged failure is due to actions of the manufacturer or distributor;

(ii) Refuse to offer to its same line-make new motor vehicle dealers all models manufactured for that line-make, including,
but not limited to, any model that contains a separate label or
badge indicating a upgraded version of the same model. This
 provision does not apply to motorhome, travel trailer or
fold-down camping trailer manufacturers; or

(iii) Require as a prerequisite to receiving a model or series
of vehicles that a new motor vehicle dealer pay an extra
unreasonable acquisition fee or surcharge, or purchase
unreasonable advertising displays or other materials, or conduct
unreasonable remodeling, renovation or reconditioning of the
dealer’s facilities, or any other type of unreasonable upgrade
requirement;

(b) Refuse to disclose to a new motor vehicle dealer the
method and manner of distribution of new motor vehicles by the
manufacturer or distributor, including any numerical calculation
or formula used, nationally or within the dealer’s market, to
make the allocations within thirty days of a request. Any
information or documentation provided by the manufacturer may
be subject to a reasonable confidentiality agreement;

(c) Refuse to disclose to a new motor vehicle dealer the total
number of new motor vehicles of a given model, which the
manufacturer or distributor has sold during the current model
year within the dealer’s marketing district, zone or region,
whichever geographical area is the smallest within thirty days of
a request;

(d) Increase prices of new motor vehicles which the new
motor vehicle dealer had ordered and then eventually delivered
to the same retail consumer for whom the vehicle was ordered,
if the order was made prior to the dealer’s receipt of the written
official price increase notification. A sales contract signed by a
private retail consumer and binding on the dealer which has been
submitted to the vehicle manufacturer is evidence of each order.
In the event of manufacturer or distributor price reductions or
cash rebates, the amount of any reduction or rebate received by a dealer shall be passed on to the private retail consumer by the dealer. Any price reduction in excess of $5 shall apply to all vehicles in the dealer’s inventory which were subject to the price reduction. A price difference applicable to new model or series motor vehicles at the time of the introduction of the new models or the series is not a price increase or price decrease. This subdivision does not apply to price changes caused by the following:

(i) The addition to a motor vehicle of required or optional equipment pursuant to state or federal law;

(ii) In the case of foreign-made vehicles or components, revaluation of the United States dollar; or

(iii) Any increase in transportation charges due to an increase in rates charged by a common carrier and transporters;

(e) Offer any refunds or other types of inducements to any dealer for the purchase of new motor vehicles of a certain line-make to be sold to this state or any political subdivision of this state without making the same offer available upon request to all other new motor vehicle dealers of the same line-make;

(f) Release to an outside party, except under subpoena or in an administrative or judicial proceeding to which the new motor vehicle dealer or the manufacturer or distributor are parties, any business, financial or personal information which has been provided by the dealer to the manufacturer or distributor, unless the new motor vehicle dealer gives his or her written consent;

(g) Deny a new motor vehicle dealer the right to associate with another new motor vehicle dealer for any lawful purpose;

(h) Establish a new motor vehicle dealership. A manufacturer or distributor is not considered to have established
a new motor vehicle dealership if the manufacturer or distributor is:

(A) Operating a preexisting dealership temporarily for a reasonable period.

(B) Operating a preexisting dealership which is for sale at a reasonable price.

(C) Operating a dealership with another person who has made a significant investment in the dealership and who will acquire full ownership of the dealership under reasonable terms and conditions;

(i) A manufacturer may not, except as provided by this section, directly or indirectly:

(A) Own an interest in a dealer or dealership: Provided, That a manufacturer may own stock in a publicly held company solely for investment purposes;

(B) Operate a dealership, including, but not limited to, displaying a motor vehicle intended to facilitate the sale of new motor vehicles other than through franchised dealers, unless the display is part of an automobile trade show that more than two automobile manufacturers participate in; or

(C) Act in the capacity of a new motor vehicle dealer;

(j) A manufacturer or distributor may own an interest in a franchised dealer, or otherwise control a dealership, for a period not to exceed twelve months from the date the manufacturer or distributor acquires the dealership if:

(i) The person from whom the manufacturer or distributor acquired the dealership was a franchised dealer; and
(ii) The dealership is for sale by the manufacturer or distributor at a reasonable price and on reasonable terms and conditions;

(k) The twelve-month period may be extended for an additional twelve months. Notice of any such extension of the original twelve-month period must be given to any dealer of the same line-make whose dealership is located in the same county, or within twenty air miles of, the dealership owned or controlled by the manufacturer or distributor prior to the expiration of the original twelve-month period. Any dealer receiving the notice may protest the proposed extension within thirty days of receiving notice by bringing a declaratory judgment action in the circuit court for the county in which the new motor vehicle dealer is located to determine whether good cause exists for the extension;

(l) For the purpose of broadening the diversity of its dealer body and enhancing opportunities for qualified persons who are part of a group who have historically been under represented in its dealer body, or other qualified persons who lack the resources to purchase a dealership outright, but for no other purpose, a manufacturer or distributor may temporarily own an interest in a dealership if the manufacturer’s or distributor’s participation in the dealership is in a bona fide relationship with a franchised dealer who:

(i) Has made a significant investment in the dealership, subject to loss;

(ii) Has an ownership interest in the dealership; and

(iii) Operates the dealership under a plan to acquire full ownership of the dealership within a reasonable time and under reasonable terms and conditions;
(m) Unreasonably withhold consent to the sale, transfer or exchange of the dealership to a qualified buyer capable of being licensed as a new motor vehicle dealer in this state;

(n) Fail to respond in writing to a request for consent to a sale, transfer or exchange of a dealership within sixty days after receipt of a written application from the new motor vehicle dealer on the forms generally utilized by the manufacturer or distributor for such purpose and containing the information required therein. Failure to respond to the request within the sixty days is consent;

(o) Unfairly prevent a new motor vehicle dealer from receiving reasonable compensation for the value of the new motor vehicle dealership;

(p) Audit any motor vehicle dealer in this state for warranty parts or warranty service compensation, service compensation, service or sales incentives, manufacturer rebates or other forms of sales incentive compensation more than twelve months after the claim for payment or reimbursement has been made by the automobile dealer. No chargeback may be made until the dealer has had notice and an opportunity to support the claim in question within thirty days of receiving notice of the chargeback. No otherwise valid reimbursements claims may be denied once properly submitted in accordance with the manufacturer’s submission guidelines due to clerical error or omission. This subsection does not apply where a claim is fraudulent. In addition, the manufacturer or distributor is responsible for reimbursing the audited dealer for all copying, postage and administrative costs incurred by the dealer during the audit. Any charges to a dealer as a result of the audit must be separately billed to the dealer;

(q) Unreasonably restrict a dealer’s ownership of a dealership through noncompetition covenants, site control,
sublease, collateral pledge of lease, right of first refusal, option
to purchase, or otherwise. A right of first refusal is created when:

(i) A manufacturer has a contractual right of first refusal to
acquire the new motor vehicle dealer’s assets where the dealer
owner receives consideration, terms and conditions that are
either the same as or better than those they have already
contracted to receive under the proposed change of more than
fifty percent of the dealer’s ownership.

(ii) The proposed change of the dealership’s ownership or
the transfer of the new vehicle dealer’s assets does not involve
the transfer of assets or the transfer or issuance of stock by the
dealer or one of the dealer’s owners to one of the following:

(A) A designated family member of one or more of the
dealer owners;

(B) A manager employed by the dealer in the dealership
during the previous five years and who is otherwise qualified as
a dealer operator;

(C) A partnership or corporation controlled by a designated
family member of one of the dealers;

(D) A trust established or to be established:

(i) For the purpose of allowing the new vehicle dealer to
continue to qualify as such under the manufacturer’s or
distributor’s standards; or

(ii) To provide for the succession of the franchise agreement
to designated family members or qualified management in the
event of death or incapacity of the dealer or its principle owner
or owners.

(iii) Upon exercising the right of first refusal by a
manufacturer, it eliminates any requirement under its dealer
agreement or other applicable provision of this statute that the manufacturer evaluate, process or respond to the underlying proposed transfer by approving or rejecting the proposal, is not subject to challenge as a rejection or denial of the proposed transfer by any party.

(iv) Except as otherwise provided in this subsection, the manufacturer or distributor agrees to pay the reasonable expenses, including reasonable out-of-pocket professional fees which shall include, but not be limited to, accounting, legal or appraisal services fees that are incurred by the proposed owner or transferee before the manufacturer’s or distributor’s exercise of its right of first refusal. Payment of the expenses and fees for professional services are not required if the dealer fails to submit an accounting of those expenses and fees within twenty days of the dealer’s receipt of the manufacturer’s or distributor’s written request for such an accounting. Such a written account of fees and expenses may be requested by a manufacturer or distributor before exercising its right of first refusal;

(r) Except for experimental low-volume not-for-retail sale vehicles, cause warranty and recall repair work to be performed by any entity other than a new motor vehicle dealer;

(s) Make any material or unreasonable change in any franchise agreement, including, but not limited to, the dealer’s area of responsibility without giving the new motor vehicle dealer written notice by certified mail of the change at least sixty days prior to the effective date of the change, and shall include an explanation of the basis for the alteration. Upon written request from the dealer, this explanation shall include, but is not limited to, a reasonable and commercially acceptable copy of all information, data, evaluations, and methodology relied on or based its decision on, to propose the change to the dealer’s area of responsibility. Any information or documentation provided by the manufacturer or distributor may be produced subject to a
reasonable confidentiality agreement. At any time prior to the effective date of an alteration of a new motor vehicle dealer’s area of responsibility and after the completion of any internal appeal process pursuant to the manufacturer’s or distributor’s policy manual, the motor vehicle dealer may petition the court to enjoin or prohibit the alteration within thirty days of receipt of the manufacturer’s internal appeal process decision. The court shall enjoin or prohibit the alteration of a motor vehicle dealer’s area of responsibility unless the franchisor shows, by a preponderance of the evidence, that the alteration is reasonable and justifiable in light of market conditions. If a motor vehicle dealer petitions the court, no alteration to a motor vehicle dealer’s area of responsibility shall become effective until a final determination by the court. If a new motor vehicle dealer’s area of responsibility is altered, the manufacturer shall allow twenty-four months for the motor vehicle dealer to become sales effective prior to taking any action claiming a breach or nonperformance of the motor vehicle dealer’s sales performance responsibilities;

(t) Fail to reimburse a new motor vehicle dealer, at the dealer’s regular rate, or the full and actual cost of providing a loaner vehicle to any customer who is having a vehicle serviced at the dealership if the provision of the loaner vehicle is required by the manufacturer;

(u) Compel a new motor vehicle dealer through its finance subsidiaries to agree to unreasonable operating requirements or to directly or indirectly terminate a franchise through the actions of a finance subsidiary of the franchisor. This subsection does not limit the right of a finance subsidiary to engage in business practices in accordance with the usage of trade in retail or wholesale vehicle financing;

(v) Discriminate directly or indirectly between dealers on vehicles of like grade or quantity where the effect of the discrimination would substantially lessen competition;
(w) Use or employ any performance standard that is not fair and reasonable and based upon accurate and verifiable data made available to the dealer;

(x) To require or coerce any new motor vehicle dealer to sell, offer to sell or sell exclusively extended service contract, maintenance plan or similar product, including gap or other products, offered, endorsed or sponsored by the manufacturer or distributor by the following means:

(i) By an act of statement that the manufacturer or distributor will adversely impact the dealer, whether it is express or implied;

(ii) By a contract made to the dealer on the condition that the dealer shall sell, offer to sell or sell exclusively an extended service contract, extended maintenance plan or similar product offered, endorsed or sponsored by the manufacturer or distributor;

(iii) By measuring the dealer’s performance under the franchise agreement based on the sale of extended service contracts, extended maintenance plans or similar products offered, endorsed or sponsored by the manufacturer or distributor;

(iv) By requiring the dealer to actively promote the sale of extended service contracts, extended maintenance plans or similar products offered, endorsed or sponsored by the manufacturer or distributor;

(v) Nothing in this paragraph prohibits a manufacturer or distributor from providing incentive programs to a new vehicle dealer who makes the voluntary decision to offer to sell, sell or sell exclusively an extended service contract, extended maintenance plan or similar product offered, endorsed or sponsored by the manufacturer or distributor;
(y) Require a dealer to purchase goods or services from a vendor selected, identified or designated by a manufacturer, factory branch, distributor, distributor branch or one of its affiliates by agreement, program, incentive provision or otherwise without making available to the dealer the option to obtain the goods or services of substantially similar quality and overall design from a vendor chosen by the dealer and approved by the manufacturer, factory branch, distributor or distributor branch: Provided, That such approval may not be unreasonably withheld: Provided, however, That the dealer’s option to select a vendor is not available if the manufacturer or distributor provides substantial reimbursement for the goods or services offered. Substantial reimbursement is equal to the difference in price of the goods and services from manufacturer’s proposed vendor and the motor vehicle dealer’s selected vendor: Provided further, That the goods are not subject to the manufacturer or distributor’s intellectual property or trademark rights, or trade dress usage guidelines.

(3) A manufacturer or distributor, either directly or through any subsidiary, may not terminate, cancel, fail to renew or discontinue any lease of the new motor vehicle dealer’s established place of business except for a material breach of the lease.

(4) Except as may otherwise be provided in this article, no manufacturer or franchisor may sell, directly or indirectly, any new motor vehicle to a consumer in this state, except through a new motor vehicle dealer holding a franchise for the line-make covering such new motor vehicle. This subsection does not apply to manufacturer or franchisor sales of new motor vehicles to charitable organizations, qualified vendors or employees of the manufacturer or franchisor.

(5) Except when prevented by an act of God, labor strike, transportation disruption outside the control of the manufacturer
or time of war, a manufacturer or distributor may not refuse or fail to deliver, in reasonable quantities and within a reasonable time, to a dealer having a franchise agreement for the retail sale of any motor vehicle sold or distributed by the manufacturer, any new motor vehicle or parts or accessories to new motor vehicles as are covered by the franchise if the vehicles, parts and accessories are publicly advertised as being available for delivery or are actually being delivered.

§17A-6A-11. Where motor vehicle dealer deceased or incapacitated.

1 (1) Any designated family member of a deceased or incapacitated new motor vehicle dealer may succeed the dealer in the ownership or operation of the dealership under the existing dealer agreement if the designated family member gives the manufacturer or distributor written notice of his or her intention to succeed to the dealership within one hundred twenty days after the dealer’s death or incapacity, agrees to be bound by all of the terms and conditions of the dealer agreement, and the designated family member meets the current criteria generally applied by the manufacturer or distributor in qualifying new motor vehicle dealers. A manufacturer or distributor may refuse to honor the existing dealer agreement with the designated family member only for good cause. In determining whether good cause exists for refusing to honor the agreement, the manufacturer or distributor has the burden of proving that the designated successor is a person who is not of good moral character or does not meet the manufacturer’s existing written, reasonable and uniformly applied standards for business experience and financial qualifications. The designated family member will have a minimum of one year to satisfy that manufacturer’s written and reasonable standards and financial qualifications for appointment as the dealer and principal.

2 (2) The manufacturer or distributor may request from a designated family member such personal and financial data as is
reasonably necessary to determine whether the existing dealer agreement should be honored. The designated family member shall supply the personal and financial data promptly upon the request.

(3) If a manufacturer or distributor believes that good cause exists for refusing to honor the succession, the manufacturer or distributor may, within forty-five days after receipt of the notice of the designated family member’s intent to succeed the dealer in the ownership and operation of the dealership, or within forty-five days after the receipt of the requested personal and financial data, serve upon the designated family member notice of its refusal to approve the succession.

(4) The notice of the manufacturer or distributor provided in subsection (3) of this section shall state the specific grounds for the refusal to approve the succession and that discontinuance of the agreement shall take effect not less than one hundred-eighty days after the date the notice is served.

(5) If notice of refusal is not served within the sixty days provided for in subsection (3) of this section, the dealer agreement continues in effect and is subject to termination only as otherwise permitted by this article.

(6) This section does not preclude a new motor vehicle dealer from designating any person as his or her successor by will or any other written instrument filed with the manufacturer or distributor, and if such an instrument is filed, it alone determines the succession rights to the management and operation of the dealership.

(7) If the manufacturer challenges the succession, it maintains the burden of proof to show good cause by a preponderance of the evidence. If the person seeking succession files a civil action within the one hundred eighty days set forth
in subsection (4) of this section, no action may be taken by the manufacturer contrary to the dealer agreement until such time as the civil action and any appeal has been exhausted: *Provided*,

That when a motor vehicle dealer appeals a decision upholding a manufacturer’s decision to not allow succession based upon the designated person’s insolvency, conviction of a crime punishable by imprisonment in excess of one year under the law which the designated person was convicted, the dealer agreement shall remain in effect pending exhaustion of all appeals only if the motor vehicle dealer establishes a likelihood of success on appeal and the public interest will not be harmed by keeping the dealer agreement in effect pending entry of final judgment after the appeal.

**§17A-6A-12. Establishment and relocation or establishment of additional dealers.**

(1) As used in this section, “relocate” and “relocation” do not include the relocation of a new motor vehicle dealer within four miles of its established place of business or an existing new motor vehicle dealer sells or transfers the dealership to a new owner and the successor new motor vehicle dealership owner relocates to a location within four miles of the seller’s last open new motor vehicle dealership location. The relocation of a new motor vehicle dealer to a site within the area of sales responsibility assigned to that dealer by the manufacturing branch or distributor may not be within six air miles of another dealer of the same line-make.

(2) Before a manufacturer or distributor enters into a dealer agreement establishing or relocating a new motor vehicle dealer within a relevant market area where the same line-make is represented, the manufacturer or distributor shall give written notice to each new motor vehicle dealer of the same line-make in the relevant market area of its intention to establish an additional dealer or to relocate an existing dealer within that relevant market area.
(3) Within sixty days after receiving the notice provided in subsection (2) of this section, or within sixty days after the end of any appeal procedure provided by the manufacturer or distributor, a new motor vehicle dealer of the same line-make within the affected relevant market area may bring a declaratory judgment action in the circuit court for the county in which the new motor vehicle dealer is located to determine whether good cause exists for the establishing or relocating of the proposed new motor vehicle dealer. Provided, That a new motor vehicle dealer of the same line-make within the affected relevant market area shall not be permitted to bring such an action if the proposed relocation site would be further from the location of the new motor vehicle dealer of the same line-make than the location from which the dealership is being moved. Once an action has been filed, the manufacturer or distributor may not establish or relocate the proposed new motor vehicle dealer until the circuit court has rendered a decision on the matter. An action brought pursuant to this section shall be given precedence over all other civil matters on the court’s docket. The manufacturer has the burden of proving that good cause exists for establishing or relocating a proposed new motor vehicle dealer.

(4) This section does not apply to the reopening in a relevant market area of a new motor vehicle dealer that has been closed within the preceding two years if the established place of business of the new motor vehicle dealer is within four air miles of the established place of business of the closed or sold new motor vehicle dealer.

(5) In determining whether good cause exists for establishing or relocating an additional new motor vehicle dealer for the same line-make, the court shall take into consideration the existing circumstances, including, but not limited to, the following:

(a) Permanency and amount of the investment, including any obligations incurred by the dealer in making the investment;
(b) Effect on the retail new motor vehicle business and the consuming public in the relevant market area;

(c) Whether it is injurious or beneficial to the public welfare;

(d) Whether the new motor vehicle dealers of the same line-make in the relevant market area are providing adequate competition and convenient consumer care for the motor vehicles of that line-make in the market area, including the adequacy of motor vehicle sales and qualified service personnel;

(e) Whether the establishment or relocation of the new motor vehicle dealer would promote competition;

(f) Growth or decline of the population and the number of new motor vehicle registrations in the relevant market area; and

(g) The effect on the relocating dealer of a denial of its relocation into the relevant market area.

§17A-6A-12a. Restriction on motor vehicle dealer’s use of dealership property.

(1) A manufacturer shall not require that a new motor vehicle dealer, a proposed new motor vehicle dealer, or any owner of an interest in a dealership facility enter into or agree to a property use agreement as a condition to any of the following:

(a) Awarding a dealer agreement to a prospective new motor vehicle dealer.

(b) Adding a line make or dealer agreement to an existing new motor vehicle dealer.

(c) Renewing a dealer agreement with an existing new motor vehicle dealer.

(d) Approving a relocation of a new motor vehicle dealer’s place of business.
(e) Approving a sale or transfer of the ownership of a dealership or a transfer of a dealer agreement to another person.

(2) Subsection (1) of this section does not apply to a property use agreement if any of the following are offered and accepted for that agreement:

(a) Monetary consideration.

(b) Separate and valuable consideration that can be calculated to a sum certain.

(3) If a manufacturer and new motor vehicle dealer are in parties to a property use agreement, the dealer agreement between the manufacturer and new motor vehicle dealer is terminated by a manufacturer or by a successor manufacturer or by operation of law and the reason for the termination is not a reason described in paragraphs (1) through (5), inclusive, subdivision (c), section seven of this article, the property use agreement terminates and ceases to be effective at the time the dealer agreement is terminated.

(4) If any provision contained in a property use agreement entered into on or after the effective date of the amendatory act that added this subsection is inconsistent with this section, the provision is voidable at the election of the affected new motor vehicle dealer, proposed new motor vehicle dealer, or owner of an interest in the dealership facility.

(5) As used in this section, “property use agreement” means any of the following:

(a) An agreement that requires that a new motor vehicle dealer establish or maintain exclusive dealership facilities.

(b) An agreement that restricts the ability of a new motor vehicle dealer, or the ability of the dealer’s lessor if the dealer is
leasing the dealership facility, to transfer, sell, lease, or change
the use of the place of business of the dealership, whether by
sublease, lease, collateral pledge of lease, right of first refusal to
purchase or lease, option to purchase, option to lease, or other
similar agreement, regardless of who the parties to that
agreement are.

(c) Any similar agreement between a manufacturer and a
new motor vehicle dealer and commonly known as a site control
agreement or exclusive use agreement.


(1) Each new motor vehicle manufacturer or distributor shall
specify in writing to each of its new motor vehicle dealers
licensed in this state the dealer’s obligations for preparation,
delivery and warranty service on its products. The manufacturer
or distributor shall compensate the new motor vehicle dealer for
warranty service required of the dealer by the manufacturer or
distributor. The manufacturer or distributor shall provide the new
motor vehicle dealer with the schedule of compensation to be
paid to the dealer for parts, work and service, and the time
allowance for the performance of the work and service in a
manner in compliance with section eight-a of this article.

(2) The schedule of compensation shall include reasonable
compensation for diagnostic work, as well as repair service and
labor. Time allowances for the diagnosis and performance of
warranty work and service shall be reasonable and adequate for
the work to be performed. In the determination of what
constitutes reasonable compensation under this section, section
eight-a of this article shall govern: Provided, That in the case of
a dealer of new motorcycles, motorboat trailers, all-terrain
vehicles, utility terrain vehicles and snowmobiles, the
compensation of a dealer for warranty parts is the greater of the
dealer’s cost of acquiring the part plus thirty percent or the
manufacturer’s suggested retail price: Provided, however, That in the case of a dealer of travel trailers, fold-down camping trailers and motorhomes, the compensation of a dealer’s cost for warranty parts is not less than the dealer’s cost of acquiring the part plus twenty percent.

(3) A manufacturer or distributor may not do any of the following:

(a) Fail to perform any warranty obligation;

(b) Fail to include in written notices of factory recalls to new motor vehicle owners and dealers the expected date by which necessary parts and equipment will be available to dealers for the correction of the defects; or

(c) Fail to compensate any of the new motor vehicle dealers licensed in this state for repairs effected by the recall.

(4) All claims made by a new motor vehicle dealer pursuant to this section for labor and parts shall be paid within thirty days after their approval. All claims shall be either approved or disapproved by the manufacturer or distributor within thirty days after their receipt on a proper form generally used by the manufacturer or distributor and containing the usually required information therein. Any claim not specifically disapproved in writing within thirty days after the receipt of the form is considered to be approved and payment shall be made within thirty days. The manufacturer has the right to initiate an audit of a claim within twelve months after payment and to charge back to the new motor vehicle dealer the amount of any false, fraudulent or unsubstantiated claim, subject to the requirements of section eight-a of this article.

(5) The manufacturer shall accept the return of any new and unused part, component or accessory that was ordered by the dealer, and shall reimburse the dealer for the full cost charged to
the dealer for the part, component or accessory if the dealer
returns the part and makes a claim for the return of the part
within one year of the dealer’s receipt of the part, component or
accessory and provides reasonable documentation, to include any
changed part numbers to match new part numbers, provided that
the part was ordered for a warranty repair.

§17A-6A-14a. Open account protection.

If there is a dispute between the manufacturer, factory
branch, distributor or distributor branch and the dealer with
respect to any matter referred to this article, either party may
notify, in writing, the other party of its request to challenge,
through the manufacturer’s appeal process or the circuit courts
of the state of West Virginia. A manufacturer, factory branch,
distributor, or distributor branch may not collect chargebacks,
fully or in part, either through direct payment or by charge to the
dealer’s account, for warranty parts or service compensation,
including service incentives, sales incentives, other sales
compensation, surcharges, fees, penalties or any financial
imposition of any type arising from an alleged failure of the
dealer to comply with a policy of, directive from or agreement
with the manufacturer, factory branch, distributor or distributor
branch until thirty days following final notice of the amount
charged to the dealer following all internal processes of the
manufacturer, factory, factory branch, distributor or distributor
branch. Within thirty days following receipt of final notice, the
dealer may, in writing, request a hearing or seek civil relief from
the manufacturer’s appeal process or the circuit courts of the
state of West Virginia. If a dealer requests a hearing or files a
civil action, the manufacturer, factory branch, distributor or
distributor branch may not collect the chargeback, fully or in
part, either through direct payment or by charge to the dealer’s
account, until the completion of the hearing or civil action, and
all appeal, civil or otherwise, have been exhausted concerning
the validity of the chargeback.

Notwithstanding the terms of any dealer agreement, a manufacturer or distributor shall indemnify and hold harmless its dealers for any reasonable expenses incurred, including damages, court costs and attorney’s fees, arising out of complaints, claims or actions to the extent such complaints, claims or actions relate to the manufacture, assembly, design of a new motor vehicle or other functions by the manufacturer or distributor beyond the control of the dealer, including, without limitation, the selection by the manufacturer or distributor of parts or components for the vehicle, and any damages to merchandise occurring prior to acceptance of the vehicle by the dealer to the dealer if the carrier is designated by the manufacturer or distributor, if the new motor vehicle dealer gives timely notice to the manufacturer or distributor of the complaint, claim or action.

§17A-6A-15a. Dealer data, obligation of manufacturer, vendors, suppliers and others; consent to access dealership information; indemnification of dealer.

(a) Except as expressly authorized in this section, a manufacturer or distributor cannot require a motor vehicle dealer to provide it customer information to the manufacturer or distributor unless necessary for the sale and delivery of a new motor vehicle to a consumer, to validate and pay consumer or dealer incentives, for manufacturer’s marketing purposes, for evaluation of dealer performance, for analytics or to support claims submitted by the new motor vehicle dealer for reimbursement for warranty parts or repairs. Nothing in this section shall limit the manufacturer’s ability to require or use customer information to satisfy any safety or recall notice obligation or other legal obligation.

(b) The dealer is only required to provide the customer information to the extent lawfully permissible; and to the extent
the requested information relates solely to specific program  
requirements or goals associated with the manufacturer’s or  
distributor’s own vehicle makes. A manufacturer, factory  
branch, distributor, distributor branch, dealer management  
computer system vendor or any third party acting on behalf of  
any manufacturer, factory branch, distributor, distributor branch  
or dealer management computer system vendor may not prohibit  
a dealer from providing a means to regularly and continually  
monitor the specific data accessed from or written to the dealer’s  
computer system and from complying with applicable state and  
federal laws and any rules or regulations promulgated  
thereunder. These provisions do not impose an obligation on a  
manufacturer, factory branch, distributor, distributor branch,  
dealer management computer system vendor or any third party  
acting on behalf of any manufacturer, factory branch, distributor,  
distributor branch or dealer management computer system  
vendor to provide that capability.

(c) A manufacturer, factory branch, distributor, distributor  
branch, dealer management computer system vendor, or any  
third party acting on behalf of any manufacturer, factory branch,  
distributor, distributor branch or dealer management computer  
system vendor, may not provide access to customer or dealership  
information maintained in a dealer management computer  
system used by a motor vehicle dealer located in this state, other  
than a subsidiary or affiliate of the manufacturer factory branch,  
distributor or distributor branch without first obtaining the  
dealer’s prior express written consent, revocable by the dealer  
upon ten business days written notice, to provide the access.

Upon a written request from a motor vehicle dealer, the  
manufacturer, factory branch, distributor, distributor branch,  
dealer management computer system vendor, or any third party  
acting on behalf of or through any manufacturer, factory branch,  
distributor, distributor branch or dealer management computer  
system vendor shall provide to the dealer a written list of all
specific third parties other than a subsidiary or affiliate of the
manufacturer, factory branch, distributor or distributor branch to
whom any data obtained from the dealer has actually been
provided within the twelve-month period prior to date of dealer’s
written request. If requested by the dealer, the list shall further
describe the scope and specific fields of the data provided. The
consent does not change the person’s obligations to comply with
the terms of this section and any additional state or federal laws,
and any rules or regulations promulgated thereunder, applicable
to them with respect to the access.

(d) A manufacturer, factory branch, distributor, distributor
branch, dealer management computer system vendor or any third
party acting on behalf of or through any dealer management
computer system vendor, having electronic access to customer
or motor vehicle dealership data in a dealership management
computer system used by a motor vehicle dealer located in this
state shall provide notice in a reasonable timely manner to the
dealer of any security breach of dealership or customer data
obtained through the access.

(e) As used in this section:

(1) “Dealer management computer system” means a
computer hardware and software system that is owned or leased
by the dealer, including a dealer’s use of web applications,
excluding a web application operated by a manufacturer,
software or hardware, whether located at the dealership or
provided at a remote location and that provides access to
customer records and transactions by a motor vehicle dealer
located in this state and that allows the motor vehicle dealer
timely information in order to sell vehicles, parts or services
through the motor vehicle dealership.

(2) “Dealer management computer system vendor” means a
seller or reseller of dealer management computer systems, a
person that sells computer software for use on dealer
management computer systems or a person who services or
maintains dealer management computer systems.

(3) “Security breach” means an incident of unauthorized
access to and acquisition of records or data containing dealership
or dealership customer information where unauthorized use of
the dealership or dealership customer information has occurred.

(4) “Customer information” means “nonpublic personal” as
defined in 16 C. F. R. §313.

(f) Notwithstanding the terms or conditions of any consent,
authorization, release, novation, franchise or other contract or
agreement, every manufacturer, factory branch, distributor,
distributor branch, dealer management computer system vendor
or any third party acting on behalf of or through a manufacturer,
factory branch, distributor, distributor branch or dealer
management computer system vendor shall fully indemnify,
defend and hold harmless any dealer or manufacturer, factory
branch, distributor or distributor branch from all damages,
attorney fees and costs, other costs and expenses incurred by the
dealer from complaints, claims or actions arising out of
manufacturer’s, factory’s branch, distributor’s, distributor’s
branch, dealer management computer system vendor’s or any
third party for its willful, negligent or illegal use or disclosure of
dealers consumer or customer data or other information in
dealer’s computer system. The indemnification includes, but is
not limited to, judgments, settlements, fines, penalties, litigation
costs, defense costs, court costs, costs related to the disclosure of
security breaches and attorneys’ fees arising out of complaints,
claims, civil or administrative actions.

(g) This section applies to contracts entered into after the
effective date of this section.
§17A-6A-15b. Exports; rebuttable presumption on behalf of dealer.

1. It is unlawful for a manufacturer or distributor to take or threaten to take any adverse action against a dealer pursuant to an export or sale-for-resale prohibition because the dealer sold or leased a vehicle to a customer who either exported the vehicle to a foreign country or resold the vehicle in violation of the prohibition, unless the export or sale-for-resale prohibition policy was provided to the dealer in writing prior to the sale or lease, and the dealer knew or reasonably should have known of the customer’s intent to export or resell the vehicle in violation of the prohibition at the time of sale or lease. If the dealer causes the vehicle to be registered in this state or any other state and has determined that the customer is not on a list of known or suspected exporters provided by the manufacturer at the time of sale, a rebuttable presumption is established that the dealer did not have reason to know of the customer’s intent to export or resell the vehicle.

§17A-6A-15c. Manufacturer performance standards; uniform application, prohibited practices.

1. A manufacturer may not require dealer adherence to a performance standard or standards which are not applied uniformly to other similarly situated dealers. In addition to any other requirements of the law, the following shall apply:

   (1) A performance standard, sales objective or program for measuring dealer performance that may have a material effect on a dealer, including the dealer’s right to payment under any incentive or reimbursement program, and the application of the standard, sales objective or program by a manufacturer, distributor or factory branch shall be reasonable and based on accurate information.

   (2) Upon written request from a dealer participating in the program, the manufacturer shall provide in writing the dealer’s performance requirement or sales goal or objective, which shall
include a reasonable and general explanation of the
methodology, criteria and calculations used.

(3) A manufacturer shall allocate a reasonable and
appropriate supply of vehicles to assist the dealer in achieving
any performance standards established by the manufacturer and
distributor.

(4) The manufacturer or distributor has the burden of
proving by a preponderance of the evidence that the performance
standard, sales objective or program for measuring dealership
performance complies with this article.

§17A-6A-18. West Virginia law to apply.

Notwithstanding the terms, provisions or requirements of
any franchise agreement, contract or other agreement of any kind
between a new motor vehicle dealer and a manufacturer or
distributor captive finance source or any subsidiary, affiliate or
partner of a manufacturer or distributor, the provisions of this
code apply to all such agreements and contracts. Any provisions
in the agreements and contracts which violate the terms of this
section are null and void.

CHAPTER 173

(H. B. 2664 - By Delegate(s) Sobonya, Butler,
McCuskey, Stansbury, E. Nelson, Ihle, Householder,
Ellington, Westfall, Marcum and Byrd)

[Amended and again passed March 18, 2015; as a result of the objections of the Governor;
in effect ninety days from passage.]
[Approved by the Governor on April 1, 2015.]

AN ACT to amend and reenact §17C-5-2 of the Code of West
Virginia, 1931, as amended; and to amend and reenact §17C-5A-2
of said code, all relating to offenses of driving under the influence of alcohol, controlled substances or drugs; defining terms; restating the elements of certain offenses of driving under the influence of alcohol, controlled substances or drugs; requiring that a person’s impaired state proximately cause the injury or death in certain offenses; increasing the penalty for driving under the influence of alcohol, controlled substances or drugs causing death; requiring death to have occurred within one year of an offense of driving under the influence of alcohol, controlled substances or drugs causing death; eliminating the misdemeanor offense of driving under the influence of alcohol, controlled substances or drugs causing death; creating felony offense and penalties for driving under the influence of alcohol, controlled substances or drugs causing serious bodily injury; increasing the penalty for certain subsequent offenses of driving under the influence of alcohol, controlled substances or drugs; and providing that the West Virginia Rules of Evidence apply to administrative proceedings concerning license revocation for driving under the influence.

Be it enacted by the Legislature of West Virginia:

That §17C-5-2 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that §17C-5A-2 of said code be amended and reenacted, all to read as follows:

ARTICLE  5. SERIOUS TRAFFIC OFFENSES.

§17C-5-2. Driving under influence of alcohol, controlled substances or drugs; penalties.

(a) Definitions —

(1) “Impaired State” means a person:

(A) Is under the influence of alcohol;

(B) Is under the influence of any controlled substance;
(C) Is under the influence of any other drug;

(D) Is under the combined influence of alcohol and any controlled substance or any other drug; or

(E) Has an alcohol concentration in his or her blood of eight hundredths of one percent or more, by weight.

(2) “Bodily Injury” means injury that causes substantial physical pain, illness or any impairment of physical condition.

(3) “Serious Bodily Injury” means bodily injury that creates a substantial risk of death, that causes serious or prolonged disfigurement, prolonged impairment of health or prolonged loss or impairment of the function of any bodily organ.

(b) Any person who drives a vehicle in this state while he or she is in an impaired state and such impaired state proximately causes the death of any person is guilty of a felony and, upon conviction thereof, shall be imprisoned in a state correctional facility for not less than three nor more than fifteen years and shall be fined not less than $1,000 nor more than $3,000: Provided, That any death charged under this subsection must occur within one year of the offense.

(c) Any person who drives a vehicle in this state while he or she is in an impaired state and such impaired state proximately causes serious bodily injury to any person other than himself or herself, is guilty of a felony and, upon conviction thereof, shall be imprisoned in a state correctional facility for not less than two nor more than ten years and shall be fined not less than $1,000 nor more than $3,000.

(d) Any person who drives a vehicle in this state while he or she is in an impaired state and such impaired state proximately causes a bodily injury to any person other than himself or herself, is guilty of a misdemeanor and, upon conviction thereof,
shall be confined in jail for not less than one day more than one year and shall be fined not less than $200 nor more than $1,000: Provided, That such jail term shall include actual confinement of not less than twenty-four hours: Provided, however, That a person sentenced pursuant to this subsection shall receive credit for any period of actual confinement he or she served upon arrest for the subject offense.

(e) Any person who drives a vehicle in this state while he or she is in an impaired state, but has an alcohol concentration in his or her blood of less than fifteen hundredths of one percent by weight, is guilty of a misdemeanor and, upon conviction thereof, shall be confined in jail for up to six months and shall be fined not less than $100 nor more than $500: Provided, That a person sentenced pursuant to this subsection shall receive credit for any period of actual confinement he or she served upon arrest for the subject offense.

(f) Any person who drives a vehicle in this state while he or she has an alcohol concentration in his or her blood of fifteen hundredths of one percent or more, by weight, is guilty of a misdemeanor and, upon conviction thereof, shall be confined in jail for not less than two days nor more than six months, which jail term is to include actual confinement of not less than twenty-four hours, and shall be fined not less than $200 nor more than $1,000. A person sentenced pursuant to this subdivision shall receive credit for any period of actual confinement he or she served upon arrest for the subject offense.

(g) Any person who, being a habitual user of narcotic drugs or amphetamine or any derivative thereof, drives a vehicle in this state is guilty of a misdemeanor and, upon conviction thereof, shall be confined in jail for not less than one day nor more than six months, which jail term is to include actual confinement of not less than twenty-four hours, and shall be fined not less than $100 nor more than $500. A person sentenced pursuant to this
subdivision shall receive credit for any period of actual confinement he or she served upon arrest for the subject offense.

(h) Any person who knowingly permits his or her vehicle to be driven in this state by any other person who is in an impaired state is guilty of a misdemeanor and, upon conviction thereof, shall be confined in jail for not more than six months and shall be fined not less than $100 nor more than $500.

(i) Any person who knowingly permits his or her vehicle to be driven in this state by any other person who is a habitual user of narcotic drugs or amphetamine or any derivative thereof is guilty of a misdemeanor and, upon conviction thereof, shall be confined in jail for not more than six months and shall be fined not less than $100 nor more than $500.

(j) Any person under the age of twenty-one years who drives a vehicle in this state while he or she has an alcohol concentration in his or her blood of two hundredths of one percent or more, by weight, but less than eight hundredths of one percent, by weight, for a first offense under this subsection is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than $25 nor more than $100. For a second or subsequent offense under this subsection, the person is guilty of a misdemeanor and, upon conviction thereof, shall be confined in jail for twenty-four hours and shall be fined not less than $100 nor more than $500. A person who is charged with a first offense under the provisions of this subsection may move for a continuance of the proceedings, from time to time, to allow the person to participate in the Motor Vehicle Alcohol Test and Lock Program as provided in section three-a, article five-a of this chapter. Upon successful completion of the program, the court shall dismiss the charge against the person and expunge the person’s record as it relates to the alleged offense. In the event the person fails to successfully complete the program, the court shall proceed to an adjudication of the alleged offense. A motion
for a continuance under this subsection may not be construed as an admission or be used as evidence.

A person arrested and charged with an offense under the provisions of this subsection or subsection (b), (c), (d), (e), (f), (g), (h) or (i) of this section may not also be charged with an offense under this subsection arising out of the same transaction or occurrence.

(k) Any person who drives a vehicle in this state while he or she is in an impaired state and has within the vehicle one or more other persons who are unemancipated minors who have not yet reached their sixteenth birthday is guilty of a misdemeanor and, upon conviction thereof, shall be confined in jail for not less than two days nor more than twelve months, and shall be fined not less than $200 nor more than $1,000: Provided, That such jail term shall include actual confinement of not less than forty-eight hours: Provided, however, That a person sentenced pursuant to this subdivision shall receive credit for any period of actual confinement he or she served upon arrest for the subject offense.

(l) A person violating any provision of subsection (d), (e), (f), (g), (h) or (j) of this section, for the second offense under this section, is guilty of a misdemeanor and, upon conviction thereof, shall be confined in jail for not less than six months nor more than one year and the court may, in its discretion, impose a fine of not less than $1,000 nor more than $3,000.

(m) A person violating any provision of subsection (d), (e), (f), (g), (h) or (j) of this section, for the third or any subsequent offense under this section, is guilty of a felony and, upon conviction thereof, shall be imprisoned in a state correctional facility for not less than two nor more than five years and the court may, in its discretion, impose a fine of not less than $3,000 nor more than $5,000.
(n) For purposes of subsections (l) and (m) of this section relating to second, third and subsequent offenses, the following events shall be regarded as offenses under this section:

(1) Any conviction under the provisions of subsection (b), (c), (d), (e), (f), (g) or (h) of this section or under a prior enactment of this section for an offense which occurred within the ten-year period immediately preceding the date of arrest in the current proceeding;

(2) Any conviction under a municipal ordinance of this state or any other state or a statute of the United States or of any other state of an offense which has the same elements as an offense described in subsection (b), (c), (d), (e), (f), (g), (h) or (i) of this section, which offense occurred within the ten-year period immediately preceding the date of arrest in the current proceeding; and

(3) Any period of conditional probation imposed pursuant section two-b of this article for violation of subsection (e) of this section, which violation occurred within the ten-year period immediately preceding the date of arrest in the current proceeding.

(o) A person may be charged in a warrant or indictment or information for a second or subsequent offense under this section if the person has been previously arrested for or charged with a violation of this section which is alleged to have occurred within the applicable time period for prior offenses, notwithstanding the fact that there has not been a final adjudication of the charges for the alleged previous offense. In that case, the warrant or indictment or information must set forth the date, location and particulars of the previous offense or offenses. No person may be convicted of a second or subsequent offense under this section unless the conviction for the previous offense has become final, or the person has previously had a period of conditional probation imposed pursuant to section two-b of this article.
The fact that any person charged with a violation of subsection (b), (c), (d), (e), (f) or (g) of this section, or any person permitted to drive as described under subsection (h) or (i) of this section, is or has been legally entitled to use alcohol, a controlled substance or a drug does not constitute a defense against any charge of violating subsection (b), (c), (d), (e), (f), (g), (h) or (i) of this section.

For purposes of this section, the term “controlled substance” has the meaning ascribed to it in chapter sixty-a of this code.

The sentences provided in this section upon conviction for a violation of this article are mandatory and are not subject to suspension or probation: Provided, That the court may apply the provisions of article eleven-a, chapter sixty-two of this code to a person sentenced or committed to a term of one year or less for a first offense under this section: Provided further, That the court may impose a term of conditional probation pursuant to section two-b of this article to persons adjudicated thereunder. An order for home detention by the court pursuant to the provisions of article eleven-b of said chapter may be used as an alternative sentence to any period of incarceration required by this section for a first or subsequent offense: Provided, however, That for any period of home incarceration ordered for a person convicted of second offense under this section, electronic monitoring shall be required for no fewer than five days of the total period of home confinement ordered and the offender may not leave home for those five days notwithstanding the provisions of section five, article eleven-b, chapter sixty-two of this code: Provided further, That for any period of home incarceration ordered for a person convicted of a third or subsequent violation of this section, electronic monitoring shall be included for no fewer than ten days of the total period of home confinement ordered and the offender may not leave home for those ten days notwithstanding section five, article eleven-b, chapter sixty-two of this code.
ARTICLE 5A. ADMINISTRATIVE PROCEDURES FOR SUSPENSION AND REVOCATION OF LICENSES FOR DRIVING UNDER THE INFLUENCE OF ALCOHOL, CONTROLLED SUBSTANCES OR DRUGS.

§17C-5A-2. Hearing; revocation; review.

(a) Written objections to an order of revocation or suspension under the provisions of section one of this article or section seven, article five of this chapter shall be filed with the Office of Administrative Hearings. Upon the receipt of an objection, the Office of Administrative Hearings shall notify the Commissioner of the Division of Motor Vehicles, who shall stay the imposition of the period of revocation or suspension and afford the person an opportunity to be heard by the Office of Administrative Hearings. The written objection must be filed with Office of Administrative Hearings in person, by registered or certified mail, return receipt requested, or by facsimile transmission or electronic mail within thirty calendar days after receipt of a copy of the order of revocation or suspension or no hearing will be granted: Provided, That a successful transmittal sheet shall be necessary for proof of written objection in the case of filing by fax. The hearing shall be before a hearing examiner employed by the Office of Administrative Hearings who shall rule on evidentiary issues. The West Virginia Rules of Evidence shall apply to all proceedings before the hearing examiner. Upon consideration of the designated record, the hearing examiner shall, based on the determination of the facts of the case and applicable law, render a decision affirming, reversing or modifying the action protested. The decision shall contain findings of fact and conclusions of law and shall be provided to all parties by registered or certified mail, return receipt requested, or with a party’s written consent, by facsimile or electronic mail.
(b) The hearing shall be held at an office of the Division of Motor Vehicles suitable for hearing purposes located in or near the county in which the arrest was made in this state or at some other suitable place in the county in which the arrest was made if an office of the division is not available. At the discretion of the Office of Administrative Hearings, the hearing may also be held at an office of the Office of Administrative Hearings located in or near the county in which the arrest was made in this state. The Office of Administrative Hearings shall send a notice of hearing to the person whose driving privileges are at issue and the person’s legal counsel if the person is represented by legal counsel, by regular mail, or with the written consent of the person whose driving privileges are at issue or their legal counsel, by facsimile or electronic mail. The Office of Administrative Hearings shall also send a notice of hearing by regular mail, facsimile or electronic mail to the Division of Motor Vehicles, and the Attorney General’s Office, if the Attorney General has filed a notice of appearance of counsel on behalf of the Division of Motor Vehicles.

(c) (1) Any hearing shall be held within one hundred eighty days after the date upon which the Office of Administrative Hearings received the timely written objection unless there is a postponement or continuance.

(2) The Office of Administrative Hearings may postpone or continue any hearing on its own motion or upon application by the party whose license is at issue in that hearing or by the commissioner for good cause shown.

(3) The Office of Administrative Hearings may issue subpoenas commanding the appearance of witnesses and subpoenas duces tecum commanding the submission of documents, items or other things. Subpoenas duces tecum shall be returnable on the date of the next scheduled hearing unless otherwise specified. The Office of Administrative hearings shall
issue subpoenas and subpoenas duces tecum at the request of a party or the party’s legal representative. The party requesting the subpoena shall be responsible for service of the subpoena upon the appropriate individual. Every subpoena or subpoena duces tecum shall be served at least five days before the return date thereof, either by personal service made by a person over eighteen years of age or by registered or certified mail, return receipt requested, and received by the party responsible for serving the subpoena or subpoena duces tecum: Provided, That the Division of Motor Vehicles may serve subpoenas to law-enforcement officers through electronic mail to the department of his or her employer. If a person does not obey the subpoena or fails to appear, the party who issued the subpoena to the person may petition the circuit court wherein the action lies for enforcement of the subpoena.

(d) Law-enforcement officers shall be compensated for the time expended in their travel and appearance before the Office of Administrative Hearings by the law-enforcement agency by whom they are employed at their regular rate if they are scheduled to be on duty during said time or at their regular overtime rate if they are scheduled to be off duty during said time.

(e) The principal question at the hearing shall be whether the person did drive a motor vehicle while under the influence of alcohol, controlled substances or drugs, or did drive a motor vehicle while having an alcohol concentration in the person’s blood of eight hundredths of one percent or more, by weight, or did refuse to submit to the designated secondary chemical test, or did drive a motor vehicle while under the age of twenty-one years with an alcohol concentration in his or her blood of two hundredths of one percent or more, by weight, but less than eight hundredths of one percent, by weight.

(f) In the case of a hearing in which a person is accused of driving a motor vehicle while under the influence of alcohol,
controlled substances or drugs, or accused of driving a motor
two percent or more, by weight, or
accused of driving a motor vehicle while under the age of
twenty-one years with an alcohol concentration in his or her
blood of two hundredths of one percent or more, by weight, but
less than eight hundredths of one percent, by weight, the Office
of Administrative Hearings shall make specific findings as to:
(1) Whether the investigating law-enforcement officer had
reasonable grounds to believe the person to have been driving
while under the influence of alcohol, controlled substances or
drugs, or while having an alcohol concentration in the person’s
blood of eight hundredths of one percent or more, by weight, or
to have been driving a motor vehicle while under the age of
twenty-one years with an alcohol concentration in his or her
blood of two hundredths of one percent or more, by weight, but
less than eight hundredths of one percent, by weight; (2) whether
the person was lawfully placed under arrest for an offense
involving driving under the influence of alcohol, controlled
substances or drugs, or was lawfully taken into custody for the
purpose of administering a secondary test: Provided. That this
element shall be waived in cases where no arrest occurred due to
driver incapacitation; (3) whether the person committed an
offense involving driving under the influence of alcohol,
controlled substances or drugs; and (4) whether the tests, if any,
were administered in accordance with the provisions of this
article and article five of this chapter.

(g) If, in addition to a finding that the person did drive a
motor vehicle while under the influence of alcohol, controlled
substances or drugs, or did drive a motor vehicle while having an
alcohol concentration in the person’s blood of eight hundredths
of one percent or more, by weight, or did drive a motor vehicle
while under the age of twenty-one years with an alcohol
centrification in his or her blood of two hundredths of one
percent or more, by weight, but less than eight hundredths of one
percent, by weight, the Office of Administrative Hearings also finds by a preponderance of the evidence that the person when driving did an act forbidden by law or failed to perform a duty imposed by law, which act or failure proximately caused the death of a person and was committed in reckless disregard of the safety of others and if the Office of Administrative Hearings further finds that the influence of alcohol, controlled substances or drugs or the alcohol concentration in the blood was a contributing cause to the death, the commissioner shall revoke the person’s license for a period of ten years: Provided, That if the person’s license has previously been suspended or revoked under the provisions of this section or section one of this article within the ten years immediately preceding the date of arrest, the period of revocation shall be for the life of the person.

(h) If, in addition to a finding that the person did drive a motor vehicle while under the influence of alcohol, controlled substances or drugs, or did drive a motor vehicle while having an alcohol concentration in the person’s blood of eight hundredths of one percent or more, by weight, the Office of Administrative Hearings also finds by a preponderance of the evidence that the person when driving did an act forbidden by law or failed to perform a duty imposed by law, which act or failure proximately caused the death of a person, the commissioner shall revoke the person’s license for a period of five years: Provided, That if the person’s license has previously been suspended or revoked under the provisions of this section or section one of this article within the ten years immediately preceding the date of arrest, the period of revocation shall be for the life of the person.

(i) If, in addition to a finding that the person did drive a motor vehicle while under the influence of alcohol, controlled substances or drugs, or did drive a motor vehicle while having an alcohol concentration in the person’s blood of eight hundredths of one percent or more, by weight, the Office of Administrative Hearings also finds by a preponderance of the evidence that the
person when driving did an act forbidden by law or failed to perform a duty imposed by law, which act or failure proximately caused bodily injury to a person other than himself or herself, the commissioner shall revoke the person’s license for a period of two years: Provided, That if the license has previously been suspended or revoked under the provisions of this section or section one of this article within the ten years immediately preceding the date of arrest, the period of revocation shall be ten years: Provided, however, That if the person’s license has previously been suspended or revoked more than once under the provisions of this section or section one of this article within the ten years immediately preceding the date of arrest, the period of revocation shall be for the life of the person.

(j) If the Office of Administrative Hearings finds by a preponderance of the evidence that the person did drive a motor vehicle while under the influence of alcohol, controlled substances or drugs, or did drive a motor vehicle while having an alcohol concentration in the person’s blood of eight hundredths of one percent or more, by weight, but less than fifteen hundredths of one percent or more, by weight, or finds that the person knowingly permitted the person’s vehicle to be driven by another person who was under the influence of alcohol, controlled substances or drugs, or knowingly permitted the person’s vehicle to be driven by another person who had an alcohol concentration in his or her blood of eight hundredths of one percent or more, by weight the commissioner shall revoke the person’s license for a period of six months or a period of fifteen days with an additional one hundred and twenty days of participation in the Motor Vehicle Alcohol Test and Lock Program in accordance with the provisions of section three-a of this article: Provided, That any period of participation in the Motor Vehicle Alcohol Test and Lock Program that has been imposed by a court pursuant to section two-b, article five of this chapter shall be credited against any period of participation imposed by the commissioner: Provided, however, That a person
whose license is revoked for driving while under the influence of drugs is not eligible to participate in the Motor Vehicle Alcohol Test and Lock Program: Provided further, That if the person’s license has previously been suspended or revoked under the provisions of this section or section one of this article within the ten years immediately preceding the date of arrest, the period of revocation shall be ten years: And provided further, That if the person’s license has previously been suspended or revoked more than once under the provisions of this section or section one of this article within the ten years immediately preceding the date of arrest, the period of revocation shall be for the life of the person.

(k) (1) If in addition to finding by a preponderance of the evidence that the person did drive a motor vehicle while under the influence of alcohol, controlled substance or drugs, the Office of Administrative Hearings also finds by a preponderance of the evidence that the person did drive a motor vehicle while having an alcohol concentration in the person’s blood of fifteen hundredths of one percent or more, by weight, the commissioner shall revoke the person’s license for a period of forty-five days with an additional two hundred and seventy days of participation in the Motor Vehicle Alcohol Test and Lock Program in accordance with the provisions of section three-a, article five-a, chapter seventeen-c of this code: Provided, That if the person’s license has previously been suspended or revoked under the provisions of this section or section one of this article within the ten years immediately preceding the date of arrest, the period of revocation shall be ten years: Provided, however, That if the person’s license has previously been suspended or revoked the person’s license more than once under the provisions of this section or section one of this article within the ten years immediately preceding the date of arrest, the period of revocation shall be for the life of the person.
If a person whose license is revoked pursuant to subdivision (1) of this subsection proves by clear and convincing evidence that they do not own a motor vehicle upon which the alcohol test and lock device may be installed or is otherwise incapable of participating in the Motor Vehicle Alcohol Test and Lock Program, the period of revocation shall be one hundred eighty days: Provided, That if the person’s license has previously been suspended or revoked under the provisions of this section or section one of this article within the ten years immediately preceding the date of arrest, the period of revocation shall be ten years: Provided, however, That if the person’s license has previously been suspended or revoked more than once under the provisions of this section or section one of this article within the ten years immediately preceding the date of arrest, the period of revocation shall be for the life of the person.

(l) If, in addition to a finding that the person did drive a motor vehicle while under the age of twenty-one years with an alcohol concentration in his or her blood of two hundredths of one percent or more, by weight, but less than eight hundredths of one percent, by weight, the Office of Administrative Hearings also finds by a preponderance of the evidence that the person when driving did an act forbidden by law or failed to perform a duty imposed by law, which act or failure proximately caused the death of a person, and if the Office of Administrative Hearings further finds that the alcohol concentration in the blood was a contributing cause to the death, the commissioner shall revoke the person’s license for a period of five years: Provided, That if the person’s license has previously been suspended or revoked under the provisions of this section or section one of this article within the ten years immediately preceding the date of arrest, the period of revocation shall be for the life of the person.

(m) If, in addition to a finding that the person did drive a motor vehicle while under the age of twenty-one years with an
alcohol concentration in his or her blood of two hundredths of one percent or more, by weight, but less than eight hundredths of one percent, by weight, the Office of Administrative Hearings also finds by a preponderance of the evidence that the person when driving did an act forbidden by law or failed to perform a duty imposed by law, which act or failure proximately caused bodily injury to a person other than himself or herself, and if the Office of Administrative Hearings further finds that the alcohol concentration in the blood was a contributing cause to the bodily injury, the commissioner shall revoke the person’s license for a period of two years: Provided, That if the person’s license has previously been suspended or revoked under the provisions of this section or section one of this article within the ten years immediately preceding the date of arrest, the period of revocation shall be ten years: Provided, however, That if the person’s license has previously been suspended or revoked more than once under the provisions of this section or section one of this article within the ten years immediately preceding the date of arrest, the period of revocation shall be for the life of the person.

(n) If the Office of Administrative Hearings finds by a preponderance of the evidence that the person did drive a motor vehicle while under the age of twenty-one years with an alcohol concentration in his or her blood of two hundredths of one percent or more, by weight, but less than eight hundredths of one percent, by weight, the commissioner shall suspend the person’s license for a period of sixty days: Provided, That if the person’s license has previously been suspended or revoked under the provisions of this section or section one of this article, the period of revocation shall be for one year, or until the person’s twenty-first birthday, whichever period is longer.

(o) If, in addition to a finding that the person did drive a motor vehicle while under the influence of alcohol, controlled substances or drugs, or did drive a motor vehicle while having an
alcohol concentration in the person’s blood of eight hundredths
of one percent or more, by weight, the Office of Administrative
Hearings also finds by a preponderance of the evidence that the
person when driving did have on or within the Motor vehicle
another person who has not reached his or her sixteenth birthday,
the commissioner shall revoke the person’s license for a period
of one year: Provided, That if the person’s license has previously
been suspended or revoked under the provisions of this section
or section one of this article within the ten years immediately
preceding the date of arrest, the period of revocation shall be ten
years: Provided, however, That if the person’s license has
previously been suspended or revoked more than once under the
provisions of this section or section one of this article within the
ten years immediately preceding the date of arrest, the period of
revocation shall be for the life of the person.

(p) For purposes of this section, where reference is made to
previous suspensions or revocations under this section, the
following types of criminal convictions or administrative
suspensions or revocations shall also be regarded as suspensions
or revocations under this section or section one of this article:

(1) Any administrative revocation under the provisions of
the prior enactment of this section for conduct which occurred
within the ten years immediately preceding the date of arrest;

(2) Any suspension or revocation on the basis of a
conviction under a municipal ordinance of another state or a
statute of the United States or of any other state of an offense
which has the same elements as an offense described in section
two, article five of this chapter for conduct which occurred
within the ten years immediately preceding the date of arrest; or

(3) Any revocation under the provisions of section seven,
article five of this chapter for conduct which occurred within the
ten years immediately preceding the date of arrest.
(q) In the case of a hearing in which a person is accused of refusing to submit to a designated secondary test, the Office of Administrative Hearings shall make specific findings as to: (1) Whether the arresting law-enforcement officer had reasonable grounds to believe the person had been driving a motor vehicle in this state while under the influence of alcohol, controlled substances or drugs; (2) whether the person was lawfully placed under arrest for an offense involving driving under the influence of alcohol, controlled substances or drugs, or was lawfully taken into custody for the purpose of administering a secondary test: Provided, That this element shall be waived in cases where no arrest occurred due to driver incapacitation; (3) whether the person committed an offense relating to driving a motor vehicle in this state while under the influence of alcohol, controlled substances or drugs; (4) whether the person refused to submit to the secondary test finally designated in the manner provided in section four, article five of this chapter; and (5) whether the person had been given a written statement advising the person that the person’s license to operate a motor vehicle in this state would be revoked for at least forty-five days and up to life if the person refused to submit to the test finally designated in the manner provided in said section.

(r) If the Office of Administrative Hearings finds by a preponderance of the evidence that: (1) The investigating officer had reasonable grounds to believe the person had been driving a motor vehicle in this state while under the influence of alcohol, controlled substances or drugs; (2) whether the person was lawfully placed under arrest for an offense involving driving under the influence of alcohol, controlled substances or drugs, or was lawfully taken into custody for the purpose of administering a secondary test: Provided, That this element shall be waived in cases where no arrest occurred due to driver incapacitation; (3) the person committed an offense relating to driving a motor vehicle in this state while under the influence of alcohol, controlled substances or drugs; (4) the person refused to submit
to the secondary test finally designated in the manner provided in section four, article five of this chapter; and (5) the person had been given a written statement advising the person that the person’s license to operate a motor vehicle in this state would be revoked for at least forty-five days and up to life if the person refused to submit to the test finally designated, the commissioner shall revoke the person’s license to operate a motor vehicle in this state for the periods specified in section seven, article five of this chapter. The revocation period prescribed in this subsection shall run concurrently with any other revocation period ordered under this section or section one of this article arising out of the same occurrence. The revocation period prescribed in this subsection shall run concurrently with any other revocation period ordered under this section or section one of this article arising out of the same occurrence.

(s) If the Office of Administrative Hearings finds to the contrary with respect to the above issues, it shall rescind or modify the commissioner’s order and, in the case of modification, the commissioner shall reduce the order of revocation to the appropriate period of revocation under this section or section seven, article five of this chapter. A copy of the Office of Administrative Hearings’ final order containing its findings of fact and conclusions of law made and entered following the hearing shall be served upon the person whose license is at issue or upon the person’s legal counsel if the person is represented by legal counsel by registered or certified mail, return receipt requested, or by facsimile or by electronic mail if available. The final order shall be served upon the commissioner by electronic mail. During the pendency of any hearing, the revocation of the person’s license to operate a motor vehicle in this state shall be stayed.

A person whose license is at issue and the commissioner shall be entitled to judicial review as set forth in chapter twenty-nine-a of this code. Neither the commissioner nor the
Office of Administrative Hearings may stay enforcement of the order. The court may grant a stay or supersede as of the order only upon motion and hearing, and a finding by the court upon the evidence presented, that there is a substantial probability that the appellant shall prevail upon the merits and the appellant will suffer irreparable harm if the order is not stayed: Provided, That in no event shall the stay or supersede as of the order exceed one hundred fifty days. The Office of Administrative Hearings may not be made a party to an appeal. The party filing the appeal shall pay the Office of Administrative Hearings for the production and transmission of the certified file copy and the hearing transcript to the court. Notwithstanding the provisions of section four, article five of said chapter, the Office of Administrative Hearings may not be compelled to transmit a certified copy of the file or the transcript of the hearing to the circuit court in less than sixty days. Circuit clerk shall provide a copy of the circuit court’s final order on the appeal to the Office of Administrative Hearings by regular mail, by facsimile, or by electronic mail if available.

(t) In any revocation or suspension pursuant to this section, if the driver whose license is revoked or suspended had not reached the driver’s eighteenth birthday at the time of the conduct for which the license is revoked or suspended, the driver’s license shall be revoked or suspended until the driver’s eighteenth birthday or the applicable statutory period of revocation or suspension prescribed by this section, whichever is longer.

(u) Funds for this section’s hearing and appeal process may be provided from the Drunk Driving Prevention Fund, as created by section forty-one, article two, chapter fifteen of this code, upon application for the funds to the Commission on Drunk Driving Prevention.
CHAPTER 174


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

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §17C-5D-1, §17C-5D-2, §17C-5D-3, and §17C-5D-4; and to amend and reenact §60-6-9 of said code, all relating to creating a misdemeanor offense for open containers of alcoholic beverages in certain areas of vehicles; providing comity with federal law governing open containers of alcoholic beverages in vehicles; providing penalties; defining terms; providing exceptions; and specifying procedure upon arrest.

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 §17C-5D-1, §17C-5D-2, §17C-5D-3, and §17C-5D-4; and that §60-6-9 of said code be amended and reenacted, all to read as follows:

CHAPTER 17C. TRAFFIC REGULATIONS AND LAWS OF THE ROAD.

ARTICLE 5D. OPEN CONTAINER LAWS.

§17C-5D-1. Purpose.

The purpose of this article is to avoid the imposition of sanctions against this state and the loss of federal-aid highway construction funds under section 1405(a) of the federal
Transportation Equity Act for the Twenty-first Century (23 U.S.C. §154), as amended, which requires states to enact and enforce a law that prohibits the consumption of an alcoholic beverage or the possession of an open alcoholic beverage container in the passenger area of a motor vehicle that is located on a public highway or the right-of-way adjacent to a public highway.

§17C-5D-2. Definitions.

For the purposes of this article, the words or terms defined in this article have the meanings ascribed to them:

(a) “Alcoholic beverage” means:

(1) Alcoholic liquor as defined in section five, article one, chapter sixty of this code; and

(2) Nonintoxicating beer as defined in section three, article sixteen, chapter eleven of this code.

(b) “Motor vehicle” means a vehicle driven or drawn by mechanical power and manufactured primarily for use on public highways, but does not include a vehicle operated solely on a rail or rails.

(c) “Open alcoholic beverage container” means any bottle, can or other receptacle that:

(1) Contains any amount of alcoholic beverage; and

(2)(A) Is open or has a broken seal; or

(B) Has had its contents partially removed.

(d) “Passenger area of a motor vehicle” means the area designed to seat the driver and passengers while the motor vehicle is in operation and any area that is readily accessible to
the driver or a passenger while in their seating positions. For purposes of this article, the passenger area of a motor vehicle does not include:

(1) (A) A locked glove compartment; or

(B) A fixed center console or other similar fixed compartment that is locked;

(2) In a motor vehicle that is not equipped with a trunk;

(A) The area behind the last upright seat; or

(B) An area not normally occupied by the driver or a passenger; or

(3) In a pickup truck that has no trunk, camper top or separate enclosed area other than the cab of the truck, in the area behind the front seat of the truck in a locked case or container located so as to not be readily accessible to the driver or passengers while in their seating positions.

(e) “Public highway or right-of-way of a public highway” means the entire width between and immediately adjacent to the boundary lines of every way that is publicly maintained, when any part thereof is open to the use of the public for purposes of vehicular travel.

§17C-5D-3. Possession of an open alcoholic beverage container in the passenger area of a motor vehicle; exceptions; penalties.

(a) It is unlawful for the operator or a passenger of a motor vehicle to consume any alcoholic beverage in the passenger area of a motor vehicle located on a public highway or right-of-way of a public highway in this state, whether the vehicle is in motion or at rest.
(b) It is unlawful for the operator or a passenger of a motor vehicle to knowingly possess any open alcoholic beverage container in the passenger area of any motor vehicle that is located on a public highway or right-of-way of a public highway in this state, whether the vehicle is in motion or at rest. Possession by a person of one or more open containers in a single criminal occurrence is a single offense.

(c) The provisions of this section are not applicable to a passenger:

   (1) In the passenger area of a motor vehicle designed, maintained or used primarily for the transportation of persons for compensation including, but not limited to, a bus, taxicab or limousine; or

   (2) In the living quarters of a motorized or nonmotorized house coach, house trailer, motor home or self-contained camper.

(d) A person who violates the provisions of subsection (a) or (b) of this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than $50 nor more than $100.

§17C-5D-4. Procedure on arrest.

If a person is arrested for an offense under the provisions of this article, unless the provisions of section three, article nineteen of this chapter require that the person arrested be taken immediately before a magistrate for an offense described in that section, the provisions of article nineteen of this chapter regarding the issuance of a traffic citation containing a notice to appear applies.
CHAPTER 60. STATE CONTROL OF ALCOHOLIC LIQUORS.

ARTICLE 6. MISCELLANEOUS PROVISIONS.

§60-6-9. Intoxication or drinking in public places; illegal possession of alcoholic liquor; arrests by sheriffs or their deputies for violation in their presence; penalties.

1 (a) A person may not:

2 (1) Appear in a public place in an intoxicated condition;

3 (2) Drink alcoholic liquor in a public place;

4 (3) Tender a drink of alcoholic liquor to another person in a public place;

5 (4) Possess alcoholic liquor in the amount in excess of ten gallons, in containers not bearing stamps or seals of the commissioner, without having first obtained written authority from the commissioner therefor; or

6 (5) Possess any alcoholic liquor which was manufactured or acquired in violation of the provisions of this chapter.

7 (b) Any law-enforcement officer may arrest without a warrant and take the following actions against a person who, in his or her presence, violates subdivision (1) of subsection (a) of this section: (1) If there is some nonintoxicated person who will accept responsibility for the intoxicated person, the officer may issue the intoxicated person a citation specifying a date for appearance before a judicial officer and release him or her to the custody of the individual accepting responsibility: Provided, That the issuance of a citation shall be used whenever feasible; (2) if it does not impose an undue burden on the officer, he or she may, after issuance of the citation, transport the individual
to the individual’s present residence or arrange for the
transportation; (3) if the individual is incapacitated or the
alternatives provided in subdivisions (1) and (2) of this
subsection are not possible, the officer shall transport or arrange
for transportation to the appropriate judicial officer as defined by
section seventeen, article eleven, chapter twenty-seven of this
code; or (4) if the individual is incapacitated and, in the
law-enforcement officer’s judgment, is in need of acute medical
attention, that officer shall arrange for transportation by
ambulance or otherwise to a hospital emergency room. The
officer shall accompany the individual until he or she is
discharged from the emergency room or admitted to the hospital.
If the individual is released from the emergency room, the
officer may proceed as described in subdivisions (1), (2) and (3)
of this subsection. If the individual is admitted to the hospital,
the officer shall issue a citation to the individual specifying a
date for appearance before a judicial officer.

(c) Upon presentment before the proper judicial officer, the
law-enforcement officer serves as the chief complaining witness.
The judicial officer shall determine if there is probative evidence
that the individual may be guilty of the charge of public
intoxication. If such evidence is not presented, the charge shall
be dismissed and the individual released. If sufficient evidence
is presented, the judicial officer shall issue a warrant and
establish bail or issue a summons to the individual. Once a
warrant or summons has been issued, the following actions may
be taken:

(1) If the individual is no longer incapacitated, he or she may
be released;

(2) If the individual is still incapacitated but a nonintoxicated
person is available to accept responsibility for him or her, he or
she may be released to the responsible person; or
(3) If the individual is still incapacitated and no responsible person is available, the judicial officer shall proceed under the provisions of article five or six-a, chapter twenty-seven of this code.

(d) Any law-enforcement officer may arrest and hold in custody, without a warrant, until complaint may be made before a judicial officer and a warrant or summons issued, any person who in the presence of the law-enforcement officer violates any one or more of subdivisions (1) through (6), subsection (a) of this section: Provided, That the law-enforcement officer may use reasonable force to prevent harm to himself or herself, the individual arrested or others in carrying out the provisions of this section.

(e) Any person who violates subdivision (1), subsection (a) of this section is guilty of a misdemeanor and, upon conviction thereof, shall be sentenced by a judicial officer in accordance with the following options:

(1) Upon first offense, a fine of not less than $5 nor more than $100. If the individual, prior to conviction, agrees to voluntarily attend an alcohol education program of not more than six hours duration at the nearest community mental health — mental retardation center, the judicial officer may delay sentencing until the program is completed and upon completion may dismiss the charges;

(2) Upon conviction for a second offense, a fine of not less than $5 nor more than $100 and not more than sixty days in jail or completion of not less than five hours of alcoholism counseling at the nearest community mental health — mental retardation center;

(3) Upon third and subsequent convictions, a fine of not less than $5 nor more than $100 and not less than five nor more than
sixty days in jail or a fine of not less than $5 nor more than $100
and completion of not less than five hours of alcoholism
counseling at the nearest community mental health — mental
retardation center: Provided, That three convictions for public
intoxication within the preceding six months is considered
evidence of alcoholism. For the educational counseling programs
described in this subsection the community mental health —
mental retardation center may charge each participant its usual
and customary fee and shall certify in writing to the referring
judicial officer the completion or failure to complete the
prescribed program for each individual.

(f) A person charged with a violation of subdivision (1),
subsection (a) of this section who is an alcoholic shall be found
not guilty by reason of addiction and proper disposition made
pursuant to articles five and six-a, chapter twenty-seven of this
code.

(g) Any person who violates subdivision (2), subsection (a)
of this section is guilty of a misdemeanor and, upon conviction
thereof, shall be fined not less than $5 nor more than $100; and
upon a second or subsequent conviction thereof, shall be fined
not less than $5 nor more than $100, or confined in jail not more
than sixty days, or both.

(h) Any person who violates subdivision (3), subsection (a)
of this section is guilty of a misdemeanor and, upon conviction
thereof, shall be fined not less than $5 nor more than $100, or
confined in jail not more than sixty days, or both.

(i) Any person who violates subdivision (4) or (5),
subsection (a) of this section is guilty of a misdemeanor and,
upon his or her first conviction, shall be fined not less than $100
nor more than $500; and upon conviction of second or
subsequent offense, he or she is guilty of a felony and, shall be
confined in a state correctional facility for a period of not less
than one year nor more than three years.
AN ACT to amend and reenact §17D-2A-4 of the Code of West Virginia, 1931, as amended, relating to allowing image displayed on a wireless communication device to serve as proof of insurance on a motor vehicle.

Be it enacted by the Legislature of West Virginia:

That §17D-2A-4 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 2A. SECURITY UPON MOTOR VEHICLES.


(a) All insurance carriers transacting insurance in this state shall supply a certificate to the insured or to any person subject to the registration provisions of article three, chapter seventeen-a of this code certifying that there is in effect a motor vehicle liability policy upon such motor vehicle in accordance with the provisions of article three, chapter seventeen-a of this code. The certificate shall give its effective date and the effective date of the policy and, unless the policy is issued to a person who is not the owner of a motor vehicle, must designate by explicit description, in such detail as the Commissioner of the Division of Motor Vehicles shall by rule require, all motor vehicles covered and all replacement vehicles of similar classification: Provided, That on and after July 1, 1984, insurance companies
shall supply a certificate of insurance in duplicate for each policy term and for each vehicle included in a policy, except for those listed in a fleet policy. Each such certificate of insurance shall list the name of the policyholder and the name of the vehicle owner if different from the policyholder.

The certificate must specify for each vehicle listed therein that there is a minimum liability insurance coverage not less than the requirements of section two, article four, chapter seventeen-d of this code.

(b) The certificate provided pursuant to the provisions of this section or other proof of insurance shall be carried by the insured in the appropriate vehicle for use as proof of security, and must be presented at the time of vehicle inspection as required by article sixteen, chapter seventeen-c of this code. Any person violating the provisions of this subsection is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than $200 nor more than $5,000; and upon a second or subsequent conviction, shall be fined not less than $200 nor more than $5,000, or confined in the county or regional jail for not less than fifteen days nor more than one year, or both: Provided, That an insured shall not be guilty of a violation of this subsection (b) if he or she furnishes proof that such insurance was in effect within seven days of being cited for not carrying such certificate or other proof in such vehicle.

(c) As used in this section, proof of insurance means a certificate of insurance, an insurance policy, a mechanically reproduced copy of an insurance policy, a certificate of self-insurance, an image displayed on a wireless communication device, as defined in section one, article one, chapter seventeen-b of this code, that includes the information required by this section as provided by a liability insurer or a copy of the current registration issued to a motor carrier by the Public Service Commission: (1) Through the single state registration system
AN ACT to amend and reenact §8-1-5a of the Code of West Virginia, 1931, as amended, relating to the Municipal Home Rule Pilot Program generally; allowing participation of thirty Class I, Class II and Class III municipalities; allowing participation of four Class IV municipalities; continuing ordinances in effect; removing requirements that Municipal Home Rule Board must approve a municipality’s amendment to its home rule plan and that a municipal ordinance is nullified if the municipality’s amendment to its home rule plan is not approved by the Municipal Home Rule Board; removing requirement that the board approve each municipal ordinance prior to enactment; removing process for enacting ordinance; authorizing amendments to municipal ordinances, acts, resolutions, rules or regulations enacted pursuant to the municipality’s approved written plan; removing provisions prohibiting municipality from enacting ordinance, act, resolution, rule or regulation after the pilot program terminates in 2019; prohibiting municipalities from seeking refunds of moneys collected from taxpayers or moneys distributed to municipalities by the Tax Division under the pilot program: removing obsolete provisions; and reorganizing existing provisions.
Be it enacted by the Legislature of West Virginia:

That §8-1-5a of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 1. PURPOSE AND SHORT TITLE; DEFINITIONS; GENERAL PROVISIONS; CONSTRUCTION.

§8-1-5a. Municipal Home Rule Pilot Program.

(a) Legislative findings. — The Legislature finds and declares that:

(1) The initial Municipal Home Rule Pilot Program brought innovative results, including novel municipal ideas that became municipal ordinances which later resulted in new statewide statutes;

(2) The initial Municipal Home Rule Pilot Program also brought novel municipal ideas that resulted in court challenges against some of the participating municipalities;

(3) The Municipal Home Rule Board was an essential part of the initial Municipal Home Rule Pilot Program, but it lacked some needed powers and duties;

(4) Municipalities still face challenges delivering services required by federal and state law or demanded by their constituents;

(5) Municipalities are sometimes restrained by state statutes, policies and rules that challenge their ability to carry out their duties and responsibilities in a cost-effective, efficient and timely manner;

(6) Continuing the Municipal Home Rule Pilot Program is in the public interest; and
(7) Increasing the powers and duties of the Municipal Home Rule Board will enhance the Municipal Home Rule Pilot Program.

(b) Continuance of pilot program. — The Municipal Home Rule Pilot Program is continued until July 1, 2019. The ordinances enacted by the participating municipalities pursuant to the Municipal Home Rule Pilot Program may remain in effect, subject to the requirements of this section, until the ordinances are repealed: Provided, That any ordinance enacting a municipal occupation tax is hereby null and void.

(c) Authorizing participation. —

(1) Commencing July 1, 2015, thirty Class I, Class II and Class III municipalities and four Class IV municipalities that are current in payment of all state fees may participate in the Municipal Home Rule Pilot Program pursuant to the provisions of this section.

(2) The municipalities participating in the pilot program on the effective date of the amendment and reenactment of this section are hereby authorized to continue in the pilot program, subject to the requirements of this section, and may amend current written plans and/or submit new written plans in accordance with the provisions of this section.

(d) Municipal Home Rule Board. — The Municipal Home Rule Board is hereby continued. Effective July 1, 2015, the Municipal Home Rule Board shall consist of the following five voting members:

(1) The Governor, or a designee, who shall serve as chair;

(2) The Executive Director of the West Virginia Development Office, or a designee;
(3) One member representing the Business and Industry Council, appointed by the Governor with the advice and consent of the Senate;

(4) One member representing the largest labor organization in the state, appointed by the Governor with the advice and consent of the Senate; and

(5) One member representing the West Virginia Chapter of the American Institute of Certified Planners, appointed by the Governor with the advice and consent of the Senate.

The Chair of the Senate Committee on Government Organization and the Chair of the House Committee on Government Organization shall continue to be ex officio nonvoting members of the board.

(e) Board’s powers and duties. — The Municipal Home Rule Board has the following powers and duties:

(1) Review, evaluate, make recommendations and approve or reject, by a majority vote of the board, each aspect of the written plan submitted by a municipality;

(2) By a majority vote of the board, select, based on the municipality’s written plan, new Class I, Class II, Class III and/or Class IV municipalities to participate in the Municipal Home Rule Pilot Program;

(3) Review, evaluate, make recommendations and approve or reject, by a majority vote of the board, the amendments to the written plans submitted by municipalities;

(4) Consult with any agency affected by the written plans or the amendments to the written plans; and

(5) Perform any other powers or duties necessary to effectuate the provisions of this section.
(f) **Written plan.** — Any Class I, Class II, Class III or Class IV municipality desiring to participate in the Municipal Home Rule Pilot Program shall submit a written plan to the board stating in detail the following:

(1) The specific laws, acts, resolutions, policies, rules or regulations which prevent the municipality from carrying out its duties in the most cost-efficient, effective and timely manner;(2) The problems created by the laws, acts, resolutions, policies, rules or regulations;

(3) The proposed solutions to the problems, including all proposed changes to ordinances, acts, resolutions, rules and regulations: *Provided, That* the specific municipal ordinance instituting the solution does not have to be included in the written plan; and

(4) A written opinion, by an attorney licensed to practice in West Virginia, stating that the proposed written plan does not violate the provisions of this section.

(g) **Public hearing on written plan.** — Prior to submitting its written plan to the board, the municipality shall:

(1) Hold a public hearing on the written plan;

(2) Provide notice at least thirty days prior to the public hearing by a Class II legal advertisement;

(3) Make a copy of the written plan available for public inspection at least thirty days prior to the public hearing; and

(4) After the public hearing, adopt an ordinance authorizing the municipality to submit a written plan to the Municipal Home Rule Board after the proposed ordinance has been read two times.
(h) **Selection of municipalities.** — On or after June 1, 2015, by a majority vote, the Municipal Home Rule Board may select from the municipalities that submitted written plans and were approved by the board by majority vote, new Class I, Class II, Class III and/or Class IV municipalities to participate in the Municipal Home Rule Pilot Program.

(i) **Powers and duties of municipalities.** — The municipalities participating in the Municipal Home Rule Pilot Program have the authority to pass an ordinance, act, resolution, rule or regulation, under the provisions of this section, that is not contrary to:

1. Environmental law;
2. Laws governing bidding on government construction and other contracts;
3. The Freedom of Information Act;
4. The Open Governmental Proceedings Act;
5. Laws governing wages for construction of public improvements;
6. The provisions of this section;
7. The provisions of section five-a, article twelve of this chapter;
8. The municipality’s written plan;
9. The Constitution of the United States or the Constitution of the State of West Virginia;
10. Federal law or crimes and punishment;
11. Chapters sixty-a, sixty-one and sixty-two of this code or state crimes and punishment;
(12) Laws governing pensions or retirement plans;

(13) Laws governing annexation;

(14) Laws governing taxation: \textit{Provided}, That a participating municipality may enact a municipal sales tax up to one percent if it reduces or eliminates its municipal business and occupation tax: \textit{Provided, however}, That if a municipality subsequently reinstates or raises the municipal business and occupation tax it previously reduced or eliminated under the Municipal Home Rule Pilot Program, it shall eliminate the municipal sales tax enacted under the Municipal Home Rule Pilot Program: \textit{Provided further}, That any municipality that imposes a municipal sales tax pursuant to this section shall use the services of the Tax Commissioner to administer, enforce and collect the tax in the same manner as the state consumers sales and service tax and use tax under the provisions of articles fifteen, fifteen-a and fifteen-b, chapter eleven of this code and all applicable provisions of the Streamlined Sales and Use Tax Agreement: \textit{And provided further}, That such tax will not apply to the sale of motor fuel or motor vehicles;

(15) Laws governing tax increment financing;

(16) Laws governing extraction of natural resources; and

(17) Marriage and divorce laws.

(j) Municipalities may not pass an ordinance, act, resolution, rule or regulation under the provisions of this section that:

(1) Affects persons or property outside the boundaries of the municipality: \textit{Provided}, That this prohibition under the Municipal Home Rule Pilot Program does not limit a municipality’s powers outside its boundary lines under other provisions of this section, other sections of this chapter, other chapters of this code or court decisions; or
Enacts an occupation tax, fee or assessment payable by a nonresident of a municipality.

Amendments to written plans. — A municipality participating in the Municipal Home Rule Pilot Program may amend its written plan at any time.

Amendments to ordinances, acts, resolutions, rules or regulations. — A municipality participating in the Municipal Home Rule Pilot Program may amend any ordinance, act, resolution, rule or regulation enacted pursuant to the municipality’s approved written plan at any time so long as any amendment is consistent with the municipality’s approved written plan, complies with the provisions of subsections (i) and (j) of this section, and the municipality complies with all applicable state law procedures for enacting municipal legislation.

Reporting requirements. — Commencing December 1, 2015, and each year thereafter, each participating municipality shall give a progress report to the Municipal Home Rule Board and commencing January 1, 2016, and each year thereafter, the Municipal Home Rule Board shall give a summary report of all the participating municipalities to the Joint Committee on Government and Finance.

Termination of the pilot program. — The Municipal Home Rule Pilot Program terminates on July 1, 2019. An ordinance, act, resolution, rule or regulation enacted by a participating municipality under the provisions of this section during the period of the Municipal Home Rule Pilot Program shall continue in full force and effect until repealed.

Notwithstanding any other provision of this code to the contrary, on and after the effective date of the enactment of this provision in 2015, no distributee under the provisions of this
section may seek from the Tax Division of the Department of Revenue a refund of revenues or moneys collected by, or remitted to, the Tax Division of the Department of Revenue, nor seek a change in past amounts distributed, or any other retrospective adjustment relating to any amount distributed, to the extent that the moneys in question have been distributed to another distributee, regardless of whether those distributions were miscalculated, mistaken, erroneous, misdirected or otherwise inaccurate or incorrect. For purposes of this section, the term ‘distributee’ means any municipality that receives or is authorized to receive a specific distribution of revenues or moneys collected by, or remitted to, the Tax Division of the Department of Revenue pursuant to this section.

CHAPTER 177

(S. B. 515 - By Senators Gaunch and Plymale)

[Passed March 13, 2015; in effect ninety days from passage.]
[Approved by the Governor on March 24, 2015.]

AN ACT to amend and reenact §8-22-18a and §8-22-18b of the Code of West Virginia, 1931, as amended, all relating to Municipal Pensions Oversight Board; and retention, allocation, distribution and investment of funds.

Be it enacted by the Legislature of West Virginia:

That §8-22-18a and §8-22-18b of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 22. RETIREMENT BENEFITS GENERALLY; POLICEMEN’S PENSION AND RELIEF FUND; FIREMEN’S PENSION AND RELIEF FUND;
§8-22-18a. West Virginia Municipal Pensions Oversight Board created; powers and duties; management; composition; terms; quorum; expenses; reports.

(a) (1) The West Virginia Municipal Pensions Oversight Board, established in 2009, is hereby continued as a public body corporate for the purpose of monitoring and improving the performance of municipal policemen’s and firemen’s pension and relief funds to assure prudent administration, investment and management of the funds. Management of the oversight board shall be vested solely in the members of the oversight board. Duties of the oversight board shall include, but not be limited to, assisting municipal boards of trustees in performing their duties, assuring the funds’ compliance with applicable laws, providing for actuarial studies, distributing tax revenues to the funds, initiating or joining legal actions on behalf of active or retired pension fund members or municipal boards of trustees to protect interests of the members in the funds and taking other actions as may be reasonably necessary to provide for the security and fiscal integrity of the pension funds. The oversight board’s authority to initiate legal action does not preempt the authority of municipalities, municipal policemen’s and firemen’s boards of trustees or pension fund active members, beneficiaries or others to initiate legal action to protect interests in the funds. Further, the oversight board may, in its discretion, investigate the actions or practices of municipal boards of trustees or of their administrators or employees that, in the oversight board’s judgment, have the potential to threaten the security or fiscal integrity of the pension funds, and the boards of trustees, administrators and employees shall cooperate with the oversight board in any investigation. Regardless of whether it has
previously conducted an investigation, the oversight board may initiate or intervene in legal actions to challenge or prevent any action or practice which, in the oversight board’s judgment, has the potential to threaten the security or fiscal integrity of the pension funds. Establishment of the oversight board does not relieve the municipal funds’ boards of trustees from their fiduciary and other duties to the funds, nor does it create any liability for the funds on the part of the state. The failure of the oversight board to investigate or initiate legal actions regarding the actions or practices of municipal boards of trustees, their administrators or employees does not render the oversight board liable for the actions or practices. Members and employees of the oversight board are not liable personally, either jointly or severally, for debts or obligations of the municipal pension and relief funds. Except as otherwise provided herein, members and employees of the oversight board have a fiduciary duty toward the municipal pension and relief funds and are liable for malfeasance or gross negligence. Employees of the oversight board are classified-exempt state employees.

(2) The oversight board shall consist of nine members. The Executive Director of the state’s Investment Management Board and the Executive Director of the state’s Consolidated Public Retirement Board, or their designees, shall serve as voting ex officio members. The other seven members shall be citizens of the state who have been qualified electors of the state for a period of at least one year next preceding their appointment and shall be as follows: An active or retired member of a Municipal Policemen’s Pension and Relief Fund chosen from a list of three persons submitted to the Governor by the state’s largest professional municipal police officers organization, an active or retired member of a Municipal Firemen’s Pension and Relief Fund chosen from a list of three persons submitted to the Governor by the state’s largest professional firefighters organization, an attorney experienced in finance and investment matters related to pensions management, two persons
experienced in pension funds management, one person who is a
certified public accountant experienced in auditing and one
person chosen from a list of three persons submitted to the
Governor by the state’s largest association of municipalities.

(3) On the effective date of the enactment of this section as
amended during the fourth extraordinary session of the
Legislature in 2009, the Governor shall forthwith appoint the
members, with the advice and consent of the Senate. The
Governor may remove any member from the oversight board for
neglect of duty, incompetency or official misconduct.

(b) The oversight board has the power to:

(1) Enter into contracts, to sue and be sued, to implead and
be impleaded;

(2) Promulgate and enforce bylaws and rules for the
management and conduct of its affairs;

(3) Maintain accounts and invest those funds which the
oversight board is charged with receiving and distributing.
Investment of those funds may be with the Board of Treasury
Investments or the Investment Management Board at the
discretion of the oversight board;

(4) Make, amend and repeal bylaws, rules and procedures
consistent with the provisions of this article and chapter
thirty-three of this code;

(5) Notwithstanding any other provision of law, retain or
employ, fix compensation, prescribe duties and pay expenses of
legal, accounting, financial, investment, management and other
staff, advisors or consultants as it considers necessary, including
the hiring of legal counsel and actuary; and

(6) Do all things necessary and appropriate to implement and
operate the board in performance of its duties. Expenses shall be
paid from the moneys in the Municipal Pensions Security Fund
created in section eighteen-b of this article or, prior to the
transition provided in section eighteen-b of this article, the
Municipal Pensions and Protection Fund: Provided, That the
board may request special appropriation for special projects. The
oversight board is exempt from provisions of article three,
chapter five-a of this code for the purpose of contracting for
actuarial services, including the services of a reviewing actuary.

(c) Except for ex officio members, the terms of oversight
board members shall be staggered initially from January 1, 2010.
The Governor shall appoint initially one member for a term of
one year, one member for a term of two years, two members for
terms of three years, one member for a term of four years and
two members for terms of five years. Subsequent appointments
shall be for terms of five years. A member serving two full
consecutive terms may not be reappointed for one year after
completion of his or her second full term. Each member shall
serve until that member’s successor is appointed and qualified.
Any member may be removed by the Governor in case of
incompetency, neglect of duty, gross immorality or malfeasance
in office. Any vacancy on the oversight board shall be filled by
appointment by the Governor for the balance of the unexpired
term.

(d) A majority of the full authorized membership of the
oversight board constitutes a quorum. The board shall meet at
least quarterly each year, but more often as duties require, at
times and places that it determines. The oversight board shall
elect a chairperson and a vice chairperson from their
membership who shall serve for terms of two years and shall
select annually a secretary/treasurer who may be either a
member or employee of the board. The oversight board shall
employ an executive director and other staff as needed and shall
fix their duties and compensation. The compensation of the
executive director shall be subject to approval of the Governor.
Except for any special appropriation as provided in subsection
(b) of this section, all personnel and other expenses of the board
shall be paid from revenue collected and allocated for municipal policemen’s or municipal firemen’s pension and relief funds pursuant to section fourteen-d, article three, chapter thirty-three of this code and distributed through the Municipal Pensions and Protection Fund or the Municipal Pensions Security Fund created in section eighteen-b of this article. Expenses during the initial year of the board’s operation shall be from proceeds of the allocation for the municipal pensions and relief funds. Expenditures in years thereafter shall be by appropriation from the Municipal Pensions Security Fund. Money allocated for municipal policemen’s and firemen’s pension and relief funds to be distributed from the Municipal Pensions and Protection Fund or the Municipal Pensions Security Fund shall be first allocated to pay expenses of the oversight board and the remainder in the fund distributed among the various municipal pension and relief funds as provided in section fourteen-d, article three, chapter thirty-three of this code. The board is exempt from the provisions of sections seven and eleven, article three, chapter twelve of this code relating to compensation and expenses of members, including travel expenses.

(e) Members of the oversight board shall serve the board without compensation for their services: Provided, That no public employee member may suffer any loss of salary or wages on account of his or her service on the board. Each member of the board shall be reimbursed, on approval of the board, for any necessary expenses actually incurred by the member in carrying out his or her duties. All reimbursement of expenses shall be paid out of the Municipal Pensions Security Fund.

(f) The board may contract with other state boards or state agencies to share offices, personnel and other administrative functions as authorized under this article: Provided, That no provision of this subsection may be construed to authorize the board to contract with other state boards or state agencies to otherwise perform the duties or exercise the responsibilities imposed on the board by this code.
(g) The board shall propose rules for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code as necessary to implement the provisions of this article, and may initially promulgate emergency rules pursuant to the provisions of section fifteen, article three, chapter twenty-nine-a of this code.

(h) The oversight board shall report annually to the Legislature’s Joint Committee on Government and Finance and the Joint Committee on Pensions and Retirement concerning the status of municipal policemen’s and firemen’s pension and relief funds and shall present recommendations for strengthening and protecting the funds and the benefit interests of the funds’ members.

(i) The oversight board shall cooperate with the West Virginia Investment Management Board and the Board of Treasury Investments to educate members of the local pension boards of trustees on the services offered by the two state investment boards. No later than October 31, 2013, the board shall report to the Joint Committee on Government and Finance and the Joint Committee on Pensions and Retirement a detailed comparison of returns on long-term investments of moneys held by or allocated to municipal pension and relief funds managed by the West Virginia Investment Management Board and those managed by others than the Investment Management Board. The oversight board shall also report at that time on short-term investment returns by local pension boards using the West Virginia Board of Treasury Investments compared to short-term investment returns by those local boards of trustees not using the Board of Treasury Investments.

(j) The oversight board shall establish minimum requirements for training to be completed by each member of the board of trustees of a municipal policemen’s or firemen’s pension and relief fund. The requirements should include, but
not be limited to, training in ethics, fiduciary duty and investment responsibilities.

§8-22-18b. Creation of Municipal Pensions Security Fund; transfer of certain powers, duties and functions of Treasurer’s office to Municipal Pensions Oversight Board.

(a) The Legislature finds that an important part of oversight of municipal policemen’s and firemen’s pension and relief funds is monitoring the performance required of the various funds to qualify to receive distribution of insurance premium tax revenues provided by section fourteen-d, article three, chapter thirty-three of this code. The duties and functions of the State Treasurer’s office with respect to monitoring and distribution are transferred from the State Treasurer’s office to the West Virginia Municipal Pensions Oversight Board effective January 1, 2010: Provided, That until the oversight board is fully organized and operating, some duties and functions being performed by the State Treasurer’s office prior to January 1, 2010, may be continued by that office temporarily as necessary to effect an orderly transition of responsibilities and provide for prompt distribution of the insurance premium tax proceeds for expenses of the oversight board and to the municipal policemen’s and firemen’s pension and relief funds.

(b) There is hereby created in the State Treasury a nonexpiring special revenue fund designated the West Virginia Municipal Pensions Security Fund which shall be administered by the West Virginia Municipal Pensions Oversight Board solely for the purposes as provided in this article and article three, chapter thirty-three of this code. All earnings shall accrue to and be retained by the fund unless otherwise provided in this article.

(c) Until the oversight board advises the Insurance Commissioner and the State Treasurer in writing that the oversight board is prepared to receive into and distribute from
the West Virginia Municipal Pensions Security Fund premium
tax revenues as provided in section fourteen-d, article three,
chapter thirty-three of this code and section seven, article
twelve-c of said chapter, the commissioner shall continue to
transfer the funds into the Municipal Pensions and Protection
Fund and the State Treasurer shall continue to disburse funds to
the qualifying municipal pension and relief funds, and shall
disburse funds as necessary for the establishment and early
operation of the oversight board. The Insurance Commissioner,
the State Treasurer and oversight board shall share information
freely as required for efficient transfer of powers and duties
related to the premium tax revenues generated pursuant to
chapter thirty-three of this code to be allocated to the municipal
policemen’s and firemen’s pension and relief funds. When the
oversight board assumes full responsibility to receive funds into
and disburse funds from the Municipal Pensions Security Fund,
the State Treasurer shall transfer to it all funds remaining in the
Municipal Pensions and Protection Fund and close the Municipal
Pensions and Protection Fund.

CHAPTER 178

(H. B. 2274 - By Delegate(s) Hanshaw,
Hamilton, A. Evans and Azinger)

[Passed February 20, 2015; in effect ninety days 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 §25-1-5a, relating to
authorizing the Commissioner of Corrections to enter into mutual
aid agreements with political subdivisions of this state, other states
and the federal government for numerous salutary 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 §25-1-5a, to read as follows:

ARTICLE 1. ORGANIZATION, INSTITUTIONS AND CORRECTIONS MANAGEMENT.


(a) The commissioner may enter into agreements to provide for the rendering of mutual aid with the political subdivisions of this state, other states and the federal government to provide for the common defense, protect the public peace, health and safety and to preserve the lives and property of the people of this state.

(b) Any agreement entered into under this section shall be with the consent and approval of the Secretary of the Department of Military Affairs and Public Safety, and shall include a provision within each agreement allowing for the immediate termination by the Secretary at any time.

CHAPTER 179

(Com. Sub for H. B. 2227 - By Delegate(s) L. Phillips, Eldridge, Gearheart, Moffatt, J. Nelson, H. White, Guthrie, Rowe, Marcum, Perdue and Hornbuckle)

[Passed February 11, 2015; in effect ninety days from passage.]
[Approved by the Governor on February 18, 2015.]
§29-27-4 and §29-27-6 of said code, all relating to the National Coal Heritage Area Authority; adding Lincoln and Kanawha counties as member counties; increasing number of authority board members; adding ex-officio non-voting member to the authority board from Marion County; adding working in member counties to qualifications of appointed members; providing for county commissions of member counties to recommend three nominees to Governor; providing for the Secretary of Education and the Arts to recommend three nominees for chairperson to Governor; creating a standing committee; establishing standing committee responsibilities; repealing article relating to the Coal Heritage Highway Authority; and transferring all assets and responsibilities of the Coal Heritage Highway Authority to the National Coal Heritage Area Authority.

Be it enacted by the Legislature of West Virginia:


ARTICLE 27. NATIONAL COAL HERITAGE AREA AUTHORITY.

§29-27-1. Legislative findings.

1 The West Virginia Legislature finds that there is a significant need for a public body to promote and enhance historic preservation, tourism and economic development activities that relate to the state’s history as a coal producing state within the counties of Boone, Cabell, Fayette, Lincoln, Logan, Kanawha, Marion, McDowell, Mercer, Mingo, Raleigh, Summers, Wayne and Wyoming.
The Legislature further finds that the creation and empowering of a statutory corporation to work with the landowners, county officials and community leaders, state and federal government agencies, and other interested parties to enable and facilitate the development of the national coal heritage area will greatly assist in the realization of these potential benefits.


Unless the context clearly requires a different meaning, the terms used in this article have the following meanings:

(a) “Authority” means the national coal heritage area authority;

(b) “Board” means the board of the national coal heritage area authority; and

(c) “National coal heritage area” means and is comprised of the counties of Boone, Cabell, Fayette, Lincoln, Logan, Kanawha, McDowell, Mercer, Mingo, Raleigh, Summers, Wayne and Wyoming.

§29-27-3. Creation; appointment of board; terms; expenses; executive director.

(a) There is hereby created the “national coal heritage area authority” which is a public corporation and a government instrumentality existing for the purposes of providing direction to and assistance with state and federal historic preservation, economic development, and tourism projects in the national coal heritage area and aiding in the development and implementation of integrated cultural, historical, and land resource management policies and programs in order to retain, enhance, and interpret the significant values of the lands, waters and structures in the national coal heritage area.
(b) The authority board shall be comprised of twenty members. The following six persons shall be non-voting members and shall serve by virtue of their offices and may be represented at meetings of the board by designees: The secretary of the Department of Education and the Arts, the commissioner of the bureau of the environment, the commissioner of the Division of Tourism, the commissioner of the Division of Culture and History, the director of the Division of Natural Resources and the executive director of the West Virginia Development Office. The remaining fourteen members shall be appointed for terms of four years by the Governor with the advice and consent of the Senate. The county commission of each of the county within the National Coal Heritage Area may submit to the Governor a list of three candidates to be considered for Board appointment. Of the fourteen members appointed by the Governor, one member must reside or work in Boone County; one member must reside or work in Cabell County; one member must reside or work in Fayette County; one member must reside or work in Lincoln County; one member must reside or work in Logan County; one member must reside or work in Kanawha county; one member must reside or work in Marion county: Provided, That this member shall be an ex-officio non-voting member; one member must reside or work in McDowell County; one member must reside or work in Mercer County; one member must reside or work in Mingo County; one member must reside or work in Raleigh County; one member must reside or work in Summers County; one member must reside or work in Wayne County; one member must reside or work in Wyoming County; and the appointees must be representative of the tourism industry, the coal industry, the united mine workers of America, economic development activity, historic preservation activity or higher education.

(c) The terms of office shall be four years and shall expire on June 30. No appointed member may serve more than two
consecutive full terms. A member shall continue to serve until
his or her successor has been appointed and qualified.

(d) If an appointed member is unable to complete a term, the
Governor shall appoint a person to complete the unexpired term.
Each vacancy occurring on the board must be filled within sixty
days after the vacancy is created.

(e) Any appointed member of the board shall immediately
and automatically forfeit his or her membership on the board if
he or she becomes a nonresident of the county, or ceases to be
employed in that county, from which he or she was appointed.

(f) Each member of the board shall serve without
compensation, but shall receive expense reimbursement for all
reasonable and necessary expenses actually incurred in the
performance of the duties of the office, in the same amount paid
to members of the Legislature for their interim duties as
recommended by the citizens legislative compensation
commission and authorized by law: Provided, That no member
may be reimbursed for expenses paid by a third party.

(g) The board shall appoint an executive director to act as its
chief executive officer, to serve at the will and pleasure of the
board. The board, acting through its executive director, may
employ any other personnel considered necessary and may
appoint staff for the authority and retain such temporary
consultants or technicians as may be required for any special
study or survey consistent with the provisions of this article. The
executive director shall carry out plans to implement the
provisions of this article and to exercise those powers. The
executive director shall prepare annually a budget to be
submitted to the board for its review and approval.
§29-27-4. Board; quorum; chairperson; bylaws.

(a) The board is the governing body of the authority and the board shall exercise all the powers given the authority in this article.

(b) A chairperson shall be appointed by and shall serve at the will and pleasure of the Governor, with the advice and consent of the Senate. The Secretary of Education and the Arts may submit to the Governor a list of three candidates to be considered for chairperson appointment. The authority shall meet at such times as shall be specified by the chairperson, but in no case less than once each three months. Notice of the meeting must be given in accordance with the provisions of section three, article nine-a, chapter six of this code. A majority of the members may also call a meeting upon such notice as provided in this section. A majority of seven appointed members shall constitute a quorum for the transaction of business. The chairperson of the board shall appoint from the membership of the authority certain members to serve as secretary and as treasurer.

(c) There shall be a standing committee of the National Coal Heritage Area Authority known as the “Coal Heritage Trail Committee” comprised of the chairperson and members of the national coal heritage area from the counties that the Coal Heritage Trail passes through. These counties are Mercer, McDowell, Wyoming, Raleigh and Fayette. This standing committee shall be responsible for making recommendations to the full board regarding development and promotion of the Coal Heritage Trail, a national scenic byway.

(d) The board shall prescribe, amend and repeal bylaws and rules governing the manner in which the business of the authority is conducted, shall keep a record of its proceedings, and shall review and approve an annual budget.
§29-27-6. Continuation of legal obligations.

1 Nothing in this article may be considered as superseding, amending, modifying or repealing any contract or agreement entered into for the benefit of the national coal heritage area prior to the date of enactment of this article. All obligations, contracts, grants and assets currently belonging to the Coal Heritage Highway Authority shall be transferred to and become the responsibility and property of the National Coal Heritage Area Authority.

CHAPTER 180

(H. B. 2201 - By Delegate(s) Ireland, Folk, Manchin, Lynch, Rowe, Fleischauer, Skinner, Fast, Fluharty, Byrd and Summers)

[Amended and again passed February 28, 2015; as a result of objections of the Governor; in effect from passage.]

[Approved by the Governor on March 12, 2015.]

AN ACT to amend and reenact §24-2F-8 of the Code of West Virginia, 1931, as amended, relating to net metering; defining net metering; defining customer-generator; defining cross-subsidization; requiring the Public Service Commission to prohibit cross-subsidization; requiring the Public Service Commission adopt certain net metering and interconnection rules and standards; striking deadlines for rulemaking by the Public Service Commission; and capping the amount of generating capacity subject to net metering.

Be it enacted by the Legislature of West Virginia:

That §24-2F-8 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

(a) “Net metering” means measuring the difference between electricity supplied by an electric utility and electricity generated from a facility owned or leased and operated by a customer generator when any portion of the electricity generated from the facility is used to offset part or all of the electric retail customer’s requirements for electricity.

(b) “Customer-generator” means an electric retail customer who owns or leases and operates a customer-sited generation project utilizing an alternative or renewable energy resource or a net metering system in this state.

(c) “Cross-subsidization”, for purposes of this section, means the practice of charging costs directly incurred by the electric utility in accommodating a net metering system to electric retail customers who are not customer generators.

(d) The Public Service Commission shall adopt a rule requiring that all electric utilities provide a rebate or discount at fair value, to be determined by the Public Service Commission, to customer-generators for any electricity generation that is delivered to the utility under a net metering arrangement. The commission shall assure that any net metering tariff does not create a cross-subsidization between customers within one class of service.

(e) The Public Service Commission shall also consider adopting, by rule, a requirement that all sellers of electricity to retail customers in the state, including rural electric cooperatives, municipally owned electric facilities or utilities serving less than thirty thousand residential electric customers in this state, offer net metering rebates or discounts to customer-generators.
(f) The Public Service Commission shall institute a general investigation for the purpose of adopting rules pertaining to net metering and the interconnection of eligible electric generating facilities intended to operate in parallel with an electric utility’s system. As part of its investigation, the Public Service Commission shall take into consideration rules of other states within the applicable region of the regional transmission organization, as that term is defined in 18 C.F.R. §35.34, that manages a utility’s transmission system in any part of this state. Furthermore, the Public Service Commission shall consider increasing the allowed kilowatt capacity for commercial customer-generators to an amount not to exceed five hundred kilowatts and for industrial customer-generators to an amount not to exceed two megawatts. The Public Service Commission shall further consider interconnection standards for combined heat and power.

(g) An electric utility shall offer net metering to a customer-generator that generates electricity on the customer-generator side of the meter using alternative or renewable energy sources, on a first-come, first-served basis, based on the date of application for interconnection as provided in the rules promulgated by the commission and pursuant to a standard tariff. An electric utility may offer net metering to customer-generators, on a first-come, first-served basis, so long as the total generation capacity installed by all customer-generators is no greater than three percent (3%) of the electric utility aggregate customer peak demand in the state during the previous year, of which no less than one-half percent (0.5%) is reserved for residential customer-generators.

(h) The Public Service Commission shall adopt a rule requiring compliance with the Institute of the Electrical and Electronics Engineers (IEEE) standards at all times, and as the same shall be amended, including having a disconnect readily
AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §16-2M-1, §16-2M-2, §16-2M-3, §16-2M-4, §16-2M-5, §16-2M-6 and §16-2M-7, all relating to prohibiting certain abortions; stating legislative findings; defining terms; requiring a calculation of gestational age before an abortion is performed or attempted, except in certain cases; prohibiting abortions when the gestational age of the fetus reaches pain capable gestational age; creating certain exceptions to that prohibition; requiring a physician performing an abortion of a fetus that has reached pain capable gestational age to use the process most likely to allow the fetus to survive, with certain exceptions; requiring reporting of all completed abortions and that the reports contain certain information regarding the abortion; requiring an annual public report that provides statistics of the abortions while keeping the identities of the persons involved confidential; deeming violations by physicians and other licensed medical practitioners to be a breach of the standard of care and outside the scope of practice that is permitted by law; allowing for discipline from the applicable licensure board for that conduct, including, but not limited to, loss of professional license to practice for violation; constituting violations for nonphysician and
nonlicensed medical practitioners as unauthorized practice of medicine and subject to criminal penalties; preserving existing legal remedies for violations; clarifying that no penalty may be assessed against a patient; and making provisions severable.

*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 §16-2M-1, §16-2M-2, §16-2M-3, §16-2M-4, §16-2M-5, §16-2M-6 and §16-2M-7, all to read as follows:

**ARTICLE 2M. THE PAIN-CAPABLE UNBORN CHILD PROTECTION ACT.**

§16-2M-1. Legislative findings.

1 The Legislature makes the following findings:

2 (1) Pain receptors (unborn child’s entire body nociceptors) are present no later than sixteen weeks after fertilization and nerves link these receptors to the brain’s thalamus and subcortical plate by no later than twenty weeks.

3 (2) By eight weeks after fertilization, the unborn child reacts to stimuli that would be recognized as painful if applied to an adult human, for example, by recoiling.

4 (3) In the unborn child, application of painful stimuli is associated with significant increases in stress hormones known as the stress response.

5 (4) Subjection to painful stimuli is associated with long-term harmful neuro developmental effects, such as altered pain sensitivity and, possibly, emotional, behavioral and learning disabilities later in life.
(5) For the purposes of surgery on unborn children, fetal anesthesia is routinely administered and is associated with a decrease in stress hormones compared to their level when painful stimuli is applied without the anesthesia.

(6) The position, asserted by some medical experts, that the unborn child is incapable of experiencing pain until a point later in pregnancy than twenty weeks after fertilization, which point in the pregnancy is generally consistent with twenty-two weeks following the woman’s last menstrual cycle, predominately rests on the assumption that the ability to experience pain depends on the cerebral cortex and requires nerve connections between the thalamus and the cortex. However, recent medical research and analysis, especially since 2007, provides strong evidence for the conclusion that a functioning cortex is not necessary to experience pain.

(7) Substantial evidence indicates that children born missing the bulk of the cerebral cortex, those with hydranencephaly, nevertheless experience pain.

(8) In adults, stimulation or ablation of the cerebral cortex does not alter pain perception while stimulation or ablation of the thalamus does.

(9) Substantial evidence indicates that structures used for pain processing in early development differ from those of adults, using different neural elements available at specific times during development, such as the subcortical plate, to fulfill the role of pain processing.

(10) Consequently, there is substantial medical evidence that an unborn child is capable of experiencing pain by pain capable gestational age as defined in subsection (7), section two, article two-m of this chapter.
(11) It is the purpose of the state to assert a compelling state interest in protecting the lives of unborn children from the stage at which substantial medical evidence indicates that they are capable of feeling pain.

§16-2M-2. Definitions.

For purposes of this article:

(1) “Abortion” means abortion as that term is defined in section two, article two-f of this chapter.

(2) “Attempt to perform or induce an abortion” means an act or an omission of a statutorily required act that, under the circumstances as the person believes them to be, constitutes a substantial step in a course of conduct planned to culminate in the performance or induction of an abortion in this state in violation of the applicable provisions of this code.

(3) “Fertilization” means the fusion of a human spermatozoon with a human ovum.

(4) “Fetus” means the developing young in the uterus, specifically the unborn offspring in the postembryonic period from nine weeks after fertilization until birth.

(5) “Medical emergency” means a condition that, on the basis of a reasonably prudent physician’s reasonable medical judgment, so complicates the medical condition of a pregnant female that it necessitates the immediate abortion of her pregnancy without first determining gestational age to avert her death or for which the delay necessary to determine gestational age will create serious risk of substantial and irreversible physical impairment of a major bodily function, not including psychological or emotional conditions. No condition may be deemed a medical emergency if based on a claim or diagnosis that the woman will engage in conduct which she intends to
result in her death or in substantial and irreversible physical
impairment of a major bodily function.

(6) “Nonmedically viable fetus” means a fetus that contains
sufficient lethal fetal anomalies so as to render the fetus
medically futile or incompatible with life outside the womb in
the reasonable medical judgment of a reasonably prudent
physician.

(7) “Pain capable gestational age” means twenty-two weeks
since the first day of the woman’s last menstrual period. The
pain capable gestational age defined herein is generally
consistent with the time that is twenty weeks after fertilization.

(8) “Physician” means a person with an unrestricted license
to practice allopathic medicine pursuant to article three of
chapter thirty of this code or osteopathic medicine pursuant to
article fourteen, chapter thirty of this code.

(9) “Probable gestational age of the fetus” means, in
reasonable medical judgment and with reasonable probability,
the gestational age of the fetus at the time an abortion is planned
to be performed.

(10) “Reasonable medical judgment” means a medical
judgment that would be made by a reasonably prudent physician,
knowledgeable about the case and the treatment possibilities
with respect to the medical conditions involved.

§16-2M-3. Determination of gestational age.

Except in the case of a medical emergency or a
nonmedically viable fetus, no abortion may be performed or
induced or be attempted to be performed or induced unless the
physician performing or inducing it has first made a
determination of the probable gestational age of the fetus or
relied upon such a determination made by another physician. In
making this determination, the physician shall make inquiries of
the patient and perform or cause to be performed medical
examinations and tests as a reasonably prudent physician,
knowledgeable about the case and the medical conditions
involved, would consider necessary to perform in making an
accurate diagnosis with respect to gestational age.

§16-2M-4. Abortion of fetus of pain capable gestational age
prohibited.

(a) No person may perform or induce, or attempt to perform
or induce, an abortion when it has been determined, by the
physician performing or inducing or attempting to perform or
induce the abortion or by another physician upon whose
determination that physician relies, that the probable gestational
age of the fetus has reached the pain capable gestational age,
unless in the reasonable medical judgment of a reasonably
prudent physician there exists a nonmedically viable fetus or the
patient has a condition that, on the basis of a reasonably prudent
physician’s reasonable medical judgment, so complicates her
medical condition as to necessitate the abortion of her pregnancy
to avert her death or to avert serious risk of substantial and
irreversible physical impairment of a major bodily function, not
including psychological or emotional conditions. No condition
may be deemed a medical emergency if based on a claim or
diagnosis that the woman will engage in conduct which she
intends to result in her death or in substantial and irreversible
physical impairment of a major bodily function.

(b) When an abortion upon a patient whose fetus has been
determined to have a probable gestational age that has reached
the pain capable gestational age is not prohibited by subsection
(a) of this section, the physician shall terminate the pregnancy in
the manner which, in reasonable medical judgment, provides the
best opportunity for the fetus to survive, unless, in reasonable
medical judgment, termination of the pregnancy in that manner
would pose a greater risk either of the death of the patient or of
the substantial and irreversible physical impairment of a major
bodily function of the patient than would other available
methods.

§16-2M-5. Reporting.

(a) Any physician who performs or induces an abortion shall
report to the Bureau for Public Health. The reporting shall be on
a schedule and on forms set forth by the Secretary of the
Department of Health and Human Resources annually, no later
than December 31. The reports shall include the following
information:

(1) Probable gestational age:

(A) If a determination of probable gestational age was made,
whether ultrasound was employed in making the determination,
and the week of probable gestational age determined.

(B) If a determination of probable gestational age was not
made, the basis of the determination that a medical emergency
existed or that there existed a nonmedically viable fetus.

(2) Method of abortion;

(3) If the probable gestational age was determined to have
reached the pain capable gestational age, the basis of the
determination that there existed a nonmedically viable fetus or
that the patient had a condition which so complicated the
medical condition of the patient that it necessitated the abortion
of her pregnancy in order to avert her death or avert a serious
risk of substantial and irreversible physical impairment of a
major bodily function; and

(4) If the probable gestational age was determined to have
reached the pain capable gestational age, whether the method of
abortion used was one that, in reasonable medical judgment, provided the best opportunity for the fetus to survive and, if such a method was not used, the basis of the determination that termination of the pregnancy in that manner would pose a greater risk either of the death of the patient or of the substantial and irreversible physical impairment of a major bodily function of the patient than would other available methods.

(b) Reports required by subsection (a) of this section may not contain the name or the address of the patient whose pregnancy was terminated nor may the report contain any information identifying the patient. These reports shall be maintained in strict confidence by the department, may not be available for public inspection, and may not be made available except pursuant to court order.

(c) Beginning June 30, 2016, and annually after that, the Department of Health and Human Resources shall issue a public report providing statistics for the previous calendar year compiled from all of the reports covering that year submitted in accordance with this section for each of the items listed in subsection (a) of this section. Each report shall provide the statistics for all previous calendar years from the effective date of this section, adjusted to reflect any additional information from late or corrected reports. The Department of Health and Human Resources shall take care to ensure that none of the information included in the public reports could reasonably lead to the identification of any patient upon whom an abortion was performed or induced.

§16-2M-6. Penalties.

(a) Any physician or other licensed medical practitioner who intentionally or recklessly performs or induces an abortion in violation of this article is considered to have acted outside the scope of practice permitted by law or otherwise in breach of the
standard of care owed to patients, and is subject to discipline
from the applicable licensure board for that conduct, including,
but not limited to, loss of professional license to practice.

(b) Any person, not subject to subsection (a) of this section,
who intentionally or recklessly performs or induces an abortion
in violation of this article is considered to have engaged in the
unauthorized practice of medicine in violation of section
thirteen, article three, chapter thirty of this code, and upon
conviction, subject to the penalties contained in that section.

(c) In addition to the penalties set forth in subsections (a)
and (b) of this section, a patient may seek any remedy otherwise
available to such patient by applicable law.

(d) No penalty may be assessed against any patient upon
whom an abortion is performed or induced or attempted to be
performed or induced.

§16-2M-7. Severability.

If any one or more provisions, sections, subsections,
sentences, clauses, phrases or words of this article or the
application thereof to any person or circumstance is found to be
unconstitutional or temporarily or permanently restrained or
enjoined by judicial order, or both, the same is declared to be
severable and the balance of this article shall remain effective
notwithstanding such judicial decision, including for all other
applications of each of the provisions, sections, subsections,
sentences, clauses, phrases or words of this article: Provided,
That whenever any judicial decision is stayed, dissolved, or
otherwise ceases to have effect, such provisions shall have full
force and effect.
AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §33-50-l, §33-50-2 and §33-50-3, all relating to the West Virginia Health Benefit Exchange; defining terms; requiring certain information be published on a website; providing online information to assist consumers in making informed decisions concerning purchase of a qualified health plan; and authorizing rulemaking.

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 §33-50-l, §33-50-2 and §33-50-3, all to read as follows:

ARTICLE 50. PATIENT PROTECTION AND TRANSPARENCY ACT.

§33-50-l. Definitions.

1 For the purposes of this article, the following words and terms mean the following:

3 (1) “Commissioner” means the West Virginia Insurance Commissioner.

5 (2) “Consumer” means an individual or family purchasing insurance coverage through the exchange.
(3) “Exchange” means the West Virginia Health Benefit Exchange or an exchange website operated by the federal government.

(4) “Health care provider” means a provider of medical or health services and any other person or organization who furnishes, bills or is paid for health care in the normal course of business.

(5) “Health carrier” means an entity subject to the insurance laws of this state, or subject to the jurisdiction of the commissioner, that contracts or offers to contract to provide, deliver, arrange for, pay for or reimburse any of the costs of health care services, including a sickness and accident insurance company, a health maintenance organization, a nonprofit hospital and health service corporation or any other entity providing a plan of health insurance, health benefits or health services.

(6) “Network” means a group of health care providers that have contracted with a health plan to provide care at a discounted rate.

(7) “Qualified health plan” means a health plan certified to be offered for sale through the exchange.

(8) “West Virginia Health Benefit Exchange” means the government-regulated marketplace of qualified health plans with multiple levels of coverage established pursuant to article sixteen-g of this chapter.

§33-50-2. Information available to the public and disclosures required of health carriers.

(a) The commissioner shall on his or her website provide information regarding the qualified health plans being offered for sale through the exchange in a format easily found by a consumer on such website. Information may be provided through links to specific information, including through links to the
(b) Information to be made available to consumers for each qualified health plan offered for sale through the exchange include:

(1) The names of the physicians, hospitals and other health care providers that are in network;

(2) A list of the types of specialists that are in network;

(3) Exclusions from coverage by category of benefits;

(4) Restrictions on use or quantity of covered items and services by category of benefits;

(5) The dollar amount of copayments;

(6) The percentage of coinsurance by item and service;

(7) Required cost-sharing;

(8) Information sufficient to determine whether a specific drug is available on formulary;

(9) Clinical prerequisites or authorization requirements for coverage of specific drugs;

(10) A description of how medications will be included in or excluded from the deductible;

(11) A description of out-of-pocket costs that may not apply to the deductible for a medication;

(12) Information sufficient to determine whether a specific drug is covered when furnished by a physician or clinic;

(13) An explanation of the amount of coverage for out-of-network providers or noncovered services;
(14) The process for a patient to appeal a health plan decision; and

(15) Contact information for the qualified health plan.

(c) The commissioner may require a qualified health plan to make the information listed in subsection (b) of this section available, including for website usage, and to provide for the reasonable updating of such information.

(d) The commissioner’s website should provide general information concerning the exchange, qualified health plans, health insurance terminology and other information consumers may need to assist them in making informed decisions concerning the purchase of a qualified health plan through the exchange.


The commissioner may 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 183

(Com. Sub. for S. B. 361 - By Senator Blair)

[Passed March 3, 2015; in effect April 13, 2015.]
[Approved by the Governor on March 12, 2015.]

AN ACT to amend and reenact §21-5A-1, §21-5A-2, §21-5A-3, §21-5A-5, §21-5A-6, §21-5A-8, §21-5A-10 and §21-5A-11 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §21-5A-12, all relating to
the fair minimum rate of wages; eliminating, modifying and defining terms; providing for determination and methodology of determining fair minimum rate of wages by Workforce West Virginia; applying fair minimum rate of wages based on monetary threshold; establishing prevailing wages at specific intervals and exception; providing for review of determinations and methodology; addressing data used in determining prevailing wage rates; providing limitation on use of confidential, individual proprietor-level data and excluding from definition of public record under section three, article one, chapter twenty-nine-b; requiring contract provisions and exceptions; keeping wage records; requiring Workforce West Virginia to propose emergency and legislative rules; and providing provisions of article are severable.

Be it enacted by the Legislature of West Virginia:

That §21-5A-1, §21-5A-2, §21-5A-3, §21-5A-5, §21-5A-6, §21-5A-8, §21-5A-10 and §21-5A-11 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 §21-5A-12, all to read as follows:

**ARTICLE 5A. WAGES FOR CONSTRUCTION OF PUBLIC IMPROVEMENTS**


1 (1) The term “public authority”, as used in this article, shall mean any officer, board or commission or other agency of the State of West Virginia, or any political subdivision thereof, authorized by law to enter into a contract for the construction of a public improvement, including any institution supported, in whole or in part, by public funds of the State of West Virginia or its political subdivisions.
(2) The term “construction”, as used in this article, shall mean any construction, reconstruction, improvement, enlargement, painting, decorating or repair of any public improvement let to contract. The term “construction” shall not be construed to include temporary or emergency repairs.

(3) The term “regions of this state”, as used in this article, means the breakup of regions within the state as determined by Workforce West Virginia for the purposes of developing a methodology pursuant to the sections of this article.

(4) The term “public improvement”, as used in this article, shall include all buildings, roads, highways, bridges, streets, alleys, sewers, ditches, sewage disposal plants, waterworks, airports and all other structures upon which construction may be let to contract by the State of West Virginia or any political subdivision thereof.

(5) The term “construction industry”, as used in this article, shall mean that industry which is composed of employees and employers engaged in construction of buildings, roads, highways, bridges, streets, alleys, sewers, ditches, sewage disposal plants, waterworks, airports and all other structures or works, whether private or public, on which construction work as defined in subsection (2) of this section is performed.

(6) The term “employee”, for the purposes of this article, shall not be construed to include such persons as are employed or hired by the public authority on a regular or temporary basis or engaged in making temporary or emergency repairs.

(7) The term “public money” means funds obtained by a public authority through taxes, fees, fines or penalties. For purposes of this article, public money does not include funds obtained by private donation, contribution, fundraising or insurance proceeds.
39 (8) The term “wages” means the hourly rate paid for work performed by an employee for an employer.


1 It is hereby declared to be the policy of the State of West Virginia that a wage of no less than the prevailing hourly rate of wages for work of a similar character in the regions of this state in which the construction is performed shall be paid to all workers employed by or on behalf of any public authority engaged in the construction of public improvements.

§21-5A-3. Fair minimum rate of wages; determination; filing; schedule of wages part of specifications.

1 Any public authority authorized to let to contract the construction of a public improvement shall, before advertising for bids for the construction thereof, ascertain from Workforce West Virginia, the fair minimum rate of wages to be paid by the successful bidder to the laborers, workers or mechanics in the various branches or classes of the construction to be performed; and such schedule of wages shall be made a part of the specifications for the construction and shall be published in an electronic or other medium and incorporated in the bidding blanks by reference when approved by Workforce West Virginia where the construction is to be performed by contract. The fair minimum rate of wages, for the intents and purposes of this article, shall be the prevailing rate of wages paid in the regions of this state as hereinbefore defined to the workers, laborers or mechanics in the same trade or occupation in the construction industry. Workforce West Virginia shall assemble the data as to the fair minimum wage rates and shall file wage rates. Rates shall be established and filed as hereinafter provided on January 1, of each year, unless otherwise specified within this article. These rates shall prevail as the minimum wage rate for all public improvements for which bids are asked during the year
beginning with the date when such new rates are filed and, until
the new rates are filed, the rates for the preceding year shall
remain in effect: Provided, That such rates shall not remain in
effect for a period longer than fifteen months from the date they
are published, but this provision shall not affect construction of
a public improvement then underway: Provided, however, That
this section applies only to contracts let for public improvements
whose cost at the time the contract is awarded will be paid with
public money in an amount greater than $500,000.

§21-5A-5. Prevailing wages established at specified intervals; how
determined; filing; legislative review.

1 (1) Workforce West Virginia, in coordination with the West
Virginia University Bureau of Business and Economic Research
and the Center for Business and Economic Research at Marshall
University in furtherance of section four, article three, chapter
eighteen-b of this code, shall investigate and determine the
prevailing hourly rate of wages in the regions of this state.
Determinations thereof shall be made annually on January 1 of
each year, unless otherwise specified within this article, and shall
remain in effect during the successive year: Provided, That such
rates shall not remain in effect for a period longer than fifteen
months from the date they are published. A copy of the
determination so made, certified by Workforce West Virginia,
shall be filed immediately with the Secretary of State.

(2) On or before June 1, 2015, Workforce West Virginia, in
coordination with the West Virginia University Bureau of
Business and Economic Research and the Center for Business
and Economic Research at Marshall University, shall determine
the methodology for annually calculating the prevailing hourly
rate of wages as evidenced by all appropriate economic data,
including, but not limited to, the average rate of wages published
by the U. S. Bureau of Labor Statistics and the actual rate of
wages paid in the regions of this state to the workers, laborers or
23 mechanics in the same trade or occupation in the construction industry, regardless of the wages listed in collective bargaining agreements, to ascertain the prevailing rate of wages paid in the regions of the state in which the construction of the public improvement is to be performed. Workforce West Virginia shall present such methodology for the determination of the prevailing hourly rate of wages to the Joint Committee on Government and Finance, which shall review the methodology being used to determine annually the prevailing hourly rate of wages and recommend to the Legislature any statutory changes needed to clarify the method for determining prevailing wages.

(3) On or before July 1, 2015, Workforce West Virginia, in coordination with the West Virginia University Bureau of Business and Economic Research and the Center for Business and Economic Research at Marshall University, shall determine the prevailing hourly rate of wages for the remainder of 2015 in accordance with the approved methodology set forth in subsection (2) of this section: Provided, That if the determination is not in place on July 1, 2015, for any reason, no prevailing hourly rate of wages shall be in effect until the determination is made: Provided, however, That in the event the determination is not in place on July 1, 2015, the Joint Committee on Government and Finance may extend the deadline to a date thereafter, but, in any event, no later than September 30, 2015. During the extension period only, the prevailing wage in place prior to July 1, 2015, shall remain the prevailing wage: Provided further, That in the event the determination is not in place at the conclusion of such extension period, no prevailing hourly rate of wages shall be in effect until the determination is made.

(4) On or before September 30 of every year, Workforce West Virginia, in coordination with the West Virginia University Bureau of Business and Economic Research and the Center for
Business and Economic Research at Marshall University, shall determine the prevailing hourly rate of wages for the following year in accordance with the approved methodology set forth in subsection (2) of this section.

(5) On or before September 30, 2018, and in every third year thereafter, Workforce West Virginia shall review the methodology for determining the prevailing hourly rate of wages, as set forth in subsection (2) of this section, with the West Virginia University Bureau of Business and Economic Research and the Center for Business and Economic Research at Marshall University, and present such review and make any recommendations regarding such methodology to the Joint Committee on Government and Finance. The Joint Committee on Government and Finance shall review the methodology being used to determine the prevailing hourly rate of wages and recommend to the Legislature any statutory changes needed to clarify the method for determining prevailing wages.

(6) Any confidential, individual proprietor-level data submitted to Workforce West Virginia, the West Virginia University Bureau of Business and Economic Research or the Center for Business and Economic Research at Marshall University for the purpose of determining the prevailing rates may not be used for any purpose other than the calculation of the prevailing wage rates: Provided, That any such data may be available for purposes of the appeals process referenced in section eleven of this article: Provided, however, That any confidential, individual proprietor-level data submitted to Workforce West Virginia, the West Virginia University Bureau of Business and Economic Research or the Center for Business and Economic Research at Marshall University for the purpose of determining the prevailing wage rates shall not be considered a public record for purposes of section three, article one, chapter twenty-nine-b of this code.
§21-5A-6. Contracts to contain provisions relative to minimum wages to be paid; exceptions.

In cases where any public authority has ascertained a fair minimum rate or rates of wages as herein provided, and construction of a public improvement is let to contract, the contract executed between the public authority and the successful bidder shall contain a provision requiring the successful bidder and all his or her subcontractors to pay a rate or rates of wages which shall not be less than the fair minimum rate or rates of wages as provided by this article: Provided, That the provisions of this article only apply to contracts let for public improvements whose cost at the time the contract is awarded will be paid with public money in an amount greater than $500,000.

§21-5A-8. Wage records to be kept by contractor, subcontractor, etc.; contents; open to inspection.

The contractor and each subcontractor or the officer of the public authority in charge of the construction of a public improvement shall keep an accurate record showing the names and occupations of all such skilled laborers, workers and mechanics employed by them, in connection with the construction on the public improvement and showing also the actual wages paid to each of the skilled laborers, workers and mechanics, which record shall be open at all reasonable hours to the inspection of Workforce West Virginia and the public authority which let the contract, its officers and agents. It shall not be necessary to preserve such record for a period longer than three years after the termination of the contract.

§21-5A-10. Existing contracts.

This article shall apply only to contracts for construction on public improvements let after the effective date of this article.

(a) The Executive Director of Workforce West Virginia shall promulgate emergency rules and propose, for legislative promulgation, legislative rules pursuant to the provisions of article three, chapter twenty-nine-a of this code to effectuate the provisions of this article. All rules, whether emergency or not, promulgated pursuant to this section shall at a minimum:

1. Define the regions of the state as used in the article;
2. Establish a process for addressing written objections regarding the methodology for calculating the prevailing hourly rate of wages and the calculation of the hourly rate of wages: Provided, That Workforce West Virginia may consolidate written objections for hearing and final determination purposes; and
3. Propose any other rules necessary to effectuate the purposes of this article.

(b) Any legislative rule in effect prior to the effective date of this article implementing the provisions of this article is hereby repealed.


Each section of this article, and every part thereof, is hereby declared to be an independent section or part of a section and if any section, subsection, sentence, clause or phrase of this article shall for any reason be held unconstitutional, the validity of the remaining phrases, clauses, sentences, subsections and sections of this article shall not be affected thereby.
AN ACT to amend and reenact §62-12-13 of the Code of West Virginia, 1931, as amended, relating to permitting parole hearings to be conducted without the presence of the inmate when a documented medical condition precludes his or her appearance.

Be it enacted by the Legislature of West Virginia:

That §62-12-13 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 12. PROBATION AND PAROLE.

§62-12-13. Powers and duties of board; eligibility for parole; procedure for granting parole.

(a) The Parole Board, whenever it is of the opinion that the best interests of the state and of the inmate will be served, and subject to the limitations provided in this section, shall release any inmate on parole for terms and upon conditions provided by this article.

(b) Any inmate of a state correctional institution is eligible for parole if he or she:

1. Has served the minimum term of his or her indeterminate sentence or has served one fourth of his or her definite term sentence, as the case may be; or
(B) He or she:

(i) Has applied for and been accepted by the Commissioner of Corrections into an accelerated parole program;

(ii) Does not have a prior criminal conviction for a felony crime of violence against the person, a felony offense involving the use of a firearm or a felony offense where the victim was a minor child;

(iii) Is not serving a sentence for a crime of violence against the person, or more than one felony for a controlled substance offense for which the inmate is serving a consecutive sentence, a felony offense involving the use of a firearm or a felony offense where the victim was a minor child; and

(iv) Has successfully completed a rehabilitation treatment program created with the assistance of a standardized risk and needs assessment.

(C) Notwithstanding any provision of this code to the contrary, any inmate who committed, or attempted to commit, a felony with the use, presentment or brandishing of a firearm, is not eligible for parole prior to serving a minimum of three years of his or her sentence or the maximum sentence imposed by the court, whichever is less: Provided, That any inmate who committed, or attempted to commit, any violation of section twelve, article two, chapter sixty-one of this code, with the use, presentment or brandishing of a firearm, is not eligible for parole prior to serving a minimum of five years of his or her sentence or one third of his or her definite term sentence, whichever is greater. Nothing in this paragraph applies to an accessory before the fact or a principal in the second degree who has been convicted as if he or she were a principal in the first degree if, in the commission of or in the attempted commission of the felony, only the principal in the first degree used, presented or
brandished a firearm. An inmate is not ineligible for parole under the provisions of this paragraph because of the commission or attempted commission of a felony with the use, presentment or brandishing of a firearm unless that fact is clearly stated and included in the indictment or presentment by which the person was charged and was either: (i) Found guilty by the court at the time of trial upon a plea of guilty or nolo contendere; (ii) found guilty by the jury, upon submitting to the jury a special interrogatory for such purpose if the matter was tried before a jury; or (iii) found guilty by the court, if the matter was tried by the court without a jury.

(D) The amendments to this subsection adopted in the year 1981:

(i) Apply to all applicable offenses occurring on or after August 1 of that year;

(ii) Apply with respect to the contents of any indictment or presentment returned on or after August 1 of that year irrespective of when the offense occurred;

(iii) Apply with respect to the submission of a special interrogatory to the jury and the finding to be made thereon in any case submitted to the jury on or after August 1 of that year or to the requisite findings of the court upon a plea of guilty or in any case tried without a jury: Provided, That the state gives notice in writing of its intent to seek such finding by the jury or court, as the case may be. The notice shall state with particularity the grounds upon which the finding will be sought as fully as the grounds are otherwise required to be stated in an indictment, unless the grounds upon which the finding will be sought are alleged in the indictment or presentment upon which the matter is being tried; and

(iv) Does not apply with respect to cases not affected by the amendments and in those cases the prior provisions of this
section apply and are construed without reference to the amendments.

(v) Insofar as the amendments relate to mandatory sentences restricting the eligibility for parole, all matters requiring a mandatory sentence shall be proved beyond a reasonable doubt in all cases tried by the jury or the court.

(E) As used in this section, “felony crime of violence against the person” means felony offenses set forth in article two, three-e, eight-b or eight-d, chapter sixty-one of this code; and

(F) As used in this section, “felony offense where the victim was a minor child” means any felony crime of violence against the person and any felony violation set forth in article eight, eight-a, eight-c or eight-d, chapter sixty-one of this code.

(G) For the purpose of this section, the term “firearm” means any instrument which will, or is designed to, or may readily be converted to expel a projectile by the action of an explosive, gunpowder or any other similar means.

(2) Is not in punitive segregation or administrative segregation as a result of disciplinary action;

(3) Has prepared and submitted to the Parole Board a written parole release plan setting forth proposed plans for his or her place of residence, employment and, if appropriate, his or her plans regarding education and post-release counseling and treatment: Provided, That an inmate’s application for parole may be considered by the board without the prior submission of a home plan, but the inmate shall have a home plan approved by the board prior to his or her release on parole. The Commissioner of Corrections or his or her designee shall review and investigate the plan and provide recommendations to the board as to the suitability of the plan: Provided, however, That in cases in which there is a mandatory thirty-day notification
period required prior to the release of the inmate, pursuant to section twenty-three of this article, the board may conduct an initial interview and deny parole without requiring the development of a plan. In the event the board believes parole should be granted, it may defer a final decision pending completion of an investigation and receipt of recommendations. Upon receipt of the plan together with the investigation and recommendation, the board, through a panel, shall make a final decision regarding the granting or denial of parole; and

(4) Has satisfied the board that if released on parole he or she will not constitute a danger to the community.

(c) Except in the case of an inmate serving a life sentence, a person who has been previously twice convicted of a felony may not be released on parole until he or she has served the minimum term provided by law for the crime for which he or she was convicted. An inmate sentenced for life may not be paroled until he or she has served ten years, and an inmate sentenced for life who has been previously twice convicted of a felony may not be paroled until he or she has served fifteen years: Provided, That an inmate convicted of first degree murder for an offense committed on or after June 10, 1994, is not eligible for parole until he or she has served fifteen years.

(d) In the case of an inmate sentenced to a state correctional institution regardless of the inmate’s place of detention or incarceration, the Parole Board, as soon as that inmate becomes eligible, shall consider the advisability of his or her release on parole.

(e) If, upon consideration, parole is denied, the board shall promptly notify the inmate of the denial. The board shall, at the time of denial, notify the inmate of the month and year he or she may apply for reconsideration and review. The board shall at least once a year reconsider and review the case of every inmate
who was denied parole and who is still eligible: Provided, That
the board may reconsider and review parole eligibility any time
within three years following the denial of parole of an inmate
serving a life sentence with the possibility of parole.

(f) Any inmate in the custody of the commissioner for
service of a sentence who reaches parole eligibility is entitled to
a timely parole hearing without regard to the location in which
he or she is housed.

(g) The board shall, with the approval of the Governor, adopt
rules governing the procedure in the granting of parole. No
provision of this article and none of the rules adopted under this
article are intended or may be construed to contravene, limit or
otherwise interfere with or affect the authority of the Governor
to grant pardons and reprieves, commute sentences, remit fines
or otherwise exercise his or her constitutional powers of
executive clemency.

(h) (1) The Division of Corrections shall promulgate policies
and procedures for developing a rehabilitation treatment plan
created with the assistance of a standardized risk and needs
assessment. The policies and procedures shall provide for, at a
minimum, screening and selecting inmates for rehabilitation
treatment and development, using standardized risk and needs
assessment and substance abuse assessment tools, and
prioritizing the use of residential substance abuse treatment
resources based on the results of the standardized risk and needs
assessment and a substance abuse assessment. The results of all
standardized risk and needs assessments and substance abuse
assessments are confidential.

(2) An inmate shall not be paroled under paragraph (B),
subdivision (1), subsection (b) of this section solely due to
having successfully completed a rehabilitation treatment plan,
but completion of all the requirements of a rehabilitation
treatment plan along with compliance with the requirements of
subsection (b) of this section creates a rebuttable presumption
that parole is appropriate. The presumption created by this
subdivision may be rebutted by a Parole Board finding that,
according to the standardized risk and needs assessment, at the
time parole release is sought the inmate still constitutes a
reasonable risk to the safety or property of other persons if
released. Nothing in subsection (b) of this section or in this
subsection may be construed to create a right to parole.

(i) Notwithstanding the provisions of subsection (b) of this
section, the Parole Board may grant or deny parole to an inmate
against whom a detainer is lodged by a jurisdiction other than
West Virginia for service of a sentence of incarceration, upon a
written request for parole from the inmate. A denial of parole
under this subsection precludes consideration for parole for a
period of one year or until the provisions of subsection (b) of this
section are applicable.

(j) If an inmate is otherwise eligible for parole pursuant to
subsection (b) of this section and has completed the
rehabilitation treatment program required under subsection (g)
of this section, the Parole Board may not require the inmate to
participate in an additional program, but may determine that the
inmate must complete an assigned task or tasks prior to actual
release on parole. The board may grant parole contingently,
effective upon successful completion of the assigned task or
tasks, without the need for a further hearing.

(k) (1) The Division of Corrections shall supervise all
probationers and parolees whose supervision may have been
undertaken by this state by reason of any interstate compact
entered into pursuant to the Uniform Act for Out-of-State
Parolee Supervision.

(2) The Division of Corrections shall provide supervision,
treatment/recovery and support services for all persons released
to mandatory supervision under section twenty-seven, article five, chapter twenty-eight of this code.

(l) (1) When considering an inmate of a state correctional center for release on parole, the Parole Board panel considering the parole shall have before it an authentic copy of or report on the inmate’s current criminal record as provided through the West Virginia State Police, the United States Department of Justice or any other reliable criminal information sources and written reports of the warden or superintendent of the state correctional institution to which the inmate is sentenced:

(A) On the inmate’s conduct record while in custody, including a detailed statement showing any and all infractions of disciplinary rules by the inmate and the nature and extent of discipline administered for the infractions;

(B) On improvement or other changes noted in the inmate’s mental and moral condition while in custody, including a statement expressive of the inmate’s current attitude toward society in general, toward the judge who sentenced him or her, toward the prosecuting attorney who prosecuted him or her, toward the policeman or other officer who arrested the inmate and toward the crime for which he or she is under sentence and his or her previous criminal record;

(C) On the inmate’s industrial record while in custody which shall include: The nature of his or her work, occupation or education, the average number of hours per day he or she has been employed or in class while in custody and a recommendation as to the nature and kinds of employment which he or she is best fitted to perform and in which the inmate is most likely to succeed when he or she leaves the state correctional institution; and

(D) On any physical, mental, psychological or psychiatric examinations of the inmate.
(2) The Parole Board panel considering the parole may waive the requirement of any report when not available or not applicable as to any inmate considered for parole but, in every case, shall enter in its record its reason for the waiver: Provided, That in the case of an inmate who is incarcerated because the inmate has been found guilty of, or has pleaded guilty to, a felony under the provisions of section twelve, article eight, chapter sixty-one of this code or under the provisions of article eight-b or eight-c of said chapter, the Parole Board panel may not waive the report required by this subsection. The report shall include a study and diagnosis of the inmate, including an ongoing treatment plan requiring active participation in sexual abuse counseling at an approved mental health facility or through some other approved program: Provided, however, That nothing disclosed by the inmate during the study or diagnosis may be made available to any law-enforcement agency, or other party without that inmate’s consent, or admissible in any court of this state, unless the information disclosed indicates the intention or plans of the parolee to do harm to any person, animal, institution or to property. Progress reports of outpatient treatment are to be made at least every six months to the parole officer supervising the parolee. In addition, in such cases, the Parole Board shall inform the prosecuting attorney of the county in which the person was convicted of the parole hearing and shall request that the prosecuting attorney inform the Parole Board of the circumstances surrounding a conviction or plea of guilty, plea bargaining and other background information that might be useful in its deliberations.

(m) Before releasing any inmate on parole, the Parole Board shall arrange for the inmate to appear in person before a Parole Board panel and the panel may examine and interrogate him or her on any matters pertaining to his or her parole, including reports before the Parole Board made pursuant to the provisions of this section: Provided, That an inmate may appear by video teleconference if the members of the Parole Board panel conducting the examination are able to contemporaneously see
the inmate and hear all of his or her remarks and if the inmate is able to contemporaneously see each of the members of the panel conducting the examination and hear all of the members’ remarks: Provided, however, That the requirement that an inmate personally appear may be waived where a physician authorized to do so by the Commissioner of Corrections certifies that the inmate, due to a medical condition or disease, is too debilitated, either physically or cognitively, to appear. The panel shall reach its own written conclusions as to the desirability of releasing the inmate on parole and the majority of the panel considering the release must concur in the decision. The warden or superintendent shall furnish all necessary assistance and cooperate to the fullest extent with the Parole Board. All information, records and reports received by the Parole Board shall be kept on permanent file.

(n) The Parole Board and its designated agents are at all times to have access to inmates imprisoned in any state correctional institution or in any jail in this state and may obtain any information or aid necessary to the performance of its duties from other departments and agencies of the state or from any political subdivision of the state.

(o) The Parole Board shall, if requested by the Governor, investigate and consider all applications for pardon, reprieve or commutation and shall make recommendation on the applications to the Governor.

(p) (1) Prior to making a recommendation for pardon, reprieve or commutation, the board shall notify the sentencing judge and prosecuting attorney at least ten days before the recommendation.

(2) Notwithstanding any other provision of law to the contrary, if the board grants a person parole, the board shall provide written notice to the prosecuting attorney and circuit judge of the county in which the inmate was prosecuted, that
parole has been granted. The notice shall be sent by certified mail, return receipt requested, and include the anticipated date of release and the person’s anticipated future residence. A written statement of reasons for releasing the person, prepared pursuant to subsection (b) of this section, shall be provided upon request.

(q) A parolee shall participate as a condition of parole in the litter control program of the county to which he or she is released to the extent directed by the Parole Board, unless the board specifically finds that this alternative service would be inappropriate.

CHAPTER 185
(Com. Sub. for S. B. 375 - By Senator Trump)

[Passed March 6, 2015; in effect from passage.]
[Approved by the Governor on March 31, 2015.]

AN ACT to amend and reenact §62-12-23 of the Code of West Virginia, 1931, as amended, relating to specifying who receives notice of parole hearings via regular or certified mail.

Be it enacted by the Legislature of West Virginia:

That §62-12-23 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 12. PROBATION AND PAROLE.

§62-12-23. Notification of parole hearing; victim’s right to be heard; notification of release on parole.

(a) Following the sentencing of a person who has been convicted of murder, aggravated robbery, sexual assault in the
first or second degree, kidnaping, child abuse resulting in injury, child neglect resulting in injury, arson or a sexual offense against a minor, the prosecuting attorney who prosecuted the offender shall prepare a Parole Hearing Notification Form. This form shall contain the following information:

(1) The name of the county in which the offender was prosecuted and sentenced;

(2) The name of the court in which the offender was prosecuted and sentenced;

(3) The name of the prosecuting attorney or assistant prosecuting attorney who prosecuted the offender;

(4) The name of the judge who presided over the criminal case and who sentenced the offender;

(5) The names of the law-enforcement agencies and officers who were primarily involved with the investigation of the crime for which the offender was sentenced; and

(6) The names, addresses and telephone numbers of the victims of the crime for which the offender was sentenced or the names, addresses and telephone numbers of the immediate family members of each victim of the crime, including, but not limited to, each victim’s spouse, father, mother, brothers, sisters and any adult household member residing with the victim.

(b) The prosecuting attorney shall retain the original of the Parole Hearing Notification Form and shall provide copies of it to the circuit court which sentenced the offender, the Parole Board, the Commissioner of Corrections and to all persons whose names and addresses are listed on the form.

(c) At least forty-five days prior to the date of a parole hearing, the Parole Board shall notify all persons who are listed
on the Parole Hearing Notification Form, including the circuit
court which sentenced the offender and office of the prosecuting
attorney that prosecuted the offender, of the date, time and place
of the hearing. Such notice to law-enforcement agencies and
officers who were primarily involved with the investigation of
the crime for which the offender was sentenced shall be sent by
regular mail, properly addressed and postage prepaid. Notice to
the prosecuting attorney who prosecuted the offender, the judge
who presided over the criminal case and sentencing of the
offender and victims of the crime for which the offender was
sentenced or the immediate family members of each victim of
the crime shall be sent by certified mail, return receipt requested.
The notice shall state that the victims of the crime have the right
to submit a written statement to the Parole Board and to attend
the parole hearing to be heard regarding the propriety of granting
parole to the prisoner. The notice shall also state that only the
victims may submit written statements and speak at the parole
hearing unless a victim is deceased, is a minor or is otherwise
incapacitated.

(d) The panel considering the parole shall inquire during the
parole hearing as to whether the victims of the crime or their
representatives, as provided in this section, are present. If so, the
panel shall permit those persons to speak at the hearing
regarding the propriety of granting parole for the prisoner.

(e) If the panel grants parole, it shall immediately set a date
on which the prisoner will be released. Such date shall be no
earlier than thirty days after the date on which parole is granted.
On the date on which parole is granted, the Parole Board shall
notify all persons listed on the Parole Hearing Notification Form,
including the circuit court which sentenced the offender and
office of the prosecuting attorney that prosecuted the offender,
that parole has been granted and the date of release. This notice
shall be sent by the method prescribed in subsection (c) of this
section. A written statement of reasons for releasing the prisoner,
prepared pursuant to subsection (b), section thirteen of this article, shall be provided upon request to all persons listed on the Parole Hearing Notification Form, including the circuit court which sentenced the offender and office of the prosecuting attorney that prosecuted the offender.

CHAPTER 186

(Com. Sub. for H. B. 2496 - By Delegate(s) Ellington, Howell, Householder, Sobonya, Fleischauer and Frich)

[Passed March 12, 2015; in effect ninety days from passage.]
[Approved by the Governor on March 31, 2015.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §30-1C-1, §30-1C-2, §30-1C-3, §30-1C-4, §30-1C-5, §30-1C-6, §30-1C-7, §30-1C-8, §30-1C-9, §30-1C-10, §30-1C-11, §30-1C-12, §30-1C-13, §30-1C-14, §30-1C-15, §30-1C-16, §30-1C-17, §30-1C-18, §30-1C-19, §30-1C-20, §30-1C-21, §30-1C-22, §30-1C-23 and §30-1C-24, all relating to the establishment and operation of an interstate compact for medical licensure of physicians in multiple states; setting forth purposes for the compact; setting forth definitions; providing physician eligibility requirements; requiring a physician to designate a state of principal license; setting forth the procedure for application and issuance of an expedited license; providing for fees regarding expedited licensure; providing requirements for renewal of an expedited license; establishing a shared database for member boards; providing for joint investigation of physicians by member boards; establishing the effect of disciplinary actions against a physician; creating the interstate medical licensure compact commission to administer the compact; setting forth commission composition; establishing the authority of the
commission; providing for commission meetings; setting forth provisions relating to disclosure of commission information and records; establishing an executive committee; setting forth provisions for funding; establishing member state’s right to charge licensing fees; limiting commission authority to incur financial obligation; requiring a financial audit; requiring the creation of bylaws; requiring annual election or appointment of commission officers; establishing that commission officers serve without remuneration; providing certain individuals defense, immunity, or limitation of liability for civil actions in certain circumstances unless their conduct was intentional willful and wanton; requiring the commission to defend certain civil actions; establishing commission rule making authority and procedure; providing for judicial review; providing for state enforcement; requiring state courts take judicial notice of certain matters; providing the commission may intervene in proceedings; requiring service of process upon the commission; establishing that failure to serve process upon the commission voids a judicial decision; providing for legal enforcement of compact rules and provisions; setting forth provisions for default; providing for termination or withdrawal of a member state; setting forth provisions for resolution of disputes; establishing provisions for state eligibility; setting forth the circumstances under which the compact will become effective; providing for amending the compact; setting forth procedures for states to withdraw from the compact; establishing circumstances, effect and procedures related to dissolution of the compact; establishing provisions related to severability; and, establishing provisions related to the binding effect of the compact.

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 §30-1C-1, §30-1C-2, §30-1C-3, §30-1C-4, §30-1C-5, §30-1C-6, §30-1C-7, §30-1C-8, §30-1C-9, §30-1C-10, §30-1C-11, §30-1C-12, §30-1C-13, §30-1C-14, §30-1C-15,
§30-1C-16, §30-1C-17, §30-1C-18, §30-1C-19, §30-1C-20, §30-1C-21, §30-1C-22, §30-1C-23 and §30-1C-24, all to read as follows:

ARTICLE 1C. INTERSTATE MEDICAL LICENSURE COMPACT.

§30-1C-1. Purpose.

1 In order to strengthen access to health care, and in recognition of the advances in the delivery of health care, the member states of the Interstate Medical Licensure Compact have allied in common purpose to develop a comprehensive process that complements the existing licensing and regulatory authority of state medical boards, provides a streamlined process that allows physicians to become licensed in multiple states, thereby enhancing the portability of a medical license and ensuring the safety of patients. The Compact creates another pathway for licensure and does not otherwise change a state’s existing medical practice statutes. The Compact also adopts the prevailing standard for licensure and affirms that the practice of medicine occurs where the patient is located at the time of the physician-patient encounter, and therefore, requires the physician to be under the jurisdiction of the state medical board where the patient is located.

State medical boards that participate in the Compact retain the jurisdiction to impose an adverse action against a license to practice medicine in that state issued to a physician through the procedures in the Compact.

§30-1C-2. Definitions.

1 In this article adopting the Interstate Medical Licensure Compact:

3 (a) “Bylaws” means those bylaws established by the Interstate Commission pursuant to section eleven of this article.
(b) “Commissioner” means the voting representative appointed by each member board pursuant to section eleven of this article.

(c) “Compact” means the Interstate Medical Licensure Compact.

(d) “Conviction” means a finding by a court that an individual is guilty of a criminal offense through adjudication, or entry of a plea of guilt or no contest to the charge by the offender. Evidence of an entry of a conviction of a criminal offense by the court shall be considered final for purposes of disciplinary action by a member board.

(e) “Expedited License” means a full and unrestricted medical license granted by a member state to an eligible physician through the process set forth in the Compact.

(f) “Interstate Commission” means the Interstate Medical Licensure Compact Commission created pursuant to section eleven of this article.

(g) “License” means authorization by a state for a physician to engage in the practice of medicine, which would be unlawful without the authorization.

(h) “Medical Practice Act” means laws and regulations governing the practice of allopathic and osteopathic medicine within a member state.

(i) “Member Board” means a state agency in a member state that acts in the sovereign interests of the state by protecting the public through licensure, regulation, and education of physicians as directed by the state government.
(j) “Member State” means a state that has enacted the Compact.

(k) “Practice of Medicine” means the clinical prevention, diagnosis, or treatment of human disease, injury, or condition requiring a physician to obtain and maintain a license in compliance with the Medical Practice Act of a member state.

(l) “Physician” means any person who:

1. Is a graduate of a medical school accredited by the Liaison Committee on Medical Education, the Commission on Osteopathic College Accreditation, or a medical school listed in the International Medical Education Directory or its equivalent;

2. Passed each component of the United States Medical Licensing Examination (USMLE) or the Comprehensive Osteopathic Medical Licensing Examination (COMLEX-USA) within three attempts, or any of its predecessor examinations accepted by a state medical board as an equivalent examination for licensure purposes;

3. Successfully completed graduate medical education approved by the Accreditation Council for Graduate Medical Education or the American Osteopathic Association;

4. Holds specialty certification or a time-unlimited specialty certificate recognized by the American Board of Medical Specialties or the American Osteopathic Association’s Bureau of Osteopathic Specialists;

5. Possesses a full and unrestricted license to engage in the practice of medicine issued by a member board;

6. Has never been convicted, received adjudication, deferred adjudication, community supervision, or deferred disposition for any offense by a court of appropriate jurisdiction;
(7) Has never held a license authorizing the practice of medicine subjected to discipline by a licensing agency in any state, federal, or foreign jurisdiction, excluding any action related to nonpayment of fees related to a license;

(8) Has never had a controlled substance license or permit suspended or revoked by a state or the United States Drug Enforcement Administration; and

(9) Is not under active investigation by a licensing agency or law-enforcement authority in any state, federal, or foreign jurisdiction.

(m) “Offense” means a felony, gross misdemeanor, or crime of moral turpitude.

(n) “Rule” means a written statement by the Interstate Commission promulgated pursuant to section twelve of this article 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 Interstate Commission, and has the force and effect of statutory law in a member state, and includes the amendment, repeal, or suspension of an existing rule.

(o) “State” means any state, commonwealth, district, or territory of the United States.

(p) “State of Principal License” means a member state where a physician holds a license to practice medicine and which has been designated as such by the physician for purposes of registration and participation in the Compact.

§30-1C-3. Eligibility.

(a) A physician must meet the eligibility requirements as defined in section two, subsection (l) of this article to receive an
expedited license under the terms and provisions of the Compact.

(b) A physician who does not meet the requirements of section two of this article may obtain a license to practice medicine in a member state if the individual complies with all laws and requirements, other than the Compact, relating to the issuance of a license to practice medicine in that state.

§30-1C-4. Designation of state of principal license.

(a) A physician shall designate a member state as the state of principal license for purposes of registration for expedited licensure through the Compact if the physician possesses a full and unrestricted license to practice medicine in that state, and the state is:

(1) The state of primary residence for the physician;

(2) The state where at least twenty-five percent of the practice of medicine occurs; or

(3) The location of the physician’s employer, or

(4) If no state qualifies under subdivision (1), (2), or (3) of this subsection, the state designated as state of residence for purpose of federal income tax.

(b) A physician may redesignate a member state as state of principal license at any time, as long as the state meets the requirements in subsection (a) of this section.

(c) The Interstate Commission is authorized to develop rules to facilitate redesignation of another member state as the state of principal license.
§30-1C-5. Application and issuance of expedited licensure.

(a) A physician seeking licensure through the Compact shall file an application for an expedited license with the member board of the state selected by the physician as the state of principal license.

(b) Upon receipt of an application for an expedited license, the member board within the state selected as the state of principal license shall evaluate whether the physician is eligible for expedited licensure and issue a letter of qualification, verifying or denying the physician’s eligibility, to the Interstate Commission.

(1) Static qualifications, which include verification of medical education, graduate medical education, results of any medical or licensing examination, and other qualifications as determined by the Interstate Commission through rule, shall not be subject to additional primary source verification where already primary source verified by the state of principal license.

(2) The member board within the state selected as the state of principal license shall, in the course of verifying eligibility, perform a criminal background check of an applicant, including the use of the results of fingerprint or other biometric data checks compliant with the requirements of the Federal Bureau of Investigation, with the exception of federal employees who have suitability determination in accordance with 5 C.F.R. §731.202.

(3) Appeal on the determination of eligibility shall be made to the member state where the application was filed and shall be subject to the law of that state.

(c) Upon verification in subsection (b) of this section, physicians eligible for an expedited license shall complete the registration process established by the Interstate Commission to receive a license in a member state selected pursuant to
subsection (a) of this section, including the payment of any applicable fees.

(d) After receiving verification of eligibility under subsection (b) of this section and any fees under subsection (c) of this section, a member board shall issue an expedited license to the physician. This license shall authorize the physician to practice medicine in the issuing state consistent with the Medical Practice Act and all applicable laws and regulations of the issuing member board and member state.

(e) An expedited license shall be valid for a period consistent with the licensure period in the member state and in the same manner as required for other physicians holding a full and unrestricted license within the member state.

(f) An expedited license obtained though the Compact shall be terminated if a physician fails to maintain a license in the state of principal licensure for a nondisciplinary reason, without redesignation of a new state of principal licensure.

(g) The Interstate Commission is authorized to develop rules regarding the application process, including payment of any applicable fees, and the issuance of an expedited license.

§30-1C-6. Fees for expedited licensure.

(a) A member state issuing an expedited license authorizing the practice of medicine in that state may impose a fee for a license issued or renewed through the Compact.

(b) The Interstate Commission is authorized to develop rules regarding fees for expedited licenses.

§30-1C-7. Renewal and continued participation.

(a) A physician seeking to renew an expedited license granted in a member state shall complete a renewal process with the Interstate Commission if the physician:
(1) Maintains a full and unrestricted license in a state of principal license;

(2) Has not been convicted, received adjudication, deferred adjudication, community supervision, or deferred disposition for any offense by a court of appropriate jurisdiction;

(3) Has not had a license authorizing the practice of medicine subject to discipline by a licensing agency in any state, federal, or foreign jurisdiction, excluding any action related to nonpayment of fees related to a license; and

(4) Has not had a controlled substance license or permit suspended or revoked by a state or the United States Drug Enforcement Administration.

(b) Physicians shall comply with all continuing professional development or continuing medical education requirements for renewal of a license issued by a member state.

(c) The Interstate Commission shall collect any renewal fees charged for the renewal of a license and distribute the fees to the applicable member board.

(d) Upon receipt of any renewal fees collected in subsection (c) of this section, a member board shall renew the physician’s license.

(e) Physician information collected by the Interstate Commission during the renewal process will be distributed to all member boards.

(f) The Interstate Commission is authorized to develop rules to address renewal of licenses obtained through the Compact.

§30-1C-8. Coordinated information system.

(a) The Interstate Commission shall establish a database of all physicians licensed, or who have applied for licensure, under section five of this article.
(b) Notwithstanding any other provision of law, member boards shall report to the Interstate Commission any public action or complaints against a licensed physician who has applied or received an expedited license through the Compact.

(c) Member boards shall report disciplinary or investigatory information determined as necessary and proper by rule of the Interstate Commission.

(d) Member boards may report any nonpublic complaint, disciplinary, or investigatory information not required by subsection (c) of this section to the Interstate Commission.

(e) Member boards shall share complaint or disciplinary information about a physician upon request of another member board.

(f) All information provided to the Interstate Commission or distributed by member boards shall be confidential, filed under seal, and used only for investigatory or disciplinary matters.

(g) The Interstate Commission is authorized to develop rules for mandated or discretionary sharing of information by member boards.

§30-1C-9. Joint investigations.

(a) Licensure and disciplinary records of physicians are deemed investigative.

(b) In addition to the authority granted to a member board by its respective Medical Practice Act or other applicable state law, a member board may participate with other member boards in joint investigations of physicians licensed by the member boards.

(c) A subpoena issued by a member state shall be enforceable in other member states.
(d) Member boards may share any investigative, litigation, or compliance materials in furtherance of any joint or individual investigation initiated under the Compact.

(e) Any member state may investigate actual or alleged violations of the statutes authorizing the practice of medicine in any other member state in which a physician holds a license to practice medicine.

§30-1C-10. Disciplinary actions.

(a) Any disciplinary action taken by any member board against a physician licensed through the Compact shall be deemed unprofessional conduct which may be subject to discipline by other member boards, in addition to any violation of the Medical Practice Act or regulations in that state.

(b) If a license granted to a physician by the member board in the state of principal license is revoked, surrendered or relinquished in lieu of discipline, or suspended, then all licenses issued to the physician by member boards shall automatically be placed, without further action necessary by any member board, on the same status. If the member board in the state of principal license subsequently reinstates the physician’s license, a licensed issued to the physician by any other member board shall remain encumbered until that respective member board takes action to reinstate the license in a manner consistent with the Medical Practice Act of that state.

(c) If disciplinary action is taken against a physician by a member board not in the state of principal license, any other member board may deem the action conclusive as to matter of law and fact decided, and:

(i) Impose the same or lesser sanction(s) against the physician so long as such sanctions are consistent with the Medical Practice Act of that state; or
(ii) Pursue separate disciplinary action against the physician under its respective Medical Practice Act, regardless of the action taken in other member states.

(d) If a license granted to a physician by a member board is revoked, surrendered or relinquished in lieu of discipline, or suspended, then any licenses issued to the physician by any other member boards shall be suspended, automatically and immediately without further action necessary by the other member boards, for ninety days upon entry of the order by the disciplining board, to permit the member boards to investigate the basis for the action under the Medical Practice Act of that state. A member board may terminate the automatic suspension of the license it issued prior to the completion of the ninety day suspension period in a manner consistent with the Medical Practice Act of that state.

§30-1C-11. Interstate Medical Licensure Compact Commission.

(a) The member states hereby create the “Interstate Medical Licensure Compact Commission”.

(b) The purpose of the Interstate Commission is the administration of the Interstate Medical Licensure Compact, which is a discretionary state function.

(c) The Interstate Commission shall be a body corporate and joint agency of the member states and shall have all the responsibilities, powers, and duties set forth in the Compact, and such additional powers as may be conferred upon it by a subsequent concurrent action of the respective Legislatures of the member states in accordance with the terms of the Compact.

(d) The Interstate Commission shall consist of two voting representatives appointed by each member state who shall serve as Commissioners. In states where allopathic and osteopathic physicians are regulated by separate member boards, or if the
licensing and disciplinary authority is split between multiple
member boards within a member state, the member state shall
appoint one representative from each member board. A
Commissioner shall be an:

(1) Allopathic or osteopathic physician appointed to a
member board;

(2) Executive director, executive secretary, or similar
executive of a member board; or

(3) Member of the public appointed to a member board.

(e) The Interstate Commission shall meet at least once each
calendar year. A portion of this meeting shall be a business
meeting to address such matters as may properly come before
the Commission, including the election of officers. The
chairperson may call additional meetings and shall call for a
meeting upon the request of a majority of the member states.

(f) The bylaws may provide for meetings of the Interstate
Commission to be conducted by telecommunication or electronic
communication.

(g) Each Commissioner participating at a meeting of the
Interstate Commission is entitled to one vote. A majority of
Commissioners shall constitute a quorum for the transaction of
business, unless a larger quorum is required by the bylaws of the
Interstate Commission. A Commissioner shall not delegate a
vote to another Commissioner. In the absence of its
Commissioner, a member state may delegate voting authority for
a specified meeting to another person from that state who shall
meet the requirements of subsection (d) of this section.

(h) The Interstate Commission shall provide public notice of
all meetings and all meetings shall be open to the public. The
Interstate Commission may close a meeting, in full or in portion,
where it determines by a two-thirds vote of the Commissioners present that an open meeting would be likely to:

(1) Relate solely to the internal personnel practices and procedures of the Interstate Commission;

(2) Discuss matters specifically exempted from disclosure by federal statute;

(3) Discuss trade secrets, commercial, or financial information that is privileged or confidential;

(4) Involve accusing a person of a crime, or formally censuring a person;

(5) Discuss information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy;

(6) Discuss investigative records compiled for law-enforcement purposes; or

(7) Specifically relate to the participation in a civil action or other legal proceeding.

(i) The Interstate Commission shall keep minutes which shall fully describe all matters discussed in a meeting and shall provide a full and accurate summary of actions taken, including record of any roll call votes.

(j) The Interstate Commission shall make its information and official records, to the extent not otherwise designated in the Compact or by its rules, available to the public for inspection.

(k) The Interstate Commission shall establish an executive committee, which shall include officers, members, and others as determined by the bylaws. The executive committee shall have
the power to act on behalf of the Interstate Commission, with the exception of rulemaking, during periods when the Interstate Commission is not in session. When acting on behalf of the Interstate Commission, the executive committee shall oversee the administration of the Compact including enforcement and compliance with the provisions of the Compact, its bylaws and rules, and other such duties as necessary.

(1) The Interstate Commission may establish other committees for governance and administration of the Compact.


1 The Interstate Commission shall have the duty and power to:

2 (1) Oversee and maintain the administration of the Compact;

3 (2) Promulgate rules which shall be binding to the extent and in the manner provided for in the Compact;

4 (3) Issue, upon the request of a member state or member board, advisory opinions concerning the meaning or interpretation of the Compact, its bylaws, rules, and actions;

5 (4) Enforce compliance with 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;

6 (5) Establish and appoint committees including, but not limited to, an executive committee as required by section eleven of this article, which shall have the power to act on behalf of the Interstate Commission in carrying out its powers and duties;

7 (6) Pay, or provide for the payment of the expenses related to the establishment, organization, and ongoing activities of the Interstate Commission;
19 (7) Establish and maintain one or more offices;

20 (8) Borrow, accept, hire, or contract for services of personnel;

22 (9) Purchase and maintain insurance and bonds;

23 (10) Employ an executive director who shall have such powers to employ, select or appoint employees, agents, or consultants, and to determine their qualifications, define their duties, and fix their compensation;

27 (11) Establish personnel policies and programs relating to conflicts of interest, rates of compensation, and qualifications of personnel;

30 (12) Accept donations and grants of money, equipment, supplies, materials and services, and to receive, utilize, and dispose of it in a manner consistent with the conflict of interest policies established by the Interstate Commission;

34 (13) Lease, purchase, accept contributions or donations of, or otherwise to own, hold, improve or use, any property, real, personal, or mixed;

37 (14) Sell, convey, mortgage, pledge, lease, exchange, abandon, or otherwise dispose of any property, real, personal, or mixed;

40 (15) Establish a budget and make expenditures;

41 (16) Adopt a seal and bylaws governing the management and operation of the Interstate Commission;

43 (17) Report annually to the Legislatures and Governors of the member states concerning the activities of the Interstate Commission during the preceding year. Such reports shall also
include reports of financial audits and any recommendations that
may have been adopted by the Interstate Commission;

(18) Coordinate education, training, and public awareness
regarding the Compact, its implementation, and its operation;

(19) Maintain records in accordance with the bylaws;

(20) Seek and obtain trademarks, copyrights, and patents;
and

(21) Perform such functions as may be necessary or
appropriate to achieve the purposes of the Compact.

§30-1C-13. Finance powers.

(a) The Interstate Commission may levy on and collect an
annual assessment from each member state to cover the cost of
the operations and activities of the Interstate Commission and its
staff. The total assessment must be sufficient to cover the annual
budget approved each year for which revenue is not provided by
other sources. The aggregate annual assessment amount shall be
allocated upon a formula to be determined by the Interstate
Commission, which shall promulgate a rule binding upon all
member states.

(b) The Interstate Commission shall not incur obligations of
any kind prior to securing the funds adequate to meet the same.

(c) The Interstate Commission shall not pledge the credit of
any of the member states, except by, and with the authority of,
the member state.

(d) The Interstate Commission shall be subject to a yearly
financial audit conducted by a certified or licensed public
accountant and the report of the audit shall be included in the
annual report of the Interstate Commission.

(a) The Interstate Commission shall, by a majority of Commissioners present and voting, adopt bylaws to govern its conduct as may be necessary or appropriate to carry out the purposes of the Compact within twelve months of the first Interstate Commission meeting.

(b) The Interstate Commission shall elect or appoint annually from among its Commissioners a chairperson, a vice-chairperson, and a treasurer, each of whom shall have such 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.

(c) Officers selected in subsection (b) of this section shall serve without remuneration from the Interstate Commission.

(d) The officers and employees of the Interstate Commission shall be immune from suit and liability, either personally or in their official capacity, for a claim for damage to or loss of property or personal injury or other civil liability caused or arising out of, or relating to, an actual or alleged act, error, or omission that occurred, or that such person had a reasonable basis for believing occurred, within the scope of Interstate Commission employment, duties, or responsibilities; provided that such person shall not be protected from suit or liability for damage, loss, injury, or liability caused by the intentional or willful and wanton misconduct of such person.

(1) The liability of the executive director and employees of the Interstate Commission or representatives of the Interstate Commission, acting within the scope of such 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. The Interstate Commission is
considered to be an instrumentality of the states for the purposes
of any such action. Nothing in this subsection may be construed
to protect such person from suit or liability for damage, loss,
injury, or liability caused by the intentional or willful and
wanton misconduct of such person.

(2) The Interstate Commission shall defend the executive
director, its employees, and subject to the approval of the
Attorney General or other appropriate legal counsel of the
member state represented by an Interstate Commission
representative, shall defend such Interstate Commission
representative in any civil action seeking to impose liability
arising out of an 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.

(3) To the extent not covered by the state involved, member
state, or the Interstate Commission, the representatives or
employees of the Interstate Commission shall be held harmless
in the amount of a settlement or judgment, including attorney’s
fees and costs, obtained against such persons arising out of an
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.

(a) The Interstate Commission shall promulgate reasonable rules in order to effectively and efficiently achieve the purposes of the Compact. Notwithstanding the foregoing, in the event the Interstate Commission exercises its rule-making authority in a manner that is beyond the scope of the purposes of the Compact, or the powers granted hereunder, then such an action by the Interstate Commission shall be invalid and have no force or effect.

(b) Rules deemed appropriate for the operations of the Interstate Commission shall be made pursuant to a rule-making process that substantially conforms to the “Model State Administrative Procedure Act” of 2010, and subsequent amendments thereto.

(c) Not later than thirty days after a rule is promulgated, any person may file a petition for judicial review of the rule in the United States District Court for the District of Columbia or the federal district where the Interstate Commission has its principal offices, provided that the filing of such a petition shall not stay or otherwise prevent the rule from becoming effective unless the court finds that the petitioner has a substantial likelihood of success. The court shall give deference to the actions of the Interstate Commission consistent with applicable law and shall not find the rule to be unlawful if the rule represents a reasonable exercise of the authority granted to the Interstate Commission.

§30-1C-16. Oversight of Interstate Compact.

(a) The executive, legislative, and judicial branches of state government in each member state shall enforce the Compact and shall take all actions necessary and appropriate to effectuate the Compact’s purposes and intent. The provisions of the Compact and the rules promulgated hereunder shall have standing as
statutory law but shall not override existing state authority to regulate the practice of medicine.

(b) All courts shall take judicial notice of the Compact and the rules in any judicial or administrative proceeding in a member state pertaining to the subject matter of the Compact which may affect the powers, responsibilities or actions of the Interstate Commission.

(c) The Interstate Commission 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. Failure to provide service of process to the Interstate Commission shall render a judgment or order void as to the Interstate Commission, the Compact, or promulgated rules.

§30-1C-17. Enforcement of Interstate Compact.

(a) The Interstate Commission, in the reasonable exercise of its discretion, shall enforce the provisions and rules of the Compact.

(b) The Interstate Commission may, by majority vote of the Commissioners, 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 principal offices, to enforce compliance with the provisions of the Compact, and its promulgated rules and bylaws, against a member state in default. The relief sought may include both injunctive relief and damages. In the event judicial enforcement is necessary, the prevailing party shall be awarded all costs of such litigation including reasonable attorney’s fees.

(c) The remedies herein shall not be the exclusive remedies of the Interstate Commission. The Interstate Commission may avail itself of any other remedies available under state law or the regulation of a profession.
§30-1C-18. Default procedures.

(a) The grounds for default include, but are not limited to, failure of a member state to perform such obligations or responsibilities imposed upon it by the Compact, or the rules and bylaws of the Interstate Commission promulgated under the Compact.

(b) If the Interstate Commission determines that a member state has defaulted in the performance of its obligations or responsibilities under the Compact, or the bylaws or promulgated rules, the Interstate Commission shall:

1. Provide written notice to the defaulting state and other member states, of the nature of the default, the means of curing the default, and any action taken by the Interstate Commission. The Interstate Commission shall specify the conditions by which the defaulting state must cure its default; and

2. Provide remedial training and specific technical assistance regarding the default.

(c) If the defaulting state fails to cure the default, the defaulting state shall be terminated from the Compact upon an affirmative vote of a majority of the Commissioners and all rights, privileges, and benefits conferred by the Compact shall terminate on the effective date of termination. A cure of the default does not relieve the offending state of obligations or liabilities incurred during the period of the default.

(d) Termination of membership in the Compact shall be imposed only after all other means of securing compliance have been exhausted. Notice of intent to terminate shall be given by the Interstate Commission to the Governor, the majority and minority leaders of the defaulting state’s Legislature, and each of the member states.
(e) The Interstate Commission shall establish rules and procedures to address licenses and physicians that are materially impacted by the termination of a member state, or the withdrawal of a member state.

(f) The member state which has been terminated is responsible for all dues, obligations, and liabilities incurred through the effective date of termination including obligations, the performance of which extends beyond the effective date of termination.

(g) The Interstate Commission shall not bear any costs relating to any state that has been found to be in default or which has been terminated from the Compact, unless otherwise mutually agreed upon in writing between the Interstate Commission and the defaulting state.

(h) The defaulting state may appeal the action of the Interstate Commission by petitioning the United States District Court for the District of Columbia or the federal district where the Interstate Commission has its principal offices. The prevailing party shall be awarded all costs of such litigation including reasonable attorney’s fees.

§30-1C-19. Dispute resolution.

(a) The Interstate Commission shall attempt, upon the request of a member state, to resolve disputes which are subject to the Compact and which may arise among member states or member boards.

(b) The Interstate Commission shall promulgate rules providing for both mediation and binding dispute resolution as appropriate.

§30-1C-20. Member states, effective date and amendment.

(a) Any state is eligible to become a member state of the Compact.
(b) The Compact shall become effective and binding upon legislative enactment of the Compact into law by no less than seven states. Thereafter, it shall become effective and binding on a state upon enactment of the Compact into law by that state.

(c) 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.

(d) The Interstate Commission may propose amendments to the Compact for enactment by the member states. No amendment shall become effective and binding upon the Interstate Commission and the member states unless and until it is enacted into law by unanimous consent of the member states.

§30-1C-21. Withdrawal.

(a) Once effective, the Compact shall continue in force and remain binding upon each and every member state; provided that a member state may withdraw from the Compact by specifically repealing the statute which enacted the Compact into law.

(b) Withdrawal from the Compact shall be by the enactment of a statute repealing the same, but shall not take effect until one year after the effective date of such statute and until written notice of the withdrawal has been given by the withdrawing state to the governor of each other member state.

(c) The withdrawing state shall immediately notify the chairperson of the Interstate Commission in writing upon the introduction of legislation repealing the Compact in the withdrawing state.

(d) The Interstate Commission shall notify the other member states of the withdrawing state’s intent to withdraw within sixty days of its receipt of notice provided under subsection (c) of this section.
(e) The withdrawing state is responsible for all dues, obligations and liabilities incurred through the effective date of withdrawal, including obligations, the performance of which extend beyond the effective date of withdrawal.

(f) Reinstatement following withdrawal of a member state shall occur upon the withdrawing state reenacting the Compact or upon such later date as determined by the Interstate Commission.

(g) The Interstate Commission is authorized to develop rules to address the impact of the withdrawal of a member state on licenses granted in other member states to physicians who designated the withdrawing member state as the state of principal license.

§30-1C-22. Dissolution.

(a) The Compact shall dissolve effective upon the date of the withdrawal or default of the member state which reduces the membership in the Compact to one member state.

(b) Upon the dissolution of the 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 surplus funds shall be distributed in accordance with the bylaws.

§30-1C-23. Severability and construction.

(a) The provisions of the 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 the Compact shall be liberally construed to effectuate its purposes.
(c) Nothing in the Compact shall be construed to prohibit the applicability of other interstate compacts to which the states are members.

§30-1C-24. Binding effect of Compact and other laws.

(a) Nothing herein prevents the enforcement of any other law of a member state that is not inconsistent with the Compact.

(b) All laws in a member state in conflict with the Compact are superseded to the extent of the conflict.

(c) All lawful actions of the Interstate Commission, including all rules and bylaws promulgated by the Commission, are binding upon the member states.

(d) All agreements between the Interstate Commission and the member states are binding in accordance with their terms.

(e) In the event any provision of the Compact exceeds the Constitutional limits imposed on the Legislature of any member state, such provision shall be ineffective to the extent of the conflict with the Constitutional provision in question in that member state.

CHAPTER 187


[Passed March 13, 2015; in effect ninety days from passage.]
[Approved by the Governor on March 25, 2015.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §30-3-11b; and to amend
said code by adding thereto a new section, designated §30-14-12c, all relating to services provided by allopathic and osteopathic physicians in federal veterans’ affairs facilities in this state; authorizing allopathic and osteopathic physicians to provide services to patients or residents of state-run veterans’ facilities by allowing them to obtain license without the required examination from the appropriate licensing agency of this state; limiting scope of the license to practice only in the state-run veterans’ facilities; providing rule-making authority to the appropriate licensing agencies of allopathic and osteopathic physicians; and requiring report to the Legislature.

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 §30-3-11b; and to further amend said code by adding thereto a new section, designated §30-14-12c, all to read as follows:

ARTICLE 3. WEST VIRGINIA MEDICAL PRACTICE ACT.

§30-3-11b. License to practice medicine and surgery at certain state veterans nursing home facilities.

(a) The board is authorized and encouraged to the best of its ability to issue a license to practice medicine and surgery in this state without examination to a physician that currently holds a license to practice medicine and surgery at a Federal Veterans Administration Hospital upon completion of an application form prescribed by the board and who presents satisfactory proof to the board that he or she is currently employed and practicing in a Federal Veterans Administration Hospital that is located in a county in which a nursing home operated by the West Virginia Department of Veteran’s Assistance is located: Provided, That the physician shall maintain an valid, unrestricted license to practice medicine in another state.
(b) The medical practice for which a physician is licensed under this section is limited to practice in a nursing home operated by the West Virginia Department of Veteran’s Assistance that is located in the same county in which the Federal Veterans Administration Hospital where the individual is employed.

(c) No fee may be assessed to an individual licensed or seeking licensure pursuant to this section.

(d) The board shall propose emergency rules pursuant to the provisions of section fifteen, article three, chapter twenty-nine-a of this code to implement the provisions of this section.

(e) The board shall report to the Legislative Oversight Commission on Health and Human Resources Accountability and the Legislative Oversight Commission on Education Accountability by July 1, 2016 on the implementation of this section including the number of licenses issued, number of complaints, and any other pertinent legislation.

ARTICLE 14. OSTEOPATHIC PHYSICIANS AND SURGEONS.

§30-14-12c. License to practice as an osteopathic physician and surgeon at certain state veterans nursing home facilities.

(a) The board is authorized and encouraged to the best of its ability to issue a license to practice as an osteopathic physician and surgeon in this state without examination to a physician that currently holds a license to practice as an osteopathic physician and surgeon at a Federal Veterans Administration Hospital upon completion of an application form prescribed by the board and who presents satisfactory proof to the board that he or she is currently employed and practicing in a Federal Veterans Administration Hospital that is located in a county in which a nursing home operated by the West Virginia Department of
Veteran’s Assistance is located: Provided, That the osteopathic physician shall maintain an valid, unrestricted license to practice osteopathic medicine in another state.

(b) The practice for which an osteopathic physician and surgeon is licensed under this section is limited to practice in a nursing home operated by the West Virginia Department of Veteran’s Assistance that is located in the same county in which the Federal Veterans Administration Hospital where the individual is employed.

(c) No fee may be assessed to an individual licensed or seeking licensure pursuant to this section.

(d) The board shall propose emergency rules pursuant to the provisions of section fifteen, article three, chapter twenty-nine-a of this code to implement the provisions of this section.

(e) The board shall report to the Legislative Oversight Commission on Health and Human Resources Accountability and the Legislative Oversight Commission on Education Accountability by July 1, 2016 on the implementation of this section including the number of licenses issued, number of complaints, and any other pertinent legislation.

CHAPTER 188

(H. B. 2272 - By Delegate(s) Ellington, Householder, Arvon, Howell, Kurcaba, Stansbury, Sobonya and Summers)

[Passed March 9, 2015; in effect ninety days from passage.]
[Approved by the Governor on March 22, 2015.]
Virginia, 1931, as amended; and to amend and reenact §30-5-7 of said code, all relating generally to the rule-making authority of the Board of Pharmacy; repealing the current statutory official prescription paper program and allowing the Board of Pharmacy to develop and maintain an official prescription paper program through rule-making; and clarifying rule-making authority of the Board of Pharmacy to include the ability of pharmacy interns to administer certain immunizations.

Be it enacted by the Legislature of West Virginia:

That §16-5W-1, §16-5W-2, §16-5W-3, §16-5W-4, §16-5W-5, §16-5W-6, §16-5W-7, and §16-5W-8 of the Code of West Virginia, 1931, as amended, be repealed and that §30-5-7 of said code be amended and reenacted to read as follows:

ARTICLE 5. PHARMACISTS, PHARMACY TECHNICIANS, PHARMACY INTERNS AND PHARMACIES.

§30-5-7. Rule-making authority.

(a) The board shall 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, and articles two, three, eight, nine and ten of chapter sixty-A including:

(1) Standards and requirements for a license, permit and registration;

(2) Educational and experience requirements;

(3) Procedures for examinations and reexaminations;

(4) Requirements for third parties to prepare, administer or prepare and administer examinations and reexaminations;
(5) The passing grade on the examination;

(6) Procedures for the issuance and renewal of a license, permit and registration;

(7) A fee schedule;

(8) Continuing education requirements;

(9) Set standards for professional conduct;

(10) Establish equipment and facility standards for pharmacies;

(11) Approve courses and standards for training pharmacist technicians;

(12) Regulation of charitable clinic pharmacies;

(13) Regulation of mail order pharmacies: Provided, That until the board establishes requirements that provide further conditions for pharmacists whom consult with or who provide pharmacist care to patients regarding prescriptions dispensed in this state by a mail order pharmacy, the pharmacist in charge of the out-of-state mail order pharmacy shall be licensed in West Virginia and any other pharmacist providing pharmacist care from the mail order pharmacy shall be licensed in the state where the pharmacy is located.

(14) Agreements with organizations to form pharmacist recovery networks;

(15) Create an alcohol or chemical dependency treatment program;

(16) Establish a ratio of pharmacy technicians to on-duty pharmacist operating in any outpatient, mail order or institutional pharmacy;
39 (17) Regulation of telepharmacy;

40 (18) The minimum standards for a charitable clinic pharmacy and rules regarding the applicable definition of a pharmacist-in-charge, who may be a volunteer, at charitable clinic pharmacies: Provided, That a charitable clinic pharmacy may not be charged any applicable licensing fees and such clinics may receive donated drugs.

46 (19) Establish standards for substituted drug products;

47 (20) Establish the regulations for E-prescribing;

49 (21) Establish the proper use of the automated data processing system;

50 (22) Registration and control of the manufacture and distribution of controlled substances within this state.

52 (23) Regulation of pharmacies;

53 (24) Sanitation and equipment requirements for wholesalers, distributors and pharmacies.

55 (25) Procedures for denying, suspending, revoking, reinstating or limiting the practice of a licensee, permittee or registrant;

58 (26) Regulations on prescription paper as provided in section five, article five-w, chapter sixteen;

60 (27) Regulations on controlled substances as provided in article two, chapter sixty-a;

62 (28) Regulations on manufacturing, distributing, or dispensing any controlled substance as provided in article three, chapter sixty-a;
(29) Regulations on wholesale drug distribution as provided in article eight, chapter sixty-a;

(30) Regulations on controlled substances monitoring as provided in article nine, chapter sixty-a;

(31) Regulations on Methamphetamine Laboratory Eradication Act as provided in article ten, chapter sixty-a;

(32) Establish and maintain an official prescription paper program; and

(33) Any other rules necessary to effectuate the provisions of this article.

(b) The board may provide an exemption to the pharmacist-in-charge requirement for the opening of a new retail pharmacy or during a declared emergency;

(c) The board, the Board of Medicine and the Board of Osteopathic Medicine shall jointly agree and propose rules concerning collaborative pharmacy practice for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of the code;

(d) The board with the advice of the Board of Medicine and the Board of Osteopathic Medicine shall propose rules for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code to perform influenza and pneumonia immunizations, on a person of eighteen years of age or older. These rules shall provide, at a minimum, for the following:

(1) Establishment of a course, or provide a list of approved courses, in immunization administration. The courses shall be based on the standards established for such courses by the Centers for Disease Control and Prevention in the public health
service of the United States Department of Health and Human 
Services;

(2) Definitive treatment guidelines which shall include, but 
not be limited to, appropriate observation for an adverse reaction 
of an individual following an immunization;

(3) Prior to administration of immunizations, a pharmacist 
shall have completed a board approved immunization 
administration course and completed an American Red Cross or 
American Heart Association basic life-support training, and 
maintain certification in the same.

(4) Continuing education requirements for this area of 
practice;

(5) Reporting requirements for pharmacists administering 
immunizations to report to the primary care physician or other 
licensed health care provider as identified by the person 
receiving the immunization;

(6) Reporting requirements for pharmacists administering 
immunizations to report to the West Virginia Statewide 
Immunization Information (WVSII);

(7) That a pharmacist may not delegate the authority to 
administer immunizations to any other person; unless 
administered by a licensed pharmacy intern under the direct 
supervision of a pharmacist of whom both pharmacist and intern 
have successfully completed all board required training; and

(8) Any other provisions necessary to implement the 
provisions of this section.

(e) The board, the Board of Medicine and the Board of 
Osteopathic Medicine shall propose joint rules for legislative 
approval in accordance with the provisions of article three,
chapter twenty-nine-a of this code to permit a licensed pharmacist or pharmacy intern to administer other immunizations such as Hepatitis A, Hepatitis B, Herpes Zoster and Tetanus. These rules shall provide, at a minimum, the same provisions contained in subsection (d)(1) through (d)(8) of this section.

(f) All of the board’s rules in effect and not in conflict with these provisions, shall remain in effect until they are amended or rescinded.

CHAPTER 189

(Com. Sub. for H. B. 2432 - By Delegate(s) Ellington, Householder, Arvon, Howell and Stansbury)

[Passed March 9, 2015; in effect ninety days from passage.]
[Approved by the Governor on March 26, 2015.]

AN ACT to amend and reenact §30-5-9 of the Code of West Virginia, 1931, as amended, relating to the licensure requirements to practice pharmacist care.

Be it enacted by the Legislature of West Virginia:

That §30-5-9 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 5. PHARMACISTS, PHARMACY TECHNICIANS, PHARMACY INTERNS AND PHARMACIES.

30-5-9. Qualifications for licensure as pharmacist;

(a) To be eligible for a license to practice pharmacist care under the provisions of this article, the applicant shall:
(1) Submit a written application to the board;

(2) Be eighteen years of age or older;

(3) Pay all applicable fees;

(4) Graduate from an accredited school of pharmacy;

(5) Complete at least fifteen hundred hours of internship in a pharmacy under the instruction and supervision of a pharmacist;

(6) Pass an examination or examinations approved by the board;

(7) Not be an alcohol or drug abuser, as these terms are defined in section eleven, article one-a, chapter twenty-seven of this code: Provided, That an applicant in an active recovery process, which may, in the discretion of the board, be evidenced by participation in a twelve-step program or other similar group or process, may be considered;

(8) Present to the board satisfactory evidence that he or she is a person of good moral character, has not been convicted of a felony involving the sale or distribution of controlled substances;

(9) Not been convicted in any jurisdiction of any other felony or crime which bears a rational nexus to the individual’s ability to practice pharmacist care, Provided, That an applicant with a felony conviction other than the felony conviction specified in subdivision eight of this section may apply to the board for licensure no sooner than five years after the date of the conviction. The board shall evaluate each applicant on a case by case basis; and

(10) Has fulfilled any other requirement specified by the board in rule.

(b) An applicant from another jurisdiction shall comply with all the requirements of this article.
AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §30-8A-1; §30-8A-2; §30-8A-3; §30-8A-4 and §30-8A-5, all relating to the practice of optometry; defining certain terms; providing that contact lenses require a prescription that must be performed by a licensee; providing that spectacles require a prescription that must be performed by a licensee; requiring certain actions to be taken with regard to prescriptions; prohibiting the dissemination of contact lenses without a prescription from a licensee; prohibiting the dissemination of spectacles without a prescription from a licensee; providing the board to enforce this article; allowing the board to promulgate rules; and providing 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 §30-8A-1; §30-8A-2; §30-8A-3; §30-8A-4 and §30-8A-5, all to read as follows:

ARTICLE 8A. EYE CARE CONSUMER PROTECTION LAW.

§30-8A-1. Definitions.

1 As used in this article:

2 (a) “Contact Lens” means a lens placed directly on the surface of the eye, regardless of whether it is intended to correct
a visual defect. Contact lens includes, but is not limited to, a cosmetic, therapeutic, or corrective lens.

(b) “Board” means the West Virginia Board of Optometry.

c) “Diagnostic contact lens” means a contact lens used to determine a proper contact lens fit.

(d) “Direct supervision” means supervision that occurs when a licensee is actually present in the building.

(e) “Examination and evaluation” means an assessment of the ocular health and visual status of a patient that does not consist solely of objective refractive data or information generated by an automated refracting device or other automated testing device for the purpose of writing a valid prescription.

(f) “Licensee” means a person who is authorized to engage in the practice of optometry under article eight, chapter thirty of this code.

(g) “Special requirements” means the type of lens design, lens material, tint, or lens treatments.

(h) “Spectacles” means an optical instrument or device worn or used by an individual that has one or more lenses designed to correct or enhance vision to address the visual needs of the individual wearer. This includes spectacles that may be adjusted to achieve different types or levels of visual correction or enhancement.

(i) “Valid prescription” means one of the following, as applicable:

1) For a contact lens, a written or electronic order by a licensee who has conducted an examination and evaluation of a patient and has determined a satisfactory fit for the contact lens based on an analysis of the physiological compatibility of the lens or the cornea and the physical fit and refractive functionality
of the lens on the patient’s eye. To be a valid prescription under this subdivision, it shall at least include the following:

(A) A statement that the prescription is for a contact lens;

(B) The contact lens type or brand name, or for a private label contact lens, the name of the manufacturer, trade name of the private label brand, and, if applicable, trade name of the equivalent or similar brand;

(C) All specifications necessary to order and fabricate the contact lens, including, if applicable, the power, material, base curve or appropriate designation, and diameter;

(D) The quantity of contact lenses to be dispensed;

(E) The number of refills;

(F) Specific wearing instructions and contact lens disposal parameters;

(G) The patient’s name;

(H) The date of the examination and evaluation;

(I) The date the prescription is originated;

(J) The prescribing licensee’s name, address, and telephone number;

(K) The prescribing licensee’s written or electronic signature, or other form of authentication; and

(L) An expiration date of not less than one year from the date of the examination and evaluation or a statement of the reasons why a shorter time is appropriate based on the medical needs of the patient.

(2) For spectacles, a written or electronic order by a licensee who has examined and evaluated a patient. To be a valid
A statement that the prescription is for spectacles;

(B) As applicable and as specified for each eye, the lens power including the spherical power, cylindrical power including axis, prism, and power of the multifocal addition;

(C) Any special requirements, the omission in the opinion of the prescribing licensee, would adversely affect the vision or ocular health of the patient;

(D) The patient’s name;

(E) The date of the examination and evaluation;

(F) The date the prescription is originated;

(G) The prescribing licensee’s name, address, and telephone number;

(H) The prescribing licensee’s written or electronic signature, or other form of authentication; and

(I) An expiration date of not less than one year from the date of the examination and evaluation or a statement of the reasons why a shorter time is appropriate based on the medical needs of the patient.


(a) Except as otherwise provided in subsection (b), spectacles and contact lenses are medical devices and are subject to the requirements of this article.

(b) The requirements of this article do not apply to the following:

A person may not:

1. (1) Employ objective or subjective physical means to determine the accommodative or refractive condition; the range, power of vision or muscular equilibrium of the human eye or prescribe spectacles or contact lenses based on that determination unless that activity is performed by a licensee or performed by a person under direct supervision.

2. (2) Dispense, give, or sell spectacles or contact lenses unless dispensed, given, or sold pursuant to a valid prescription.

3. (3) Use an automated refractor or other automated testing device to generate objective refractive data unless that use is under direct supervision.

§30-8A-4. Enforcement.

(a) The board shall enforce the provisions of this article.

(b) The board may promulgate a legislative rule in accordance with the provisions of article three, chapter twenty-nine-a of this code regarding the implementation of this article.

(c) The board is not required to wait until harm to human health has occurred to initiate an investigation under this section.

A person violating this article is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than $1,000 nor more than $5,000.

CHAPTER 191

(S. B. 389 - By Senators Blair, Yost, Maynard, Facemire, Leonhardt, Williams, Walters, Boso, Palumbo, Mullins, Gaunch, Miller, Ferns and Snyder)

AN ACT to amend and reenact §30-13-13a, §30-13-17 and §30-13-18 of the Code of West Virginia, 1931, as amended, all relating to the Board of Registration for Professional Engineers; changing time period for renewal from fiscal year to calendar year; authorizing renewal notification by mail or electronically; providing for reinstatement of nonrenewed licenses; authorizing annual or biennial renewal periods; providing a late fee; and requiring emergency rules related to renewal and reinstatement.

Be it enacted by the Legislature of West Virginia:

That §30-13-13a, §30-13-17 and §30-13-18 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:
ARTICLE 13. ENGINEERS.


1 The board may designate a professional engineer as ineligible to practice or offer to practice engineering in this state using one of the following terms:

2 (1) *Professional engineer-retired.* – A registrant may apply for retired status upon certification that he or she is no longer practicing or offering to practice engineering in this state for remuneration.

3 (2) *Professional engineer-inactive.* – A registrant may request inactive status upon affirmation that he or she is no longer practicing or offering to practice engineering in this state.

4 (3) *Professional engineer-lapsed.* – A registrant’s license is lapsed when the registrant does not respond to renewal notices or pay the required fees.

5 (4) *Professional engineer-invalidated.* – A registrant’s license is invalidated when he or she is unable to provide sufficient proof that any condition of renewal set forth in this article or by board rule has been met.

§30-13-17. Certificates of authorization required; naming of engineering firms.

1 (a) No person or firm is authorized to practice or offer to practice engineering in this state until the person or firm has been issued a certificate of authorization by the board.

2 (b) A person or firm desiring a certificate of authorization must file all the required information with the board on an application form specified by the board. The required information shall include the sworn statement of the engineer in
responsible charge who is a professional engineer registered in this state. The board shall issue a certificate of authorization to an applicant who has met all the requirements and paid the fees set forth in board rules.

(c) No person or firm is relieved of responsibility for the conduct or acts of its agents, employees, officers or partners due to compliance with the provisions of this article. No individual practicing engineering under the provisions of this article is relieved of responsibility for engineering services performed due to his or her employment or other relationship with a person or firm holding a certificate of authorization.

(d) An engineer who renders occasional, part-time or contract engineering services to or for a firm may not be designated as being in responsible charge for the professional activities of the firm unless that engineer is an owner or principal of the firm.

(e) The Secretary of State shall not issue a certificate of authority or business registration or license to an applicant whose business includes, among the objectives for which it is established, the words engineer, engineering or any modification or derivation thereof unless the board of registration for this profession has issued to the applicant a certificate of authorization or a letter indicating eligibility to receive the certificate. The certificate or letter from the board shall be filed with the application filed with the Secretary of State to do business in West Virginia.

(f) The Secretary of State shall decline to register a trade name or service mark which includes the words engineer, engineering or modifications or derivatives thereof in its business name or logotype except those businesses holding a certificate of authorization issued under the provisions of this article.
40 (g) The certificate of authorization may be renewed or
41 reinstated in accordance with board rule and upon payment of
42 the required fees.

43 (h) Every holder of a certificate of authorization has a duty
44 to notify the board promptly of any change in information
45 previously submitted to the board in an application for a
46 certificate of authorization.


1 (a) Certificates of registration and certificates of
2 authorization expire on the last day of December of the year
3 indicated on the certificate, and the holder of any certificate that
4 is not timely renewed is ineligible to practice or offer to practice
5 engineering in this state until the certificate has been reinstated
6 in accordance with rules promulgated by the board.

7 (b) Certificates may be renewed only in accordance with
8 board rule, which may include payment of a late fee for renewals
9 not postmarked by December 31 of the year in which renewal is
10 required. The board shall notify every person or firm holding an
11 active certificate under this article of the certificate renewal
12 requirements at least one month prior to the renewal date. The
13 notice shall be made by mail or electronic means using the
14 contact information provided to the board.

15 (c) A certificate that was not timely renewed or for other
16 reason was given a nonpracticing status may be reinstated under
17 rules promulgated by the board and may require reexamination
18 and payment of fees set forth in board rules.

19 (d) Effective July 1, 2015, the board may renew certificates
20 on a biennial basis.

21 (e) The board shall promulgate emergency rules pursuant to
22 section fifteen, article three, chapter twenty-nine-a of this code
23 to implement the provisions of this section.
CHAPTER 192

(H. B. 2879 - By Delegate(s) Walters, Frich, Azinger, Shott, E. Nelson, Deem, Waxman, B. White and Ashley)

[Passed March 5, 2015; in effect ninety days from passage.]
[Approved by the Governor on March 13, 2015.]

AN ACT to amend and reenact §12-1-5 of the Code of West Virginia, 1931, as amended, relating to certain limitations on amount of state funds on deposit in any depository; and requiring that the amount of state funds on deposit in excess of the amount insured by an agency of the federal government be secured by certain securities in an amount of at least one hundred two percent of the amount on deposit.

Be it enacted by the Legislature of West Virginia:

That §12-1-5 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 1. STATE DEPOSITORIES.

§12-1-5. Limitation on amount of deposits.

1 The amount of state funds on deposit in any depository in excess of the amount insured by an agency of the federal government shall be secured by a deposit guaranty bond issued by a valid bankers surety company or by other securities acceptable to the treasurer in an amount of at least one hundred two percent of the amount on deposit. The value of the collateral shall be determined by the treasurer.
AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §6B-2-5c, relating to prohibiting the use of the name or likeness of a public official on publicly-owned vehicles; prohibiting a public official from placing his or her name or likeness on trinkets paid for with public funds; prohibiting a public official from using public funds to distribute certain advertising materials bearing his or her name or likeness; prohibiting a public official from using public funds or public employees for entertainment purposes within forty-five days of a primary, general, or special election in which the public official is a candidate; defining terms; making exceptions; and permitting the Ethics Commission to promulgate rules.

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 §6B-2-5c, to read as follows:

ARTICLE 2. WEST VIRGINIA ETHICS COMMISSION; POWERS AND DUTIES; DISCLOSURE OF FINANCIAL INTEREST BY PUBLIC OFFICIALS AND EMPLOYEES; APPEARANCES BEFORE PUBLIC AGENCIES; CODE OF CONDUCT FOR ADMINISTRATIVE LAW JUDGES.
§6B-2-5c. Limitations on a public official from using his or her name or likeness.

(a) Public officials, their agents, or anyone on public payroll may not:

1. Use the public official’s name or likeness on any publicly-owned vehicles;

2. Place the public official’s name or likeness on trinkets paid for by public funds;

3. Use public funds, including funds of the office held by the public official, public employees, or public resources to distribute, disseminate, publish or display the public official’s name or likeness for the purpose of advertising including, but not limited to, billboards, public service announcements, communication sent by mass mailing, or any other publication or media communication intended for general dissemination to the public.

4. Use public funds or public employees, other than employees for security services, for entertainment activities within forty-five days of a primary, general, or special election in which the public official or agent is a candidate.

(b) For purposes of this section:

1. “Agent” means any volunteer or employee, contractual or permanent, serving at the discretion of a public official; and

2. “Trinkets” means items of tangible personal property that are not vital or necessary to the duties of the public official’s or public employee’s office, including, but not limited to, the following: magnets, mugs, cups, key chains, pill holders, band-aid dispensers, fans, nail files, matches and bags.
(c) This section does not prohibit public officials from using their names or likenesses on any official record or report, letterhead, document or certificate, or instructional material issued in the course of their duties as public officials, or on promotional materials used for tourism promotion.

(d) This section shall not be interpreted as prohibiting public officials from using public funds to communicate with constituents in the normal course of their duties as public officials so long as such communications do not include any reference to voting in favor of the public official in an election.

(e) The commission may propose rules and emergency rules for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code to effectuate this section by July 1, 2015.
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 §15-5-6a, to read as follows:

ARTICLE 5. DIVISION OF HOMELAND SECURITY AND EMERGENCY MANAGEMENT.

§15-5-6a. Temporary suspension of nutrition standards in public schools.

This section is operative only during the existence of a state of emergency or state of preparedness proclaimed by the Governor or by concurrent resolution of the Legislature. During a state of emergency or state of preparedness, the Governor or the Legislature may, to facilitate uninterrupted days of instruction, temporarily suspend legislative rules establishing nutrition standards for foods and beverages distributed to students in public schools during the school day: Provided, That safe alternative foods and beverages are available for distribution to students: Provided, however, That the temporary suspension of nutrition standards permitted by this section is limited to the geographic area affected by the state of emergency or state of preparedness and a report of any such action be made to the Joint Committee on Government and Finance.
AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §15-5-19b, relating to creating new offense of disseminating false, misleading or deceptive information during a declared state of emergency or state of preparedness; establishing elements of the offense; providing each call constitutes a separate offense; and establishing 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 section, designated §15-5-19b, to read as follows:

ARTICLE 5. DIVISION OF HOMELAND SECURITY AND EMERGENCY MANAGEMENT.

§15-5-19b. Criminal penalties for using automated telephone calls to disseminate false, misleading or deceptive information regarding matters effecting or effected by a proclaimed state of emergency or state of preparedness.

1 (a) Any person or entity who, during a state of emergency or state of preparedness declared pursuant to the provisions of section six of this article:

4 (1) Knowingly and willfully disseminates false, misleading or deceptive information regarding matters effecting or effected by the declaration; and
(2) by means of an automated telephone call or calling device, including, but not limited to, technology designed to disseminate a previously recorded message shall be guilty of a misdemeanor and, upon conviction thereof, be confined in jail for not more than one year or fined not more than $5,000, or both.

(b) For purposes of this section each call made shall constitute a separate violation of this section.

CHAPTER 196

(Com. Sub. for S. B. 234 - By Senators Trump, M. Hall, Blair and Plymale)

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

AN ACT to amend and reenact §8-12-17 of the Code of West Virginia, 1931, as amended; to amend and reenact §8-16-19 of said code; to amend and reenact §8-19-4 of said code; to amend and reenact §16-13A-1a, §16-13A-9 and §16-13A-25 of said code; to amend and reenact §24-1-1, §24-1-1b and §24-1-2 of said code; to amend and reenact §24-2-1, §24-2-2, §24-2-3, §24-2-4a, §24-2-4b, §24-2-7 and §24-2-11 of said code; and to amend and reenact §24-3-5 of said code, all relating to operation and regulation of certain water and sewer utilities owned or operated by political subdivisions of the state; modifying procedure for sale or lease of municipal public utility; providing procedures for adjustment of rates by certain public service districts and municipal water and sewer utilities; eliminating requirement for consent and approval of Public Service Commission with respect to public service districts borrowing money, issuing bonds and entering into certain engineering contracts; relating to the authority of bondholders to
petition the Public Service Commission for redress when there is a deficiency in bond revenue or bond reserve accounts or is otherwise in breach of bond covenants; limiting jurisdiction of Public Service Commission over certain water and sewer utilities owned or operated by political subdivisions of the state; defining terms; providing procedure for providing notice of construction projects to be undertaken by certain water and sewer utilities; requiring all public utilities to file schedules of rates with Public Service Commission; expanding jurisdiction of the Public Service Commission to provide assistance to public service districts and municipal corporations regarding proposed rate changes; providing for a working capital reserve; expanding powers of certain public service boards; providing mechanism for Public Service Commission to address deficiencies in the measurements, practices acts or services provided by certain public utility that is a political subdivision of the state; and providing mechanisms for various functions of political subdivisions related to water and sewer services.

Be it enacted by the Legislature of West Virginia:

That §8-12-17 of the Code of West Virginia, 1931, as amended, be amended and reenacted; that §8-16-19 of said code be amended and reenacted; that §8-19-4 of said code be amended and reenacted; that §16-13A-1a, §16-13A-9 and §16-13A-25 of said code be amended and reenacted; that §24-1-1, §24-1-1b and 24-1-2 of said code be amended and reenacted; that §24-2-1, §24-2-2, §24-2-3, §24-2- 4a, §24-2-4b, §24-2-7 and §24-2-11 of said code be amended and reenacted; and that §24-3-5 of said code be amended and reenacted, all to read as follows:

CHAPTER 8. MUNICIPAL CORPORATIONS.

ARTICLE 12. GENERAL AND SPECIFIC POWERS, DUTIES AND ALLIED RELATIONS OF MUNICIPALITIES, GOVERNING BODIES AND MUNICIPAL OFFICERS AND
EMPLOYEES; SUITS AGAINST MUNICIPALITIES.

§8-12-17. Sale or lease of municipal public utility.

In any case where a municipality owns a gas system, an electric system, a waterworks system, a sewer system or other public utility and a majority of not less than sixty percent of the members of the governing body thereof shall deem it for the best interest of such municipality that such utility be sold or leased, the governing body may so sell or lease such gas system, electric system, waterworks system, sewer system or other public utility upon such terms and conditions as said governing body in its discretion considers in the best interest of the municipality:

Provided, That such sale or lease may be made only upon: (1) The publication of notice of a hearing before the governing body of the municipality, as a Class I legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, in a newspaper published and of general circulation in the municipality, such publication to be made not earlier than twenty days and not later than seven days prior to the hearing; and (2) the approval by the Public Service Commission of West Virginia. The governing body, upon the approval of the sale or lease by a majority of its members of not less than sixty percent of the members of the governing body, shall have full power and authority to proceed to execute or effect such sale or lease in accordance with the terms and conditions prescribed in the ordinance approved as aforesaid, and shall have power to do any and all things necessary or incident thereto: Provided, however, That if at any time after such approval and before the execution of the authority under the ordinance, any person should present to the governing body an offer to buy such public utility at a price which exceeds by at least five percent the sale price which shall have been so approved and authorized or to lease the same upon terms which the governing body, in its discretion, shall
consider more advantageous to the municipality than the terms
of the lease which shall have been previously approved as
aforesaid, the governing body shall have the power to accept
such subsequent offer, and to make such sale or such lease to the
person making the offer, upon approval of the offer by a
majority of not less than sixty percent of the members of the
governing body; but, if a sale shall have been approved by the
governing body as aforesaid, and the subsequent proposition be
for a lease, or, if a lease shall have been approved by the
governing body, and the subsequent proposition shall be for a
sale, the governing body shall have the authority to accept the
same upon approval of the offer by a majority of not less than
sixty percent of the members of the governing body. The person
making such proposition shall furnish bond, with security to be
approved by the governing body, in a penalty of not less than
twenty-five percent of such proposed bid, conditioned to carry
such proposition into execution, if the same shall be approved by
the governing body. In any case where any such public utility
shall be sold or leased by the governing body as hereinabove
provided, no part of the moneys derived from such sale or lease
shall be applied to the payment of current expenses of the
municipality, but the proceeds of such sale or lease shall be
applied in payment and discharge of any indebtedness created in
respect to such public utility, and in case there be no
indebtedness, the governing body, in its discretion, shall have the
power and authority to expend all such moneys when received
for the purchase or construction of firefighting equipment and
buildings for housing such equipment, a municipal building or
city hall, and the necessary land upon which to locate the same,
or for the construction of paved streets, avenues, roads, alleys,
ways, sidewalks, sewers and other like permanent improvements,
and for no other purposes. In case there be a surplus after the
payment of such indebtedness, the surplus shall be used as
aforesaid.
The requirements of this section shall not apply to the sale or lease of any part of the properties of any such public utility determined by the governing body to be unnecessary for the efficient rendering of the service of such utility.

§8-16-19. Appeal to Public Service Commission from rates fixed.

If any party in interest is dissatisfied with the rates fixed under the provisions of section eighteen of this article, such party shall have the right to appeal to the Public Service Commission at any time within thirty days after the fixing of such rates by the governing body, but the rates so fixed by the governing body shall remain in full force and effect, until set aside, altered or amended by the Public Service Commission.

ARTICLE 19. MUNICIPAL AND COUNTY WATERWORKS AND ELECTRIC POWER SYSTEMS.

§8-19-4. Estimate of cost; ordinance or order for issuance of revenue bonds; interest on bonds; rates for services; exemption from taxation.

Whenever a municipality or county commission shall, under the provisions of this article, determine to acquire, by purchase or otherwise, construct, establish, extend or equip a waterworks system or an electric power system, or to construct any additions, betterments or improvements to any waterworks or electric power system, it shall cause an estimate to be made of the cost thereof, and may, by ordinance or order, provide for the issuance of revenue bonds under the provisions of this article, which ordinance or order shall set forth a brief description of the contemplated undertaking, the estimated cost thereof, the amount, rate or rates of interest, the time and place of payment and other details in connection with the issuance of the bonds. The bonds shall be in such form and shall be negotiated and sold in such manner and upon such terms as the governing body of such municipality or county commission may, by ordinance or
order, specify. All the bonds and the interest thereon shall be
exempt from all taxation by this state, or any county, municipality or county commission, political subdivision or agency thereof. Notwithstanding any other provision of this code to the contrary, the real and personal property which a municipality or county has acquired and constructed according to the provisions of this article, and any leasehold interest therein held by other persons, shall be deemed public property and shall be exempt from taxation by the state, or any county, municipality or other levying body, so long as the same is owned by the municipality or county: Provided, That with respect to electric power systems, this exemption for real and personal property shall be applicable only for the real and personal property: (1) Physically situate within the municipal or county boundaries of the municipality or county which acquired or constructed the electric power system and there was in place prior to the effective date of the amendments to this section made in the year 1992 an agreement between the municipality and the county commission for payments in lieu of tax; or (2) acquired or constructed with the written agreement of the county school board, county commission and any municipal authority within whose jurisdiction the electric power system is or is to be physically situate. Notwithstanding anything contained in this statute to the contrary, this exemption shall be applicable to any leasehold or similar interest held by persons other than a municipality or county only if acquired or constructed with the written agreement of the county school board, county commission and any municipal authority within whose jurisdiction the electric power system is or is to be physically situate: Provided, however, That payments made to any county commission, county school board or municipality in lieu of tax pursuant to such an agreement shall be distributed as if the payments resulted from ad valorem property taxation. The bonds shall bear interest at a rate per annum set by the municipality or county commission, payable at such times, and shall be payable
as to principal at such times, not exceeding fifty years from their
date, and at such place or places, within or without the state, as
shall be prescribed in the ordinance or order providing for their
issuance. Unless the governing body of the municipality or
county commission shall otherwise determine, the ordinance or
order shall also declare that a statutory mortgage lien shall exist
upon the property so to be acquired, constructed, established,
extended or equipped, fix minimum rates or charges for water or
electricity to be collected prior to the payment of all of said
bonds and shall pledge the revenues derived from the
waterworks or electric power system for the purpose of paying
the bonds and interest thereon, which pledge shall definitely fix
and determine the amount of revenues which shall be necessary
to be set apart and applied to the payment of the principal of and
interest upon the bonds and the proportion of the balance of the
revenues, which are to be set aside as a proper and adequate
depreciation account, and the remainder shall be set aside for the
reasonable and proper maintenance and operation thereof. The
rates or charges to be charged for the services from the
waterworks or electric power system shall be sufficient at all
times to provide for the payment of interest upon all bonds and
to create a sinking fund to pay the principal thereof as and when
the same become due, and reasonable reserves therefor, and to
provide for the repair, maintenance and operation of the
waterworks or electric power system, and to provide an adequate
depreciation fund, and to make any other payments which shall
be required or provided for in the ordinance or order authorizing
the issuance of said bonds.

CHAPTER 16. PUBLIC HEALTH.

ARTICLE 13A. PUBLIC SERVICE DISTRICTS.


The jurisdiction of the Public Service Commission relating
to public service districts shall be expanded to include the
following powers and the powers shall be in addition to all other
powers of the Public Service Commission set forth in this code:

(a) To study, modify, approve, deny or amend the plans
created under section one-b of this article for consolidation or
merger of public service districts and their facilities, personnel
or administration;

(b) To petition the appropriate circuit court for the removal
of a public service district board member or members; and

(c) To create by general order a separate division within the
Public Service Commission to provide assistance to public
service districts in technological, operational, financial and
regulatory matters, including, upon written request of the public
service board, assistance to the board in deliberations regarding
a proposed rate change or project.

§16-13A-9. Rules; service rates and charges; discontinuance of
service; required water and sewer connections; lien
for delinquent fees.

(a) (1) The board may make, enact and enforce all needful
rules in connection with the acquisition, construction,
 improvement, extension, management, maintenance, operation,
care, protection and the use of any public service properties
owned or controlled by the district. The board shall establish, in
accordance with this article, rates, fees and charges for the
services and facilities it furnishes, which shall be sufficient at all
times, notwithstanding the provisions of any other law or laws,
to pay the cost of maintenance, operation and depreciation of the
public service properties and principal of and interest on all
bonds issued, other obligations incurred under the provisions of
this article and all reserve or other payments provided for in the
proceedings which authorized the issuance of any bonds under
this article. The schedule of the rates, fees and charges may be
based upon:
(A) The consumption of water or gas on premises connected with the facilities, taking into consideration domestic, commercial, industrial and public use of water and gas;

(B) The number and kind of fixtures connected with the facilities located on the various premises;

(C) The number of persons served by the facilities;

(D) Any combination of paragraphs (A), (B) and (C) of this subdivision; or

(E) May be determined on any other basis or classification which the board may determine to be fair and reasonable, taking into consideration the location of the premises served and the nature and extent of the services and facilities furnished. However, no rates, fees or charges for stormwater services may be assessed against highways, road and drainage easements or stormwater facilities constructed, owned or operated by the West Virginia Division of Highways.

(2) The board of a public service district with at least four thousand five hundred customers and annual combined gross revenue of $3 million or more from its separate or combined services may make, enact and enforce all needful rules in connection with the enactment or amendment of rates, fees and charges of the district. At a minimum, these rules shall provide for:

(A) Adequate prior public notice of the contemplated rates, fees and charges by causing a notice of intent to effect such a change to be specified on the monthly billing statement of the customers of the district for the month next preceding the month in which the contemplated change is to be before the board on first reading.

(B) Adequate prior public notice of the contemplated rates, fees and charges by causing to be published as a Class I legal
advertisement of the proposed action, in compliance with the provisions of article three, chapter fifty-nine of the code. The publication area for publication shall be all territory served by the district. If the district provides service in more than one county, publication shall be made in a newspaper of general circulation in each county that the district provides service.

(C) The public notice of the proposed action shall state the current rates, fees and charges and the proposed changes to said rates, fees and charges; the date, time and place of both a public hearing on the proposal and the proposed final vote on adoption; and the place or places within the district where the proposed rates, fees and charges may be inspected by the public. A reasonable number of copies of the proposal shall be kept at the place or places and be made available for public inspection. The notice shall also advise that interested parties may appear at the public hearing before the board and be heard with respect to the proposed rates, fees and charges.

(D) The proposed rates, fees and charges shall be read at two meetings of the board with at least two weeks intervening between each meeting. The public hearing may be conducted with or following the second reading.

(E) Rates, fees and charges approved by an affirmative vote of the board shall be forwarded in writing to the county commission appointing the approving board. The county commission shall publish notice of the proposed rates, fees and charges by a Class 1 legal advertisement in compliance with the provisions of article three, chapter fifty-nine of the code. Within forty-five days of receipt of the proposed rates, fees and charges, the county commission shall take action to approve or reject the proposed rates, fees and charges. After forty-five days, the proposed rates, fees and charges shall be effective with no further action by the board or county commission. In any event, this 45-day period shall be mandatory unless extended by the
official action of both the board proposing the rates, fees and charges, and the appointing county commission.

(F) Enactment of the proposed rates, fees and charges shall follow an affirmative vote by the county commission and shall be effective no sooner than forty-five days following action. The 45-day waiting period may be waived by public vote of the county commission only if the commission finds and declares the district to be in financial distress such that the 45-day waiting period would be detrimental to the ability of the district to deliver continued and compliant public services.

(3) Where water, sewer, stormwater or gas services, or any combination thereof, are all furnished to any premises, the schedule of charges may be billed as a single amount for the aggregate of the charges. The board shall require all users of services and facilities furnished by the district to designate on every application for service whether the applicant is a tenant or an owner of the premises to be served. If the applicant is a tenant, he or she shall state the name and address of the owner or owners of the premises to be served by the district. Notwithstanding the provisions of section eight, article three, chapter twenty-four of this code to the contrary, all new applicants for service shall deposit the greater of a sum equal to two twelfths of the average annual usage of the applicant’s specific customer class or $50, with the district to secure the payment of service rates, fees and charges in the event they become delinquent as provided in this section. If a district provides both water and sewer service, all new applicants for service shall deposit the greater of a sum equal to two twelfths of the average annual usage for water service or $50 and the greater of a sum equal to two twelfths of the average annual usage for wastewater service of the applicant’s specific customer class or $50. In any case where a deposit is forfeited to pay service rates, fees and charges which were delinquent at the time of disconnection or termination of service, no reconnection or
reinstatement of service may be made by the district until
another deposit equal to the greater of a sum equal to two
twelfths of the average usage for the applicant’s specific
customer class or $50 has been remitted to the district. After
twelve months of prompt payment history, the district shall
return the deposit to the customer or credit the customer’s
account at a rate as the Public Service Commission may
prescribe: Provided, That where the customer is a tenant, the
district is not required to return the deposit until the time the
tenant discontinues service with the district. Whenever any rates,
fees, rentals or charges for services or facilities furnished remain
unpaid for a period of twenty days after the same become due
and payable, the user of the services and facilities provided is
delinquent and the user is liable at law until all rates, fees and
charges are fully paid. The board may, under reasonable rules
promulgated by the Public Service Commission, shut off and
discontinue water or gas services to all delinquent users of either
water or gas facilities, or both, ten days after the water or gas
services become delinquent: Provided, however, That nothing
contained within the rules of the Public Service Commission
shall be deemed to require any agents or employees of the board
to accept payment at the customer’s premises in lieu of
discontinuing service for a delinquent bill.

(b) In the event that any publicly or privately owned utility,
city, incorporated town, other municipal corporation or other
public service district included within the district owns and
operates separately water facilities, sewer facilities or
stormwater facilities and the district owns and operates another
kind of facility, either water or sewer, or both, as the case may
be, then the district and the publicly or privately owned utility,
city, incorporated town or other municipal corporation or other
public service district shall covenant and contract with each
other to shut off and discontinue the supplying of water service
for the nonpayment of sewer or stormwater service fees and
charges: Provided, That any contracts entered into by a public
service district pursuant to this section shall be submitted to the Public Service Commission for approval. Any public service district which provides water and sewer service, water and stormwater service or water, sewer and stormwater service has the right to terminate water service for delinquency in payment of water, sewer or stormwater bills. Where one public service district is providing sewer service and another public service district or a municipality included within the boundaries of the sewer or stormwater district is providing water service and the district providing sewer or stormwater service experiences a delinquency in payment, the district or the municipality included within the boundaries of the sewer or stormwater district that is providing water service, upon the request of the district providing sewer or stormwater service to the delinquent account, shall terminate its water service to the customer having the delinquent sewer or stormwater account: Provided, however, that any termination of water service must comply with all rules and orders of the Public Service Commission: Provided further, that nothing contained within the rules of the Public Service Commission shall be deemed to require any agents or employees of the public service districts to accept payment at the customer’s premises in lieu of discontinuing service for a delinquent bill.

(c) Any district furnishing sewer facilities within the district may require or may, by petition to the circuit court of the county in which the property is located, compel or may require the Division of Health to compel all owners, tenants or occupants of any houses, dwellings and buildings located near any sewer facilities where sewage will flow by gravity or be transported by other methods approved by the Division of Health, including, but not limited to, vacuum and pressure systems, approved under the provisions of section nine, article one, chapter sixteen of this code, from the houses, dwellings or buildings into the sewer facilities, to connect with and use the sewer facilities and to cease the use of all other means for the collection, treatment and
disposal of sewage and waste matters from the houses, dwellings and buildings where there is gravity flow or transportation by any other methods approved by the Division of Health, including, but not limited to, vacuum and pressure systems, approved under the provisions of section nine, article one of this chapter and the houses, dwellings and buildings can be adequately served by the sewer facilities of the district and it is declared that the mandatory use of the sewer facilities provided for in this subsection is necessary and essential for the health and welfare of the inhabitants and residents of the districts and of the state. If the public service district requires the property owner to connect with the sewer facilities even when sewage from dwellings may not flow to the main line by gravity and the property owner incurs costs for any changes in the existing dwellings’ exterior plumbing in order to connect to the main sewer line, the public service district board shall authorize the district to pay all reasonable costs for the changes in the exterior plumbing, including, but not limited to, installation, operation, maintenance and purchase of a pump or any other method approved by the Division of Health. Maintenance and operation costs for the extra installation should be reflected in the users charge for approval of the Public Service Commission. The circuit court shall adjudicate the merits of the petition by summary hearing to be held not later than thirty days after service of petition to the appropriate owners, tenants or occupants.

(d) Whenever any district has made available sewer facilities to any owner, tenant or occupant of any house, dwelling or building located near the sewer facility and the engineer for the district has certified that the sewer facilities are available to and are adequate to serve the owner, tenant or occupant and sewage will flow by gravity or be transported by other methods approved by the Division of Health from the house, dwelling or building into the sewer facilities, the district may charge, and the owner, tenant or occupant shall pay, the rates and charges for services
established under this article only after thirty days’ notice of the availability of the facilities has been received by the owner, tenant or occupant. Rates and charges for sewage services shall be based upon actual water consumption or the average monthly water consumption based upon the owner’s, tenant’s or occupant’s specific customer class.

(e) The owner, tenant or occupant of any real property may be determined and declared to be served by a stormwater system only after each of the following conditions is met: (1) The district has been designated by the Environmental Protection Agency as an entity to serve a West Virginia Separate Storm Sewer System community, as defined in 40 C. F. R. §122.26; (2) the district’s authority has been properly expanded to operate and maintain a stormwater system; (3) the district has made available a stormwater system where stormwater from the real property affects or drains into the stormwater system; and (4) the real property is located in the Municipal Separate Storm Sewer System’s designated service area. It is further hereby found, determined and declared that the mandatory use of the stormwater system is necessary and essential for the health and welfare of the inhabitants and residents of the district and of the state. The district may charge and the owner, tenant or occupant shall pay the rates, fees and charges for stormwater services established under this article only after thirty days’ notice of the availability of the stormwater system has been received by the owner. An entity providing stormwater service shall provide a tenant a report of the stormwater fee charged for the entire property and, if appropriate, that portion of the fee to be assessed to the tenant.

(f) All delinquent fees, rates and charges of the district for either water facilities, sewer facilities, gas facilities or stormwater systems or stormwater management programs are liens on the premises served of equal dignity, rank and priority with the lien on the premises of state, county, school and
municipal taxes. Nothing contained within the rules of the Public
Service Commission shall be deemed to require any agents or
employees of the public service districts to accept payment at the
customer’s premises in lieu of discontinuing service for a
delinquent bill. In addition to the other remedies provided in this
section, public service districts are granted a deferral of filing
fees or other fees and costs incidental to the bringing and
maintenance of an action in magistrate court for the collection of
delinquent water, sewer, stormwater or gas bills. If the district
collects the delinquent account, plus reasonable costs, from its
customer or other responsible party, the district shall pay to the
magistrate the normal filing fee and reasonable costs which were
previously deferred. In addition, each public service district may
exchange with other public service districts a list of delinquent
accounts: Provided, That an owner of real property may not be
held liable for the delinquent rates or charges for services or
facilities of a tenant, nor may any lien attach to real property for
the reason of delinquent rates or charges for services or facilities
of a tenant of the real property unless the owner has contracted
directly with the public service district to purchase the services
or facilities.

(g) Anything in this section to the contrary notwithstanding,
any establishment, as defined in section three, article eleven,
chapter twenty-two of this code, now or hereafter operating its
own sewage disposal system pursuant to a permit issued by the
Department of Environmental Protection, as prescribed by
section eleven of said article, is exempt from the provisions of
this section.

(h) A public service district which has been designated by
the Environmental Protection Agency as an entity to serve a
West Virginia Separate Storm Sewer System community shall
prepare an annual report detailing the collection and expenditure
of rates, fees or charges and make it available for public review
§16-13A-25. Borrowing and bond issuance; procedure.

A public service district has plenary power to borrow money, enter into contracts for the provision of engineering, design or feasibility studies, issue or contract to issue revenue bonds or exercise any of the powers conferred by the provisions of section thirteen, twenty or twenty-four of this article. Upon written request of the public service board contemplating such transaction or project, the Public Service Commission shall provide technical support to the public service board, including, but not limited to, engineering, design and financial analysis of the proposed transaction or project.
consistent with the productive use of the state’s energy resources, such as coal;

(4) Ensure that rates and charges for utility services are just, reasonable, applied without unjust discrimination or preference, applied in a manner consistent with the purposes and policies set forth in article two-a of this chapter and based primarily on the costs of providing these services;

(5) Encourage energy conservation and the effective and efficient management of regulated utility enterprises; and

(6) Encourage removal of artificial barriers to rail carrier service, stimulate competition, stimulate the free flow of goods and passengers throughout the state and promote the expansion of the tourism industry, thereby improving the economic condition of the state.

(b) The Legislature creates the Public Service Commission to exercise the legislative powers delegated to it. The Public Service Commission is charged with the responsibility for appraising and balancing the interests of current and future utility service customers, the general interests of the state’s economy and the interests of the utilities subject to its jurisdiction in its deliberations and decisions.

(c) The Legislature directs the Public Service Commission to identify, explore and consider the potential benefits or risks associated with emerging and state-of-the-art concepts in utility management, rate design and conservation. The commission may conduct inquiries and hold hearings regarding such concepts in order to provide utilities subject to its jurisdiction and other interested persons the opportunity to comment and shall report to the Governor and the Legislature regarding its findings and policies to each of these areas not later than the first day of the regular session of the Legislature in the year 1985, and every two years thereafter.
(d) It is legislative policy to ensure that the Legislature and the general public become better informed regarding the regulation of public utilities in this state and the conduct of the business of the Public Service Commission. To aid in the achievement of this policy, the Public Service Commission annually shall present to the Joint Committee on Government and Finance, created by article three, chapter four of this code, or a subcommittee designated by the joint committee, a management summary report which describes in a concise manner:

1. The major activities of the commission for the year especially as such activities relate to the implementation of the provisions of this chapter;

2. Important policy decisions reached and initiatives undertaken during the year;

3. The current balance of supply and demand for natural gas and electric utility services in the state and forecast of the probable balance for the next ten years; and

4. Other information considered by the commission to be important including recommendations for statutory reform and the reasons for such recommendations.

(e) In addition to any other studies and reports required to be conducted and made by the Public Service Commission pursuant to any other provision of this section, the commission shall study and initially report to the Legislature no later than the first day of the regular session of the Legislature in the year 1980 upon:

1. The extent to which natural gas wells or wells heretofore supplying gas utilities in this state have been capped off or shut in; the number of such wells; their probable extent of future production and the reasons given and any justification for capping off or shutting in such wells; the reasons, if any, why
persons engaged or heretofore engaged in the development of gas wells in this state or the Appalachian areas have been discouraged from drilling, developing or selling the production of such wells; and whether there are fixed policies by any utility or group of utilities to avoid the purchase of natural gas produced in the Appalachian region of the United States generally and in West Virginia specifically.

(2) The extent of the export and import of natural gas utility supplies in West Virginia.

(3) The cumulative effect of the practices mentioned in subdivisions (1) and (2) of this subsection upon rates theretofore and hereafter charged gas utility customers in West Virginia. In carrying out the provisions of this section the commission shall have jurisdiction over such persons, whether public utilities or not, as may be in the opinion of the commission necessary to the exercise of its mandate and may compel attendance before it, take testimony under oath and compel the production of papers or other documents. Upon reasonable request by the commission, all other state agencies shall cooperate with the commission in carrying out the provisions and requirements of this subsection.

(f) No later than the first day of the regular session of the Legislature in the year 1980, the Public Service Commission shall submit to the Legislature a plan for internal reorganization which plan shall specifically address the following:

(1) A division within the Public Service Commission which shall include the office of the commissioners, the hearing examiners and such support staff as may be necessary to carry out the functions of decisionmaking and general supervision of the commission, which functions shall not include advocacy in cases before the commission;

(2) The creation of a division which shall act as an advocate for the position of and in the interest of all customers;
(3) The means and procedures by which the division to be created pursuant to the provisions of subdivision (2) of this subsection shall protect the interests of each class of customers and the means by which the commission will assure that such division will be financially and departmentally independent of the division created by subdivision (1) of this subsection;

(4) The creation of a division within the Public Service Commission which shall assume the duties and responsibilities now charged to the commissioners with regard to motor carriers which division shall exist separately from those divisions set out in subdivisions (1) and (2) of this subsection and which shall relieve the commissioners of all except minimal administrative responsibilities as to motor carriers and which plan shall provide for a hearing procedure to relieve the commissioners from hearing motor carrier cases;

(5) Which members of the staff of the Public Service Commission shall be exempted from the salary schedules or pay plan adopted by the Civil Service Commission and identify such staff members by job classification or designation, together with the salary or salary ranges for each such job classification or designation;

(6) The manner in which the commission will strengthen its knowledge and independent capacity to analyze key conditions and trends in the industries it regulates extending from general industry analysis and supply-demand forecasting to continuing and more thorough scrutiny of the capacity planning, construction management, operating performance and financial condition of the major companies within these industries.

Such plan shall be based on the concept that each of the divisions mentioned in subdivisions (1), (2) and (4) of this subsection shall exist independently of the others and the plan shall discourage ex parte communications between them by such
means as the commission shall direct, including, but not limited
to, separate clerical and professional staffing for each division.
Further, the Public Service Commission is directed to
incorporate within the said plan to the fullest extent possible the
recommendations presented to the subcommittee on the Public
Service Commission of the Joint Committee on Government and
Finance in a final report dated February, 1979, and entitled A
Plan for Regulatory Reform and Management Improvement.

The commission shall, before January 5, 1980, adopt said
plan by order, which order shall promulgate the same as a rule
of the commission to be effective upon the date specified in said
order, which date shall be no later than December 31, 1980.
Certified copies of such order and rule shall be filed on the first
day of the 1980 regular session of the Legislature, by the
chairman of the commission with the clerk of each house of the
Legislature, the Governor and the Secretary of State. The
chairman of the commission shall also file with the office of the
Secretary of State the receipt of the clerk of each house and of
the Governor, which receipt shall evidence compliance with this
section.

Upon the filing of a certified copy of such order and rule, the
clerk of each house of the Legislature shall report the same to
their respective houses and the presiding officer thereof shall
refer the same to appropriate standing committee or committees.

Within the limits of funds appropriated therefor, the rule of
the Public Service Commission shall be effective upon the date
specified in the order of the commission promulgating it unless
an alternative plan be adopted by general law or unless the rule
is disapproved by a concurrent resolution of the Legislature
adopted prior to adjournment sine die of the regular session of
the Legislature to be held in the year 1980: Provided, That if
such rule is approved in part and disapproved in part by a
concurrent resolution of the Legislature adopted prior to such
adjournment, such rule shall be effective to the extent and only
to the extent that the same is approved by such concurrent
resolution.

The rules promulgated and made effective pursuant to this
section shall be effective notwithstanding any other provisions
of this code for the promulgation of rules or regulations.

(g) The Public Service Commission is hereby directed to
cooperate with the Joint Committee on Government and Finance
of the Legislature in its review, examination and study of the
administrative operations and enforcement record of the Railroad
Safety Division of the Public Service Commission and any
similar studies.

(h) (1) The Legislature hereby finds that rates for natural gas
charged to customers of all classes have risen dramatically in
recent years to the extent that such increases have adversely
affected all customer classes. The Legislature further finds that
it must take action necessary to mitigate the adverse
consequences of these dramatic rate increases.

(2) The Legislature further finds that the practices of natural
gas utilities in purchasing high-priced gas supplies, in purchasing
gas supplies from out-of-state sources when West Virginia
possesses abundant natural gas, and in securing supplies, directly
or indirectly, by contractual agreements including take-or-pay
provisions, indefinite price escalators or most-favored nation
clauses have contributed to the dramatic increase in natural gas
prices. It is therefore the policy of the Legislature to discourage
such purchasing practices in order to protect all customer
classes.

(3) The Legislature further finds that it is in the best interests
of the citizens of West Virginia to encourage the transportation
of natural gas in intrastate commerce by interstate or intrastate
pipelines or by local distribution companies in order to provide competition in the natural gas industry and in order to provide natural gas to consumers at the lowest possible price.

(i) The Legislature further finds that transactions between utilities and affiliates are a contributing factor to the increase in natural gas and electricity prices and tend to confuse consideration of a proper rate of return calculation. The Legislature therefore finds that it is imperative that the Public Service Commission have the opportunity to properly study the issue of proper rate of return for lengthy periods of time and to limit the return of a utility to a proper level when compared to return or profit that affiliates earn on transactions with sister utilities.

(j) The Legislature further finds that water and sewer utilities that are political subdivisions of the state providing separate or combined services and having at least four thousand five hundred customers and annual gross revenues of $3 million or more are most fairly and effectively regulated by the local governing body with respect to rates, borrowing and capital projects. Therefore, notwithstanding any contrary provisions of this section, the jurisdiction of the Public Service Commission over water and sewer utilities that are political subdivisions of the state is limited to that granted specifically in this code.

(k) The Legislature further finds that an adequate cash working capital fund is essential to allow water and sewer utilities that are political subdivisions of the state to deliver continuous and compliant service. Therefore, these utilities shall maintain a working capital reserve in an amount of no less than one eighth of actual annual operation and maintenance expense. This reserve shall be separate and distinct from and in addition to any repair and replacement fund that may be required by bond covenants.
§24-1-1b. Supplemental rule for reorganization.

The Public Service Commission shall, by general order, create a division within its staff which shall, upon written request of the governing body of a political subdivision that operates a water, sewer and/or stormwater utility, provide legal, operational, engineering, financial, ratemaking and accounting advice and assistance to water, sewer and/or stormwater utilities that are political subdivisions of the state and may perform or participate in the studies required under section one-b, article thirteen-a, chapter sixteen of this code.

§24-1-2. Definitions.

Except where a different meaning clearly appears from the context, the words “public utility”, when used in this chapter, shall mean and include any person or persons, or association of persons, however associated, whether incorporated or not, including municipalities, engaged in any business, whether herein enumerated or not, which is, or shall hereafter be held to be, a public service. Whenever in this chapter the words “commission” or “Public Service Commission” occur, such word or words shall, unless a different intent clearly appears from the context, be taken to mean the Public Service Commission of West Virginia. Whenever used in this chapter, “customer” shall mean and include any person, firm, corporation, municipality, public service district or any other entity who purchases a product or services of any utility and shall include any such person, firm, corporation, municipality, public service district or any other entity who purchases such services or product for resale. Whenever in this chapter the words “governing body” occur, such word or words shall, unless a different intent clearly appears from the context, be taken to mean the municipal body charged with the authority and responsibility of enacting ordinances of the municipality, as defined in section two, article one, chapter eight of this code, or a public service board of a
23 public service district, as defined in section three, article
24 thirteen-a, chapter sixteen of this code.

ARTICLE 2. POWERS AND DUTIES OF PUBLIC SERVICE
COMMISSION.

*§24-2-1. Jurisdiction of commission; waiver of jurisdiction.

1 (a) The jurisdiction of the commission shall extend to all
2 public utilities in this state and shall include any utility engaged
3 in any of the following public services:

4 Common carriage of passengers or goods, whether by air,
5 railroad, street railroad, motor or otherwise, by express or
6 otherwise, by land, water or air, whether wholly or partly by
7 land, water or air; transportation of oil, gas or water by pipeline;
8 transportation of coal and its derivatives and all mixtures and
9 combinations thereof with other substances by pipeline; sleeping
10 car or parlor car services; transmission of messages by
11 telephone, telegraph or radio; generation and transmission of
12 electrical energy by hydroelectric or other utilities for service to
13 the public, whether directly or through a distributing utility;
14 supplying water, gas or electricity by municipalities or others;
15 sewer systems servicing twenty-five or more persons or firms
16 other than the owner of the sewer systems: Provided, That if a
17 public utility other than a political subdivision intends to provide
18 sewer service by an innovative, alternative method, as defined by
19 the federal Environmental Protection Agency, the innovative,
20 alternative method is a public utility function and subject to the
21 jurisdiction of the Public Service Commission regardless of the
22 number of customers served by the innovative, alternative
23 method; any public service district created under the provisions
24 of article thirteen-a, chapter sixteen of this code; toll bridges,
25 wharves, ferries; solid waste facilities; and any other public

*NOTE: This section was also amended by S. B. 576 (Chapter 197),
which passed prior to this act.
service: Provided, however, That natural gas producers who
provide natural gas service to not more than twenty-five
residential customers are exempt from the jurisdiction of the
commission with regard to the provisions of such residential
service: Provided further, That upon request of any of the
customers of such natural gas producers, the commission may,
upon good cause being shown, exercise such authority as the
commission may deem appropriate over the operation, rates and
charges of such producer and for such length of time as the
commission may consider to be proper.

(b) The jurisdiction of the commission over political
subdivisions of this state providing separate or combined
services and having at least four thousand five hundred
customers and annual combined gross revenues of $3 million or
more that are political subdivisions of the state is limited to:

(1) General supervision of public utilities, as granted and
described in section five of this article;

(2) Regulation of measurements, practices, acts or services,
as granted and described in section seven of this article;

(3) Regulation of a system of accounts to be kept by a public
utility that is a political subdivision of the state, as granted and
described in section eight of this article;

(4) Submission of information to the commission regarding
rates, tolls, charges or practices, as granted and described in
section nine of this article;

(5) Authority to subpoena witnesses, take testimony and
administer oaths to any witness in any proceeding before or
conducted by the commission, as granted and described in
section ten of this article; and

(6) Investigation and resolution of disputes involving
political subdivisions of the state regarding inter-utility
agreements, rates, fees and charges, service areas and contested utility combinations.

(7) Customers of water and sewer utilities operated by a political subdivision of the state and customers of stormwater utilities operated by a public service district may bring formal or informal complaints regarding the commission’s exercise of the powers enumerated in this section and the commission shall resolve these complaints.

(8) In the event that a political subdivision has a deficiency in either its bond revenue or bond reserve accounts, or is otherwise in breach of a bond covenant, the bond holder may petition the Public Service Commission for such redress as will bring the accounts to current status or otherwise resolve the breached covenant, and the commission shall have jurisdiction to fully resolve the alleged deficiency or breach.

(c) The commission may, upon application, waive its jurisdiction and allow a utility operating in an adjoining state to provide service in West Virginia when:

(1) An area of West Virginia cannot be practicably and economically served by a utility licensed to operate within the State of West Virginia;

(2) Said area can be provided with utility service by a utility which operates in a state adjoining West Virginia;

(3) The utility operating in the adjoining state is regulated by a regulatory agency or commission of the adjoining state; and

(4) The number of customers to be served is not substantial. The rates the out-of-state utility charges West Virginia customers shall be the same as the rate the utility is duly authorized to charge in the adjoining jurisdiction. The commission, in the case of any such utility, may revoke its waiver of jurisdiction for good cause.
(d) Any other provisions of this chapter to the contrary notwithstanding:

(1) An owner or operator of an electric generating facility located or to be located in this state that has been designated as an exempt wholesale generator under applicable federal law, or will be so designated prior to commercial operation of the facility, and for which such facility the owner or operator holds a certificate of public convenience and necessity issued by the commission on or before July 1, 2003, shall be subject to subsections (e), (f), (g), (h), (i) and (j), section eleven-c of this article as if the certificate of public convenience and necessity for such facility were a siting certificate issued under said section and shall not otherwise be subject to the jurisdiction of the commission or to the provisions of this chapter with respect to such facility except for the making or constructing of a material modification thereof as provided in subdivision (5) of this subsection.

(2) Any person, corporation or other entity that intends to construct or construct and operate an electric generating facility to be located in this state that has been designated as an exempt wholesale generator under applicable federal law, or will be so designated prior to commercial operation of the facility, and for which facility the owner or operator does not hold a certificate of public convenience and necessity issued by the commission on or before July 1, 2003, shall, prior to commencement of construction of the facility, obtain a siting certificate from the commission pursuant to the provisions of section eleven-c of this article in lieu of a certificate of public convenience and necessity pursuant to the provisions of section eleven of this article. An owner or operator of an electric generating facility as is described in this subdivision for which a siting certificate has been issued by the commission shall be subject to subsections (e), (f), (g), (h), (i) and (j), section eleven-c of this article and shall not otherwise be subject to the jurisdiction of the
commission or to the provisions of this chapter with respect to such facility except for the making or constructing of a material modification thereof as provided in subdivision (5) of this subsection.

(3) An owner or operator of an electric generating facility located in this state that had not been designated as an exempt wholesale generator under applicable federal law prior to commercial operation of the facility that generates electric energy solely for sale at retail outside this state or solely for sale at wholesale in accordance with any applicable federal law that preempts state law or solely for both such sales at retail and such sales at wholesale and that had been constructed and had engaged in commercial operation on or before July 1, 2003, shall not be subject to the jurisdiction of the commission or to the provisions of this chapter with respect to such facility, regardless of whether such facility subsequent to its construction has been or will be designated as an exempt wholesale generator under applicable federal law: Provided, That such owner or operator shall be subject to subdivision (5) of this subsection if a material modification of such facility is made or constructed.

(4) Any person, corporation or other entity that intends to construct or construct and operate an electric generating facility to be located in this state that has not been or will not be designated as an exempt wholesale generator under applicable federal law prior to commercial operation of the facility that will generate electric energy solely for sale at retail outside this state or solely for sale at wholesale in accordance with any applicable federal law that preempts state law or solely for both such sales at retail and such sales at wholesale and that had not been constructed and had not been engaged in commercial operation on or before July 1, 2003, shall, prior to commencement of construction of the facility, obtain a siting certificate from the commission pursuant to the provisions of section eleven-c of this article in lieu of a certificate of public convenience and necessity
pursuant to the provisions of section eleven of this article. An owner or operator of an electric generating facility as is described in this subdivision for which a siting certificate has been issued by the commission shall be subject to subsections (e), (f), (g), (h), (i) and (j), section eleven-c of this article and shall not otherwise be subject to the jurisdiction of the commission or to the provisions of this chapter with respect to such facility except for the making or constructing of a material modification thereof as provided in subdivision (5) of this subsection.

(5) An owner or operator of an electric generating facility described in this subsection shall, before making or constructing a material modification of the facility that is not within the terms of any certificate of public convenience and necessity or siting certificate previously issued for the facility or an earlier material modification thereof, obtain a siting certificate for the modification from the commission pursuant to the provisions of section eleven-c of this article in lieu of a certificate of public convenience and necessity for the modification pursuant to the provisions of section eleven of this article and, except for the provisions of section eleven-c of this article, shall not otherwise be subject to the jurisdiction of the commission or to the provisions of this chapter with respect to such modification.

(6) The commission shall consider an application for a certificate of public convenience and necessity filed pursuant to section eleven of this article to construct an electric generating facility described in this subsection or to make or construct a material modification of such electric generating facility as an application for a siting certificate pursuant to section eleven-c of this article if the application for the certificate of public convenience and necessity was filed with the commission prior to July 1, 2003, and if the commission has not issued a final order thereon as of that date.
(7) The limitations on the jurisdiction of the commission over, and on the applicability of the provisions of this chapter to, the owner or operator of an electric generating facility as imposed by and described in this subsection shall not be deemed to affect or limit the commission’s jurisdiction over contracts or arrangements between the owner or operator of such facility and any affiliated public utility subject to the provisions of this chapter.

§24-2-2. General power of commission to regulate public utilities.

(a) The commission is hereby given power to investigate all rates, methods and practices of public utilities subject to the provisions of this chapter; to require them to conform to the laws of this state and to all rules, regulations and orders of the commission not contrary to law; and to require copies of all reports, rates, classifications, schedules and timetables in effect and used by the public utility or other person to be filed with the commission, and all other information desired by the commission relating to the investigation and requirements, including inventories of all property in such form and detail as the commission may prescribe. The commission may compel obedience to its lawful orders by mandamus or injunction or other proper proceedings in the name of the state in any circuit court having jurisdiction of the parties or of the subject matter, or the Supreme Court of Appeals directly, and the proceedings shall have priority over all pending cases. The commission may change any intrastate rate, charge or toll which is unjust or unreasonable or any interstate charge with respect to matters of a purely local nature which have not been regulated by or pursuant to an act of Congress and may prescribe a rate, charge or toll that is just and reasonable, and change or prohibit any practice, device or method of service in order to prevent undue discrimination or favoritism between persons and between localities and between commodities for a like and contemporaneous service. But in no case shall the rate, toll or
charge be more than the service is reasonably worth, considering
the cost of the service. Every order entered by the commission
shall continue in force until the expiration of the time, if any,
named by the commission in the order, or until revoked or
modified by the commission, unless the order is suspended,
modified or revoked by order or decree of a court of competent
jurisdiction: Provided, That in the case of utilities used by
emergency shelter providers, the commission shall prescribe
such rates, charges or tolls that are the lowest available.
“Emergency shelter provider” means any nonprofit entity which
provides temporary emergency housing and services to the
homeless or to victims of domestic violence or other abuse.

(b) Notwithstanding any other provision of this code to the
contrary, rates are not discriminatory if, when considering the
debt costs associated with a future water or sewer project which
would not benefit existing customers, the commission
establishes rates which ensure that the future customers to be
served by the new project are solely responsible for the debt
costs associated with the project.

(c) Notwithstanding any other provision of this code to the
contrary, the jurisdiction of the commission over water and/or
sewer utilities that are political subdivisions of the state
providing a separate or combined services and having at least
four thousand five hundred customers and annual combined
gross revenues of $3 million or more shall be limited to those
powers enumerated in subsection (b), section one of this article.

§24-2-3. General power of commission with respect to rates.

(a) The commission shall have power to enforce, originate,
establish, change and promulgate tariffs, rates, joint rates, tolls
and schedules for all public utilities except for water and/or
sewer utilities that are political subdivisions of this state
providing a separate or combined services and having at least
four thousand five hundred customers and annual combined
gross revenues of $3 million or more: Provided, That the
commission may exercise such rate authority over municipally
owned electric or natural gas utilities or a municipally owned
water and/or sewer utility having less than four thousand five
hundred customers and $3 million dollars annual combined gross
revenues, only under the circumstances and limitations set forth
in section four-b of this article. And whenever the commission
shall, after hearing, find any existing rates, tolls, tariffs, joint
rates or schedules enacted or maintained by a utility regulated
under the provisions of this section to be unjust, unreasonable,
insufficient or unjustly discriminatory or otherwise in violation
of any of the provisions of this chapter, the commission shall by
an order fix reasonable rates, joint rates, tariffs, tolls or
schedules to be followed in the future in lieu of those found to be
unjust, unreasonable, insufficient or unjustly discriminatory or
otherwise in violation of any provisions of law, and the said
commission, in fixing the rate of any railroad company, may fix
a fair, reasonable and just rate to be charged on any branch line
thereof, independent of the rate charged on the main line of such
railroad.

(b) In determining just and reasonable rates, the commission
may audit and investigate management practices and policies, or
have performed an audit and investigation of such practices and
policies, in order to determine whether the utility is operating
with efficiency and is utilizing sound management practices. The
commission shall adopt rules and regulations setting forth the
scope, frequency and application of such audits and
investigations to the various utilities subject to its jurisdiction.
The commission may include the cost of conducting the
management audit in the cost of service of the utility.

(c) In determining just and reasonable rates, the commission
shall investigate and review transactions between utilities and
affiliates. The commission shall limit the total return of the
utility to a level which, when considered with the level of profit or return the affiliate earns on transactions with the utility, is just and reasonable.


(a) After June 30, 1981, no public utility subject to this chapter, except for water and/or sewer utilities that are political subdivisions of the state providing separate or combined services and having at least four thousand five hundred customers and annual gross revenue of $3 million or more from its separate or combined services, shall change, suspend or annul any rate, joint rate, charge, rental or classification except after thirty days’ notice to the commission and the public, which notice shall plainly state the changes proposed to be made in the schedule then in force and the time when the changed rates or charges shall go into effect; but the commission may enter an order suspending the proposed rate as hereinafter provided. The proposed changes shall be shown by printing new schedules, or shall be plainly indicated upon the schedules in force at the time, and kept open to public inspection: Provided, That the commission may, in its discretion, and for good cause shown, allow changes upon less time than the notice herein specified, or may modify the requirements of this section in respect to publishing, posting and filing of tariffs, either by particular instructions or by general order.

(b) Whenever there shall be filed with the commission any schedule stating a change in the rates or charges, or joint rates or charges, or stating a new individual or joint rate or charge or joint classification or any new individual or joint regulation or practice affecting any rate or charge, the commission may, either upon complaint or upon its own initiative without complaint, enter upon a hearing concerning the propriety of such rate, charge, classification, regulation or practice; and, if the commission so orders, it may proceed without answer or other
form of pleading by the interested parties, but upon reasonable
notice, and, pending such hearing and the decisions thereon, the
commission, upon filing with such schedule and delivering to the
public utility affected thereby a statement in writing of its
reasons for such suspension, may suspend the operation of such
schedule and defer the use of such rate, charge, classification,
regulation or practice, but not for a longer period than two
hundred seventy days beyond the time when such rate, charge,
classification, regulation or practice would otherwise go into
effect; and after full hearing, whether completed before or after
the rate, charge, classification, regulation or practice goes into
effect, the commission may make such order in reference to such
rate, charge, classification, regulation or practice as would be
proper in a proceeding initiated after the rate, charge,
classification, regulation or practice had become effective:
Provided, That in the case of a public utility having two
thousand five hundred customers or less and which is not a
political subdivision and which is not principally owned by any
other public utility corporation or public utility holding
corporation, the commission may suspend the operation of such
schedule and defer the use of such rate, charge, classification,
regulation or practice, but not for a longer period than one
hundred twenty days beyond the time when such rate, charge,
classification, regulation or practice would otherwise go into
effect; and in the case of a public utility having more than two
thousand five hundred customers, but not more than five
thousand customers, and which is not a political subdivision and
which is not principally owned by any other public utility
corporation or public utility holding corporation, the commission
may suspend the operation of such schedule and defer the use of
such rate, charge, classification, regulation or practice, but not
for a longer period than one hundred fifty days beyond the time
when such rate, charge, classification, regulation or practice
would otherwise go into effect; and in the case of a public utility
having more than five thousand customers, but not more than
seven thousand five hundred customers, and which is not a political subdivision and which is not principally owned by any other public utility corporation or public utility holding corporation, the commission may suspend the operation of such schedule and defer the use of such rate, charge, classification, regulation or practice, but not for a longer period than one hundred eighty days beyond the time when such rate, charge, classification, regulation or practice would otherwise go into effect; and after full hearing, whether completed before or after the rate, charge, classification, regulation or practice goes into effect, the commission may make such order in reference to such rate, charge, classification, regulation or practice as would be proper in a proceeding initiated after the rate, charge, classification, regulation or practice had become effective: 

Provided, however, That, in the case of rates established or proposed that increase by less than twenty-five percent of the gross revenue of the regulated public service district, there shall be no suspension period in the case of rates established by a public service district pursuant to section nine, article thirteen-a, chapter sixteen of this code and the proposed rates of public service districts shall go into effect upon the date of filing with the commission, subject to refund modification at the conclusion of the commission proceeding. In the case of rates established or proposed that increase by more than twenty-five percent of the gross revenue of the public service district, the district may apply for, and the commission may grant, a waiver of the suspension period and allow rates to be effective upon the date of filing with the commission. The public service district shall provide notice by Class 1 legal advertisement in a newspaper of general circulation in its service territory of the percentage increase in rates at least fourteen days prior to the effective date of the increased rates. Any refund determined to be determined to be due and owing as a result of any difference between any final rates approved by the commission and the rates placed into effect subject to refund shall be refunded by the public service
district as a credit against each customer’s account for a period
of up to six months after entry of the commission’s final order.
Any remaining balance which is not fully credited by credit
within six months after entry of the commission’s final order
shall be directly refunded to the customer by check: Provided
further, That if any such hearing and decision thereon is not
concluded within the periods of suspension, as above stated,
such rate, charge, classification, regulation or practice shall go
into effect at the end of such period not subject to refund: And
provided further, That if any such rate, charge, classification,
regulation or practice goes into effect because of the failure of
the commission to reach a decision, the same shall not preclude
the commission from rendering a decision with respect thereto
which would disapprove, reduce or modify any such proposed
rate, charge, classification, regulation or practice, in whole or in
part, but any such disapproval, reduction or modification shall
not be deemed to require a refund to the customers of such utility
as to any rate, charge, classification, regulation or practice so
disapproved, reduced or modified. The fact of any rate, charge,
classification, regulation or practice going into effect by reason
of the commission’s failure to act thereon shall not affect the
commission’s power and authority to subsequently act with
respect to any such application or change in any rate, charge,
classification, regulation or practice. Any rate, charge,
classification, regulation or practice which shall be approved,
disapproved, modified or changed, in whole or in part, by
decision of the commission shall remain in effect as so approved,
disapproved, modified or changed during the period or pendency
of any subsequent hearing thereon or appeal therefrom. Orders
of the commission affecting rates, charges, classifications,
regulations or practices which have gone into effect
automatically at the end of the of the suspension period are
prospective in effect.

(c) At any hearing involving a rate sought to be increased or
involving the change of any rate, charge, classification,
regulation or practice, the burden of proof to show the justness
and reasonableness of the increased rate or proposed increased
rate, or the proposed change of rate, charge, classification,
regulation or practice shall be upon the public utility making
application for such change. The commission shall, whenever
practicable and within budgetary constraints, conduct one or
more public hearings within the area served by the public utility
making application for such increase or change, for the purpose
of obtaining comments and evidence on the matter from local
ratepayers.

(d) Each public utility subject to the provisions of this
section shall be required to establish, in a written report which
shall be incorporated into each general rate case application, that
it has thoroughly investigated and considered the emerging and
state-of-the-art concepts in the utility management, rate design
and conservation as reported by the commission under
subsection (c), section one, article one of this chapter as
alternatives to, or in mitigation of, any rate increase. The utility
report shall contain as to each concept considered the reasons for
adoption or rejection of each. When in any case pending before
the commission all evidence shall have been taken and the
hearing completed, the commission shall render a decision in
such case. The failure of the commission to render a decision
with respect to any such proposed change in any such rate,
charge, classification, regulation or practice within the various
time periods specified in this section after the application
therefor shall constitute neglect of duty on the part of the
commission and each member thereof.

(e) Where more than twenty members of the public are
affected by a proposed change in rates, it shall be a sufficient
notice to the public within the meaning of this section if such
notice is published as a Class II legal advertisement in
compliance with the provisions of article three, chapter fifty-nine
of this code and the publication area for such publication shall be
the community where the majority of the resident members of the public affected by such change reside or, in case of nonresidents, have their principal place of business within this state.

(f) The commission may order rates into effect subject to refund, plus interest in the discretion of the commission, in cases in which the commission determines that a temporary or interim rate increase is necessary for the utility to avoid financial distress, or in which the costs upon which these rates are based are subject to modification by the commission or another regulatory commission and to refund to the public utility. In such case the commission may require such public utility to enter into a bond in an amount deemed by the commission to be reasonable and conditioned upon the refund to the persons or parties entitled thereto of the amount of the excess if such rates so put into effect are subsequently determined to be higher than those finally fixed for such utility.

(g) No utility regulated under the provisions of this section may make application for a general rate increase while another general rate application is pending before the commission and not finally acted upon, except pursuant to the provisions of subsection (f) of this section. The provisions of this subsection shall not be construed so as to prohibit any such rate application from being made while a previous application which has been finally acted upon by the commission is pending before or upon appeal to the West Virginia Supreme Court of Appeals.

§24-2-4b. Procedures for changing rates of electric and natural gas cooperatives, local exchange services of telephone cooperatives and municipally operated public utilities.

(a) The rates and charges of electric cooperatives, natural gas cooperatives and municipal water and/or sewer utilities that are political subdivisions of the state with at least four thousand five
hundred customers and annual combined gross revenue of less than $3 million dollars, except for municipally operated commercial solid waste facilities as defined in section two, article fifteen, chapter twenty-two of this code, and the rates and charges for local exchange services provided by telephone cooperatives are not subject to the rate approval provisions of section four or four-a of this article, but are subject to the limited rate provisions of this section.

(b) All rates and charges set by electric cooperatives, natural gas cooperatives and municipally operated public utilities that are political subdivisions of the state providing water, sewer, electric and natural gas services and all rates and charges for local exchange services set by telephone cooperatives shall be just, reasonable, applied without unjust discrimination between or preference for any customer or class of customer and based primarily on the costs of providing these services. All rates and charges shall be based upon the measured or reasonably estimated cost of service and the equitable sharing of those costs between customers based upon the cost of providing the service received by the customer, including a reasonable plant-in-service depreciation expense. The rates and charges shall be adopted by the electric, natural gas, telephone cooperative or political subdivision’s governing board or body and, in the case of the municipally operated public utility, by municipal ordinance to be effective not sooner than forty-five days after adoption. The 45-day waiting period may be waived by public vote of the governing body if that body finds and declares the public utility that is a political subdivision of the state to be in financial distress such that the 45-day waiting period would be detrimental to the ability of the utility to deliver continued and compliant public services: Provided, That notice of intent to effect a rate change shall be specified on the monthly billing statement of the customers of the utility for the month next preceding the month in which the rate change is to become effective and the utility governing body shall give its customers and, in the case of a
cooperative, its customers, members and stockholders, other
reasonable notices as will allow filing of timely objections to the
proposed rate change and full participation in municipal rate
legislation through the provision of a public forum in which
customers may comment upon the proposed rate change prior to
an enactment vote. The rates and charges or ordinance shall be
filed with the commission, together with any information
showing the basis of the rates and charges and other information
as the commission considers necessary. Any change in the rates
and charges with updated information shall be filed with the
commission. If a petition, as set out in subdivision (1), (2) or (3),
subsection (c) of this section, is received and the electric
cooperative, natural gas cooperative or telephone cooperative or
municipality has failed to file with the commission the rates and
charges with information showing the basis of rates and charges
and other information as the commission considers necessary,
the suspension period limitation of one hundred twenty days and
the one hundred-day period limitation for issuance of an order by
a hearing examiner, as contained in subsections (d) and (e) of
this section, is tolled until the necessary information is filed. The
electric cooperative, natural gas cooperative, telephone
cooperative or municipality shall set the date when any new rate
or charge is to go into effect.

(c) The commission shall review and approve or modify the
rates and charges of electric cooperatives, natural gas
cooperatives, telephone cooperatives, or municipal electric or
natural gas utilities and municipally owned water and/or sewer
utilities that are political subdivisions of the state and having less
than four thousand five hundred customers and $3 million
dollars of annual combined gross revenues upon the filing of a
petition within thirty days of the adoption of the ordinance or
resolution changing the rates or charges by:

(1) Any customer aggrieved by the changed rates or charges
who presents to the commission a petition signed by not less
than twenty-five percent of the customers served by the municipally operated electric or natural gas public utility or municipally owned water and/or sewer utility having less than four thousand five hundred customers and $3 million dollars annual combined gross revenues or twenty-five percent of the membership of the electric, natural gas or telephone cooperative residing within the state;

(2) Any customer who is served by a municipally owned electric or natural gas public utility and who resides outside the corporate limits and who is affected by the change in the rates or charges and who presents to the commission a petition alleging discrimination between customers within and without the municipal boundaries. The petition shall be accompanied by evidence of discrimination; or

(3) Any customer or group of customers of the municipally owned electric or natural gas public utility who is affected by the change in rates who reside within the municipal boundaries and who present a petition to the commission alleging discrimination between a customer or group of customers and other customers of the municipal utility. The petition shall be accompanied by evidence of discrimination.

(d) (1) The filing of a petition with the commission signed by not less than twenty-five percent of the customers served by the municipally owned electric or natural gas public utility or a municipally owned water and/or sewer utility having less than four thousand five hundred customers or $3 million dollars annual combined gross revenues or twenty-five percent of the membership of the electric, natural gas or telephone cooperative residing within the state under subsection (c) of this section shall suspend the adoption of the rate change contained in the ordinance or resolution for a period of one hundred twenty days from the date the rates or charges would otherwise go into effect or until an order is issued as provided herein.
(2) Upon sufficient showing of discrimination by customers outside the municipal boundaries or a customer or a group of customers within the municipal boundaries under a petition filed under subdivision (2) or (3), subsection (c) of this section, the commission shall suspend the adoption of the rate change contained in the ordinance for a period of one hundred twenty days from the date the rates or charges would otherwise go into effect or until an order is issued as provided herein. A municipal rate ordinance enacted pursuant to the provisions of this section and municipal charter or state code that establishes or proposes a rate increase that results in an increase of less than twenty-five percent of the gross revenue of the utility shall be presumed valid and rates shall be allowed to go into effect, subject to refund, upon the date stated in that ordinance. In the case of rates established or proposed that increase by more than twenty-five percent of the gross revenue of the municipally operated public utility, the utility may apply for, and the commission may grant, a waiver of the suspension period and allow rates to be effective upon enactment.

(e) The commission shall forthwith appoint a hearing examiner from its staff to review the grievances raised by the petitioners. The hearing examiner shall conduct a public hearing and shall, within one hundred days from the date the rates or charges would otherwise go into effect, unless otherwise tolled as provided in subsection (b) of this section, issue an order approving, disapproving or modifying, in whole or in part, the rates or charges imposed by the electric, natural gas or telephone cooperative or by the municipally operated public utility pursuant to this section.

(f) Upon receipt of a petition for review of the rates under the provisions of subsection (c) of this section, the commission may exercise the power granted to it under the provisions of section three of this article, consistent with the applicable rate provisions of section twenty, article ten, chapter eight of this
140 code, section four, article nineteen of said chapter and section
141 sixteen, article thirteen, chapter sixteen of this code. The
142 commission may determine the method by which the rates are
143 reviewed and may grant and conduct a de novo hearing on the
144 matter if the customer, electric, natural gas or telephone
145 cooperative or municipality requests a hearing.

146 (g) The commission may, upon petition by an electric,
147 natural gas or telephone cooperative or municipal electric or
148 natural gas public utility or a municipally owned water and/or
149 sewer utility having less than four thousand five hundred
150 customers and $3 million dollars annual combined gross
151 revenues, allow an interim or emergency rate to take effect,
152 subject to refund or future modification, if it is determined that
153 the interim or emergency rate is necessary to protect the
154 municipality from financial hardship attributable to the purchase
155 of the utility commodity sold, or the commission determines that
156 a temporary or interim rate increase is necessary for the utility to
157 avoid financial distress. In such cases, the commission shall
158 waive the 45-day waiting period provided for in subsection (b)
159 of this section and the one hundred twenty-day suspension
160 period provided for in subsection (d) of this section.

161 (h) The commission shall, upon written request of the
162 governing body of a political subdivision, provide technical
163 assistance to the governing body in its deliberations regarding a
164 proposed rate increase.

165 (i) Notwithstanding any other provision, the commission has
166 no authority or responsibility with regard to the regulation of
167 rates, income, services or contracts by municipally operated
168 public utilities for services which are transmitted and sold
169 outside of the State of West Virginia.

170 (j) Notwithstanding any other provision of this code to the
171 contrary, the jurisdiction of the commission over water and/or
sewer utilities that are political subdivisions of the state and
having at least four thousand five hundred customers and annual
gross combined revenues of $3 million or more shall be limited
to those powers enumerated in subsection (b), section one of this
article.

§24-2-7. Unreasonable, etc., regulations, practices and services;
receivership; procedures respecting receivership;
appointment and compensation of receiver;
liquidation.

(a) Whenever, under the provisions of this chapter, the
commission shall find any regulations, measurements, practices,
acts or service to be unjust, unreasonable, insufficient or unjustly
discriminatory, or otherwise in violation of any provisions of this
chapter, or shall find that any service is inadequate, or that any
service which is demanded cannot be reasonably obtained, the
commission shall determine and declare, and by order fix
reasonable measurement, regulations, acts, practices or services,
to be furnished, imposed, observed and followed in the state in
lieu of those found to be unjust, unreasonable, insufficient, or
unjustly discriminatory, inadequate or otherwise in violation of
this chapter, and shall make such other order respecting the same
as shall be just and reasonable.

(b) If the Public Service Commission shall determine that
any utility is unable or unwilling to adequately serve its
customers or has been actually or effectively abandoned by its
owners, or that its management is grossly and willfully
inefficient, irresponsible or unresponsive to the needs of its
customers, the commission may petition to the circuit court of
any county wherein the utility does business for an order
attaching the assets of the utility and placing such utility under
the sole control and responsibility of a receiver. If the court
determines that the petition is proper in all respects and finds,
after a hearing thereon, that the allegations contained in the
petition are true, it shall grant the same and shall order that the utility be placed in receivership. The court, in its discretion and in consideration of the recommendation of the commission, shall appoint a receiver who shall be a responsible individual, partnership or corporation knowledgeable in public utility affairs and who shall maintain control and responsibility for the running and management of the affairs of the utility. In so doing, the receiver shall operate the utility so as to preserve the assets of the utility and to serve the best interests of its customers. The receiver shall be compensated from the assets of said utility in an amount to be determined by the court.

(c) Control of and responsibility for said utility shall remain in the receiver until the same can, in the best interest of the customers, be returned to the owners, transferred to other owners or assumed by another utility or public service corporation: Provided, That if the court after hearing, determines that control of and responsibility for the affairs of the utility should not, in the best interests of its customers, be returned to the legal owners thereof, the receiver shall proceed to liquidate the assets of the utility in the manner provided by law.

(d) The laws generally applicable to receivership shall govern receiverships created pursuant to this section.

§24-2-11. Requirements for certificate of public convenience and necessity.

(a) A public utility, person or corporation other than a political subdivision of the state providing water, sewer and/or stormwater services and having at least four thousand five hundred customers and annual gross combined revenues of $3 million dollars or more may not begin the construction of any plant, equipment, property or facility for furnishing to the public any of the services enumerated in section one, article two of this chapter, nor apply for, nor obtain any franchise, license or permit
from any municipality or other governmental agency, except ordinary extensions of existing systems in the usual course of business, unless and until it shall obtain from the Public Service Commission a certificate of public convenience and necessity authorizing such construction franchise, license or permit.

(b) Upon the filing of any application for the certificate, and after hearing, the commission may, in its discretion, issue or refuse to issue, or issue in part and refuse in part, the certificate of convenience and necessity: Provided, That the commission, after it gives proper notice and if no substantial protest is received within thirty days after the notice is given, may waive formal hearing on the application. Notice shall be given by publication which shall state that a formal hearing may be waived in the absence of substantial protest, made within thirty days, to the application. The notice shall be published as a Class I legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code. The publication area shall be the proposed area of operation.

(c) Any public utility, person or corporation subject to the provisions of this section other than a political subdivision of the state providing water and/or sewer services having at least four thousand five hundred customers and combined annual gross revenue of $3 million dollars or more shall give the commission at least thirty days’ notice of the filing of any application for a certificate of public convenience and necessity under this section: Provided, That the commission may modify or waive the thirty-day notice requirement and shall waive the thirty-day notice requirement for projects approved by the Infrastructure and Jobs Development Council.

(d) The commission shall render its final decision on any application filed under the provisions of this section or section eleven-a of this article within two hundred seventy days of the filing of the application and within ninety days after final
submission of any such application for decision following a
hearing: Provided, That if the application is for authority to
construct a water and sewer project and the projected total cost
is less than $10 million, the commission shall render its final
decision within two hundred twenty-five days of the filing of the
application.

(e) The commission shall render its final decision on any
application filed under the provisions of this section that has
received the approval of the Infrastructure and Jobs
Development Council pursuant to article fifteen-a, chapter thirty-
one of this code within one hundred eighty days after filing of
the application: Provided, That if a substantial protest is received
within thirty days after the notice is provided pursuant to
subsection (b) of this section, the commission shall render its
final decision within two hundred seventy days or two hundred
twenty-five days of the filing of the application, whichever is
applicable as determined in subsection (d) of this section.

(f) If the projected total cost of a project which is the subject
of an application filed pursuant to this section or section eleven-a
of this article is greater than $50 million, the commission shall
render its final decision on any such application filed under the
provisions of this section or section eleven-a of this article
within four hundred days of the filing of the application and
within ninety days after final submission of any such application
for decision after a hearing.

(g) If a decision is not rendered within the time frames
established in this section, the commission shall issue a
certificate of convenience and necessity as applied for in the
application.

(h) The commission shall prescribe rules as it may deem
proper for the enforcement of the provisions of this section; and,
in establishing that public convenience and necessity do exist,
the burden of proof shall be upon the applicant.
(i) Pursuant to the requirements of this section, the commission may issue a certificate of public convenience and necessity to any intrastate pipeline, interstate pipeline or local distribution company for the transportation in intrastate commerce of natural gas used by any person for one or more uses, as defined by rule, by the commission in the case of:

(1) Natural gas sold by a producer, pipeline or other seller to the person; or

(2) Natural gas produced by the person.

(j) A public utility, including a public service district, which has received a certificate of public convenience and necessity after July 8, 2005, from the commission and has been approved by the Infrastructure and Jobs Development Council is not required to, and cannot be compelled to, reopen the proceeding if the cost of the project changes but the change does not affect the rates established for the project.

(k) Any public utility, person or corporation proposing any electric power project that requires a certificate under this section is not required to obtain such certificate before applying for or obtaining any franchise, license or permit from any municipality or other governmental agency.

(l) Water, sewer and/or stormwater utilities that are political subdivisions of the state and having at least four thousand five hundred customers and combined gross revenues of $3 million dollars or more desiring to pursue construction projects that are not in the ordinary course of business shall provide notice to both current customers and those citizens who will be affected by the proposed construction as follows:

(1) Adequate prior public notice of the contemplated construction by causing a notice of intent to pursue a project that is not in the ordinary course of business to be specified on the
monthly billing statement of the customers of the utility for the
month next preceding the month in which the contemplated
construction is to be before the governing body on first reading.

(2) Adequate prior public notice of the contemplated
construction by causing to be published as a Class I legal
advertisement of the proposed action, in compliance with the
provisions of article three, chapter fifty-nine of the code. The
publication area for publication shall be all territory served by
the district. If the political subdivision provides service in more
than one county, publication shall be made in a newspaper of
general circulation in each county that the political subdivision
provides service.

(3) The public notice of the proposed construction shall state
the scope of the proposed construction, the current rates, fees
and charges, the proposed changes to said rates, fees and
charges; the date, time and place of both a public hearing on the
proposal and the proposed final vote on adoption; and the place
or places within the political subdivision where the proposed
construction and the rates, fees and charges may be inspected by
the public. A reasonable number of copies of the proposal shall
be kept at the place or places and be made available for public
inspection. The notice shall also advise that interested parties
may appear at the public hearing before the political subdivision
and be heard with respect to the proposed construction and the
proposed rates, fees and charges.

(4) The proposed construction and the proposed rates, fees
and charges shall be read at two meetings of the governing body
with at least two weeks intervening between each meeting. The
public hearing may be conducted with or following the second
reading.

(5) Enactment of the proposed construction and the proposed
rates, fees and charges shall follow an affirmative vote of the
governing body and shall be effective no sooner than forty-five
days following the action of the governing body. If the political
subdivision proposes rates that will go into effect prior than the
completion of construction of the proposed project, the 45-day
waiting period may be waived by public vote of the governing
body only if the political subdivision finds and declares the
political subdivision to be in financial distress such that the 45-
day waiting period would be detrimental to the ability of the
political subdivision to deliver continued and compliant public
services: Provided, That in no event shall the rate become
effective prior to the date that the county commission has
entered an order approving the action of the public service
district board.

(6) Rates, fees and charges approved by an affirmative vote
of the public services district board shall be forwarded in writing
to the county commission appointing the approving board. The
county commission shall, within forty-five days of receipt of the
proposed rates, fees and charges, take action to approve or reject
the proposed rates, fees and charges. After forty-five days, and
absent action by the county commission, the proposed rates, fees
and charges shall be effective with no further action by the board
or county commission. In any event this 45-day period may be
extended by official action of both the board proposing the rates,
fees and charges and the appointing county commission.

(7) The county commission shall provide notice to the public
by a Class I legal advertisement of the proposed action, in
compliance with the provisions of article three, chapter fifty-nine
of this code, of the meeting where it shall consider the proposed
increases in rates, fees and charges no later than one week prior
to the meeting date.

ARTICLE 3. DUTIES AND PRIVILEGES OF PUBLIC
UTILITIES SUBJECT TO REGULATIONS
OF COMMISSION.
§24-3-5. Schedule of rates to be filed with commission.

Every public utility shall file with the commission, and keep open to public inspection, schedules showing all the rates, charges and tolls for service to be rendered by it or by other persons, firms or corporations in connection with it: Provided, that the reports and tariffs filed by interstate carriers with the Public Service Commission may be copies of its reports and tariffs filed with the Interstate Commerce Commission; but nothing herein shall preclude the Public Service Commission from requiring interstate carriers to furnish information bearing upon any complaint or question pending before said Public Service Commission and with which it has a right to deal.

CHAPTER 197

(S. B. 576 - By Senators Blair, Walters, Williams, Leonhardt, Facemire, Maynard, Yost, Snyder, Ferns, Miller, Gaunch, Mullins, Palumbo and Boso)

[Passed March 10, 2015; in effect ninety days from passage.]
[Approved by the Governor on April 2, 2015.]

AN ACT to amend and reenact §24-2-1 of the Code of West Virginia, 1931, as amended, relating to internet protocol-enabled service and voice over internet protocol-enabled service; prohibiting Public Service Commission jurisdiction of internet protocol-enabled service and voice over internet protocol-enabled service; and limiting Public Service Commission jurisdiction of certain telephone company transactions.

Be it enacted by the Legislature of West Virginia:

That §24-2-1 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:
ARTICLE 2. POWERS AND DUTIES OF PUBLIC SERVICE COMMISSION.

*§24-2-1. Jurisdiction of commission; waiver of jurisdiction.

(a) The jurisdiction of the commission shall extend to all public utilities in this state and shall include any utility engaged in any of the following public services:

- Common carriage of passengers or goods, whether by air, railroad, street railroad, motor or otherwise, by express or otherwise, by land, water or air, whether wholly or partly by land, water or air; transportation of oil, gas or water by pipeline; transportation of coal and its derivatives and all mixtures and combinations thereof with other substances by pipeline; sleeping car or parlor car services; transmission of messages by telephone, telegraph or radio; generation and transmission of electrical energy by hydroelectric or other utilities for service to the public, whether directly or through a distributing utility; supplying water, gas or electricity, by municipalities or others; sewer systems servicing twenty-five or more persons or firms other than the owner of the sewer systems: Provided, That if a public utility intends to provide sewer service by an innovative, alternative method, as defined by the federal Environmental Protection Agency, the innovative, alternative method is a public utility function and subject to the jurisdiction of the Public Service Commission regardless of the number of customers served by the innovative, alternative method; any public service district created under the provisions of article thirteen-a, chapter sixteen of this code; toll bridges, wharves, ferries; solid waste facilities; and any other public service: Provided, however, That natural gas producers who provide natural gas service to not more than twenty-five residential customers are exempt from the

*NOTE: This section was also amended by S. B. 234 (Chapter 196), which passed subsequent to this act.
jurisdiction of the commission with regard to the provisions of such residential service: *Provided further,* That upon request of any of the customers of such natural gas producers, the commission may, upon good cause being shown, exercise such authority as the commission may deem appropriate over the operation, rates and charges of such producer and for such length of time as the commission may consider to be proper: *And provided further,* That the jurisdiction the commission may exercise over the rates and charges of municipally operated public utilities is limited to that authority granted the commission in section four-b of this article: *And provided further,* That the decision-making authority granted to the commission in sections four and four-a of this article shall, in respect to an application filed by a public service district, be delegated to a single hearing examiner appointed from the commission staff, which hearing examiner shall be authorized to carry out all decision-making duties assigned to the commission by said sections, and to issue orders having the full force and effect of orders of the commission.

(b) The commission may, upon application, waive its jurisdiction and allow a utility operating in an adjoining state to provide service in West Virginia when:

(1) An area of West Virginia cannot be practicably and economically served by a utility licensed to operate within the State of West Virginia;

(2) Said area can be provided with utility service by a utility which operates in a state adjoining West Virginia;

(3) The utility operating in the adjoining state is regulated by a regulatory agency or commission of the adjoining state; and

(4) The number of customers to be served is not substantial. The rates the out-of-state utility charges West Virginia
customers shall be the same as the rate the utility is duly authorized to charge in the adjoining jurisdiction. The commission, in the case of any such utility, may revoke its waiver of jurisdiction for good cause.

(c) Any other provisions of this chapter to the contrary notwithstanding:

(1) An owner or operator of an electric generating facility located or to be located in this state that has been designated as an exempt wholesale generator under applicable federal law, or will be so designated prior to commercial operation of the facility, and for which such facility the owner or operator holds a certificate of public convenience and necessity issued by the commission on or before July 1, 2003, shall be subject to subsections (e), (f), (g), (h), (i) and (j), section eleven-c of this article as if the certificate of public convenience and necessity for such facility were a siting certificate issued under said section and shall not otherwise be subject to the jurisdiction of the commission or to the provisions of this chapter with respect to such facility except for the making or constructing of a material modification thereof as provided in subdivision (5) of this subsection.

(2) Any person, corporation or other entity that intends to construct or construct and operate an electric generating facility to be located in this state that has been designated as an exempt wholesale generator under applicable federal law, or will be so designated prior to commercial operation of the facility, and for which facility the owner or operator does not hold a certificate of public convenience and necessity issued by the commission on or before July 1, 2003, shall, prior to commencement of construction of the facility, obtain a siting certificate from the commission pursuant to the provisions of section eleven-c of this article in lieu of a certificate of public convenience and necessity pursuant to the provisions of section eleven of this article. An
owner or operator of an electric generating facility as is described in this subdivision for which a siting certificate has been issued by the commission shall be subject to subsections (e), (f), (g), (h), (i) and (j), section eleven-c of this article and shall not otherwise be subject to the jurisdiction of the commission or to the provisions of this chapter with respect to such facility except for the making or constructing of a material modification thereof as provided in subdivision (5) of this subsection.

(3) An owner or operator of an electric generating facility located in this state that had not been designated as an exempt wholesale generator under applicable federal law prior to commercial operation of the facility, that generates electric energy solely for sale at retail outside this state or solely for sale at wholesale in accordance with any applicable federal law that preempts state law or solely for both such sales at retail and such sales at wholesale, and that had been constructed and had engaged in commercial operation on or before July 1, 2003, shall not be subject to the jurisdiction of the commission or to the provisions of this chapter with respect to such facility, regardless of whether such facility subsequent to its construction has been or will be designated as an exempt wholesale generator under applicable federal law: Provided, That such owner or operator shall be subject to subdivision (5) of this subsection if a material modification of such facility is made or constructed.

(4) Any person, corporation or other entity that intends to construct or construct and operate an electric generating facility to be located in this state that has not been or will not be designated as an exempt wholesale generator under applicable federal law prior to commercial operation of the facility, that will generate electric energy solely for sale at retail outside this state or solely for sale at wholesale in accordance with any applicable federal law that preempts state law or solely for both such sales at retail and such sales at wholesale and that had not
been constructed and had not been engaged in commercial
operation on or before July 1, 2003, shall, prior to
commencement of construction of the facility, obtain a siting
certificate from the commission pursuant to the provisions of
section eleven-c of this article in lieu of a certificate of public
convenience and necessity pursuant to the provisions of section
eleven of this article. An owner or operator of an electric
generating facility as is described in this subdivision for which
a siting certificate has been issued by the commission shall be
subject to subsections (e), (f), (g), (h), (i) and (j), section eleven-
c of this article and shall not otherwise be subject to the
jurisdiction of the commission or to the provisions of this
chapter with respect to such facility except for the making or
constructing of a material modification thereof as provided in
subdivision (5) of this subsection.

(5) An owner or operator of an electric generating facility
described in this subsection shall, before making or constructing
a material modification of the facility that is not within the terms
of any certificate of public convenience and necessity or siting
certificate previously issued for the facility or an earlier material
modification thereof, obtain a siting certificate for the
modification from the commission pursuant to the provisions of
section eleven-c of this article in lieu of a certificate of public
convenience and necessity for the modification pursuant to the
provisions of section eleven of this article and, except for the
provisions of section eleven-c of this article, shall not otherwise
be subject to the jurisdiction of the commission or to the
provisions of this chapter with respect to such modification.

(6) The commission shall consider an application for a
certificate of public convenience and necessity filed pursuant to
section eleven of this article to construct an electric generating
facility described in this subsection or to make or construct a
material modification of such electric generating facility as an
application for a siting certificate pursuant to section eleven-c of
this article if the application for the certificate of public
convenience and necessity was filed with the commission prior
to July 1, 2003, and if the commission has not issued a final
order thereon as of that date.

(7) The limitations on the jurisdiction of the commission
over, and on the applicability of the provisions of this chapter to,
the owner or operator of an electric generating facility as
imposed by, and described in this subsection, shall not be
deemed to affect or limit the commission’s jurisdiction over
contracts or arrangements between the owner or operator of such
facility and any affiliated public utility subject to the provisions
of this chapter.

(d) The commission shall not have jurisdiction of internet
protocol-enabled service or voice over internet protocol-enabled
service. As used in this subsection:

(1) “Internet protocol-enabled service” means any service,
capability, functionality or application provided using internet
protocol, or any successor protocol, that enables an end user to
send or receive a communication in internet protocol format, or
any successor format, regardless of whether the communication
is voice, data or video.

(2) “Voice over internet protocol service” means any service
that:

(i) Enables real-time two-way voice communications that
originates or terminates from the user’s location using internet
protocol or a successor protocol; and

(ii) Uses a broadband connection from the user’s location.

(3) The term “voice over internet protocol service” shall
include any service that permits users to receive calls that
originate on the public-switched telephone network and to
terminate calls on the public-switched telephone network.
(e) Notwithstanding any other provisions of this article, the commission shall not have jurisdiction to review or approve any transaction involving a telephone company otherwise subject to sections twelve and twelve-a, article two, chapter twenty-four of this code if all entities involved in the transaction are under common ownership.

CHAPTER 198

(Com. Sub. for S. B. 390 - 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 the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §24-2-1k, relating to additional duties of the Public Service Commission; authorizing commission to approve expedited cost recovery of natural gas utility infrastructure projects deemed just and reasonable and in the public interest; making findings; establishing application and hearing process; and providing for rulemaking.

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 §24-2-1k, to read as follows:

ARTICLE 2. POWERS AND DUTIES OF THE PUBLIC SERVICE COMMISSION.

§24-2-1k. Natural gas infrastructure expansion, development, improvement and job creation; findings; expedited process; requirements; rulemaking.

(a) The Legislature hereby finds that:
(1) West Virginia is rich in energy resources, which provide many advantages to the state, its economy and its citizens;

(2) West Virginia is experiencing significant growth in the natural gas industry with the development of the Marcellus and Utica shale;

(3) West Virginia’s abundant natural gas reserves have created, and will continue to create, many benefits to the state and its citizens;

(4) Growth in the natural gas industry and its accompanying benefits require West Virginia to be proactive and increase the focus on the natural gas infrastructure in this state in order for those benefits to flow to the state and its citizens, including those citizens in areas unserved or underserved by natural gas utilities;

(5) A comprehensive program of replacing, upgrading and expanding infrastructure by natural gas utilities at reasonable cost to ratepayers will benefit the customers of the natural gas utilities, the public in West Virginia and the economy of the state, as a whole;

(6) A natural gas utility infrastructure program will create jobs, provide for continued and enhanced safety and reliability of aging natural gas infrastructure, provide for more economic natural gas utility service, and provide natural gas utility service to new customers in areas of the state that are unserved or underserved; and

(7) Natural gas utility infrastructure programs involve the investment of capital and the incurrence of associated incremental costs. Accordingly, in order for the natural gas utility undertaking those infrastructure programs to attract the necessary capital, the natural gas utility should be permitted to recover the incremental rate of return, related income taxes, depreciation and property taxes associated with the infrastructure
programs commencing with the implementation of an infrastructure program approved by the commission without waiting for a full base rate tariff filing as more fully described in subsection (f) of this section.

(b) Natural gas utilities may file with the commission an application for a multi-year comprehensive plan for infrastructure replacements, upgrades and extensions. Subject to commission review and approval, a plan may be amended and updated by the natural gas utility as circumstances warrant. The recovery of costs in support of the plans shall be allowed in the manner set forth in this section if the proposed plans have been found to be prudent and useful.

(c) The application is in lieu of a proceeding pursuant to section eleven of this article and shall contain the following:

(1) A description of the infrastructure program, in such detail as the commission prescribes, and the projected annual amount (in approximate line sizes and feet), general location, type, and projected installation timing of the facilities that the applicant proposes to replace, construct and/or improve;

(2) The projected net cost, on an annual basis, of the replacement, construction or improvements;

(3) The projected starting date for the infrastructure program;

(4) The projected numbers of potential new customers, if any, that may be served by the infrastructure program and the projected annual load of the customers;

(5) The projected cost of debt for the infrastructure program funding and the projected capital structure for infrastructure program funding;
(6) Testimony, exhibits or other evidence that demonstrates the need for the replacement, construction or improvement of facilities in order to provide and maintain adequate, efficient, safe, reliable and reasonable natural gas service;

(7) A proposed cost recovery mechanism consistent with this section; and

(8) Other information the applicant considers relevant or the commission requires.

(d) Upon filing of the application, the applicant shall publish, in the form the commission directs, which form shall include, but not be limited to, the anticipated rates and, if any, rate increase under the proposal, by average percentage and dollar amount for customers within a class of service, as a Class I legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, the publication area to be each county in which service is provided by the natural gas utility, a notice of the filing of the application and that the commission shall hold a hearing on the application within ninety days of the notice; unless no opposition to the rate change is received by the Public Service Commission within one week of the proposed hearing date, in which case the hearing can be waived, and issue a final order within one hundred fifty days of the application filing date. However, if the proposed infrastructure program includes a request for extension of infrastructure into an unserved area and another natural gas utility files to extend service to the same area, the commission may move that extension request of each natural gas utility into separate proceedings to be considered concurrently and extend the time period for issuing a final order on that portion of the proposed programs beyond the one hundred fifty days.

(e) Upon notice and hearing, if required by the commission, the commission shall approve the infrastructure program and
allow expedited recovery of costs related to the expenditures as provided in subsection (f) of this section if the commission finds that the expenditures and the associated rate requirements are just, reasonable, not contrary to the public interest and will allow for the provision and maintenance of adequate, efficient, safe, reliable and reasonably priced natural gas service.

(f) Upon commission approval, natural gas utilities will be authorized to implement the infrastructure programs and to recover related incremental costs, net of contributions to recovery of return and depreciation and property tax expenses directly attributable to the infrastructure program provided by new customers served by the infrastructure program investments, if any, as provided in the following:

(1) An allowance for return shall be calculated by applying a rate of return to the average planned net incremental increase to rate base attributable to the infrastructure program for the coming year, considering the projected amount and timing of expenditures under the infrastructure program plus any expenditures in previous years of the infrastructure program. The rate of return shall be determined by utilizing the rate of return on equity authorized by the commission in the natural gas utility’s most recent rate case proceeding or in the case of a settled rate case, a rate of return on equity as determined by the commission, and the projected cost of the natural gas utility’s debt during the period of the infrastructure program to determine the weighted cost of capital based upon the natural gas utility’s capital structure.

(2) Income taxes applicable to the return allowed on the infrastructure program shall be calculated for inclusion in rates.

(3) Incremental depreciation and property tax expenses directly attributable to the infrastructure program shall be estimated for the upcoming year.
(4) Following commission approval of its infrastructure program, a natural gas utility shall place into effect rates that include an increment that recovers the allowance for return, related income taxes, depreciation and property tax expenses associated with the natural gas utility’s estimated infrastructure program investments for the upcoming year, net of contributions to recovery of those incremental costs provided by new customers served by the infrastructure program investments, if any, (“incremental cost recovery increment”). In each year subsequent to the order approving the infrastructure program and an incremental cost recovery increment, the natural gas utility shall file a petition with the commission setting forth a new proposed incremental cost recovery increment based on investments to be made in the subsequent year, plus any under-recovery or minus any over-recovery of actual incremental costs attributable to the infrastructure program investments, for the preceding year.

(g) The natural gas utility may make any accounting accruals necessary to establish a regulatory asset or liability through which actual incremental costs incurred and costs recovered through the rate mechanism are tracked.

(h) Natural gas utilities may defer incremental operation and maintenance expenditures attributable to regulatory and compliance-related requirements introduced after the natural gas utility’s last rate case proceeding and not included in the natural gas utility’s current base rates. In a future rate case, the commission may allow recovery of the deferred costs amortized over a reasonable period of time to be determined by the commission provided the commission finds that the costs were reasonable and prudently incurred and were not reflected in rates in prior rate cases.
AN ACT to amend and reenact §5A-3-1 of the Code of West Virginia, 1931, as amended; to amend and reenact §5A-3-3 of said code; to amend and reenact §18-2E-7 of said code; and to amend and reenact §18-9A-10 of said code, all relating to purchasing guidelines; exempting the West Virginia State Police Forensics Laboratory and the West Virginia Office of Laboratory Services from state purchasing guidelines; exempting procurement of instructional materials, digital content resources, instructional technology, hardware, software, telecommunications and technical services for use in and in support of public schools; exempting procurement of these items from division of purchasing requirements; removing outdated language and updating name of state technology plan; requiring the State Board of Education to define “equitable distribution”; requiring certain technology tools to adhere to state contract prices; adding personalized learning as potential student use for technology; providing for technology system specialists; and removing expired transitional funding language and references to the twenty-first century.

Be it enacted by the Legislature of West Virginia:

That §5A-3-1 of the Code of West Virginia, 1931, as amended, be amended and reenacted; that §5A-3-3 of said code be amended and reenacted; that §18-2E-7 of said code be amended and reenacted; and that §18-9A-10 of said code be amended and reenacted, all to read as follows:
CHAPTER 5A. DEPARTMENT OF ADMINISTRATION.

ARTICLE 3. PURCHASING DIVISION.

§5A-3-1. Division created; purpose; director; applicability of article; continuation.

(a) The Purchasing Division within the Department of Administration is continued. The underlying purposes and policies of the Purchasing Division are:

1. To establish centralized offices to provide purchasing and travel services to the various state agencies;

2. To simplify, clarify and modernize the law governing procurement by this state;

3. To permit the continued development of procurement policies and practices;

4. To make as consistent as possible the procurement rules and practices among the various spending units;

5. To provide for increased public confidence in the procedures followed in public procurement;

6. To ensure the fair and equitable treatment of all persons who deal with the procurement system of this state;

7. To provide increased economy in procurement activities and to maximize to the fullest extent practicable the purchasing value of public funds;

8. To foster effective broad-based competition within the free enterprise system;

9. To provide safeguards for the maintenance of a procurement system of quality and integrity; and
(10) To obtain in a cost-effective and responsive manner the commodities and services required by spending units in order for those spending units to better serve this state’s businesses and residents.

(b) The Director of the Purchasing Division shall, at the time of appointment:

(1) Be a graduate of an accredited college or university; and

(2) Have spent a minimum of ten of the fifteen years immediately preceding his or her appointment employed in an executive capacity in purchasing for any unit of government or for any business, commercial or industrial enterprise.

(c) The provisions of this article apply to all of the spending units of state government, except as otherwise provided by this article or by law.

(d) The provisions of this article do not apply to the judicial branch, the West Virginia State Police Forensics Laboratory, the West Virginia Office of Laboratory Services, the legislative branch, to purchases of stock made by the Alcohol Beverage Control Commissioner and to purchases of textbooks, instructional materials, digital content resources, instructional technology, hardware, software, telecommunications and technical services by the State Board of Education for use in and in support of the public schools.

(e) The provisions of this article apply to every expenditure of public funds by a spending unit for commodities and services irrespective of the source of the funds.

§5A-3-3. Powers and duties of Director of Purchasing.

The director, under the direction and supervision of the secretary, shall be the executive officer of the Purchasing Division and shall have the power and duty to:
(1) Direct the activities and employees of the Purchasing Division;

(2) Ensure that the purchase of or contract for commodities and services shall be based, whenever possible, on competitive bid;

(3) Purchase or contract for, in the name of the state, the commodities, services and printing required by the spending units of the state government;

(4) Apply and enforce standard specifications established in accordance with section five of this article as hereinafter provided;

(5) Transfer to or between spending units or sell commodities that are surplus, obsolete or unused as hereinafter provided;

(6) Have charge of central storerooms for the supply of spending units, as the director deems advisable;

(7) Establish and maintain a laboratory for the testing of commodities and make use of existing facilities in state institutions for that purpose as hereinafter provided, as the director deems advisable;

(8) Suspend the right and privilege of a vendor to bid on state purchases when the director has evidence that such vendor has violated any of the provisions of the purchasing law or the rules and regulations of the director;

(9) Examine the provisions and terms of every contract entered into for and on behalf of the State of West Virginia that impose any obligation upon the state to pay any sums of money for commodities or services and approve each such contract as to such provisions and terms; and the duty of examination and
approval herein set forth does not supersede the responsibility
and duty of the Attorney General to approve such contracts as to
form: Provided, That the provisions of this subdivision do not
apply in any respect whatever to construction or repair contracts
entered into by the Division of Highways of the Department of
Transportation: Provided, however, That the provisions of this
subdivision do not apply in any respect whatever to contracts
entered into by the University of West Virginia Board of
Trustees or by the Board of Directors of the State College
System, except to the extent that such boards request the
facilities and services of the director under the provisions of this
subdivision: Provided further, That the provisions of this
subdivision do not apply to the West Virginia State Police
Forensic Laboratory and the West Virginia Office of Laboratory
Services;

(10) Assure that the specifications and descriptions in all
solicitations are prepared so as to provide all potential
suppliers-vendors who can meet the requirements of the state an
opportunity to bid and to assure that the specifications and
descriptions do not favor a particular brand or vendor. If the
director determines that any such specifications or descriptions
as written favor a particular brand or vendor or if it is decided,
either before or after the bids are opened, that a commodity or
service having different specifications or quality or in different
quantity can be bought, the director may rewrite the solicitation
and the matter shall be rebid; and

(11) Issue a notice to cease and desist to a spending unit
when the director has credible evidence that a spending unit has
violated competitive bidding or other requirements established
by this article and the rules promulgated hereunder. Failure to
abide by such notice may result in penalties set forth in section
seventeen of this article.
CHAPTER 18. EDUCATION.

ARTICLE 2E. HIGH QUALITY EDUCATIONAL PROGRAMS.

§18-2E-7. Providing for instruction and learning in all public schools.

(a) The Legislature finds that:

(1) The knowledge and skills children need to succeed are changing dramatically and that West Virginia students must develop proficiency in the subject matter content, technology tools and learning skills to succeed and prosper in life, in school and on the job;

(2) Students must be equipped to live in a multitasking, multifaceted, technology-driven world;

(3) The provision technologies and software resources in grades prekindergarten through twelve is necessary to meet the goal that high school graduates will be prepared fully for college, other post-secondary education or gainful employment;

(4) This goal reflects a fundamental belief that the youth of the state exit the system equipped with the skills, competencies and attributes necessary to succeed, to continue learning throughout their lifetimes and to attain self-sufficiency;

(5) To promote learning, teachers must be competent in content and learning skills and must be equipped to fully integrate technology to transform instructional practice and to support skills acquisition;

(6) For students to learn technology skills, students and teachers must have equitable access to high quality, technology tools and resources;
(7) When aligned with standards and curriculum, technology-based assessments can be a powerful tool for teachers; and

(8) Teachers must understand how to use technology to create classroom assessments for accurate, timely measurements of student proficiency in attainment of academic content.

(b) The state board shall ensure that the resources to be used to provide technology services to students in grades prekindergarten through twelve are included in a West Virginia Strategic Technology Learning Plan to be developed by the Department of Education as an integral component of the county electronic strategic improvement plan required in section five of this article. The provision of technologies and services to students and teachers shall be based on a county technology plan developed by a team that includes school building-level professional educators and is aligned with the goals and objectives of the West Virginia Strategic Technology Learning Plan. This plan shall be an integral component of the county electronic strategic improvement plan as required in section five of this article. Funds shall be allocated equitably to county school systems following peer review of the plans that includes providing necessary technical assistance prior to submission and allows timely review and approval by the West Virginia Department of Education. Equitable allocation shall be defined by the state board and may include per school-site equity for technologies requiring a site license or other per school application. Technology tools purchased from appropriations for this section shall adhere to state contract prices: Provided, That contingent upon approval of the county technology plan, counties that identify, within that plan, specific software or peripheral equipment not listed on the state contract, but necessary to support implementation, may request the West Virginia Department of Education to secure state purchasing prices for those identified items. Total expenditure to purchase
these additional items may not exceed ten percent of the annual county allocation. To the extent practicable, the technology shall be used:

(1) To maximize student access to learning tools and resources at all times including during regular school hours, before and after school or class, in the evenings, on weekends and holidays and for public education, noninstructional days and during vacations; and

(2) For student use for homework, remedial work, personalized learning, independent learning, career planning and adult basic education.

(c) The implementation of this section should provide a technology infrastructure capable of supporting multiple technology-based learning strategies designed to enable students to achieve at higher academic levels. The technology infrastructure should facilitate student development by addressing the following areas:

(1) Mastery of rigorous core academic subjects in grades prekindergarten through eight by providing software, other technology resources or both aligned with state standards in reading, mathematics, writing, science, social studies and learning tools;

(2) Mastery of rigorous core academic subjects in grades nine through twelve by providing appropriate technology tools aligned with state standards for learning skills and technology tools;

(3) Attainment of skill outcomes for all students in the use of technology tools and learning skills;

(4) Proficiency in new, emerging content;
(5) Participation in relevant, contextual instruction that uses dynamic, real-world contexts that are engaging and meaningful for students, making learning relevant to life outside of school and bridging the gap between how students live and how they learn in school;

(6) Ability to use digital and emerging technologies to manage information, communicate effectively, think critically, solve problems, work productively as an individual and collaboratively as part of a team and demonstrate personal accountability and other self-directional skills;

(7) Providing students with information on post-secondary educational opportunities, financial aid and the skills and credentials required in various occupations that will help them better prepare for a successful transition following high school;

(8) Providing greater access to advanced and other curricular offerings than could be provided efficiently through traditional on-site delivery formats, including increasing student access to quality distance learning curricula and online distance education tools;

(9) Providing resources for teachers in differentiated instructional strategies, technology integration, sample lesson plans, curriculum resources and online staff development that enhance student achievement; and

(10) Providing resources to support basic skills acquisition and improvement at the above mastery and distinguished levels.

(d) Developed with input from appropriate stakeholder groups, the West Virginia Strategic Technology Learning Plan shall be an integral component of the electronic strategic county improvement plan as required in section five of this article. The West Virginia Strategic Technology Learning Plan shall be
comprehensive and shall address, but not necessarily be limited
to, the following provisions:

(1) Allocation of adequate resources to provide students with
equitable access to technology tools, including instructional
offerings and appropriate curriculum, assessment and technology
integration resources aligned to both the content and rigor of
state content standards as well as to learning skills and
technology tools;

(2) Providing students and staff with equitable access to a
technology infrastructure that supports the acquisition of skills
in the use of technology, including the ability to access
information, solve problems, communicate clearly, make
informed decisions, acquire new knowledge, construct products,
reports and systems and access online assessment systems;

(3) Inclusion of various technologies that enable and
enhance the attainment of the skills outcomes for all students;

(4) Collaboration with various partners, including parents,
community organization, higher education, schools of education
in colleges and universities, employers and content providers;

(5) Seeking of applicable federal government funds,
philanthropic funds, other partnership funds or any combination
of those types of funds to augment state appropriations and
encouraging the pursuit of funding through grants, gifts,
donations or any other sources for uses related to education
technology;

(6) Sufficient bandwidth to support teaching and learning
and to provide satisfactorily for instructional management needs;

(7) Protection of the integrity and security of the network, as
well as student and administrative workstations;
(8) Flexibility to adjust the plan based on developing technology, federal and state requirements and changing local school and county needs;

(9) Incorporation of findings based upon validation from research-based evaluation findings from previous West Virginia-based evaluation projects;

(10) Continuing study of emerging technologies for application in a learning environment and inclusion in the technology plan, as appropriate;

(11) An evaluation component to determine the effectiveness of the program and make recommendations for ongoing implementation;

(12) A program of embedded, sustained professional development for teachers that is strategically developed to support a thorough and efficient education for all students and that aligns with state standards for technology, integrates technology skills into educational practice and supports the implementation of software, technology and assessment resources in the classroom;

(13) Providing for uniformity in technological hardware and software standards and procedures;

(14) The strategy for ensuring that the capabilities and capacities of the technology infrastructure is adequate for acceptable performance of the technology being implemented in the public schools;

(15) Providing for a comprehensive, statewide uniform, integrated education management and information system for data collection and reporting to the Department of Education and the public;
(16) Providing for an effective model for the distance delivery, virtual delivery or both types of 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 such as the West Virginia Virtual School;

(17) Providing a strategy to implement, support and maintain technology in the public schools;

(18) Providing a strategy to provide ongoing support and assistance to teachers in integrating technology into instruction such as with technology integration specialists and technology system specialists;

(19) A method of allowing public education to take advantage of appropriate bulk purchasing abilities and to purchase from competitively bid contracts initiated through the southern regional education board educational technology cooperative and the America TelEdCommunications Alliance;

(20) Compliance with United States Department of Education regulations and Federal Communications Commission requirements for federal E-rate discounts; and

(21) Other provisions as considered appropriate, necessary or both to align with applicable guidelines, policies, rules, regulations and requirements of the West Virginia Legislature, the Board of Education and the Department of Education.

(e) Any state code and budget references to the Basic Skills/Computer Education Program and the SUCCESS Initiative will be understood to refer to the statewide technology initiative referenced in this section, commonly referred to as the 21st Century Tools for 21st Century Schools Technology Initiative.
ARTICLE 9A. PUBLIC SCHOOL SUPPORT.

§18-9A-10. Foundation allowance to improve instructional programs.

(a) The total allowance to improve instructional programs shall be the sum of the following:

(1) For instructional improvement, in accordance with county and school electronic strategic improvement plans required by section five, article two-e of this chapter, an amount equal to ten percent of the increase in the local share amount for the next school year above any required allocation pursuant to section six-b of this article shall be added to the amount of the appropriation for this purpose for the immediately preceding school year. The sum of these amounts shall be distributed to the counties as follows:

(A) One hundred fifty thousand dollars shall be allocated to each county; and

(B) Distribution to the counties of the remainder of these funds shall be made proportional to the average of each county’s average daily attendance for the preceding year and the county’s second month net enrollment.

Moneys allocated by provision of this subdivision shall be used to improve instructional programs according to the county and school strategic improvement plans required by section five, article two-e of this chapter and approved by the state board: Provided, That notwithstanding any other provision of this code to the contrary, moneys allocated by provision of this section also may be used in the implementation and maintenance of the uniform integrated regional computer information system.

Up to twenty-five percent of this allocation may be used to employ professional educators and service personnel in counties
after all applicable provisions of sections four and five of this article have been fully utilized.

Prior to the use of any funds from this subdivision for personnel costs, the county board must receive authorization from the state superintendent. The state superintendent shall require the county board to demonstrate: (1) The need for the allocation; (2) efficiency and fiscal responsibility in staffing; (3) sharing of services with adjoining counties and the regional educational service agency for that county in the use of the total local district board budget; and (4) employment of technology integration specialists to meet the needs for implementation of the West Virginia Strategic Technology Learning Plan. County boards shall make application for the use of funds for personnel for the next fiscal year by May 1 of each year. On or before June 1, the state superintendent shall review all applications and notify applying county boards of the approval or disapproval of the use of funds for personnel during the fiscal year appropriate. The state superintendent shall require the county board to demonstrate the need for an allocation for personnel based upon the county’s inability to meet the requirements of state law or state board policy.

The provisions relating to the use of any funds from this subdivision for personnel costs are subject to the following: (1) The funds available for personnel under this subsection may not be used to increase the total number of professional noninstructional personnel in the central office beyond four; and (2) For the school year beginning July 1, 2013, and thereafter, any funds available to a county for use for personnel under this subsection above the amount available for the 2012-2013 school year, only may be used for technology systems specialists until the state superintendent determines that the county has sufficient technology systems specialists to serve the needs of the county.

The plan shall be made available for distribution to the public at the office of each affected county board; plus
(2) For the purposes of improving instructional technology, an amount equal to twenty percent of the increase in the local share amount for the next school year above any required allocation pursuant to section six-b of this article shall be added to the amount of the appropriation for this purpose for the immediately preceding school year. The sum of these amounts shall be distributed to the counties as follows:

(A) Thirty thousand dollars shall be allocated to each county; and

(B) Distribution to the counties of the remainder of these funds shall be made proportional to the average of each county’s average daily attendance for the preceding year and the county’s second month net enrollment.

Effective July 1, 2014, moneys allocated by provision of this subdivision shall be used to improve instructional technology programs according to the county and school strategic improvement plans; plus

(3) One percent of the state average per pupil state aid multiplied by the number of students enrolled in dual credit, advanced placement and international baccalaureate courses, as defined by the state board, distributed to the counties proportionate to enrollment in these courses in each county; plus

(4) An amount not less than the amount required to meet debt service requirements on any revenue bonds issued prior to January 1, 1994, and the debt service requirements on any revenue bonds issued for the purpose of refunding revenue bonds issued prior to January 1, 1994, shall be paid into the School Building Capital Improvements Fund created by section six, article nine-d of this chapter and shall be used solely for the purposes of that article. The School Building Capital Improvements Fund shall not be utilized to meet the debt services requirement on any revenue bonds or revenue refunding
bonds for which moneys contained within the School Building Debt Service Fund have been pledged for repayment pursuant to that section.

(b) When the school improvement bonds secured by funds from the School Building Capital Improvements Fund mature, the state Board of Education shall annually deposit an amount equal to $24,000,000 from the funds allocated in this section into the School Construction Fund created pursuant to the provisions of section six, article nine-d of this chapter to continue funding school facility construction and improvements.

(c) Any project funded by the School Building Authority shall be in accordance with a comprehensive educational facility plan which must be approved by the state board and the School Building Authority.

CHAPTER 200

(S. B. 412 - By Senator Blair)

[Passed March 12, 2015; in effect ninety days from passage.]
[Approved by the Governor on March 24, 2015.]

AN ACT to amend and reenact §30-40-20 of the Code of West Virginia, 1931, as amended, relating to the Real Estate Commission; licenses issued by commission; establishing time limitations on filing complaints of unprofessional conduct against a licensee; and tolling the time limits during criminal investigations and prosecutions.

Be it enacted by the Legislature of West Virginia:

That §30-40-20 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:
§30-40-20. Complaints; investigation.

(a) The commission may upon its own motion and shall upon the filing of a complaint setting forth a cause of action under this article, or the rules promulgated thereunder, ascertain the facts and if warranted hold a hearing for the suspension or revocation of a license, or the imposition of sanctions against a licensee: Provided, That no disciplinary action may be brought against a licensee upon any complaint that is filed more than two years after the acts or omissions alleged in the complaint or, where the licensee is alleged to have engaged in fraud, deceit or misrepresentation, more than two years after the date at which the complainant discovered, or through reasonable diligence should have discovered, the alleged unprofessional conduct. Time limits for the filing of a complaint shall be tolled during any period in which material evidence necessary for the commission’s evaluation or use is unavailable to the commission due to an ongoing criminal investigation or prosecution.

(b) All complaints must be submitted in writing and must fully describe the acts or omissions constituting the alleged unprofessional conduct.

(c) Upon initiation or receipt of the complaint, the commission shall provide a copy of the complaint to the licensee for his or her response to the allegations contained in the complaint. The accused party shall file an answer within twenty days of the date of service. Failure of the licensee to file a timely response may be considered an admission of the allegations in the complaint: Provided, That nothing contained herein shall prohibit the accused party from obtaining an extension of time to file a response, if the commission, its executive director or other authorized representative permits the extension.
(d) The commission may cause an investigation to be made into the facts and circumstances giving rise to the complaint and any person licensed by the commission has an affirmative duty to assist the commission, or its authorized representative, in the conduct of its investigation.

(e) After receiving the licensee’s response and reviewing any information obtained through investigation, the commission shall determine if probable cause exists that the licensee has violated any provision of this article or the rules.

(f) If a determination that probable cause exists for disciplinary action, the commission may hold a hearing in compliance with section twenty-one of this article or may dispose of the matter informally through a consent agreement or otherwise.

CHAPTER 201

(S. B. 454 - By Senators Prezioso, Beach, D. Hall, Kessler, Leonhardt, Plymale, Walters, Woelfel, Facemire and Stollings)

[Passed March 10, 2015; in effect ninety days from passage.]
[Approved by the Governor on March 18, 2015.]

AN ACT to amend and reenact §47-2-1 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto four new sections, designated §47-2-14a, §47-2-14b, §47-2-14c and §47-2-14d, all relating to trademark counterfeiting and forfeiture; defining terms; creating crime of misdemeanor trademark counterfeiting; creating crime of felony trademark counterfeiting; providing penalties; and providing for seizure, forfeiture and disposal of property used or obtained in furtherance of violations.
Be it enacted by the Legislature of West Virginia:

That §47-2-1 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that said code be amended by adding thereto four new sections, designated §47-2-14a, §47-2-14b, §47-2-14c and §47-2-14d, all to read as follows:

ARTICLE 2. TRADEMARKS IN GENERAL.

§47-2-1. Definitions.

As used in this article:

1. The term “trademark” means any word, name, symbol or device or any combination thereof used by a person to identify and distinguish the goods of such person, including a unique product, from those manufactured and sold by others, and to indicate the source of the goods, even if that source is unknown.

2. The term “service mark” means any word, name, symbol or device or any combination thereof used by a person to identify and distinguish the services of one person, including a unique service, from the services of others, and to indicate the source of the services, even if that source is unknown. Titles, character names used by a person, and other distinctive features of radio or television programs may be registered as service marks notwithstanding that they, or the programs, may advertise the goods of the sponsor.

3. The term “mark” includes any trademark or service mark, entitled to registration under this article whether registered or not.

4. The term “trade name” means any name used by a person to identify a business or vocation of such person.

5. The term “person” and any other word or term used to designate the applicant or other party entitled to a benefit or
privilege or rendered liable under the provisions of this article includes a juristic person as well as a natural person. The term “juristic person” includes a firm, partnership, corporation, union, association or other organization capable of suing and being sued in a court of law.

(6) The term “applicant” embraces the person filing an application for registration of a mark under this article, and the legal representatives, successors or assigns of such person.

(7) The term “registrant” as used herein embraces the person to whom the registration of a mark under this article is issued, and the legal representatives, successors or assigns of such person.

(8) The term “use” means the bona fide use of a mark in the ordinary course of trade, and not made merely to reserve a right in a mark. For the purposes of this article, a mark shall be deemed to be in use: (A) On goods when it is placed in any manner on the goods or other containers or the displays associated therewith or on the tags or labels affixed thereto, or if the nature of the goods makes such placement impracticable, then on documents associated with the goods or their sale, and the goods are sold or transported in commerce in this state; and (B) on services when it is used or displayed in the sale or advertising of services and the services are rendered in this state.

(9) A mark shall be deemed to be “abandoned” when either of the following occurs:

(A) When its use has been discontinued with intent not to resume such use. Intent not to resume may be inferred from circumstances. Nonuse for two consecutive years shall constitute prima facie evidence of abandonment.

(B) When any course of conduct of the owner, including acts of omission as well as commission, causes the mark to lose its significance as a mark.
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55 (10) The term “secretary” means the Secretary of State or the designee of the secretary charged with the administration of this article.

58 (11) The term “dilution” means the lessening of the capacity of registrant’s mark to identify and distinguish goods or services, regardless of the presence or absence of: (A) Competition between the parties; or (B) likelihood of confusion, mistake or deception.

63 (12) “Retail value” means:

64 (A) For items that bear a counterfeit mark and are components of a finished product, the regular selling price of the finished product in which the component would be utilized.

67 (B) For items that bear a counterfeit mark other than items described in paragraph (A) of this subdivision and for services that are identified by a counterfeit mark, the regular selling price of the item or service.

§47-2-14a. Trademark counterfeiting.

1 (a) A person commits trademark counterfeiting if the person knowingly and with the intent to sell or distribute and without the consent of the registrant or owner uses, displays, advertises, distributes, offers for sale, sells or possesses any item that bears a counterfeit of a mark or any service that is identified by a counterfeit of a mark registered under this chapter, registered under 15 U. S. C. §1052, or under the common law with knowledge that the mark is counterfeit.

9 (b) For purposes of this section, a mark is counterfeit if:

10 (1) It is a mark that is identical to or substantially indistinguishable from a registered or common law mark; and
§47-2-14b. Misdemeanor trademark counterfeiting; penalty.

(a) A person commits the crime of misdemeanor trademark counterfeiting if the person commits trademark counterfeiting as described in section fourteen-a of this article and the total retail value of all of the items bearing the counterfeit mark or services that are identified by the counterfeit mark is less than $1,000.

(b) The penalty for misdemeanor trademark counterfeiting is:

(1) For a first violation, confinement in jail for not more than one year, or a fine not exceeding $2,000, or both a fine and confinement; and

(2) For each subsequent violation, confinement in jail for not more than one year, or a fine not exceeding $5,000, or both a fine and confinement.

(3) If the person convicted under this section is a firm, partnership, corporation, union, association or other organization capable of suing and being sued in a court of law, the maximum fine that may be imposed is $10,000.

§47-2-14c. Felony trademark counterfeiting; penalty.

(a) A person commits the crime of felony trademark counterfeiting if the person commits trademark counterfeiting as described in section fourteen-a of this article and the total retail value of all of the items bearing the counterfeit mark or services that are identified by the counterfeit mark is $1,000 or greater.

(b) The penalty for felony trademark counterfeiting is:
(1) Confinement in a state correctional facility for no less than one year nor more than five years or a fine not exceeding $10,000, or both a fine and confinement.

(2) If the person convicted under this section is a firm, partnership, corporation, union, association or other organization capable of suing and being sued in a court of law, the maximum fine that may be imposed is $20,000.

§47-2-14d. Seizure, forfeiture and disposal.

(a) The following are subject to seizure and forfeiture in the same manner as the items referenced in section seven hundred three, article seven, chapter sixty-a of this code:

(1) All raw materials and equipment that are used, or intended for use, in providing, manufacturing and delivering items bearing a counterfeit mark or services identified by a counterfeit mark;

(2) All conveyances, including aircraft, vehicles or vessels, which are used, or are intended for use, to transport items bearing a counterfeit mark, except that:

(A) A conveyance used by any person as a common carrier in the transaction of business as a common carrier shall not be forfeited under this section unless it appears that the person owning the conveyance is a consenting party or privy to a violation of this article;

(B) A conveyance shall not be forfeited under the provisions of this article if the person owning the conveyance establishes that he or she neither knew, nor had reason to know, that the conveyance was being employed or was likely to be employed in a violation of this article; and

(C) A bona fide security interest or other valid lien in any conveyance shall not be forfeited under the provisions of this article, unless the state proves by a preponderance of the
evidence that the holder of the security interest or lien either
knew, or had reason to know, that the conveyance was being
used or was likely to be used in a violation of this article;

(3) All books, records, computers and data that are used or
intended for use in the production, manufacture, sale or delivery
of items bearing a counterfeit mark or services identified by a
counterfeit mark; and

(4) All moneys, negotiable instruments, balances in deposit
or other accounts, securities or other things of value furnished or
intended to be furnished by any person in the course of activity
constituting a violation of sections fourteen-b, fourteen-c and
fourteen-d of this article.

(b) Items bearing a counterfeit mark are subject to seizure
and disposition as provided in section seven, article one-a,
chapter sixty-two of this code. However, if the registrant or
owner so requests, the agency holding the seized items shall
release the seized items to the registrant or owner or make such
other disposition as the registrant or owner directs. If the
registrant or owner does not direct disposition of the seized
items, the agency shall destroy the items.

CHAPTER 202

(H. B. 2663 - By Delegate(s) Ashley and Frich)

[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 a new section, designated §18-10G-5a, relating to
creating the Rehabilitation Services Vending Program 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 section, designated §18-10G-5a, to read as follows:

ARTICLE 10G. PROVIDING OF FOOD SERVICE IN PUBLIC OFFICE BUILDINGS BY THE WEST VIRGINIA DIVISION OF VOCATIONAL REHABILITATION.

§18-10G-5a. Rehabilitation Services Vending Program Fund created.

There is created in the State Treasury a special revenue fund to be known as the “Rehabilitation Services Vending Program Fund.” The fund shall operate as a special revenue fund whereby all deposits and payments thereto do not expire to the General Revenue Fund, but shall remain in the fund and be available for expenditure in succeeding fiscal years. This fund consists of moneys deposited in the fund pursuant to the provisions of section five of this article. Money from this fund shall be expended by the Director of the Division of Rehabilitation Services pursuant to the provisions of section five of this article.

CHAPTER 203

(H. B. 2914 - By Delegate(s) Hartman, Sponaugle, Campbell and Perry)

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

AN ACT to amend and reenact §7-25-6, §7-25-11 and §7-25-15 of the Code of West Virginia, 1931, as amended; and to amend said code
by adding thereto two new sections, designated §7-25-7a and §7-25-27, all relating generally to resort area districts; providing for voluntary dissolution of a resort area district; establishing a procedure for a dissolution; permitting nominations for resort area board members be made by mail or electronic means; permitting property owners to make nominations; providing for election of board members by plurality vote instead of by a majority vote; limiting the amount of assessments that may be levied against a parcel of real property; establishing a procedure for assessments proposed by a board on its own initiative; and providing for the effect of 2015 amendments.

Be it enacted by the Legislature of West Virginia:

That §7-25-6, §7-25-11 and §7-25-15 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 §7-25-7a and §7-25-27, all to read as follows:

ARTICLE  25. RESORT AREA DISTRICTS.

§7-25-6. Notice to property owners before creation or expansion of resort area district; form of notice; affidavit of publication.

1 (a) Before the adoption of an order creating a resort area district, the governing body shall cause notice to be given to the owners of real property located within the proposed resort area district that the order will be considered for adoption at a public meeting of the governing body at a date, time and place named in the notice and that all persons at that meeting, or any adjournment of the meeting, shall be given an opportunity to protest or be heard concerning the adoption or rejection of the order. At or after the meeting the governing body may amend, revise or otherwise modify the information in the petition for formation or expansion of a resort area district as it may consider appropriate after taking into account any comments received at the meeting.
(b) A resort area district may not be created by a governing body if, at the public meeting required by this section, written protest is filed by at least twenty-five percent of the owners of real property proposed to be included within the district. In the event of a protest, the petition for the creation of the resort area district may not be resubmitted to the governing body for a period of at least one year from the date of the original submission.

(c) At least sixty days prior to the date of the meeting the notice required by this section shall, using reasonable efforts, be mailed to each owner of real property to be included in the proposed resort area district as provided in subsection (g) of this section, posted in multiple, conspicuous public locations within the proposed district and published as a Class II legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code and the publication area for the publication shall be the county in which the proposed resort area district is located. The notice shall be in the form of, or substantially in the form of, the following notice:

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“NOTICE TO ALL PERSONS OWNING PROPERTY LOCATED WITHIN ................. (here describe the boundaries of the proposed resort area district) IN THE COUNTY OF ................. (name of county):

A petition has been presented to the county commission of the County of ................. (name of county) requesting establishment of a resort area district and authorization of a resort service fee under article twenty-five, chapter seven of the code of West Virginia, 1931, as amended, to ................. (describe potential projects and/or services to be provided) in the county of ................. (name of county) as the county commission may deem proper. A copy of the petition is available in the office of the clerk of the county commission of the County of ................. (name of county) for review by the public during regular office hours.
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The petition to create a resort area district will be considered by the county commission at a public meeting to be held on the … day of ………………, …………………, at … m. at …………………………………… Any owner of real property whose property may be affected by the creation of the above-described resort area district, and any owner of real property whose property is not located within said resort area district but wishes his or her property to be included, will be given an opportunity, under oath, to protest or be heard at said meeting or any adjournment thereof:

………………………… (name of clerk)

(d) An affidavit of publication of the notice made by newspaper publisher, or a person authorized to do so on behalf of the publisher, and a copy of the notice shall be made part of the minutes of the governing body and spread on its records of the meeting described in the notice. The service of the notice upon all persons owning any interest in any real property located within the proposed resort area district shall conclusively be determined to have been given upon completion of mailing as provided in subsection (g) of this section and the newspaper publication.

(e) The petitioners shall bear the expense of publication of the notice, the meeting and the mailing of the proposed order, as requested by subsection (f) of this section.

(f) After the public meeting and before the governing body may adopt an order creating a resort area district, the governing body shall, using reasonable efforts, mail a true copy of the proposed order creating the resort area district to the owners of real property in the proposed district as provided in subsection (g) of this section and shall post copies of the proposed order in multiple, conspicuous public locations within the proposed district. Unless waived in writing, any petitioning owner of real
property has thirty days from mailing of the proposed order in which to withdraw his or her signature from the petition in writing prior to the vote of the governing body on the order. If any signatures on the petition are withdrawn, the governing body may adopt the proposed order only upon certification by the petitioners that the petition otherwise continues to meet the requirements of this article. If all petitioning owners of real property waive the right to withdraw their signatures from the petition, then the governing body may immediately adopt the order.

(g) For purposes of the mailing of each notice to owners of real property required by this section, reasonable efforts shall be made to mail the notice to all owners of real property proposed to be included within the resort area district using the real property tax records and land books of the county in which the proposed district is located and any lists maintained by a resort operator or homeowners association within the proposed district. The notice shall be also mailed to each president of a homeowners association, if any, located within a proposed district which has registered with a resort operator to receive the information. Immaterial defects in the mailing of the notices shall not affect the validity of the notices: Provided, That in the case of any resort area district to be voted upon after the effective date of this amendment adopted during the 2015 regular session of the Legislature, any notice shall be mailed to the property owner’s primary place of abode by certified mail, return receipt requested.

§7-25-7a. Voluntary dissolution resort area district.

(a) The owners of twenty-five percent or more of the real property in a resort area district may petition the board to dissolve that resort area district.

(b) Within sixty days of the submission of a petition for the dissolution of a resort area district, the board shall verify the
total number of eligible petitioners to determine whether the required percentage of petitioners has been obtained. If the board determines that the petition has met the requirements of subsection (a) of this section, the board shall set a date for a special election on the question of continuing or dissolving the resort area district. The board shall, using reasonable efforts, cause a notice to be mailed by certified mail, return receipt requested, to each owner of real property located within the resort area district’s of a special election to determine continuance or dissolution of the resort area district: Provided, That any notice shall be mailed to the property owner’s primary place of abode by certified mail, return receipt requested.

The date set by the board for the special election required by this section may be no less than sixty nor more than ninety days from the date the board mails the notice, in the form described in subsection (c) of this section, to the owners of real property located within the district. The board shall make a copy of the petition available for inspection by interested persons before the special election. If the board determines that the petition has not met the requirements of subsection (a) of this section, the petition shall be returned to the petitioners with a statement of the reason why the petition was rejected.

(c) The notice mailed to real property owners regarding the special election to determine the continuance or dissolution of the resort area district shall contain the following:

(1) The purpose, location, date and time for the special election;

(2) A proxy, in the form described in subsection (d) of this section, which may be used by owners of any class of property to grant proxies to any person to cast the owner’s ballot at the special election as if the owner were present in person. The proxy may be mailed or transmitted electronically to the individual being granted the proxy; and
(3) A copy of a ballot described in subsection (e) of this section. The ballot may be used to vote for continuance or dissolution of the resort area district at the special election.

(d) The proxy form required to be included with the notice of special election mailed to real property owners, as provided in subsection (c) of this section, shall contain the following information:

(1) That the proxy is for the special election to consider the continuance or dissolution of the resort area district as covered by the notice required by subsection (b) of this section;

(2) The name of the owner having the voting right for a parcel of real property;

(3) The location of the real property;

(4) The name of the individual being given the proxy to vote for the owner unable to attend the special election;

(5) The date and signature of real property owner authorizing the proxy; and

(6) A statement that the named individual being extended the voting proxy is restricted to placing a vote for the named owner as indicated by the owner’s check mark in one of the following two voting choices:

/ / For Continuance of the ______ (name of district) resort area district.

/ / For Dissolution of the ______ (name of district) resort area district.

(e) At the special election, the board shall submit the question of continuing or dissolving the resort area district to owners of qualified real property within the resort area district. For purposes of this section, the term “qualified real property”
includes the following classes of real property: Unimproved/
developable; commercial business; resort operator; and
residential improved. Each owner of qualified real property is
entitled to one undivided vote in the special election for each
parcel of qualified real property owned. The special election
ballots shall have written or printed on them the following:

// For Continuance of the ______ (name of district) resort
area district.

// For Dissolution of the ______ (name of district) resort
area district.

If a simple majority of the votes is cast for dissolution, then
the board shall request that the governing body dissolve the
resort area district. Following the receipt of a request, the resort
area district shall be dissolved by the governing body by
operation of law. However, all debts or other obligations
outstanding against the resort area district must be settled in full
prior to the dissolution. If a simple majority of the votes is cast
for continuance, the resort area district shall continue in
existence until dissolved at some later date under this section.
However, another election may not be held within two years of
the last election.

(f) An election under this section shall be held, and
conducted and the result determined, certified, returned and
canvassed in the same manner and by the same persons as an
election for resort area district board members pursuant to
section eleven of this article.

§7-25-11. Election procedure for initial members of resort area
board; subsequent elections; elections and procedures
to fill board vacancies.

(a) Within ninety days of the adoption of the order creating
the resort area district, a public meeting shall be held at which
elections for the initial members of the board shall be held. The
meeting shall be held at a location within the district not less
than twenty days after the publication of the notice required by
subsection (b) of this section.

(b) Prior to the meeting required by this section, the
petitioners for the creation of the resort area district shall, using
reasonable efforts, cause notice of the initial election meeting to
be given to all owners of real property, including owners of
commercial business property, located within the district. The
notice shall be mailed to each owner of real property included in
the resort area district as provided in subsection (h) of this
section, posted in multiple, conspicuous public locations within
the district and published at least thirty days prior to the date of
the meeting as a Class II legal advertisement in compliance with
the provisions of article three, chapter fifty-nine of this code and
the publication area for the publication is the resort area district.
The notice shall provide, at a minimum, the following
information:

(1) The purpose of the meeting;

(2) Descriptions of the board positions;

(3) A statement that only owners of real property, including
owners of commercial business property, located within the
district are eligible to make nominations for board positions or
vote in the election;

(4) The location of the meeting;

(5) Electronic and physical addresses where nominations for
board positions will be received by petitioners for the creation of
the resort area district; and

(6) The date and time of the meeting.

(c) Nominations shall be made for each board position by
persons eligible to vote for each board position. Nominations
may be made at the meeting required by this section, by mail or by electronic means. Nominations made by mail or by electronic means must be received by the petitioners prior to the meeting to be valid. Persons nominated for board positions shall meet the criteria provided for each board position as set forth in subsection (b), section ten of this article. Nominations shall be made for each board position in the following manner:

(1) Only owners of residential, improved real property located within the resort area district may nominate persons for the three board positions provided for owners of or representatives of owners of residential, improved real property located within the resort area district;

(2) Only representatives of the resort operator or resort operators may nominate persons for the two board positions provided for representatives of the resort operator or resort operators located within the resort area district;

(3) Only owners of commercial business property located within the resort area district may nominate persons for the board position provided for an owner of or a representative of owners of commercial business property located within the resort area district; and

(4) Only owners of unimproved, developable real property located within the resort area district may nominate persons for the board position provided for an owner of or a representative of owners of unimproved, developable real property located within the resort area district.

(d) Following board member nominations, a vote shall be taken by written ballot for board members to be elected, but owners of any class of property may grant proxies to any person to cast the owner’s ballot as if the owner were present in person. Voting shall occur in the following manner:
(1) Only owners of residential, improved real property located within the resort area district may vote for the three board positions provided for owners of or representatives of owners of residential, improved real property located within the resort area district. Each owner is entitled to one vote per unit or parcel of residential, improved real property he or she owns;

(2) Only a representative of each resort operator may vote for the two board positions provided for representatives of the resort operator or resort operators located within the resort area district;

(3) Only owners of commercial business property located within the resort area district may vote for the board position provided for an owner of or a representative of owners of commercial business property located within the resort area district. Each owner is entitled to one vote per unit of commercial business property he or she owns; and

(4) Only owners of unimproved, developable real property located within the resort area may vote for the board position provided for an owner of or a representative of owners of unimproved, developable real property located within the resort area district. Each owner is entitled to one vote per parcel of unimproved, developable real property that he or she owns.

(e) For purposes of voting in the initial election and in all subsequent elections for board members:

(1) The owners of each parcel or unit of real property are entitled one vote, irrespective of the number of owners of the parcel or unity;

(2) Fractional voting shall not be permitted; and

(3) The vote pertaining to a parcel or unit shall be cast in accordance with the direction of the person or persons holding
the majority interest in the parcel or unit, and in the event there
is no majority, the vote shall be forfeited.

(f) Each board member shall be elected by a plurality of the
votes cast for such board position.

(g) The petitioners for the creation of the resort area district
shall be responsible for the costs of the initial election and
meeting required by this section.

(h) For purposes of the mailing of notice to owners of real
property required by this section, reasonable efforts shall be
made to mail such notice to all owners of real property included
within such resort area district using the real property tax records
and land books of the county in which such district is located and
any lists maintained by a resort operator or homeowners
association within such district. Such notice shall be also mailed
to each president of a homeowners association, if any, located
within a district which has registered with a resort operator to
receive such information. Immaterial defects in the mailing of
such notices shall not affect the validity of such notice.

§7-25-15. Authorization to implement assessments for projects;
procedures for implementing assessments; by-laws to
provide additional procedures for implementation of
assessments; notice to property owners before
implementation of assessments for projects; voting
on assessments; affidavit of publication.

(a) An assessment for a project within a resort area district
shall be authorized by the adoption of a resolution by the board.
The aggregate limit of assessments that may be levied against a
parcel of real property within the district is five percent of the
appraised value of the real property, including improvements, as
shown in the property tax records and land books of the county
in which the property is located. A resolution authorizing an
assessment shall only be adopted after following the procedures set forth in this section.

(b) The bylaws of a district shall provide the procedures not addressed in this section for the implementation of an assessment to pay the costs of a project: Provided, That the procedures must be consistent with constitutional standards and all other laws and rules of this state.

(c) Fifty-one percent or more of the owners of real property to be benefitted by a project may petition the board to implement an assessment to pay the costs of the project. A board may on its own initiative propose an assessment to pay the costs of a project upon approval by six sevenths of the board.

d) Upon following the procedures provided in this section and a resort area district’s bylaws for the implementation of an assessment to pay the costs of a project, the board may, after giving notice to all real property owners, holding a public meeting and a vote on the project if required by this section, adopt a resolution authorizing the assessment to pay the costs of a project upon approval by six sevenths of the board.

e) Before the adoption of a resolution authorizing an assessment to pay the costs of a project, the board shall cause notice to be given to the owners of real property located within the resort area district that the resolution will be considered for adoption at a public meeting of the board at a date, time and place named in the notice and that all persons at that meeting, or any adjournment thereof, shall be given an opportunity to protest or be heard concerning the adoption or rejection of the resolution. If, as provided in subsection (f) of this section, a favorable vote of the property owners is required before the board authorizes the assessment, the notice of meeting shall also contain information required to enable the owners of real property within the district that will be subject to the assessment to vote on the assessment by mail or electronic means.
(f) An assessment may not be authorized by the board if at the public meeting required by this section written protest is filed by at least twenty-five percent of the owners of the real property within the district to be benefitted by the proposed project and subject to the assessment. However, before an assessment proposed by the board on its own initiative as provided in subsection (c) of this section is authorized by the board, the proposal must also receive the favorable vote of a majority of the votes cast at the meeting for the proposal by the owners of real property in the district that will be subject to the assessment. Voting at the meeting shall be in person or by proxy at the meeting or by mailed ballot or electronic means received prior to the meeting. The voting rules set forth in subsection (e), section eleven of this article apply to all voting on assessments. In the event of such protest, the proposed assessment in the same form may not be reconsidered by a board for a period of at least one year from the date of the public meeting.

(g) At least thirty days prior to the date of the public meeting, the notice required by this section shall, using reasonable efforts, be mailed to the owners of real property to be assessed for a proposed project as provided in subsection (k) of this section, posted in multiple, conspicuous public locations within the district and published as a Class II legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code. The publication area for the publication is the resort area district.

(h) An affidavit of publication of the notice made by newspaper publisher, or a person authorized to do so on behalf of the publisher, and a copy of the notice shall be made part of the minutes of the board and spread on its records of the meeting described in the notice. The service of the notice upon all persons owning any interest in any real property located within the resort area district shall conclusively be determined to have been given upon completion of mailing as provided in subsection (k) of this section and the newspaper publication.
(i) After the public meeting and before the board may adopt a resolution authorizing implementation of assessments, the board shall, using reasonable efforts, mail a true copy of the proposed resolution authorizing implementation of an assessment to the owners of real property in the resort area district as provided in subsection (k) of this section.

(j) A board shall make available to the owners of real property within the district a list of all owners of real property within the district for the purposes of enabling the owners of real property to solicit support for a petition proposing or a protest against an assessment.

(k) For purposes of the mailing of each notice to owners of real property required by this section, reasonable efforts shall be made to mail the notice to all owners of real property required to receive notice under this section using the real property tax records and land books of the county in which the district is located and any lists maintained by a resort operator or homeowners association within the district. The notice shall be also mailed to each president of a homeowners association, if any, located within a district which has registered with a resort operator to receive the information. Immaterial defects in the mailing of the notices shall not affect the validity of the notices.


It is the intent of the Legislature that the amendments to this article passed during the 2015 regular session of the Legislature does not cause any petition for the creation of a resort area district that is currently before the governing body of the county in which the proposed resort area district is located to be voided and that those petitions may be modified to meet the current requirements of this article, put to a public meeting, and incorporated into the petition.
AN ACT to amend and reenact §5-10-2, §5-10-14, §5-10-15, §5-10-15a, §5-10-20, §5-10-21 and §5-10-29 of the Code of West Virginia, 1931, as amended; to amend said code by adding thereto a new section, designated §5-10-21a; to amend and reenact §5-13-2 of said code; to amend and reenact §5-16-13 of said code; to amend and reenact §15-2A-21 of said code; to amend and reenact §18-7A-17, §18-7A-23 and §18-7A-25 of said code; to amend said code by adding thereto two new sections, designated §18-7A-17a and §18-7A-25b; and to amend and reenact §18-7D-6, all relating generally to benefits and costs for certain members of the West Virginia Public Employees Retirement System, State Police Retirement System and Teachers Retirement System; calculating final average salary and service credit for certain public employees; authorizing purchase of military service for certain members of the West Virginia Public Employees Retirement System and Teachers Retirement System; providing military service credit for certain members of the West Virginia Public Employees Retirement System; increasing contribution rate and years of contributing service required for certain public employees to qualify for certain annuities; providing for determination of years of service; providing that accrued annual and sick leave of certain employees participating in the West Virginia Public Employees Retirement System, the State Police Retirement System and the Teachers Retirement System may not be applied for retirement service credit; for a limited time permitting certain members of the Teachers Retirement System who transferred from
the Teachers’ Defined Contribution System to buy, with interest, their full service credit in the Teachers Retirement System; and revising the reciprocal retirement provisions for certain members of the teachers and the public employees system.

Be it enacted by the Legislature of West Virginia:

That §5-10-2, §5-10-14, §5-10-15, §5-10-15a, §5-10-20, §5-10-21 and §5-10-29 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 §5-10-21a; that §5-13-2 of said code be amended and reenacted; that §5-16-13 of said code be amended and reenacted; that §15-2A-21 of said code be amended and reenacted; that §18-7A-17, §18-7A-23, §18-7A-25 of said code be amended and reenacted; that said code be amended by adding thereto two new sections, designated §18-7A-17a and §18-7A-25b; and that §18-7D-6 of said code be amended and reenacted, all to read as follows:

CHAPTER 5. GENERAL POWERS AND AUTHORITY OF THE GOVERNOR, SECRETARY OF STATE AND ATTORNEY GENERAL; BOARD OF PUBLIC WORKS; MISCELLANEOUS AGENCIES, COMMISSIONS, OFFICES, PROGRAMS, ETC.

ARTICLE 10. WEST VIRGINIA PUBLIC EMPLOYEES RETIREMENT ACT.

§5-10-2. Definitions.

1 Unless a different meaning is clearly indicated by the context, the following words and phrases as used in this article have the following meanings:

4 (1) “Accumulated contributions” means the sum of all amounts deducted from the compensations of a member and credited to his or her individual account in the members’ deposit fund, together with regular interest on the contributions;
(2) “Accumulated net benefit” means the aggregate amount of all benefits paid to or on behalf of a retired member;

(3) “Actuarial equivalent” means a benefit of equal value computed upon the basis of a mortality table and regular interest adopted by the board of trustees from time to time: Provided, That when used in the context of compliance with the federal maximum benefit requirements of Section 415 of the Internal Revenue Code, actuarial equivalent shall be computed using the mortality tables and interest rates required to comply with those requirements;

(4) “Annuity” means an annual amount payable by the retirement system throughout the life of a person. All annuities shall be paid in equal monthly installments, rounding to the upper cent for any fraction of a cent;

(5) “Annuity reserve” means the present value of all payments to be made to a retirant or beneficiary of a retirant on account of any annuity, computed upon the basis of mortality and other tables of experience, and regular interest, adopted by the board of trustees from time to time;

(6) “Beneficiary” means any person, except a retirant, who is entitled to, or will be entitled to, an annuity or other benefit payable by the retirement system;

(7) “Board of Trustees” or “board” means the Board of Trustees of the West Virginia Consolidated Public Retirement System;

(8) “Compensation” means the remuneration paid a member by a participating public employer for personal services rendered by the member to the participating public employer. In the event a member’s remuneration is not all paid in money, his or her participating public employer shall fix the value of the portion of the remuneration which is not paid in money. Any lump sum
or other payments paid to members that do not constitute regular
salary or wage payments are not considered compensation for
the purpose of withholding contributions for the system or for
the purpose of calculating a member’s final average salary.
These payments include, but are not limited to, attendance or
performance bonuses, one-time flat fee or lump sum payments,
payments paid as a result of excess budget, or employee
recognition payments. The board shall have final power to
decide whether the payments shall be considered compensation
for purposes of this article;

(9) “Contributing service” means service rendered by a
member within this state and for which the member made
contributions to a public retirement system account of this state,
to the extent credited him or her as provided by this article;

(10) “Credited service” means the sum of a member’s prior
service credit, military service credit, workers’ compensation
service credit and contributing service credit standing to his or
her credit as provided in this article;

(11) “Employee” means any person who serves regularly as
an officer or employee, full time, on a salary basis, whose tenure
is not restricted as to temporary or provisional appointment, in
the service of, and whose compensation is payable, in whole or
in part, by any political subdivision, or an officer or employee
whose compensation is calculated on a daily basis and paid
monthly or on completion of assignment, including technicians
and other personnel employed by the West Virginia National
Guard whose compensation, in whole or in part, is paid by the
federal government: Provided, That an employee of the
Legislature whose term of employment is otherwise classified as
temporary and who is employed to perform services required by
the Legislature for its regular sessions or during the interim
between regular sessions and who has been or is employed
during regular sessions or during the interim between regular
sessions in seven or more consecutive calendar years, as certified by the clerk of the house in which the employee served, is an employee, any provision to the contrary in this article notwithstanding, and is entitled to credited service in accordance with provisions of section fourteen of this article: Provided, however, That members of the legislative body of any political subdivision and judges of the state Court of Claims are employees receiving one year of service credit for each one-year term served and prorated service credit for any partial term served, anything contained in this article to the contrary notwithstanding. In any case of doubt as to who is an employee within the meaning of this article, the board of trustees shall decide the question;

(12) “Employer error” means an omission, misrepresentation or violation of relevant provisions of the West Virginia Code or of the West Virginia Code of State Regulations or the relevant provisions of both the West Virginia Code and of the West Virginia Code of State Regulations by the participating public employer that has resulted in an underpayment or overpayment of contributions required. A deliberate act contrary to the provisions of this section by a participating public employer does not constitute employer error;

(13) “Final average salary” means either of the following: Provided, That salaries for determining benefits during any determination period may not exceed the maximum compensation allowed as adjusted for cost of living in accordance with section seven, article ten-d of this chapter and Section 401 (a) (17) of the Internal Revenue Code: Provided, however, That the provisions of section twenty-two-h of this article are not applicable to the amendments made to this subdivision during the 2011 regular session of the Legislature;

(A) The average of the highest annual compensation received by a member, including a member of the Legislature
who participates in the retirement system in the year 1971 or thereafter, during any period of three consecutive years of credited service contained within the member’s fifteen years of credited service immediately preceding the date his or her employment with a participating public employer last terminated: Provided, That for persons who were first hired on or after July 1, 2015, any period of five consecutive years of contributing service contained within the member’s fifteen years of credited service immediately preceding the date his or her employment with a participating public employer last terminated; or

(B) If the member has less than five years of credited service, the average of the annual rate of compensation received by the member during his or her total years of credited service; and in determining the annual compensation, under either paragraph (A) or (B) of this subdivision, of a member of the Legislature who participates in the retirement system as a member of the Legislature in the year 1971, or in any year thereafter, his or her actual legislative compensation (the total of all compensation paid under sections two, three, four and five, article two-a, chapter four of this code), in the year 1971, or in any year thereafter, plus any other compensation he or she receives in any year from any other participating public employer including the State of West Virginia, without any multiple in excess of one times his or her actual legislative compensation and other compensation, shall be used: Provided, That final average salary for any former member of the Legislature or for any member of the Legislature in the year 1971 who, in either event, was a member of the Legislature on November 30, 1968, or November 30, 1969, or November 30, 1970, or on November 30 in any one or more of those three years and who participated in the retirement system as a member of the Legislature in any one or more of those years means: (i) Either, notwithstanding the provisions of this subdivision preceding this proviso, $1,500 multiplied by eight, plus the highest other
compensation the former member or member received in any one of the three years from any other participating public employer including the State of West Virginia; or (ii) final average salary determined in accordance with paragraph (A) or (B) of this subdivision, whichever computation produces the higher final average salary, and in determining the annual compensation under subparagraph (ii) of this paragraph, the legislative compensation of the former member shall be computed on the basis of $1,500 multiplied by eight, and the legislative compensation of the member shall be computed on the basis set forth in the provisions of this subdivision immediately preceding this paragraph or on the basis of $1,500 multiplied by eight, whichever computation as to the member produces the higher annual compensation;

(14) “Internal Revenue Code” means the Internal Revenue Code of 1986, as amended, codified at Title 26 of the United States Code;

(15) “Limited credited service” means service by employees of the West Virginia Educational Broadcasting Authority, in the employment of West Virginia University, during a period when the employee made contributions to another retirement system, as required by West Virginia University, and did not make contributions to the Public Employees Retirement System: Provided, That while limited credited service can be used for the formula set forth in subsection (e), section twenty-one of this article, it may not be used to increase benefits calculated under section twenty-two of this article;

(16) “Member” means any person who has accumulated contributions standing to his or her credit in the members’ deposit fund;

(17) “Participating public employer” means the State of West Virginia, any board, commission, department, institution
or spending unit and includes any agency created by rule of the
Supreme Court of Appeals having full-time employees, which
for the purposes of this article is considered a department of state
government; and any political subdivision in the state which has
elected to cover its employees, as defined in this article, under
the West Virginia Public Employees Retirement System;

(18) “Plan year” means the same as referenced in section
forty-two of this article;

(19) “Political subdivision” means the State of West
Virginia, a county, city or town in the state; a school corporation
or corporate unit; any separate corporation or instrumentality
established by one or more counties, cities or towns, as permitted
by law; any corporation or instrumentality supported in most part
by counties, cities or towns; and any public corporation charged
by law with the performance of a governmental function and
whose jurisdiction is coextensive with one or more counties,
cities or towns: Provided, That any mental health agency
participating in the Public Employees Retirement System before
July 1, 1997, is considered a political subdivision solely for the
purpose of permitting those employees who are members of the
Public Employees Retirement System to remain members and
continue to participate in the retirement system at their option
after July 1, 1997: Provided, however, That the Regional
Community Policing Institute which participated in the Public
Employees Retirement System before July 1, 2000, is considered
a political subdivision solely for the purpose of permitting those
employees who are members of the Public Employees
Retirement System to remain members and continue to
participate in the Public Employees Retirement System after July
1, 2000;

(20) “Prior service” means service rendered prior to July 1,
1961, to the extent credited a member as provided in this article;
(21) “Regular interest” means the rate or rates of interest per annum, compounded annually, as the board of trustees adopts from time to time;

(22) “Required beginning date” means April 1 of the calendar year following the later of: (A) The calendar year in which the member attains age seventy and one-half years of age; or (B) the calendar year in which a member who has attained the age seventy and one-half years of age and who ceases providing service covered under this system to a participating employer;

(23) “Retirant” means any member who commences an annuity payable by the retirement system;

(24) “Retirement” means a member’s withdrawal from the employ of a participating public employer and the commencement of an annuity by the retirement system;

(25) “Retirement system” or “system” means the West Virginia Public Employees Retirement System created and established by this article;

(26) “Retroactive service” means: (1) Service between July 1, 1961, and the date an employer decides to become a participating member of the Public Employees Retirement System; (2) service prior to July 1, 1961, for which the employee is not entitled to prior service at no cost in accordance with 162 CSR 5.13; and (3) service of any member of a legislative body or employees of the state Legislature whose term of employment is otherwise classified as temporary for which the employee is eligible, but for which the employee did not elect to participate at that time;

(27) “Service” means personal service rendered to a participating public employer by an employee of a participating public employer; and
Section 5-10-14. Service credit; retroactive provisions.

(a) The board of trustees shall credit each member with the prior service and contributing service to which he or she is entitled based upon rules adopted by the board of trustees and based upon the following:

1 (1) In no event may less than ten days of service rendered by a member in any calendar month be credited as a month of service: Provided, That for employees of the state Legislature whose term of employment is otherwise classified as temporary and who are employed to perform services required by the Legislature for its regular sessions or during the interim between regular sessions or during the interim between regular sessions in seven consecutive calendar years, service credit of one month shall be awarded for each ten days employed in the interim between regular sessions, which interim days shall be cumulatively calculated so that any ten days, regardless of calendar month or year, shall be calculated toward any award of one month of service credit;

(2) Except for hourly employees, and those persons who first become members of the retirement system on or after July 1, 2015, ten or more months of service credit earned in any calendar year shall be credited as a year of service: Provided, That no more than one year of service may be credited to any member for all service rendered by him or her in any calendar year and no days may be carried over by a member from one calendar year to another calendar year where the member has received a full-year credit for that year; and

(3) Service may be credited to a member who was employed by a political subdivision if his or her employment occurred
within a period of thirty years immediately preceding the date
the political subdivision became a participating public employer.

(b) The board of trustees shall grant service credit to
employees of boards of health, the Clerk of the House of
Delegates and the Clerk of the State Senate or to any former and
present member of the State Teachers Retirement System who
have been contributing members for more than three years, for
service previously credited by the State Teachers Retirement
System and shall require the transfer of the member’s
contributions to the system and shall also require a deposit, with
interest, of any withdrawals of contributions any time prior to the
member’s retirement. Repayment of withdrawals shall be as
directed by the board of trustees.

(c) Court reporters who are acting in an official capacity,
although paid by funds other than the county commission or
State Auditor, may receive prior service credit for time served in
that capacity.

(d) Active members who previously worked in
Comprehensive Employment and Training Act (CETA) may
receive service credit for time served in that capacity: Provided,
That in order to receive service credit under the provisions of
this subsection the following conditions must be met: (1) The
member must have moved from temporary employment with the
participating employer to permanent full-time employment with
the participating employer within one hundred twenty days
following the termination of the member’s CETA employment;
(2) the board must receive evidence that establishes to a
reasonable degree of certainty as determined by the board that
the member previously worked in CETA; and (3) the member
shall pay to the board an amount equal to the employer and
employee contribution plus interest at the amount set by the
board for the amount of service credit sought pursuant to this
subsection: Provided, however, That the maximum service credit
that may be obtained under the provisions of this subsection is
two years: Provided further, That a member must apply and pay
for the service credit allowed under this subsection and provide
all necessary documentation by March 31, 2003: And provided
further, That the board shall exercise due diligence to notify
affected employees of the provisions of this subsection.

(e) (1) Employees of the state Legislature whose terms of
employment are otherwise classified as temporary and who are
employed to perform services required by the Legislature for its
regular sessions or during the interim time between regular
sessions shall receive service credit for the time served in that
capacity in accordance with the following: For purposes of this
section, the term “regular session” means day one through day
sixty of a sixty-day legislative session or day one through day
thirty of a thirty-day legislative session. Employees of the state
Legislature whose term of employment is otherwise classified as
temporary and who are employed to perform services required
by the Legislature for its regular sessions or during the interim
time between regular sessions and who have been or are
employed during regular sessions or during the interim time
between regular sessions in seven consecutive calendar years, as
certified by the clerk of the house in which the employee served,
shall receive service credit of six months for all regular sessions
served, as certified by the clerk of the house in which the
employee served, or shall receive service credit of three months
for each regular thirty-day session served prior to 1971: Provided,
That employees of the state Legislature whose term of
employment is otherwise classified as temporary and who are
employed to perform services required by the Legislature for its
regular sessions and who have been or are employed during the
regular sessions in thirteen consecutive calendar years as either
temporary employees or full-time employees or a combination
thereof, as certified by the clerk of the house in which the
employee served, shall receive a service credit of twelve months
for each regular session served, as certified by the clerk of the
house in which the employee served: *Provided, however, That*
the amendments made to this subsection during the 2002 regular
session of the Legislature only apply to employees of the
Legislature who are employed by the Legislature as either
temporary employees or full-time employees as of January 1,
2002, or who become employed by the Legislature as temporary
or full-time employees for the first time after January 1, 2002.
Employees of the State Legislature whose terms of employment
are otherwise classified as temporary and who are employed to
perform services required by the Legislature during the interim
time between regular sessions shall receive service credit of one
month for each ten days served during the interim between
regular sessions, which interim days shall be cumulatively
calculated so that any ten days, regardless of calendar month or
year, shall be calculated toward any award of one month of
service credit: *Provided further, That* no more than one year of
service may be credited to any temporary legislative employee
for all service rendered by that employee in any calendar year
and no days may be carried over by a temporary legislative
employee from one calendar year to another calendar year where
the member has received a full year credit for that year. Service
credit awarded for legislative employment pursuant to this
section shall be used for the purpose of calculating that
member’s retirement annuity, pursuant to section twenty-two of
this article, and determining eligibility as it relates to credited
service, notwithstanding any other provision of this section.
Certification of employment for a complete legislative session
and for interim days shall be determined by the clerk of the
house in which the employee served, based upon employment
records. Service of fifty-five days of a regular session constitutes
an absolute presumption of service for a complete legislative
session and service of twenty-seven days of a thirty-day regular
session occurring prior to 1971 constitutes an absolute
presumption of service for a complete legislative session. Once
a legislative employee has been employed during regular
sessions for seven consecutive years or has become a full-time employee of the Legislature, that employee shall receive the service credit provided in this section for all regular and interim sessions and interim days worked by that employee, as certified by the clerk of the house in which the employee served, regardless of when the session or interim legislative employment occurred: And provided further, That regular session legislative employment for seven consecutive years may be served in either or both houses of the Legislature.

(2) For purposes of this section, employees of the Joint Committee on Government and Finance are entitled to the same benefits as employees of the House of Delegates or the Senate: Provided, That for joint committee employees whose terms of employment are otherwise classified as temporary, employment in preparation for regular sessions, certified by the legislative manager as required by the Legislature for its regular sessions, shall be considered the same as employment during regular sessions to meet service credit requirements for sessions served.

(f) Any employee may purchase retroactive service credit for periods of employment in which contributions were not deducted from the employee’s pay. In the purchase of service credit for employment prior to 1989 in any department, including the Legislature, which operated from the General Revenue Fund and which was not expressly excluded from budget appropriations in which blanket appropriations were made for the state’s share of public employees’ retirement coverage in the years prior to 1989, the employee shall pay the employee’s share. Other employees shall pay the state’s share and the employee’s share to purchase retroactive service credit. Where an employee purchases service credit for employment which occurred after 1988, that employee shall pay for the employee’s share and the employer shall pay its share for the purchase of retroactive service credit: Provided, That no legislative employee and no current or former member of the Legislature may be required to
pay any interest or penalty upon the purchase of retroactive service credit in accordance with the provisions of this section where the employee was not eligible to become a member during the years for which he or she is purchasing retroactive credit or had the employee attempted to contribute to the system during the years for which he or she is purchasing retroactive service credit and such contributions would have been refused by the board: Provided, however, That a legislative employee purchasing retroactive credit under this section does so within twenty-four months of becoming a member of the system or no later than December 31, 2008, whichever occurs last: Provided further, That once a legislative employee becomes a member of the retirement system, he or she may purchase retroactive service credit for any time he or she was employed by the Legislature and did not receive service credit. Any service credit purchased shall be credited as six months for each sixty-day session worked, three months for each thirty-day session worked or twelve months for each sixty-day session for legislative employees who have been employed during regular sessions in thirteen consecutive calendar years, as certified by the clerk of the house in which the employee served, and credit for interim employment as provided in this subsection: And provided further, That this legislative service credit shall also be used for months of service in order to meet the sixty-month requirement for the payments of a temporary legislative employee member’s retirement annuity: And provided further, That no legislative employee may be required to pay for any service credit beyond the actual time he or she worked regardless of the service credit which is credited to him or her pursuant to this section: And provided further, That any legislative employee may request a recalculation of his or her credited service to comply with the provisions of this section at any time.

(g) (1) Notwithstanding any provision to the contrary, the seven consecutive calendar years requirement and the thirteen consecutive calendar years requirement and the service credit
requirements set forth in this section shall be applied retroactively to all periods of legislative employment prior to the passage of this section, including any periods of legislative employment occurring before the seven consecutive and thirteen consecutive calendar years referenced in this section: Provided, That the employee has not retired prior to the effective date of the amendments made to this section in the 2002 regular session of the Legislature.

(2) The requirement of seven consecutive years and the requirement of thirteen consecutive years apply retroactively to all legislative employment prior to the effective date of the 2006 amendments to this section.

(h) The board of trustees shall grant service credit to any former or present member of the State Police Death, Disability and Retirement Fund who has been a contributing member of this system for more than three years for service previously credited by the State Police Death, Disability and Retirement Fund if the member transfers all of his or her contributions to the State Police Death, Disability and Retirement Fund to the system created in this article, including repayment of any amounts withdrawn any time from the State Police Death, Disability and Retirement Fund by the member seeking the transfer allowed in this subsection: Provided, That there shall be added by the member to the amounts transferred or repaid under this subsection an amount which shall be sufficient to equal the contributions he or she would have made had the member been under the Public Employees Retirement System during the period of his or her membership in the State Police Death, Disability and Retirement Fund, excluding contributions on lump sum payment for annual leave, plus interest at a rate determined by the board.

(i) The provisions of section twenty-two-h of this article are not applicable to the amendments made to this section during the 2006 regular session.
§5-10-15. Military service credit; qualified military service.

(a) (1) The Legislature recognizes the men and women of this state who have served in the armed forces of the United States during times of war, conflict and danger. It is the intent of this subsection to confer military service credit upon persons who are eligible at any time for public employees retirement benefits for any time served in active duty in the armed forces of the United States, regardless of whether the person was a public employee at the time of entering the military service.

(2) In addition to any benefit provided by federal law, any member of the retirement system who has previously served in or enters the active service of the armed forces of the United States, including active duty in the National Guard performed pursuant to Title 10 or Title 32 of the United States Code, shall receive credited service for the time spent in the armed forces of the United States, not to exceed five years, if the member:

(A) Has been honorably discharged from the armed forces; and

(B) Substantiates by appropriate documentation or evidence his or her active military service.

If a member of the retirement system enters the active service of the armed forces of the United States, the member’s contributions to the retirement system are suspended during the period of the active service and until the member’s return to the employ of a participating public employer, and any credit balance remaining in the member’s deposit fund shall accumulate regular interest: Provided, That notwithstanding any provision in this article to the contrary, if an employee of a participating political subdivision serving on active duty in the military has accumulated credited service prior to the last entry into military service, in an amount that, added to the time in
active military service while an employee equals nine or more
years, and the member is unable to resume employment with a
participating employer upon completion of duty due to death
during or as a result of active service, all time spent in active
military service, up to and including a total of five years, is
considered to be credited service and death benefits are vested in
the member: Provided, however, That the active service during
the time the member is an employee must be as a result of an
order or call to duty, and not as a result of volunteering for
assignment or volunteering to extend the time in service beyond
the time required by order or call.

(b) Subsection (a) of this section does not apply to any
member who first becomes an employee of a participating public
employer on or after July 1, 2015. This subsection does not
apply to any member who first became an employee of a
participating public employer before July 1, 2015.

(1) A member who first becomes an employee of a
participating public employer on or after July 1, 2015, may
purchase up to sixty months of military service credit for time
served in active military duty prior to first becoming an
employee of a participating public employer if all of the
following conditions are met:

(A) The member has completed at least twelve consecutive
months of contributory service upon first becoming an employee
of a participating public employer;

(B) The active military duty occurs prior to the date on
which the member first becomes an employee of a participating
public employer; and

(C) The employee pays to the retirement system the actuarial
reserve purchase amount within forty-eight months after the date
on which employer and employee contributions are first received
by the retirement system for the member and while he or she continues to be in the employ of a participating public employer and contributing to the retirement system: Provided, That any employee who ceases employment with a participating public employer before completing the required actuarial reserve purchase amount in full shall not be eligible to purchase the military service.

(2) Notwithstanding paragraph (A), subdivision (1) of this subsection, a member who first becomes an employee of a participating public employer on or after July 1, 2015, but who does not remain employed and contributing to the retirement system for at least twelve consecutive months after his or her initial employment, shall be considered to have met the requirement of paragraph (A), subdivision (1) of this subsection the first time he or she becomes an employee of a participating public employer and completes at least twelve consecutive months of contributing service. Such a member shall be considered to have met the requirement of paragraph (C), subdivision (1) of this subsection if he or she pays to the retirement system the actuarial reserve purchase amount within forty-eight months after the date on which employer and employee contributions are first received by the retirement system for the member the first time he or she becomes an employee of a participating public employer and completes at least twelve consecutive months of contributing service, and while he or she continues to be in the employ of a participating public employer and contributing to the retirement system.

(3) Notwithstanding paragraph (A), subdivision (1) of this subsection, a member who first becomes an employee of a participating public employer on or after July 1, 2015, as an elected official, shall be considered to have met the requirement of paragraph (A), subdivision (1) of this subsection after remaining employed for the first twelve consecutive months of his or her term and first becoming an employee, regardless of
whether a salary is paid to the employee for each such month.
An elected official who does not elect to begin participating in
the retirement system upon first becoming an employee of a
participating public employer as an elected official is not eligible
to purchase military service credit pursuant to subdivision (1) of
this subsection.

(4) A member who first becomes an employee of a
participating public employer on or after July 1, 2015, may
purchase military service credit for active military duty
performed on or after the date he or she first becomes an
employee of a participating public employer only if all of the
following conditions are met: Provided, That the maximum
military service credit such member may purchase shall take into
account any military service credit purchased for active military
duty pursuant to subdivision (1) of this subsection in addition to
any military service credit purchased pursuant to this
subdivision:

(A) The member was an employee of a participating public
employer, terminated employment and experienced a break in
contributing service in the retirement system of one or more
months, performed active military service while not an employee
of the participating public employer and not contributing to the
retirement system, then again becomes an employee of a
participating public employer and completes at least twelve
consecutive months of contributory service;

(B) The member does not qualify for military service credit
for such active military duty pursuant to subsection (d) of this
section; and

(C) The member pays to the retirement system the actuarial
reserve lump sum purchase amount within forty-eight months
after the date on which employer and employee contributions are
first received by the retirement system for the member after he
or she again becomes an employee of a participating public employer immediately following the period of active military duty and break in service and completes at least twelve consecutive months of contributory service and while he or she continues to be in the employ of a participating public employer and contributing to the retirement system.

(5) Notwithstanding paragraph (A), subdivision (4) of this subsection, a member who otherwise meets the requirements of said paragraph, but who does not remain employed and contributing to the retirement system for at least twelve consecutive months when he or she first becomes an employee of a participating public employer after the period of active military duty and break in service, shall be considered to have met the requirement of paragraph (A), subdivision (4) of this subsection the first time he or she again becomes an employee of a participating public employer and completes at least twelve consecutive months of contributing service. Such a member shall be considered to have met the requirement of paragraph (C), subdivision (4) of this subsection if he or she pays to the retirement system the actuarial reserve lump sum purchase amount within forty-eight months after the date on which employer and employee contributions are first received by the retirement system for the member for the first time he or she again becomes an employee of a participating public employer and completes at least twelve consecutive months of contributing service, and while he or she continues to be in the employ of a participating public employer and contributing to the retirement system.

(6) Notwithstanding paragraph (A), subdivision (4) of this subsection, a member who becomes an employee of a participating public employer after such a period of active military duty and break in service as an elected official shall be considered to have met the requirement of paragraph (A), subdivision (4) of this subsection after remaining employed for
the first twelve consecutive months of his or her term after again
becoming an employee, regardless of whether a salary is paid to
the employee for each such month. Such an individual must elect
to begin participating in the retirement system immediately upon
again becoming an employee of a participating public employer
after the period of active military duty and break in service.

(7) For purposes of this subsection, the following definitions
apply:

(A) “Active military duty” means full-time active duty in the
armed forces of the United States for a period of thirty or more
consecutive calendar days. Active military duty does not include
inactive duty of any kind.

(B) “Actuarial reserve purchase amount” means the purchase
annuity rate multiplied by the purchase accrued benefit,
calculated as of the calculation month, plus annual interest
accruing at seven and one-half percent from the calculation
month through the purchase month, compounded monthly:
Provided, That if the employee elects to pay the full purchase
amount on an installment or partial payment basis, the actuarial
reserve purchase amount will include the lump sum payment
plus additional interest accruing at seven and one-half percent
until the purchase amount is paid in full.

(C) “Armed forces of the United States” means the Army,
Navy, Air Force, Marine Corps and Coast Guard, the reserve
components thereof, and the National Guard of the United States
or the National Guard of a state or territory when members of the
same are on full-time active duty pursuant to Title 10 or Title 32
of the United States Code.

(D) “Calculation month” means the month immediately
following the month in which the member completes the twelve
consecutive months of contributory service with a participating
public employer required by this subsection, as applicable.
(E) “Purchase accrued benefit” means two percent times the purchase military service times the purchase average monthly salary.

(F) “Purchase age” means the age of the employee in years and completed months as of the first day of the calculation month.

(G) “Purchase annuity rate” means the actuarial lump sum annuity factor calculated as of the calculation month based on the following actuarial assumptions: Interest rate of seven and one-half percent; mortality of the 1971 group annuity mortality table, fifty percent blended male and female rates, applied on a unisex basis to all members; if purchase age is under age sixty-two, a deferred annuity factor with payments commencing at age sixty-two; and if purchase age is sixty-two or over, an immediate annuity factor with payments starting at the purchase age.

(H) “Purchase average monthly salary” means the average monthly salary of the member during the months two through twelve of the twelve consecutive month period required by this subsection of this section, as applicable.

(I) “Purchase military service” means the amount of military service being purchased by the employee in months up to the sixty-month maximum, calculated in accordance with subdivision (9) of this subsection.

(J) “Purchase month” means the month in which the employee deposits the actuarial reserve lump sum purchase amount in full payment of the service credit being purchased or makes the final payment of the actuarial reserve purchase amount into the plan trust fund in full payment of the service credit being purchased.

(8) A member may purchase military service credit for a period of active military duty pursuant to this subsection only if
the member received an honorable discharge for such period. Anything other than an honorable discharge, including, but not limited to, a general or under honorable conditions discharge, an entry-level separation discharge, an other than honorable conditions discharge or a dishonorable discharge, shall disqualify the member from receiving military service credit for the period of service.

(9) To calculate the amount of military service credit a member may purchase, the board shall add the total number of days in each period of a member’s active military duty eligible to be purchased, divide the total by thirty, and round up or down to the nearest integer (fractions of 0.5 shall be rounded up), in order to yield the total number of months of military service credit a member may purchase, subject to the sixty-month maximum. A member may purchase all or part of the maximum amount of military service credit he or she is eligible for in one-month increments.

(10) To receive credit, a member must submit a request to purchase military service credit to the board, on such form or in such other manner as shall be required by the board, within the twelve consecutive month period required by this subsection, as applicable. The board shall then calculate the actuarial reserve lump sum purchase amount, which amount must be paid by the member within the 48-month period required by this subsection, as applicable. A member purchasing military service credit pursuant to this subsection must do so in a single, lump sum payment: Provided, That the board may accept partial, installment or other similar payments if the employee executes a contract with the board specifying the amount of military service to be purchased and the payments required: Provided, however, That any failure to pay the contract amount in accordance with this section shall be treated as an overpayment or excess contribution subject to section forty-four of this article and no military service shall be credited.
(11) The board shall require a member requesting military service credit to provide official documentation establishing that the requirements set forth in this subsection have been met.

(12) Military service credit purchased pursuant to this subsection may not be considered contributing service credit or contributory service for purposes of this article.

(13) If a member who has purchased military service credit pursuant to this subsection is eligible for and requests a withdrawal of accumulated contributions pursuant to the provisions of this article, he or she shall also receive a refund of the actuarial reserve purchase amount he or she paid to the retirement system to purchase military service credit, together with regular interest on such amount.

(c) No period of military service may be used to obtain credit in more than one retirement system administered by the board and once used in any system, a period of military service may not be used again in any other system.

(d) Notwithstanding the preceding provisions of this section, contributions, benefits and service credit with respect to qualified military service shall be provided in accordance with Section 414(u) of the Internal Revenue Code and the federal Uniformed Services Employment and Reemployment Rights Act (USERRA), and regulations promulgated thereunder, as the same may be amended from time to time. For purposes of this section, “qualified military service” has the same meaning as in Section 414(u) of the Internal Revenue Code.

(e) In any case of doubt as to the period of service to be credited a member under the provisions of this section, the board has final power to determine the period. Notwithstanding the provisions of section three-a of this article, the provisions of this section are not subject to liberal construction. The board is
authorized to determine all questions and make all decisions relating to this section and, pursuant to the authority granted to the board in section one, article ten-d of this chapter, may propose rules to administer this section for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code.

§5-10-15a. Retirement credited service through member’s use, as option, of accrued annual or sick leave days.

(a) Any member accruing annual leave or sick leave days may, after June 27, 1988, elect to use the days at the time of retirement to acquire additional credited service in this retirement system. Except as provided in subsection (b) of this section, the accrued days shall be applied on the basis of two workdays credit granted for each one day of such accrued annual or sick leave days, with each month of retirement service credit to equal twenty workdays and with any remainder of ten workdays or more to constitute a full month of additional credit and any remainder of less than ten workdays to be dropped and not used, notwithstanding any provisions of the code to the contrary, including section twelve, article sixteen of this chapter. Such credited service shall be allowed and not deemed to controvert the requirement of no more than twelve months credited service in any year’s period.

(b) For those persons who first become members of the retirement system on or after July 1, 2015, accrued annual or sick days may not be applied to acquire additional credited service.

§5-10-20. Voluntary retirement.

(a) Except as provided in subsection (b) of this section, any member who has attained or attains age sixty years and has five or more years of credited service in force, at least one year of
which he or she was a contributing member of the retirement
system, may retire upon his or her written application filed with
the board of trustees setting forth at what time, not less than
thirty days nor more than ninety days subsequent to the
execution and filing thereof the member desires to be retired:
Provided, That on and after June 1, 1986, any person who
becomes a new member of this retirement system shall, in
qualifying for retirement hereunder, have five or more years of
service, all of which years shall be actual, contributory ones.
Upon retirement, the member shall receive an annuity provided
for in section twenty-two of this article.

(b) Any person who first becomes a member of the
retirement system on or after July 1, 2015, may retire upon
written application as provided in subsection (a) of this section
upon attaining the age of sixty-two with ten or more years of
service, all of which must be actual, contributing years.

§5-10-21. Deferred retirement and early retirement.

(a) Except as provided in section twenty-one-a of this article,
any member who first becomes a member of the retirement
system before July 1, 2015, and who has five or more years of
credited service in force, of which at least three years are
contributing service, and who leaves the employ of a
participating public employer prior to his or her attaining age
sixty years for any reason except his or her disability retirement
or death, is entitled to an annuity computed according to section
twenty-two of this article, as that section was in force as of the
date of his or her separation from the employ of a participating
public employer: Provided, That he or she does not withdraw his
or her accumulated contributions from the members’ deposit
fund: Provided, however, That on and after July 1, 2002, any
person who becomes a new member of this retirement system
shall, in qualifying for retirement under this section, have five or
more years of service, all of which years shall be actual,
17 contributory ones. His or her annuity shall begin the first day of
18 the calendar month next following the month in which his or her
19 application for same is filed with the board of trustees on or after
20 his or her attaining age sixty-two years.

21 (b) Any member who qualifies for deferred retirement
22 benefits in accordance with subsection (a) of this section and has
23 ten or more years of credited service in force and who has
24 attained age fifty-five as of the date of his or her separation,
25 may, prior to the effective date of his or her retirement, but not
26 thereafter, elect to receive the actuarial equivalent of his or her
27 deferred retirement annuity as a reduced annuity commencing on
28 the first day of any calendar month between his or her date of
29 separation and his or her attainment of age sixty-two years and
30 payable throughout his or her life.

31 (c) Any member who qualifies for deferred retirement
32 benefits in accordance with subsection (a) of this section and has
33 twenty or more years of credited service in force may elect to
34 receive the actuarial equivalent of his or her deferred retirement
35 annuity as a reduced annuity commencing on the first day of any
36 calendar month between his or her fifty-fifth birthday and his or
37 her attainment of age sixty-two years and payable throughout his
38 or her life.

39 (d) Notwithstanding any of the other provisions of this
40 section or of this article, except sections twenty-seven-a and
41 twenty-seven-b of this article, and pursuant to rules promulgated
42 by the board, and except for a person who first becomes a
43 member of the retirement system on or after July 1, 2015, any
44 member who has thirty or more years of credited service in
45 force, at least three of which are contributing service, and who
46 elects to take early retirement, which for the purposes of this
47 subsection means retirement prior to age sixty, whether an active
48 employee or a separated employee at the time of application, is
49 entitled to the full computation of annuity according to section
twenty-two of this article, as that section was in force as of the
date of retirement application, but with the reduced actuarial
equivalent of the annuity the member would have received if his
or her benefit had commenced at age sixty when he or she would
have been entitled to full computation of benefit without any
reduction.

(e) Notwithstanding any of the other provisions of this
section or of this article, except sections twenty-seven-a and
twenty-seven-b of this article, and except for a person who first
becomes a member of the retirement system on or after July 1, 2015, any member of the retirement system may retire with full
pension rights, without reduction of benefits, if he or she is at
least fifty-five years of age and the sum of his or her age plus
years of contributing service and limited credited service, as
defined in section two of this article, equals or exceeds eighty:
Provided, That on and after July 1, 2011, any person who
becomes a new member of this retirement system shall, in
qualifying for retirement under this subsection, have five or
more years of service, all of which years shall be actual,
contributory ones. The member’s annuity shall begin the first
day of the calendar month immediately following the calendar
month in which his or her application for the annuity is filed
with the board.

§5-10-21a. Deferred retirement and early retirement for new
members as of July 1, 2015.

(a) Any person who first becomes a member of the
retirement system on or after July 1, 2015, who has ten or more
years of contributing service and who leaves the employ of a
participating public employer prior to attaining age sixty-two
years for any reason except his or her disability or death, is
entitled to an annuity computed according to section twenty-two
of this article, as that section was in force as of the date of his or
her separation from the employ of a participating public
That he or she does not withdraw his or her accumulated contributions from the members’ deposit fund: Provided, however, That his or her annuity shall begin the first day of the calendar month next following the month in which his or her application for same is filed with the board of trustees on or after his or her attaining age sixty-four years.

(b) Any member who qualifies for deferred retirement benefits in accordance with subsection (a) of this section and has twenty or more years of contributing service in force is entitled to an annuity computed as in subsection (a) of this section: Provided, That his or her annuity shall begin the first day of the calendar month next following the month in which his or her application for same is filed with the board of trustees on or after his or her attaining age sixty-three.

(c) Notwithstanding any of the other provisions of this section or of this article, except sections twenty-seven-a and twenty-seven-b of this article, and pursuant to rules promulgated by the board, any member who first becomes a member of the retirement system on or after July 1, 2015, has ten or more years of contributing service in force, is currently employed by a participating public employer and who elects to take early retirement, which for the purposes of this subsection means retirement following attainment of age sixty but prior to attaining age sixty-two, is entitled to the full computation of annuity according to section twenty-two of this article but with the reduced actuarial equivalent of the annuity the member would have received if his or her benefit had commenced at age sixty-two when he or she would have been entitled to full computation of benefit without any reduction: Provided, That his or her annuity shall begin the first day of the calendar month next following the month in which his or her application for same is filed with the board of trustees on or after his or her attaining age sixty.
(d) Any member who first becomes a member of the retirement system on or after July 1, 2015, and has twenty or more years of contributing service in force, is currently employed by a participating public employer and who elects to take early retirement, which for the purposes of this subsection means retirement following attainment of age fifty-seven but prior to attaining age sixty-two, is entitled to the full computation of annuity according to section twenty-two of this article but with the reduced actuarial equivalent of the annuity the member would have received if his or her benefit had commenced at age sixty-two when he or she would have been entitled to full computation of benefit without any reduction: Provided, That his or her annuity shall begin the first day of the calendar month next following the month in which his or her application for same is filed with the board of trustees on or after his or her attaining age fifty-seven.

(e) Any member who first becomes a member of the retirement system on or after July 1, 2015, and has thirty or more years of contributing service in force, and who elects to take early retirement, which for the purposes of this subsection means retirement following attainment of age fifty-five but prior to attaining age sixty-two, is entitled to the full computation of annuity according to section twenty-two of this article but with the reduced actuarial equivalent of the annuity the member would have received if his or her benefit had commenced at age sixty-two when he or she would have been entitled to full computation of benefit without any reduction: Provided, That his or her annuity shall begin the first day of the calendar month next following the month in which his or her application for same is filed with the board of trustees on or after his or her attaining age fifty-five.

§5-10-29. Members’ deposit fund; members’ contributions; forfeitures.

(a) The members’ deposit fund is hereby created. It shall be the fund in which shall be accumulated, at regular interest, the
contributions deducted from the compensation of members, and
from which refunds of accumulated contributions shall be paid
and transfers made as provided in this section.

(b) The contributions of a member to the retirement system
(including any member of the Legislature, except as otherwise
provided in subsection (g) of this section) shall be a sum of not
less than three and five-tenths percent of his or her annual
compensation but not more than four and five-tenths percent of
his or her annual compensation, as determined by the board of
trustees: Provided, That for persons who first become members
of the retirement system on or after July 1, 2015, the
contributions to the system shall be six percent of his or her
annual compensation beginning July 1, 2015. The said
contributions shall be made notwithstanding that the minimum
salary or wages provided by law for any member shall be
thereby changed. Each member shall be deemed to consent and
agree to the deductions made and provided for herein. Payment
of a member’s compensation less said deductions shall be a full
and complete discharge and acquittance of all claims and
demands whatsoever for services rendered by him or her to a
participating public employer, except as to benefits provided by
this article.

(c) The officer or officers responsible for making up the
payrolls for payroll units of the state government and for each of
the other participating public employers shall cause the
contributions, provided in subsection (b) of this section, to be
deducted from the compensations of each member in the employ
of the participating public employer, on each and every payroll,
for each and every payroll period, from the date the member
enters the retirement system to the date his or her membership
terminates. When deducted, each of said amounts shall be paid
by the participating public employer to the retirement system;
said payments to be made in such manner and form, and in such
frequency, and shall be accompanied by such supporting data, as
the board of trustees shall from time to time prescribe. When paid to the retirement system, each of said amounts shall be credited to the members’ deposit fund account of the member from whose compensations said contributions were deducted.

(d) In addition to the contributions deducted from the compensations of a member, as heretofore provided, a member shall deposit in the members’ deposit fund, by a single contribution or by an increased rate of contribution as approved by the board of trustees, the amounts he or she may have withdrawn therefrom and not repaid thereto, together with regular interest from the date of withdrawal to the date of repayment. In no case shall a member be given credit for service rendered prior to the date he or she withdrew his or her contributions or accumulated contributions, as the case may be, until he or she returns to the members’ deposit fund all amounts due the said fund by him or her.

(e) Upon the retirement of a member, or if a survivor annuity becomes payable on account of his or her death, in either event his or her accumulated contributions standing to his or her credit in the members’ deposit fund shall be transferred to the retirement reserve fund.

(f) In the event an employee’s membership in the retirement system terminates and no annuity becomes or will become payable on his or her account, any accumulated contributions standing to his or her credit in the members’ deposit fund, unclaimed by the said employee, or his or her legal representative, within three years from and after the date his or her membership terminated, shall be transferred to the income fund.

(g) Any member of the Legislature who is a member of the retirement system and with respect to whom the term “final average salary” includes a multiple of eight, pursuant to the
provisions of subdivision (13), section two of this article, shall contribute to the retirement system on the basis of his or her legislative compensation the sum of $540 each year he or she participates in the retirement system as a member of the Legislature.

(h) Notwithstanding any other provisions of this article, forfeitures under the system shall not be applied to increase the benefits any member would otherwise receive under the system.

ARTICLE 13. PUBLIC EMPLOYEES’ AND TEACHERS’ RECIPROCAL SERVICE CREDIT ACT.


The following words and phrases as used in this article, unless a different meaning is clearly indicated by the context, shall have the following meanings:

(a) “Accumulated contributions” means the sum of the amounts deducted from the compensation of a member and credited to his or her individual account in a state system, together with interest, if any, credited thereto.

(b) “Annuity” means the annuity payable by a state system.

(c) “Member” means a member of either the West Virginia Public Employees Retirement System or the State Teachers Retirement System. The term “member” does not include any person who has retired under either state system.

(d) “Public final average salary” means a member’s final average salary computed according to the law governing the public system. In computing his or her public final average salary, the compensation, if any, received by the member for services rendered in positions covered by the teacher system shall be used in the same manner as if the compensation were
received for services covered by the public system: Provided, That for persons who first became members of the retirement system on or after July 1, 2015, no compensation for services rendered in positions covered by the teacher system may be used to compute his or her public system final average salary.

(e) “Public system” means the West Virginia Public Employees Retirement System established in article ten of this chapter.

(f) “Reciprocal service credit” for a member of the public system who subsequently becomes a member of the teacher system, or vice versa, means the sum of his or her credited service in force acquired as a member of the public system and his or her credited service in force acquired as a member of the teacher system: Provided, That persons who first became members of the public system or teacher system on or after July 1, 2015, must be employed and contributed for ten years or more in each system to receive reciprocal service credit.

(g) “State system” means the West Virginia Public Employees Retirement System and the State Teachers Retirement System.

(h) “Teacher final average salary” means a member’s final average salary computed according to the law governing the teacher system. In computing his or her teacher final average salary, the compensation, if any, received by the member for services rendered in positions covered by the public system shall be used in the same manner as if the compensation were received for services covered by the teacher system: Provided, That for persons who first became members of the retirement system on or after July 1, 2015, no compensation for services rendered in positions covered by the public system may be used to compute his or her teacher system final average salary.
(i) “Teacher system” means the State Teachers Retirement System established in article seven-a, chapter eighteen of this code.

(j) The masculine gender includes the feminine, and words of the singular number with respect to persons include the plural number, and vice versa.

ARTICLE 16. WEST VIRGINIA PUBLIC EMPLOYEES INSURANCE ACT.

§5-16-13. Payment of costs by employer and employee; spouse and dependent coverage; involuntary employee termination coverage; conversion of annual leave and sick leave authorized for health or retirement benefits; authorization for retiree participation; continuation of health insurance for surviving dependents of deceased employees; requirement of new health plan, limiting employer contribution.

(a) Cost-sharing. — The director shall provide under any contract or contracts entered into under the provisions of this article that the costs of any group hospital and surgical insurance, group major medical insurance, group prescription drug insurance, group life and accidental death insurance benefit plan or plans shall be paid by the employer and employee.

(b) Spouse and dependent coverage. — Each employee is entitled to have his or her spouse and dependents included in any group hospital and surgical insurance, group major medical insurance or group prescription drug insurance coverage to which the employee is entitled to participate: Provided, That the spouse and dependent coverage is limited to excess or secondary coverage for each spouse and dependent who has primary coverage from any other source. For purposes of this section, the term “primary coverage” means individual or group hospital and
surgical insurance coverage or individual or group major medical insurance coverage or group prescription drug coverage in which the spouse or dependent is the named insured or certificate holder. For the purposes of this section, “dependent” includes an eligible employee’s unmarried child or stepchild under the age of twenty-five if that child or stepchild meets the definition of a “qualifying child” or a “qualifying relative” in Section 152 of the Internal Revenue Code. The director may require proof regarding spouse and dependent primary coverage and shall adopt rules governing the nature, discontinuance and resumption of any employee’s coverage for his or her spouse and dependents.

(c) *Continuation after termination.* — If an employee participating in the plan is terminated from employment involuntarily or in reduction of work force, the employee’s insurance coverage provided under this article shall continue for a period of three months at no additional cost to the employee and the employer shall continue to contribute the employer’s share of plan premiums for the coverage. An employee discharged for misconduct shall not be eligible for extended benefits under this section. Coverage may be extended up to the maximum period of three months, while administrative remedies contesting the charge of misconduct are pursued. If the discharge for misconduct be upheld, the full cost of the extended coverage shall be reimbursed by the employee. If the employee is again employed or recalled to active employment within twelve months of his or her prior termination, he or she shall not be considered a new enrollee and may not be required to again contribute his or her share of the premium cost, if he or she had already fully contributed such share during the prior period of employment.

(d) *Conversion of accrued annual and sick leave for extended insurance coverage upon retirement for employees who elected to participate in the plan before July, 1988.* — Except as
otherwise provided in subsection (g) of this section, when an employee participating in the plan, who elected to participate in the plan before July 1, 1988, is compelled or required by law to retire before reaching the age of sixty-five, or when a participating employee voluntarily retires as provided by law, that employee’s accrued annual leave and sick leave, if any, shall be credited toward an extension of the insurance coverage provided by this article, according to the following formulae:

The insurance coverage for a retired employee shall continue one additional month for every two days of annual leave or sick leave, or both, which the employee had accrued as of the effective date of his or her retirement. For a retired employee, his or her spouse and dependents, the insurance coverage shall continue one additional month for every three days of annual leave or sick leave, or both, which the employee had accrued as of the effective date of his or her retirement.

(e) Conversion of accrued annual and sick leave for extended insurance coverage upon retirement for employees who elected to participate in the plan after June, 1988. — Notwithstanding subsection (d) of this section, and except as otherwise provided in subsections (g) and (l) of this section, when an employee participating in the plan who elected to participate in the plan on and after July 1, 1988, is compelled or required by law to retire before reaching the age of sixty-five, or when the participating employee voluntarily retires as provided by law, that employee’s annual leave or sick leave, if any, shall be credited toward one half of the premium cost of the insurance provided by this article, for periods and scope of coverage determined according to the following formulae: (1) One additional month of single retiree coverage for every two days of annual leave or sick leave, or both, which the employee had accrued as of the effective date of his or her retirement; or (2) one additional month of coverage for a retiree, his or her spouse and dependents for every three days of annual leave or sick leave, or both, which the employee had accrued as of the
effective date of his or her retirement. The remaining premium
cost shall be borne by the retired employee if he or she elects the
coverage. For purposes of this subsection, an employee who has
been a participant under spouse or dependent coverage and who
reenters the plan within twelve months after termination of his
or her prior coverage shall be considered to have elected to
participate in the plan as of the date of commencement of the
prior coverage. For purposes of this subsection, an employee
shall not be considered a new employee after returning from
extended authorized leave on or after July 1, 1988.

(f) Increased retirement benefits for retired employees with
accrued annual and sick leave. — In the alternative to the
extension of insurance coverage through premium payment
provided in subsections (d) and (e) of this section, the accrued
annual leave and sick leave of an employee participating in the
plan may be applied, on the basis of two days’ retirement service
credit for each one day of accrued annual and sick leave, toward
an increase in the employee’s retirement benefits with those days
constituting additional credited service in computation of the
benefits under any state retirement system: Provided, That for a
person who first becomes a member of the Teachers Retirement
System as provided in article seven-a, chapter eighteen of this
code on or after July 1, 2015, accrued annual and sick leave of
an employee participating in the plan may not be applied for
retirement service credit. However, the additional credited
service shall not be used in meeting initial eligibility for
retirement criteria, but only as additional service credited in
excess thereof.

(g) Conversion of accrued annual and sick leave for
extended insurance coverage upon retirement for certain higher
education employees. — Except as otherwise provided in
subsection (l) of this section, when an employee, who is a higher
education full-time faculty member employed on an annual
contract basis other than for twelve months, is compelled or
required by law to retire before reaching the age of sixty-five, or when such a participating employee voluntarily retires as provided by law, that employee’s insurance coverage, as provided by this article, shall be extended according to the following formulae: The insurance coverage for a retired higher education full-time faculty member, formerly employed on an annual contract basis other than for twelve months, shall continue beyond the effective date of his or her retirement one additional year for each three and one-third years of teaching service, as determined by uniform guidelines established by the University of West Virginia Board of Trustees and the board of directors of the state college system, for individual coverage, or one additional year for each five years of teaching service for family coverage.

(h) Any employee who retired prior to April 21, 1972, and who also otherwise meets the conditions of the “retired employee” definition in section two of this article, shall be eligible for insurance coverage under the same terms and provisions of this article. The retired employee’s premium contribution for any such coverage shall be established by the finance board.

(i) Retiree participation. — All retirees under the provisions of this article, including those defined in section two of this article; those retiring prior to April 21, 1972; and those hereafter retiring are eligible to obtain health insurance coverage. The retired employee’s premium contribution for the coverage shall be established by the finance board.

(j) Surviving spouse and dependent participation. — A surviving spouse and dependents of a deceased employee, who was either an active or retired employee participating in the plan just prior to his or her death, are entitled to be included in any comprehensive group health insurance coverage provided under this article to which the deceased employee was entitled, and the
spouse and dependents shall bear the premium cost of the insurance coverage. The finance board shall establish the premium cost of the coverage.

(k) *Elected officials.* — In construing the provisions of this section or any other provisions of this code, the Legislature declares that it is not now nor has it ever been the Legislature’s intent that elected public officials be provided any sick leave, annual leave or personal leave, and the enactment of this section is based upon the fact and assumption that no statutory or inherent authority exists extending sick leave, annual leave or personal leave to elected public officials and the very nature of those positions preclude the arising or accumulation of any leave, so as to be thereafter usable as premium paying credits for which the officials may claim extended insurance benefits.

(l) *Participation of certain former employees.* — An employee, eligible for coverage under the provisions of this article who has twenty years of service with any agency or entity participating in the public employees insurance program or who has been covered by the public employees insurance program for twenty years may, upon leaving employment with a participating agency or entity, continue to be covered by the program if the employee pays one hundred five percent of the cost of retiree coverage: *Provided,* That the employee shall elect to continue coverage under this subsection within two years of the date the employment with a participating agency or entity is terminated.

(m) *Prohibition on conversion of accrued annual and sick leave for extended coverage upon retirement for new employees who elect to participate in the plan after June, 2001.* — Any employee hired on or after July 1, 2001, who elects to participate in the plan may not apply accrued annual or sick leave toward the cost of premiums for extended insurance coverage upon his or her retirement. This prohibition does not apply to the conversion of accrued annual or sick leave for increased
retirement benefits, as authorized by this section: Provided, That any person who has participated in the plan prior to July 1, 2001, is not a new employee for purposes of this subsection if he or she becomes reemployed with an employer participating in the plan within two years following his or her separation from employment and he or she elects to participate in the plan upon his or her reemployment.

(n) Prohibition on conversion of accrued years of teaching service for extended coverage upon retirement for new employees who elect to participate in the plan July, 2009. — Any employee hired on or after July 1, 2009, who elects to participate in the plan may not apply accrued years of teaching service toward the cost of premiums for extended insurance coverage upon his or her retirement.

CHAPTER 15. PUBLIC SAFETY.

ARTICLE 2A. WEST VIRGINIA STATE POLICE RETIREMENT SYSTEM.

§15-2A-21. Retirement credited service through member’s use, as option, of accrued annual or sick leave days.

Any member accruing annual leave or sick leave days may, after April 9, 2005, elect to use the days at the time of retirement to acquire additional credited service in this retirement system. The days shall be applied on the basis of two workdays’ credit granted for each one day of accrued annual or sick leave days, with each month of retirement service credit to equal twenty workdays and with any remainder of ten workdays or more to constitute a full month of additional credit and any remainder of less than ten workdays to be dropped and not used, notwithstanding any provisions of the code to the contrary: Provided, That for a person who first becomes a member of the retirement system on or after July 1, 2015, accrued annual and
sick leave days may not be applied to acquire additional credited service. The credited service shall be allowed and not considered to controvert the requirement of no more than twelve months’ credited service in any year’s period.

CHAPTER 18. EDUCATION.

ARTICLE 7A. STATE TEACHERS RETIREMENT SYSTEM.

§18-7A-17. Statement and computation of teachers’ service.

(a) Under rules adopted by the retirement board, each teacher and nonteaching member shall file a detailed statement of his or her length of service as a teacher or nonteacher for which he or she claims credit. The retirement board shall determine what part of a year is the equivalent of a year of service. In computing the service, however, it shall credit no period of more than a month’s duration during which a member was absent without pay, nor shall it credit for more than one year of service performed in any calendar year.

(b) For service as a teacher in the employment of the federal government, or a state or territory of the United States, or a governmental subdivision of that state or territory, the retirement board shall grant credit to the member: Provided, That the member shall pay to the system twelve percent of that member’s gross salary earned during the first full year of current employment whether a member of the Teachers Retirement System or the Teachers’ Defined Contribution Retirement System, times the number of years for which credit is granted, plus interest at a rate to be determined by the retirement board. The interest shall be deposited in the reserve fund and service credit granted at the time of retirement shall not exceed the lesser of ten years or fifty percent of the member’s total service as a teacher in West Virginia. Any purchase of out-of-state service, as provided in this article, shall not be used to establish
eligibility for a retirement allowance and the retirement board shall grant credit for the purchased service as additional service only: Provided, however, That a purchase of out-of-state service is prohibited if the service is used to obtain a retirement benefit from another retirement system: Provided further, That salaries paid to members for service prior to entrance into the retirement system shall not be used to compute the average final salary of the member under the retirement system.

(c) No members shall be considered absent from service while serving as a member or employee of the Legislature of the State of West Virginia during any duly constituted session of that body or while serving as an elected member of a county commission during any duly constituted session of that body.

(d) No member shall be considered absent from service as a teacher or nonteacher while serving as an officer with a statewide professional teaching association, or who has served in that capacity, and no retirant, who served in that capacity while a member, shall be considered to have been absent from service as a teacher by reason of that service: Provided, That the period of service credit granted for that service shall not exceed ten years: Provided, however, That a member or retirant who is serving or has served as an officer of a statewide professional teaching association shall make deposits to the Teachers Retirement System, for the time of any absence, in an amount double the amount which he or she would have contributed in his or her regular assignment for a like period of time.

(e) The Teachers Retirement System shall grant service credit to any former or present member of the West Virginia Public Employees Retirement System who has been a contributing member of the Teachers Retirement System for more than three years, for service previously credited by the Public Employees Retirement System upon his or her written request and: (1) Shall require the transfer of the member’s Public
Employees Retirement System accumulated contributions to the Teachers Retirement System; or (2) shall require a repayment of the amount withdrawn from the Public Employees Retirement System, plus interest at a rate to be determined by the retirement board, compounded annually from the date of withdrawal to the date of payment, any time prior to the member’s effective retirement date: Provided, That there shall be added by the member to the amounts transferred or repaid under this subsection an amount which shall be sufficient to equal the contributions he or she would have made had the member been under the Teachers Retirement System during the period of his or her membership in the Public Employees Retirement System, plus interest at a rate determined by the retirement board, compounded annually from the date the additional contribution would have been made had the member been under the Teachers Retirement System to the date of payment. All interest paid or transferred shall be deposited in the reserve fund.

(f) For service as a teacher in an elementary or secondary parochial school, located within this state and fully accredited by the West Virginia Department of Education, the retirement board shall grant credit to the member: Provided, That the member shall pay to the system twelve percent of that member’s gross salary earned during the first full year of current employment whether a member of the Teachers Retirement System or the Teachers’ Defined Contribution Retirement System, times the number of years for which credit is granted, plus interest at a rate to be determined by the retirement board. The interest shall be deposited in the reserve fund and service granted at the time of retirement shall not exceed the lesser of ten years or fifty percent of the member’s total service as a teacher in the West Virginia public school system. Any purchase of parochial school service, as provided in this section, may not be used to establish eligibility for a retirement allowance and retirement board shall grant credit for the purchase as additional service only: Provided, however, That a purchase of parochial school service
is prohibited if the service is used to obtain a retirement benefit from another retirement system.

(g) Active members who previously worked in Comprehensive Employment and Training Act (CETA) may receive service credit for time served in that capacity: Provided, that in order to receive service credit under the provisions of this subsection the following conditions must be met: (1) The member must have moved from temporary employment with the participating employer to permanent full-time employment with the participating employer within one hundred twenty days following the termination of the member's CETA employment; (2) the retirement board must receive evidence that establishes to a reasonable degree of certainty as determined by the retirement board that the member previously worked in CETA; and (3) the member shall pay to the retirement board an amount equal to the employer and employee contribution plus interest at the amount set by the retirement board for the amount of service credit sought pursuant to this subsection: Provided, however, that the maximum service credit that may be obtained under the provisions of this subsection is two years: Provided further, that a member must apply and pay for the service credit allowed under this subsection and provide all necessary documentation by March 31, 2003: And provided further, that the retirement board shall exercise due diligence to notify affected employees of the provisions of this subsection.

(h) If a member is not eligible for prior service credit or pension as provided in this article, then his or her prior service shall not be considered a part of his or her total service.

(i) A member who withdrew from membership may regain his or her former membership rights as specified in section thirteen of this article only in case he or she has served two years since his or her last withdrawal.
(j) Subject to the provisions of subsections (a) through (k), inclusive, of this section, the retirement board shall verify as soon as practicable the statements of service submitted. The retirement board shall issue prior service certificates to all persons eligible for the certificates under the provisions of this article. The certificates shall state the length of the prior service credit, but in no case shall the prior service credit exceed forty years.

(k) Notwithstanding any provision of this article to the contrary, when a member is or has been elected to serve as a member of the Legislature, and the proper discharge of his or her duties of public office require that member to be absent from his or her teaching or administrative duties, the time served in discharge of his or her duties of the legislative office are credited as time served for purposes of computing service credit: Provided, That the retirement board may not require any additional contributions from that member in order for the retirement board to credit him or her with the contributing service credit earned while discharging official legislative duties: Provided, however, That nothing in this section may be construed to relieve the employer from making the employer contribution at the member’s regular salary rate or rate of pay from that employer on the contributing service credit earned while the member is discharging his or her official legislative duties. These employer payments shall commence as of June 1,2000: Provided further, That any member to which the provisions of this subsection apply may elect to pay to the retirement board an amount equal to what his or her contribution would have been for those periods of time he or she was serving in the Legislature. The periods of time upon which the member paid his or her contribution shall then be included for purposes of determining his or her final average salary as well as for determining years of service: And provided further, That a member using the provisions of this subsection is not required to pay interest on any contributions he or she may decide to make.
(l) The Teachers Retirement System shall grant service credit to any former member of the State Police Death, Disability and Retirement System who has been a contributing member for more than three years for service previously credited by the State Police Death, Disability and Retirement System; and: (1) Shall require the transfer of the member’s contributions to the Teachers Retirement System; or (2) shall require a repayment of the amount withdrawn any time prior to the member’s retirement: Provided, That the member shall add to the amounts transferred or repaid under this paragraph an amount which is sufficient to equal the contributions he or she would have made had the member been under the Teachers Retirement System during the period of his or her membership in the State Police Death, Disability and Retirement System plus interest at a rate to be determined by the retirement board compounded annually from the date of withdrawal to the date of payment. The interest paid shall be deposited in the reserve fund.

§18-7A-17a. Qualified military service.

(a) Except as provided in subsection (b) of this section, for the purpose of this article, the retirement board shall grant prior service credit to members of the retirement system who were honorably discharged from active duty service in any of the armed forces of the United States in any period of national emergency within which a federal Selective Service Act was in effect. For purposes of this section, “armed forces” includes Women’s Army Corps, women’s appointed volunteers for emergency service, Army Nurse Corps, SPARS, Women’s Reserve and other similar units officially part of the military service of the United States. The military service is considered equivalent to public school teaching, and the salary equivalent for each year of that service is the actual salary of the member as a teacher for his or her first year of teaching after discharge from military service. Prior service credit for military service shall not exceed ten years for any one member, nor shall it exceed
twenty-five percent of total service at the time of retirement. Notwithstanding the preceding provisions of this subsection, contributions, benefits and service credit with respect to qualified military service shall be provided in accordance with Section 414(u) of the Internal Revenue Code. For purposes of this section, “qualified military service” has the same meaning as in Section 414(u) of the Internal Revenue Code. The retirement board is authorized to determine all questions and make all decisions relating to this section and, pursuant to the authority granted to the retirement board in section one, article ten-d, chapter five of this code, may promulgate rules relating to contributions, benefits and service credit to comply with Section 414(u) of the Internal Revenue Code. No military service credit may be used in more than one retirement system administered by the Consolidated Public Retirement Board.

(b) Subsection (a) of this section does not apply to any member who first becomes an employee of a participating public employer on or after July 1, 2015. This subsection applies to any member who first became an employee of a participating public employer on or after July 1, 2015, and also applies to any member who became an employee of a participating public employer before July 1, 2015, and is unable to meet the requirements of subsection (a) of this section.

(1) Any member may purchase up to sixty months of military service credit for time served in active military duty prior to first becoming an employee of a participating public employer if all of the following conditions are met:

   (A) The member has completed a complete fiscal year of contributory service;

   (B) The active military duty occurs prior to the date on which the member first becomes an employee of a participating public employer; and
(C) The employee pays to the retirement system the actuarial reserve purchase amount within forty-eight months after the date on which employer and employee contributions are first received by the retirement system for the member and while he or she continues to be in the employ of a participating public employer and contributing to the retirement system, or within forty-eight months of July 1, 2015, whichever is later: Provided, That any employee who ceases employment with a participating public employer before completing the required actuarial reserve purchase amount in full shall not be eligible to purchase the military service.

(2) Notwithstanding paragraph (A), subdivision (1) of this subsection, a member who first becomes an employee of a participating public employer on or after July 1, 2015, but who does not remain employed and contributing to the retirement system for at least a complete fiscal year after his or her initial employment, shall be considered to have met the requirement of said paragraph the first time he or she becomes an employee of a participating public employer and completes at least a complete fiscal year of contributing service. Such a member shall be considered to have met the requirement of paragraph (C) of said subdivision if he or she pays to the retirement system the actuarial reserve purchase amount within forty-eight months after the date on which employer and employee contributions are first received by the retirement system for the member the first time he or she becomes an employee of a participating public employer and completes at least a complete fiscal year of contributing service, and while he or she continues to be in the employ of a participating public employer and contributing to the retirement system.

(3) A member who first becomes an employee of a participating public employer on or after July 1, 2015, may purchase military service credit for active military duty performed on or after the date he or she first becomes an
employee of a participating public employer only if all of the following conditions are met: Provided, That the maximum military service credit such member may purchase shall take into account any military service credit purchased for active military duty pursuant to subdivision (1) of this subsection in addition to any military service credit purchased pursuant to this subdivision:

(A) The member was an employee of a participating public employer, terminated employment and experienced a break in contributing service in the retirement system of one or more months, performed active military service while not an employee of the participating public employer and not contributing to the retirement system, then again becomes an employee of a participating public employer and completes at least a complete fiscal year of contributory service;

(B) The member does not qualify for military service credit for such active military duty pursuant to subsection (d) of this section; and

(C) The member pays to the retirement system the actuarial reserve purchase amount within forty-eight months after the date on which employer and employee contributions are first received by the retirement system for the member after he or she again becomes an employee of a participating public employer immediately following the period of active military duty and break in service and completes at least a complete fiscal year of contributory service, and while he or she continues to be in the employ of a participating public employer and contributing to the retirement system.

(4) Notwithstanding paragraph (A), subdivision (3) of this subsection, a member who otherwise meets the requirements of said paragraph, but who does not remain employed and contributing to the retirement system for at least a complete
fiscal year when he or she first becomes an employee of a participating public employer after the period of active military duty and break in service, shall be considered to have met the requirement of said paragraph the first time he or she again becomes an employee of a participating public employer and completes at least a complete fiscal year of contributing service. Such a member shall be considered to have met the requirement of paragraph (C) of said subdivision if he or she pays to the retirement system the actuarial reserve purchase amount within forty-eight months after the date on which employer and employee contributions are first received by the retirement system for the member for the first time he or she again becomes an employee of a participating public employer and completes at least a complete fiscal year of contributing service, and while he or she continues to be in the employ of a participating public employer and contributing to the retirement system.

(5) For purposes of this subsection, the following definitions shall apply:

(A) “Active military duty” means full-time active duty in the armed forces of the United States for a period of thirty or more consecutive calendar days. Active military duty does not include inactive duty of any kind.

(B) “Actuarial reserve purchase amount” means the purchase annuity rate multiplied by the purchase accrued benefit, calculated as of the calculation month, plus annual interest accruing at seven and one-half percent from the calculation month through the purchase month, compounded monthly.

(C) “Armed forces of the United States” means the Army, Navy, Air Force, Marine Corps, and Coast Guard, the reserve components thereof, and the National Guard of the United States or the National Guard of a state or territory when members of the
same are on full-time active duty pursuant to Title 10 or Title 32 of the United States Code.

(D) “Calculation month” means the month immediately following the month in which the member completes a complete fiscal year of contributory service with a participating public employer required by subdivision (1), (2), (3) or (4) of this subsection, as applicable.

(E) “Purchase accrued benefit” means two percent times the purchase military service times the purchase average monthly salary.

(F) “Purchase age” means the age of the employee in years and completed months as of the first day of the calculation month.

(G) “Purchase annuity rate” means the actuarial lump sum annuity factor calculated as of the calculation month based on the following actuarial assumptions: Interest rate of seven and one-half percent; mortality of the 1971 group annuity mortality table, fifty percent blended male and female rates, applied on a unisex basis to all members; if purchase age is under age sixty-two, a deferred annuity factor with payments commencing at age sixty-two; and if purchase age is sixty-two or over, an immediate annuity factor with payments starting at the purchase age.

(H) “Purchase average monthly salary” means the average monthly salary of the member during the number of months of the member’s contract during the fiscal year of contributory service required by subdivisions (1), (2), (3) and (4) of this subsection, as applicable. For any member who first became an employee of a participating public employer before July 1, 2015, the purchase average monthly salary means the average monthly salary of the member during the number of months of the
member’s contract during his or her complete fiscal year of contributory service on or after July 1, 2015.

(I) “Purchase military service” means the amount of military service being purchased by the employee in months up to the sixty-month maximum, calculated in accordance with subdivision (7) of this subsection.

(J) “Purchase month” means the month in which the employee deposits the actuarial reserve lump sum purchase amount into the plan trust fund in full payment of the service credit being purchased or makes the final payment of the actuarial reserve purchase amount into the plan trust fund in full payment of the service credit being purchased.

(6) A member may purchase military service credit for a period of active military duty pursuant to this subsection only if the member received an honorable discharge for the period. Anything other than an honorable discharge, including, but not limited to, a general or under honorable conditions discharge, an entry-level separation discharge, an other than honorable conditions discharge or a dishonorable discharge, shall disqualify the member from receiving military service credit for the period of service. The board shall require a member requesting military service credit to provide official documentation establishing that the requirements set forth in this subsection have been met.

(7) To calculate the amount of military service credit a member may purchase, the board shall add the total number of days in each period of a member’s active military duty eligible to be purchased, divide the total by thirty, and round up or down to the nearest integer (fractions of 0.5 shall be rounded up), in order to yield the total number of months of military service credit a member may purchase, subject to the sixty-month maximum. A member may purchase all or part of the maximum
208 amount of military service credit he or she is eligible for in
209 one-month increments.

210 (8) To receive credit, a member must submit a request to
211 purchase military service credit to the board, on such form or in
212 such other manner as shall be required by the board, within the
213 complete fiscal year period required by subdivision (1), (2), (3)
214 or (4) of this subsection, as applicable. The board shall then
215 calculate the actuarial reserve lump sum purchase amount, which
216 amount must be paid by the member within the 48-month period
217 required by said subdivisions, as applicable. A member
218 purchasing military service credit pursuant to this subsection
219 must do so in a single, lump sum payment: Provided, That the
220 board may accept partial, installment or other similar payments
221 if the employee executes a contract with the board specifying the
222 amount of military service to be purchased and the payments
223 required: Provided, however, That any failure to pay the contract
224 amount in accordance with this section shall be treated as an
225 overpayment or excess contribution subject to section forty-four
226 of this article and no military service shall be credited.

227 (9) The board shall require a member requesting military
228 service credit to provide official documentation establishing that
229 the requirements set forth in this subsection have been met.

230 (10) Military service credit purchased pursuant to this
231 subsection shall not be considered contributing service credit or
232 contributory service for purposes of this article.

233 (11) If a member who has purchased military service credit
234 pursuant to this subsection is eligible for and requests a
235 withdrawal of accumulated contributions pursuant to the
236 provisions of this article, he or she shall also receive a refund of
237 the actuarial reserve purchase amount he or she paid to the
238 retirement system to purchase military service credit, together
239 with regular interest on such amount.
(c) No period of military service shall be used to obtain credit in more than one retirement system administered by the board and once used in any system, a period of military service may not be used again in any other system.

(d) Notwithstanding the preceding provisions of this section, contributions, benefits and service credit with respect to qualified military service shall be provided in accordance with Section 414(u) of the Internal Revenue Code and the federal Uniformed Services Employment and Reemployment Rights Act (USERRA), and regulations promulgated thereunder, as the same may be amended from time to time. For purposes of this section, “qualified military service” has the same meaning as in Section 414(u) of the Internal Revenue Code.

(e) In any case of doubt as to the period of service to be credited a member under the provisions of this section, the board has final power to determine the period. The board is authorized to determine all questions and make all decisions relating to this section and, pursuant to the authority granted to the board in section one, article ten-d of this chapter, may propose rules to administer this section for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code.


(a) Benefits upon withdrawal from service prior to retirement under the provisions of this article shall be as follows:

(1) A contributor who withdraws from service for any cause other than death, disability or retirement shall, upon application, be paid his or her accumulated contributions up to the end of the fiscal year preceding the year in which application is made, after offset of any outstanding loan balance, plus accrued loan interest, pursuant to section thirty-four of this article, but in no
event shall interest be paid beyond the end of five years following the year in which the last contribution was made: 

*Provided, That the contributor, at the time of application, is then no longer under contract, verbal or otherwise, to serve as a teacher; or*

(2) Except as provided in section twenty-five-b of this article, if the inactive member has completed twenty years of total service, he or she may elect to receive at age sixty an annuity which shall be computed as provided in this article: *Provided, That if the inactive member has completed at least five, but fewer than twenty, years of total service in this state, he or she may elect to receive at age sixty-two an annuity which shall be computed as provided in this article. The inactive member must notify the retirement board in writing concerning the election. If the inactive member has completed fewer than five years of service in this state, he or she shall be subject to the provisions as outlined in subdivision (1) of this subsection.*

(b) Benefits upon the death of a contributor prior to retirement under the provisions of this article shall be paid as follows:

(1) If the contributor was at least fifty years old and if his or her total service as a teacher or nonteaching member was at least twenty-five years at the time of his or her death, then the surviving spouse of the deceased, provided the spouse is designated as the sole primary refund beneficiary, is eligible for an annuity computed as though the deceased were actually a retainer at the time of death and had selected a survivorship option which pays the spouse the same monthly amount which would have been received by the deceased; or

(2) If the facts do not permit payment under subdivision (1) of this subsection, then the following sum shall be paid to the refund beneficiary of the contributor: (A) The contributor’s
accumulated contributions up to the plan year of his or her death
plus an amount equal to his or her member contributions:
Provided, That the latter sum shall emanate from the Employer’s
Accumulation Fund; and (B) the refund beneficiary of any
individual who became a member of the retirement system as a
result of the voluntary transfer contemplated in article seven-d
of this chapter shall also be paid the member contributions plus
the vested portion of employer contributions made on his or her
behalf to the Teachers’ Defined Contribution Retirement
System, plus any earnings thereon, as of June 30, 2008, as stated
by the retirement board.

§18-7A-25. Eligibility for retirement allowance.

(a) Except for a person who first becomes a member of the
retirement system on or after July 1, 2015, any actively
contributing member who has attained the age of sixty years or
any member who has thirty-five years of total service as a
teacher or nonteaching member in West Virginia, regardless of
age, is eligible for an annuity. No new entrant nor present
member is eligible for an annuity, however, if either has less
than five years of service to his or her credit: Provided, That on
and after July 1, 2013, any person who becomes a new member
of this retirement system shall, in qualifying for retirement under
this section, have five or more years of contributory service, all
of which shall be actual, contributory ones.

(b) Except for a person who first becomes a member of the
retirement system on or after July 1, 2015, any member who has
attained the age of fifty-five years and who has served thirty
years as a teacher or nonteaching member in West Virginia is
eligible for an annuity.

(c) Except for a person who first becomes a member of the
retirement system on or after July 1, 2015, any member who has
served at least thirty but less than thirty-five years as a teacher
or nonteaching member in West Virginia and is less than fifty-five years of age is eligible for an annuity, but the annuity shall be the reduced actuarial equivalent of the annuity the member would have received if the member were age fifty-five at the time the annuity was applied for.

(d) The request for any annuity shall be made by the member in writing to the retirement board, but in case of retirement for disability, the written request may be made by either the member or the employer.

(e) A member is eligible for annuity for disability if he or she satisfies the conditions in either subdivision (1) or (2) of this subsection and meets the conditions of subdivision (3) of this subsection as follows:

(1) His or her service as a teacher or nonteaching member in West Virginia must total at least ten years and service as a teacher or nonteaching member must have been terminated because of disability, which disability must have caused absence from service for at least six months before his or her application for disability annuity is approved.

(2) His or her service as a teacher or nonteaching member in West Virginia must total at least five years and service as a teacher or nonteaching member must have been terminated because of disability, which disability must have caused absence from service for at least six months before his or her application for disability annuity is approved and the disability is a direct and total result of an act of student violence directed toward the member.

(3) An examination by a physician or physicians selected by the retirement board must show that the member is at the time mentally or physically incapacitated for service as a teacher or nonteaching member, that for that service the disability is total
and likely to be permanent and that he or she should be retired
in consequence of the disability.

(f) Continuance of the disability of the retirant shall be
established by medical examination, as prescribed in subdivision
(3), subsection (e) of this section, annually for five years after
retirement, and thereafter at such times required by the
retirement board. Effective July 1, 1998, a member who has
retired because of a disability may select an option of payment
under the provisions of section twenty-eight of this article:
Provided, That any option selected under the provisions of
section twenty-eight of this article shall be in all respects the
actuarial equivalent of the straight life annuity benefit the
disability retirant receives or would receive if the options under
said section were not available and that no beneficiary or
beneficiaries of the disability retirant may receive a greater
benefit, nor receive any benefit for a greater length of time, than
the beneficiary or beneficiaries would have received had the
disability retirant not made any election of the options available
under said section. In determining the actuarial equivalence, the
retirement board shall take into account the life expectancies of
the member and the beneficiary: Provided, however, That the life
expectancies may at the discretion of the retirement board be
established by an underwriting medical director of a competent
insurance company offering annuities. Payment of the disability
annuity provided in this article shall cease immediately if the
retirement board finds that the disability of the retirant no longer
exists, or if the retirant refuses to submit to medical examination
as required by this section.

§18-7A-25b. Withdrawal and eligibility for retirement allowance
for a person who first becomes a member of the
retirement system on or after July 1, 2015.

(a) A person who first becomes a member of the retirement
system on or after July 1, 2015, who has ten or more years of
contributing service, and attains or has attained the age of sixty-two years, may retire upon his or her written application filed with the board of trustees setting forth the date on which the member desires to be retired. Upon retirement, the member shall receive an annuity provided in section twenty-six of this article.

(b) Any person who first becomes a member of the retirement system on or after July 1, 2015, who has ten or more years of contributing service and who leaves the employ of a participating public employer prior to attaining age sixty-two years for any reason except his or her disability or death, is entitled to an annuity computed according to section twenty-two of this article: Provided, That he or she does not withdraw his or her accumulated contributions from the members’ deposit fund. His or her annuity shall begin the first day of the calendar month next following the month in which his or her application for same is filed with the board of trustees on or after his or her attaining age sixty-four years.

(c) Any member who qualifies for deferred retirement benefits in accordance with subsections (a) and (b) of this section and has twenty or more years of contributing service in force is entitled to an annuity computed as in subsection (a) of this section: Provided, That he or she does not withdraw his or her accumulated contributions from the members’ deposit fund: Provided, however, That his or her annuity shall begin the first day of the calendar month next following the month in which his or her application for same is filed with the board of trustees on or after his or her attaining age sixty-three.

(d) Notwithstanding any of the other provisions of this section or of this article, except sections twenty-eight-a and twenty-eight-b of this article, and pursuant to rules promulgated by the board, any member who first becomes a member of the retirement system on or after July 1, 2015, and has ten or more
years of contributing service in force, is currently employed by
a participating public employer and who elects to take early
retirement, which for the purposes of this subsection means
retirement following attainment of age sixty but prior to
attaining age sixty-two, is entitled to the full computation of
annuity according to section twenty-two of this article but with
the reduced actuarial equivalent of the annuity the member
would have received if his or her benefit had commenced at age
sixty-two when he or she would have been entitled to full
computation of benefit without any reduction: Provided, That his
or her annuity shall begin the first day of the calendar month
next following the month in which his or her application for
same is filed with the board of trustees on or after his or her
attaining age sixty.

(e) Any member who first becomes a member of the
retirement system on or after July 1, 2015, and has twenty or
more years of contributing service in force, is currently
employed by a participating public employer and who elects to
take early retirement, which for the purposes of this subsection
means retirement following attainment of age fifty-seven but
prior to attaining age sixty-two, is entitled to the full
computation of annuity according to section twenty-two of this
article but with the reduced actuarial equivalent of the annuity
the member would have received if his or her benefit had
commenced at age sixty-two when he or she would have been
entitled to full computation of benefit without any reduction:
Provided, That his or her annuity shall begin the first day of the
calendar month next following the month in which his or her
application for same is filed with the board of trustees on or after
his or her attaining age fifty-seven.

(f) Any member who first becomes a member of the
retirement system on or after July 1, 2015, and has thirty or more
years of contributing service in force, is currently employed by
a participating public employer and who elects to take early
retirement, which for the purposes of this subsection means retirement following attainment of age fifty-five but prior to attaining age sixty-two, is entitled to the full computation of annuity according to section twenty-two of this article but with the reduced actuarial equivalent of the annuity the member would have received if his or her benefit had commenced at age sixty-two when he or she would have been entitled to full computation of benefit without any reduction: Provided, That his or her annuity shall begin the first day of the calendar month next following the month in which his or her application for same is filed with the board of trustees on or after his or her attaining age fifty-five.

ARTICLE 7D. VOLUNTARY TRANSFER FROM TEACHERS’ DEFINED CONTRIBUTION RETIREMENT SYSTEM TO STATE TEACHERS RETIREMENT SYSTEM.

§18-7D-6. Service credit in State Teachers Retirement System following transfer; conversion of assets; adjustments.

(a) Any member who has affirmatively elected to transfer to the State Teachers Retirement System within the period provided in section seven of this article whose assets have been transferred from the Teachers’ Defined Contribution Retirement System to the State Teachers Retirement System pursuant to the provisions of this article and who has not made any withdrawals or cash-outs from his or her assets is, depending upon the percentage of actively contributing members affirmatively electing to transfer, entitled to service credit in the State Teachers Retirement System in accordance with the provisions of subsection (c) of this section.

(b) Any member who has made withdrawals or cash-outs will receive service credit based upon the amounts transferred. The board shall make the appropriate adjustment to the service credit the member will receive.
(c) More than seventy-five percent of actively contributing members of the Teachers’ Defined Contribution Retirement System affirmatively elected to transfer to the State Teachers Retirement System within the period provided in section seven of this article. Therefore, any member of the Teachers’ Defined Contribution Retirement System who decides to transfer to the State Teachers Retirement System calculates his or her service credit in the State Teachers Retirement System as follows:

(1) For any member affirmatively electing to transfer, the member’s State Teachers Retirement System credit shall be seventy-five percent of the member’s Teachers’ Defined Contribution Retirement System service credit, less any service previously withdrawn by the member or due to a qualified domestic relations order and not repaid;

(2) To receive full credit in the State Teachers Retirement System for service in the Teachers’ Defined Contribution Retirement System for which assets are transferred, members who affirmatively elected to transfer and who provided to the board a signed verification of cost for service credit purchase form by the effective date of the amendments to this section enacted in the 2009 regular legislative session shall pay into the State Teachers Retirement System a one and one-half percent contribution by no later than July 1, 2015, or no later than ninety days after the postmarked date on a final and definitive contribution calculation from the board, whichever is later. This contribution shall be calculated as one and one-half percent of the member’s estimated total earnings for which assets are transferred, plus interest of four percent per annum accumulated from the date of the member’s initial participation in the Teachers’ Defined Contribution Retirement System through June 30, 2009, and interest of seven and one-half percent per annum accumulated from July 1, 2009, through July 1, 2015: Provided, That any member who transferred and provided to the board a signed verification of cost for service credit purchase form by
June 30, 2009, but was unable to complete the purchase of the one and one-half percent contribution, or any member who did not request a verification of cost letter but attempted to purchase the one and one-half percent contribution and was denied in writing by the board on or before December 31, 2009, may request the board on or before April 15, 2015, to recalculate the contribution for 2015. To receive full credit, the member shall pay into the State Teachers Retirement System the recalculated purchase amount by July 1, 2015, or no later than sixty days after the postmarked date on a contribution recalculation from the board, whichever is later. The recalculated contribution shall include the interest loss at the actuarial rate of seven and one-half percent. The board’s executive director may correct clerical errors.

(A) For a member contributing to the Teachers’ Defined Contribution Retirement System at any time during the 2008 fiscal year and commencing membership in the State Teachers Retirement System on July 1, 2008, or August 1, 2008, as the case may be:

(i) The estimated total earnings shall be calculated based on the member’s salary and the member’s age nearest birthday on June 30, 2008;

(ii) This calculation shall apply both an annual backward salary scale from that date for prior years’ salaries and a forward salary scale for the salary for the 2008 fiscal year.

(B) The calculations in paragraph (A) of this subdivision are based upon the salary scale assumption applied in the West Virginia Teachers Retirement System actuarial valuation as of July 1, 2007, prepared for the Consolidated Public Retirement Board. This salary scale shall be applied regardless of breaks in service.

(d) All service previously transferred from the State Teachers Retirement System to the Teachers’ Defined
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83 Contribution Retirement System is considered Teachers’ Defined Contribution Retirement System service for the purposes of this article.

86 (e) Notwithstanding any provision of this code to the contrary, the retirement of a member who becomes eligible to retire after the member’s assets are transferred to the State Teachers Retirement System pursuant to the provisions of this article may not commence before September 1, 2008: Provided, That the Consolidated Public Retirement Board may not retire any member who is eligible to retire during the calendar year 2008 unless the member has provided a written notice to his or her county board of education by July 1, 2008, of his or her intent to retire.

96 (f) The provisions of section twenty-eight-e, article seven-a of this chapter do not apply to the amendments to this section enacted during the 2009 regular legislative session or the 2015 regular legislative session.

CHAPTER 205

(Com. Sub. for H. B. 2505 - By Delegate(s) Canterbury, Pethtel, Folk, Walters, Hamilton, Marcum, Kurcaba and Hicks)

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

AN ACT to amend and reenact §5-10-17 of the Code of West Virginia, 1931, as amended; to amend and reenact §7-14D-5 of said code; to amend and reenact §8-22A-6 of said code; to amend and reenact §15-2A-3 of said code; to amend and reenact §16-5V-6 of said code; and to amend and reenact §18-7A-13 of said code, all relating to retirement system participation; clarifying that police
officers and firefighters hired after a certain date are members of
the West Virginia Municipal Police and Firefighters Retirement
System; clarifying that members first employed in covered
employment in the West Virginia Deputy Sheriffs Retirement
System, West Virginia Municipal Police Officers and Firefighters
Retirement System or the West Virginia Emergency Medical
Services Retirement System shall participate in only one
retirement system administered by the Consolidated Public
Retirement Board in which the member has the earliest date of
hire; and specifying that members of the Public Employees
Retirement System, the State Police Retirement System and the
Teachers’ Retirement System who are employed in an additional
job that requires membership in the West Virginia Deputy Sheriff
Retirement System, the West Virginia Municipal Police Officers
and Firefighters Retirement System or the West Virginia
Emergency Medical Services Retirement System shall abide by the
concurrent employment provisions of said system and participate
in only one system administered by the Consolidated Public
Retirement Board.

Be it enacted by the Legislature of West Virginia:

That §5-10-17 of the Code of West Virginia, 1931, as amended, be
amended and reenacted; that §7-14D-5 of said code be amended and
reenacted; that §8-22A-6 of said code be amended and reenacted; that
§15-2A-3 of said code be amended and reenacted; that §16-5V-6 of
said code be amended and reenacted; and that §18-7A-13 of said code
be amended and reenacted, all to read as follows:

CHAPTER 5. GENERAL POWERS AND AUTHORITY OF
THE GOVERNOR, SECRETARY OF STATE AND
ATTORNEY GENERAL; BOARD OF PUBLIC WORKS;
MISCELLANEOUS AGENCIES, COMMISSIONS,
OFFICES, PROGRAMS, ETC.

ARTICLE 10. WEST VIRGINIA PUBLIC EMPLOYEES RE-
TIREMENT ACT.
§5-10-17. Retirement system membership.

The membership of the retirement system consists of the following persons:

(a) All employees, as defined in section two of this article, who are in the employ of a political subdivision the day preceding the date it becomes a participating public employer and who continue in the employ of the participating public employer on and after that date shall become members of the retirement system; and all persons who become employees of a participating public employer on or after that date shall thereupon become members of the system; except as provided in subdivisions (b), (c) and (d) of this section.

(b) The membership of the Public Employees Retirement System shall not include any person who is an active contributing member of, or who has been retired by, any of the state Teachers retirement systems, the Judges Retirement System, any Retirement System of the West Virginia State Police, the Deputy Sheriff Retirement System or any municipal retirement system for either, or both, police or firefighter; and the Bureau of Employment Programs, by the Commissioner of the Bureau, may elect whether its employees will accept coverage under this article or be covered under the authorization of a separate enactment: Provided, That the exclusions of membership do not apply to any member of the State Legislature, the Clerk of the House of Delegates, the Clerk of the State Senate or to any member of the legislative body of any political subdivision provided he or she once becomes a contributing member of the retirement system: Provided, however, That any retired member of the State Police Death, Disability and Retirement Fund, the West Virginia State Police Retirement System, the Deputy Sheriff Retirement System and any retired member of any municipal retirement system for either, or both, police or firefighter may on and after the
effective date of this section become a member of the retirement
system as provided in this article, without receiving credit for
prior service as a municipal police officer or firefighter or as a
member of the State Police Death, Disability and Retirement
Fund, the West Virginia State Police Retirement System or the
Deputy Sheriff Retirement System: Provided further, That any
retired member of the State Police Death, Disability and
Retirement Fund, the West Virginia State Police Retirement
System, the Deputy Sheriff Retirement System and any retired
member of any municipal retirement system for either, or both,
police or firefighters, who begins participation in the retirement
system established in this article on or after July 1, 2005, may
not receive a combined retirement benefit in excess of one
hundred five percent of the member’s highest annual salary
earned while either a member of the retirement system
established in this article or while a member of the other
retirement system or systems from which he or she previously
retired when adding the retirement benefit from the retirement
system created in this article to the retirement benefit received
by that member from the other retirement system or systems set
forth herein from which he or she previously retired: And
provided further, That the membership of the retirement system
does not include any person who becomes employed by the
Prestera Center for Mental Health Services, Valley
Comprehensive Mental Health Center, Westbrook Health
Services or Eastern Panhandle Mental Health Center on or after
July 1, 1997, And provided further, That membership of the
retirement system does not include any person who becomes a
member of the federal Railroad Retirement Act on or after July
1, 2000.

(c) Any member of the State Legislature, the Clerk of the
House of Delegates, the Clerk of the State Senate and any
employee of the State Legislature whose employment is
otherwise classified as temporary and who is employed to
perform services required by the Legislature for its regular
sessions or during the interim between regular sessions and who
has been or is employed during regular sessions or during the
interim between sessions in seven consecutive calendar years, as
certified by the Clerk of the House in which the employee
served, or any member of the legislative body of any other
political subdivision shall become a member of the retirement
system provided he or she notifies the retirement system in
writing of his or her intention to be a member of the system and
files a membership enrollment form as prescribed by the Board
of Trustees, and each person, upon filing his or her written notice
to participate in the retirement system, shall by that act authorize
the Clerk of the House of Delegates or the Clerk of the State
Senate or such person or legislative agency as the legislative
body of any other political subdivision shall designate to deduct
the member’s contribution, as provided in subsection (b), section
twenty-nine of this article, and after the deductions have been
made from the member’s compensation, the deductions shall be
forwarded to the retirement system.

(d) Any employee, as defined in section two of this article,
who has concurrent employment in an additional job or jobs
which would require the employee to be a member of the West
Virginia Deputy Sheriff Retirement System, the West Virginia
Municipal Police Officers and Firefighters Retirement System or
the West Virginia Emergency Medical Services Retirement
System shall abide by the concurrent employment statutory
provisions of said retirement system and shall participate in only
one retirement system administered by the board.

(e) If question arises regarding the membership status of any
employee, the Board of Trustees has the final power to decide
the question.

(f) Any individual who is a leased employee is not eligible
to participate in the system. For the purposes of this article, the
term “leased employee” means any individual who performs
services as an independent contractor or pursuant to an
agreement with an employee leasing organization or other
similar organization. If a question arises regarding the status of
an individual as a leased employee, the board has final authority
to decide the question.

CHAPTER 7. COUNTY COMMISSIONS AND OFFICERS.

ARTICLE 14D. DEPUTY SHERIFF RETIREMENT SYSTEM ACT.

§7-14D-5. Members.

(a) Any deputy sheriff first employed by a county in covered employment after the effective date of this article shall be a member of this retirement system and does not qualify for membership in any other retirement system administered by the board, so long as he or she remains employed in covered employment: Provided, That any deputy sheriff who has concurrent employment in an additional job or jobs which would require the deputy sheriff to be a member of the West Virginia Municipal Police Officers and Firefighters Retirement System or the West Virginia Emergency Medical Services Retirement System shall participate in only one retirement system administered by the board, and the retirement system applicable to the concurrent employment for which the employee has the earliest date of hire shall prevail. The membership of any person in the plan ceases: (1) Upon the withdrawal of accumulated contributions after the cessation of service; (2) upon retirement; (3) at death; or (4) upon the date, if any, when after the cessation of service, the outstanding balance of any loan obtained by the member pursuant to section twenty-three of the article, plus accrued interest, equals or exceeds the accumulated contributions of the member.

(b) Any deputy sheriff employed in covered employment on the effective date of this article shall within six months of that
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24 effective date notify in writing both the county commission in
25 the county in which he or she is employed and the board, of his
26 or her desire to become a member of the plan: Provided, That
27 this time period is extended to January 30, 1999, in accordance
28 with the decision of the Supreme Court of Appeals in West
30 al, No. 25212: Provided, however, That any deputy sheriff
31 employed in covered employment on the effective date of this
32 article has an additional time period consisting of the ten-day
33 period following the day after which the amended provisions of
34 this section become law to notify in writing both the county
35 commission in the county in which he or she is employed and the
36 board of his or her desire to become a member of the plan. Any
37 deputy sheriff who elects to become a member of the plan ceases
38 to be a member or have any credit for covered employment in
39 any other retirement system administered by the board and shall
40 continue to be ineligible for membership in any other retirement
41 system administered by the board so long as the deputy sheriff
42 remains employed in covered employment in this plan: Provided
43 further, That any deputy sheriff who elects during the time
44 period from July 1, 1998 to January 30, 1999 or who so elects
45 during the ten-day time period occurring immediately following
46 the day after the day the amendments made during the 1999
47 legislative session become law, to transfer from the Public
48 Employees Retirement System to the plan created in this article
49 shall contribute to the plan created in this article at the rate set
50 forth in section seven of this article retroactive to July 1, 1998.
51 Any deputy sheriff who does not affirmatively elect to become
52 a member of the plan continues to be eligible for any other
53 retirement system as is from time to time offered to other county
54 employees but is ineligible for this plan regardless of any
55 subsequent termination of employment and rehire.

56 (c) Any deputy sheriff employed in covered employment on
57 the effective date of this article who has timely elected to
58 transfer into this plan as provided in subsection (b) of this
section shall be given credited service at the time of transfer for
all credited service then standing to the deputy sheriff’s service
credit in the Public Employees Retirement System regardless of
whether the credited service (as that term is defined in section
two, article ten, chapter five of this code) was earned as a deputy
sheriff. All the credited service standing to the transferring
deputy sheriff’s credit in the Public Employees Retirement Fund
System at the time of transfer into this plan shall be transferred
into the plan created by this article, and the transferring deputy
sheriff shall be given the same credit for the purposes of this
article for all service transferred from the Public Employees
Retirement System as that transferring deputy sheriff would have
received from the Public Employees Retirement System as if the
transfer had not occurred. In connection with each transferring
deputy sheriff receiving credit for prior employment as provided
in this subsection, a transfer from the Public Employees
Retirement System to this plan shall be made pursuant to the
procedures described in section eight of this article: Provided,
That a member of this plan who has elected to transfer from the
Public Employees Retirement System into this plan pursuant to
subsection (b) of this section may not, after having transferred
into and become an active member of this plan, reinstate to his
or her credit in this plan any service credit relating to periods of
nondeputy sheriff service which were withdrawn from the Public
Employees Retirement System prior to his or her elective
transfer into this plan.

(d) Any deputy sheriff who was employed as a deputy sheriff
prior to the effective date of this article, but was not employed
as a deputy sheriff on the effective date of this article, shall
become a member upon rehire as a deputy sheriff. For purposes
of this subsection, the member’s years of service and credited
service in the Public Employees Retirement System prior to the
effective date of this article shall not be counted for any purposes
under this plan unless: (1) The deputy sheriff has not received
the return of his or her accumulated contributions in the Public
Employees Retirement System pursuant to section thirty, article ten, chapter five of this code; or (2) the accumulated contributions returned to the member from the Public Employees Retirement System have been repaid pursuant to section thirteen of this article. If the conditions of subdivision (1) or (2) of this subsection are met, all years of the deputy sheriff’s covered employment shall be counted as years of service for the purposes of this article.

(e) Once made, the election provided in this section is irrevocable. All deputy sheriffs first employed after the effective date and deputy sheriffs electing to become members as described in this section shall be members as a condition of employment and shall make the contributions required by section seven of this article.

(f) Notwithstanding any other provisions of this article, any individual who is a leased employee is not eligible to participate in the plan. For purposes of this plan, a “leased employee” means any individual who performs services as an independent contractor or pursuant to an agreement with an employee leasing organization or similar organization. If a question arises regarding the status of an individual as a leased employee, the board has final power to decide the question.

CHAPTER 8. MUNICIPAL CORPORATIONS.

ARTICLE 22A. WEST VIRGINIA MUNICIPAL POLICE OFFICERS AND FIREFIGHTERS RETIREMENT SYSTEM.

*§8-22A-6. Members.*

(a) A police officer or firefighter hired in covered employment after the effective date of this article by a
municipality or municipal subdivision which has established and
maintained a policemen’s pension and relief fund or a firemen’s
pension and relief fund pursuant to section sixteen, article
twenty-two of this chapter and which is a participating employer,
shall be a member of this retirement plan: Provided, That any
police officer or firefighter who has concurrent employment in
an additional job or jobs which would require the police officer
or firefighter to be a member of the West Virginia Deputy
Sheriff Retirement System or the West Virginia Emergency
Medical Services Retirement System shall participate in only
one retirement system administered by the board, and the
retirement system applicable to the concurrent employment for
which the employee has the earliest date of hire shall prevail.

(b) Except as provided in section thirty-two of this article, a
police officer or firefighter who is a member of the Municipal
Police Officers and Firefighters Retirement System may not
have credit for covered employment in any other retirement
system applied as service credit in the Municipal Police Officers
and Firefighters Retirement System.

(c) Notwithstanding any other provisions of this article, any
individual who is a leased employee is not eligible to participate
in the plan. For purposes of this plan, a “leased employee”
means any individual who performs services as an independent
contractor or pursuant to an agreement with an employee leasing
organization or similar organization. If a question arises
regarding the status of an individual as a leased employee, the
board has final power to decide the question.

CHAPTER 15. PUBLIC SAFETY.

ARTICLE 2A. WEST VIRGINIA STATE POLICE RETIRE-
MENT SYSTEM.
§15-2A-3. Continuation and administration of West Virginia State Police Retirement System; leased employees; federal qualification requirements.

(a) The West Virginia State Police Retirement System is continued. It is contemplated that substantially all of the members of the retirement system shall be qualified public safety employees as defined in section two of this article. Any West Virginia state trooper employed by the agency on or after the effective date of this article shall be a member of this retirement system and may not qualify for membership in any other retirement system administered by the board so long as he or she remains employed by the State Police: Provided, That any state trooper who has concurrent employment in an additional job or jobs which would require the state trooper to be a member of the West Virginia Deputy Sheriff Retirement System, the West Virginia Municipal Police Officers and Firefighters Retirement System or the West Virginia Emergency Medical Services Retirement System shall abide by the statutory provisions of said retirement system related to concurrent employment and participate in only one retirement system administered by the board.

(b) Any individual who is a leased employee shall not be eligible to participate in the system. For purposes of this system, a “leased employee” means any individual who performs services as an independent contractor or pursuant to an agreement with an employee leasing organization or other similar organization. If a question arises regarding the status of an individual as a leased employee, the board has final power to decide the question.

(c) The board created pursuant to article ten-d, chapter five of this code shall administer the retirement system. The board may sue and be sued, contract and be contracted with and
conduct all the business of the system in the name of the West Virginia State Police Retirement System.

(d) This fund is intended to meet the federal qualification requirements of Section 401(a) and related sections of the Internal Revenue Code as applicable to governmental plans. Notwithstanding any other provision of state law, the board shall administer the retirement system to fulfill this intent for the exclusive benefit of the employees, members, retirants and their beneficiaries. Any provision of this article referencing or relating to these federal qualification requirements shall be effective as of the date required by federal law. The board may promulgate rules and amend or repeal conflicting rules in accordance with the authority granted to the board pursuant to section one, article ten-d, chapter five of this code to assure compliance with this section.

CHAPTER 16. PUBLIC HEALTH.

ARTICLE 5V. EMERGENCY MEDICAL SERVICES RETIREMENT SYSTEM ACT.

§16-5V-6. Members.

(a) Any emergency medical services officer first employed by a county or political subdivision in covered employment after the effective date of this article shall be a member of this retirement plan as a condition of employment and upon membership does not qualify for membership in any other retirement system administered by the board, so long as he or she remains employed in covered employment: Provided, That any emergency medical services officer who has concurrent employment in an additional job or jobs which would require the emergency medical services officer to be a member of the West Virginia Deputy Sheriff Retirement System or the West Virginia Municipal Police Officers and Firefighters Retirement System
shall participate in only one retirement system administered by the board, and the retirement system applicable to the concurrent employment for which the employee has the earliest date of hire shall prevail.

(b) Any emergency medical services officer employed in covered employment by an employer which is currently a participating public employer of the Public Employees Retirement System shall notify in writing both the county commission in the county or officials in the political subdivision in which he or she is employed and the board of his or her desire to become a member of the plan by December 31, 2007. Any emergency medical services officer who elects to become a member of the plan ceases to be a member or have any credit for covered employment in any other retirement system administered by the board and shall continue to be ineligible for membership in any other retirement system administered by the board so long as the emergency medical services officer remains employed in covered employment by an employer which is currently a participating public employer of this plan: Provided, That any emergency medical services officer who does not affirmatively elect to become a member of the plan continues to be eligible for any other retirement system as is, from time to time, offered to other county employees but is ineligible for this plan regardless of any subsequent termination of employment and rehire.

(c) Any emergency medical services officer who was employed as an emergency medical services officer prior to the effective date, but was not employed on the effective date of this article, shall become a member upon rehire as an emergency medical services officer. For purposes of this section, the member’s years of service and credited service prior to the effective date shall not be counted for any purposes under this plan unless the emergency medical services officer has not received the return of his or her accumulated contributions in the
Public Employees Retirement System pursuant to section thirty, article ten, chapter five of this code. The member may request in writing to have his or her accumulated contributions and employer contributions from covered employment in the Public Employees Retirement System transferred to the plan. If the conditions of this subsection are met, all years of the emergency medical services officer’s covered employment shall be counted as years of service for the purposes of this article.

(d) Any emergency medical services officer employed in covered employment on the effective date of this article who has timely elected to transfer into this plan as provided in subsection (b) of this section shall be given credited service at the time of transfer for all credited service then standing to the emergency medical services officer’s service credit in the Public Employees Retirement System regardless of whether the credited service (as that term is defined in section two, article ten, chapter five of this code) was earned as an emergency medical services officer. All credited service standing to the transferring emergency medical services officer’s credit in the Public Employees Retirement System at the time of transfer into this plan shall be transferred into the plan created by this article and the transferring emergency medical services officer shall be given the same credit for the purposes of this article for all service transferred from the Public Employees Retirement System as that transferring emergency medical services officer would have received from the Public Employees Retirement System as if the transfer had not occurred. In connection with each transferring emergency medical services officer receiving credit for prior employment as provided in this subsection, a transfer from the Public Employees Retirement System to this plan shall be made pursuant to the procedures described in this article: Provided, That any member of this plan who has elected to transfer from the Public Employees Retirement System into this plan pursuant to subsection (b) of this section may not, after having transferred into and becoming an active member of this plan, reinstate to his
or her credit in this plan any service credit relating to periods in
which the member was not in covered employment as an
emergency medical services officer and which service was
withdrawn from the Public Employees Retirement System prior
to his or her elective transfer into this plan.

(e) Once made, the election made under this section is
irrevocable. All emergency medical services officers employed
by an employer which is a participating public employer of the
Public Employees Retirement System after the effective date and
emergency medical services officers electing to become
members as described in this section shall be members as a
condition of employment and shall make the contributions
required by this article.

(f) Notwithstanding any other provisions of this article, any
individual who is a leased employee is not eligible to participate
in the plan. For purposes of this plan, a “leased employee”
means any individual who performs services as an independent
contractor or pursuant to an agreement with an employee leasing
organization or similar organization. If a question arises
regarding the status of an individual as a leased employee, the
board has final power to decide the question.

CHAPTER 18. EDUCATION.

ARTICLE 7A. STATE TEACHERS RETIREMENT SYSTEM.

§18-7A-13. Membership in retirement system; cessation of
membership; reinstatement of withdrawn service.

The membership of the retirement system shall consist of the
following:

(a) New entrants, whose membership in the system is
compulsory upon employment as teachers and nonteachers:
Provided, That any teaching member or nonteaching member, as
defined in section three of this article, who has concurrent
employment in an additional job or jobs which would require the
teaching member or nonteaching member to be a member of the
West Virginia Deputy Sheriff Retirement System, the West
Virginia Municipal Police Officers and Firefighters Retirement
System or the West Virginia Emergency Medical Services
Retirement System shall abide by the concurrent employment
statutory provisions of said retirement system and shall
participate in only one retirement system administered by the
retirement board.

(b) The membership of the retirement system shall not
include any person who is an active member of or who has been
retired by the West Virginia Public Employees Retirement
System, the judge’s retirement system, or the retirement system
of the West Virginia State Police or the supplemental retirement
system as provided in section four-a, article twenty-three of this
chapter. The membership of any person in the retirement system
ceases: (1) Upon the withdrawal of accumulated contributions
after the cessation of service; (2) upon effective retirement date;
(3) at death; or (4) upon the date, if any, when after the cessation
of service, the outstanding balance of any loan obtained by the
member pursuant to section thirty-four of this article or section
five, article seven-d of this chapter, plus accrued interest, equals
or exceeds the member’s accumulated contributions.

(c) Any former member of the retirement system who has
withdrawn accumulated contributions but subsequently reenters
the retirement system may repay to the retirement fund the
amount withdrawn, plus interest at a rate set by the board,
compounded annually from the date of withdrawal to the date of
repayment: Provided, That no repayment may be made until the
former member has completed two years of contributory service
after reentry; and the member shall be accorded all the rights to
prior service and experience as were held at the time of
39 withdrawal of the accumulated contributions: Provided, however, That no withdrawn service may be reinstated that has
40 been transferred to another retirement system from which the member is currently or will in the future draw benefits based on
41 the same service. The interest paid shall be deposited in the reserve fund.
42
43 (d) No member is eligible for prior service credit unless he or she is eligible for prior service pension, as prescribed by
44 section twenty-two of this article; however, a new entrant who becomes a present teacher as provided in this subdivision shall
45 be considered eligible for prior service pension upon retirement.
46
47 (e) Any individual who is a leased employee is not eligible to participate in the system. For purposes of this system, a
48 “leased employee” means any individual who performs services as an independent contractor or pursuant to an agreement with an
49 employee leasing organization or other similar organization. If a question arises regarding the status of an individual as a leased
50 employee, the board has final power to decide the question.

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CHAPTER 206

(S. B. 298 - By Senators Gaunch and Trump)

[Passed February 20, 2015; in effect ninety days from passage.]
[Approved by the Governor on March 3, 2015.]

AN ACT to amend and reenact §5-10-28 of the Code of West Virginia, 1931, as amended, relating to the Public Employees Retirement System; and clarifying that members deposit fund, employers accumulation fund, retirement reserve fund, income fund and expense fund all refer to the Public Employees Retirement Fund.
Be it enacted by the Legislature of West Virginia:

That §5-10-28 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 10. WEST VIRGINIA PUBLIC EMPLOYEES RETIREMENT ACT.

§5-10-28. Unified accounting; funds.

For financing and accounting purposes, the West Virginia Public Employees Retirement System shall consist of only one division, including, in combination, the participating state employees and participating public employees who are not state employees. Unified accounting of the retirement system transactions shall be maintained for all the assets of the system. The retirement system funds shall be: (1) The members deposit fund; (2) the employers accumulation fund; (3) the retirement reserve fund; (4) the income fund; and (5) the expense fund. All references in this code to the members deposit fund, the employers accumulation fund, the retirement reserve fund, the income fund and the expense fund mean the Public Employees Retirement Fund. Nothing contained in this section or any prior provision of law shall be interpreted to mean that any assets of the system, regardless of their origin or date of receipt, are to be in any manner segregated or insulated for the purposes of either paying benefits due or determining or establishing accounting or actuarial methodologies or functions utilized by the retirement system. The amendments to this section adopted during the third extraordinary session of the 1990 legislative session shall not be construed to limit the powers of the board relating to contributions to or benefits of the Public Employees Retirement System and any and all powers residing in the board previously administering the Public Employees Retirement System shall be preserved.
AN ACT to amend and reenact §5-10-44 of the Code of West Virginia, 1931, as amended; to amend and reenact §7-14D-7a of said code; to amend and reenact §8-22A-8 of said code; to amend said code by adding thereto a new section, designated §8-22A-8a; to amend said code by adding thereto a new section, designated §15-2-54; to amend said code by adding thereto a new section, designated §15-2A-23; to amend and reenact §16-5V-8a of said code; to amend and reenact §18-7A-14c of said code; to amend and reenact §18-7B-21 of said code; and to amend said code by adding thereto a new section, designated §51-9-18, all relating to correction of errors under the West Virginia Public Employees Retirement System, West Virginia Deputy Sheriff Retirement System, West Virginia Municipal Police Officers and Firefighters Retirement System, West Virginia Emergency Medical Services Retirement System, the State Teachers Retirement System, Teachers’ Defined Contribution Retirement System, the West Virginia State Police Death, Disability and Retirement System, West Virginia State Police Retirement System and the Judges’ Retirement System; and clarifying scope, application and requirements for error correction by Consolidated Public Retirement Board.

Be it enacted by the Legislature of West Virginia:

That §5-10-44 of the Code of West Virginia, 1931, as amended, be amended and reenacted; that §7-14D-7a of said code be amended and reenacted; that §8-22A-8 of said code be amended and reenacted; that
said code be amended by adding thereto a new section, designated §8-22A-8a; that said code be amended by adding thereto a new section, designated §15-2-54; that said code be amended by adding thereto a new section, designated §15-2A-23; that §16-5V-8a of said code be amended and reenacted; that §18-7A-14c of said code be amended and reenacted; that §18-7B-21 of said code be amended and reenacted; and that said code be amended by adding thereto a new section, designated §51-9-18, all to read as follows:

CHAPTER 5. GENERAL POWERS AND AUTHORITY OF THE GOVERNOR, SECRETARY OF STATE AND ATTORNEY GENERAL; BOARD OF PUBLIC WORKS; MISCELLANEOUS AGENCIES, COMMISSIONS, OFFICES, PROGRAMS, ETC.

ARTICLE 10. WEST VIRGINIA PUBLIC EMPLOYEES RETIREMENT ACT.

§5-10-44. Correction of errors; underpayments; overpayments.

1 (a) General rule: Upon learning of any errors, the board shall correct errors in the retirement system in a timely manner whether an individual, entity or board was at fault for the error with the intent of placing the affected individual, entity and retirement board in the position each would have been in had the error not occurred.

7 (b) Underpayments to the retirement system: Any error resulting in an underpayment to the retirement system may be corrected by the member or retirant remitting the required employee contribution or underpayment and the participating public employer remitting the required employer contribution or underpayment. Interest shall accumulate in accordance with the legislative rule 162 CSR 7 concerning retirement board refund, reinstatement, retroactive service, loan and correction of error interest factors and any accumulating interest owed on the employee and employer contributions or underpayments.
resulting from an employer error shall be the responsibility of
the participating public employer. The participating public
employer may remit total payment and the employee reimburse
the participating public employer through payroll deduction over
a period equivalent to the time period during which the employer
error occurred. If the correction of an error involving an
underpayment to the retirement system will result in the
retirement system paying a retirant an additional amount, this
additional payment shall be made only after the board receives
full payment of all required employee and employer
contributions or underpayments, including interest.

(c) Overpayments to the retirement system by an employer:
When mistaken or excess employer contributions or other
employer overpayments have been made to the retirement
system, the board shall credit the employer with an amount equal
to the overpayment, to be offset against the employer’s future
liability for employer contributions to the system. If the
employer has no future liability for employer contributions to the
retirement system, the board shall refund the erroneous
contributions directly to the employer. Earnings or interest shall
not be returned, offset or credited to the employer under any of
the means used by the board for returning employer
overpayments to the retirement system.

(d) Overpayments to the retirement system by an employee:
When mistaken or excess employee contributions or
overpayments have been made to the retirement system, the
board shall have sole authority for determining the means of
return, offset or credit to or for the benefit of the individual
making the mistaken or excess employee contribution of the
amounts, and may use any means authorized or permitted under
the provisions of section 401(a), et seq. of the Internal Revenue
Code and guidance issued thereunder applicable to governmental
plans. Alternatively, in its full and complete discretion, the board
may require the participating public employer employing the
individual to pay the individual the amounts as wages, with the
board crediting the participating public employer with a
corresponding amount to offset against its future contributions
to the plan. If the employer has no future liability for employer
contributions to the retirement system, the board shall refund
said amount directly to the employer: Provided, That the wages
paid to the individual shall not be considered compensation for
any purposes of this article. Earnings or interest shall not be
returned, offset or credited under any of the means used by the
board for returning employee overpayments.

(e) Overpayments from the retirement system: If any error
results in any member, retirant, beneficiary, entity or other
individual receiving from the system more than he would have
been entitled to receive had the error not occurred, the board
shall correct the error in a timely manner. If correction of the
error occurs after annuity payments to a retirant or beneficiary
have commenced, the board shall prospectively adjust the
payment of the benefit to the correct amount. In addition, the
member, retirant, beneficiary, entity or other person who
received the overpayment from the retirement system shall repay
the amount of any overpayment to the retirement system in any
manner permitted by the board. Interest shall not accumulate on
any corrective payment made to the retirement system pursuant
to this subsection.

(f) Underpayments from the retirement system: If any error
results in any member, retirant, beneficiary, entity or other
individual receiving from the retirement system less than he
would have been entitled to receive had the error not occurred,
the board shall correct the error in a timely manner. If correction
of the error occurs after annuity payments to a retirant or
beneficiary have commenced, the board shall prospectively
adjust the payment of the benefit to the correct amount. In
addition, the board shall pay the amount of such underpayment
to the member, retirant, beneficiary or other individual in a lump
sum. Interest shall not be paid on any corrective payment made by the retirement system pursuant to this subsection.

(g) Eligibility errors: If the board finds that an individual, employer, or both individual and employer currently or formerly participating in the retirement system is not eligible to participate, the board shall notify the individual and his or her employer of the determination and terminate participation in the retirement system. Any erroneous payments to the retirement system shall be returned to the employer and individual in accordance with the methods described in subsections (c) and (d) of this section and any erroneous payments from the retirement system to such individual shall be returned to the retirement system in accordance with the methods described in subsection (e) of this section. Any erroneous service credited to the individual shall be removed. If the board determines that an individual or employer, or both, has not been participating in the retirement system, but was eligible to and required to be participating in the retirement system, the board shall as soon as practicable notify the individual and his or her employer of the determination and the individual and his or her employer shall prospectively commence participation in the retirement system as soon as practicable. Service credit for service prior to the date on which the individual prospectively commences participation in the retirement system shall be granted only if the board receives the required employer and employee contributions for such service, in accordance with subsection (b) of this section, including interest.

CHAPTER 7. COUNTY COMMISSIONS AND OFFICERS.

ARTICLE 14D. DEPUTY SHERIFF RETIREMENT SYSTEM ACT.

§7-14D-7a. Correction of errors; underpayments; overpayments.

(a) General rule: Upon learning of errors, the board shall correct errors in the retirement plan in a timely manner whether
the individual, entity or board was at fault for the error with the
intent of placing the affected individual, entity and board in the
position each would have been in had the error not occurred.

(b) Underpayments to the plan: Any error resulting in an
underpayment to the plan may be corrected by the member or
retirant remitting the required employee contribution or
underpayment and the participating public employer remitting
the required employer contribution or underpayment. Interest
shall accumulate in accordance with the legislative rule 162 CSR
7 concerning retirement board refund, reinstatement, retroactive
service, loan and correction of error interest factors and any
accumulating interest owed on the employee and employer
contributions or underpayments resulting from an employer error
shall be the responsibility of the participating public employer.
The participating public employer may remit total payment and
the employee reimburse the participating public employer
through payroll deduction over a period equivalent to the time
period during which the employer error occurred. If the
correction of an error involving an underpayment to the plan will
result in the plan paying a retirant an additional amount, this
additional payment shall be made only after the board receives
full payment of all required employee and employer
contributions or underpayments, including interest.

(c) Overpayments to the plan by an employer: When
mistaken or excess employer contributions or other employer
overpayments have been made to the plan, the board shall credit
the employer with an amount equal to the overpayment, to be
offset against the employer’s future liability for employer
contributions to the plan. If the employer has no future liability
for employer contributions to the retirement system, the board
shall refund the erroneous contributions directly to the employer.
Earnings or interest shall not be returned, offset or credited to the
employer under any of the means used by the board for returning
employer overpayments made to the plan.
(d) Overpayments to the plan by an employee: When mistaken or excess employee contributions or overpayments have been made to the retirement system, the board shall have sole authority for determining the means of return, offset or credit to or for the benefit of the individual making the mistaken or excess employee contribution of the amounts, and may use any means authorized or permitted under the provisions of section 401(a), et seq. of the Internal Revenue Code and guidance issued thereunder applicable to governmental plans. Alternatively, in its full and complete discretion, the board may require the participating public employer employing the individual to pay the individual the amounts as wages, with the board crediting the participating public employer with a corresponding amount to offset against its future contributions to the plan. If the employer has no future liability for employer contributions to the plan, the board shall refund said amount directly to the employer: Provided, That the wages paid to the individual shall not be considered compensation for any purposes of this article. Earnings or interest shall not be returned, offset, or credited under any of the means used by the board for returning employee overpayments.

(e) Overpayments from the plan: If any error results in any member, retirant, beneficiary, entity or other individual receiving from the system more than he would have been entitled to receive had the error not occurred the board shall correct the error in a timely manner. If correction of the error occurs after annuity payments to a retirant or beneficiary have commenced, the board shall prospectively adjust the payment of the benefit to the correct amount. In addition, the member, retirant, beneficiary, entity or other person who received the overpayment from the plan shall repay the amount of any overpayment to the plan in any manner permitted by the board. Interest shall not accumulate on any corrective payment made to the plan pursuant to this subsection.
(f) Underpayments from the plan: If any error results in any member, retirant, beneficiary, entity or other individual receiving from the plan less than he would have been entitled to receive had the error not occurred, the board, upon learning of the error, shall correct the error in a timely manner. If correction of the error occurs after annuity payments to a retirant or beneficiary have commenced, the board shall prospectively adjust the payment of the benefit to the correct amount. In addition, the board shall pay the amount of such underpayment to the member, retirant, beneficiary or other individual in a lump sum. Interest shall not be paid on any corrective payment made by the plan pursuant to this subsection.

(g) Eligibility errors: If the board finds that an individual, employer, or both individual and employer formerly or currently participating in the plan is not eligible to participate, the board shall notify the individual and his or her employer of the determination, and terminate participation in the plan. Any erroneous payments to the retirement system shall be returned to the employer and individual in accordance with the methods described in subsections (c) and (d) of this section and any erroneous payments from the plan to such individual shall be returned to the plan in accordance with the methods described in subsection (e) of this section. Any erroneous service credited to the individual shall be removed. If the board determines that an individual or employer, or both, has not been participating in the plan, but was eligible to and required to be participating in the plan, the board shall as soon as practicable notify the individual and his or her employer of the determination, and the individual and his or her employer shall prospectively commence participation in the plan as soon as practicable. Service credit for service prior to the date on which the individual prospectively commences participation in the plan shall be granted only if the board receives the required employer and employee contributions for such service, in accordance with subsection (b) of this section, including interest.
§8-22A-8. Members’ contributions; employer contributions.

(a)(1) There shall be deducted from the monthly salary of each member and paid into the fund an amount equal to eight and one-half percent, or ten and one-half percent, if applicable, of his or her monthly salary. An additional amount shall be paid to the fund by the municipality or municipal subdivision in which the member is employed in covered employment in an amount determined by the board: Provided, That in no year may the total of the employer contributions provided in this section, to be paid by the municipality or municipal subdivision, exceed ten and one-half percent of the total payroll for the members in the employ of the municipality or municipal subdivision. Any active member who has concurrent employment in an additional job or jobs and the additional employment requires the police officer or firefighter to be a member of another retirement system which is administered by the Consolidated Public Retirement Board pursuant to article ten-d, chapter five of this code shall contribute to the fund the sum of eight and one-half percent, or ten and one-half percent, if applicable, of his or her monthly salary earned as a municipal police officer or firefighter as well as the sum of eight and one-half percent, or ten and one-half percent, if applicable, of his or her monthly salary earned from any additional employment which additional employment requires the police officer or firefighter to be a member of another retirement system which is administered by the Consolidated Public Retirement Board pursuant to article ten-d, chapter five of this code. An additional amount as determined by the board, not to exceed ten and one-half percent
of the monthly salary of each member, shall be paid to the fund by the concurrent employer by which the member is employed.

(2) The board may, on the recommendation of the board’s actuary, increase the employees’ contribution rate from eight and one-half percent to ten and one-half percent should the plan not be seventy percent funded by July 1, 2014. The board shall decrease the contribution rate to eight and one-half percent on July 1 following the acceptance by the board of an actuarial valuation determining that the plan is seventy-five percent funded. If the plan funding level at a later actuarial valuation date falls below seventy percent, the employee rate of contribution shall be increased to ten and one-half percent of salary until the seventy-five percent level of funding is achieved. The board shall change the employee contribution rate on July 1 following the board’s acceptance of the actuarial valuation. At no time may the rate of employee contribution exceed the rate of employer contribution.

(b) All required deposits shall be remitted to the board no later than fifteen days following the end of the calendar month for which the deposits are required. If the board on the recommendation of the board actuary finds that the benefits provided by this article can be actuarially funded with a lesser contribution, then the board shall reduce the required member and employer contributions proportionally. Any municipality or municipal subdivision which fails to make any payment due the Municipal Police Officers and Firefighters Retirement Fund by the fifteenth day following the end of each calendar month in which contributions are due may be required to pay the actuarial rate of interest lost on the total amount owed for each day the payment is delinquent. Accrual of the loss of earnings owed by the delinquent municipality or municipal subdivision commences after the fifteenth day following the end of the calendar month in which contributions are due and continues
until receipt of the delinquent amount. Interest compounds daily and the minimum surcharge is $50.

§8-22A-8a. Correction of errors; underpayments; overpayments.

(a) General rule: Upon learning of errors, the board shall correct errors in the plan in a timely manner whether the individual, entity or board was at fault for the error with the intent of placing the affected individual, entity and retirement board in the position each would have been in had the error not occurred.

(b) Underpayments to the plan: Any error resulting in an underpayment to the plan may be corrected by the member or retirant remitting the required employee contribution or underpayment and the employer remitting the required employer contribution or underpayment. Interest shall accumulate in accordance with the legislative rule 162 CSR 7 concerning retirement board refund, reinstatement, retroactive service, loan and correction of error interest factors, and any accumulating interest owed on the employee and employer contributions or underpayments resulting from an employer error shall be the responsibility of the employer. The employer may remit total payment and the employee reimburse the employer through payroll deduction over a period equivalent to the time period during which the employer error occurred. If the correction of an error involving an underpayment to the plan will result in the plan correcting an erroneous underpayment from the plan, the correction of the underpayment from the plan shall be made only after the board receives full payment of all required employee and employer contributions or underpayments, including interest.

(c) Overpayments to the plan by the employer: When mistaken or excess employer contributions, including any overpayments have been made to the retirement system by the
employer, the board shall credit the employer with an amount equal to the overpayment, to be offset against the employer’s future liability for employer contributions to the system. If the employer has no future liability for employer contributions to the plan, the board shall refund the erroneous contributions directly to the employer. Earnings or interest shall not be returned, offset or credited to the employer under any of the means used by the board for returning employer overpayments to the plan.

(d) Overpayments to the plan by an employee: When mistaken or excess employee contributions or overpayments have been made to the plan, the board shall have sole authority for determining the means of return, offset or credit to or for the benefit of the individual making the mistaken or excess employee contribution of the amounts, and may use any means authorized or permitted under the provisions of section 401(a), et seq. of the Internal Revenue Code and guidance issued thereunder applicable to governmental plans. Alternatively, in its full and complete discretion, the board may require the employer employing the individual to pay the individual the amounts as wages, with the board crediting the employer with a corresponding amount to offset against its future contributions to the plan. If the employer has no future liability for employer contributions to the plan, the board shall refund said amount directly to the employer: Provided, That the wages paid to the individual shall not be considered compensation for any purposes of this article. Earnings or interest shall not be returned, offset, or credited under any of the means used by the board for returning employee overpayments.

(e) Overpayments from the plan: If any error results in any member, retirant, beneficiary, entity or other individual receiving from the plan more than he would have been entitled to receive had the error not occurred the board after learning of the error shall correct the error in a timely manner. If correction of the error occurs after annuity payments to a retirant or beneficiary
have commenced, the board shall prospectively adjust the payment of the benefit to the correct amount. In addition, the member, retirant, beneficiary, entity or other person who received the overpayment from the plan shall repay the amount of any overpayment to the retirement system in any manner permitted by the board. Interest shall not accumulate on any corrective payment made to the plan pursuant to this subsection.

(f) Underpayments from the plan: If any error results in any member, retirant, beneficiary, entity or other individual receiving from the plan less than he would have been entitled to receive had the error not occurred, the board, upon learning of the error, shall correct the error in a timely manner. If correction of the error occurs after annuity payments to a retirant or beneficiary have commenced, the board shall prospectively adjust the payment of the benefit to the correct amount. In addition, the board shall pay the amount of such underpayment to the member, retirant, beneficiary or other individual in a lump sum. Interest shall not be paid on any corrective payment made by the retirement system pursuant to this subsection.

(g) Eligibility errors: If the board finds that an individual, employer, or both individual and employer formerly or currently participating in the plan is not eligible to participate, the board shall notify the individual and his or her employer of the determination, and terminate participation in the plan. Any erroneous payments to the plan shall be returned to the employer and individual in accordance with the methods described in subsections (c) and (d) of this section, and any erroneous payments from the plan to such individual shall be returned to the plan in accordance with the methods described in subsection (e) of this section. Any erroneous service credited to the individual shall be removed. If the board determines that an individual or employer, or both, has not been participating in the retirement plan, but was eligible to and required to be participating in the plan, the board shall as soon as practicable
notify the individual and his or her employer of the determination, and the individual and his or her employer shall prospectively commence participation in the plan as soon as practicable. Service credit for service prior to the date on which the individual prospectively commences participation in the plan shall be granted only if the board receives the required employer and employee contributions for such service, in accordance with subsection (b) of this section, including interest.

CHAPTER 15. PUBLIC SAFETY.

ARTICLE 2. WEST VIRGINIA STATE POLICE.

§15-2-54. Correction of errors; underpayments; overpayments.

(a) General rule: Upon learning of any errors, the board shall correct errors in the system in a timely manner whether the individual, entity or board was at fault for the error with the intent of placing the affected individual, entity and retirement board in the position each would have been in had the error not occurred.

(b) Underpayments to the system: Any error resulting in an underpayment to the system may be corrected by the member or retirant remitting the required employee contribution or underpayment and the employer remitting the required employer contribution or underpayment. Interest shall accumulate in accordance with the legislative rule 162 CSR 7 concerning retirement board refund, reinstatement, retroactive service, loan and correction of error interest factors and any accumulating interest owed on the employee and employer contributions or underpayments resulting from an employer error is the responsibility of the employer. The employer may remit total payment and the employee reimburse the employer through payroll deduction over a period equivalent to the time period during which the employer error occurred. If the correction of an
error involving an underpayment to the system will result in the
system correcting an erroneous underpayment from the system,
the correction of the underpayment from the system shall be
made only after the board receives full payment of all required
employee and employer contributions or underpayments,
including interest.

(c) Overpayments to the system by an employer: When
mistaken or excess employer contributions, including any
overpayments have been made to the system by the employer,
the board shall credit the employer with an amount equal to the
overpayment, to be offset against the employer's future liability
for employer contributions to the system. If the employer has no
future liability for employer contributions to the retirement
system, the board shall refund the erroneous contributions
directly to the employer. Earnings or interest shall not be
returned, offset or credited to the employer under any of the
means used by the board for returning employer overpayments
to the retirement system.

(d) Overpayments to the system by an employee: When
mistaken or excess employee contributions or overpayments
have been made to the system, the board shall have sole
authority for determining the means of return, offset or credit to
or for the benefit of the individual making the mistaken or excess
employee contribution of the amounts, and may use any means
authorized or permitted under the provisions of section 401(a),
et seq. of the Internal Revenue Code and guidance issued
thereunder applicable to governmental plans. Alternatively, in its
full and complete discretion, the board may require the employer
employing the individual to pay the individual the amounts as
wages, with the board crediting the employer with a
corresponding amount to offset against its future contributions
to the plan. If the employer has no future liability for employer
contributions to the system, the board shall refund said amount
directly to the employer: Provided, That the wages paid to the
individual shall not be considered compensation for any purposes of this article. Earnings or interest shall not be returned, offset, or credited under any of the means used by the board for returning employee overpayments.

(e) Overpayments from the system: If any error results in any member, retirant, beneficiary, entity or other individual receiving from the system more than he would have been entitled to receive had the error not occurred the board, upon learning of the error, shall correct the error in a timely manner. If correction of the error occurs after annuity payments to a retirant or beneficiary have commenced, the board shall prospectively adjust the payment of the benefit to the correct amount. In addition, the member, retirant, beneficiary, entity or other person who received the overpayment from the system shall repay the amount of any overpayment to the system in any manner permitted by the board. Interest shall not accumulate on any corrective payment made to the system pursuant to this subsection.

(f) Underpayments from the system: If any error results in any member, retirant, beneficiary, entity or other individual receiving from the retirement system less than he would have been entitled to receive had the error not occurred, the board, upon learning of the error, shall correct the error in a timely manner. If correction of the error occurs after annuity payments to a retirant or beneficiary have commenced, the board shall prospectively adjust the payment of the benefit to the correct amount. In addition, the board shall pay the amount of such underpayment to the member, retirant, beneficiary or other individual in a lump sum. Interest shall not be paid on any corrective payment made by the system pursuant to this subsection.

(g) Eligibility errors: If the board finds that an individual, employer, or both individual and employer currently or formerly
participating in the retirement system is not eligible to
participate, the board shall notify the individual and his or her
employer of the determination, and terminate participation in the
system. Any erroneous payments to the system shall be returned
to the employer and individual in accordance with the methods
described in subsections (c) and (d) of this section and any
erroneous payments from the system to such individual shall be
returned to the system in accordance with the methods described
in subsection (e) of this section. Any erroneous service credited
to the individual shall be removed. If the board determines that
an individual or employer, or both, has not been participating in
the system, but was eligible to and required to be participating in
the system, the board shall as soon as practicable notify the
individual and his or her employer of the determination, and the
individual and his or her employer shall prospectively
commence participation in the system as soon as practicable.
Service credit for service prior to the date on which the
individual prospectively commences participation in the system
shall be granted only if the board receives the required employer
and employee contributions for such service, in accordance with
subsection (b) in this section, including interest.

ARTICLE 2A. WEST VIRGINIA STATE POLICE RETIRE-
MENT SYSTEM.

§15-2A-23. Correction of errors; underpayments; overpayments.

(a) General rule: Upon learning of any errors, the board shall
correct errors in the retirement system in a timely manner
whether the individual, entity or board was at fault for the error
with the intent of placing the affected individual, entity and
retirement board in the position each would have been in had the
error not occurred.

(b) Underpayments to the system: Any error resulting in an
underpayment to the system, may be corrected by the member or
retirant remitting the required employee contribution or underpayment and the employer remitting the required employer contribution or underpayment. Interest shall accumulate in accordance with the legislative rule 162 CSR 7 concerning retirement board refund, reinstatement, retroactive service, loan and correction of error interest factors and any accumulating interest owed on the employee and employer contributions or underpayments resulting from an employer error shall be the responsibility of the employer. The employer may remit total payment and the employee reimburse the employer through payroll deduction over a period equivalent to the time period during which the employer error occurred. If the correction of an error involving an underpayment to the system will result in the system correcting an erroneous underpayment from the system, the correction of the underpayment from the system shall be made only after the board receives full payment of all required employee and employer contributions or underpayments, including interest.

(c) Overpayments to the system by an employer: When mistaken or excess employer contributions or other overpayments have been made to the system by an employer, the board shall credit the employer with an amount equal to the overpayment, to be offset against the employer’s future liability for employer contributions to the system. If the employer has no future liability for employer contributions to the retirement system, the board shall refund the erroneous contributions directly to the employer. Earnings or interest shall not be returned, offset or credited to the employer under any of the means used by the board for returning employer overpayments to the retirement system.

(d) Overpayments to the system by an employee: When mistaken or excess employee contributions or overpayments have been made to the system, the board shall have sole authority for determining the means of return, offset or credit to
or for the benefit of the individual making the mistaken or excess
employee contribution of the amounts, and may use any means
authorized or permitted under the provisions of section 401(a),
et seq. of the Internal Revenue Code and guidance issued
thereunder applicable to governmental plans. Alternatively, in its
full and complete discretion, the board may require the employer
employing the individual to pay the individual the amounts as
wages, with the board crediting the employer with a
corresponding amount to offset against its future contributions
to the plan. If the employer has no future liability for employer
contributions to the retirement system, the board shall refund
said amount directly to the employer: Provided, That the wages
paid to the individual shall not be considered compensation for
any purposes of this article. Earnings or interest shall not be
returned, offset, or credited under any of the means used by the
board for returning employee overpayments.

(e) Overpayments from the system: If any error results in
any member, retirant, beneficiary, entity or other individual
receiving from the system more than he would have been
entitled to receive had the error not occurred the board, upon
learning of the error, shall correct the error in a timely manner.
If correction of the error occurs after annuity payments to a
retirant or beneficiary have commenced, the board shall
prospectively adjust the payment of the benefit to the correct
amount. In addition, the member, retirant, beneficiary, entity or
other person who received the overpayment from the system
shall repay the amount of any overpayment to the system in any
manner permitted by the board. Interest shall not accumulate on
any corrective payment made to the system pursuant to this
subsection.

(f) Underpayments from the system: If any error results in
any member, retirant, beneficiary, entity or other individual
receiving from the system less than he would have been entitled
to receive had the error not occurred, the board shall correct the
error in a timely manner. If correction of the error occurs after
annuity payments to a retirant or beneficiary have commenced,
the board shall prospectively adjust the payment of the benefit to
the correct amount. In addition, the board shall pay the amount
of such underpayment to the member, retirant, beneficiary or
other individual in a lump sum. Interest shall not be paid on any
corrective payment made by the system pursuant to this
subsection.

(g) Eligibility errors: If the board finds that an individual,
employer, or both individual and employer currently or formerly
participating in the system is not eligible to participate, the board
shall notify the individual and his or her employer of the
determination, and terminate participation in the system. Any
erroneous payments to the system shall be returned to the
employer and individual in accordance with the methods
described in subsections (c) and (d) of this section and any
erroneous payments from the system to such individual shall be
returned to the system in accordance with the methods described
in subsection (e) of this section. Any erroneous service credited
to the individual shall be removed. If the board determines that
an individual or employer, or both, has not been participating in
the system, but was eligible to and required to be participating in
the system, the board shall as soon as practicable notify the
individual and his or her employer of the determination, and the
individual and his or her employer shall prospectively
commence participation in the system as soon as practicable.
Service credit for service prior to the date on which the
individual prospectively commences participation in the system
shall be granted only if the board receives the required employer
and employee contributions for such service, in accordance with
subsection (b) in this section, including interest.

CHAPTER 16. PUBLIC HEALTH.

ARTICLE 5V. EMERGENCY MEDICAL SERVICES RETIRE-
MENT SYSTEM ACT.
§16-5V-8a. Correction of errors; underpayments; overpayments.

(a) General rule: Upon learning of any errors, the board shall correct errors in the retirement system in a timely manner whether the individual, entity or board was at fault for the error with the intent of placing the affected individual, entity and retirement board in the position each would have been in had the error not occurred.

(b) Underpayments to the plan: Any error resulting in an underpayment to the retirement plan, may be corrected by the member or retiree remitting the required employee contribution or underpayment and the participating public employer remitting the required employer contribution or underpayment. Interest shall accumulate in accordance with the legislative rule 162 CSR 7 concerning retirement board refund, reinstatement, retroactive service, loan and correction of error interest factors and any accumulating interest owed on the employee and employer contributions or underpayments resulting from an employer error shall be the responsibility of the participating public employer. The participating public employer may remit total payment and the employee reimburse the participating public employer through payroll deduction over a period equivalent to the time period during which the employer error occurred. If the correction of an error involving an underpayment to the retirement system will result in the plan paying the retiree an additional amount, this additional payment shall be made only after the board receives full payment of all required employee and employer contributions or underpayments, including interest.

(c) Overpayments to the plan by an employer: When mistaken or excess employer contributions or other employer overpayments have been made to the plan, the board shall credit the employer with an amount equal to the overpayment, to be offset against the employer’s future liability for employer
contributions to the plan. If the employer has no future liability
for employer contributions to the plan, the board shall refund the
erroneous contributions directly to the employer. Earnings or
interest shall not be returned, offset or credited to the employer
under any of the means used by the board for returning employer
overpayments to the retirement system.

(d) Overpayments to the plan by an employee: When
mistaken or excess employee contributions or overpayments
have been made to the plan, the board shall have sole authority
for determining the means of return, offset or credit to or for the
benefit of the individual making the mistaken or excess
employee contribution of the amounts, and may use any means
authorized or permitted under the provisions of section 401(a),
et seq. of the Internal Revenue Code and guidance issued
thereunder applicable to governmental plans. Alternatively, in its
full and complete discretion, the board may require the
participating public employer employing the individual to pay
the individual the amounts as wages, with the board crediting the
participating public employer with a corresponding amount to
offset against its future contributions to the plan. If the employer
has no future liability for employer contributions to the plan, the
board shall refund said amount directly to the employer:
Provided, That the wages paid to the individual shall not be
considered compensation for any purposes of this article.
Earnings or interest shall not be returned, offset, or credited
under any of the means used by the board for returning employee
overpayments.

(e) Overpayments from the plan: If any error results in any
member, retirant, beneficiary, entity or other individual receiving
from the system more than he would have been entitled to
receive had the error not occurred the board upon learning of the
error shall correct the error in a timely manner. If correction of
the error occurs after annuity payments to a retirant or
beneficiary have commenced, the board shall prospectively
adjust the payment of the benefit to the correct amount. In addition, the member, retirant, beneficiary, entity or other person who received the overpayment from the plan shall repay the amount of any overpayment to the plan in any manner permitted by the board. Interest shall not accumulate on any corrective payment made to the plan pursuant to this subsection.

(f) Underpayments from the retirement system: If any error results in any member, retirant, beneficiary, entity or other individual receiving from the plan less than he would have been entitled to receive had the error not occurred, the board, upon learning of the error, shall correct the error in a timely manner. If correction of the error occurs after annuity payments to a retirant or beneficiary have commenced, the board shall prospectively adjust the payment of the benefit to the correct amount. In addition, the board shall pay the amount of such underpayment to the member, retirant, beneficiary or other individual in a lump sum. Interest shall not be paid on any corrective payment made by the plan pursuant to this subsection.

(g) Eligibility errors: If the board finds that an individual, employer, or both individual and employer, participating in the plan is not eligible to participate, the board shall notify the individual and his or her employer of the determination and terminate participation in the plan. Any erroneous payments to the plan shall be returned to the employer and individual in accordance with the methods described in subsections (c) and (d) of this section and any erroneous payments from the plan to such individual shall be returned to the plan in accordance with the methods described in subsection (e) of this section. Any erroneous service credited to the individual shall be removed. If the board determines that an individual or employer, or both, has not been participating in the plan, but was eligible to and required to be participating in the plan, the board shall as soon as practicable notify the individual and his or her employer of the determination, and the individual and his or her employer
shall prospectively commence participation in the plan as soon as practicable. Service credit for service prior to the date on which the individual prospectively commences participation in the plan shall be granted only if the board receives the required employer and employee contributions for such service, in accordance with subsection (b) of this section, including interest.

CHAPTER 18. EDUCATION.

ARTICLE 7A. STATE TEACHERS RETIREMENT SYSTEM.

§18-7A-14c. Correction of errors; underpayments; overpayments.

(a) General rule: Upon learning of any errors, the board shall correct errors in the retirement system in a timely manner whether the individual, entity or board was at fault for the error with the intent of placing the affected individual, entity and retirement board in the position each would have been in had the error not occurred.

(b) Underpayments to the retirement system: Any error resulting in an underpayment to the retirement system, may be corrected by the member or retirant remitting the required employee contribution or underpayment and the participating public employer remitting the required employer contribution or underpayment. Interest shall accumulate in accordance with the legislative rule 162 CSR 7 concerning retirement board refund, reinstatement, retroactive service, loan and correction of error interest factors and any accumulating interest owed on the employee and employer contributions or underpayments resulting from an employer error shall be the responsibility of the participating public employer. The participating public employer may remit total payment and the employee reimburse the participating public employer through payroll deduction over a period equivalent to the time period during which the employer error occurred. If the correction of an error involving an
underpayment to the retirement system will result in the plan paying the retirant an additional amount, this additional payment shall be made only after the board receives full payment of all required employee and employer contributions or underpayments, including interest.

(c) Overpayments to the retirement system by an employer: When mistaken or excess employer contributions or other employer overpayments have been made to the retirement system, the board shall credit the employer with an amount equal to the erroneous overpayment, to be offset against the employer’s future liability for employer contributions to the retirement system. If the employer has no future liability for employer contributions to the retirement system, the retirement board shall refund the erroneous contributions directly to the employer. Earnings or interest shall not be returned, offset or credited to the employer under any of the means used by the retirement board for returning employer overpayments to the retirement system.

(d) Overpayments to the retirement system by an employee: When mistaken or excess employee contributions or overpayments, have been made to the retirement system, the board shall have sole authority for determining the means of return, offset or credit to or for the benefit of the individual making the mistaken or excess employee contribution of the amounts and may use any means authorized or permitted under the provisions of section 401(a), *et seq.* of the Internal Revenue Code and guidance issued thereunder applicable to governmental plans. Alternatively, in its full and complete discretion, the board may require the employer employing the individual to pay the individual the amounts as wages, with the retirement board crediting the participating public employer with a corresponding amount to offset against its future contributions to the plan. If the employer has no future liability for employer contributions to the retirement system, the retirement board shall refund said amount
directly to the employer: Provided, That the wages paid to the
individual shall not be considered compensation for any
purposes of this article. Earnings or interest shall not be returned,
offset, or credited under any of the means used by the retirement
board for returning member overpayments.

(e) Overpayments from the retirement system: If any error
results in any member, retirant, beneficiary, entity or other
individual receiving from the system more than he would have
been entitled to receive had the error not occurred the board,
upon learning of the error, shall correct the error in a timely
manner. If correction of the error occurs after annuity payments
to a retirant or beneficiary have commenced, the board shall
prospectively adjust the payment of the benefit to the correct
amount. In addition, the member, retirant, beneficiary, entity or
other person who received the overpayment from the retirement
system shall repay the amount of any overpayment to the
retirement system in any manner permitted by the board. Interest
shall not accumulate on any corrective payment made to the
retirement system pursuant to this subsection.

(f) Underpayments from the retirement system: If any error
results in any member, retirant, beneficiary, entity or other
individual receiving from the retirement system less than he
would have been entitled to receive had the error not occurred,
the board, upon learning of the error, shall correct the error in a
timely manner. If correction of the error occurs after annuity
payments to a retirant or beneficiary have commenced, the board
shall prospectively adjust the payment of the benefit to the
correct amount. In addition, the board shall pay the amount of
such underpayment to the member, retirant, beneficiary or other
individual in a lump sum. Interest shall not be paid on any
corrective payment made by the retirement system pursuant to
this subsection.

(g) Eligibility errors: If the board finds that an individual,
employer, or both individual and employer currently or formerly
participating in the retirement system is not eligible to participate, the board shall notify the individual and his or her employer of the determination, and terminate participation in the retirement system. Any erroneous payments to the retirement system shall be returned to the employer and individual in accordance with the methods described in subsections (c) and (d) of this section and any erroneous payments from the retirement system to such individual shall be returned to the retirement system in accordance with the methods described in subsection (e) of this section. Any erroneous service credited to the individual shall be removed. If the board determines that an individual or employer, or both, has not been participating in the retirement system, but was eligible to and required to be participating in the retirement system, the board shall as soon as practicable notify the individual and his or her employer of the determination, and the individual and his or her employer shall prospectively commence participation in the retirement system as soon as practicable. Service credit for service prior to the date on which the individual prospectively commences participation in the retirement system shall be granted only if the board receives the required employer and employee contributions for such service, in accordance with subsection (b) of this section, including interest.

ARTICLE 7B. TEACHERS’ DEFINED CONTRIBUTION RETIREMENT SYSTEM.

§18-7B-21. Correction of errors; underpayments; overpayments

(a) General rule: Upon learning of any errors, the board shall correct errors in the retirement system in a timely manner whether the individual, entity or board was at fault for the error with the intent of placing the affected individual, entity and retirement board in the position each would have been in had the error not occurred.
(b) Underpayments to the system: Any error resulting in an underpayment to the system, may be corrected by the member or retirant remitting the required employee contribution or underpayment and the existing employer remitting the required employer contribution or underpayment. Interest shall accumulate in accordance with the legislative rule 162 CSR 7 concerning retirement board Refund, Reinstatement, Retroactive Service, Loan and Correction of Error Interest Factors and any accumulating interest owed on the employee and employer contributions or underpayments resulting from an employer error shall be the responsibility of the participating public employer. The participating public employer may remit total payment and the employee reimburse the participating public employer through payroll deduction over a period equivalent to the time period during which the employer error occurred. If the correction of an error involving an underpayment to the system will result in the system paying the retirant an additional amount, this additional payment shall be made only after the board receives full payment of all required employee and employer contributions or underpayments, including interest.

(c) Overpayments to the system by an employer: When mistaken or excess employer contributions or other employer overpayments have been made to the system, the board shall credit the employer with an amount computed by the board, to be offset against the employer’s future liability for employer contributions to the system. If the employer has no future liability for employer contributions to the retirement system, the board shall refund the erroneous contributions directly to the employer.

(d) Overpayments to the retirement system by an employee: When mistaken or excess employee contributions or overpayments, have been made to the retirement system, the board shall have sole authority for determining the means of return, offset or credit to or for the benefit of the individual
making the mistaken or excess employee contribution of the amounts, and may use any means authorized or permitted under the provisions of section 401(a), *et seq.* of the Internal Revenue Code and guidance issued thereunder applicable to governmental plans. Alternatively, in its full and complete discretion, the board may require the existing employer employing the individual to pay the individual the amounts as wages, with the board crediting the participating public employer with a corresponding amount to offset against its future contributions to the plan. If the employer has no future liability for employer contributions to the retirement system, the board shall refund said amount directly to the employer: *Provided,* That the wages paid to the individual are not considered compensation for any purposes of this article.

(e) Overpayments from the retirement system: If any error results in any member, retirant beneficiary, entity or other individual receiving from the system more than he would have been entitled to receive had the error not occurred the board upon learning of the error shall correct the error in a timely manner. If correction of the error occurs after annuity payments to a retirant or beneficiary have commenced, the board shall prospectively adjust the payment of the benefit to the correct amount. In addition, the member, retirant, beneficiary, entity or other person who received the overpayment from the retirement system shall repay the amount of any overpayment to the retirement system in any manner permitted by the board. Interest shall not accumulate on any corrective payment made to the retirement system pursuant to this subsection.

(f) Underpayments from the retirement system: If any error results in any member, retirant, beneficiary, entity or other individual receiving from the retirement system less than he would have been entitled to receive had the error not occurred, the board, upon learning of the error, shall correct the error in a timely manner. If correction of the error occurs after annuity payments to a retirant or beneficiary have commenced, the board
shall prospectively adjust the payment of the benefit to the correct amount. In addition, the board shall pay the amount of such underpayment to the member, retirant, beneficiary or other individual in a lump sum. Interest shall not be paid on any corrective payment made by the retirement system pursuant to this subsection.

(g) Eligibility errors: If the board finds that an individual, employer, or both individual and employer currently or formerly participating in the retirement system is not eligible to participate, the board shall notify the individual and his or her employer of the determination, and terminate participation in the retirement system. Any erroneous payments to the retirement system shall be returned to the employer and individual in accordance with the methods described in subsections (c) and (d) of this section and any erroneous payments from the retirement system to such individual shall be returned to the retirement system in accordance with the methods described in subsection (e) of this section. Any erroneous service credited to the individual shall be removed. Service credit for service prior to the date on which the individual prospectively commences participation in the retirement system shall be granted only if the board receives the required employer and employee contributions for such service, in accordance with subsection (b) of this section, including interest.

CHAPTER 51. COURTS AND THEIR OFFICERS.

ARTICLE 9. RETIREMENT SYSTEM FOR JUDGES OF COURTS OF RECORD.

§51-9-18. Correction of errors; underpayments; overpayments.

(a) General rule: Upon learning of any errors, the board shall correct errors in the retirement system in a timely manner whether the individual, entity or board was at fault for the error
with the intent of placing the affected individual, entity and retirement board in the position each would have been in had the error not occurred.

(b) Underpayments to the system: Any error resulting in an underpayment to the system, may be corrected by the member or retirant remitting the required employee contribution or underpayment and the participating public employer remitting the required employer contribution or underpayment. Interest shall accumulate in accordance with the legislative rule 162 CSR 7 concerning retirement board refund, reinstatement, retroactive service, loan and correction of error interest factors and any accumulating interest owed on the employee and employer contributions or underpayments resulting from an employer error shall be the responsibility of the participating public employer. The participating public employer may remit total payment and the employee reimburse the participating public employer through payroll deduction over a period equivalent to the time period during which the employer error occurred. If the correction of an error involving an underpayment to the system will result in the system correcting an erroneous underpayment from the system, the correction of the underpayment from the system shall be made only after the board receives full payment of all required employee and employer contributions or underpayments, including interest.

(c) Overpayments to the retirement system by an employer: When mistaken or excess employer contributions, including any overpayments have been made to the retirement system by a participating public employer, the board, upon learning of the error, shall credit the participating public employer with an amount equal to the overpayment, to be offset against the employer’s future liability for employer contributions to the system. If the employer has no future liability for employer contributions to the retirement system, the board shall refund the erroneous contributions directly to the employer. Earnings or
interest shall not be returned, offset or credited to the employer
under any of the means used by the board for returning employer
overpayments to the retirement system.

(d) Overpayments to the retirement system by an employee:
When mistaken or excess employee contributions or
overpayments have been made to the retirement system, the
board, upon learning of the error, shall have sole authority for
determining the means of return, offset or credit to or for the
benefit of the individual making the mistaken or excess
employee contribution of the amounts, and may use any means
authorized or permitted under the provisions of section 401(a),
et seq. of the Internal Revenue Code and guidance issued
thereunder applicable to governmental plans. Alternatively, in its
full and complete discretion, the board may require the
participating public employer employing the individual to pay
the individual the amounts as wages, with the board crediting the
participating public employer with a corresponding amount to
offset against its future contributions to the plan. If the employer
has no future liability for employer contributions to the
retirement system, the board shall refund said amount directly to
the employer: Provided, That the wages paid to the individual
shall not be considered compensation for any purposes of this
article. Earnings or interest shall not be returned, offset, or
credited under any of the means used by the board for returning
employee overpayments.

(e) Overpayments from the retirement system: If any error
results in any member, retirant, beneficiary, entity or other
individual receiving from the system more than he would have
been entitled to receive had the error not occurred the board,
upon learning of the error, shall correct the error in a timely
manner. If correction of the error occurs after annuity payments
to a retirant or beneficiary have commenced, the board shall
prospectively adjust the payment of the benefit to the correct
amount. In addition, the member, retirant, beneficiary, entity or
other person who received the overpayment from the retirement system shall repay the amount of any overpayment to the retirement system in any manner permitted by the board. Interest shall not accumulate on any corrective payment made to the retirement system pursuant to this subsection.

(f) Underpayments from the retirement system: If any error results in any member, retirant, beneficiary, entity or other individual receiving from the retirement system less than he would have been entitled to receive had the error not occurred, the board, upon learning of the error, shall correct the error in a timely manner. If correction of the error occurs after annuity payments to a retirant or beneficiary have commenced, the board shall prospectively adjust the payment of the benefit to the correct amount. In addition, the board shall pay the amount of such underpayment to the member, retirant, beneficiary or other individual in a lump sum. Interest shall not be paid on any corrective payment made by the retirement system pursuant to this subsection.

(g) Eligibility errors: If the board finds that an individual, employer, or both individual and employer, participating in the system is not eligible to participate, the board shall notify the individual and his or her employer of the determination, and terminate participation in the system. Any erroneous payments to the system shall be returned to the employer and individual in accordance with the methods described in subsections (c) and (d) of this section and any erroneous payments from the system to such individual shall be returned to the system in accordance with the methods described in subsection (e) of this section. Any erroneous service credited to the individual shall be removed. If the board determines that an individual or employer, or both, has not been participating in the system, but was eligible to and required to be participating in the system, the board shall as soon as practicable notify the individual and his or her employer of
the determination, and the individual and his or her employer shall prospectively commence participation in the retirement system as soon as practicable. Service credit for service prior to the date on which the individual prospectively commences participation in the system shall be granted only if the board receives the required employer and employee contributions for such service, in accordance with subsection (b) of this section, including interest.

CHAPTER 208
(S. B. 302 - By Senators Gaunch and Trump)

[Passed February 20, 2015; in effect ninety days from passage.]
[Approved by the Governor on March 3, 2015.]

AN ACT to amend and reenact §5-10A-2 and §5-10A-6 of the Code of West Virginia, 1931, as amended, all relating to disqualification for public retirement plan benefits when a participant is determined to have rendered less than honorable service; adding the West Virginia Municipal Police Officers and Firefighters Retirement System to definition of “retirement plan”; and specifying that former participants of the West Virginia Teachers Defined Contribution Retirement System who elected to transfer to the West Virginia Teachers Retirement System and whose benefits have been terminated for less than honorable service shall not be refunded any transferred vested employer contributions.

Be it enacted by the Legislature of West Virginia:

That §5-10A-2 and §5-10A-6 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:
ARTICLE 10A. DISQUALIFICATION FOR PUBLIC RETIREMENT PLAN BENEFITS.

§5-10A-2. Definitions.

As used in this article:

(a) “Retirement plan” or “plan” means the Public Employees Retirement Act pursuant to article ten of this chapter; each municipal employees retirement plan pursuant to article twenty-two, chapter eight of this code; each policemen’s and firemen’s pension and relief fund pursuant to article twenty-two, chapter eight of this code; the West Virginia Municipal Police Officers and Firefighters Retirement System pursuant to article twenty-two-a, chapter eight of this code; the West Virginia State Police Death, Disability and Retirement Fund pursuant to article two, chapter fifteen of this code; the West Virginia State Police Retirement System pursuant to article two-a, chapter fifteen of this code; the State Teachers Retirement System pursuant to article seven-a, chapter eighteen of this code; the Teachers’ Defined Contribution Retirement System pursuant to article seven-b, chapter eighteen of this code; the Deputy Sheriff Retirement System pursuant to article fourteen-d, chapter seven of this code; the higher education retirement plan and supplemental retirement plans pursuant to section four-a, article twenty-three, chapter eighteen of this code; the Judges’ Retirement System pursuant to article nine, chapter fifty-one of this code; the West Virginia Emergency Medical Services Retirement System pursuant to article five-v, chapter sixteen of this code; and any other plan established pursuant to this code for the payment of pension, annuity, disability or other benefits to any person by reason of his or her service as an officer or employee of this state or of any political subdivision, agency or instrumentality thereof, whenever the plan is supported, in whole or in part, by public funds.
(b) “Beneficiary” means any person eligible for or receiving benefits on account of the service for a public employer by a participant or former participant in a retirement plan.

(c) “Benefits” means pension, annuity, disability or any other benefits granted pursuant to a retirement plan.

(d) “Conviction” means a conviction on or after the effective date of this article in any federal or state court of record whether following a plea of guilty, not guilty or nolo contendere and whether or not the person convicted was serving as an officer or employee of a public employer at the time of the conviction.

(e) “Former participant” means any person who is no longer eligible to receive any benefit under a retirement plan because full distribution has occurred.

(f) “Less than honorable service” means:

(1) Impeachment and conviction of a participant or former participant under the provisions of section nine, article four of the Constitution of West Virginia, except for a misdemeanor;

(2) Conviction of a participant or former participant of a felony for conduct related to his or her office or employment which he or she committed while holding the office or during the employment; or

(3) Conduct of a participant or former participant which constitutes all of the elements of a crime described in either subdivision (1) or (2) of this subsection but for which the participant or former participant was not convicted because: (i) Having been indicted or having been charged in an information for the crime, he or she made a plea bargaining agreement pursuant to which he or she pleaded guilty to or nolo contendere to a lesser crime: Provided, That the lesser crime is a felony containing all the elements described in subdivision (1) or (2) of
This subsection; or (ii) having been indicted or having been
charged in an information for the crime, he or she was granted
immunity from prosecution for the crime.

(g) “Participant” means any person eligible for or receiving
any benefit under a retirement plan on account of his or her
service as an officer or employee for a public employer.

(h) “Public employer” means the State of West Virginia and
any political subdivision, agency or instrumentality thereof for
which there is established a retirement plan.

(i) “Supervisory board” or “board” means the Consolidated
Public Retirement Board; the board of trustees of any municipal
retirement fund; the board of trustees of any policemen’s or
firemen’s retirement plan; the governing board of any
supplemental retirement plan instituted pursuant to authority
granted by the previous provisions of section four-a, article
twenty-three, chapter eighteen of this code; and any other board,
commission or public body having the duty to supervise and
operate any retirement plan.

§5-10A-6. Refund of contributions.

The supervisory board shall refund to a participant or
beneficiary terminated from benefits by section five of this
article the contributions of the participant in the same manner
and with the same interest as provided to those participants or
beneficiaries otherwise eligible to withdraw the participant’s
contributions under the retirement plan, less the amount of any
benefits which the participant or his or her beneficiaries have
previously received: Provided, That a member of the Teachers’
Defined Contribution Retirement System whose benefits have
been terminated pursuant to section five of this article shall be
refunded only his or her employee contributions and the earnings
on those contributions; and any vested employer contributions
shall remain in the Teachers’ Defined Contribution Retirement System and be used to offset future employer contributions for each contributing employer: Provided, however, That any former member of the Teachers’ Defined Contribution Retirement System who affirmatively elected to transfer to the State Teachers’ Retirement System pursuant to article seven-d, chapter eighteen of this code and whose benefits have been terminated pursuant to section five of this article shall be refunded only his or her employee contributions and the earnings on those contributions; and any vested employer contributions from the Teachers’ Defined Contribution Retirement System shall remain in the State Teachers Retirement System to be used to offset future employer contributions for each contributing employer.

CHAPTER 209

(S. B. 483 - By Senators Gaunch, D. Hall, Karnes, Maynard, Plymale, Sypolt and Woelfel)

[Passed March 13, 2015; in effect ninety days from passage.]
[Approved by the Governor on March 31, 2015.]

AN ACT to amend and reenact §8-22-18 of the Code of West Virginia, 1931, as amended, relating to boards of trustees of certain municipal policemen’s pension and relief funds and certain municipal firemen’s pension and relief funds.

Be it enacted by the Legislature of West Virginia:

That §8-22-18 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:
ARTICLE 22. RETIREMENT BENEFITS GENERALLY; POLICEMEN’S PENSION AND RELIEF FUND; FIREMEN’S PENSION AND RELIEF FUND; PENSION PLANS FOR EMPLOYEES OF WATERWORKS SYSTEM, SEWERAGE SYSTEM OR COMBINED WATERWORKS AND SEWERAGE SYSTEM.

§8-22-18. Members of board of trustees; how elected; presiding officers; secretary.

(a) The board of trustees of the policemen’s pension and relief fund shall consist of the mayor of the municipality and four members of the paid police department, to be chosen as hereinafter in this section specified. The mayor of such municipality shall give notice of an election to be held on the second Monday of the month following the adoption of the ordinance providing for the establishment and maintenance of such fund, which notice shall be served upon each member of the paid police department and which shall notify each member that between the hours of nine in the forenoon and six in the afternoon, on the day designated for such election, an election will be held for such purpose and that each member shall furnish in writing the names of four members of the paid police department voted for; and all votes so cast shall be counted and canvassed by the mayor and the governing body for the first election, and thereafter the votes shall be counted by the then existing members of such board, who after such election shall announce the results, and the four members of the paid police department receiving the highest number of votes shall, with the mayor, constitute “The Board of Trustees of the Policemen’s Pension and Relief Fund of (name of municipality).” As to the first election held following the adoption of the ordinance providing for the establishment and maintenance of such fund, the member receiving the highest number of votes shall serve for a period of four years, the member receiving the second highest
number of votes shall serve for a period of three years, the
member receiving the third highest number of votes shall serve
for a period of two years and the member receiving the fourth
highest number of votes shall serve for a period of one year.

(b) After the first election, the board shall hold a similar
election each year to elect one member to succeed, for a term of
four years, the retiring member. In the case of a tie vote being
received by any two individuals for the office of trustee, such tie
vote shall be decided by casting lots, or in any other way which
may be agreed upon by the individuals for whom such tie vote
was cast. The results of such election shall be entered in the
record of the proceedings of the board and the members so
elected shall, except as herein above specified with respect to the
first election, serve for four years and until their successors are
elected and have qualified. The election for such members of the
board of trustees shall be held annually upon the second Monday
of the same month during which the first election was held. In
case of a vacancy by death or resignation among the members so
elected, the remaining members of the board shall choose the
successor, or successors, until the next annual election at which
latter time all vacancies shall be filled: Provided, That in the
case of an elected member retiring during his or her term, the
retired member may continue to serve the remainder of his or her
term.

(c) The board of trustees of the firemen’s pension and relief
fund shall consist of the mayor of the municipality and four
members of the paid fire department, to be chosen in the same
manner and for such terms as is provided above in this section
for the election of policemen to the policemen’s pension and
relief fund board of trustees.

(d) The presiding officer of any such board of trustees shall
be the mayor of the municipality and the secretary thereof shall
be appointed by the board. It shall be the duty of such secretary
to keep a full and permanent record of all of the proceedings of
the board and said trustees may fix the secretary’s compensation
for this work, which shall be paid out of the funds of said
policemen’s pension and relief fund or firemen’s pension and
relief fund, as the case may be.

(e) For all pension and relief funds closed after January 1,
2010, pursuant to subsection (e), section twenty of this article
and those closed after April 1, 2011, pursuant to subsection (f)
of said section, the boards shall continue to elect four trustees
until there are no more beneficiaries to be paid from the fund.
Trustees are elected in the same manner and for the same terms
but may be members of the paid police or fire departments or
retirees from the paid police or fire departments.

CHAPTER 210

(S. B. 481 - By Senators Gaunch, D. Hall, Karnes,
Maynard, Plymale, Sypolt and Woelfel)

[Passed March 13, 2015; in effect ninety days from passage.]
[Approved by the Governor on March 31, 2015.]

AN ACT to amend and reenact §8-22-22 and §8-22-22a of the Code of
West Virginia, 1931, as amended, all relating to investment
authority of municipal policemen’s and firemen’s pension and
relief funds; authorizing delegation of investment authority;
requiring diversification of investments of municipal policemen’s
and firemen’s pension and relief funds; and providing investment
requirements.

Be it enacted by the Legislature of West Virginia:

That §8-22-22 and §8-22-22a of the Code of West Virginia, 1931,
as amended, be amended and reenacted, all to read as follows:
ARTICLE 22. RETIREMENT BENEFITS GENERALLY; POLICEMEN’S PENSION AND RELIEF FUND; FIREMEN’S PENSION AND RELIEF FUND; PENSION PLANS FOR EMPLOYEES OF WATERWORKS SYSTEM, SEWERAGE SYSTEM OR COMBINED WATERWORKS AND SEWERAGE SYSTEM.

§8-22-22. Investment of funds by boards of trustees; exercise of discretion in making investments; report of investment plan.

(a) The board of trustees may invest a portion or all of the fund assets in any of the pools, funds and securities managed by the West Virginia Investment Management Board or West Virginia Board of Treasury Investments or as otherwise provided in this section. The board of trustees shall keep as an available sum for the purpose of making regular retirement, disability retirement, death benefit, payments and administrative expenses in an estimated amount not to exceed payments for a period of ninety days in short-term investments. The board of trustees, in acquiring, investing, reinvesting, exchanging, retaining, selling and managing property for the benefit of the fund, shall do so in accordance with the provisions of the Uniform Prudent Investor Act codified as article six-c, chapter forty-four of this code. Within the limitations of the Uniform Prudent Investor Act, the board of trustees is authorized in its sole discretion to invest and reinvest any funds received by it and not invested with the West Virginia Investment Management Board or West Virginia Board of Treasury Investments.

(b) The board of trustees of each fund may delegate investment authority to professional investment advisors registered with the Securities and Exchange Commission, in accordance with the Investment Advisors Act of 1940, and
registered with the appropriate state regulatory agencies, if applicable, and who manage assets in excess of $75 million.

(c) The board of trustees of each fund shall deliver to the State Treasurer or oversight board on or before March 1, 2010, a copy of the pension and relief fund’s investment policy. A board of trustees shall submit to the oversight board any change to the investment policy within thirty days of the board’s authorizing the change.

§8-22-22a. Restrictions on investments; diversification of investments; disclosure of fees and costs.

(a) Moneys invested as permitted by section twenty-two of this article and not invested with the West Virginia Investment Management Board or the Board of Treasury Investments are subject to the following restrictions and conditions contained in this section:

(1) The board of trustees of each fund shall diversify fund investment so as to minimize the risk of large losses unless, under the circumstances, it is clearly prudent not to do so.

(2) The board shall hold in equity investments no more than seventy-five percent of the total pension assets managed by the board.

(3) The board shall hold in international securities no more than thirty percent of the total pension assets managed by the board.

(4) The board may not at the time of purchase hold more than five percent of the assets managed by the board in the equity securities of any single company or association.

(5) The board may purchase any security trading on the New York Stock Exchange, the American Stock Exchange and the
NASDAQ over-the-counter market for its pension portfolio unless it is otherwise restricted by this section. No more than twenty-five percent of the board’s total retirement plan assets may be invested in any one industry.

(6) The board shall annually review, establish and modify, if necessary, the board’s investment objectives and investment policy so as to provide for the financial security of the trust funds giving consideration to the following:

(A) Preservation of capital;

(B) Diversification;

(C) Risk tolerance;

(D) Rate of return;

(E) Stability;

(F) Turnover;

(G) Liquidity; and

(H) Reasonable cost of fees.

(7) The board is expressly prohibited from investing in any class, style or strategy of alternative investments, including a real estate investment trust, private equity fund such as a venture capital, private real estate or buy-out fund; commodities fund; distressed debt fund; mezzanine debt fund; hedge fund; or fund consisting of any combination of private equity, distressed or mezzanine debt, hedge funds, private real estate, commodities and other types and categories of investment permitted under this article unless the investments satisfy all of the following:

(A) A professional third-party fiduciary investment adviser registered with the Securities and Exchange Commission under
the Investment Advisors Act of 1940, as amended, recommends
the investment;

(B) The board or a committee designated by the board
approves the investment;

(C) The total maximum alternative investment exposure of
all strategies in this subdivision may not be more than twenty-
five percent of the total pension portfolio at any time;

(D) The total maximum alternative investment exposure of
a single fund strategy in this subdivision may not be more than
ten percent of the total pension portfolio at any time; and

(E) The board requires that all of the plan assets be invested
in liquid securities that are defined as securities that can be
transacted quickly and efficiently for the plan, priced daily and
settled within five business days.

(8) Notwithstanding the investment limitations set forth in
this section, it is recognized that the assets managed by the board
may temporarily exceed the investment limitations in this section
due to market appreciation, depreciation and rebalancing
limitations. Accordingly, the limitations on investments set forth
in this section shall not be considered to have been violated if the
board rebalances the assets it manages to comply with the
limitations set forth in this section at least once every twelve
months based on the latest available market information and any
other reliable market data that the board considers advisable to
take into consideration.

(9) The board shall hold in fixed income and cash equivalent
investments no less than twenty-five percent and no more than
seventy-five percent of total pension assets. No more than five
percent may be held in one issuer or twenty-five percent in one
industry: Provided, That the board may exceed this limitation if
the investments are held in United States securities.
(10) Fixed income securities shall be of generally high quality and have a quality rating of “B-“ or better by Moody’s, Standard & Poor’s, or other recognized agency, unless held by a registered investment advisor and governed by prospectus. The total fixed income portfolio shall have an average Standard & Poor’s quality rating of at least “A-“. For registered mutual funds, the prospectus of the fund will govern the investment policies of the fund investments.

(11) The maximum maturity for any fixed income securities is thirty years. The weighted average portfolio maturity of all fixed income securities may not exceed ten years.

(12) The board is authorized in its sole discretion to invest and reinvest any funds received by it in the following fixed income securities:

(A) Obligations issued by the U. S. government, its agencies and instrumentalities;

(B) Obligations of foreign governments and their subdivisions, agencies and government-sponsored enterprises;

(C) Obligations of international agencies or supranational entities;

(D) Mortgage-related and other asset-backed securities;

(E) Corporate debt securities, including convertible securities and corporate commercial paper;

(F) Inflation-index bonds issued by corporations;

(G) Bank certificates of deposit, fixed time deposits and bankers acceptances; and

(H) Debt securities, issued by states or local governments and their agencies, authorities and other instrumentalities.
(13) The board is authorized in its sole discretion to invest and reinvest any funds received by it in the following cash and cash equivalents:

(A) Treasury bills;

(B) Money market funds;

(C) Short-term investment funds;

(D) Commercial paper;

(E) Bankers’ acceptances;

(F) Repurchase agreements; and

(G) Certificates of deposit.

(14) Investments in cash equivalents shall be of the highest quality and, if rated, shall be ranked at least A2/P2 or higher.

(b) The board of trustees of each fund shall obtain an independent performance evaluation of the funds at least annually and the evaluation shall consist of comparisons with other funds having similar investment objectives for performance results with appropriate market indices; and

(c) Each entity conducting business for each pension fund shall fully disclose all fees and costs of investing conducted on a quarterly basis to the trustees of the fund and to the oversight board in the manner directed by the oversight board. Entities conducting business in mutual funds for and on behalf of each pension fund shall timely file revised prospectus and normal quarterly and annual Securities and Exchange Commission reporting documents with the board of trustees of each pension fund.
AN ACT to amend and reenact §8-22A-2 and §8-22A-6 of the Code of West Virginia, 1931, as amended, all relating to membership provisions in the West Virginia Municipal Police and Firefighters Retirement System.

Be it enacted by the Legislature of West Virginia:

That §8-22A-2 and §8-22A-6 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 22A. WEST VIRGINIA MUNICIPAL POLICE OFFICERS AND FIREFIGHTERS RETIREMENT SYSTEM.


As used in this article, unless a federal law or regulation or the context clearly requires a different meaning:

(a) “Accrued benefit” means on behalf of any member two and six-tenths percent per year of the member’s final average salary for the first twenty years of credited service. Additionally, two percent per year for twenty-one through twenty-five years and one percent per year for twenty-six through thirty years will be credited with a maximum benefit of sixty-seven percent. A member’s accrued benefit may not exceed the limits of Section
10 415 of the Internal Revenue Code and is subject to the provisions
11 of section ten of this article.

12 (b) “Accumulated contributions” means the sum of all
13 retirement contributions deducted from the compensation of a
14 member, or paid on his or her behalf as a result of covered
15 employment, together with regular interest on the deducted
16 amounts.

17 (c) “Active military duty” means full-time duty in the active
18 military service of the United States Army, Navy, Air Force,
19 Coast Guard or Marine Corps. The term does not include
20 regularly required training or other duty performed by a member
21 of a reserve component or National Guard unless the member
22 can substantiate that he or she was called into the full-time active
23 military service of the United States and has received no
24 compensation during the period of that duty from any board or
25 employer other than the Armed Forces.

26 (d) “Actuarial equivalent” means a benefit of equal value
27 computed on the basis of the mortality table and interest rates as
28 set and adopted by the board in accordance with the provisions
29 of this article: Provided, That when used in the context of
30 compliance with the federal maximum benefit requirements of
31 Section 415 of the Internal Revenue Code, “actuarial equivalent”
32 shall be computed using the mortality tables and interest rates
33 required to comply with those requirements.

34 (e) “Annual compensation” means the wages paid to the
35 member during covered employment within the meaning of
36 Section 3401(a) of the Internal Revenue Code, but determined
37 without regard to any rules that limit the remuneration included
38 in wages based on the nature or location of employment or
39 services performed during the plan year plus amounts excluded
40 under Section 414(h)(2) of the Internal Revenue Code and less
41 reimbursements or other expense allowances, cash or noncash
fringe benefits or both, deferred compensation and welfare benefits. Annual compensation for determining benefits during any determination period may not exceed the maximum compensation allowed as adjusted for cost-of-living in accordance with section seven, article ten-d, chapter five of this code and Section 401(a)(17) of the Internal Revenue Code.

(f) “Annual leave service” means accrued annual leave.

(g) “Annuity starting date” means the first day of the month for which an annuity is payable after submission of a retirement application or the required beginning date, if earlier. For purposes of this subsection, if retirement income payments commence after the normal retirement age, “retirement” means the first day of the month following or coincident with the latter of the last day the member worked in covered employment or the member’s normal retirement age and after completing proper written application for “retirement” on an application supplied by the board.

(h) “Board” means the Consolidated Public Retirement Board.

(i) “Covered employment” means either: (1) Employment as a full-time municipal police officer or firefighter and the active performance of the duties required of that employment; or (2) the period of time during which active duties are not performed but disability benefits are received under this article; or (3) concurrent employment by a municipal police officer or firefighter in a job or jobs in addition to his or her employment as a municipal police officer or firefighter in this plan where the secondary employment requires the police officer or firefighter to be a member of another retirement system which is administered by the Consolidated Public Retirement Board pursuant to this code: Provided, That the police officer or firefighter contributes to the fund created in this article the
(j) “Credited service” means the sum of a member’s years of service, active military duty and disability service.

(k) “Dependent child” means either: (1) An unmarried person under age eighteen who is: (A) A natural child of the member; (B) a legally adopted child of the member; (C) a child who at the time of the member’s death was living with the member while the member was an adopting parent during any period of probation; or (D) a stepchild of the member residing in the member’s household at the time of the member’s death; or (2) Any unmarried child under age twenty-three: (A) Who is enrolled as a full-time student in an accredited college or university; (B) who was claimed as a dependent by the member for federal income tax purposes at the time of the member’s death; and (C) whose relationship with the member is described in paragraph (A), (B) or (C), subdivision (1) of this subsection.

(l) “Dependent parent” means the father or mother of the member who was claimed as a dependent by the member for federal income tax purposes at the time of the member’s death.

(m) “Disability service” means service credit received by a member, expressed in whole years, fractions thereof or both, equal to one half of the whole years, fractions thereof, or both, during which time a member receives disability benefits under this article.


(o) “Final average salary” means the average of the highest annual compensation received for covered employment by the member during any five consecutive plan years within the member’s last ten years of service while employed, prior to any disability payment. If the member did not have annual
compensation for the five full plan years preceding the member’s attainment of normal retirement age and during that period the member received disability benefits under this article, then “final average salary” means the average of the monthly compensation which the member was receiving in the plan year prior to the initial disability. “Final average salary” does not include any lump sum payment for unused, accrued leave of any kind or character.

(p) “Full-time employment” means permanent employment of an employee by a participating municipality in a position which normally requires twelve months per year service and requires at least one thousand forty hours per year service in that position.

(q) “Fund” means the West Virginia Municipal Police Officers and Firefighters Retirement Fund created by this article.

(r) “Hour of service” means: (1) Each hour for which a member is paid or entitled to payment for covered employment during which time active duties are performed. These hours shall be credited to the member for the plan year in which the duties are performed; and (2) each hour for which a member is paid or entitled to payment for covered employment during a plan year but where no duties are performed due to vacation, holiday, illness, incapacity including disability, layoff, jury duty, military duty, leave of absence or any combination thereof and without regard to whether the employment relationship has terminated. Hours under this subdivision shall be calculated and credited pursuant to West Virginia Division of Labor rules. A member will not be credited with any hours of service for any period of time he or she is receiving benefits under section seventeen or eighteen of this article; and (3) each hour for which back pay is either awarded or agreed to be paid by the employing municipality, irrespective of mitigation of damages. The same hours of service shall not be credited both under subdivision (1)
or (2) of this subsection and under this subdivision. Hours under
this paragraph shall be credited to the member for the plan year
or years to which the award or agreement pertains, rather than
the plan year in which the award, agreement or payment is made.

(s) “Member” means, except as provided in section thirty-
two of this article, a person hired as a municipal police officer or
municipal firefighter, as defined in this section, by a
participating municipal employer on or after January 1, 2010. A
member shall remain a member until the benefits to which he or
she is entitled under this article are paid or forfeited.

(t) “Monthly salary” means the W-2 reportable
compensation received by a member during the month.

(u) “Municipality” has the meaning ascribed to it in this
code.

(v) (1) “Municipal police officer” means an individual
employed as a member of a paid police department by a West
Virginia municipality or municipal subdivision which has
established and maintains a municipal policemen’s pension and
relief fund, and who is not a member of, and not eligible for
membership in, a municipal policemen’s pension and relief fund
as provided in section sixteen, article twenty-two of this chapter.
Paid police department does not mean a department whose
employees are paid nominal salaries or wages or are paid only
for services actually rendered on an hourly basis.

(2) “Municipal firefighter” means an individual employed as
a member of a paid fire department by a West Virginia
municipality or municipal subdivision which has established and
maintains a municipal firemen’s pension and relief fund, and
who is not a member of, and not eligible for membership in, a
municipal firemen’s pension and relief fund as provided in
section sixteen, article twenty-two of this chapter. Paid fire
department does not mean a department whose employees are
paid nominal salaries or wages or are paid only for services
actually rendered on an hourly basis.

(w) “Municipal subdivision” means any separate corporation
or instrumentality established by one or more municipalities, as
permitted by law; and any public corporation charged by law
with the performance of a governmental function and whose
jurisdiction is coextensive with one or more municipalities.

(x) “Normal form” means a monthly annuity which is one
twelfth of the amount of the member’s accrued benefit which is
payable for the member’s life. If the member dies before the sum
of the payments he or she receives equals his or her accumulated
contributions on the annuity starting date, the named beneficiary
shall receive in one lump sum the difference between the
accumulated contributions at the annuity starting date and the
total of the retirement income payments made to the member.

(y) “Normal retirement age” means the first to occur of the
following: (1) Attainment of age fifty years and the completion
of twenty or more years of regular contributory service; (2)
while still in covered employment, attainment of at least age
fifty years and when the sum of current age plus regular
contributory service equals or exceeds seventy years; (3) while
still in covered employment, attainment of at least age sixty
years and completion of ten years of regular contributory
service; or (4) Attainment of age sixty-two years and completion
of five or more years of regular contributory service.

(z) “Plan” means the West Virginia Municipal Police
Officers and Firefighters Retirement System established by this
article.

(aa) “Plan year” means the twelve-month period
commencing on January 1 of any designated year and ending the
following December 31.
“ Qualified public safety employee” means any employee of a participating state or political subdivision who provides police protection, firefighting services or emergency medical services for any area within the jurisdiction of the state or political subdivision, or such other meaning given to the term by Section 72(t)(10)(B) of the Internal Revenue Code or by Treasury Regulation §1.401(a)-1(b)(2)(v) as they may be amended from time to time.

“Regular contributory service” means a member’s credited service excluding active military duty, disability service and accrued annual and sick leave service.

“Regular interest” means the rate or rates of interest per annum, compounded annually, as the board adopts in accordance with the provisions of this article.

“Required beginning date” means April 1 of the calendar year following the later of: (1) The calendar year in which the member attains age seventy and one-half; or (2) the calendar year in which he or she retires or otherwise separates from covered employment.

“Retirement income payments” means the monthly retirement income payments payable under the plan.

“Spouse” means the person to whom the member is legally married on the annuity starting date.

“Surviving spouse” means the person to whom the member was legally married at the time of the member’s death and who survived the member.

“Totally disabled” means a member’s inability to engage in substantial gainful activity by reason of any medically determined physical or mental impairment that can be expected to result in death or that has lasted or can be expected to last for
a continuous period of not less than twelve months. For purposes of this subsection: (1) A member is totally disabled only if his or her physical or mental impairment or impairments is so severe that he or she is not only unable to perform his or her previous work as a police officer or firefighter but also cannot, considering his or her age, education and work experience, engage in any other kind of substantial gainful employment which exists in the state regardless of whether: (A) The work exists in the immediate area in which the member lives; (B) a specific job vacancy exists; or (C) the member would be hired if he or she applied for work. For purposes of this article, substantial gainful employment is the same definition as used by the United States Social Security Administration. (2) “Physical or mental impairment” is an impairment that results from an anatomical, physiological or psychological abnormality that is demonstrated by medically accepted clinical and laboratory diagnostic techniques. The board may require submission of a member’s annual tax return for purposes of monitoring the earnings limitation.

(jj) “Year of service” means a member shall, except in his or her first and last years of covered employment, be credited with years of service credit based on the hours of service performed as covered employment and credited to the member during the plan year based on the following schedule:

<table>
<thead>
<tr>
<th>Hours of Service</th>
<th>Year of Service Credited</th>
</tr>
</thead>
<tbody>
<tr>
<td>Less than 500</td>
<td>0</td>
</tr>
<tr>
<td>500 to 999</td>
<td>1/3</td>
</tr>
<tr>
<td>1,000 to 1,499</td>
<td>2/3</td>
</tr>
<tr>
<td>1,500 or more</td>
<td>1</td>
</tr>
</tbody>
</table>

During a member’s first and last years of covered employment, the member shall be credited with one twelfth of
a year of service for each month during the plan year in which
the member is credited with an hour of service for which
contributions were received by the fund. A member is not
entitled to credit for years of service for any time period during
which he or she received disability payments under section
seventeen or eighteen of this article.

§8-22A-6. Members.

(a) A police officer or firefighter hired in covered
employment after the effective date of this article by a
municipality or municipal subdivision which has established and
maintained a policemen’s pension and relief fund or a firemen’s
pension and relief fund pursuant to section sixteen, article
twenty-two of this chapter and which is a participating employer,
shall be a member of this retirement plan: Provided, That any
police officer or firefighter who has concurrent employment in
an additional job or jobs which would require the police officer
or firefighter to be a member of the West Virginia Deputy
Sheriff Retirement System or the West Virginia Emergency
Medical Services Retirement System shall participate in only
one retirement system administered by the board, and the
retirement system applicable to the concurrent employment for
which the employee has the earliest date of hire shall prevail.

(b) Except as provided in section thirty-two of this article, a
police officer or firefighter who is a member of the Municipal
Police Officers and Firefighters Retirement System may not
have credit for covered employment in any other retirement
system applied as service credit in the Municipal Police Officers
and Firefighters Retirement System.

(c) Notwithstanding any other provisions of this article, any
individual who is a leased employee is not eligible to participate
in the plan. For purposes of this plan, a “leased employee”

* NOTE: This section was also amended by H. B. 2505 (Chapter 205),
which passed prior to this act.
means any individual who performs services as an independent contractor or pursuant to an agreement with an employee leasing organization or similar organization. If a question arises regarding the status of an individual as a leased employee, the board has final power to decide the question.

CHAPTER 212

(S. B. 299 - By Senators Gaunch and Trump)

[Passed February 20, 2015; in effect ninety days from passage.] [Approved by the Governor on March 3, 2015.]

AN ACT to amend and reenact §15-2A-9 and §15-2A-10 of the Code of West Virginia, 1931, as amended, all relating to duty-related and nonduty-related disability retirement in the West Virginia State Police Retirement System; and specifying that disability disbursements begin the first day of the month following approval by the Consolidated Public Retirement Board and the member’s termination of employment or as ordered by a court of competent jurisdiction.

Be it enacted by the Legislature of West Virginia:

That §15-2A-9 and §15-2A-10 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 2A. WEST VIRGINIA STATE POLICE RETIREMENT SYSTEM.


(a) Any employee of the agency who has not yet entered retirement status on the basis of age and service and who
becomes partially disabled by injury, illness or disease resulting from any occupational risk or hazard inherent in or peculiar to the services required of employees of the agency or incurred pursuant to or while the employee was engaged in the performance of his or her duties as an employee of the agency shall, if, in the opinion of the board, he or she is, by reason of that cause, unable to perform adequately the duties required of him or her as an employee of the agency, but is able to engage in other gainful employment in a field other than law enforcement, be retired from active service by the board. The retirant thereafter is entitled to receive annually from the fund in equal monthly installments during his or her lifetime, or until the retirant attains the age of fifty-five or until the disability eligibility sooner terminates, one or the other of two amounts, whichever is greater:

(1) An amount equal to six tenths of the base salary received in the preceding twelve-month employment period: Provided, That if the member had not been employed with the agency for twelve months prior to the disability, the amount of monthly salary shall be annualized for the purpose of determining the benefit; or

(2) The sum of $6,000. The first day of the month following the date in which the retirant attains age fifty-five, the retirant shall receive the benefit provided in section six of this article as it would apply to his or her final average salary based on earnings from the agency through the day immediately preceding his or her disability. The recalculation of benefit upon a retirant attaining age fifty-five shall be considered to be a retirement under the provisions of section six of this article for purposes of determining the amount of annual annuity adjustment and for all other purposes of this article: Provided, That a retirant who is partially disabled under this article may not, while in receipt of benefits for partial disability, be employed as a law-enforcement officer: Provided, however, That a retirant on a partial disability
under this article may serve as an elected sheriff or appointed
chief of police in the state without a loss of disability retirement
benefits as long as the elected or appointed position is shown, to
the satisfaction of the board, to require the performance of
administrative duties and functions only, as opposed to the full
range of duties of a law-enforcement officer.

(b) Any member who has not yet entered retirement status
on the basis of age and service and who becomes physically or
mentally disabled by injury, illness or disease on a probable
permanent basis resulting from any occupational risk or hazard
inherent in or peculiar to the services required of employees of
the agency or incurred pursuant to or while the employee was or
is engaged in the performance of his or her duties as an
employee of the agency to the extent that the employee is
incapacitated ever to engage in any gainful employment, the
employee is entitled to receive annually, and there shall be paid
from the fund in equal monthly installments during his or her
lifetime or until the disability sooner terminates, an amount
equal to the base salary received by the employee in the
preceding full twelve-month employment period. Until a
member has worked twelve months, the amount of monthly base
salary shall be annualized for the purpose of determining the
benefit.

(c) Disability benefit payments made pursuant to subsection
(a) or (b) of this section will begin the first day of the month
following board approval and termination of employment or as
ordered by a court of competent jurisdiction.

(d) The superintendent of the agency may expend moneys
from funds appropriated for the agency in payment of medical,
surgical, laboratory, x-ray, hospital, ambulance and dental
expenses and fees and reasonable costs and expenses incurred in
the purchase of artificial limbs and other approved appliances
which may be reasonably necessary for any retirant who is
temporarily, permanently or totally disabled by injury, illness or
disease resulting from any occupational risk or hazard inherent
in or peculiar to the service required of employees of the agency
or incurred pursuant to or while the employee was or shall be
engaged in the performance of duties as an employee of the
agency. Whenever the superintendent determines that any
disabled retirant is ineligible to receive any of the benefits in this
section at public expense, the superintendent shall, at the request
of the disabled retirant, refer the matter to the board for hearing
and final decision. In no case will the compensation rendered to
health care providers for medical and hospital services exceed
the then current rate schedule approved by the West Virginia
Insurance Commission. Upon termination of employment and
receipt of properly executed forms from the agency and the
member, the board shall process the member’s disability
retirement benefit and commence annuity payments as soon as
administratively feasible.

§15-2A-10. Same — Due to other causes.

(a) If any employee while in active service of the agency
becomes partially or totally disabled on a probable permanent
basis to the extent that the employee cannot adequately perform
the duties required of an employee of the agency from any cause
other than those set forth in the preceding section and not due to
vicious habits, intemperance or willful misconduct on his or her
part, the employee shall be retired by the board. There shall be
paid annually to the retirant from the fund in equal monthly
installments, commencing on the date the retirant is retired and
continuing during the lifetime of the retirant or until the retirant
attains the age of fifty-five; while in status of retirement an
amount equal to one-half the base salary received by the retirant
in the preceding full twelve-month period: Provided, That if the
retirant had not been employed with the agency for twelve full
months prior to the disability, the amount of monthly base salary
shall be annualized for the purpose of determining the benefit.
(b) The first day of the month following the date in which the retirant attains age fifty-five, the retirant shall receive the benefit provided in section six of this article as it would apply to his or her final average salary based on earnings from the agency through the day immediately preceding his or her disability. The recalculation of benefit upon a retirant attaining age fifty-five shall be considered to be a retirement under the provisions of section six of this article for purposes of determining the amount of annual annuity adjustment and for all other purposes of this article.

(c) Disability benefit payments made pursuant to this section will begin the first day of the month following board approval and termination of employment or as ordered by a court of competent jurisdiction: Provided, That in no circumstance may the disability payments begin prior to termination of employment in order to avoid an in-service distribution.

CHAPTER 213

(Com. Sub. for H. B. 2778 - By Delegate(s) Gearheart, McCuskey, Storch, Hamrick, Espinosa, E. Nelson, Westfall, Mr. Speaker (Mr. Armstead), O’Neal, Pethel and Ferro)

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

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §17-17B-1, §17-17B-2, §17-17B-3, §17-17B-4 and §17-17B-5, all relating to transportation funding; authorizing West Virginia Division of Highways to enter into cooperative agreements with United States Secretary of Transportation to establish infrastructure revolving
funds; creating the State Transportation Infrastructure Fund Program; creating State Transportation Infrastructure Fund; and permitting Commissioner of the Division of Highways to propose rules for legislative approval.

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 §17-17B-1, §17-17B-2, §17-17B-3, §17-17B-4 and §17-17B-5, all to read as follows:

ARTICLE 17B. STATE TRANSPORTATION INFRASTRUCTURE FUND PROGRAM.

§17-17B-1 Short title; legislative findings and purpose.

(a) This article may be known and cited as the “State Transportation Infrastructure Fund Program.”

(b) The Legislature finds and declares that new financing mechanisms will provide greater flexibility and additional funds for needed transportation infrastructure projects in the state. The creation of a financing mechanism, in conformance with the federal State infrastructure bank program, will enable the state, counties and municipalities to use federal and state highway funds to construct transportation projects eligible for assistance under the federal State infrastructure bank program.

§17-17B-2. Definitions.

As used in this article, the following words and terms shall have the following meaning:

(1) “Capitalized” means depositing funds as initial capital into a State Transportation Infrastructure Fund to establish the infrastructure fund.
(2) “Commissioner” means the West Virginia Commissioner of Highways.

(3) “Cooperative agreement” means written consent between the state and the United States Department of Transportation Secretary.

(4) “Department” means the West Virginia Department of Transportation.

(5) “Division” means the Division of Highways, a division within the West Virginia Department of Transportation.

(6) “Initial assistance” means the first round of funds that are loaned or used for credit enhancement by the State Transportation Infrastructure Fund for projects eligible for assistance under this section.

(7) “Loan” means any form of direct financial assistance from the infrastructure fund that is required to be repaid over a period of time and that is provided to a project sponsor for all or part of the costs of the project.

(8) “US DOT Secretary” means the United States Department of Transportation Secretary.

§17-17B-3. Purpose and scope.

(a) There is hereby created in the State Treasury the West Virginia State Transportation Infrastructure Fund. The special fund shall be a revolving fund, to be administered by the commissioner and used for the purposes described in this article. The fund consists of certain federal and state highway funds and other funds eligible for deposit under applicable federal law, payments received by the division in connection with the State Transportation Infrastructure Fund, investment earnings on money in state transportation infrastructure fund accounts, and other funds as may be provided by law. Separate accounts may
be established within the State Transportation Infrastructure Fund if required for its proper administration. The account shall retain all earnings and interest, and may not be expired into the General Revenue Fund at the end of the fiscal year.

(b) The Commissioner of Highways shall use the State Transportation Infrastructure Fund to make loans to municipalities, counties, state agencies and quasi-state government agencies for eligible transportation projects. For purposes of this article, a project is an “eligible transportation project” and is “eligible for assistance” when it complies with the eligibility criteria established in the National Highway System Designation Act of 1995, Public Law 104-59, Section 350. Initial assistance provided with respect to a project from federal funds deposited into an infrastructure fund under this article may not be made in the form of a grant.

§17-17B-4. Authority to enter into agreements.

The loans shall be made upon such terms as the commissioner shall determine, including secured and unsecured loans, and in connection with the secured and unsecured loans. The commissioner may enter into loan agreements, subordination agreements and other agreements; accept notes and other forms of obligation to evidence the indebtedness, and mortgages, liens, pledges, assignments or other security interest to secure the indebtedness, which may be prior or subordinate to or on a parity with other indebtedness, obligations, mortgages, pledges, assignments, other security interests or liens or encumbrances, and take such actions as are appropriate to protect the security and safeguard against losses, including foreclosure and the funds for other projects.

§17-17B-5. Enforcement of provisions by commissioner; rules.

It is the function and duty of the Commissioner of Highways to administer and enforce the provisions of this article, and in the
performance of duties hereunder, the commissioner may assign
to other employees in the department, such duties as he or she
may deem proper. The commissioner may propose rules for
legislative approval in accordance with the provisions of article
three, chapter twenty-nine-a of this code relating to the
implementation and exercise of the authority granted by this
article, including rules permitting the State of West Virginia to
comply with the provisions of Title 23, Chapter 6 of the United
States Code relating to the federal State infrastructure bank
program; and for receiving, reviewing, evaluating and selecting
projects for which financial assistance will be approved.

CHAPTER 214

(S. B. 89 - By Senators Laird and Miller)

[Passed March 11, 2015; in effect ninety days from passage.]
[Approved by the Governor on March 18, 2015.]

AN ACT to amend and reenact §6-7-2a of the Code of West Virginia,
1931, as amended, relating to compensation for public officials
generally; increasing the annual salary of the Executive Director
of the West Virginia Prosecuting Attorneys Institute; and
clarifying and restoring language accurately stating the
compensation range for the Secretary of the Department of Health
and Human Resources that was omitted by inadvertent clerical
error in previous legislation.

Be it enacted by the Legislature of West Virginia:

That §6-7-2a of the Code of West Virginia, 1931, as amended, be
amended and reenacted to read as follows:
ARTICLE 7. COMPENSATION AND ALLOWANCES.

§6-7-2a. Terms of certain appointive state officers; appointment; qualifications; powers and salaries of officers.

(a) Each of the following appointive state officers named in this subsection shall be appointed by the Governor, by and with the advice and consent of the Senate. Each of the appointive state officers serves at the will and pleasure of the Governor for the term for which the Governor was elected and until the respective state officers’ successors have been appointed and qualified. Each of the appointive state officers are subject to the existing qualifications for holding each respective office and each has and is hereby granted all of the powers and authority and shall perform all of the functions and services heretofore vested in and performed by virtue of existing law respecting each office.

The annual salary of each named appointive state officer is as follows:

Commissioner, Division of Highways, $92,500;
Commissioner, Division of Corrections, $80,000; Director, Division of Natural Resources, $75,000; Superintendent, State Police, $85,000; Commissioner, Division of Banking, $75,000;
Commissioner, Division of Culture and History, $65,000;
Commissioner, Alcohol Beverage Control Commission, $75,000; Commissioner, Division of Motor Vehicles, $75,000;
Chairman, Health Care Authority, $80,000; members, Health Care Authority, $70,000; Director, Human Rights Commission, $55,000; Commissioner, Division of Labor, $70,000; prior to July 1, 2011, Director, Division of Veterans Affairs, $65,000;
Chairperson, Board of Parole, $55,000; members, Board of Parole, $50,000; members, Employment Security Review Board, $17,000; and Commissioner, Workforce West Virginia, $75,000.
Secretaries of the departments shall be paid an annual salary as follows: Health and Human Resources, $95,000: Provided, That
effective July 1, 2013, the Secretary of the Department of Health
and Human Resources shall be paid an annual salary not to
exceed $175,000; Transportation, $95,000: Provided, however,
That if the same person is serving as both the Secretary of
Transportation and the Commissioner of Highways, he or she
shall be paid $120,000; Revenue, $95,000; Military Affairs and
Public Safety, $95,000; Administration, $95,000; Education and
the Arts, $95,000; Commerce, $95,000; Veterans’ Assistance,
$95,000; and Environmental Protection, $95,000: Provided
further, That any officer specified in this subsection whose
salary is increased by more than $5,000 as a result of the
amendment and reenactment of this section during the 2011
regular session of the Legislature shall be paid the salary
increase in increments of $5,000 per fiscal year beginning July
1, 2011, up to the maximum salary provided in this subsection.

(b) Each of the state officers named in this subsection shall
continue to be appointed in the manner prescribed in this code
and shall be paid an annual salary as follows:

   Director, Board of Risk and Insurance Management,
   $80,000; Director, Division of Rehabilitation Services, $70,000;
   Director, Division of Personnel, $70,000; Executive Director,
   Educational Broadcasting Authority, $75,000; Secretary, Library
   Commission, $72,000; Director, Geological and Economic
   Survey, $75,000; Executive Director, Prosecuting Attorneys
   Institute, $80,000; Executive Director, Public Defender Services,
   $70,000; Commissioner, Bureau of Senior Services, $75,000;
   Executive Director, Women’s Commission, $45,000; Director,
   Hospital Finance Authority, $35,000; member, Racing
   Commission, $12,000; Chairman, Public Service Commission,
   $85,000; members, Public Service Commission, $85,000;
   Director, Division of Forestry, $75,000; Director, Division of
   Juvenile Services, $80,000; and Executive Director, Regional
   Jail and Correctional Facility Authority, $80,000.
(c) Each of the following appointive state officers named in this subsection shall be appointed by the Governor, by and with the advice and consent of the Senate. Each of the appointive state officers serves at the will and pleasure of the Governor for the term for which the Governor was elected and until the respective state officers’ successors have been appointed and qualified. Each of the appointive state officers are subject to the existing qualifications for holding each respective office and each has and is hereby granted all of the powers and authority and shall perform all of the functions and services heretofore vested in and performed by virtue of existing law respecting each office.

The annual salary of each named appointive state officer shall be as follows:

Commissioner, State Tax Division, $92,500; Insurance Commissioner, $92,500; Director, Lottery Commission, $92,500; Director, Division of Homeland Security and Emergency Management, $65,000; and Adjutant General, $125,000.

(d) No increase in the salary of any appointive state officer pursuant to this section may be paid until and unless the appointive state officer has first filed with the State Auditor and the Legislative Auditor a sworn statement, on a form to be prescribed by the Attorney General, certifying that his or her spending unit is in compliance with any general law providing for a salary increase for his or her employees. The Attorney General shall prepare and distribute the form to the affected spending units.
AN ACT to amend and reenact §16-13-18 of the Code of West Virginia, 1931, as amended, relating to supervision of works by a sanitary board; and providing that if a professional engineer is under contract for a project, an engineer is not required to serve on the sanitary board.

Be it enacted by the Legislature of West Virginia:

That §16-13-18 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 13. SEWAGE WORKS AND STORMWATER WORKS.

§16-13-18. Supervision of works by sanitary board; organization of board; qualifications, terms and compensation of members.

(a) The governing body shall provide by ordinance the organization of the board, and that the custody, administration, operation and maintenance of such works are under the supervision and control of a sanitary board, created under this section.

(b) The sanitary board shall be composed of either the mayor of the municipality, or the city manager thereof, if the municipality has a city manager form of government, and two persons appointed by the governing body: Provided, That, in the
event of an acquisition or merger of an existing works, the
governing body may increase the membership to a maximum of
four members in addition to the mayor or city manager of the
municipality served by the board.

(c) During the construction period, one of the members must
be a registered professional engineer, except that if a registered
professional engineer is under contract for the project, the
membership of the board is not required to include a registered
professional engineer. The engineer member of the board need
not be a resident of the municipality. After the construction of
the plant for which no registered professional engineer is under
contract has been completed, the engineer member may be
succeeded by a person not an engineer. No officer or employee
of the municipality, whether holding a paid or unpaid office, is
eligible for appointment to the sanitary board until at least one
year after the expiration of the term of his or her public office.
The appointees shall originally be appointed for terms of two
and three years respectively, and upon the expiration of each
term and each succeeding term, an appointment of a successor
shall be made in like manner for a term of three years. Vacancies
shall be filled for an unexpired term in the same manner as the
original appointment. Each member shall give bond, if any, as
required by ordinance. The mayor or city manager shall act as
chairman of the sanitary board, which shall elect a vice chairman
from its members and designate a secretary and treasurer (but the
secretary and the treasurer may be one and the same) who need
not be a member or members of the sanitary board. The vice
chairman, secretary and treasurer shall hold office at the will of
the sanitary board.

(d) The members of the sanitary board are entitled to receive
compensation for their services, either as a salary or as payments
for meetings attended, as the governing body determines, and are
entitled to payment for their reasonable expenses incurred in the
performance of their duties. The governing body shall fix the
reasonable compensation of the secretary and treasurer in its
discretion, and shall fix the amounts of bond to be given by the
treasurer. All compensation, together with the expenses
previously referred to in this section, shall be paid solely from
funds provided under the authority of this article. The sanitary
board may establish bylaws, rules and regulations for its own
governance.

CHAPTER 216

(H. B. 2645 - By Delegate(s) Mr. Speaker (Mr. Armstead)
and Miley)
[By Request of the Governor’s Office]

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

AN ACT to amend and reenact §18C-4A-1, §18C-4A-2 and
§18C-4A-3 of the Code of West Virginia, 1931, as amended, all
relating to modifying the Underwood-Smith Teacher Loan
Assistance Program; increasing annual award from program; and
expanding teacher eligibility for program awards.

Be it enacted by the Legislature of West Virginia:

That §18C-4A-1, §18C-4A-2 and §18C-4A-3 of the Code of West
Virginia, 1931, as amended, be amended and reenacted, all to read as
follows:

ARTICLE  4A. UNDERWOOD-SMITH TEACHER LOAN
ASSISTANCE PROGRAM.

§18C-4A-1. Selection criteria and procedures for loan assistance.

(a) The Governor shall designate the Higher Education
Student Financial Aid Advisory Board created by section five,
article one of this chapter to select recipients to receive
Underwood-Smith Teacher Loan Assistance Awards.

(b) To be eligible for a loan award, a teacher shall agree to
teach, or shall currently be teaching, a subject area of critical
need or in a school or geographic area of the state identified as
an area of critical need. The advisory board shall make decisions
regarding loan assistance pursuant to section one, article four of
this chapter.

(c) In accordance with the rule promulgated pursuant to
section one, article four of this chapter, the Vice Chancellor for
Administration shall develop additional eligibility criteria and
procedures for the administration of the loan program.

(d) The Vice Chancellor for Administration shall make
available program application forms to public and private
schools in the state via the website of the commission and the
State Department of Education and in other locations convenient
to potential applicants.

§18C-4A-2. Loan assistance agreement.

(a) Before receiving an award, each eligible teacher shall
enter into an agreement with the Vice Chancellor for
Administration and shall meet the following criteria:

(1) Provide the commission with evidence of compliance
with subsection (b), section four, article four of this chapter;

(2) Teach in a subject area of critical need or in a school or
geographic area of critical need full time under contract with a
county board for a period of two school years for each year for
which loan assistance is received pursuant to this article. The
Vice Chancellor for Administration may grant a partial award to
an eligible recipient whose contract term is for less than a full
school year pursuant to criteria established by commission rule.
(3) Acknowledge that an award is to be paid to the recipient’s student loan institution, not directly to the recipient, and only after the commission determines that the recipient has complied with all terms of the agreement; and

(4) Repay all or part of an award received pursuant to this article if the award is not paid to the student loan institution or if the recipient does not comply with the other terms of the agreement.

(b) Each loan agreement shall disclose fully the terms and conditions under which an award may be granted pursuant to this article and under which repayment may be required. The agreement also is subject to and shall include the terms and conditions established by section five, article four of this chapter.

§18C-4A-3. Amount and duration of loan assistance; limits.

(a) Each award recipient is eligible to receive loan assistance of up to $3,000 annually, subject to limits set forth in subsection (b) of this section:

(1) If the recipient has taught for a full school year under contract with a county board in a subject area of critical need or in a school or geographic area of critical need; and

(2) If the recipient otherwise has complied with the terms of the agreement and with applicable provisions of this article and article four of this chapter, and any rules promulgated pursuant thereto.

(b) The recipient is eligible for renewal of loan assistance only during periods when the recipient is under contract with a county board to teach in a subject area of critical need or in a school or geographic area of critical need and complies with other criteria and conditions established by rule, except that a
teacher who is teaching under a contract in a position that no longer meets the definition of critical need under rules established in accordance with section one, article four of this chapter is eligible for renewal of loan assistance until the teacher leaves his or her current position.

(c) A recipient may not receive loan assistance pursuant to this article which accumulates in excess of $15,000.
CHAPTER 18. EDUCATION.

ARTICLE 5. COUNTY BOARD OF EDUCATION.

§18-5-18. Kindergarten programs.

(a) County boards shall provide kindergarten programs for all children who have attained the age of five prior to September 1, of the school year in which the pupil enters the kindergarten program and may, pursuant to the provisions of section forty-four, article five, chapter eighteen of this code, establish kindergarten programs designed for children below the age of five. The programs for children who shall have attained the age of five shall be full-day everyday programs.

(b) Persons employed as kindergarten teachers, as distinguished from paraprofessional personnel, shall be required to hold a certificate valid for teaching at the assigned level as prescribed by rules established by the state board. The state board shall establish the minimum requirements for all paraprofessional personnel employed in kindergarten programs established pursuant to the provisions of this section and no such paraprofessional personnel may be employed in any kindergarten program unless he or she meets the minimum requirements. Beginning July 1, 2014, any person previously employed as an aide in a kindergarten program and who is employed in the same capacity on and after that date and any new person employed in that capacity in a kindergarten program on and after that date shall hold the position of aide and either Early Childhood Classroom Assistant Teacher I, Early Childhood Classroom Assistant Teacher II or Early Childhood Classroom Assistant Teacher III. Any person employed as an aide in a kindergarten program that is eligible for full retirement benefits before July 1, 2020, may remain employed as an aide in that position and shall be granted an Early Childhood Classroom Assistant Teacher permanent authorization by the state superintendent pursuant to section two-a, article three, chapter eighteen-a of this code.
(c) The state board with the advice of the state superintendent shall establish and prescribe guidelines and criteria relating to the establishment, operation and successful completion of kindergarten programs in accordance with the other provisions of this section. Guidelines and criteria so established and prescribed also are intended to serve for the establishment and operation of nonpublic kindergarten programs and shall be used for the evaluation and approval of those programs by the state superintendent, provided application for the evaluation and approval is made in writing by proper authorities in control of the programs. The state superintendent, annually, shall publish a list of nonpublic kindergarten programs, including Montessori kindergartens that have been approved in accordance with the provisions of this section. Montessori kindergartens established and operated in accordance with usual and customary practices for the use of the Montessori method which have teachers who have training or experience, regardless of additional certification, in the use of the Montessori method of instruction for kindergartens shall be considered to be approved.

(d) Pursuant to the guidelines and criteria, and only pursuant to the guidelines and criteria, the county boards may establish programs taking kindergarten to the homes of the children involved, using educational television, paraprofessional personnel in addition to and to supplement regularly certified teachers, mobile or permanent classrooms and other means developed to best carry kindergarten to the child in its home and enlist the aid and involvement of its parent or parents in presenting the program to the child; or may develop programs of a more formal kindergarten type, in existing school buildings, or both, as the county board may determine, taking into consideration the cost, the terrain, the existing available facilities, the distances each child may be required to travel, the time each child may be required to be away from home, the child’s health, the involvement of parents and other factors as
CHAPTER 18A. SCHOOL PERSONNEL.

ARTICLE 4. SALARIES, WAGES AND OTHER BENEFITS.

§18A-4-8. Employment term and class titles of service personnel; definitions.

(a) The purpose of this section is to establish an employment term and class titles for service personnel. The employment term for service personnel may not be less than ten months. A month is defined as twenty employment days. The county board may contract with all or part of these service personnel for a longer term.

(b) Service personnel employed on a yearly or twelve-month basis may be employed by calendar months. Whenever there is a change in job assignment during the school year, the minimum pay scale and any county supplement are applicable.

(c) Service personnel employed in the same classification for more than the two hundred-day minimum employment term are paid for additional employment at a daily rate of not less than the daily rate paid for the two hundred-day minimum employment term.

(d) A service person may not be required to report for work more than five days per week without his or her agreement, and no part of any working day may be accumulated by the employer for future work assignments, unless the employee agrees thereto.

(e) If a service person whose regular work week is scheduled from Monday through Friday agrees to perform any work assignments on a Saturday or Sunday, the service person is paid for at least one-half day of work for each day he or she reports for work. If the service person works more than three and one-
half hours on any Saturday or Sunday, he or she is paid for at least a full day of work for each day.

(f) A custodian, aide, maintenance, office and school lunch service person required to work a daily work schedule that is interrupted is paid additional compensation in accordance with this subsection.

(1) A maintenance person means a person who holds a classification title other than in a custodial, aide, school lunch, office or transportation category as provided in section one, article one of this chapter.

(2) A service person’s schedule is considered to be interrupted if he or she does not work a continuous period in one day. Aides are not regarded as working an interrupted schedule when engaged exclusively in the duties of transporting students;

(3) The additional compensation provided in this subsection:

(A) Is equal to at least one eighth of a service person’s total salary as provided by the state minimum pay scale and any county pay supplement; and

(B) Is payable entirely from county board funds.

(g) When there is a change in classification or when a service person meets the requirements of an advanced classification, his or her salary shall be made to comply with the requirements of this article and any county salary schedule in excess of the minimum requirements of this article, based upon the service person’s advanced classification and allowable years of employment.

(h) A service person’s contract, as provided in section five, article two of this chapter, shall state the appropriate monthly salary the employee is to be paid, based on the class title as
provided in this article and on any county salary schedule in
excess of the minimum requirements of this article.

(i) The column heads of the state minimum pay scale and
class titles, set forth in section eight-a of this article, are defined
as follows:

(1) “Pay grade” means the monthly salary applicable to class
titles of service personnel;

(2) “Years of employment” means the number of years
which an employee classified as a service person has been
employed by a county board in any position prior to or
subsequent to the effective date of this section and includes
service in the Armed Forces of the United States, if the
employee was employed at the time of his or her induction. For
the purpose of section eight-a of this article, years of
employment is limited to the number of years shown and
allowed under the state minimum pay scale as set forth in section
eight-a of this article;

(3) “Class title” means the name of the position or job held
by a service person;

(4) “Accountant I” means a person employed to maintain
payroll records and reports and perform one or more operations
relating to a phase of the total payroll;

(5) “Accountant II” means a person employed to maintain
accounting records and to be responsible for the accounting
process associated with billing, budgets, purchasing and related
operations;

(6) “Accountant III” means a person employed in the county
board office to manage and supervise accounts payable, payroll
procedures, or both;
Accounts payable supervisor” means a person employed in the county board office who has primary responsibility for the accounts payable function and who either has completed twelve college hours of accounting courses from an accredited institution of higher education or has at least eight years of experience performing progressively difficult accounting tasks. Responsibilities of this class title may include supervision of other personnel;

“Aide I” means a person selected and trained for a teacher-aide classification such as monitor aide, clerical aide, classroom aide or general aide;

“Aide II” means a service person referred to in the “Aide I” classification who has completed a training program approved by the state board, or who holds a high school diploma or has received a general educational development certificate. Only a person classified in an Aide II class title may be employed as an aide in any special education program.

“Aide III” means a service person referred to in the “Aide I” classification who holds a high school diploma or a general educational development certificate; and

(A) Has completed six semester hours of college credit at an institution of higher education; or

(B) Is employed as an aide in a special education program and has one year’s experience as an aide in special education;

“Aide IV” means a service person referred to in the “Aide I” classification who holds a high school diploma or a general educational development certificate; and

(A) Has completed eighteen hours of State Board-approved college credit at a regionally accredited institution of higher education, or
(B) Has completed fifteen hours of State Board-approved college credit at a regionally accredited institution of higher education; and has successfully completed an in-service training program determined by the state Board to be the equivalent of three hours of college credit;

(12) “Audiovisual technician” means a person employed to perform minor maintenance on audiovisual equipment, films, and supplies and who fills requests for equipment;

(13) “Auditor” means a person employed to examine and verify accounts of individual schools and to assist schools and school personnel in maintaining complete and accurate records of their accounts;

(14) “Autism mentor” means a person who works with autistic students and who meets standards and experience to be determined by the state Board. A person who has held or holds an aide title and becomes employed as an autism mentor shall hold a multiclassification status that includes both aide and autism mentor titles, in accordance with section eight-b of this article;

(15) “Braille specialist” means a person employed to provide braille assistance to students. A service person who has held or holds an aide title and becomes employed as a braille specialist shall hold a multiclassification status that includes both aide and braille specialist title, in accordance with section eight-b of this article;

(16) “Bus operator” means a person employed to operate school buses and other school transportation vehicles as provided by the state board;

(17) “Buyer” means a person employed to review and write specifications, negotiate purchase bids and recommend purchase
agreements for materials and services that meet predetermined specifications at the lowest available costs;

(18) “Cabinetmaker” means a person employed to construct cabinets, tables, bookcases and other furniture;

(19) “Cafeteria manager” means a person employed to direct the operation of a food services program in a school, including assigning duties to employees, approving requisitions for supplies and repairs, keeping inventories, inspecting areas to maintain high standards of sanitation, preparing financial reports and keeping records pertinent to food services of a school;

(20) “Carpenter I” means a person classified as a carpenter’s helper;

(21) “Carpenter II” means a person classified as a journeyman carpenter;

(22) “Chief mechanic” means a person employed to be responsible for directing activities which ensure that student transportation or other county board-owned vehicles are properly and safely maintained;

(23) “Clerk I” means a person employed to perform clerical tasks;

(24) “Clerk II” means a person employed to perform general clerical tasks, prepare reports and tabulations, and operate office machines;

(25) “Computer operator” means a qualified person employed to operate computers;

(26) “Cook I” means a person employed as a cook’s helper;

(27) “Cook II” means a person employed to interpret menus and to prepare and serve meals in a food service program of a
school. This definition includes a service person who has been
employed as a “Cook I” for a period of four years;

(28) “Cook III” means a person employed to prepare and
serve meals, make reports, prepare requisitions for supplies,
over equipment and repairs for a food service program of a
school system;

(29) “Crew leader” means a person employed to organize the
work for a crew of maintenance employees to carry out assigned
projects;

(30) “Custodian I” means a person employed to keep
buildings clean and free of refuse;

(31) “Custodian II” means a person employed as a watchman
or groundsman;

(32) “Custodian III” means a person employed to keep
buildings clean and free of refuse, to operate the heating or
cooling systems and to make minor repairs;

(33) “Custodian IV” means a person employed as a head
custodian. In addition to providing services as defined in
“Custodian III” duties may include supervising other custodian
personnel;

(34) “Director or coordinator of services” means an
employee of a county board who is assigned to direct a
department or division.

(A) Nothing in this subdivision prohibits a professional
person or a professional educator from holding this class title;

(B) Professional personnel holding this class title may not be
defined or classified as service personnel unless the professional
person held a service personnel title under this section prior to
holding the class title of “director or coordinator of services;”
(C) The director or coordinator of services is classified either as a professional person or a service person for state aid formula funding purposes;

(D) Funding for the position of director or coordinator of services is based upon the employment status of the director or coordinator either as a professional person or a service person; and

(E) A person employed under the class title “director or coordinator of services” may not be exclusively assigned to perform the duties ascribed to any other class title as defined in this subsection: Provided, That nothing in this paragraph prohibits a person in this position from being multiclassified;

(35) “Draftsman” means a person employed to plan, design and produce detailed architectural/engineering drawings;

(36) “Early Childhood Classroom Assistant Teacher I” means a person who does not possess minimum requirements for the permanent authorization requirements, but is enrolled in and pursuing requirements;

(37) “Early Childhood Classroom Assistant Teacher II” means a person who has completed the minimum requirements for a state-awarded certificate for early childhood classroom assistant teachers as determined by the State Board;

(38) “Early Childhood Classroom Assistant Teacher III” means a person who has completed permanent authorization requirements, as well as additional requirements comparable to current paraprofessional certificate;

(39) “Educational Sign Language Interpreter I” means a person employed to provide communication access across all educational environments to students who are deaf or hard of hearing, and who holds the Initial Paraprofessional Certificate – Educational Interpreter pursuant to state board policy;
(40) “Educational Sign Language Interpreter II” means a person employed to provide communication access across all educational environments to students who are deaf or hard of hearing, and who holds the Permanent Paraprofessional Certificate – Educational Interpreter pursuant to state board policy;

(41) “Electrician I” means a person employed as an apprentice electrician helper or one who holds an electrician helper license issued by the State Fire Marshal;

(42) “Electrician II” means a person employed as an electrician journeyman or one who holds a journeyman electrician license issued by the State Fire Marshal;

(43) “Electronic technician I” means a person employed at the apprentice level to repair and maintain electronic equipment;

(44) “Electronic technician II” means a person employed at the journeyman level to repair and maintain electronic equipment;

(45) “Executive secretary” means a person employed as secretary to the county school superintendent or as a secretary who is assigned to a position characterized by significant administrative duties;

(46) “Food services supervisor” means a qualified person who is not a professional person or professional educator as defined in section one, article one of this chapter. The food services supervisor is employed to manage and supervise a county school system’s food service program. The duties include preparing in-service training programs for cooks and food service employees, instructing personnel in the areas of quantity cooking with economy and efficiency and keeping aggregate records and reports;
(47) “Foreman” means a skilled person employed to supervise personnel who work in the areas of repair and maintenance of school property and equipment;

(48) “General maintenance” means a person employed as a helper to skilled maintenance employees, and to perform minor repairs to equipment and buildings of a county school system;

(49) “Glazier” means a person employed to replace glass or other materials in windows and doors and to do minor carpentry tasks;

(50) “Graphic artist” means a person employed to prepare graphic illustrations;

(51) “Groundsman” means a person employed to perform duties that relate to the appearance, repair and general care of school grounds in a county school system. Additional assignments may include the operation of a small heating plant and routine cleaning duties in buildings;

(52) “Handyman” means a person employed to perform routine manual tasks in any operation of the county school system;

(53) “Heating and air conditioning mechanic I” means a person employed at the apprentice level to install, repair and maintain heating and air conditioning plants and related electrical equipment;

(54) “Heating and air conditioning mechanic II” means a person employed at the journeyman level to install, repair and maintain heating and air conditioning plants and related electrical equipment;

(55) “Heavy equipment operator” means a person employed to operate heavy equipment;
“Inventory supervisor” means a person employed to supervise or maintain operations in the receipt, storage, inventory and issuance of materials and supplies;

“Key punch operator” means a qualified person employed to operate key punch machines or verifying machines;

“Licensed practical nurse” means a nurse, licensed by the West Virginia Board of Examiners for Licensed Practical Nurses, employed to work in a public school under the supervision of a school nurse;

“Locksmith” means a person employed to repair and maintain locks and safes;

“Lubrication man” means a person employed to lubricate and service gasoline or diesel-powered equipment of a county school system;

“Machinist” means a person employed to perform machinist tasks which include the ability to operate a lathe, planer, shader, threading machine and wheel press. A person holding this class title also should have the ability to work from blueprints and drawings;

“Mail clerk” means a person employed to receive, sort, dispatch, deliver or otherwise handle letters, parcels and other mail;

“Maintenance clerk” means a person employed to maintain and control a stocking facility to keep adequate tools and supplies on hand for daily withdrawal for all school maintenance crafts;

“Mason” means a person employed to perform tasks connected with brick and block laying and carpentry tasks related to these activities;
(65) “Mechanic” means a person employed to perform skilled duties independently in the maintenance and repair of automobiles, school buses and other mechanical and mobile equipment to use in a county school system;

(66) “Mechanic assistant” means a person employed as a mechanic apprentice and helper;

(67) “Multiclassification” means a person employed to perform tasks that involve the combination of two or more class titles in this section. In these instances the minimum salary scale is the higher pay grade of the class titles involved;

(68) “Office equipment repairman I” means a person employed as an office equipment repairman apprentice or helper;

(69) “Office equipment repairman II” means a person responsible for servicing and repairing all office machines and equipment. A person holding this class title is responsible for the purchase of parts necessary for the proper operation of a program of continuous maintenance and repair;

(70) “Painter” means a person employed to perform duties painting, finishing and decorating wood, metal and concrete surfaces of buildings, other structures, equipment, machinery and furnishings of a county school system;

(71) “Paraprofessional” means a person certified pursuant to section two-a, article three of this chapter to perform duties in a support capacity including, but not limited to, facilitating in the instruction and direct or indirect supervision of students under the direction of a principal, a teacher or another designated professional educator.

(A) A person employed on the effective date of this section in the position of an aide may not be subject to a reduction in force or transferred to create a vacancy for the employment of a paraprofessional;
(B) A person who has held or holds an aide title and becomes employed as a paraprofessional shall hold a multiclassification status that includes both aide and paraprofessional titles in accordance with section eight-b of this article; and

(C) When a service person who holds an aide title becomes certified as a paraprofessional and is required to perform duties that may not be performed by an aide without paraprofessional certification, he or she shall receive the paraprofessional title pay grade;

(72) “Payroll supervisor” means a person employed in the county board office who has primary responsibility for the payroll function and who either has completed twelve college hours of accounting from an accredited institution of higher education or has at least eight years of experience performing progressively difficult accounting tasks. Responsibilities of this class title may include supervision of other personnel;

(73) “Plumber I” means a person employed as an apprentice plumber and helper;

(74) “Plumber II” means a person employed as a journeyman plumber;

(75) “Printing operator” means a person employed to operate duplication equipment, and to cut, collate, staple, bind and shelve materials as required;

(76) “Printing supervisor” means a person employed to supervise the operation of a print shop;

(77) “Programmer” means a person employed to design and prepare programs for computer operation;
(78) “Roofing/sheet metal mechanic” means a person employed to install, repair, fabricate and maintain roofs, gutters, flashing and duct work for heating and ventilation;

(79) “Sanitation plant operator” means a person employed to operate and maintain a water or sewage treatment plant to ensure the safety of the plant’s effluent for human consumption or environmental protection;

(80) “School bus supervisor” means a qualified person:

(A) Employed to assist in selecting school bus operators and routing and scheduling school buses, operate a bus when needed, relay instructions to bus operators, plan emergency routing of buses and promote good relationships with parents, students, bus operators and other employees; and

(B) Certified to operate a bus or previously certified to operate a bus;

(81) “Secretary I” means a person employed to transcribe from notes or mechanical equipment, receive callers, perform clerical tasks, prepare reports and operate office machines;

(82) “Secretary II” means a person employed in any elementary, secondary, kindergarten, nursery, special education, vocational, or any other school as a secretary. The duties may include performing general clerical tasks; transcribing from notes; stenotype, mechanical equipment or a sound-producing machine; preparing reports; receiving callers and referring them to proper persons; operating office machines; keeping records and handling routine correspondence. Nothing in this subdivision prevents a service person from holding or being elevated to a higher classification;

(83) “Secretary III” means a person assigned to the county board office administrators in charge of various instructional,
408 maintenance, transportation, food services, operations and health
409 departments, federal programs or departments with particular
410 responsibilities in purchasing and financial control or any person
411 who has served for eight years in a position which meets the
412 definition of “Secretary II” or “Secretary III”;

413 (84) “Sign Support Specialist” means a person employed to
414 provide sign supported speech assistance to students who are
415 able to access environments through audition. A person who has
416 held or holds an aide title and becomes employed as a sign
417 support specialist shall hold a multiclassification status that
418 includes both aide and sign support specialist titles, in
419 accordance with section eight-b of this article.

420 (85) “Supervisor of maintenance” means a skilled person
421 who is not a professional person or professional educator as
422 defined in section one, article one of this chapter. The
423 responsibilities include directing the upkeep of buildings and
424 shops, and issuing instructions to subordinates relating to
425 cleaning, repairs and maintenance of all structures and
426 mechanical and electrical equipment of a county board;

427 (86) “Supervisor of transportation” means a qualified person
428 employed to direct school transportation activities properly and
429 safely, and to supervise the maintenance and repair of vehicles,
430 buses and other mechanical and mobile equipment used by the
431 county school system. After July 1, 2010, all persons employed
432 for the first time in a position with this classification title or in
433 a multiclassification position that includes this title shall have
434 five years of experience working in the transportation
435 department of a county board. Experience working in the
436 transportation department consists of serving as a bus operator,
437 bus aide, assistant mechanic, mechanic, chief mechanic or in a
438 clerical position within the transportation department;

439 (87) “Switchboard operator-receptionist” means a person
440 employed to refer incoming calls, to assume contact with the
public, to direct and to give instructions as necessary, to operate
switchboard equipment and to provide clerical assistance;

(88) “Truck driver” means a person employed to operate
light or heavy duty gasoline and diesel-powered vehicles;

(89) “Warehouse clerk” means a person employed to be
responsible for receiving, storing, packing and shipping goods;

(90) “Watchman” means a person employed to protect
school property against damage or theft. Additional assignments
may include operation of a small heating plant and routine
cleaning duties;

(91) “Welder” means a person employed to provide
acetylene or electric welding services for a school system; and

(92) “WVEIS data entry and administrative clerk” means a
person employed to work under the direction of a school
principal to assist the school counselor or counselors in the
performance of administrative duties, to perform data entry tasks
on the West Virginia Education Information System, and to
perform other administrative duties assigned by the principal.

(j) Notwithstanding any provision in this code to the
contrary, and in addition to the compensation provided for
service personnel in section eight-a of this article, each service
person is entitled to all service personnel employee rights,
privileges and benefits provided under this or any other chapter
of this code without regard to the employee’s hours of
employment or the methods or sources of compensation.

(k) A service person whose years of employment exceeds the
number of years shown and provided for under the state
minimum pay scale set forth in section eight-a of this article may
not be paid less than the amount shown for the maximum years
of employment shown and provided for in the classification in
which he or she is employed.
(l) Each county board shall review each service person’s job classification annually and shall reclassify all service persons as required by the job classifications. The state superintendent may withhold state funds appropriated pursuant to this article for salaries for service personnel who are improperly classified by the county boards. Further, the state superintendent shall order a county board to correct immediately any improper classification matter and, with the assistance of the Attorney General, shall take any legal action necessary against any county board to enforce the order.

(m) Without his or her written consent, a service person may not be:

(1) Reclassified by class title; or

(2) Relegated to any condition of employment which would result in a reduction of his or her salary, rate of pay, compensation or benefits earned during the current fiscal year; or for which he or she would qualify by continuing in the same job position and classification held during that fiscal year and subsequent years.

(n) Any county board failing to comply with the provisions of this article may be compelled to do so by mandamus and is liable to any party prevailing against the board for court costs and the prevailing party’s reasonable attorney fee, as determined and established by the court.

(o) Notwithstanding any provision of this code to the contrary, a service person who holds a continuing contract in a specific job classification and who is physically unable to perform the job’s duties as confirmed by a physician chosen by the employee, shall be given priority status over any employee not holding a continuing contract in filling other service personnel job vacancies if the service person is qualified as provided in section eight-e of this article.
(p) Any person employed in an aide position on the effective date of this section may not be transferred or subject to a reduction in force for the purpose of creating a vacancy for the employment of a licensed practical nurse.

(q) Without the written consent of the service person, a county board may not establish the beginning work station for a bus operator or transportation aide at any site other than a county board-owned facility with available parking. The workday of the bus operator or transportation aide commences at the bus at the designated beginning work station and ends when the employee is able to leave the bus at the designated beginning work station, unless he or she agrees otherwise in writing. The application or acceptance of a posted position may not be construed as the written consent referred to in this subsection.

(r) Itinerant status means a service person who does not have a fixed work site and may be involuntarily reassigned to another work site. A service person is considered to hold itinerant status if he or she has bid upon a position posted as itinerant or has agreed to accept this status. A county board may establish positions with itinerant status only within the aide and autism mentor classification categories and only when the job duties involve exceptional students. A service person with itinerant status may be assigned to a different work site upon written notice ten days prior to the reassignment without the consent of the employee and without posting the vacancy. A service person with itinerant status may be involuntarily reassigned no more than twice during the school year. At the conclusion of each school year, the county board shall post and fill, pursuant to section eight-b of this article, all positions that have been filled without posting by a service person with itinerant status. A service person who is assigned to a beginning and ending work site and travels at the expense of the county board to other work sites during the daily schedule, is not considered to hold itinerant status.
(s) Any service person holding a classification title on June 30, 2013, that is removed from the classification schedule pursuant to amendment and reenactment of this section in the year 2013, has his or her employment contract revised as follows:

(1) Any service person holding the Braille or Sign Language Specialist classification title has that classification title renamed on his or her employment contract as either Braille Specialist or Sign Support Specialist. This action does not result in a loss or reduction of salary or supplement by any employee. Any seniority earned in the Braille or Sign Language Specialist classification prior to July 1, 2013, continues to be credited as seniority earned in the Braille Specialist or Sign Support Specialist classification;

(2) Any service person holding the Paraprofessional classification title and holding the Initial Paraprofessional Certificate – Educational Interpreter has the title Educational Sign Language Interpreter I added to his or her employment contract. This action does not result in a loss or reduction of salary or supplement by any employee. Any seniority earned in the Paraprofessional classification prior to July 1, 2013, continues to be credited as seniority earned in the Educational Sign Language Interpreter I classification; and

(3) Any service person holding the Paraprofessional classification title and holding the Permanent Paraprofessional Certificate – Educational Interpreter has the title Educational Sign Language Interpreter II added to his or her employment contract. This action does not result in a loss or reduction of salary or supplement by any employee. Any seniority earned in the Paraprofessional classification prior to July 1, 2013, continues to be credited as seniority earned in the Educational Sign Language Interpreter II classification;
(t) Any person employed as an aide in a kindergarten program who is eligible for full retirement benefits before the first day of the instructional term in the 2020-2021 school year, may not be subject to a reduction in force or transferred to create a vacancy for the employment of a less senior Early Childhood Classroom Assistant Teacher;

(u) A person who has held or holds an aide title and becomes employed as an Early Childhood Classroom Assistant Teacher shall hold a multiclassification status that includes aide and/or paraprofessional titles in accordance with section eight-b of this article.

§18A-4-8a. Service personnel minimum monthly salaries.

(a) The minimum monthly pay for each service employee shall be as follows:

(1) Beginning July 1, 2014, and continuing thereafter, the minimum monthly pay for each service employee whose employment is for a period of more than three and one-half hours a day shall be at least the amounts indicated in the State Minimum Pay Scale Pay Grade and the minimum monthly pay for each service employee whose employment is for a period of three and one-half hours or less a day shall be at least one-half the amount indicated in the State Minimum Pay Scale Pay Grade set forth in this subdivision.

STATE MINIMUM PAY SCALE PAY GRADE

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(2) Each service employee shall receive the amount prescribed in the Minimum Pay Scale in accordance with the provisions of this subsection according to their class title and pay grade as set forth in this subdivision:

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<th>CLASS TITLE</th>
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<td>Aide IV</td>
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<tr>
<td>Code</td>
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<td>68</td>
<td>Audiovisual Technician</td>
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<td>Auditor</td>
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<td>70</td>
<td>Autism Mentor</td>
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<td>71</td>
<td>Braille Specialist</td>
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<td>Bus Operator</td>
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<td>73</td>
<td>Buyer</td>
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<td>Cabinetmaker</td>
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<td>Cafeteria Manager</td>
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<td>Carpenter I</td>
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<td>Carpenter II</td>
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<td>Chief Mechanic</td>
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<td>Clerk I</td>
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<td>Clerk II</td>
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<td>81</td>
<td>Computer Operator</td>
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<td>Cook I</td>
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<td>Cook II</td>
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<td>Cook III</td>
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<td>85</td>
<td>Crew Leader</td>
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<td>Custodian I</td>
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<td>Custodian II</td>
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<td>Position</td>
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<td>Custodian IV</td>
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<td>Director or Coordinator of Services</td>
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<td>Draftsman</td>
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<td>92</td>
<td>Early Childhood Classroom Assistant Teacher I</td>
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<td>93</td>
<td>Early Childhood Classroom Assistant Teacher II</td>
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<tr>
<td>94</td>
<td>Early Childhood Classroom Assistant Teacher III</td>
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<td>95</td>
<td>Educational Sign Language Interpreter I</td>
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<td>96</td>
<td>Educational Sign Language Interpreter II</td>
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<td>Electrician I</td>
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<td>Electrician II</td>
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<td>Executive Secretary</td>
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<td>Food Services Supervisor</td>
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<td>Foreman</td>
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<td>General Maintenance</td>
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<td>Glazier</td>
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<td>106</td>
<td>Graphic Artist</td>
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<td>108</td>
<td>Handyman</td>
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<td>109</td>
<td>Heating and Air Conditioning Mechanic I</td>
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<td>110</td>
<td>Heating and Air Conditioning Mechanic II</td>
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<td>Heavy Equipment Operator</td>
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<td>Inventory Supervisor</td>
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<td>Key Punch Operator</td>
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<td>Licensed Practical Nurse</td>
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<td>Locksmith</td>
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<td>Lubrication Man</td>
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<td>Machinist</td>
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<td>119</td>
<td>Maintenance Clerk</td>
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<td>Mason</td>
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<td>Mechanic Assistant</td>
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<td>Office Equipment Repairman I</td>
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<td>124</td>
<td>Office Equipment Repairman II</td>
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<td>125</td>
<td>Painter</td>
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<td>126</td>
<td>Paraprofessional</td>
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<td>127</td>
<td>Payroll Supervisor</td>
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Plumber I ................................................................. E
Plumber II ................................................................. G
Printing Operator ......................................................... B
Printing Supervisor ....................................................... D
Programmer ................................................................. H
Roofing/Sheet Metal Mechanic ........................................ F
Sanitation Plant Operator ............................................... G
School Bus Supervisor .................................................... E
Secretary I ................................................................. D
Secretary II ................................................................. E
Secretary III ................................................................. F
Sign Support Specialist ................................................... E
Supervisor of Maintenance ................................................. H
Supervisor of Transportation ............................................. H
Switchboard Operator-Receptionist ..................................... D
Truck Driver ................................................................. D
Warehouse Clerk .......................................................... C
Watchman ................................................................. B
Welder ................................................................. F
WVEIS Data Entry and Administrative Clerk ......................... B
(b) An additional $12 per month is added to the minimum monthly pay of each service person who holds a high school diploma or its equivalent.

(c) An additional $11 per month also is added to the minimum monthly pay of each service person for each of the following:

(1) A service person who holds twelve college hours or comparable credit obtained in a trade or vocational school as approved by the state board;

(2) A service person who holds twenty-four college hours or comparable credit obtained in a trade or vocational school as approved by the state board;

(3) A service person who holds thirty-six college hours or comparable credit obtained in a trade or vocational school as approved by the state board;

(4) A service person who holds forty-eight college hours or comparable credit obtained in a trade or vocational school as approved by the state board;

(5) A service employee who holds sixty college hours or comparable credit obtained in a trade or vocational school as approved by the state board;

(6) A service person who holds seventy-two college hours or comparable credit obtained in a trade or vocational school as approved by the state board;

(7) A service person who holds eighty-four college hours or comparable credit obtained in a trade or vocational school as approved by the state board;

(8) A service person who holds ninety-six college hours or comparable credit obtained in a trade or vocational school as approved by the state board;
(9) A service person who holds one hundred eight college hours or comparable credit obtained in a trade or vocational school as approved by the state board;

(10) A service person who holds one hundred twenty college hours or comparable credit obtained in a trade or vocational school as approved by the state board.

(d) An additional $40 per month also is added to the minimum monthly pay of each service person for each of the following:

(1) A service person who holds an associate’s degree;

(2) A service person who holds a bachelor’s degree;

(3) A service person who holds a master’s degree;

(4) A service person who holds a doctorate degree.

(e) An additional $11 per month is added to the minimum monthly pay of each service person for each of the following:

(1) A service person who holds a bachelor’s degree plus fifteen college hours;

(2) A service person who holds a master’s degree plus fifteen college hours;

(3) A service person who holds a master’s degree plus thirty college hours;

(4) A service person who holds a master’s degree plus forty-five college hours; and

(5) A service person who holds a master’s degree plus sixty college hours.
(f) To meet the objective of salary equity among the counties, each service person is paid an equity supplement, as set forth in section five of this article, of $164 per month, subject to the provisions of that section. These payments: (i) Are in addition to any amounts prescribed in the applicable State Minimum Pay Scale Pay Grade, any specific additional amounts prescribed in this section and article and any county supplement in effect in a county pursuant to section five-b of this article; (ii) are paid in equal monthly installments; and (iii) are considered a part of the state minimum salaries for service personnel.

(g) When any part of a school service person’s daily shift of work is performed between the hours of six o’clock p. m. and five o’clock a. m. the following day, the employee is paid no less than an additional $10 per month and one half of the pay is paid with local funds.

(h) Any service person required to work on any legal school holiday is paid at a rate one and one-half times the person’s usual hourly rate.

(i) Any full-time service personnel required to work in excess of their normal working day during any week which contains a school holiday for which they are paid is paid for the additional hours or fraction of the additional hours at a rate of one and one-half times their usual hourly rate and paid entirely from county board funds.

(j) A service person may not have his or her daily work schedule changed during the school year without the employee’s written consent and the person’s required daily work hours may not be changed to prevent the payment of time and one-half wages or the employment of another employee.

(k) The minimum hourly rate of pay for extra duty assignments as defined in section eight-b of this article is no less
than one seventh of the person’s daily total salary for each hour
the person is involved in performing the assignment and paid
entirely from local funds: Provided, That an alternative
minimum hourly rate of pay for performing extra duty
assignments within a particular category of employment may be
used if the alternate hourly rate of pay is approved both by the
county board and by the affirmative vote of a two-thirds majority
of the regular full-time persons within that classification
category of employment within that county: Provided, however,
That the vote is by secret ballot if requested by a service person
within that classification category within that county. The salary
for any fraction of an hour the employee is involved in
performing the assignment is prorated accordingly. When
performing extra duty assignments, persons who are regularly
employed on a one-half day salary basis shall receive the same
hourly extra duty assignment pay computed as though the person
were employed on a full-day salary basis.

The minimum pay for any service personnel engaged in
the removal of asbestos material or related duties required for
asbestos removal is their regular total daily rate of pay and no
less than an additional $3 per hour or no less than $5 per hour for
service personnel supervising asbestos removal responsibilities
for each hour these employees are involved in asbestos-related
duties. Related duties required for asbestos removal include, but
are not limited to, travel, preparation of the work site, removal
of asbestos, decontamination of the work site, placing and
removal of equipment and removal of structures from the site. If
any member of an asbestos crew is engaged in asbestos-related
duties outside of the employee’s regular employment county, the
daily rate of pay is no less than the minimum amount as
established in the employee’s regular employment county for
asbestos removal and an additional $30 per each day the
employee is engaged in asbestos removal and related duties. The
additional pay for asbestos removal and related duties shall be
payable entirely from county funds. Before service personnel
may be used in the removal of asbestos material or related
duties, they shall have completed a federal Environmental
Protection Act-approved training program and be licensed. The
employer shall provide all necessary protective equipment and
maintain all records required by the Environmental Protection
Act.

(m) For the purpose of qualifying for additional pay as
provided in section eight, article five of this chapter, an aide is
considered to be exercising the authority of a supervisory aide
and control over pupils if the aide is required to supervise,
control, direct, monitor, escort or render service to a child or
children when not under the direct supervision of a certified
professional person within the classroom, library, hallway,
lunchroom, gymnasium, school building, school grounds or
wherever supervision is required. For purposes of this section,
"under the direct supervision of a certified professional person"
means that certified professional person is present, with and
accompanying the aide.

§18A-4-8b. Seniority rights for school service personnel.

(a) A county board shall make decisions affecting
promotions and the filling of any service personnel positions of
employment or jobs occurring throughout the school year that
are to be performed by service personnel as provided in section
eight of this article, on the basis of seniority, qualifications and
evaluation of past service.

(b) Qualifications means the applicant holds a classification
title in his or her category of employment as provided in this
section and is given first opportunity for promotion and filling
vacancies. Other employees then shall be considered and shall
qualify by meeting the definition of the job title that relates to
the promotion or vacancy, as defined in section eight of this
article. If requested by the employee, the county board shall
show valid cause why a service person with the most seniority is not promoted or employed in the position for which he or she applies. Qualified applicants shall be considered in the following order:

(1) Regularly employed service personnel who hold a classification title within the classification category of the vacancy;

(2) Service personnel who have held a classification title within the classification category of the vacancy whose employment has been discontinued in accordance with this section;

(3) Regularly employed service personnel who do not hold a classification title within the classification category of vacancy;

(4) Service personnel who have not held a classification title within the classification category of the vacancy and whose employment has been discontinued in accordance with this section;

(5) Substitute service personnel who hold a classification title within the classification category of the vacancy;

(6) Substitute service personnel who do not hold a classification title within the classification category of the vacancy; and

(7) New service personnel.

The county board may not prohibit a service person from retaining or continuing his or her employment in any positions or jobs held prior to the effective date of this section and thereafter.
(d) A promotion means any change in employment that the service person considers to improve his or her working circumstance within the classification category of employment.

(1) A promotion includes a transfer to another classification category or place of employment if the position is not filled by an employee who holds a title within that classification category of employment.

(2) Each class title listed in section eight of this article is considered a separate classification category of employment for service personnel, except for those class titles having Roman numeral designations, which are considered a single classification of employment:

   (A) The cafeteria manager class title is included in the same classification category as cooks;

   (B) The executive secretary class title is included in the same classification category as secretaries;

   (C) Paraprofessional, autism mentor, early classroom assistant teacher and braille or sign support specialist class titles are included in the same classification category as aides; and

   (D) The mechanic assistant and chief mechanic class titles are included in the same classification category as mechanics.

(3) The assignment of an aide to a particular position within a school is based on seniority within the aide classification category if the aide is qualified for the position.

(4) Assignment of a custodian to work shifts in a school or work site is based on seniority within the custodian classification category.

(e) For purposes of determining seniority under this section a service person’s seniority begins on the date that he or she enters into the assigned duties.
(f) *Extra-duty assignments.* —

(1) For the purpose of this section, “extra-duty assignment” means an irregular job that occurs periodically or occasionally such as, but not limited to, field trips, athletic events, proms, banquets and band festival trips.

(2) Notwithstanding any other provisions of this chapter to the contrary, decisions affecting service personnel with respect to extra-duty assignments are made in the following manner:

(A) A service person with the greatest length of service time in a particular category of employment is given priority in accepting extra duty assignments, followed by other fellow employees on a rotating basis according to the length of their service time until all employees have had an opportunity to perform similar assignments. The cycle then is repeated.

(B) An alternative procedure for making extra-duty assignments within a particular classification category of employment may be used if the alternative procedure is approved both by the county board and by an affirmative vote of two-thirds of the employees within that classification category of employment.

(g) County boards shall post and date notices of all job vacancies of existing or newly created positions in conspicuous places for all school service personnel to observe for at least five working days.

(1) Posting locations include any website maintained by or available for the use of the county board.

(2) Notice of a job vacancy shall include the job description, the period of employment, the work site, the starting and ending time of the daily shift, the amount of pay and any benefits and other information that is helpful to prospective applicants to
understand the particulars of the job. The notice of a job vacancy
in the aide classification categories shall include the program or
primary assignment of the position. Job postings for vacancies
made pursuant to this section shall be written to ensure that the
largest possible pool of qualified applicants may apply. Job
postings may not require criteria which are not necessary for the
successful performance of the job and may not be written with
the intent to favor a specific applicant.

(3) After the five-day minimum posting period, all vacancies
shall be filled within twenty working days from the posting date
notice of any job vacancies of existing or newly created
positions.

(4) The county board shall notify any person who has
applied for a job posted pursuant to this section of the status of
his or her application as soon as possible after the county board
makes a hiring decision regarding the posted position.

(h) All decisions by county boards concerning reduction in
work force of service personnel shall be made on the basis of
seniority, as provided in this section.

(i) The seniority of a service person is determined on the
basis of the length of time the employee has been employed by
the county board within a particular job classification. For the
purpose of establishing seniority for a preferred recall list as
provided in this section, a service person who has been
employed in one or more classifications retains the seniority
accrued in each previous classification.

(j) If a county board is required to reduce the number of
service personnel within a particular job classification, the
following conditions apply:

(1) The employee with the least amount of seniority within
that classification or grades of classification is properly released
and employed in a different grade of that classification if there is a job vacancy;

(2) If there is no job vacancy for employment within that classification or grades of classification, the service person is employed in any other job classification which he or she previously held with the county board if there is a vacancy and retains any seniority accrued in the job classification or grade of classification.

(k) After a reduction in force or transfer is approved, but prior to August 1, a county board in its sole and exclusive judgment may determine that the reason for any particular reduction in force or transfer no longer exists.

(1) If the board makes this determination, it shall rescind the reduction in force or transfer and notify the affected employee in writing of the right to be restored to his or her former position of employment.

(2) The affected employee shall notify the county board of his or her intent to return to the former position of employment within five days of being notified or lose the right to be restored to the former position.

(3) The county board may not rescind the reduction in force of an employee until all service personnel with more seniority in the classification category on the preferred recall list have been offered the opportunity for recall to regular employment as provided in this section.

(4) If there are insufficient vacant positions to permit reemployment of all more senior employees on the preferred recall list within the classification category of the service person who was subject to reduction in force, the position of the released service person shall be posted and filled in accordance with this section.
(l) If two or more service persons accumulate identical seniority, the priority is determined by a random selection system established by the employees and approved by the county board.

(m) All service personnel whose seniority with the county board is insufficient to allow their retention by the county board during a reduction in work force are placed upon a preferred recall list and shall be recalled to employment by the county board on the basis of seniority.

(n) A service person placed upon the preferred recall list shall be recalled to any position openings by the county board within the classification(s) where he or she had previously been employed, to any lateral position for which the service person is qualified or to a lateral area for which a service person has certification and/or licensure.

(o) A service person on the preferred recall list does not forfeit the right to recall by the county board if compelling reasons require him or her to refuse an offer of reemployment by the county board.

(p) The county board shall notify all service personnel on the preferred recall list of all position openings that exist from time to time. The notice shall be sent by certified mail to the last known address of the service person. Each service person shall notify the county board of any change of address.

(q) No position openings may be filled by the county board, whether temporary or permanent, until all service personnel on the preferred recall list have been properly notified of existing vacancies and have been given an opportunity to accept reemployment.

(r) A service person released from employment for lack of need as provided in sections six and eight-a, article two of this
chapter is accorded preferred recall status on July 1 of the succeeding school year if he or she has not been reemployed as a regular employee.

(s) A county board failing to comply with the provisions of this article may be compelled to do so by mandamus and is liable to any party prevailing against the board for court costs and the prevailing party’s reasonable attorney fee, as determined and established by the court.

(1) A service person denied promotion or employment in violation of this section shall be awarded the job, pay and any applicable benefits retroactively to the date of the violation and shall be paid entirely from local funds.

(2) The county board is liable to any party prevailing against the board for any court reporter costs including copies of transcripts.

CHAPTER 218

(Com. Sub. for H. B. 2139 - By Delegate(s) Perry, Pasdon, L. Phillips, Hamrick, Rowan, Ambler, Cooper, Espinosa, Pethtel, Romine and Longstreth)

[Passed March 12, 2015; in effect from passage.]
[Approved by the Governor on March 26, 2015.]

AN ACT to amend and reenact §18A-2-3 of the Code of West Virginia, 1931, as amended, relating to employment of retired teachers as substitutes in areas of critical need and shortage for substitutes; requiring days of retirement before instructional term employed as substitute; requiring electronic posting of vacancy;
requiring preemployment submission of information to, and verification of compliance by, state board prior to submission to retirement board; resetting expiration date of provisions; and making other technical improvements.

_Be it enacted by the Legislature of West Virginia:_

That §18A-2-3 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

**ARTICLE 2. SCHOOL PERSONNEL.**

§18A-2-3. Employment of substitute teachers; employment of retired teachers as substitutes in areas of critical need and shortage; and employment of prospective employable professional personnel.

(a) The county superintendent, subject to approval of the county board, may employ and assign substitute teachers to any of the following duties:

1. Fill the temporary absence of any teacher or an unexpired school term made vacant by resignation, death, suspension or dismissal;

2. Fill a teaching position of a regular teacher on leave of absence; and

3. Perform the instructional services of any teacher who is authorized by law to be absent from class without loss of pay, providing the absence is approved by the board of education in accordance with the law.

The substitute shall be a duly certified teacher.

(b) Notwithstanding any other provision of this code to the contrary, a substitute teacher who has been assigned as a
classroom teacher in the same classroom continuously for more than one half of a grading period and whose assignment remains in effect two weeks prior to the end of the grading period, shall remain in the assignment until the grading period has ended, unless the principal of the school certifies that the regularly employed teacher has communicated with and assisted the substitute with the preparation of lesson plans and monitoring student progress or has been approved to return to work by his or her physician. For the purposes of this section, teacher and substitute teacher, in the singular or plural, mean professional educator as defined in section one, article one of this chapter.

(c) (1) The Legislature hereby finds and declares that due to a shortage of qualified substitute teachers, a compelling state interest exists in expanding the use of retired teachers to provide service as substitute teachers in areas of critical need and shortage. The Legislature further finds that diverse circumstances exist among the counties for the expanded use of retired teachers as substitutes. For the purposes of this subsection, “area of critical need and shortage for substitute teachers” means an area of certification and training in which the number of available substitute teachers in the county who hold certification and training in that area and who are not retired is insufficient to meet the projected need for substitute teachers.

(2) A person receiving retirement benefits under article seven-a, chapter eighteen of this code or who is entitled to retirement benefits during the fiscal year in which that person retired may accept employment as a critical needs substitute teacher for an unlimited number of days each fiscal year without affecting the monthly retirement benefit to which the retirant is otherwise entitled if the following conditions are satisfied:

(A) The county board adopts a policy recommended by the superintendent to address areas of critical need and shortage for substitute teachers;
(B) The policy sets forth the areas of critical need and shortage for substitute teachers in the county in accordance with the definition of area of critical need and shortage for substitute teachers set forth in subdivision (1) of this subsection;

(C) The policy provides for the employment of retired teachers as critical needs substitute teachers during the school year on an expanded basis in areas of critical need and shortage for substitute teachers as provided in this subsection;

(D) The policy provides that a retired teacher may be employed as a substitute teacher in an area of critical need and shortage for substitute teachers on an expanded basis as provided in this subsection only when no other teacher who holds certification and training in the area and who is not retired is available and accepts the substitute assignment;

(E) The policy is effective for one school year only and is subject to annual renewal by the county board;

(F) The state board approves the policy and the use of retired teachers as substitute teachers on an expanded basis in areas of critical need and shortage for substitute teachers as provided in this subsection; and

(G) Prior to employment of a retired teacher as a critical needs substitute teacher beyond the post-retirement employment limitations established by the Consolidated Public Retirement Board, the superintendent of the affected county submits to the state board in a form approved by the Consolidated Public Retirement Board and the state board, an affidavit signed by the superintendent stating the name of the county, the fact that the county has adopted a policy to employ retired teachers as substitutes to address areas of critical need and shortage, the name or names of the person or persons to be employed as a critical needs substitute pursuant to the policy, the critical need
and shortage area position filled by each person, the date that the
person gave notice to the county board of the person’s intent to
retire, and the effective date of the person’s retirement. Upon
verification of compliance with this section and the eligibility of
the critical needs substitute teacher for employment beyond the
post-retirement limit, the state board shall submit the affidavit to
the Consolidated Public Retirement Board.

(3) Any person who retires and begins work as a critical
needs substitute teacher within the same employment term shall
lose those retirement benefits attributed to the annuity reserve,
effective from the first day of employment as a retiree substitute
in that employment term and ending with the month following
the date the retiree ceases to perform service as a substitute.

(4) Retired teachers employed to perform expanded
substitute service pursuant to this subsection are considered day-
to-day, temporary, part-time employees. The substitutes are not
eligible for additional pension or other benefits paid to regularly
employed employees and may not accrue seniority.

(5) A retired teacher is eligible to be employed as a critical
needs substitute to fill a vacant position only if the retired
teacher’s retirement became effective at least twenty days before
the beginning of the employment term during which he or she is
employed as a substitute;

(6) When a retired teacher is employed as a critical needs
substitute to fill a vacant position, the county board shall
continue to post the vacant position until it is filled with a
regularly employed teacher who is fully certified or permitted
for the position.

(7) When a retired teacher is employed as a critical needs
substitute to fill a vacant position, the position vacancy shall be
posted electronically and easily accessible to prospective
employees as determined by the state board;
(8) Until this subsection is expired pursuant to subdivision (9) of this subsection, the state board, annually, shall report to the Joint Committee on Government and Finance prior to February 1 of each year. Additionally, a copy shall be provided to the Legislative Oversight Commission on Education Accountability. The report shall contain information indicating the effectiveness of the provisions of this subsection on reducing the critical need and shortage of substitute teachers including, but not limited to, the number of retired teachers, by critical need and shortage area position filled and by county, employed beyond the post-retirement employment limit established by the Consolidated Public Retirement Board, the date that each person gave notice to the county board of the person’s intent to retire, and the effective date of the person’s retirement.

(9) The provisions of this subsection shall expire on June 30, 2017.

(d) (1) Notwithstanding any other provision of this code to the contrary, each year a county superintendent may employ prospective employable professional personnel on a reserve list at the county level subject to the following conditions:

(A) The county board adopts a policy to address areas of critical need and shortage as identified by the state board. The policy shall include authorization to employ prospective employable professional personnel;

(B) The county board posts a notice of the areas of critical need and shortage in the county in a conspicuous place in each school for at least ten working days; and

(C) There are not any potentially qualified applicants available and willing to fill the position.

(2) Prospective employable professional personnel may only be employed from candidates at a job fair who have or will
graduate from college in the current school year or whose employment contract with a county board has or will be terminated due to a reduction in force in the current fiscal year.

(3) Prospective employable professional personnel employed are limited to three full-time prospective employable professional personnel per one hundred professional personnel employed in a county or twenty-five full-time prospective employable professional personnel in a county, whichever is less.

(4) Prospective employable professional personnel shall be granted benefits at a cost to the county board and as a condition of the employment contract as approved by the county board.

(5) Regular employment status for prospective employable professional personnel may be obtained only in accordance with the provisions of section seven-a, article four of this chapter.

(e) The state board annually shall review the status of employing personnel under the provisions of subsection (d) of this section and annually shall report to the Legislative Oversight Commission on Education Accountability on or before November 1 of each year. The report shall include, but not be limited to, the following:

(A) The counties that participated in the program;

(B) The number of personnel hired;

(C) The teaching fields in which personnel were hired;

(D) The venue from which personnel were employed;

(E) The place of residency of the individual hired; and

(F) The state board’s recommendations on the prospective employable professional personnel program.
CHAPTER 219

(Com. Sub. for S. B. 435 - By Senators Blair, D. Hall, Boso, Carmichael, Kirkendoll, Laird, Stollings, Trump, Williams, Prezioso, Plymale, Gaunch and Walters)

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §7-26-1, §7-26-2, §7-26-3, §7-26-4, §7-26-5 and §7-26-6, all relating to creating West Virginia Sheriffs’ Bureau of Professional Standards; purpose and composition; general powers and duties; authorizing the bureau to promulgate legislative rules; officers; promotion of training; standards for vehicles, badges and uniforms; and standards for interagency cooperation.

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 §7-26-1, §7-26-2, §7-26-3, §7-26-4, §7-26-5 and §7-26-6, all to read as follows:

ARTICLE 26. WEST VIRGINIA SHERIFFS’ BUREAU OF PROFESSIONAL STANDARDS.

§7-26-1. Creation; purpose; composition.

(a) For the purpose of providing better law enforcement for the counties of our state and for providing standardization and uniformity of services and operation of the sheriff offices throughout the state, there is hereby created the West Virginia Sheriffs’ Bureau of Professional Standards.
(b) The bureau shall be comprised of nine members, as follows:

(1) Two statutory members:

(i) The Secretary of the Department of Military Affairs and Public Safety, or his or her designee; and

(ii) The Executive Director of the West Virginia Sheriffs’ Association; and

(2) Seven members representing the public and law enforcement to be appointed by the Governor:

(i) Five sheriffs of the counties of West Virginia, to be recommended for appointment by the West Virginia Sheriffs’ Association; and

(ii) Two citizen members.

(c) Service of members of the bureau shall be conditioned upon signing all necessary nondisclosure agreements relating to confidential law-enforcement information.

(d) Each bureau member shall serve a two-year term commencing July 1, 2015, except that three of the first five sheriffs beginning their term on July 1, 2015, shall serve a one-year term expiring July 1, 2016, at which time new selections for regular two-year terms shall be made for these three positions.

(e) Any vacancy on the bureau for a sheriff position shall be filled for the remainder of the unexpired term by selection of the West Virginia Sheriffs’ Association. Any vacancy on the bureau for a citizen member position shall be filled for the remainder of the unexpired term by appointment of the Governor.
§7-26-2. General powers and duties; legislative rules.

1 The bureau shall have the power to contract and be contracted with relating to training and operation of state sheriff offices. The bureau may recommend policies and procedures to sheriff offices, including, but not limited to, those that promote cooperation between all state and local law-enforcement officers, eliminate duplication of work, promote the proper and efficient operation of the office of the sheriff and which seek to standardize operation of sheriff offices throughout the state. The bureau may propose legislative rules which adopt a standard badge, uniform and color for the motor vehicles used by the various sheriffs and deputy sheriffs of West Virginia.

§7-26-3. Bureau officers.

1 The bureau shall select a chair, vice chair and secretary from within its appointed members to keep an accurate record of the actions of the bureau and perform such duties as the bureau may prescribe.

§7-26-4. Training promoted by the bureau.

1 The bureau may contract with or agree with any state university or college in West Virginia or any other organization for a university, college or other organization to provide specialized training for sheriffs and deputies as it deems appropriate for the efficient operation of a sheriff’s office: Provided, That nothing herein shall be construed to circumvent or replace the duties or authority of the training of law-enforcement officers in this state as prescribed in article twenty-nine, chapter thirty of this code.

§7-26-5. Standard color for motor vehicles used by sheriffs; standard badges and uniforms; wearing other than standard uniform or badge; unauthorized wearing of official uniforms or badges.
(a) The bureau, by legislative rules, may adopt a standard color for the motor vehicles used by the various sheriffs and deputy sheriffs of West Virginia.

(b) For purposes of uniformity, the bureau may establish a standard badge and uniform to be worn by all sheriffs and deputy sheriffs.

(c) On and after July 1, 2015, any sheriff or deputy sheriff shall not wear any uniform or badge other than the standard uniform and badge as provided in subsection (b) of this section, except when engaged in specialized duty or undercover work, or other similar duties wherein the identity of the officer should be undisclosed: Provided, That nothing herein shall be construed to prevent members of any military, fraternal or similar organization or any other law-enforcement officer from wearing any insignia officially adopted or worn prior to the effective date of this section.

(d) Nothing in this article prevents an honorably retired sheriff or deputy sheriff from acquiring a standard uniform and insignia in accordance with section seventeen-d, article fourteen of this chapter.

§7-26-6. Standards for interagency cooperation.

(a) This section is created for the purpose of enhancing cooperative efforts undertaken by sheriff offices for the more efficient investigation and apprehension of persons who violate the criminal laws of the state of West Virginia or the United States and also to assist the victims of such crimes. The provisions of this section are meant to promote interagency communication, intelligence gathering, multijurisdictional investigations, provision of personnel to work on temporary special assignment with the personnel of another sheriff’s office and making available equipment, training, technical assistance and information systems.
(b) Sheriffs and deputy sheriffs may, from time to time, be called upon by a sheriff of another jurisdiction for assistance during incidents where the resources of that county are not adequate to meet the needs of a particular circumstance or emergency in accordance with article ten, chapter fifteen of this code. Sheriffs and deputy sheriffs are hereby authorized to provide multiagency assistance to another county pursuant to the requirements outlined in this section: Provided, That any mutual aid agreement entered into by a sheriff of any county shall remain in effect unless and until the agreement is withdrawn in writing by the sheriff of that county, regardless of whether a new sheriff of the county is elected or appointed.

(c) The provisions of this section apply only to requests for assistance made by and to authorized representatives of a sheriff’s office whose jurisdiction is involved in a mutual aid agreement pursuant to article ten, chapter fifteen of this code. The provisions of this section shall be activated only upon request by one of the aforementioned authorized representatives or their designee.

CHAPTER 220

(S. B. 559 - By Senators M. Hall and Ferns)

[Passed March 9, 2015; in effect ninety days from passage.]
[Approved by the Governor on March 24, 2015.]

AN ACT to amend and reenact §30-30-16 of the Code of West Virginia, 1931, as amended, all relating to qualifications for a provisional license to practice as a social worker; providing that certain individuals applying for a provisional license to practice social work meet the education requirement with a baccalaureate
degree; requiring the Board of Social Work to promulgate emergency rules; providing an education alternative for a provisionally licensed social worker seeking to become a licensed social worker; requiring the Secretary of the West Virginia Department of Health and Human Resources to promulgate rules; and requiring a legislative audit of the social worker license application process.

Be it enacted by the Legislature of West Virginia:

That §30-30-16 of the Code of West Virginia, 1931, as amended, be amended and reenacted, to read as follows:

ARTICLE 30. SOCIAL WORKERS.

§30-30-16. Provisional license to practice as a social worker.

1 (a) To be eligible for a provisional license to practice as a social worker, the applicant must:

3 (1) Submit an application to the board;

4 (2) Be at least eighteen years of age;

5 (3) Be of good moral character;

6 (4) Have a baccalaureate degree in a related field, as provided by legislative rule: Provided, That an individual seeking employment as a provisionally licensed social worker with the West Virginia Department of Health and Human Resources shall have a baccalaureate degree;

11 (5) Have obtained regular supervised employment, or the reasonable promise of regular supervised employment contingent upon receiving a provisional license, in a critical social work workforce shortage position, area or setting requiring a social work license: Provided, That such employment
shall not as an independent practitioner, contracted employee, sole proprietor, consultant or other nonregular employment;

(6) Have satisfied the board that he or she merits the public trust by providing the board with three letters of recommendation from persons not related to the applicant;

(7) Not be an alcohol or drug abuser, as these terms are defined in section eleven, article one-a, chapter twenty-seven of this code: Provided, That an applicant in an active recovery process, which may, in the discretion of the board, be evidenced by participation in an acknowledged substance abuse treatment and/or recovery program may be considered;

(8) Not have been convicted of a felony in any jurisdiction within five years preceding the date of application for license which conviction remains unreversed;

(9) Not have been convicted of a misdemeanor or felony in any jurisdiction if the offense for which he or she was convicted related to the practice of social work, which conviction remains unreversed; and

(10) Meet any other requirements established by the board.

(b) The board shall promulgate emergency rules, in accordance with section fifteen, article three, chapter twenty-nine-a of this code, to implement the provisions of subsection (a) of this section.

(c) A provisionally licensed social worker may become a licensed social worker, by completing the following:

(1) Be continuously employed for four years as a social worker and supervised. The board shall promulgate by legislative rule the supervision requirements;

(2) Complete twelve credit hours of core social work study from a program accredited by the council on social work
education, as defined by legislative rule, within the four-year provisional license period: *Provided,* That an individual employed as a provisionally licensed social worker with the West Virginia Department of Health and Human Resources shall satisfy this requirement upon completion of the social work training program with the West Virginia Department of Health and Human Resources. The Secretary of the West Virginia Department of Health and Human Resources shall, with the advice of the Higher Education Policy Commission, West Virginia University School of Social Work and Marshall University Department of Social Work, promulgate legislative rules, in accordance with article three, chapter twenty-nine-a of this code, to implement the provisions of this subdivision;

(3) Complete continuing education as required by legislative rule; and

(4) Pass an examination approved by the board.

(d) On or before July 1, 2020, the Legislative Auditor shall cause to be performed a performance audit of the provisional license to practice as a social worker application process and the application process by which a provisional licensee may become a licensed social worker.

CHAPTER 221

(Com. Sub. for S. B. 436 - By Senator Nohe)

[Passed February 14, 2015; in effect ninety days from passage.]
[Approved by the Governor on April 2, 2015.]
§29-5A-19, §29-5A-20 and §29-5A-24 of said code; and to amend said code by adding thereto two new sections, designated §29-5A-1a and §29-5A-3b, all relating to the State Athletic Commission; changing composition of commission; requiring that office of commission be located on the premises of Lottery Commission office; requiring Lottery Commission to provide administrative support; creating a State Athletic Commission Fund; authorizing expenditures; paying expenses of the commission; setting payment schedule; requiring promoter to ensure attendance of appointed officials; requiring the commission to give advance notice of appointed officials; permitting alternates; prohibiting the commission from performing certain functions at events; requiring the commission to follow weight classes as adopted by the Association of Boxing Commissions; increasing certain fees; providing rule-making authority; requiring the commission to follow certain unified rules for professional boxing events; requiring the commission to follow certain unified rules for mixed martial arts events; requiring the commission to follow certain rules for amateur boxing events; and requiring the commission to follow certain rules for amateur mixed martial arts events.

Be it enacted by the Legislature of West Virginia:

That §29-5A-12 of the Code of West Virginia, 1931, as amended, be repealed; that §29-5A-1, §29-5A-2, §29-5A-3, §29-5A-3a, §29-5A-5, §29-5A-6, §29-5A-8, §29-5A-17, §29-5A-19, §29-5A-20 and §29-5A-24 of said code be amended and reenacted; and that said code be amended by adding thereto two new sections, designated §29-5A-1a and §29-5A-3b, all to read as follows:

ARTICLE 5A. STATE ATHLETIC COMMISSION.

§29-5A-1. Creation of commission; members; officers; seal and rules.

1 The State Boxing Commission, heretofore created, is hereby continued and renamed the State Athletic Commission. The
commission shall consist of five persons appointed by the Governor, by and with the consent of the Senate, no more than three of whom shall belong to the same political party and no two of whom shall be residents of the same county at the same time. One member shall have at least three years of experience in the sport of boxing. One member shall have at least three years of experience in the sport of mixed martial arts. One member shall have at least three years of experience in the health care industry as a licensed physician, registered nurse, nurse practitioner or physicians assistant. Two members shall be citizen members who are not licensed under the provisions of this article and who do not perform any services related to the persons regulated under this article. The members shall serve without pay. At the expiration of the term of each member, his or her successor shall be appointed by the Governor for a term of four years. If there is a vacancy in the board, the vacancy shall likewise be filled by appointment by the Governor and the Governor shall likewise have the power to remove any commissioner at his or her pleasure. Any three members of the commission shall constitute a quorum for the exercise of the power or authority conferred upon it. The members of the commission shall at the first meeting after their appointment elect one of their number chairman of the commission, and another of their number secretary of the commission, shall adopt a seal for the commission, and shall make such rules for the administration of their office, not inconsistent herewith, as they may consider expedient; and they may hereafter amend or abrogate such rules. The concurrence of at least three commissioners is necessary to render a choice or decision of the commission.


The office of the commission shall be located on the same premises as the office of the Lottery Commission and the Lottery
Commission shall provide the commission with any necessary administrative support or management, including, but not limited to:

(1) Administrative recordkeeping;

(2) Maintaining an accurate and published registry of names, addresses and relevant information of all licensees; and

(3) Management of finances and budgetary oversight.

§29-5A-2. Powers and duties of secretary; penalty for false swearing, etc.; biennial reports of commission.

It shall be the duty of the secretary to keep a full and true record of all proceedings of said commission, to preserve all its books, documents and papers, to prepare for service such notices and other papers as may be required of him or her by the commission and to perform such other duties as the commission may prescribe; and he or she may at the direction of the commission issue subpoenas for the attendance of witnesses before the commission with the same effect as if they were issued in an action in any circuit court of the state and may administer oaths in all matters pertaining to the duties of his or her office or connected with the administration of the affairs of the commission. The subpoenas shall be on forms prescribed by the commission and served by the sheriff’s department of the county in which the individual being subpoenaed resides. Such subpoenas shall be signed by at least two members. Disobedience of such subpoena and false swearing before such secretary shall be attended by the same consequences and be subject to the same penalties as if such disobedience or false swearing occurred in an action in any circuit court of the state. The commission shall make to the Legislature biennial reports of their proceedings for the two years ending with the last day of the preceding December and may submit with such report such
recommendations pertaining to its affairs, as to it shall seem advisable.

§29-5A-3. Commission to have sole control of boxing, etc., matches; licenses; municipality not to tax boxing, etc., club.

(a) The commission has sole direction, management and control of the jurisdiction over all amateur, professional and semiprofessional boxing, sparring matches and exhibitions, or any form thereof, to be conducted, held or given within the state by any club, individual, corporation or association. As used in this article, the term “boxing” includes any fighting event that includes or permits the striking of an opponent with a closed fist, even if wrestling moves, elements of martial arts or striking an opponent with the feet are also permitted. No boxing, sparring or exhibition may be conducted, held or given within the state except pursuant to the commission’s authority and held in accordance with this article. The commission may issue and revoke the license to conduct, hold or give boxing or sparring matches or exhibitions to any club, corporation, association or individual. Every license is subject to rules the commission may prescribe. Every application for a license shall be on a blank form provided by the commission. No promoter’s license may be granted to any club, corporation, association or individual unless the signer of the application is a bona fide resident of the state of West Virginia. Upon application of the promoter’s license, the promoter shall pay a state license fee of $125 for one year. The fee is nonrefundable and shall be paid in the form of a certified check or money order issued to the Treasurer of the state of West Virginia to be deposited in the fund set forth in section three-b of this article. Nonprofit chartered and charitable organizations are exempt from this license fee for all amateur events. No municipal corporation may impose any license tax on boxing, sparring or exhibition clubs, notwithstanding the provisions of any section of the code respecting municipal taxes and licenses.
The granting of a license to a club by the commission, or the holding of a license by a club, individual, corporation or association, does not prevent the commission from canceling or revoking the license to conduct an event as provided in this section.

(b) In exercising its jurisdiction over professional and semiprofessional boxing, sparring matches and exhibitions, the commission shall follow the current unified rules of boxing adopted by the Association of Boxing Commissions and requirements to enable the proper sanctioning of all participants, referees, judges and matches or exhibitions conducted under the rules described in subdivision (1), subsection (c), section twenty-four of this article and shall cooperate fully with the Association of Boxing Commissions in order that the sanctioning be extended to state boxers. The commission shall supervise all amateur boxing conducted in this state and any such contest shall follow the amateur rules for boxing as adopted by the United States Amateur Boxing Authority. For full contact boxing events and other boxing events that follow nontraditional rules, the commission may impose any limitations or restrictions reasonably necessary to guarantee the safety of the participants and the fair and honest conducting of the matches or exhibitions and may refuse to license any event that poses an unreasonable degree of risk to the participants.

§29-5A-3a. Power to regulate mixed martial arts.

(a) The commission has sole power, direction, management and control over all professional and amateur mixed martial arts contests, matches and exhibitions, or any form thereof, to be promoted, conducted, held or given within the state.

(b) As used in this article, the term “mixed martial arts” means a combative sporting contest, the rules of which allow two competitors to attempt to achieve dominance over one
another by utilizing a variety of techniques including, but not limited to, striking, grappling and the application of submission holds.

(c) A mixed martial arts contest, match or exhibition promoted, conducted, held or given within the state shall be under the commission’s authority and be in accordance with the provision of this section. The provisions of this article that apply to boxing shall also apply to mixed martial arts as appropriate.

(d) In exercising its jurisdiction over professional and amateur mixed martial arts contests matches and exhibitions, the commission shall follow the current unified rules of mixed martial arts as adopted by the Association of Boxing Commissions to enable the proper equipment, fighting area and weight classes to ensure the safety of contestants and ensure the licensing of all participants, referees and judges, and the approval of contests, matches or exhibitions conducted under the provisions of this section.

(e) The commission may issue and revoke a license to promote, conduct, hold or give mixed martial arts contests, matches or exhibitions and may issue and revoke a license to be a contestant. Each license is subject to the provisions of this section and this article and the rules of the commission.

(f) The commission shall 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 section, including:

1. Procedures and requirements for the issuance and renewal of licenses: Provided, That the procedures and requirements may not:

   A. Limit or prohibit mixed martial arts contests, matches or exhibitions; nor
(B) Include a provision that a licensee be a West Virginia resident;

(2) Exemptions from licensure;

(3) Procedures for revoking licenses;

(4) Adopting the unified rules of mixed martial arts;

(5) A fee schedule;

(6) Limitations or restrictions necessary to guarantee the safety of the participants;

(7) The requirements for fair and honest conducting of the contests, matches or exhibitions; and

(8) Any other rules necessary to effectuate the provisions of this section.

(g) Notwithstanding the provisions of this code to the contrary, a municipality may not impose a municipal license tax under section four, article thirteen, chapter eight of this code on mixed martial arts clubs. The granting of a license to a club by the commission, or the holding of a license by a club, individual, corporation or association, does not prevent the commission from revoking the license to conduct an event as provided in this section: Provided, That nothing in this subsection limits the authority of a municipality to impose any other taxes or fees on mixed martial arts contests, matches or exhibitions pursuant to article thirteen, chapter eight of this code.


(a) All moneys collected shall be deposited in a special account in the State Treasury to be known as the State Athletic Commission Fund. Expenditures from the fund shall be for the purposes set forth in this article 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
fulfillment of the provisions of article two, chapter eleven-b of
this code: Provided, That for the fiscal year ending June 30,
2016, expenditures are authorized from collections rather than
pursuant to appropriation by the Legislature.

(b) A supplemental appropriation may be authorized by the
Legislature for administrative expenditures that exceed
collections in the fiscal years ending June 30, 2016, June 30,
2017, and June 30, 2018, or until such time as the commission
collections are sufficient to fully fund its operations.

(c) All money collected and deposited in the State Athletic
Commission Fund that remains after the commission satisfies its
administrative operating obligations shall be surplus revenue
funds available for appropriation: Provided, That the
commission may retain surplus revenue funds as long as it
allocates the surplus for a specific purpose and approves such
funds be carried forward for use in the following fiscal year prior
to the end of the fiscal year in which the revenues were
collected.

§29-5A-5. Expense of commission.

On or before December 31 of each year, the secretary of the
commission shall present to the Governor projected expenses for
the following year. Such projections shall include all expenses
and revenues of the commission and its official headquarters.
Necessary expenses incurred by the commission shall be
submitted on a standard expense form to the Treasurer of the
state of West Virginia to be paid from the State Athletic
Commission Fund except in such circumstances referred to in
subsection (b), section three-b of this article designating such
expenses be paid from the General Fund.
§29-5A-6. Payment of official in charge.

The deputy, inspector or other officials designated by the commission to be in charge of a boxing or mixed martial arts event shall be paid by the promoter at a minimum rate of $75 per day for services performed prior to any event at a weigh-in and each day of an event: *Provided,* That not more than one official designated by the commission to be in charge of a boxing or mixed martial arts event may receive compensation for services performed. If a weigh-in occurs within three hours before the boxing bouts are scheduled to begin, the deputy, inspector or other officials will be paid only one rate at a minimum of $75 for that particular night or day’s events. Judges, timekeepers and inspectors shall be paid by the promoter at a minimum rate of $50 per day for services performed prior to any event and each day of an event. Referees shall be paid by the promoter at a minimum rate of $75 per day of bouts. Payments to the officials in charge, judges, timekeepers, inspectors or referees exceeding the amounts under this section are prohibited without prior written consent of the promoter: *Provided, however,* That the commission may revise any fees paid to officials through legislative rule-making process beginning June 30, 2018, and every three years thereafter. The commission may not revoke an event permit or license for refusal to pay a fee greater than the fees in this section: *Provided further,* That approved officials are available, willing and able to work the event for the proscribed fees. Deputies, inspectors, judges, referees, timekeepers or any other officials designated by the commission to be in charge of an event shall not accept, other than the fees proscribed herein, any gift, pass or other thing of value in connection with any event.

§29-5A-8. Issuance of license; qualification for licenses; application of other provisions of chapter; hearings.

The commission may issue a license to promote, conduct or hold professional boxing, professional or amateur mixed martial
arts sparring matches and exhibitions to any person, corporation, association, club or organization eligible for a license under this chapter.

Before being granted a license, or the renewal of the license, the applicant must establish to the satisfaction of the commission that he or she:

(a) Is skilled, or has knowledge, in the profession of boxing or mixed martial arts;

(b) Is of good moral character;

(c) Is physically fit and mentally sound;

(d) Will conduct his or her business in the best interest and welfare of the public, preserving the safety and health of participants and the best interests of professional boxing or professional or amateur mixed martial arts generally;

(e) Will adhere to and comply with all the rules and regulations of the commission pertaining to the license.

In the case of a corporate applicant, these factors shall pertain to its officers, directors, principal stockholders and employees.

Every license and licensee is subject to such rules, and amendments thereof, as the commission may prescribe.

§29-5A-17. Referee and judges; appointment by commission; powers, payment.

(a) The chief official of the boxing match or exhibition shall be the referee. The referee and judges shall be appointed by the commission and shall receive from the commission a card authorizing them to act as such and no club may employ or
permit anyone to act as referee except one holding a card of
authorization from the commission. The referee has general
supervision and control over the match or exhibition and shall be
paid by the promoter a minimum of $75 for each day or night’s
services. The referee is limited to refereeing a maximum of
thirty rounds per day or night unless special consent is given by
the commission.

(b) Once appointed by the commission, the promoter bears
the responsibility for ensuring the attendance of referee and
judges at events. The commission shall provide promoters with
advance notice of the person(s) appointed as referee and judges.
A promoter, at his or her own expense, may request alternate
referee(s) and judge(s) be appointed by the commission to serve
in the event a first appointed referee or judge is unable to satisfy
the role. Under no circumstances may a member of the
commission or any employee of the commission serve as a
referee or judge for a boxing or mixed martial arts contest
conducted in this state.


No boxer shall be permitted to contest against an opponent
ten pounds heavier than himself or herself when the weight of
either contestant is less than one hundred fifty pounds. Weight
classes as adopted by the Association of Boxing Commissions
shall be utilized for all boxing and mixed martial arts contests
conducted in this state.

§29-5A-20. Licenses for contestants, referees and managers.

No professional contestant, trainer, inspector, referee or
professional manager may take part in any boxing contest or
exhibition unless holding a license from the state that is issued
by the commission upon payment of the following annual license
fee schedule: Professional contestant $25; trainer $20; inspector

(a) The commission shall propose rules for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code.

(b) The commission shall propose such rules to regulate professional and semiprofessional boxers, professional or amateur mixed martial artists, professional and semiprofessional boxing matches and exhibitions and professional or amateur mixed martial arts matches and exhibitions: Provided, That for professional boxers and boxing matches and exhibitions, the commission rules shall comply with the current unified rules of boxing as adopted by the Association of Boxing Commissions; for professional mixed martial artists and mixed martial arts matches and exhibitions, the commission rules shall comply with the current unified rules of mixed martial arts as adopted by the Association of Boxing Commissions; for amateur boxers and boxing matches or exhibitions, the commission rules shall comply with the amateur rules for boxing as adopted by the United States Amateur Boxing Authority; and for amateur mixed martial artists and mixed martial arts matches or exhibitions, the commission rules shall follow the current rules for the International Sport Karate Association, the World Kickboxing Association or the International Sport Combat Federation at any given match or exhibition. For full contact boxing and other boxing events that follow nontraditional rules, rules guaranteeing
the safety of the participants and the fair and honest conducting
of the matches or exhibitions are authorized.

(c) The commission shall propose separate rules for amateur
boxers and amateur boxing, sparring matches and exhibitions as
follows:

Rules which comply with the requirements of the rules of the
current United States Amateur Boxing Authority to the extent
that any boxer complying with them will be eligible to
participate in any state, national or international boxing match
sanctioned by the current United States Amateur Boxing
Authority or the International Amateur Boxing Association.

CHAPTER 222

(H. B. 2523 - By Delegate Ashley)

[Passed February 27, 2015; in effect ninety days from passage.]
[Approved by the Governor on March 11, 2015.]
(a) The superintendent shall create, appoint and equip the State Police which shall consist of the number of troops, districts and detachments required for the proper administration of the State Police. Each troop, district or detachment shall be composed of the number of officers and members the superintendent determines are necessary to meet operational needs and are required for the efficient operation of the State Police. The superintendent shall establish the general organizational structure of the State Police by interpretive rule in accordance with the provisions of article three, chapter twenty-nine-a of this code. The superintendent shall provide adequate facilities for the training of all members of the State Police and shall prescribe basic training requirements for newly enlisted members. He or she shall also provide advanced or in-service training from time to time for all members of the State Police. The superintendent shall hold entry-level training classes for other law-enforcement officers in the state without cost to those officers, except actual expenses for food, lodging and school supplies. The superintendent may hold advanced levels of training classes for other law-enforcement officers in the state for a reasonable daily fee per student not to exceed $100.

(b) There is hereby created in the State Treasury a special revenue account, which shall be an interest bearing account, to be known as the Academy Training and Professional Development Fund. The special revenue account shall consist of training fees, any appropriations that may be made by the Legislature, income from the investment of moneys held in the special revenue account and all other sums available for deposit to the special revenue account from any source, public or private. No expenditures for purposes of this section are authorized from collections except in accordance with the provisions of article three, chapter twelve of this code and upon fulfillment of the provisions set forth in article two, chapter eleven-b of this code. Any balance remaining in the special revenue account at the end of any state fiscal year does not revert
to the General Revenue Fund but remains in the special revenue account and shall be used solely in a manner consistent with this article. The superintendent is authorized to expend funds from the account to offset operational and training costs; for building maintenance and repair, for purchases and for equipment repair or replacement for the West Virginia State Police Academy; and to defray necessary expenses incidental to those and other activities associated with law-enforcement training.

(c) There is hereby created in the State Treasury a special revenue account, which shall be an interest bearing account, to be known as the State Police 100th Anniversary Fund. The special revenue account shall consist of merchandise sales, any appropriations that may be made by the Legislature, income from the investment of moneys held in the special revenue account and all other sums available for deposit to the special revenue account from any source, public or private. No expenditures for purposes of this section are authorized from collections except in accordance with the provisions of article three, chapter twelve of this code and upon fulfillment of the provisions set forth in article two, chapter eleven-b of this code. Any balance remaining in the special revenue account at the end of any state fiscal year does not revert to the General Revenue Fund but remains in the special revenue account and shall be used solely in a manner consistent with this article. The superintendent is authorized to expend funds from the account to offset costs for the 100th Anniversary celebration; for purchasing 100th Anniversary commemorative merchandise, equipment, vehicles; and to defray necessary expenses incidental to those and other activities associated with the 100th Anniversary of the West Virginia State Police. This fund shall expire on December 31, 2019 and remaining funds shall be transferred to the Academy Training and Professional Development Fund.
AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §17-16E-1, §17-16E-2 and §17-16E-3, all relating to implementation of a state safety oversight program pursuant to a mandate per 49 U. S. C. §5329; designating the Division of Public Transit as the State Safety Oversight Agency; specifying powers and duties of the State Safety Oversight Agency; and requiring rulemaking.

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 §17-16E-1, §17-16E-2 and §17-16E-3, all to read as follows:

ARTICLE 16E. STATE SAFETY OVERSIGHT PROGRAM.

§17-16E-1. Purpose.

The purpose of this article is to establish authority for a State Safety Oversight Agency to oversee the safety for fixed guideway public transportation systems in West Virginia not regulated by the Federal Railroad Administration and to accomplish compliance with 49 U. S. C. §5329.

§17-16E-2. Designated oversight agency; prohibitions.

(a) The Division of Public Transit created by article sixteen-c of this chapter is hereby designated the State Safety Oversight
Agency. The Division of Public Transit shall have the powers
and duties assigned to the State Safety Oversight Agency.

(b) The State Safety Oversight Agency shall be financially
and legally independent from any public transportation entity
that the agency oversees. Any public transportation agency is
prohibited from providing funds to the State Safety Oversight
Agency. The agency may not employ any individual who is also
responsible for the administration of rail fixed guideway public
transportation programs.


(a) The State Safety Oversight Agency has the following
powers and duties:

(1) Oversee all safety aspects of the rail fixed guideway
public transportation system pursuant to 49 U. S. C. §5329,
including:

(A) The development, implementation and application of the
public transportation system safety plan;

(B) Inspection, investigations or hearings involving all
aspects of the facility and its operations including infrastructure,
documentation, including electronic data, and personnel and may
conduct or cause to be conducted such inspections,
investigations or hearings; and

(C) Respond to information obtained through inspection,
investigations, hearings, other incidents or occurrences of
significance to the State Safety Oversight Agency by the
issuance of directives, appropriate suspension of service,
withholding of funding or the imposition of civil or criminal
penalties;

(2) Enforce federal and state laws on rail fixed guideway
public transportation safety;
(3) Determine, in consultation with the Federal Transit Administration, an appropriate staffing level for the State Safety Oversight Agency that is commensurate with the number, size and complexity of the rail fixed guideway transit systems in the state;

(4) Require that its employees and other designated personnel who are responsible for rail fixed guideway public transportation safety oversight are qualified to perform such functions through appropriate training, including successful completion of the public transportation safety certification training program established under 49 U. S. C. §5329(c);

(5) Coordinate all enforcement responsibilities with other governmental authorities as needed;

(6) Review, revise, approve, oversee and enforce the public transportation agency safety plan required under 49 U. S. C. §5329(d), including the implementation by the rail fixed guideway public transportation agency of such plan;

(7) Investigate and enforce the safety of rail fixed guideway public transportation systems;

(8) Audit, at least once every three years, the compliance of the rail fixed guideway public transportation systems in the state with the public transportation agency safety plan required under 49 U. S. C. §5329(d);

(9) Provide an annual status report on the safety of the state’s rail fixed guideway public transportation systems to the Federal Transit Administration, the Governor, the Legislature and the governing body of the rail fixed guideway public transportation system;

(10) Prepare and provide to the Governor and Legislature drafts of proposed legislation that may be necessary for the state to remain compliant with the requirements of 49 U. S. C. §5329.
(b) The State Safety Oversight Agency shall propose rules for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code to accomplish the purpose of this article, including rules concerning the implementation of the duties set forth in subsection (a) of this section and the inspection and enforcement powers that are reasonably necessary to ensure compliance with 49 U. S. C. §5329.

CHAPTER 224

(H. B. 2880 - By Delegate(s) Stansbury, Rohrbach, Householder, R. Phillips, Arvon, Howell, Moffatt, Shott, Ellington, E. Nelson and Campbell)

[Amended and again passed March 18, 2015; as a result of the objections of the Governor; in effect ninety days from passage.]

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

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §62-15A-1, §62-15A-2 and §62-15A-3, all relating to creating an addiction treatment pilot program; defining terms; requiring the Secretary of the Department of Health and Human Resources to create an addiction treatment pilot program; permitting the department to choose the Supreme Court of Appeals of West Virginia to participate in the pilot program; permitting department to choose the Division of Corrections to participate in the pilot program; permitting the department to limit the number of participants; requiring additional support services if medication-assisted treatment is provided; setting forth pilot program requirements; setting forth a participant’s requirements; requiring a report; and requiring the report to be submitted to certain entities.
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 §62-15A-1, §62-15A-2 and §62-15A-3, all to read as follows:

ARTICLE 15A. ADDICTION TREATMENT PILOT PROGRAM.


As used in this article:

(1) “Addiction service provider” means a person licensed by this state to provide addiction and substance abuse services to persons addicted to opioids.

(2) “Adult drug court judge” means a circuit court judge operating a drug court as defined in subsection (a), section one, article fifteen.

(3) “Adult Drug Court Program” means an adult treatment court established by the Supreme Court of Appeals of West Virginia pursuant to this article.

(4) “Circuit court” means those courts set forth in article two, chapter fifty-one of this code.

(5) “Court” means the Supreme Court of Appeals of West Virginia.

(6) “Department” means the Department of Health and Human Resources.

(7) “Division” means the Division of Corrections.

(8) “LS/CMI assessment criteria” means the level of service/case management inventory which is an assessment tool that measures the risk and need factors of adult offenders.
“Medication-assisted treatment” means the use of medications, in combination with counseling and behavioral therapies, to provide a whole-patient approach to the treatment of substance use disorders.

“Prescriber” means an individual currently licensed and authorized by this state to prescribe and administer prescription drugs in the course of their professional practice.


(a) The secretary of the department shall conduct a pilot program to provide addiction treatment, including medication-assisted treatment, to persons who are offenders within the criminal justice system, eligible to participate in a program, and selected under this section to be participants in the pilot program because of their dependence on opioids.

(b) In the case of the medication-assisted treatment provided under the pilot program, a drug may be used only if it has been approved by the United States Food and Drug Administration for use in the prevention of relapse to opioid dependence and in conjunction with psychosocial support, provided as part of the pilot program, appropriate to patient needs.

(c) The department may invite the Court and the division to participate in the pilot program.

(d) The department may limit the number of participants.

(e) (1) If the Court’s Adult Drug Court Program is selected to participate, it shall select persons who are participants in the Adult Drug Court program, who have been clinically assessed and diagnosed with opioid addiction. Participants must either be eligible for medicaid, or eligible for a state, federal or private grant or other funding sources that provides for the full payment of

(9) “Medication-assisted treatment” means the use of medications, in combination with counseling and behavioral therapies, to provide a whole-patient approach to the treatment of substance use disorders.

(10) “Prescriber” means an individual currently licensed and authorized by this state to prescribe and administer prescription drugs in the course of their professional practice.
of the treatment necessary to participate in the pilot program. After being enrolled in the pilot program, participants shall comply with all requirements of the Adult Drug Court Program.

(2) Treatment may be provided under this subsection only by a treatment provider who is approved by the Court or Adult Drug Court Program consistent with the policies and procedures for Adult Drug Courts developed by the Court. In serving as a treatment provider, a treatment services provider shall do all of the following:

(A) Provide treatment based on an integrated service delivery model that consists of the coordination of care between a prescriber and the addiction services provider;

(B) Conduct any necessary additional professional, comprehensive substance abuse and mental health diagnostic assessments of persons under consideration for selection as pilot program participants to determine whether they would benefit from substance abuse treatment and monitoring;

(C) Determine, based on the assessments described in paragraph (B), the treatment needs of the participants served by the treatment provider;

(D) Develop, for the participants served by the treatment provider, individualized goals and objectives;

(E) Provide access to the non-narcotic, long-acting antagonist therapy included in the pilot program’s medication-assisted treatment; and

(F) Provide other types of therapies, including psychosocial therapies, for both substance abuse and any disorders that are considered by the treatment provider to be co-occurring disorders.
(f) (1) If the Division of Corrections is selected to participate, the division shall select persons, within the custody of the Division of Corrections, who are determined to be at high risk using the LS/CMI assessment criteria into the pilot program. Participants must either be eligible for medicaid, or eligible for a state, federal or private grant or other funding sources that provides for the full payment of the treatment necessary to participate in the pilot program. After being enrolled in the pilot program, a participant shall comply with all requirements of the treatment program.

(2) A participant shall:

(A) Receive treatment based on an integrated service delivery model that consists of the coordination of care between a prescriber and the addiction services provider;

(B) Submit to professional, comprehensive substance abuse and mental health diagnostic assessments of persons under consideration for selection as pilot program participants to determine whether they would benefit from substance abuse treatment and monitoring;

(C) Receive, based on the assessments described in paragraph (B), the treatment needs of the participants served by the treatment provider;

(D) Submit to the treatment provider, individualized goals and objectives;

(E) Receive the non-narcotic, long-acting antagonist therapy included in the pilot program’s medication-assisted treatment; and

(F) Participate in other types of therapies, including psychosocial therapies, for both substance abuse and any disorders that are considered by the treatment provider to be co-occurring disorders.

(a) The department shall prepare a report.

(b) The report shall include:

(1) Number of participants;
(2) Number of participants successfully completing the program;
(3) Offenses committed or offense convicted of;
(4) Recidivism Rate;
(5) Potential cost saving or expenditures;
(6) A statistical analysis which determines the effectiveness of the program; and
(7) Any other information the reporting entity finds pertinent.

(b) The Court and the division should provide any information necessary to the department to complete the report.

(c) The department shall submit the report to:

(1) The Governor;
(2) The Chief Justice of the Supreme Court of Appeals of West Virginia;
(3) The Joint Committee on Government and Finance; and
(4) The Commissioner of the Division of Corrections.

(d) The report shall be submitted by July 1, 2017 and shall include twelve months of data from the beginning of the administration of the program.
CHAPTER 225

(H. B. 2535 - By Delegate(s) Longstreth, Ferro, Caputo, Rowan, O’Neal, Ashley, Hamrick, L. Phillips, Fleischauer, Skinner and P. Smith)

[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 §18-2-40; to amend said code by adding thereto a new section, designated §18B-1B-7; and to amend said code by adding thereto a new article, designated §27-6-1, all relating to creating “Jamie’s Law”; requiring a public middle and high school administrator to disseminate and provide opportunities to discuss suicide prevention awareness information to all middle and high school students; requiring each public and private institution of higher education to develop and implement a policy to advise students and staff on suicide prevention programs available on and off campus; requiring each public and private institution of higher education to provide all incoming students with information about depression and suicide prevention resources available to students; requiring the posting of certain information on the website of the public and private institutions of higher education, the Higher Education Policy Commission, and the Council for Community and Technical College Education; and requiring the Bureau for Behavioral Health and Health Facilities to post on its website suicide prevention awareness information.

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 §18-2-40; that said code be amended by adding thereto a new section, designated §18B-1B-7; that
said code be amended by adding thereto a new article, designated §27-6-1; all to read as follows:

CHAPTER 18. EDUCATION.

ARTICLE 2. STATE BOARD OF EDUCATION.

§18-2-40. Suicide prevention awareness training; dissemination of information.

(a) This section, section seven, article one-b, chapter eighteen-b of this code and section one, article six, chapter twenty-seven of this code shall be known as “Jamie’s Law”.

(b) On or before September 1, 2015 and each year thereafter, a public middle and high school administrator shall disseminate and provide opportunities to discuss suicide prevention awareness information to all middle and high school students. The information may be obtained from the Bureau for Behavioral Health and Health Facilities or from a commercially developed suicide prevention training program approved by the State Board of Education in consultation with the bureau to assure the accuracy and appropriateness of the information.

CHAPTER 18B. HIGHER EDUCATION.

ARTICLE 1B. HIGHER EDUCATION POLICY COMMISSION.

§18B-1B-7. Student mental health policies; suicide prevention.

(a) Each public and private institution of higher education shall develop and implement a policy to advise students and staff on suicide prevention programs available on and off campus that includes, but is not limited to:

(1) Crisis intervention access, which includes information for national, state and local suicide prevention hotlines;
(2) Mental health program access, which provides information on the availability of local mental health clinics, student health services and counseling services;

(3) Multimedia application access, which includes crisis hotline contact information, suicide warning signs, resources offered and free-of-cost applications;

(4) Student communication plans, which consist of creating outreach plans regarding educational and outreach activities on suicide prevention; and

(5) Post intervention plans which include creating a strategic plan to communicate effectively with students, staff and parents after the loss of a student to suicide.

(b) Each public and private institution of higher education shall provide all incoming students with information about depression and suicide prevention resources available to students. The information provided to students shall include available mental health services and other support services, including student-run organizations for individuals at risk of or affected by suicide.

(c) The information prescribed by subsection (a), subdivisions (1) through (4) of this section shall be posted on the website of each institution of higher education in this state.

(d) Any applicable free-of-cost prevention materials or programs shall be posted on the websites of the public and private institutions of higher education, the Higher Education Policy Commission, and the West Virginia Council for Community and Technical College Education.

CHAPTER 27. MENTALLY ILL PERSONS.

ARTICLE 6. SUICIDE PREVENTION AND AWARENESS.
§27-6-1. Dissemination of information.

(a) The Bureau for Behavioral Health and Health Facilities shall, on or before August 1, 2015, post on its website suicide prevention awareness information, to include recognizing the warning signs of a suicide crisis. The website shall include information related to suicide prevention training opportunities offered by the bureau or an agency recognized by the bureau as a training provider.

(b) The bureau may assist the public middle and high school administrators in providing suicide prevention information to students in the public middle and high schools.

(c) The bureau shall annually review, for adequacy and completeness, the materials or programs posted on the websites of the institutions of higher education as required by section seven, article one-b, chapter eighteen-b of this code.

CHAPTER 226

(S. B. 502 - By Senators Sypolt, Ferns, Gaunch, Kirkendoll, Leonhardt, Plymale, Prezioso and Stollings)

[Passed March 12, 2015; in effect ninety days from passage.]
[Approved by the Governor on March 24, 2015.]

AN ACT to amend and reenact §22-3-11 of the Code of West Virginia, 1931, as amended, relating generally to surface mining and reclamation; bonding; special reclamation tax and funds; prohibited acts; bond liability; specifying retrospective eligibility of a mine operator to receive a tax credit for performing reclamation or remediation at a bond forfeiture site which
otherwise would have been reclaimed using funds from the Special Reclamation Fund or Special Reclamation Water Trust Fund; and specifying limitations.

Be it enacted by the Legislature of West Virginia:

That §22-3-11 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 3. SURFACE COAL MINING AND RECLAMATION ACT.

§22-3-11. Bonds; amount and method of bonding; bonding requirements; special reclamation tax and funds; prohibited acts; period of bond liability.

(a) After a surface mining permit application has been approved pursuant to this article, but before a permit has been issued, each operator shall furnish a penal bond, on a form to be prescribed and furnished by the secretary, payable to the state of West Virginia and conditioned upon the operator faithfully performing all of the requirements of this article and of the permit. The penal amount of the bond shall be not less than $1,000 nor more than $5,000 for each acre or fraction of an acre: Provided, That the minimum amount of bond furnished for any type of reclamation bonding shall be $10,000. The bond shall cover: (1) The entire permit area; or (2) that increment of land within the permit area upon which the operator will initiate and conduct surface mining and reclamation operations within the initial term of the permit. If the operator chooses to use incremental bonding, as succeeding increments of surface mining and reclamation operations are to be initiated and conducted within the permit area, the operator shall file with the secretary an additional bond or bonds to cover the increments in accordance with this section: Provided, however, That once the operator has chosen to proceed with bonding either the entire
permit area or with incremental bonding, the operator shall continue bonding in that manner for the term of the permit.

(b) The period of liability for bond coverage begins with issuance of a permit and continues for the full term of the permit plus any additional period necessary to achieve compliance with the requirements in the reclamation plan of the permit.

(c) (1) The form of the bond shall be approved by the secretary and may include, at the option of the operator, surety bonding, collateral bonding (including cash and securities), establishment of an escrow account, self bonding or a combination of these methods. If collateral bonding is used, the operator may elect to deposit cash or collateral securities or certificates as follows: Bonds of the United States or its possessions of the Federal Land Bank or of the Homeowners’ Loan Corporation; full faith and credit general obligation bonds of the state of West Virginia or other states and of any county, district or municipality of the state of West Virginia or other states; or certificates of deposit in a bank in this state, which certificates shall be in favor of the department. The cash deposit or market value of the securities or certificates shall be equal to or greater than the penal sum of the bond. The secretary shall, upon receipt of any deposit of cash, securities or certificates, promptly place the same with the Treasurer of the state of West Virginia whose duty it is to receive and hold the deposit in the name of the state in trust for the purpose for which the deposit is made when the permit is issued. The operator making the deposit is entitled, from time to time, to receive from the State Treasurer, upon the written approval of the secretary, the whole or any portion of any cash, securities or certificates so deposited, upon depositing with him or her in lieu thereof cash or other securities or certificates of the classes specified in this subsection having value equal to or greater than the sum of the bond.

(2) The secretary may approve an alternative bonding system if it will: (A) Reasonably assure that sufficient funds will be
available to complete the reclamation, restoration and abatement provisions for all permit areas which may be in default at any time; and (B) provide a substantial economic incentive for the permittee to comply with all reclamation provisions.

(d) The secretary may accept the bond of the applicant itself without separate surety when the applicant demonstrates to the satisfaction of the secretary the existence of a suitable agent to receive service of process and a history of financial solvency and continuous operation sufficient for authorization to self insure.

(e) It is unlawful for the owner of surface or mineral rights to interfere with the present operator in the discharge of the operator’s obligations to the state for the reclamation of lands disturbed by the operator.

(f) All bond releases shall be accomplished in accordance with the provisions of section twenty-three of this article.

(g) (1) The Special Reclamation Fund previously created is continued. The Special Reclamation Water Trust Fund is created within the state treasury into and from which moneys shall be paid for the purpose of assuring a reliable source of capital to reclaim and restore water treatment systems on forfeited sites. The moneys accrued in both funds, any interest earned thereon and yield from investments by the State Treasurer or West Virginia Investment Management Board are reserved solely and exclusively for the purposes set forth in this section and section seventeen, article one of this chapter. The funds shall be administered by the secretary who is authorized to expend the moneys in both funds for the reclamation and rehabilitation of lands which were subjected to permitted surface mining operations and abandoned after August 3, 1977, where the amount of the bond posted and forfeited on the land is less than the actual cost of reclamation, and where the land is not eligible for abandoned mine land reclamation funds under article two of
this chapter. The secretary shall develop a long-range planning
process for selection and prioritization of sites to be reclaimed
so as to avoid inordinate short-term obligations of the assets in
both funds of such magnitude that the solvency of either is
jeopardized. The secretary may use both funds for the purpose of
designing, constructing and maintaining water treatment systems
when they are required for a complete reclamation of the
affected lands described in this subsection. The secretary may
also expend an amount not to exceed ten percent of the total
annual assets in both funds to implement and administer the
provisions of this article and, as they apply to the Surface Mine
Board, articles one and four, chapter twenty-two-b of this code.

(2) (A) A tax credit shall be granted against the tax imposed
by subsection (i) of this section to any mine operator who
performs reclamation or remediation at a bond forfeiture site
which otherwise would have been reclaimed using funds from
the Special Reclamation Fund or Special Reclamation Water
Trust Fund The credit authorized pursuant to this subdivision is
retroactive and may be claimed for reclamation or remediation
performed on or after January 1, 2012: Provided, That for
reclamation or remediation performed prior to July 13, 2013, no
tax credit may be granted unless a written application for the tax
credit was submitted to the Tax Commissioner prior to
September 1, 2014. The amount of credit shall be determined as
provided in this section.

(B) The amount of a reclamation tax credit granted under
this subsection shall be equal to the amount that the Tax
Commissioner determines, based on the project costs, as shown
in the records of the secretary, that would have been spent from
the Special Reclamation Fund or Special Reclamation Water
Trust Fund to accomplish the reclamation or remediation
performed by the mine operator, including expenditures for
water treatment.
(C) To claim the credit, the mine operator shall, from time to time, file with the Tax Commissioner a written application seeking the amount of the credit earned. Within thirty days of receipt of the application, the Tax Commissioner shall issue a certification of the amount of tax credit, if any, to be allocated to the eligible taxpayer. Should the amount of the credit certified be less than the amount applied for, the Tax Commissioner shall set forth in writing the reason for the difference. Should no certification be issued within the thirty-day period, the application will be deemed certified. Any decision by the Tax Commissioner is appealable pursuant to the provisions of the West Virginia Tax Procedure and Administration Act set forth in article ten, chapter eleven of the code. Applications for certification of the proposed tax credit shall contain the information and be in the detail and form as required by the Tax Commissioner.

(h) The Tax Commissioner may promulgate rules for legislative approval pursuant to the provisions of article three, chapter twenty-nine-a of this code to carry out the purposes of this subdivision two, subsection (g) of this section.

(i) (1) Rate, deposits and review.

(A) For tax periods commencing on and after July 1, 2009, every person conducting coal surface mining shall remit a special reclamation tax of fourteen and four-tenths cents per ton of clean coal mined, the proceeds of which shall be allocated by the secretary for deposit in the Special Reclamation Fund and the Special Reclamation Water Trust Fund.

(B) For tax periods commencing on and after July 1, 2012, the rate of tax specified in paragraph (A) of this subdivision is discontinued and is replaced by the rate of tax specified in this paragraph. For tax periods commencing on and after July 1, 2012, every person conducting coal surface mining shall remit a special reclamation tax of twenty-seven and nine-tenths cents
per ton of clean coal mined, the proceeds of which shall be allocated by the secretary for deposit in the Special Reclamation Fund and the Special Reclamation Water Trust Fund. Of that amount, fifteen cents per ton of clean coal mined shall be deposited into the Special Reclamation Water Trust Fund.

(C) The tax shall be levied upon each ton of clean coal severed or clean coal obtained from refuse pile and slurry pond recovery or clean coal from other mining methods extracting a combination of coal and waste material as part of a fuel supply.

(D) Beginning with the tax period commencing on July 1, 2009, and every two years thereafter, the special reclamation tax shall be reviewed by the Legislature to determine whether the tax should be continued: Provided, That the tax may not be reduced until the Special Reclamation Fund and Special Reclamation Water Trust Fund have sufficient moneys to meet the reclamation responsibilities of the state established in this section.

(2) In managing the special reclamation program, the secretary shall: (A) Pursue cost-effective alternative water treatment strategies; and (B) conduct formal actuarial studies every two years and conduct informal reviews annually on the Special Reclamation Fund and Special Reclamation Water Trust Fund.

(3) Prior to December 31, 2008, the secretary shall:

(A) Determine the feasibility of creating an alternate program, on a voluntary basis, for financially sound operators by which those operators pay an increased tax into the Special Reclamation Fund in exchange for a maximum per-acre bond that is less than the maximum established in subsection (a) of this section;

(B) Determine the feasibility of creating an incremental bonding program by which operators can post a reclamation
bond for those areas actually disturbed within a permit area, but
for less than all of the proposed disturbance and obtain
incremental release of portions of that bond as reclamation
advances so that the released bond can be applied to approved
future disturbance; and

(C) Determine the feasibility for sites requiring water
reclamation by creating a separate water reclamation security
account or bond for the costs so that the existing reclamation
bond in place may be released to the extent it exceeds the costs
of water reclamation.

(4) If the secretary determines that the alternative program,
the incremental bonding program or the water reclamation
account or bonding programs reasonably assure that sufficient
funds will be available to complete the reclamation of a forfeited
site and that the Special Reclamation Fund will remain fiscally
stable, the secretary is authorized to propose legislative rules in
accordance with article three, chapter twenty-nine-a of this code
to implement an alternate program, a water reclamation account
or bonding program or other funding mechanisms or a
combination thereof.

(j) This special reclamation tax shall be collected by the Tax
Commissioner in the same manner, at the same time and upon
the same tonnage as the minimum severance tax imposed by
article twelve-b, chapter eleven of this code is collected:
Provided, That under no circumstance shall the special
reclamation tax be construed to be an increase in either the
minimum severance tax imposed by said article or the severance
tax imposed by article thirteen of said chapter.

(k) Every person liable for payment of the special
reclamation tax shall pay the amount due without notice or
demand for payment.

(l) The Tax Commissioner shall provide to the secretary a
quarterly listing of all persons known to be delinquent in
payment of the special reclamation tax. The secretary may take
the delinquencies into account in making determinations on the
issuance, renewal or revision of any permit.

(m) The Tax Commissioner shall deposit the moneys
collected with the Treasurer of the state of West Virginia to the
credit of the Special Reclamation Fund and Special Reclamation
Water Trust Fund.

(n) At the beginning of each quarter, the secretary shall
advise the Tax Commissioner and the Governor of the assets,
excluding payments, expenditures and liabilities, in both funds.

(o) To the extent that this section modifies any powers,
duties, functions and responsibilities of the department that may
require approval of one or more federal agencies or officials in
order to avoid disruption of the federal-state relationship
involved in the implementation of the federal Surface Mining
Control and Reclamation Act, 30 U. S. C. §1270 by the state, the
modifications will become effective upon the approval of the
modifications by the appropriate federal agency or official.

CHAPTER 227

(Com. Sub. for H. B. 2968 - By Mr. Speaker (Mr. Armstead),
Ashley, Bates, Perry, Kessinger, Hicks, Cooper, Shott,
McCuskey and Arvon)

[Passed March 12, 2015; in effect ninety days from passage.]
[Approved by the Governor on March 27, 2015.]

AN ACT to amend and reenact §11-3-9 of the Code of West Virginia,
1931, as amended, relating to exempting from property tax certain
real properties in this state owned by nonprofit youth organizations
and built at a cost of at least $100 million; specifying restrictions affecting the property; specifying permitted activities; requiring property owner to pay one and one quarter percent of gross revenues from specified uses, operations and activities; specifying how one and one quarter percent fee is administered, specifying how monies derived from one and one quarter percent fee are distributed; requiring reports; and defining terms.

Be it enacted by the Legislature of West Virginia:

That §11-3-9 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 3. ASSESSMENTS GENERALLY.

§11-3-9. Property exempt from taxation.

1 (a) All property, real and personal, described in this subsection, and to the extent limited by this section, is exempt from taxation:

4 (1) Property belonging to the United States, other than property permitted by the United States to be taxed under state law;

7 (2) Property belonging exclusively to the state;

8 (3) Property belonging exclusively to any county, district, city, village or town in this state and used for public purposes;

10 (4) Property located in this state belonging to any city, town, village, county or any other political subdivision of another state and used for public purposes;

13 (5) Property used exclusively for divine worship;

16 (6) Parsonages and the household goods and furniture pertaining thereto;
(7) Mortgages, bonds and other evidence of indebtedness in the hands of bona fide owners and holders hereafter issued and sold by churches and religious societies for the purposes of securing money to be used in the erection of church buildings used exclusively for divine worship or for the purpose of paying indebtedness thereon;

(8) Cemeteries;

(9) Property belonging to, or held in trust for, colleges, seminaries, academies and free schools, if used for educational, literary or scientific purposes, including books, apparatus, annuities and furniture;

(10) Property belonging to, or held in trust for, colleges or universities located in West Virginia, or any public or private nonprofit foundation or corporation which receives contributions exclusively for such college or university, if the property or dividends, interest, rents or royalties derived therefrom are used or devoted to educational purposes of such college or university;

(11) Public and family libraries;

(12) Property used for charitable purposes and not held or leased out for profit;

(13) Property used for the public purposes of distributing electricity, water or natural gas or providing sewer service by a duly chartered nonprofit corporation when such property is not held, leased out or used for profit;

(14) Property used for area economic development purposes by nonprofit corporations when the property is not leased out for profit;

(15) All real estate not exceeding one acre in extent, and the buildings on the real estate, used exclusively by any college or
university society as a literary hall, or as a dormitory or clubroom, if not used with a view to profit, including, but not limited to, property owned by a fraternity or sorority organization affiliated with a university or college or property owned by a nonprofit housing corporation or similar entity on behalf of a fraternity or sorority organization affiliated with a university or college, when the property is used as residential accommodations or as a dormitory for members of the organization;

(16) All property belonging to benevolent associations not conducted for private profit;

(17) Property belonging to any public institution for the education of the deaf, intellectually disabled or blind or any hospital not held or leased out for profit;

(18) Houses of refuge and mental health facility or orphanage;

(19) Homes for children or for the aged, friendless or infirm not conducted for private profit;

(20) Fire engines and implements for extinguishing fires, and property used exclusively for the safekeeping thereof, and for the meeting of fire companies;

(21) All property on hand to be used in the subsistence of livestock on hand at the commencement of the assessment year;

(22) Household goods to the value of $200, whether or not held or used for profit;

(23) Bank deposits and money;

(24) Household goods, which for purposes of this section means only personal property and household goods commonly
found within the house and items used to care for the house and its surrounding property, when not held or used for profit;

(25) Personal effects, which for purposes of this section means only articles and items of personal property commonly worn on or about the human body or carried by a person and normally thought to be associated with the person when not held or used for profit;

(26) Dead victuals laid away for family use;

(27) All property belonging to the state, any county, district, city, village, town or other political subdivision or any state college or university which is subject to a lease purchase agreement and which provides that, during the term of the lease purchase agreement, title to the leased property rests in the lessee so long as lessee is not in default or shall not have terminated the lease as to the property;

(28) Personal property, including vehicles that qualify for a farm use exemption certificate pursuant to section two, article three, chapter seventeen-a of this code and livestock, employed exclusively in agriculture, as defined in article ten, section one of the West Virginia Constitution: Provided, That this exemption only applies in the case of such personal property used on a farm or farming operation that annually produces for sale agricultural products, as defined in rules of the Tax Commissioner;

(29) Real property owned by a nonprofit organization whose primary purpose is youth development by means of adventure, educational or recreational activities for young people, which real property contains a facility built with the expenditure of not less than $100 million that is capable of supporting additional activities within the region or the state and which is leased or used to generate revenue for the nonprofit organization whether or not the property is used by the nonprofit organization for its
nonprofit purpose, subject to the requirements, limitations and
conditions set forth in subsection (h) of this section; and

(30) Any other property or security exempted by any other
provision of law.

(b) Notwithstanding the provisions of subsection (a) of this
section, no property is exempt from taxation which has been
purchased or procured for the purpose of evading taxation
whether temporarily holding the same over the first day of the
assessment year or otherwise.

(c) Real property which is exempt from taxation by
subsection (a) of this section shall be entered upon the assessor’s
books, together with the true and actual value thereof, but no
taxes may be levied upon the property or extended upon the
assessor’s books.

(d) Notwithstanding any other provisions of this section, this
section does not exempt from taxation any property owned by,
or held in trust for, educational, literary, scientific, religious or
other charitable corporations or organizations, including any
public or private nonprofit foundation or corporation existing for
the support of any college or university located in West Virginia,
unless such property, or the dividends, interest, rents or royalties
derived therefrom, is used primarily and immediately for the
purposes of the corporations or organizations.

(e) The Tax Commissioner shall, by issuance of rules,
provide each assessor with guidelines to ensure uniform
assessment practices statewide to effect the intent of this section.

(f) Inasmuch as there is litigation pending regarding
application of this section to property held by fraternities and
sororities, amendments to this section enacted in the year 1998
shall apply to all cases and controversies pending on the date of
such enactment.
(g) The amendment to subdivision (27), subsection (a) of this section, passed during the 2005 regular session of the Legislature, shall apply to all applicable lease purchase agreements in existence upon the effective date of the amendment.

(h) Nonprofit youth organization exemption - Limitations, Conditions, Collection and administration of one and one quarter percent fee, limitations and distribution of monies.

(1) The exemption from ad valorem taxation provided pursuant to the provisions of subdivision (29), subsection (a) of this section does not apply to a property owned by a nonprofit organization otherwise qualifying for the exemption but which property or facilities are used for-profit or outside the primary purpose of the owner which result in unrelated business taxable income as defined by Section 512 of the Internal Revenue Code of 1986, as amended, unless the income is generated by an activity upon which the one and one quarter percent fee authorized by subdivision (2) of this section is applied as provided in subdivision (3) of this subsection.

(2) The owner of real property exempt from ad valorem taxation under subdivision (29), subsection (a) of this section shall pay an amount equal to one and one quarter percent of the gross revenues the owner receives in accordance with this subsection. For purposes of this subsection, “gross revenues” means the gross amount received by the owner as payment for use of the property or the facilities thereon.

(3) Gross revenues derived from the following facilities, uses, activities and operations are subject to a fee of one and one quarter percent of such gross revenues:

(A) Gross revenues derived from the use of lodging and campground facilities by persons participating in meetings and multiday spectator sports or multiday recreational, celebratory
or ceremonial events held on-site where on-site lodging or camping is offered as part of the program. For purposes of this section the term “meeting” means, and is limited to, a gathering, assembly or conference of two or more persons who have deliberately convened at a single specific location at a single specified time and date for a common specific purpose.

(B) Gross revenues derived from any retail store located at the facility that is open only to those persons who are attending meetings, spectator sports, recreational, celebratory or ceremonial events held on-site at the facility.

(C) Gross revenues derived from operations of gift shops at a welcome or information center located adjacent to a public highway operated by the nonprofit organization which is open to the general public.

(D) Gross revenues derived from the leasing of zip-lines, canopy tours, wheeled sports and climbing facilities used by the general public on a for-profit basis (i) Under a written agreement with a licensed commercial outfitter operating a business utilizing zip-lines, canopy tours, wheeled sports or climbing areas of a similar nature in the same or an adjacent county where the facilities are located; and (ii) When the property or facilities are used as part of a training or advanced experience offered by the licensed commercial outfitter.

(E) Gross revenues derived from the use or operation of zip-lines, canopy tours, wheeled sports facilities or activities, climbing facilities or activities and the use or operation of other sporting facilities on the exempt property that are leased on a for-profit basis for spectator events, such as concerts, spectator sporting events or exhibitions or similar mass gathering events.

(F) Gross revenues derived from leases or agreements for use of the property for meetings and multi-day spectator sports or
(4) Notwithstanding any other provision of this section to the contrary, programs or activities occurring on the property or its facilities held in conjunction with a government organization or sponsored by other nonprofit organizations serving youth, veterans, military services, public service agencies including, fire, police, emergency and search and rescue services, government agencies, schools and universities, health care providers and similar organizations or groups which are designed to provide opportunities for learning or training in the areas of leadership, character education, science, technology, engineering, arts and mathematics (STEAM) programs, physical challenges, sustainability, conservation and outdoor learning shall be considered a charitable or nonprofit use for the purposes of this section and not subject to the one and one quarter percent fee.

(5) Notwithstanding any other provision of this section to the contrary, activities open to the public through individual visitor passes allowing tours and access to the property and its facilities for the purpose of viewing or participating in demonstrations, programs and facilities providing information and experiences consistent with the owner’s nonprofit purposes where zip-lines, canopy tours, wheeled sports or climbing facilities are merely components of the demonstrations, programs and facilities used shall be considered a charitable or nonprofit use for the purposes of this section and not subject to the one and one quarter percent fee: Provided, That such individual visitor passes may not include the rental or use of on-site overnight lodging or camping facilities.

(6) Administration –

(A) The sheriff of the county wherein the majority of the acreage of the property is located as specified in the deed to such
property, shall collect, on a monthly basis, all monies derived from the fee of one and one quarter percent of the gross revenues imposed under this subsection.

(B) The sheriff of the county wherein the majority of the acreage of the property is located as specified in the deed to such property, shall prescribe such forms and schedules as may be necessary for the efficient, accurate, and expeditious payment and reporting of the one and one quarter percent fee specified in this subsection on gross revenues.

(C) The sheriff of the county wherein the majority of the acreage of the property is located as specified in the deed to such property, shall administer the fee imposed under this subsection, including refunds and adjustments.

(D) Payment, administration and compliance of fee payers and administrators shall be subject to audit by the Office of Chief Inspector.

(E) All monies so collected, net of refunds and adjustments, shall be paid into a special account in the State Treasury, which is hereby created, and the amount thereof shall be distributed and paid annually, by the State Treasurer, on October 1 of each year, into the funds and to the distributees specified in subdivision (7) of this subsection in the amounts specified therein.

(7) Distribution –

(A) Twenty-five percent of monies so collected, net of refunds and adjustments, shall be paid annually to the Tourism Promotion Fund established pursuant to section twelve, article two, chapter five-b of this code.

(B) Twenty-five percent of monies so collected, net of refunds and adjustments, shall be paid annually to the sheriff of the county where the property is located which, but for the
exemption provided in subdivision (29), subsection (a) of this
section, would be entitled to receive ad valorem taxes on the
property. The sheriff shall treat all such payments in the same
manner as payments in lieu of taxes, and such payments are
subject to the adjustment mandated under section twelve, article
nine-a, chapter eighteen of this code. For properties located in
more than one county, the amount paid to the sheriff of the
county shall be in proportion to the total number of acres located
in each county at the close of the fiscal year, as specified in the
deed to such property.

(C) Fifty percent of monies so collected, net of refunds and
adjustments, shall be divided equally and paid annually into
separate accounts established and maintained by the sheriffs of
the county or counties wherein the property is located and the
sheriffs of any other county that is within the jurisdiction of the
same economic development authority as the county or counties
wherein the property is located to be used solely for the
establishment and delivery of a science, technology, engineering,
art and math (STEAM) program in conjunction with the owner
of the exempt property. The funds shall be divided equally for
use in each county and the programs must be approved by the
respective county superintendents of schools. Expenditures from
the accounts shall be authorized by the county superintendent of
schools.

(8) If lodging is furnished as part of a retreat, meeting, or
multiday spectator sport or event being held on-site wherein on-
site lodging or camping is offered as part of the program, any
applicable hotel occupancy tax and state and local consumers
sales and service tax and use tax shall be paid based upon the
actual location of such lodging.

(9) If merchants are allowed to do business on the property,
the owner or lessee of the property shall offer space to local
merchants on terms at least as favorable as are offered to other
merchants.
(10) For the purposes of this subsection, owner includes the owner holding record title to the property and its affiliates to the extent they are commonly owned, controlled or have the power to appoint the governing body of the affiliate.

(11) The Tourism Commission shall include in its annual report submitted to the Governor and the Legislature a summary of funds paid into the Tourism Promotion Fund and recommendations pertaining to the administration of this section.

(12) This subsection may not be construed to prohibit the owner of property otherwise subject to this section from having portions of the property severed from the remainder of the property, assessed and taxed as if nonexempt and thereafter conducting business on such property the same as any other nonexempt property: Provided, That the area of property to be severed shall be approved by the county commission wherein the property lies so as to include in the severance all property substantially supporting the for profit or business activity giving rise to the specific purpose of the severance and excluding all property entitled to the continued benefits of this Act.

(i) To assure the implementation of subsection (h) of this section does not harm local and regionally located businesses by use of the tax exempt facility in a manner that cause unfair competition and unreasonable loss of revenue to those businesses, studies shall be periodically conducted to assure that further legislation is in order regarding the uses of the tax exempt facility. The County commission of any county where such a property is located shall report to the Joint Committee on Government and Finance by the first day of January every five years after the effective date of this section. The report shall include information on any unfair business competition resulting from the establishment of the non-profit status, and include a report of the costs and benefits to its county of the tax exemption and associated fee, including an audit of that county’s use of the
net revenues. The West Virginia University Bureau of Business and Economic Research in coordination of the Center for Business and Economic Research at Marshall University, by January 1, two thousand twenty, shall undertake a study and report to the Committee, the economic impact of this tax exemption and fee to the county and that region of the state, and make any recommendations regarding the benefits and disadvantages for continuing the provision of this tax exemption and fee, included, but not limited to, the impacts to other small and large businesses in the county, the costs to the county has incurred as a result of use of the facility, and any other relevant data that the universities may deem relevant.

CHAPTER 228

(H. B. 2877 - By Delegate(s) Miller, Williams, Faircloth, Rowe, Hill, Stansbury, Espinosa and Westfall)

[Passed March 14, 2015; in effect ninety days from passage.]
[Approved by the Governor on April 1, 2015.]

AN ACT to amend and reenact §11-10-5t and §11-10-5z of the Code of West Virginia, 1931, as amended; and to amend and reenact §11-13V-7 of said code, all relating to electronic filing of tax returns and electronic funds transfers in payment of taxes; and raising to $25,000 the tax liability threshold amount at which taxpayers must file returns electronically or pay by electronic funds transfers.

Be it enacted by the Legislature of West Virginia:

That §11-10-5t and §11-10-5z of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that §11-13V-7 of said code be amended and reenacted, all to read as follows:
ARTICLE 10. TAX PROCEDURE AND ADMINISTRATION ACT.

§11-10-5t. Payment by electronic fund transfers.

(a) The term “electronic funds transfer” means and includes automated clearinghouse debit, automated clearinghouse credit, wire transfer and any other means recognized by the Tax Commissioner for payment of taxes.

(b) The Tax Commissioner may prescribe by emergency rules, administrative notices, forms and instructions, and the procedures and criteria to be followed by certain taxpayers in order to pay taxes by electronic funds transfer methods.

(c) The rules shall set forth the following:

(1) Acceptable indicia of timely payment;

(2) Which type of electronic filing method or methods a particular type of taxpayer may or may not use;

(3) Which types of taxes to which electronic filing requirements apply for any given tax year and implementation dates: Provided, That the type of tax to which electronic funds transfer requirements apply during the first tax year is personal income tax withholding by employers;

(4) The dollar amount of tax liability per year which, when exceeded, requires or permits electronic funds transfer. Unless and until a legislative rule is promulgated or this section is amended, no person may be required to pay any tax by electronic funds transfer if the amount owed for the tax during the preceding year was less than $120,000: Provided, That for tax years beginning on or after January 1, 2016, no person may be required to pay any tax by electronic funds transfer if the amount owed for the tax during the preceding tax year was less than $25,000;
(5) What, if any, exceptions are allowable, and alternative methods of payment to be used for any exceptions;

(6) Procedures for making voluntary electronic funds transfer payments;

(7) Any provisions needed to implement the civil penalty created by this section; and

(8) Any other provisions necessary to ensure the timely implementation of electronic funds transfer payments.

(d) In addition to any other additions and penalties which may be applicable, there is a civil penalty for failing or refusing to use an appropriate electronic funds transfer method when required to do so. The amount of this penalty is three percent of the total tax liability which is or was to be paid by electronic funds transfer for any tax for which electronic funds transfer methods are required to be used by the taxpayer.

(e) The provisions of this section are not intended to affect the provisions of other sections of this chapter concerning filing of returns or any other provisions which are not in direct conflict with this section.

(f) The State Treasurer shall adopt any procedures or rules necessary or convenient for implementing electronic funds transfers of tax payments authorized by this section and rules adopted by the Tax Commissioner. The treasurer shall draft any procedures and rules adopted in consultation with the Tax Commissioner and the procedures and rules may not conflict with this section or rules adopted by the Tax Commissioner.

(g) The provisions of this section become effective on or after January 1, 1998.
§11-10-5z. Electronic filing for certain persons.

(a) (1) For tax years beginning on or after January 1, 2009, any person required to file a return for a tax administered under the provisions of this article and who had total annual remittance for any single tax equal to or greater than $100,000 during the immediately preceding taxable year shall file electronically all returns for all taxes administered under this article.

(2) For tax years beginning on or after January 1, 2011, any person required to file a return for a tax administered under the provisions of this article and who had total annual remittance for any single tax equal to or greater than $10,000 during the immediately preceding tax year shall file electronically all returns for all taxes administered under this article.

(3) For tax years beginning on or after January 1, 2015:

(i) For returns that are required to be filed prior to January 1, 2016, any person required to file a return for a tax administered under the provisions of this article and who had total annual remittance for any single tax equal to or greater than $10,000 during the immediately preceding tax year shall file electronically all such returns for all taxes administered under this article.

(ii) For returns that are required to be filed on or after January 1, 2016, any person required to file a return for a tax administered under the provisions of this article and who had total annual remittance for any single tax equal to or greater than $25,000 during the immediately preceding tax year shall file electronically all returns for all taxes administered under this article.

(b) The Tax Commissioner shall implement the provisions of this section using any combination of notices, forms, instructions and rules that he or she determines necessary. All
rules shall be promulgated pursuant to article three, chapter twenty-nine-a of this code.

ARTICLE 13V. WORKERS’ COMPENSATION DEBT REDUCTION ACT.

§11-13V-7. Periodic installment payments of taxes imposed by this article; exceptions.

(a) General rule. — Except as provided in subsection (b) of this section, taxes levied by this article are due and payable in periodic installments as follows:

(1) Tax of $50 or less per month. — If a person’s aggregate annual tax liability under this article and article thirteen-a of this chapter is reasonably expected to be $50 or less per month, no installment payments of tax are required under this section during that taxable year.

(2) Tax of more than $1,000 per month. — For taxpayers whose aggregate estimated tax liability under this article and article thirteen-a of this chapter exceeds $1,000 per month, the tax is due and payable in monthly installments on or before the last day of the month following the month in which the tax accrued: Provided, That the installment payment otherwise due under this subdivision on or before June 30 each year shall be remitted to the Tax Commissioner on or before June 15 each year. When this subdivision applies, the taxpayer shall, on or before the due date specified in this subdivision, make out an estimate of the tax for which the taxpayer is liable for the preceding month, sign the estimate and mail it together with a remittance, in the form prescribed by the Tax Commissioner, of the amount of tax due to the office of the Tax Commissioner: Provided, however, That the installment payment otherwise due under this paragraph on or before June 30 each year shall be remitted to the Tax Commissioner on or before June 15.
(3) **Tax of $1,000 per month or less.** — For taxpayers whose estimated tax liability under this article is $1,000 per month or less, the tax is due and payable in quarterly installments on or before the last day of the month following the quarter in which the tax accrued. When this subdivision applies, the taxpayer shall, on or before the last day of the fourth, seventh and tenth months of the taxable year, make out an estimate of the tax for which the taxpayer is liable for the preceding quarter, sign the same and mail it together with a remittance, in the form prescribed by the Tax Commissioner, of the amount of tax due to the office of the Tax Commissioner.

(b) **Exception.** — Notwithstanding the provisions of subsection (a) of this section, the Tax Commissioner, if he or she considers it necessary to ensure payment of the tax, may require the return and payment under this section for periods of shorter duration than those prescribed in subsection (a) of this section.

(c) **Remittance by electronic funds transfer.** — When the taxpayer’s annual aggregate liability for tax under this article and article thirteen-a of this chapter exceeds $50,000 for the prior tax year, payments of estimated tax required by this article and article thirteen-a during the then current tax year shall be by electronic funds transfer, in accordance with rules of the Tax Commissioner and rules of the State Treasurer, except as otherwise permitted by the Tax Commissioner: *Provided,* That for tax years beginning on or after January 1, 2016, when the taxpayer’s annual aggregate liability for tax under this article and article thirteen-a of this chapter exceeds $25,000 for the prior tax year, payments of estimated tax required by this article and article thirteen-a during the then current tax year shall be by electronic funds transfer, in accordance with rules of the Tax Commissioner and rules of the State Treasurer, except as otherwise permitted by the Tax Commissioner.
AN ACT to amend and reenact §11-10-17a of the Code of West Virginia, 1931, as amended, relating to the determination of the adjusted rate of interest by the Tax Commissioner for the administration of tax deficiencies and overpayments for tax years beginning after December 31, 2016.

Be it enacted by the Legislature of West Virginia:

That §11-10-17a of the Code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 10. WEST VIRGINIA TAX PROCEDURE AND ADMINISTRATION ACT.

§11-10-17a. Determination of rate of interest.

1 (a) In general. — The annual rate of interest established under this section shall be such adjusted rate as is established by the Tax Commissioner under subsections (b) and (c): Provided,

4 That for taxable years beginning prior to January 1, 2017, such annual rate shall not be less than eight percent per annum.

6 (b) Adjustments of interest rate prior to January 1, 2017.

7 (1) Establishment of adjusted rate. — If the adjusted prime rate charged by banks (rounded to the nearest full percent):
(A) During the six-month period ending on September 30, of any calendar year; or

(B) During the six-month period ending on the thirty-first day of March of any calendar year, differs from the interest rate in effect under this section on either such date, respectively, then the Tax Commissioner shall establish, within fifteen days after the close of the applicable six-month period, an adjusted rate of interest equal to such adjusted prime rate.

(2) Effective date of adjustment. — Any such adjusted rate of interest established under paragraph (1) shall become effective:

(A) On January 1, of the succeeding year in the case of an adjustment attributable to paragraph (1)(A) above; and on

(B) The first day of July of the same year in the case of an adjustment attributable to paragraph (1)(B).

(c) Adjustment of interest rate after December 31, 2016. — Each year, the Tax Commissioner shall fix the adjusted rate to equal the adjusted prime rate charged by banks (rounded to the nearest hundredth of a percent) plus three percentage points per annum as of the first business day of December, for which an adjusted prime rate is determined, in the preceding year and it shall be effective January 1.

(d) Definition of “adjusted prime rate.” — For purposes of subsections (b) and (c), the term “adjusted prime rate charged by banks” means the average predominant prime rate quoted by commercial banks to large businesses, as determined by the board of Governors of the Federal Reserve System.

(e) Application of change in interest rate.

(1) To deficiencies. — The interest rate in effect at the time of assessment or when the payment of delinquent tax is made
Interest on moneys owed by the taxpayer shall be the sum of the interest amounts calculated for each year or part thereof from the date prescribed for payment (determined without regard to any extensions) to the date the payment is made using the interest rate in effect for each respective year or part thereof.

(2) To overpayments. — The interest rate in effect at the time an overpayment of tax is refunded, or a credit therefor is established, by the Tax Commissioner, shall not be applied retroactively to the date the claim for refund or credit was filed with the Tax Commissioner. Interest on moneys owed to taxpayers shall be the sum of the interest amounts calculated for each year or part thereof from date the claim for refund or credit was filed with the Tax Commissioner until date the refund is paid or credit therefor is established (such dates determined as provided in section seventeen) using the interest rate in effect for each respective year or part thereof.

CHAPTER 230

(S. B. 332 - By Senator M. Hall)

[Passed March 10, 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 section, designated §11-10-27, relating to administrative fees for the Tax Division of the Department of Revenue; specifying imposition and retention of fees by the Tax Division of the Department of Revenue from specified taxes and fees and from any interest, additions to tax and penalties related thereto; specifying imposition and retention of fees in payment for
Tax Division services in the collection, distribution and administration of taxes for state and local departments, divisions, subdivisions and agencies; authorizing reimbursements to the Tax Division for transaction fees imposed by the Enterprise Resource Planning System; authorizing fee increases by legislative rule; specifying limitations; and specifying effective date.

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 §11-10-27, to read as follows:

ARTICLE 10. WEST VIRGINIA TAX PROCEDURE AND ADMINISTRATION ACT.

§11-10-27. Administrative fees.

(a) Administrative fee for the collection of money for other state departments, divisions, agencies and institutions.

The Tax Commissioner may retain one percent of the taxes and fees, including one percent of any interest, additions to tax and penalties related thereto, collected by the Tax Division of the Department of Revenue that are to be deposited into any of the following special revenue funds: The Special Reclamation Fund, the Special Reclamation Water Trust Fund, the Mining and Reclamation Operations Fund, the Solid Waste Reclamation and Environmental Response Fund, the Solid Waste Enforcement Fund, the Solid Waste Management Board Reserve Fund, the Recycling Assistance Fund, the Closure Cost Assistance Fund, the Solid Waste Planning Fund, the Hazardous Waste Emergency Response Fund, the Law-Enforcement Fund, the Gas Field Highway Repair and Horizontal Drilling Waste Study Fund, the Waste Coal-Producing Counties Fund, the Coalbed Methane Gas Distribution Fund, the Eligible Acute Care Provider Enhancement Account, the West Virginia Affordable Housing Trust Fund, the special revenue account in the State
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Treasury to be appropriated by the Legislature for the purposes of the Division of Forestry and the special medical school fund in the State Treasury to be used solely for the construction, maintenance and operation of a four-year school of medicine, dentistry and nursing. For all taxes collected by the Tax Division of the Department of Revenue that are to be deposited into any other special revenue funds, the Tax Commissioner may retain, as an administrative fee, one percent of the taxes and fees, including one percent of any interest, additions to tax and penalties related thereto: Provided, That the Legislature has not expressly and specifically authorized a fee in a provision of this code other than this section, to be collected by, retained by or dedicated to, the Tax Commissioner for the collection, distribution or administration of a specified tax or fee. The amount retained by the Tax Commissioner is a fee for the services provided by the Tax Division in the administration, distribution or collection, or any combination thereof, of those taxes and fees.

(b) Administrative fee for the collection, administration and distribution of money for local or municipal government, any other governmental subdivision or other public entity or public corporation, where a fee is not otherwise provided for elsewhere in this code.

For all taxes or fees collected by the Tax Division of the Department of Revenue on behalf of any local, county or municipal government, or any other governmental subdivision or public entity or public corporation, including, but not limited to, sanitary districts, water districts and solid waste authorities, the Tax Commissioner may retain, as an administrative fee, one percent of the taxes and fees, including one percent of any interest, additions to tax and penalties related thereto: Provided, That the Legislature has not expressly and specifically authorized a fee in a provision of this code other than this section, to be collected by, retained by or dedicated to, the Tax
Commissioner for the collection, distribution or administration of a specified tax or fee. For purposes of this section the term “taxes and fees” includes any interest, additions to tax and penalties relating to any taxes or fees.

(c) Transaction fees imposed by the Enterprise Resource Planning System may be recovered by the Tax Division of the Department of Revenue.

If the Tax Division of the Department of Revenue incurs a fee imposed by the Enterprise Resource Planning System, which is developed, implemented and managed by the West Virginia Enterprise Resource Planning Board under article six-d, chapter twelve of this code, relating to a transaction of any entity or person with the Tax Division of the Department of Revenue, then the Tax Commissioner may charge that entity or person a fee in the amount that the Tax Division of the Department of Revenue incurred or will incur relating to that transaction.

(d) Fees collected under this section shall be retained in a revolving fund for the use of the Tax Division of the Department of Revenue.

Any fees collected or retained under subsections (a), (b) and (c) of this section shall be held in a revolving fund for the use of the Tax Division of the Department of Revenue for general tax administration, which fund is hereby created in the State Treasury and designated the “Tax Administration Services Fund”. Expenditures from the fund are authorized from collections. Moneys remaining in such fund on the last day of the fiscal year in excess of $3 million shall be transferred to the General Revenue Fund. The amount remaining in the fund after such transfer, if any, is retained for use by the Tax Division of the Department of Revenue.

(e) Fee increases. – Any state agency may increase any administrative fee that the agency is authorized to impose by
West Virginia statute or West Virginia rule by proposing a legislative rule, for legislative approval, in accordance with the provisions of article three, chapter twenty-nine-a of this code, imposing the increase: Provided, That no such increase shall be made within three years of the initial imposition of the fee or within three years of the most recent revision of a statute or rule that increases or decreases the fee.

(f) Effective date. – The provisions of this section become effective January 1, 2016.

AN ACT to amend and reenact §11-13-3 of the Code of West Virginia, 1931, as amended, relating to exempting nonprofit public utility companies from the West Virginia Business and Occupation Tax.

Be it enacted by the Legislature of West Virginia:

That §11-13-3 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 13. BUSINESS AND OCCUPATION TAX.

§11-13-3. Exemptions; annual exemption and periods thereof.

(a) Monthly exemption. — For any tax imposed under the provisions of this article with respect to any period beginning on or after July 1, 1985, there is an exemption in every case of $41.67 per month in amount of tax computed under the
provisions of this article. Only one exemption is allowed to any one person, whether the person exercises one or more privileges taxable hereunder.

(b) **Exemptions from tax.** — The provisions of this article do not apply to:

1. Insurance companies which pay the State of West Virginia a tax upon premiums: *Provided,* That the exemption does not extend to that part of the gross income of insurance companies which is received for the use of real property, other than property in which any company maintains its office or offices, in this state, whether the income is in the form of rentals or royalties;

2. Nonprofit cemetery companies organized and operated for the exclusive benefit of their members;

3. Fraternal societies, organizations and associations organized and operated for the exclusive benefit of their members and not for profit: *Provided,* That the exemption does not extend to that part of the gross income arising from the sale of alcoholic liquor, food and related services of fraternal societies, organizations and associations which are licensed as private clubs under the provisions of article seven, chapter sixty of this code;

4. Corporations, associations and societies organized and operated exclusively for religious or charitable purposes and production credit associations, organized under the provisions of the federal Farm Credit Act of 1933;

5. Any credit union organized under the provisions of chapter thirty-one of this code or any other chapter of this code: *Provided,* That the exemptions of this section do not apply to corporations or cooperative associations organized under the provisions of article four, chapter nineteen of this code;
AN ACT to amend and reenact §11-15-30 of the Code of West Virginia, 1931, as amended, relating to the dedication and deposit of certain tax proceeds; reducing the amount of sales tax proceeds annually dedicated to the School Major Improvement Fund by $2,000,004 for the fiscal year 2016; reducing the amount of sales tax proceeds annually dedicated to the School Construction Fund by $6 million for the fiscal years 2016; and making stylistic changes.

Be it enacted by the Legislature of West Virginia:

That §11-15-30 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:
ARTICLE  15. CONSUMERS SALES AND SERVICE TAX.


1 (a) The proceeds of the tax imposed by this article shall be deposited in the General Revenue Fund of the state except as otherwise expressly provided in this article.

4 (b) School Major Improvement Fund. — After the payment or commitment of the proceeds or collections of this tax for the purposes set forth in section sixteen of this article, on the first day of each month, there shall be dedicated monthly from the collections of this tax, the amount of $416,667.00 and the amount dedicated shall be deposited on a monthly basis into the School Major Improvement Fund created pursuant to section six, article nine-d, chapter eighteen of this code: Provided, That for fiscal year 2016, the amount so dedicated and deposited annually under this subdivision is reduced by $2,000,004, and the amount so dedicated and deposited monthly is reduced to $250,000.00 for fiscal year 2016. This reduction shall cease for fiscal years beginning after June 30, 2016.

17 (c) School Construction Fund. — After the payment or commitment of the proceeds or collections of this tax for the purposes set forth in section sixteen of this article:

20 (1) On the first day of each month, there shall be dedicated monthly from the collections of this tax the amount of $1,416,667.00 and the amount dedicated shall be deposited into the School Construction Fund created pursuant to section six, article nine-d, chapter eighteen of this code.

25 (2) Except as provided in subdivision (3) of this subsection, effective July 1, 1998, there shall be dedicated from the collections of this tax an amount equal to any annual difference that may occur between the debt service payment for the 1997 fiscal year for school improvement bonds issued under the Better School Building Amendment under the provisions of article
nine-c, chapter eighteen of this code and the amount of funds
required for debt service on these school improvement bonds in
any current fiscal year thereafter. This annual difference shall be
prorated monthly, added to the monthly deposit in subdivision
(1) of this subsection and deposited into the School Construction
Fund created pursuant to section six, article nine-d, chapter
eighteen of this code.

(3) After June 30, 2015, the provisions of subdivision (2) of
this subsection shall have no force or effect. After June 30, 2015,
there shall be dedicated from the collections of this tax the
amount of $27,216,996 annually. This amount shall be prorated
monthly and added to the monthly deposit in subdivision (1) of
this subsection and deposited into the School Construction Fund
created pursuant to section six, article nine-d, chapter eighteen
of this code: Provided, That for fiscal year 2016, the amount so
dedicated annually under this subdivision is reduced by $6
million. This reduction shall cease for fiscal years beginning
after June 30, 2016.

(d) Prepaid wireless calling service. — The proceeds or
collections of this tax from the sale of prepaid wireless service
are dedicated as follows:

(1) The tax imposed by this article upon the sale of prepaid
wireless calling service is in lieu of the wireless enhanced 911
fee imposed by section six-b, article six, chapter twenty-four of
this code.

(2) Within thirty days following the end of each calendar
month, the Tax Commissioner shall remit to the Public Service
Commission the proceeds of the tax imposed by this article upon
the sale of prepaid wireless calling service in the preceding
month, determined as follows: For purposes of determining the
amount of those monthly proceeds, the Tax Commissioner shall
use an amount equal to one twelfth of the wireless enhanced 911
fees collected from prepaid wireless calling service under section
six-b, article six, chapter twenty-four of this code during the period beginning on July 1, 2007, and ending on June 30, 2008. Beginning on July 1, 2009, the Tax Commissioner shall adjust this amount annually by an amount proportionate to the increase or decrease in the enhanced wireless 911 fees paid to the Public Service Commission under said section during the previous twelve months. The Public Service Commission shall receive, deposit and disburse the proceeds in the manner prescribed in said section.

CHAPTER 233

(H. B. 2114 - By Mr. Speaker, (Mr. Armstead) and Delegate Miley) [By Request of the Executive]

[Passed February 17, 2015; in effect from passage.] [Approved by the Governor on February 25, 2015.]

AN ACT to amend and reenact §11-21-9 of the Code of West Virginia, 1931, as amended, relating to updating the meaning of federal adjusted gross income and certain other terms used in the West Virginia Personal Income Tax Act; and specifying effective dates.

Be it enacted by the Legislature of West Virginia:

That §11-21-9 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE  21. WEST VIRGINIA PERSONAL INCOME TAX.


(a) Any term used in this article has the same meaning as when used in a comparable context in the laws of the United
States relating to income taxes, unless a different meaning is clearly required. Any reference in this article to the laws of the United States means the provisions of the Internal Revenue Code of 1986, as amended, and any other provisions of the laws of the United States that relate to the determination of income for federal income tax purposes. All amendments made to the laws of the United States after December 31, 2013, but prior to January 1, 2015, shall be given effect in determining the taxes imposed by this article to the same extent those changes are allowed for federal income tax purposes, whether the changes are retroactive or prospective, but no amendment to the laws of the United States made on or after January 1, 2015, may be given any effect.

(b) **Medical savings accounts.** — The term “taxable trust” does not include a medical savings account established pursuant to section twenty, article fifteen, chapter thirty-three of this code or section fifteen, article sixteen of that chapter. Employer contributions to a medical savings account established pursuant to those sections are not wages for purposes of withholding under section seventy-one of this article.

(c) **Surtax.** — The term “surtax” means the twenty percent additional tax imposed on taxable withdrawals from a medical savings account under section twenty, article fifteen, chapter thirty-three of this code and the twenty percent additional tax imposed on taxable withdrawals from a medical savings account under section fifteen, article sixteen of that chapter which are collected by the Tax Commissioner as tax collected under this article.

(d) **Effective date.** — The amendments to this section enacted in the year 2015 are retroactive to the extent allowable under federal income tax law. With respect to taxable years that began prior to January 1, 2016, the law in effect for each of those years shall be fully preserved as to that year, except as provided in this section.
(e) For purposes of the refundable credit allowed to a low income senior citizen for property tax paid on his or her homestead in this state, the term “laws of the United States” as used in subsection (a) of this section means and includes the term “low income” as defined in subsection (b), section twenty-one of this article and as reflected in the poverty guidelines updated periodically in the federal register by the U.S. Department of Health and Human Services under the authority of 42 U.S.C. § 9902(2).

CHAPTER 234

(H. B. 2115 - By Mr. Speaker, (Mr. Armstead) and Delegate Miley)
[By Request of the Executive]

[Passed February 17, 2015; in effect from passage.]
[Approved by the Governor on February 25, 2015.]

AN ACT to amend and reenact §11-24-3 of the Code of West Virginia, 1931, as amended, relating to updating the meaning of the term “federal taxable income” and certain other terms used in the West Virginia Corporation Net Income Tax Act; and specifying effective dates.

Be it enacted by the Legislature of West Virginia:

That §11-24-3 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 24. CORPORATION NET INCOME TAX.

§11-24-3. Meaning of terms; general rule.
(a) Any term used in this article has the same meaning as when used in a comparable context in the laws of the United States relating to federal income taxes, unless a different meaning is clearly required by the context or by definition in this article. Any reference in this article to the laws of the United States means the provisions of the Internal Revenue Code of 1986, as amended, and any other provisions of the laws of the United States that relate to the determination of income for federal income tax purposes. All amendments made to the laws of the United States after December 31, 2013, but prior to January 1, 2015, shall be given effect in determining the taxes imposed by this article to the same extent those changes are allowed for federal income tax purposes, whether the changes are retroactive or prospective, but no amendment to the laws of the United States made on or after January 1, 2015, shall be given any effect.

(b) The term “Internal Revenue Code of 1986” means the Internal Revenue Code of the United States enacted by the federal Tax Reform Act of 1986 and includes the provisions of law formerly known as the Internal Revenue Code of 1954, as amended, and in effect when the federal Tax Reform Act of 1986 was enacted that were not amended or repealed by the federal Tax Reform Act of 1986. Except when inappropriate, any reference in any law, executive order or other document:

(1) To the Internal Revenue Code of 1954 includes a reference to the Internal Revenue Code of 1986; and

(2) To the Internal Revenue Code of 1986 includes a reference to the provisions of law formerly known as the Internal Revenue Code of 1954.

(c) Effective date. — The amendments to this section enacted in the year 2015 are retroactive to the extent allowable under federal income tax law. With respect to taxable years that
began prior to January 1, 2016, the law in effect for each of those years shall be fully preserved as to that year, except as provided in this section.

CHAPTER 235

(S. B. 583 - By Senators M. Hall, Walters, Blair, Boso, Facemire, Laird, Mullins, Plymale, Prezioso, Stollings, Sypolt and Takubo)

[Passed March 13, 2015; in effect July 1, 2015.]
[Approved by the Governor on March 26, 2015.]

AN ACT to amend and reenact §11-27-11 of the Code of West Virginia, 1931, as amended, relating to increasing the tax rate on providers of certain nursing facility services; and providing effective dates for the tax rate.

Be it enacted by the Legislature of West Virginia:

That §11-27-11 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 27. HEALTH CARE PROVIDER TAXES.

§11-27-11. Imposition of tax on providers of nursing facility services, other than services of intermediate care facilities for individuals with an intellectual disability.

(a) Imposition of tax. — For the privilege of engaging or continuing within this state in the business of providing nursing facility services, other than those services of intermediate care
facilities for individuals with an intellectual disability, there is levied and shall be collected from every person rendering such service an annual broad-based health care-related tax: Provided, That hospitals which provide nursing facility services may adjust nursing facility rates to the extent necessary to compensate for the tax without first obtaining approval from the Health care Authority: Provided, however, That the rate adjustment is limited to a single adjustment during the initial year of the imposition of the tax which adjustment is exempt from prospective review by the Health Care Authority and further which is limited to an amount not to exceed the amount of the tax which is levied against the hospital for the provision of nursing facility services pursuant to this section. The Health Care Authority shall retroactively review the rate increases implemented by the hospitals under this section during the regular rate review process. A hospital which fails to meet the criteria established by this section for a rate increase exempt from prospective review is subject to the penalties imposed under article twenty-nine-b, chapter sixteen of the code.

(b) Rate and measure of tax. — The tax imposed in subsection (a) of this section is five and one-half percent of the gross receipts derived by the taxpayer from furnishing nursing facility services in this state, other than services of intermediate care facilities for individuals with an intellectual disability. This rate shall be increased to five and seventy-two one hundredths percent of the gross receipts received or receivable by providers of nursing facility services on and after October 1, 2015, and shall again be decreased to five and one-half percent of the gross receipts received or receivable by providers of nursing services after June 30, 2016.

(c) Definitions. —

(1) “Gross receipts” means the amount received or receivable, whether in cash or in kind, from patients, third-party
payors and others for nursing facility services furnished by the
provider, including retroactive adjustments under reimbursement
agreements with third-party payors, without any deduction for
any expenses of any kind: Provided. That accrual basis providers
are allowed to reduce gross receipts by their bad debts, to the
extent the amount of those bad debts was previously included in
gross receipts upon which the tax imposed by this section was
paid.

(2) “Nursing facility services” means those services that are
nursing facility services for purposes of §1903(w) of the Social
Security Act.

(d) Effective date. — The tax imposed by this section applies
to gross receipts received or receivable by providers after May

CHAPTER 236

(S. B. 398 - By Senators Ferns, D. Hall and Stollings)

[Passed February 27, 2015; in effect July 1, 2015.]
[Approved by the Governor on March 5, 2015.]

AN ACT to amend and reenact §11-27-38 of the Code of West
Virginia, 1931, as amended, relating generally to health care
provider taxes; modifying expiration date for tax rate on eligible
acute care hospitals; changing tax rate on eligible acute care
hospitals; and providing for disbursement of any funds remaining
in the Eligible Acute Care Provider Enhancement Account.

Be it enacted by the Legislature of West Virginia:

That §11-27-38 of the Code of West Virginia, 1931, as amended,
be amended and reenacted to read as follows:
ARTICLE 27. HEALTH CARE PROVIDER TAXES.

§11-27-38. Contingent increase of tax rate on certain eligible acute care hospitals.

(a) In addition to the rate of the tax imposed by sections nine and fifteen of this article on providers of inpatient and outpatient hospital services, there is imposed on certain eligible acute care hospitals an additional tax of seventy-two one hundredths of one percent on the gross receipts received or receivable by eligible acute care hospitals that provide inpatient or outpatient hospital services in this state through a Medicaid upper payment limit program.

(b) For purposes of this section, the term “eligible acute care hospital” means any inpatient or outpatient hospital conducting business in this state that is not:

(1) A state-owned or -designated facility;

(2) A nonstate, but government-owned facility such as a county or city hospital;

(3) A critical access hospital, designated as a critical access hospital after meeting all federal eligibility criteria;

(4) A licensed free-standing psychiatric or medical rehabilitation hospital; or

(5) A licensed long-term acute care hospital.

(c) The taxes imposed by this section may not be imposed or collected until all of the following have occurred:

(1) A state plan amendment is developed by the Bureau for Medical Services, as authorized by the Secretary of the Department of Health and Human Resources;
(2) The state plan amendment is reviewed by the Medical Fund Services Advisory Council;

(3) A comment period of not less than thirty days for public comment on the state plan amendment shall have passed; and

(4) The state plan amendment is approved by the Centers for Medicare and Medicaid Services.

(d) The state plan amendment shall include all of the following:

(1) The provisions of the proposed upper payment limit program or programs;

(2) A state maintenance of effort to maintain adequate Medicaid funding; and

(3) A provision that any other state Medicaid program will not negatively impact the hospital upper payment limit payments. The taxes imposed and collected may be imposed and collected beginning on the earliest date permissible under applicable federal law under the upper payment limit program, as determined by the secretary.

(e) There is continued a special revenue account in the State Treasury designated the Medicaid State Share Fund. The amount of taxes collected under this section, including any interest, additions to tax and penalties collected under article ten of this chapter, less the amount of allowable refunds, the amount of any interest payable with respect to such refunds and costs of administration and collection, shall be deposited into the Special Revenue Fund and may not revert to general revenue. The Tax Commissioner shall establish and maintain a separate account and accounting for the funds collected under this section in an account to be designated as the Eligible Acute Care Provider Enhancement Account. The amounts collected shall be
deposited, within fifteen days after receipt by the Tax Commissioner, into the Eligible Acute Care Provider Enhancement Account. Disbursements from the Eligible Acute Care Provider Enhancement Account within the Medicaid State Share Fund may only be used as set forth in this section.

(f) The imposition and collection of taxes imposed by this section is suspended immediately upon the occurrence of any of the following:

(1) The effective date of any action by Congress that would disqualify the taxes imposed by this section from counting toward state Medicaid funds available to be used to determine the federal financial participation;

(2) The effective date of any decision, enactment or other determination by the Legislature or by any court, officer, department, agency of office of state or federal government that has the effect of disqualifying the tax from counting toward state Medicaid funds available to be used to determine federal financial participation for Medicaid matching funds or creating for any reason a failure of the state to use the assessment of the Medicaid program as described in this section; and

(3) The effective date of an appropriation for any state fiscal year for hospital payments under the state Medicaid program that is less than the amount appropriate for state fiscal year ending June 30, 2011. Fifty percent of any funds remaining in the Eligible Acute Care Provider Enhancement Account as of June 30, 2015, shall be transferred to the West Virginia Medical Services Fund. This transfer shall occur no later than September 30, 2015. These funds shall be used during state fiscal year 2016 at the discretion of the Bureau for Medical Services. The remaining fifty percent of any funds in the Eligible Acute Care Provider Enhancement Account as of June 30, 2015, shall remain in the Eligible Acute Care Provider Enhancement
Account and shall be used in state fiscal year 2016. If the program expires on June 30, 2016, as set forth in subsection (h) of this section, fifty percent of any funds remaining as of June 30, 2017, shall be transferred on that date to the West Virginia Medical Services Fund. This transfer shall occur only after state fiscal year 2016 fourth quarter tax collections and program payments. The remaining fifty percent of the funds shall be distributed to the eligible acute care providers no later than June 30, 2017. The distribution of funds to the eligible acute care providers shall be made in the same proportion as the taxes paid by the eligible acute care providers into the Eligible Acute Care Provider Enhancement Fund during state fiscal year 2016.

(g) The changes to the tax rate in this section enacted in the 2015 Regular Session are effective July 1, 2015, upon the approval of the state plan amendment.

(h) The tax imposed by this section expires on and after June 30, 2016, unless otherwise extended by the Legislature.
§18A-3-1g, §18A-3-1h and §18A-3-1i, all relating to revising, reorganizing and clarifying provisions regarding teacher certifications, including standard certifications, alternative certifications, certifications for out-of-state teachers and certifications for athletic coaches and extracurricular coaches; expanding criteria upon which a teacher’s certificate may be awarded to a teacher from another state; defining terms relating to alternative programs for the education of teachers; authorizing certain partnerships to provide alternative certification programs; modifying entities eligible to deliver alternative programs; specifying permissible partners; requiring partnership agreements and specifying necessary contents; requiring posting of vacancies; limiting circumstance where partnership may enroll alternative program candidate; requiring or authorizing approval by state board of education under certain circumstances; modifying and specifying criteria and components required for alternative certification program delivery; specifying certain required components of alternative certification program; requiring minimum hours of instruction; specifying eligibility criteria for alternative certification program teacher candidate; requiring that employment be in an area of critical need and shortage; providing for professional support team to participate in alternative program delivery and specifying responsibilities; modifying the charges which may be imposed for alternative program participation or delivery; specifying required and prohibited acts by certain entities; requiring continued contract renewal of participating program teacher and continued delivery of alternative certification program under certain circumstances and providing exception; providing retention preference for professional educators; providing for evaluation of and recommendation regarding award of professional teaching certificate for alternative program teacher; authorizing appeal of recommendation under certain circumstances; expanding program fields and conditions in which an alternative program teacher may be employed; removing preference among certain applicants when considering applicants
for alternative teacher programs; modifying provisions for alternative program teacher to attain professional teaching certificate; modifying institutions from which professional teaching certificate candidates may have graduated; providing guidelines for alternative programs for certain highly qualified special education teachers; providing for certification under certain circumstances of teachers educated or certified in other states; expanding criteria upon which a teacher’s certificate may be awarded to teachers; removing references to internship programs; extending alternative program teacher certificate and making nonrenewable; removing requirement, regarding athletic and extracurricular coaches, that a currently employed certified professional educator has not applied for position; and requiring legislative rule promulgation by state board.

Be it enacted by the Legislature of West Virginia:

That §18A-3-1, §18A-3-1a, §18A-3-1b and §18A-3-2a of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that said code be amended by adding thereto seven new sections, designated §18A-3-1c, §18A-3-1d, §18A-3-1e, §18A-3-1f, §18A-3-1g, §18A-3-1h and §18A-3-1i, all to read as follows:

ARTICLE 3. TRAINING, CERTIFICATION, LICENSING, PROFESSIONAL DEVELOPMENT.

§18A-3-1. Teacher preparation programs; program approval and standards; authority to issue teaching certificates.

1 (a) The education of professional educators in the state is under the general direction and control of the state board after consultation with the Secretary of Education and the Arts and the Chancellor for Higher Education who shall represent the interests of educator preparation programs within the institutions of higher education in this state as defined in section two, article one, chapter eighteen-b of this code.
The education of professional educators in the state includes all programs leading to certification to teach or serve in the public schools. The programs include the following:

1. Programs in all institutions of higher education, including student teaching and teacher-in-residence programs as provided in this section;
2. Beginning teacher induction programs;
3. Granting West Virginia certification to persons who received their preparation to teach outside the boundaries of this state, except as provided in subsection (b) of this section;
4. Alternative preparation programs in this state leading to certification, including programs established pursuant to the provisions of sections one-a, one-b, one-c, one-d, one-e, one-f, one-g, one-h and one-i of this article and programs which are in effect on the effective date of this section; and
5. Continuing professional education, professional development and in-service training programs for professional educators employed in the public schools in the state.

(b) After consultation with the Secretary of Education and the Arts and the Chancellor for Higher Education, the state board shall adopt standards for the education of professional educators in the state and for awarding certificates valid in the public schools of this state. The standards include, but are not limited to the following:

1. A provision for the study of multicultural education. As used in this section, multicultural education means the study of the pluralistic nature of American society including its values, institutions, organizations, groups, status positions and social roles;
(2) A provision for the study of classroom management techniques, including methods of effective management of disruptive behavior including societal factors and their impact on student behavior; and

(3) A teacher from another state shall be awarded a teaching certificate for a comparable grade level and subject area valid in the public schools of this state, subject to section ten of this article, if he or she has met the following requirements:

(A) Holds a valid teaching certificate or a certificate of eligibility issued by another state;

(B) Has graduated from an educator preparation program at a regionally accredited institution of higher education or from another educator preparation program;

(C) Possesses the minimum of a bachelor’s degree; and

(D) Meets all of the requirements of the state for full certification except employment.

(c) The state board may enter into an agreement with county boards for the use of the public schools in order to give prospective teachers the teaching experience needed to demonstrate competence as a prerequisite to certification to teach in the West Virginia public schools.

(d) An agreement established pursuant to subsection (c) of this section shall recognize student teaching as a joint responsibility of the educator preparation institution and the cooperating public schools. The agreement shall include the following items:

(1) The minimum qualifications for the employment of public school teachers selected as supervising teachers, including the requirement that field-based and clinical experiences be
supervised by a teacher fully certified in the state in which that
teacher is supervising;

(2) The remuneration to be paid to public school teachers by
the state board, in addition to their contractual salaries, for
supervising student teachers;

(3) Minimum standards to guarantee the adequacy of the
facilities and program of the public school selected for student
teaching;

(4) Assurance that the student teacher, under the direction
and supervision of the supervising teacher, shall exercise the
authority of a substitute teacher;

(5) A provision requiring any higher education institution
with an educator preparation program to document that the
student teacher’s field-based and clinical experiences include
participation and instruction with multicultural, at-risk and
exceptional children at each programmatic level for which the
student teacher seeks certification; and

(6) A provision authorizing a school or school district that
has implemented a comprehensive beginning teacher induction
program, to enter into an agreement that provides for the training
and supervision of student teachers consistent with the
educational objectives of this subsection by using an alternate
structure implemented for the support, supervision and
mentoring of beginning teachers. The agreement is in lieu of any
specific provisions of this subsection and is subject to the
approval of the state board.

(e) Teacher-in-residence programs. —

(1) In lieu of the provisions of subsections (c) and (d) of this
section and subject to approval of the state board, an institution
of higher education with a program for the education of
professional educators in the state approved by the state board may enter into an agreement with county boards for the use of teacher-in-residence programs in the public schools.

(2) A “teacher-in-residence program” means an intensively supervised and mentored residency program for prospective teachers during their senior year that refines their professional practice skills and helps them gain the teaching experience needed to demonstrate competence as a prerequisite to certification to teach in the West Virginia public schools.

(3) The authorization for the higher education institution and the county board to implement a teacher-in-residence program is subject to state board approval. The provisions of the agreement include, but are not limited to, the following items:

(A) A requirement that the prospective teacher in a teacher-in-residence program has completed all other preparation courses and has passed the appropriate basic skills and subject matter test or tests required by the state board for teachers to become certified in the area for which licensure is sought;

(B) A requirement that the teacher-in-residence serve only in a teaching position in the county which has been posted and for which no other teacher fully certified for the position has been employed;

(C) Specifics regarding the program of instruction for the teacher-in-residence setting forth the responsibilities for supervision and mentoring by the higher education institution’s educator preparation program, the school principal, and peer teachers and mentors, and the responsibilities for the formal instruction or professional development necessary for the teacher-in-residence to perfect his or her professional practice skills. The program also may include other instructional items as considered appropriate.
(D) A requirement that the teacher-in-residence hold a teacher-in-residence permit qualifying the individual to teach in his or her assigned position as the teacher of record;

(E) A requirement that the salary and benefit costs for the position to which the teacher-in-residence is assigned shall be used only for program support and to pay a stipend to the teacher-in-residence as specified in the agreement, subject to the following:

(i) The teacher-in-residence is a student enrolled in the teacher preparation program of the institution of higher education and is not a regularly employed employee of the county board;

(ii) The teacher-in-residence is included on the certified list of employees of the county eligible for state aid funding the same as an employee of the county at the appropriate level based on their permit and level of experience;

(iii) All state-aid-funding due to the county board for the teacher-in-residence shall be used only in accordance with the agreement with the institution of higher education for support of the program as provided in the agreement, including costs associated with instruction and supervision as set forth in paragraph (C) of this subdivision;

(iv) The teacher-in-residence is provided the same liability insurance coverage as other employees; and

(v) All state aid funding due to the county for the teacher-in-residence and not required for support of the program shall be paid as a stipend to the teacher-in-residence: Provided, That the stipend paid to the teacher-in-residence shall be no less than sixty-five percent of all state aid funding due the county for the teacher-in-residence.
Other provisions that may be required by the state board.

(f) In lieu of the student teaching experience in a public school setting required by this section, an institution of higher education may provide an alternate student teaching experience in a nonpublic school setting if the institution of higher education meets the following criteria:

1. Complies with the provisions of this section;
2. Has a state board approved educator preparation program; and
3. Enters into an agreement pursuant to subdivisions (g) and (h) of this section.

(g) At the discretion of the higher education institution, an agreement for an alternate student teaching experience between an institution of higher education and a nonpublic school shall require one of the following:

1. The student teacher shall complete at least one half of the clinical experience in a public school; or
2. The educator preparation program shall include a requirement that any student performing student teaching in a nonpublic school shall complete the following:
   (A) At least two hundred clock hours of field-based training in a public school; and
   (B) A course, which is a component of the institution’s state board approved educator preparation program, that provides information to prospective teachers equivalent to the teaching experience needed to demonstrate competence as a prerequisite to certification to teach in the public schools in West Virginia. The course also shall include instruction on at least the following elements:
(i) State board policy and provisions of this code governing public education;

(ii) Requirements for federal and state accountability, including the mandatory reporting of child abuse;

(iii) Federal and state mandated curriculum and assessment requirements, including multicultural education, safe schools and student code of conduct;

(iv) Federal and state regulations for the instruction of exceptional students as defined by the Individuals with Disabilities Education Act, 20 U.S.C. §1400 et seq.; and

(v) Varied approaches for effective instruction for students who are at-risk.

(h) In addition to the requirements set forth in subsection (g) of this section, an agreement for an alternate student teaching experience between an institution of higher education and a nonpublic school shall include the following:

(1) A requirement that the higher education institution with an educator preparation program shall document that the student teacher’s field-based and clinical experiences include participation and instruction with multicultural, at-risk and exceptional children at each programmatic level for which the student teacher seeks certification; and

(2) The minimum qualifications for the employment of school teachers selected as supervising teachers, including the requirement that field-based and clinical experiences be supervised by a teacher fully certified in the state in which that teacher is supervising.

(i) The state superintendent may issue certificates as provided in section two-a of this article to graduates of educator
preparation programs and alternative educator preparation
programs approved by the state board. The certificates are issued
in accordance with this section and rules adopted by the state
board after consultation with the Secretary of Education and the
Arts and the Chancellor for Higher Education.

(1) A certificate to teach may be granted only to a person
who meets the following criteria:

(A) Is a citizen of the United States, except as provided in
subdivision (2) of this subsection;

(B) Is of good moral character;

(C) Is physically, mentally and emotionally qualified to
perform the duties of a teacher; and

(D) Is at least eighteen years of age on or before October 1;
of the year in which his or her certificate is issued.

(2) A permit to teach in the public schools of this state may
be granted to a person who is an exchange teacher from a foreign
country or an alien person who meets the requirements to teach.

(j) In consultation with the Secretary of Education and the
Arts and the Chancellor for Higher Education, institutions of
higher education approved for educator preparation may
cooperate with each other, with the center for professional
development and with one or more county boards to organize
and operate centers to provide selected phases of the educator
preparation program. The phases include, but are not limited to
the following:

(1) Student teaching and teacher-in-residence programs;

(2) Beginning teacher induction programs;

(3) Instruction in methodology; and
(4) Seminar programs for college students, teachers with provision certification, professional support team members and supervising teachers.

By mutual agreement, the institutions of higher education, the center for professional development and county boards may budget and expend funds to operate the centers through payments to the appropriate fiscal office of the participating institutions, the center for professional development and the county boards.

(k) The provisions of this section do not require discontinuation of an existing student teacher training center or school which meets the standards of the state board.

(l) All institutions of higher education approved for educator preparation in the 1962-63 school year continue to hold that distinction so long as they meet the minimum standards for educator preparation. Nothing in this section infringes upon the rights granted to any institution by charter given according to law previous to the adoption of this code.

(m) Definitions. — For the purposes of this section, the following words have the meanings ascribed to them unless the context clearly indicates a different meaning:

(1) “Nonpublic school” means a private school, parochial school, church school, school operated by a religious order or other nonpublic school that elects to meet the following conditions:

(A) Comply with the provisions of article twenty-eight, chapter eighteen of this code;

(B) Participate on a voluntary basis in a state operated or state sponsored program provided to this type school pursuant to this section; and
(C) Comply with the provisions of this section;

(2) “At-risk” means a student who has the potential for academic failure, including, but not limited to, the risk of dropping out of school, involvement in delinquent activity or poverty as indicated by free or reduced lunch status; and

(3) “Exceptional child” or “exceptional children” has the meaning ascribed to these terms pursuant to section one, article twenty, chapter eighteen of this code, but, as used in this section, the terms do not include gifted students.

§18A-3-1a. Alternative programs for the education of teachers; purpose; definitions.

(a) Purpose. – Sections one-a, one-b, one-c, one-d, one-e, one-f, one-g, one-h and one-i of this article create an alternative means for a qualified person to earn a professional teaching certificate. These sections authorize a school or a school district to offer a rigorous alternative program for teacher certification in partnership with an accredited higher education institution, an entity affiliated with an accredited higher education institution, the West Virginia Department of Education or a regional education service agency, all under the supervision of the State Board.

(b) Definitions. — For the purposes of this section and sections one-b, one-c, one-d, one-e, one-f, one-g, one-h and one-i of this article, the following terms have the meanings ascribed to them, unless the context in which a term is used clearly requires a different meaning:

(1) “Alternative program” means a program for teacher education that is offered as an alternative to the standard college or university programs for the education of teachers;

(2) “Alternative program teacher” means a teacher who holds an alternative program teacher certificate and who participates in an alternative program;
(3) “Area of critical need and shortage” means an opening in an established, existing or newly-created position which has been posted at least two times in accordance with section seven-a, article four of this chapter and for which no fully-qualified applicant has been employed;

(4) “Alternative program teacher certificate” means a temporary teacher certificate that authorizes a person to teach while participating in an alternative program;

(5) “Approved alternative program” means an alternative program that is approved by the State Board in accordance with section one-e of this article;

(6) “Approved education provider” means a partnership that the State Board has approved to provide an alternative program;

(7) “Partnership” means a partnership formed pursuant to section one-b of this article to provide an alternative program;

(8) “Partnership agreement” means an agreement adopted by a partnership pursuant to section one-b of this article; and

(9) “Professional support team” means the group of persons that an approved education provider has selected to train and supervise alternative program teachers.

§18A-3-1b. Alternative program partnerships; formation; necessary partners; partnership agreements; single-provider programs.

(a) Formation. – One or more schools or school districts, or any combination of these, may form a partnership with one or more institutions of higher education, one or more entities affiliated with an institution of higher education, the West Virginia Department of Education, a regional education service agency, or any combination of these, to provide an alternative program.
(b) *Necessary partners.* – Except as provided in subsection (d) of this section, a partnership shall include at least one of the following:

1. An institution of higher education with an accredited program for the education of professional educators that has been approved by the State Board;
2. An entity affiliated with an institution of higher education that has an accredited program for the education of professional educators that has been approved by the State Board;
3. The West Virginia Department of Education; or
4. A regional education service agency.

(c) *Partnership agreement contents.* – A partnership shall adopt a written partnership agreement that governs how the partnership will conduct its alternative program and that identifies the rights and responsibilities of each partner. The partnership agreement shall include, at a minimum, the following elements:

1. Procedures and criteria for determining whether a person is eligible to enroll in the alternative program;
2. A requirement that a vacancy has to be advertised for a ten day period, and if no qualified traditional certified teacher applies, only then may the partnership consider enrolling as person in the alternative program;
3. Procedures and criteria for making a formal offer of employment to a person who is eligible to enroll in the alternative program;
4. A detailed list, with descriptions, of the categories, methods and sources of instruction that the alternative program will provide;
(5) A detailed description of the phases of on-the-job training and supervision that the alternative program will provide;

(6) A detailed description of the academic and performance standards that an alternative program teacher shall satisfy to receive the partnership’s recommendation that the State Superintendent issue to him or her a professional teaching certificate;

(7) Procedures for selecting and training the professional support team who will instruct, mentor or supervise alternative program teachers;

(8) Provisions for determining tuition or other charges, if any, relating to an alternative program;

(9) A requirement, subject to the provisions of subsection (e), subsection one-f of this article, that the hiring authority for any school or school district that hires an alternative program teacher will renew the alternative program teacher’s contract from year to year as along as he or she makes satisfactory progress in the alternative education program and until he or she completes the alternative program; and

(10) Any other provisions that the partners consider necessary or helpful to ensure that the alternative program operates in accordance with this chapter.

§18A-3-1c. Alternative program instruction for classroom teachers; methods; training and evaluation phases; professional support team; tuition.

(a) Alternative program instruction. — An alternative program for classroom teachers shall provide, at a minimum, either six credit hours or six staff development hours of instruction in one or more of the following subjects:
(1) Early literacy (if an alternative program teacher will be teaching elementary school children);

(2) Student assessment;

(3) Development and learning;

(4) Curriculum;

(5) Classroom management;

(6) Use of educational computers and other technology; and

(7) Special education and diversity.

(b) Methods of instruction. – An alternative program may provide instruction through nontraditional methods, including, but not limited to, methods such as a series of modules covering the various topics, electronically delivered instruction, summer sessions, professional development and job-embedded mentoring.

(c) Professional support team. – If the State Board approves, an alternative program may provide a professional support team whose structure is consistent with the structure that the partnership’s participating school or schools use for supporting, supervising, inducting and mentoring a beginning teacher or teacher-in-residence. If the State Board approves, an alternative program’s professional support team may be trained by and in coordination with the Center for Professional Development.

(d) Professional support team evaluation for classroom teachers. – The professional support team shall submit a written evaluation of the alternative program teacher to the approved education provider. This evaluation shall be submitted on a form specified by the approved education provider and shall be submitted before the first Monday in May on a date set by the approved education provider. The evaluation shall report the
alternative program teacher’s progress toward meeting the alternative program’s academic and performance standards: 

Provided, That all final decisions on the progress of an alternative program teacher shall rest with the principal.

(e) Tuition. – A partnership may not charge tuition, or impose any other charge for participation in an alternative program, unless the tuition or other charge is necessary to offset the partnership’s cost of providing the alternative program: 

Provided, That a partner that is an institution of higher education with an accredited program for the education of professional educators may charge tuition for academic credit that an alternative education teacher receives in the alternative program if:

(1) The institution of higher education is the entity that grants the academic credit; and

(2) The charge does not exceed the per credit rate charged for students enrolled in its standard program for the education of professional educators.

§18A-3-1d. Alternative program rules; necessary contents.

(a) Alternative program rules. –

(1) The State Board shall promulgate a legislative rule or rules in accordance with article three-b, chapter twenty-nine-a of this code containing procedures for the approval and operation of alternative teacher education programs as provided in this article. The State Board shall promulgate separate procedures for alternative programs for classroom teachers, alternative programs for highly qualified special education teachers, and additional alternative programs to prepare highly qualified special education teachers. These procedures shall be separate from the State Board’s other procedures for approving standard teacher education programs.
(2) Before promulgating a rule or rules, the State Board shall consult with the Secretary of Education and the Arts and the Chancellor of the Higher Education Policy Commission.

(3) Before adopting a rule or rules, the State Board shall submit its proposed rule or rules to the Legislative Oversight Commission on Education Accountability for review.

(b) **Necessary contents.** – The State Board’s rule or rules shall include, at a minimum, the following elements:

(1) An orderly set of deadlines, forms and guidance to govern:

(A) A partnership’s process for applying to become an approved education provider;

(B) The State Board’s process for reviewing and acting on a partnership’s application;

(C) An approved education provider’s process for seeking persons to enroll in an alternative program; and

(D) A person’s process for enrolling in an approved education provider’s alternative program;

(2) Procedures for determining whether a partnership agreement complies with sections one-b and one-c of this article;

(3) Procedures for determining whether a partnership agreement complies with any additional requirements contained in the State Board’s rule or rules;

(4) Standards for how often and for what lengths of time an alternative program teacher must observe in a mentor’s classroom;

(5) Guidelines for determining what tuition or other charges an approved education provider may impose relating to an alternative program;
(6) A list of the test or tests that a person must pass if he or she seeks a certification to teach American Sign Language; and

(7) A list of the test or tests that a person must pass if he or she seeks a certification to teach in selected vocational and technical areas.

§18A-3-1e. State Board approval; prohibited acts.

(a) State Board approval. –

(1) The State Board shall approve a partnership’s application to operate an alternative program for classroom teachers if the State Board determines that the proposed alternative program, in all material respects, complies or will comply with the State Board’s applicable alternative program rules and with the requirements of sections one-b, one-c of this article.

(2) The State Board shall approve a partnership’s application to operate an alternative program for a highly qualified special education teacher if the State Board determines that the proposed alternative program, in all material respects, complies or will comply with the State Board’s applicable alternative program rules and with the requirements of section one-g of this article.

(3) The State Board shall approve a partnership’s application to operate an alternative program to prepare highly qualified special education teachers if the State Board determines that the proposed alternative program, in all material respects, complies or will comply with the State Board’s applicable alternative program rules and with the requirements of section one-h of this article.

(b) Prohibited acts. –

(1) A partnership may not implement an alternative program until the partnership’s alternative program has been approved by the State Board.
(2) A school or school district may not employ, or make a formal offer of employment to, any person for the purpose of his or her participation in an alternative program unless the alternative program is approved by the State Board and the school or school district is a member of the partnership that is operating the alternative program.

(3) A school or school district may not continue to employ an alternative program teacher unless he or she makes satisfactory progress in the alternative program for which he or she is employed.

§18A-3-1f. Alternative program participation; eligibility for alternative program certificate; contract renewals; hiring preference.

(a) Alternative program participation. – A person may not participate in an alternative program unless he or she holds an alternative program teacher certificate issue by the State Superintendent for the alternative program position in which he or she will be teaching. An alternative program teacher certificate is the same as a professional teaching certificate for the purpose of issuing a continuing contract.

(b) Eligibility for alternative program teacher certificate. – To be eligible for an alternative program teacher certificate, a person shall:

(1) Possess at least a bachelor’s degree from a regionally accredited institution of higher education;

(2) Pass the same basic skills and subject matter test or tests required by the State Board for traditional program candidates to become certified in the area for which he or she is seeking licensure;

(3) Hold United States citizenship;
(4) Be of good moral character;

(5) Be physically, mentally and emotionally qualified to perform the duties of a teacher;

(6) Attain the age of eighteen years on or before October 1 of the year in which the alternative program teacher certificate is issued;

(7) Receive from a county superintendent a formal offer of employment in an area of critical need and shortage and by a school or school district that is a member of an approved educational provider;

(8) Have relevant academic or occupational qualifications that reasonably indicate that the person will be competent to fill the teaching position in which he or she would be employed. For the purposes of this section, “reasonably indicate” means an academic major or occupational area the same as or similar to the subject matter to which the alternative program teacher is being hired to teach; and

(9) Qualify for employment after a criminal history check made pursuant to section ten of this article.

(c) Eligibility for alternative program certificate: American Sign Language. – If a person seeks certification to teach American Sign Language, in lieu of subdivisions (1) and (2), subsection (b) of this section, he or she shall pass one or more appropriate State Board approved tests demonstrating his or her proficiency in American Sign Language.

(d) Eligibility for alternative program certificate: selected vocational and technical areas. – If a person seeks certification to teach in selected vocational and technical areas, in lieu of subdivisions (1) and (2), subsection (b) of this section, he or she shall pass one or more appropriate State Board approved tests
demonstrating his or her proficiency in the basic skills and occupational content areas.

(e) Contract renewals. –

(1) A county board shall renew an alternative program teacher’s contract from year to year as long as he or she makes satisfactory progress in the applicable alternative education program and until he or she completes the alternative program, except as provided in subdivision (2) of this subsection.

(2) If the school or school district that employs the alternative program teacher reduces its overall number of teachers, the alternative program teacher is subject to the same force reduction rules and procedures as any other employee, except those that relate to seniority. In no event will an alternative program teacher displace a professional educator as defined in section one, article one of this chapter.

§18A-3-1g. Alternative program for highly qualified special education teachers.

(a) An alternative program for highly qualified special education teachers are separate from the programs established under sections one-b and one-h of this article and are applicable only to teachers who have at least a bachelor’s degree in a program for the preparation of teachers from an accredited institution of higher education.

(b) These programs are subject to the other provisions of sections one-b, one-c, one-e and one-f of this article only to the extent specifically provided in State Board rule.

(c) These programs may be an alternative to the standard college and university programs for the education of special education teachers and also may address the content area preparation of certified special education teachers.
(d) The programs shall incorporate professional development to the maximum extent possible to help teachers who are currently certified in special education to obtain the required content area preparation.

(e) Participation in an alternative education program pursuant to this section may not affect any rights, privileges or benefits to which the participant otherwise would be entitled as a regular employee and may not alter any rights, privileges or benefits of participants on continuing contract status.

§18A-3-1h. Additional alternative program to prepare highly qualified special education teachers.

(a) An additional alternative program to prepare highly qualified special education teachers are separate from the programs established under sections one-b and one-g of this article and are applicable only to persons who hold a bachelor’s degree from an accredited institution of higher education.

(b) These programs are subject to the other provisions of sections one-b, one-c, one-e and one-f of this article only to the extent specifically provided in State Board rule.

(c) These programs may be an alternative to the standard college and university programs for the education of special education teachers and also may address the content area preparation of these persons.

§18A-3-1i. Recommendation for certification of alternative program teachers; report forms to be prepared by State Superintendent; appeal.

(a) At the conclusion of an approved alternative program, the approved education provider shall prepare a comprehensive evaluation report on the alternative program teacher’s performance.
(b) This report shall be submitted directly to the State Superintendent and shall contain a recommendation as to whether or not a professional teaching certificate should be issued to the alternative program teacher. The State Superintendent shall develop standard forms for this report, and the report shall be made on one or more of the State Superintendent’s forms.

(c) The comprehensive evaluation report shall include one of the following recommendations:

(1) Approved: Recommends issuance of a professional teaching certificate;

(2) Insufficient: Recommends that a professional teaching certificate not be issued but that the candidate be allowed to seek reentry on one or more occasions in the future to an approved alternative program; or

(3) Disapproved: Recommends that a professional teaching certificate not be issued and that the candidate not be allowed to enter into another approved alternative program in this state but not be prohibited from pursuing teacher certification through other approved programs for the education of teachers in this state.

(d) The approved education provider shall provide the alternative program teacher with a copy of the alternative program teacher’s written evaluation report and certification recommendation before the approved education provider submits them to the State Superintendent. If the alternative program teacher disagrees with the provider’s recommendation, the alternative program teacher may, within fifteen days of receipt, request an appeal in accordance with the certification appeals process established by the State Board.
§18A-3-2a. Certificates valid in the public schools that may be issued by the State Superintendent.

In accordance with State Board rules for the education of professional educators adopted pursuant to section one of this article and subject to the limitations and conditions of that section, the State Superintendent may issue the following certificates valid in the public schools of the state:

(a) Professional teaching certificates. —

(1) A professional teaching certificate for teaching in the public schools may be issued to a person who meets the following conditions:

(A) Holds at least a bachelor’s degree from a regionally accredited institution of higher education, and

(i) Has passed appropriate State Board approved basic skills and subject matter tests in the area for which licensure is being sought; and

(ii) Has completed a program for the education of teachers which meets the requirements approved by the State Board; or

(iii) Has met equivalent standards at institutions in other states; or

(iv) Has completed three years of successful teaching experience within the last seven years under a license issued by another state in the area for which licensure is being sought; or

(v) Has completed an alternative program approved by another state; or

(B) Holds at least a bachelor’s degree from an accredited institution of higher education; and
(i) Has passed appropriate State Board approved basic skills and subject matter tests; and

(ii) Has completed an alternative program for teacher education as provided in this article; and

(iii) Is recommended for a certificate in accordance with the provisions of section one-i of this article relating to the program; and

(iv) Is recommended by the State Superintendent based on documentation submitted.

(2) The certificate shall be endorsed to indicate the grade level or levels or areas of specialization in which the person is certified to teach or to serve in the public schools.

(3) The initial professional certificate is issued provisionally for a period of three years from the date of issuance:

(A) The certificate may be converted to a professional certificate valid for five years subject to successful completion of a beginning teacher induction program, if applicable; or

(B) The certificate may be renewed subject to rules adopted by the State Board.

(b) Alternative program teacher certificate. — An alternative program teacher certificate may be issued to a candidate who is enrolled in an alternative program for teacher education approved by the State Board.

(1) The certificate is valid only for the alternative program position in which the candidate is employed and is subject to enrollment in the program.
(2) The certificate is valid while the candidate is enrolled in the alternative program, up to a maximum of three years, and may not be renewed.

(c) Professional administrative certificate. —

(1) A professional administrative certificate, endorsed for serving in the public schools, with specific endorsement as a principal, vocational administrator, supervisor of instructions or superintendent, may be issued to a person who has completed requirements all to be approved by the State Board as follows:

(A) Holds at least a master’s degree from an institution of higher education accredited to offer a master’s degree; and

(i) Has successfully completed an approved program for administrative certification developed by the State Board in cooperation with the chancellor for higher education; and

(ii) Has successfully completed education and training in evaluation skills through the center for professional development, or equivalent education and training in evaluation skills approved by the State Board; and

(iii) Possesses three years of management level experience.

(2) Any person serving in the position of dean of students on June 4, 1992, is not required to hold a professional administrative certificate.

(3) The initial professional administrative certificate is issued provisionally for a period of five years. This certificate may be converted to a professional administrative certificate valid for five years or renewed, subject to the regulations of the State Board.

(d) Paraprofessional certificate. — A paraprofessional certificate may be issued to a person who meets the following conditions:
(1) Has completed thirty-six semester hours of post-secondary education or its equivalent in subjects directly related to performance of the job, all approved by the State Board; and

(2) Demonstrates the proficiencies to perform duties as required of a paraprofessional as defined in section eight, article four of this chapter.

(e) Other certificates; permits. —

(1) Other certificates and permits may be issued, subject to the approval of the State Board, to persons who do not qualify for the professional or paraprofessional certificate.

(2) A certificate or permit may not be given permanent status and a person holding one of these credentials shall meet renewal requirements provided by law and by regulation, unless the State Board declares certain of these certificates to be the equivalent of the professional certificate.

(3) Within the category of other certificates and permits, the State Superintendent may issue certificates for persons to serve in the public schools as athletic coaches or coaches of other extracurricular activities, whose duties may include the supervision of students, subject to the following limitations:

(A) The person is employed under a contract with the county board of education.

(i) The contract specifies the duties to be performed, specifies a rate of pay that is equivalent to the rate of pay for professional educators in the district who accept similar duties as extra duty assignments, and provides for liability insurance associated with the activity; and

(ii) The person holding this certificate is not considered an employee of the board for salary and benefit purposes other than as specified in the contract.
(B) The person completes an orientation program designed and approved in accordance with State Board rules.

(f) Teacher-In-Residence Permit. —

(1) A teacher-in-residence permit may be issued to a candidate who is enrolled in a teacher-in-residence program in accordance with an agreement between an institution of higher education and a county board. The agreement is developed pursuant to subsection (e), section one of this article and requires approval by the State Board.

(2) The permit is valid only for the teacher-in-residence program position in which the candidate is enrolled and is subject to enrollment in the program. The permit is valid for no more than one school year and may not be renewed.

CHAPTER 238

(Com. Sub. for S. B. 248 - By Senator Williams)

[Passed March 14, 2015; in effect ninety days from passage.]
[Approved by the Governor on March 24, 2015.]

AN ACT to amend and reenact §17C-4-3 of the Code of West Virginia, 1931, as amended, relating to the duty to give information after a car crash; and requiring person involved in a car crash to provide certain insurance, vehicle owner information and exhibit his or her driver’s license.

Be it enacted by the Legislature of West Virginia:

That §17C-4-3 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:
ARTICLE 4. ACCIDENTS.

§17C-4-3. Duty to give information and render aid.

(a) (1) The driver of any vehicle involved in a crash resulting in injury to or death of any person or damage to any vehicle which is driven or attended by any person shall, if physically able to do so, provide to the person struck or the driver or occupant of or person attending any vehicle collided with, the following:

(A) His or her name, a valid telephone number where he or she may be contacted and the year, make, model and last four digits of the vehicle identification number of the vehicle he or she is driving; and

(B) Proof of security and financial responsibility required by section three, article two-a, and section two, article four, chapter seventeen-d of this code, and if provided by insurance, the information provided upon the certificate of insurance, including the name of the insured, the name and contact information of the insurer and insurance policy number.

(2) A driver may meet the requirements of this subsection by providing the information required herein to a law-enforcement officer who is investigating or providing assistance at the scene of the collision, who shall, if practical under the circumstances, provide the information to any person entitled thereto pursuant to this subsection.

(b) The driver of any vehicle involved in a crash resulting in injury to or death of any person, if physically able to do so, shall render to any person injured in such crash reasonable assistance, including the carrying, or the making arrangements for the carrying, of such person to a physician, surgeon or hospital for medical or surgical treatment if it is apparent that such treatment is necessary or if such carrying is requested by the injured person.
convention must be registered immediately unless a tribunal in the state where the registration is sought determines that the language of the order goes against the policy of the state; providing notice to the nonregistering party; allowing opportunity to challenge order on certain grounds; providing for enforcement of an order unless one of the grounds for denying recognition is established; and requiring documents submitted under the convention be in the original language and a translated version submitted if the original language is not English.

Be it enacted by the Legislature of West Virginia:


ARTICLE 16. UNIFORM INTERSTATE FAMILY SUPPORT ACT.

PART I. GENERAL PROVISIONS.

§48-16-102. Definitions.

As used in this article:
(1) “Child” means an individual, whether over or under the age of majority, who is or is alleged to be owed a duty of support by the individual’s parent or who is or is alleged to be the beneficiary of a support order directed to the parent.

(2) “Child support order” means a support order for a child, including a child who has attained the age of majority under the law of the issuing state or foreign country.


(4) “Duty of support” means an obligation imposed or imposable by law to provide support for a child, spouse or former spouse, including an unsatisfied obligation to provide support.

(5) “Foreign country” means a country, including a political subdivision thereof, other than the United States, that authorizes the issuance of support orders and:

(A) Which has been declared under the law of the United States to be a foreign reciprocating country;

(B) Which has established a reciprocal arrangement for child support with this state;

(C) Which has enacted a law or established procedures for the issuance and enforcement of support orders which are substantially similar to the procedures under this article; or

(D) In which the convention is in force with respect to the United States.

(6) “Foreign support order” means a support order of a foreign tribunal.
7 “Foreign tribunal” means a court, administrative agency or quasi-judicial entity of a foreign country which is authorized to establish, enforce or modify support orders or to determine parentage of a child. The term includes a competent authority under the convention.

8 “Home state” means the state or foreign country in which a child lived with a parent or a person acting as parent for at least six consecutive months immediately preceding the time of filing of a petition or comparable pleading for support and, if a child is less than six months old, the state or foreign country in which the child lived from birth with any of them. A period of temporary absence of any of them is counted as part of the six-month or other period.

9 “Income” includes earnings or other periodic entitlements to money from any source and any other property subject to withholding for support under the law of this state.

10 “Income withholding order” means an order or other legal process directed to an obligor’s source of income as defined by section 1-240 [§48-1-240] of this chapter to withhold support from the income of the obligor.

11 “Initiating tribunal” means the tribunal of a state or foreign country from which a petition or comparable pleading is forwarded or in which a petition or comparable pleading is filed for forwarding to another state or foreign country.

12 “Issuing foreign country” means the foreign country in which a tribunal issues a support order or a judgment determining parentage of a child.

13 “Issuing state” means the state in which a tribunal issues a support order or a judgment determining parentage of a child.
(14) “Issuing tribunal” means the tribunal of a state or foreign country that issues a support order or a judgment determining parentage of a child.

(15) “Law” includes decisional and statutory law and rules and regulations having the force of law.

(16) “Obligee” means:

(A) An individual to whom a duty of support is or is alleged to be owed or in whose favor a support order or a judgment determining parentage of a child has been issued;

(B) A foreign country, state or political subdivision of a state to which the rights under a duty of support or support order have been assigned or which has independent claims based on financial assistance provided to an individual obligee in place of child support;

(C) An individual seeking a judgment determining parentage of the individual’s child; or

(D) A person that is a creditor in a proceeding under part VII.

(17) “Obligor” means an individual or the estate of a decedent that:

(A) Owes or is alleged to owe a duty of support;

(B) Is alleged but has not been adjudicated to be a parent of a child;

(C) Is liable under a support order; or

(D) Is a debtor in a proceeding under part VII.

(18) “Outside this state” means a location in another state or a country other than the United States, whether or not the country is a foreign country.
(19) “Person” means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, public corporation, government or governmental subdivision, agency or instrumentality or any other legal or commercial entity.

(20) “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.

(21) “Register” means to record in a tribunal of this state a support order or judgment determining parentage of a child issued in another state or a foreign country.

(22) “Registering tribunal” means a tribunal in which a support order or judgment determining parentage of a child is registered.

(23) “Responding state” means a state in which a petition or comparable pleading for support or to determine parentage of a child is filed or to which a petition or comparable pleading is forwarded for filing from another state or a foreign country.

(24) “Responding tribunal” means the authorized tribunal in a responding state or foreign country.

(25) “Spousal support order” means a support order for a spouse or former spouse of the obligor.

(26) “State” means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands or any territory or insular possession subject to the jurisdiction of the United States. The term includes an Indian nation or tribe.

(27) “Support enforcement agency” means a public official or governmental entity, or private agency authorized to:

(A) Seek enforcement of support orders or laws relating to the duty of support;
(B) Seek establishment or modification of child support;
(C) Request determination of parentage of a child;
(D) Attempt to locate obligors or their assets; or
(E) Request determination of the controlling child support order.

“Support order” means a judgment, decree, order, decision or directive, whether temporary, final or subject to modification, issued in a state or foreign country for the benefit of a child, a spouse or a former spouse which provides for monetary support, health care, arrearages, retroactive support or reimbursement for financial assistance provided to an individual obligee in place of child support. The term may include related costs and fees, interest, income withholding, automatic adjustment, reasonable attorney’s fees and other relief.

“Tribunal” means a court, administrative agency or quasi-judicial entity authorized to establish, enforce or modify support orders or to determine parentage of a child.

§48-16-103. State tribunal and support enforcement agency.

(a) The family court is the tribunal of this state.

(b) The Bureau for Child Support Enforcement is the support enforcement agency of this state.

§48-16-104. Remedies cumulative.

(a) Remedies provided by this article are cumulative and do not affect the availability of remedies under other law or the recognition of a support order on the basis of comity.

(b) This article does not:

(1) Provide the exclusive method of establishing or enforcing a support order under the law of this state; or
(2) Grant a tribunal of this state jurisdiction to render judgment or issue an order relating to child custody or visitation in a proceeding under this article.

§48-16-105. Application of article to resident of foreign country and foreign support proceeding.

(a) A tribunal of this state shall apply parts I through VI [§48-16-101 et seq. through §48-16-601 et seq.] and, as applicable, part VII [§48-16-701 et seq.], to a support proceeding involving:

(1) A foreign support order;

(2) A foreign tribunal; or

(3) An obligee, obligor, or child residing in a foreign country.

(b) A tribunal of this state that is requested to recognize and enforce a support order on the basis of comity may apply the procedural and substantive provisions of parts I through VI.

(c) Part VII [§48-16-701 et seq.] applies only to a support proceeding under the convention. In such a proceeding, if a provision of part VII [§48-16-701 et seq.] is inconsistent with parts I through VI [§48-16-101 et seq. through §48-16-601 et seq.], part VII [§48-16-701 et seq.] controls.

PART II. JURISDICTION.

§48-16-201. Bases for jurisdiction over nonresident.

(a) In a proceeding to establish or enforce a support order or to determine parentage of a child, a tribunal of this state may exercise personal jurisdiction over a nonresident individual or the individual’s guardian or conservator if:
(1) The individual is personally served with notice within this state;

(2) The individual submits to the jurisdiction of this state by consent in a record, by entering a general appearance or by filing a responsive document having the effect of waiving any contest to personal jurisdiction;

(3) The individual resided with the child in this state;

(4) The individual resided in this state and provided prenatal expenses or support for the child;

(5) The child resides in this state as a result of the acts or directives of the individual;

(6) The individual engaged in sexual intercourse in this state and the child may have been conceived by that act of intercourse;

(7) The individual has committed a tortious act by failing to support a child resident in this state; or

(8) There is any other basis consistent with the constitutions of this state and the United States for the exercise of personal jurisdiction.

(b) The bases of personal jurisdiction set forth in subsection (a) of this section or in any other law of this state may not be used to acquire personal jurisdiction for a tribunal of this state to modify a child support order of another state unless the requirements of section 611 [§48-16-611] are met or in the case of a foreign support order, unless the requirements of section 615 [§48-16-615] are met.

§48-16-203. Initiating and responding tribunal of state.

Under this article, a tribunal of this state may serve as an initiating tribunal to forward proceedings to a tribunal of another
§48-16-204. Simultaneous proceedings.

(a) A tribunal of this state may exercise jurisdiction to establish a support order if the petition or comparable pleading is filed after a petition or comparable pleading is filed in another state or a foreign country only if:

(1) The petition or comparable pleading in this state is filed before the expiration of the time allowed in the other state or the foreign country for filing a responsive pleading challenging the exercise of jurisdiction by the other state or the foreign country;

(2) The contesting party timely challenges the exercise of jurisdiction in the other state or foreign country; and

(3) If relevant, this state is the home state of the child.

(b) A tribunal of this state may not exercise jurisdiction to establish a support order if the petition or comparable pleading is filed before a petition or comparable pleading is filed in another state or a foreign country if:

(1) The petition or comparable pleading in the other state or foreign country is filed before the expiration of the time allowed in this state for filing a responsive pleading challenging the exercise of jurisdiction by this state;

(2) The contesting party timely challenges the exercise of jurisdiction in this state; and

(3) If relevant, the other state or foreign country is the home state of the child.
§48-16-205. Continuing, exclusive jurisdiction to modify child support order.

(a) A tribunal of this state that has issued a child support order consistent with the law of this state has and shall exercise continuing, exclusive jurisdiction to modify its child support order if the order is the controlling order and:

(1) At the time of the filing of a request for modification this state is the residence of the obligor, the individual obligee or the child for whose benefit the support order is issued; or

(2) Even if this state is not the residence of the obligor, the individual obligee or the child for whose benefit the support order is issued, the parties consent in a record or in open court that the tribunal of this state may continue to exercise jurisdiction to modify its order.

(b) A tribunal of this state that has issued a child support order consistent with the law of this state may not exercise continuing, exclusive jurisdiction to modify the order if:

(1) All of the parties who are individuals file consent in a record with the tribunal of this state that a tribunal of another state that has jurisdiction over at least one of the parties who is an individual or that is located in the state of residence of the child may modify the order and assume continuing, exclusive jurisdiction; or

(2) Its order is not the controlling order.

(c) If a tribunal of another state has issued a child support order pursuant to the Uniform Interstate Family Support Act or a law substantially similar to that article which modifies a child support order of a tribunal of this state, tribunals of this state shall recognize the continuing, exclusive jurisdiction of the tribunal of the other state.
(d) A tribunal of this state that lacks continuing, exclusive jurisdiction to modify a child support order may serve as an initiating tribunal to request a tribunal of another state to modify a support order issued in that state.

(e) A temporary support order issued ex parte or pending resolution of a jurisdictional conflict does not create continuing, exclusive jurisdiction in the issuing tribunal.

§48-16-206. Continuing jurisdiction to enforce child support order.

(a) A tribunal of this state that has issued a child support order consistent with the law of this state may serve as an initiating tribunal to request a tribunal of another state to enforce:

(1) The order if the order is the controlling order and has not been modified by a tribunal of another state that assumed jurisdiction pursuant to the Uniform Interstate Family Support Act; or

(2) A money judgment for arrears of support and interest on the order accrued before a determination that an order of a tribunal of another state is the controlling order.

(b) A tribunal of this state having continuing jurisdiction over a support order may act as a responding tribunal to enforce the order.

§48-16-207. Determination of controlling child support order.

(a) If a proceeding is brought under this article and only one tribunal has issued a child support order, the order of that tribunal controls and must be so recognized.

(b) If a proceeding is brought under this article, and two or more child support orders have been issued by tribunals of this
state, another state or a foreign country with regard to the same
obligor and same child, a tribunal of this state having personal
jurisdiction over both the obligor and individual obligee shall
apply the following rules and by order shall determine which
order controls and must be recognized.

   (1) If only one of the tribunals would have continuing,
exclusive jurisdiction under this article, the order of that tribunal
controls and must be so recognized.

   (2) If more than one of the tribunals would have continuing,
exclusive jurisdiction under this article:

      (A) An order issued by a tribunal in the current home state
of the child controls; or

      (B) If an order has not been issued in the current home state
of the child, the order most recently issued controls.

   (3) If none of the tribunals would have continuing, exclusive
jurisdiction under this article, the tribunal of this state shall issue
a child support order which controls.

   (c) If two or more child support orders have been issued for
the same obligor and same child, upon request of a party who is
an individual or that is a support enforcement agency, a tribunal
of this state having personal jurisdiction over both the obligor
and the obligee who is an individual shall determine which order
controls under subsection (b) of this section. The request may be
filed with a registration for enforcement or registration for
modification pursuant to part VI or [§48-16-601 et seq.] may be
filed as a separate proceeding.

   (d) A request to determine which is the controlling order
must be accompanied by a copy of every child support order in
effect and the applicable record of payments. The requesting
party shall give notice of the request to each party whose rights
may be affected by the determination.
(e) The tribunal that issued the controlling order under subsection (a), (b) or (c) of this section has continuing jurisdiction to the extent provided in section 16-205 [§48-16-205] or 16-206 [§48-16-206].

(f) A tribunal of this state that determines by order which is the controlling order under subsection (b) (1) or (2) or (c) or that issues a new controlling order under subdivision (3) of subsection (b) shall state in that order:

(1) The basis upon which the tribunal made its determination;

(2) The amount of prospective support, if any; and

(3) The total amount of consolidated arrears and accrued interest, if any, under all of the orders after all payments made are credited as provided by section 209 [§48-16-209].

(g) Within thirty days after issuance of an order determining which is the controlling order, the party obtaining that order shall file a certified copy of it in each tribunal that issued or registered an earlier order of child support. A party or support enforcement agency obtaining the order that fails to file a certified copy is subject to appropriate sanctions by a tribunal in which the issue of failure to file arises. The failure to file does not affect the validity or enforceability of the controlling order.

(h) An order that has been determined to be the controlling order, or a judgment for consolidated arrears of support and interest, if any, made pursuant to this section must be recognized in proceedings under this article.

§48-16-208. Child support orders for two or more obligees.

In responding to registrations or petitions for enforcement of two or more child support orders in effect at the same time with
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3 regard to the same obligor and different individual obligees, at
4 least one of which was issued by a tribunal of another state or a
5 foreign country, a tribunal of this state shall enforce those orders
6 in the same manner as if the orders had been issued by a tribunal
7 of this state.

§48-16-209. Credit for payments.

1 A tribunal of this state shall credit amounts collected for a
2 particular period pursuant to any child support order against the
3 amounts owed for the same period under any other child support
4 order for support of the same child issued by a tribunal of this
5 state, another state, or a foreign country.

§48-16-210. Application of article to nonresident subject to
personal jurisdiction.

1 A tribunal of this state exercising personal jurisdiction over
2 a nonresident in a proceeding under this article, under other law
3 of this state relating to a support order, or recognizing a foreign
4 support order may receive evidence from outside this state
5 pursuant to section 316 [§48-16-316], communication with a
6 tribunal outside this state pursuant to section 317 [§48-16-317],
7 and obtain discovery through a tribunal outside this state
8 pursuant to section 318 [§48-16-318]. In all other respects, parts
9 III through [§§48-3-101 et seq. through §§ 48-6-101 et seq.] VI
10 do not apply and the tribunal shall apply the procedural and
11 substantive law of this state.

§48-16-211. Continuing, exclusive jurisdiction to modify spousal
support order.

1 (a) A tribunal of this state issuing a spousal support order
2 consistent with the law of this state has continuing, exclusive
3 jurisdiction to modify the spousal support order throughout the
4 existence of the support obligation.
A tribunal of this state may not modify a spousal support order issued by a tribunal of another state or a foreign country having continuing, exclusive jurisdiction over that order under the law of that state or foreign country.

(c) A tribunal of this state that has continuing, exclusive jurisdiction over a spousal support order may serve as:

(1) An initiating tribunal to request a tribunal of another state to enforce the spousal support order issued in this state; or

(2) A responding tribunal to enforce or modify its own spousal support order.

PART III. CIVIL PROCEDURES OF GENERAL APPLICATION.

§48-16-301. Proceeding under article.

(a) Except as otherwise provided in this article, this part applies to all proceedings under this article.

(b) An individual petitioner or a support enforcement agency may initiate a proceeding authorized under this article by filing a petition in an initiating tribunal for forwarding to a responding tribunal or by filing a petition or a comparable pleading directly in a tribunal of another state or a foreign country which has or can obtain personal jurisdiction over the respondent.

§48-16-304. Duties of initiating tribunal.

(a) Upon the filing of a petition authorized by this article, an initiating tribunal of this state shall forward the petition and its accompanying documents:

(1) To the responding tribunal or appropriate support enforcement agency in the responding state; or

(2) If the identity of the responding tribunal is unknown, to the state information agency of the responding state with a
§48-16-305. Duties and powers of responding tribunal.

(a) When a responding tribunal of this state receives a petition or comparable pleading from an initiating tribunal or directly pursuant to subsection (b), section 16-301 [§48-16-301], it shall cause the petition or pleading to be filed and notify the petitioner where and when it was filed.

(b) A responding tribunal of this state, to the extent not prohibited by other law, may do one or more of the following:

(1) Establish or enforce a support order, modify a child support order, determine the controlling child support order, or determine parentage of a child;

(2) Order an obligor to comply with a support order, specifying the amount and the manner of compliance;

(3) Order income withholding;

(4) Determine the amount of any arrearages and specify a method of payment;

(5) Enforce orders by civil or criminal contempt or both;
(6) Set aside property for satisfaction of the support order;

(7) Place liens and order execution on the obligor’s property;

(8) Order an obligor to keep the tribunal informed of the obligor’s current residential address, electronic mail address, telephone number, employer, address of employment and telephone number at the place of employment;

(9) Issue a capias for an obligor who has failed after proper notice to appear at a hearing ordered by the tribunal and enter the capias in any local and state computer systems for criminal warrants;

(10) Order the obligor to seek appropriate employment by specified methods;

(11) Award reasonable attorney’s fees and other fees and costs; and

(12) Grant any other available remedy.

(c) A responding tribunal of this state shall include in a support order issued under this article or, in the documents accompanying the order, the calculations on which the support order is based.

(d) A responding tribunal of this state may not condition the payment of a support order issued under this article upon compliance by a party with provisions for visitation.

(e) If a responding tribunal of this state issues an order under this article, the tribunal shall send a copy of the order to the petitioner and the respondent and to the initiating tribunal, if any.

(f) If requested to enforce a support order, arrears, or judgment or modify a support order stated in a foreign currency,
a responding tribunal of this state shall convert the amount stated
in the foreign currency to the equivalent amount in dollars under
the applicable official or market exchange rate as publicly
reported.

§48-16-307. Duties of support enforcement agency.

(a) A support enforcement agency of this state, upon request,
shall provide services to a petitioner in a proceeding under this
article.

(b) A support enforcement agency of this state that is
providing services to the petitioner shall:

(1) Take all steps necessary to enable an appropriate tribunal
of this state, another state or a foreign country to obtain
jurisdiction over the respondent;

(2) Request an appropriate tribunal to set a date, time and
place for a hearing;

(3) Make a reasonable effort to obtain all relevant
information, including information as to income and property of
the parties;

(4) Within two days, exclusive of Saturdays, Sundays and
legal holidays, after receipt of a notice in a record from an
initiating, responding or registering tribunal, send a copy of the
notice to the petitioner;

(5) Within two days, exclusive of Saturdays, Sundays and
legal holidays, after receipt of communication in a record from
the respondent or the respondent’s attorney, send a copy of the
communication to the petitioner; and

(6) Notify the petitioner if jurisdiction over the respondent
cannot be obtained.
(c) A support enforcement agency of this state that requests registration of a child support order in this state for enforcement or for modification shall make reasonable efforts:

(1) To ensure that the order to be registered is the controlling order; or

(2) If two or more child support orders exist and the identity of the controlling order has not been determined, to ensure that a request for such a determination is made in a tribunal having jurisdiction to do so.

(d) A support enforcement agency of this state that requests registration and enforcement of a support order, arrears or judgment stated in a foreign currency shall convert the amounts stated in the foreign currency into the equivalent amounts in dollars under the applicable official or market exchange rate as publicly reported.

(e) A support enforcement agency of this state shall request a tribunal of this state to issue a child support order and an income withholding order that redirect payment of current support, arrears, and interest if requested to do so by a support enforcement agency of another state pursuant to section 319 [§48-16-319].

(f) This article does not create or negate a relationship of attorney and client or other fiduciary relationship between a support enforcement agency or the attorney for the agency and the individual being assisted by the agency.

§48-16-310. Duties of state information agency.

(a) The Bureau for Child Support Enforcement is the state information agency under this article.

(b) The state information agency shall:
(1) Compile and maintain a current list, including addresses, of the tribunals in this state which have jurisdiction under this article and any support enforcement agencies in this state and transmit a copy to the state information agency of every other state;

(2) Maintain a register of names and addresses of tribunals and support enforcement agencies received from other states.

(3) Forward to the appropriate tribunal in the county in this state in which the obligee who is an individual or the obligor resides, or in which the obligor’s property is believed to be located, all documents concerning a proceeding under this article received from another state or a foreign country; and

(4) Obtain information concerning the location of the obligor and the obligor’s property within this state not exempt from execution, by such means as postal verification and federal or state locator services, examination of telephone directories, requests for the obligor’s address from employers and examinations of governmental records, including, to the extent not prohibited by other law, those relating to real property, vital statistics, law enforcement, taxation, motor vehicles, driver’s licenses and social security.

§48-16-311. Pleadings and accompanying documents.

(a) In a proceeding under this article, a petitioner seeking to establish a support order, to determine parentage of a child or to register and modify a support order of a tribunal of another state or a foreign country must file a petition. Unless otherwise ordered under section 16-312 [§48-16-312], the petition or accompanying documents must provide, so far as known, the name, residential address and social security numbers of the obligor and the obligee or the parent and alleged parent and the
name, sex, residential address, social security number and date of birth of each child for whose benefit support is sought or whose parentage is to be determined. Unless filed at the time of registration, the petition must be accompanied by a copy of any support order known to have been issued by another tribunal. The petition may include any other information that may assist in locating or identifying the respondent.

(b) The petition must specify the relief sought. The petition and accompanying documents must conform substantially with the requirements imposed by the forms mandated by federal law for use in cases filed by a support enforcement agency.

§48-16-313. Costs and fees.

(a) The petitioner may not be required to pay a filing fee or other costs.

(b) If an obligee prevails, a responding tribunal of this state may assess against an obligor filing fees, reasonable attorney’s fee, other costs and necessary travel and other reasonable expenses incurred by the obligee and the obligee’s witnesses. The tribunal may not assess fees, costs or expenses against the obligee or the support enforcement agency of either the initiating or the responding state or foreign country, except as provided by other law. Attorney’s fees may be taxed as costs and may be ordered paid directly to the attorney, who may enforce the order in the attorney’s own name. Payment of support owed to the obligee has priority over fees, costs and expenses.

(c) The tribunal shall order the payment of costs and reasonable attorney’s fees if it determines that a hearing was requested primarily for delay. In a proceeding under part VI [§§48-16-601 through 48-16-615], a hearing is presumed to have been requested primarily for delay if a registered support order is confirmed or enforced without change.
§48-16-314. Limited immunity of petitioner.

(a) Participation by a petitioner in a proceeding under this article before a responding tribunal, whether in person, by private attorney or through services provided by the support enforcement agency, does not confer personal jurisdiction over the petitioner in another proceeding.

(b) A petitioner is not amenable to service of civil process while physically present in this state to participate in a proceeding under this article.

(c) The immunity granted by this section does not extend to civil litigation based on acts unrelated to a proceeding under this article committed by a party while physically present in this state to participate in the proceeding.

§48-16-316. Special rules of evidence and procedure.

(a) The physical presence of a nonresident party who is an individual in a tribunal of this state is not required for the establishment, enforcement or modification of a support order or the rendition of a judgment determining parentage of a child.

(b) An affidavit, a document substantially complying with federally mandated forms or a document incorporated by reference in any of them, which would not be excluded under the hearsay rule if given in person, is admissible in evidence if given under penalty of perjury by a party or witness residing outside this state.

(c) A copy of the record of child support payments certified as a true copy of the original by the custodian of the record may be forwarded to a responding tribunal. The copy is evidence of facts asserted in it and is admissible to show whether payments were made.
(d) Copies of bills for testing for parentage of a child, and for prenatal and postnatal health care of the mother and child, furnished to the adverse party at least ten days before trial are admissible in evidence to prove the amount of the charges billed and that the charges were reasonable, necessary and customary.

(e) Documentary evidence transmitted from outside this state to a tribunal of this state by telephone, telex, or other electronic means that do not provide an original record may not be excluded from evidence on an objection based on the means of transmission.

(f) In a proceeding under this article, a tribunal of this state shall permit a party or witness residing outside this state to be deposed or to testify under penalty of perjury by telephone, audiovisual means or other electronic means at a designated tribunal or other location. A tribunal of this state shall cooperate with other tribunals in designating an appropriate location for the deposition or testimony. The Supreme Court of Appeals shall promulgate new rules or amend the rules of practice and procedure for family law to establish procedures pertaining to the exercise of cross examination in those instances involving the receipt of testimony by means other than direct or personal testimony.

(g) If a party called to testify at a civil hearing refuses to answer on the ground that the testimony may be self-incriminating, the trier of fact may draw an adverse inference from the refusal.

(h) A privilege against disclosure of communications between spouses does not apply in a proceeding under this article.

(i) The defense of immunity based on the relationship of husband and wife or parent and child does not apply in a proceeding under this article.
(j) A voluntary acknowledgment of paternity, certified as a true copy, is admissible to establish parentage of the child.

§48-16-317. Communications between tribunals.

A tribunal of this state may communicate with a tribunal outside this state in a record, or by telephone, electronic mail or other means, to obtain information concerning the laws, the legal effect of a judgment, decree, or order of that tribunal and the status of a proceeding. A tribunal of this state may furnish similar information by similar means to a tribunal outside this state.

§48-16-318. Assistance with discovery.

A tribunal of this state may:

1. Request a tribunal outside this state to assist in obtaining discovery; and
2. Upon request, compel a person over which it has jurisdiction to respond to a discovery order issued by a tribunal outside this state.

§48-16-319. Receipt and disbursement of payments.

(a) A support enforcement agency or tribunal of this state shall disburse promptly any amounts received pursuant to a support order as directed by the order. The agency or tribunal shall furnish to a requesting party or tribunal of another state or a foreign country a certified statement by the custodian of the record of the amounts and dates of all payments received.

(b) If neither the obligor, nor the obligee who is an individual, nor the child resides in this state, upon request from the support enforcement agency of this state or another state, a tribunal of this state shall:
(1) Direct that the support payment be made to the support enforcement agency in the state in which the obligee is receiving services; and

(2) Issue and send to the obligor’s employer a conforming income withholding order or an administrative notice of change of payee, reflecting the redirected payments.

(c) The support enforcement agency of this state receiving redirected payments from another state pursuant to a law similar to subsection (b) of this section shall furnish to a requesting party or tribunal of the other state a certified statement by the custodian of the record of the amount and dates of all payments received.

PART IV. ESTABLISHMENT OF SUPPORT ORDER.

§48-16-401. Petition to establish support order.

(a) If a support order entitled to recognition under this article has not been issued, a responding tribunal of this state with personal jurisdiction over the parties may issue a support order if:

(1) The individual seeking the order resides outside this state; or

(2) The support enforcement agency seeking the order is located outside this state.

(b) The tribunal may issue a temporary child support order if the tribunal determines that such an order is appropriate and the individual ordered to pay is:

(1) A presumed father of the child;

(2) Petitioning to have his paternity adjudicated;
(3) Identified as the father of the child through genetic testing;

(4) An alleged father who has declined to submit to genetic testing;

(5) Shown by clear and convincing evidence to be the father of the child;

(6) An acknowledged father as provided by applicable state law;

(7) The mother of the child; or

(8) An individual who has been ordered to pay child support in a previous proceeding and the order has not been reversed or vacated.

(c) Upon finding, after notice and opportunity to be heard, that an obligor owes a duty of support, the tribunal shall issue a support order directed to the obligor and may issue other orders pursuant to section 16-305 [§48-16-305].

§48-16-402. Proceeding to determine parentage.

A tribunal of this state authorized to determine parentage of a child may serve as a responding tribunal in a proceeding to determine parentage of a child brought under this article or a law or procedure substantially similar to this article.

PART V. ENFORCEMENT OF SUPPORT ORDER WITHOUT REGISTRATION.

§48-16-501. Employer’s receipt of income withholding order of another state.

An income withholding order issued in another state may be sent by or on behalf of the obligee, or by the support
enforcement agency, to the person defined as the obligor’s
source of income under section 1-240 {§48-1-240} of this
chapter without first filing a petition or comparable pleading or
registering the order with a tribunal of this state.

§48-16-502. Employer’s compliance with income withholding
order of another state.

(a) Upon receipt of an income withholding order, the
obligor’s employer shall immediately provide a copy of the order
to the obligor.

(b) The employer shall treat an income withholding order
issued in another state which appears regular on its face as if it
had been issued by a tribunal of this state.

(c) Except as otherwise provided in subsection (d) of this
section and section 16-503 [§48-16-503], the employer shall
withhold and distribute the funds as directed in the withholding
order by complying with the terms of the order which specify:

(1) The duration and amount of periodic payments of current
child support, stated as a sum certain;

(2) The person designated to receive payments and the
address to which the payments are to be forwarded;

(3) Medical support, whether in the form of periodic cash
payment, stated as a sum certain, or ordering the obligor to
provide health insurance coverage for the child under a policy
available through the obligor’s employment;

(4) The amount of periodic payments of fees and costs for a
support enforcement agency, the issuing tribunal and the
obligee’s attorney, stated as sums certain; and

(5) The amount of periodic payments of arrearages and
interest on arrearages, stated as sums certain.
(d) An employer shall comply with the law of the state of the obligor’s principal place of employment for withholding from income with respect to:

(1) The employer’s fee for processing an income withholding order;

(2) The maximum amount permitted to be withheld from the obligor’s income; and

(3) The times within which the employer must implement the withholding order and forward the child support payment.

§48-16-504. Immunity from civil liability.

An employer that complies with an income withholding order issued in another state in accordance with this article is not subject to civil liability to any individual or agency with regard to the employer’s withholding of child support from the obligor’s income.

§48-16-505. Penalties for noncompliance.

An employer that willfully fails to comply with an income withholding order issued in another state and received for enforcement is subject to the same penalties that may be imposed for noncompliance with an order issued by a tribunal of this state.

§48-16-506. Contest by obligor.

(a) An obligor may contest the validity or enforcement of an income withholding order issued in another state and received directly by an employer in this state by registering the order in a tribunal of this state and filing a contest to that order as provided in part VI [§48-16-601 et seq.], or otherwise contesting the order in the same manner as if the order had been issued by a tribunal of this state.
§48-16-507. Administrative enforcement of orders.

(a) A party or support enforcement agency seeking to enforce a support order or an income withholding order, or both, issued in another state or a foreign support order may send the documents required for registering the order to a support enforcement agency of this state.

(b) Upon receipt of the documents, the support enforcement agency, without initially seeking to register the order, shall consider and, if appropriate, use any administrative procedure authorized by the law of this state to enforce a support order or an income withholding order, or both. If the obligor does not contest administrative enforcement, the order need not be registered. If the obligor contests the validity or administrative enforcement of the order, the support enforcement agency shall register the order pursuant to this article.

PART VI. REGISTRATION, ENFORCEMENT AND MODIFICATION OF SUPPORT ORDER.

§48-16-601. Registration of order for enforcement.

A support order or income withholding order issued in another state or a foreign support order may be registered in this state for enforcement.
§48-16-602. Procedure to register order for enforcement.

(a) Except as provided in section 706 [§48-16-706], a support order or income withholding order of another state or a foreign support order may be registered in this state by sending the following records to the state information agency in this state:

(1) A letter of transmittal to the tribunal requesting registration and enforcement;

(2) Two copies, including one certified copy, of the order to be registered, including any modification of the order;

(3) A sworn statement by the person requesting registration or a certified statement by the custodian of the records showing the amount of any arrearage;

(4) The name of the obligor and, if known:

(A) The obligor’s address and social security number;

(B) The name and address of the obligor’s employer and any other source of income of the obligor; and

(C) A description and the location of property of the obligor in this state not exempt from execution; and

(5) Except as otherwise provided in section 312 [§48-16-312], the name and address of the obligee and, if applicable, the person to whom support payments are to be remitted.

(b) On receipt of a request for registration, the clerk of the court shall cause the order to be filed as an order of a tribunal of another state or a foreign support order, together with one copy of the documents and information, regardless of their form.

(c) A petition or comparable pleading seeking a remedy that must be affirmatively sought under other law of this state may be
filed at the same time as the request for registration or later. The pleading must specify the grounds for the remedy sought.

(d) If two or more orders are in effect, the person requesting registration shall:

(1) Furnish to the tribunal a copy of every support order asserted to be in effect in addition to the documents specified in this section;

(2) Specify the order alleged to be the controlling order, if any; and

(3) Specify the amount of consolidated arrears, if any.

(e) A request for a determination of which is the controlling order may be filed separately or with a request for registration and enforcement or for registration and modification. The person requesting registration shall give notice of the request to each party whose rights may be affected by the determination.

§48-16-603. Effect of registration for enforcement.

(a) A support order or income withholding order issued in another state or a foreign support order is registered when the order is filed in the registering tribunal of this state.

(b) A registered support order issued in another state or a foreign country is enforceable in the same manner and is subject to the same procedures as an order issued by a tribunal of this state.

(c) Except as otherwise provided in this article, a tribunal of this state shall recognize and enforce, but may not modify, a registered support order if the issuing tribunal had jurisdiction.

§48-16-604. Choice of law.

(a) Except as otherwise provided in subsection (d) of this section, the law of the issuing state or foreign country governs:
(1) The nature, extent, amount and duration of current payments under a registered support order;

(2) The computation and payment of arrearages and accrual of interest on the arrearages under the support order; and

(3) The existence and satisfaction of other obligations under the support order.

(b) In a proceeding for arrears under a registered support order, the statute of limitation of this state or of the issuing state or foreign country, whichever is longer, applies.

c) A responding tribunal of this state shall apply the procedures and remedies of this state to enforce current support and collect arrears and interest due on a support order of another state or a foreign country registered in this state.

d) After a tribunal of this state or another state determines which is the controlling order and issues an order consolidating arrears, if any, a tribunal of this state shall prospectively apply the law of the state or foreign country issuing the controlling order, including its law on interest on arrears, on current and future support and on consolidated arrears.

§48-16-605. Notice of registration of order.

(a) When a support order or income withholding order issued in another state or a foreign support order is registered, the clerk of the court shall notify the nonregistering party. The notice must be accompanied by a copy of the registered order and the documents and relevant information accompanying the order.

(b) A notice must inform the nonregistering party:

(1) That a registered order is enforceable as of the date of registration in the same manner as an order issued by a tribunal of this state;
§48-16-707. Procedure to contest validity or enforcement of registered order.

(a) A nonregistering party seeking to contest the validity or enforcement of a registered order in this state shall request a hearing to contest the validity or enforcement of the registered order within twenty days after notice unless the registered order is under section 707 [§48-16-707];

(b) That failure to contest the validity or enforcement of the registered order in a timely manner will result in confirmation of the order and enforcement of the order and the alleged arrearages; and

(c) Of the amount of any alleged arrearages.

(d) If the registering party asserts that two or more orders are in effect, a notice must also:

(1) Identify the two or more orders and the order alleged by the registering party to be the controlling order and the consolidated arrears, if any;

(2) Notify the nonregistering party of the right to a determination of which is the controlling order;

(3) State that the procedures provided in subsection (b) of this section apply to the determination of which is the controlling order; and

(4) State that failure to contest the validity or enforcement of the order alleged to be the controlling order in a timely manner may result in confirmation that the order is the controlling order.

(d) Upon registration of an income withholding order for enforcement, the support enforcement agency or the registering tribunal shall notify the obligor’s source of income pursuant to section 14-401 et seq. [§48-14-401 et seq.], of this chapter.

§48-16-606. Procedure to contest validity or enforcement of registered support order.

(a) A nonregistering party seeking to contest the validity or enforcement of a registered order in this state shall request a
The nonregistering party may seek to vacate the registration, to assert any defense to an allegation of noncompliance with the registered order or to contest the remedies being sought or the amount of any alleged arrearages pursuant to section 16-607 [§48-16-607].

(b) If the nonregistering party fails to contest the validity or enforcement of the registered support order in a timely manner, the order is confirmed by operation of law.

(c) If a nonregistering party requests a hearing to contest the validity or enforcement of the registered order, the registering tribunal shall schedule the matter for hearing and give notice to the parties of the date, time and place of the hearing.

§48-16-607. Contest of registration or enforcement.

(a) A party contesting the validity or enforcement of a registered support order or seeking to vacate the registration has the burden of proving one or more of the following defenses:

(1) The issuing tribunal lacked personal jurisdiction over the contesting party;

(2) The order was obtained by fraud;

(3) The order has been vacated, suspended or modified by a later order;

(4) The issuing tribunal has stayed the order pending appeal;

(5) There is a defense under the law of this state to the remedy sought;

(6) Full or partial payment has been made;
(7) The statute of limitation under section 16-604 [§48-16-604] precludes enforcement of some or all of the alleged arrearages; or

(8) The alleged controlling order is not the controlling order.

(b) If a party presents evidence establishing a full or partial defense under subsection (a) of this section, a tribunal may stay enforcement of a registered support order, continue the proceeding to permit production of additional relevant evidence and issue other appropriate orders. An uncontested portion of the registered support order may be enforced by all remedies available under the law of this state.

(c) If the contesting party does not establish a defense under subsection (a) of this section to the validity or enforcement of a registered support order, the registering tribunal shall issue an order confirming the order.

§48-16-608. Confirmed order.

Confirmation of a registered support order, whether by operation of law or after notice and hearing, precludes further contest of the order with respect to any matter that could have been asserted at the time of registration.

§48-16-609. Procedure to register child support order of another state for modification.

A party or support enforcement agency seeking to modify or to modify and enforce a child support order issued in another state shall register that order in this state in the same manner provided in sections 16-601 through 16-608 [§§48-16-601 through §48-16-608] if the order has not been registered. A petition for modification may be filed at the same time as a request for registration or later. The pleading must specify the grounds for modification.
§48-16-610. Effect of registration for modification.

A tribunal of this state may enforce a child support order of another state registered for purposes of modification in the same manner as if the order had been issued by a tribunal of this state, but the registered support order may be modified only if the requirements of section 16-611 [§48-16-611] or 16-613 [§48-16-613] have been met.

§48-16-611. Modification of child support order of another state.

(a) If section 613 [§48-16-613] does not apply, upon petition a tribunal of this state may modify a child support order issued in another state which is registered in this state if, after notice and hearing, the tribunal finds that:

(1) The following requirements are met:

(A) Neither the child, nor the obligee who is an individual nor the obligor resides in the issuing state;

(B) A petitioner who is a nonresident of this state seeks modification; and

(C) The respondent is subject to the personal jurisdiction of the tribunal of this state; or

(2) This state is the residence of the child or a party who is an individual is subject to the personal jurisdiction of the tribunal of this state and all of the parties who are individuals have filed consents in a record in the issuing tribunal for a tribunal of this state to modify the support order and assume continuing, exclusive jurisdiction.

(b) Modification of a registered child support order is subject to the same requirements, procedures and defenses that apply to the modification of an order issued by a tribunal of this state and the order may be enforced and satisfied in the same manner.
(c) A tribunal of this state may not modify any aspect of a
child support order that may not be modified under the law of
the issuing state, including the duration of the obligation of
support. If two or more tribunals have issued child support
orders for the same obligor and same child, the order that
controls must be so recognized under section 16-207 [§48-16-
207] establishes the aspects of the support order which are
nonmodifiable.

(d) In a proceeding to modify a child support order, the law
of the state that is determined to have issued the initial
controlling order governs the duration of the obligation of
support. The obligor’s fulfillment of the duty of support
established by that order precludes imposition of a further
obligation of support by a tribunal of this state.

(e) On the issuance of an order by a tribunal of this state
modifying a child support order issued in another state, the
tribunal of this state becomes the tribunal having continuing,
exclusive jurisdiction.

(f) Notwithstanding subsections (a) through (e) of this
section and section 201 (b), a tribunal of this state retains
jurisdiction to modify an order issued by a tribunal of this state
if:

   (1) One party resides in another state; and

   (2) The other party resides outside the United States.

§48-16-613. Jurisdiction to modify child support order of another
state when individual parties reside in this state.

(a) If all of the parties who are individuals reside in this state
and the child does not reside in the issuing state, a tribunal of
this state has jurisdiction to enforce and to modify the issuing
state’s child support order in a proceeding to register that order.
(b) A tribunal of this state exercising jurisdiction under this section shall apply the provisions of parts I [§48-16-101 et seq.] and II [§48-16-201 et seq.], and the procedural and substantive law of this state to the proceeding for enforcement or modification. Parts III, IV, V, VII and VIII [§§48-16-301 et seq. through §§48-16-501 et seq. and §§48-16-701 et seq. and §§48-16-801 et seq.] do not apply.

§48-16-614. Notice to issuing tribunal of modification.

Within thirty days after issuance of a modified child support order, the party obtaining the modification shall file a certified copy of the order with the issuing tribunal that had continuing, exclusive jurisdiction over the earlier order and in each tribunal in which the party knows the earlier order has been registered. A party who obtains the order and fails to file a certified copy is subject to appropriate sanctions by a tribunal in which the issue of failure to file arises. The failure to file does not affect the validity or enforceability of the modified order of the new tribunal having continuing, exclusive jurisdiction.

§48-16-615. Jurisdiction to modify child support order of foreign country.

(a) Except as otherwise provided in section 711 [§48-16-711], if a foreign country lacks or refuses to exercise jurisdiction to modify its child support order pursuant to its laws, a tribunal of this state may assume jurisdiction to modify the child support order and bind all individuals subject to the personal jurisdiction of the tribunal whether the consent to modification of a child support order otherwise required of the individual pursuant to section 611 [§48-16-611] has been given or whether the individual seeking modification is a resident of this state or of the foreign country.

(b) An order issued by a tribunal of this state modifying a foreign child support order pursuant to this section is the controlling order.
§48-16-616. Procedure to register child support order of foreign country for modification.

A party or support enforcement agency seeking to modify, or to modify and enforce, a foreign child support order not under the convention may register that order in this state under sections 601 through 608 [§§48-16-601 through §48-16-608] if the order has not been registered. A petition for modification may be filed at the same time as a request for registration or at another time. The petition must specify the grounds for modification.

PART VII. SUPPORT PROCEEDING UNDER CONVENTION.

§48-16-701. Definitions.

In this part:

(1) “Application” means a request under the convention by an obligee or obligor, or on behalf of a child, made through a central authority for assistance from another central authority.

(2) “Central authority” means the entity designated by the United States or a foreign country described in section 102(5)(D) [§48-16-102(5)(D)] to perform the functions specified in the convention.

(3) “Convention support order” means a support order of a tribunal of a foreign country described in section 102(5)(D) [§48-16-102(5)(D)].

(4) “Direct request” means a petition filed by an individual in a tribunal of this state in a proceeding involving an obligee, obligor or child residing outside the United States.

(5) “Foreign central authority” means the entity designated by a foreign country described in section 102(5)(D) [§48-16-102(5)(D)], to perform the functions specified in the convention.
(6) “Foreign support agreement:”

(A) Means an agreement for support in a record that:

(i) Is enforceable as a support order in the country of origin;

(ii) Has been:

(I) Formally drawn up or registered as an authentic instrument by a foreign tribunal; or

(II) Authenticated by, or concluded, registered or filed with a foreign tribunal; and

(iii) May be reviewed and modified by a foreign tribunal; and

(B) Includes a maintenance arrangement or authentic instrument under the convention.

(7) “United States central authority” means the Secretary of the United States Department of Health and Human Services.

§48-16-702. Applicability.

This article applies only to a support proceeding under the convention. In such a proceeding, if a provision of this article is inconsistent with parts I through VI [§§48-16-101 et seq. through §§48-16-601 et seq.], this part controls.

§48-16-703. Relationship of Bureau for Child Support Enforcement to United States central authority.

The Bureau for Child Support Enforcement of this state is recognized as the agency designated by the United States central authority to perform specific functions under the convention.

(a) In a support proceeding under this article, the Bureau for Child Support Enforcement of this state shall:

(1) Transmit and receive applications; and

(2) Initiate or facilitate the institution of a proceeding regarding an application in a tribunal of this state.

(b) The following support proceedings are available to an obligee or under the convention:

(1) Recognition or recognition and enforcement of a foreign support order;

(2) Enforcement of a support order issued or recognized in this state;

(3) Establishment of a support order if there is no existing order, including, if necessary, determination of parentage of a child;

(4) Establishment of a support order if recognition of a foreign support order is refused under section 708(b)(2) [§48-16-708(b)(2)], (4) [§48-16-708(b)(4)], or (9) [§48-16-708(b)(9)].

(5) Modification of a support order of a tribunal of this state;

and

(6) Modification of a support order of a tribunal of another state or a foreign country.

(c) The following support proceedings are available under the convention to an obligor against which there is an existing support order;
(1) Recognition of an order suspending or limiting enforcement of an existing support order of a tribunal of this state;

(2) Modification of a support order of a tribunal of this state; and

(3) Modification of a support order of a tribunal of another state or a foreign country.

(d) A tribunal of this state may not require security, bond or deposit, however described, to guarantee the payment of costs and expenses in proceedings under the convention.

§48-16-705. Direct request.

(a) A petitioner may file a direct request seeking establishment or modification of a support order or determination of parentage of a child. In the proceeding, the law of this state applies.

(b) A petitioner may file a direct request seeking recognition and enforcement of a support order or support agreement. In the proceeding, sections 706 through 713 [§§48-16-706 through §48-16-713] apply.

(c) In a direct request for recognition and enforcement of a convention support order or foreign support agreement:

(1) A security, bond, or deposit is not required to guarantee the payment of costs and expenses; and

(2) An obligee or obligor that in the issuing country has benefited from free legal assistance is entitled to benefit, at least to the same extent, from any free legal assistance provided for by the law of this state under the same circumstances.

(d) A petitioner filing a direct request is not entitled to assistance from the Bureau for Child Support Enforcement.
(e) This article does not prevent the application of laws of this state that provide simplified, more expeditious rules regarding a direct request for recognition and enforcement of a foreign support order or foreign support agreement.

§48-16-706. Registration of convention support order.

(a) Except as otherwise provided in this article, a party who is an individual or a support enforcement agency seeking recognition of a convention support order shall register the order in this state as provided in part VI.

(b) Notwithstanding sections 311 [§48-16-311] and 602(a) [§48-16-602(a)], a request for registration of a convention support order must be accompanied by:

(1) A complete text of the support order or an abstract or extract of the support order drawn up by the issuing foreign tribunal, which may be in the form recommended by the Hague Conference on Private International Law;

(2) A record stating that the support order is enforceable in the issuing country;

(3) If the respondent did not appear and was not represented in the proceedings in the issuing country, a record attesting, as appropriate, either that the respondent had proper notice of the proceedings and an opportunity to be heard or that the respondent had proper notice of the support order and an opportunity to be heard in a challenge or appeal on fact or law before a tribunal;

(4) A record showing the amount of arrears, if any, and the date the amount was calculated;

(5) A record showing a requirement for automatic adjustment of the amount of support, if any, and the information necessary to make the appropriate calculations; and
(6) If necessary, a record showing the extent to which the applicant received free legal assistance in the issuing country;

(c) A request for registration of a convention support order may seek recognition and partial enforcement of the order.

(d) A tribunal of this state may vacate the registration of a convention support order without the filing of a contest under section 707 [§48-16-707] only if, acting on its own motion, the tribunal finds that recognition and enforcement of the order would be manifestly incompatible with public policy.

(e) The tribunal shall promptly notify the parties of the registration or the order vacating the registration of a convention support order.

§48-16-707. Contest of registered convention support order.

(a) Except as otherwise provided in this article, sections 605 through 608 [§§48-16-605 through §48-16-608] apply to a contest of a registered convention support order.

(b) A party contesting a registered convention support order shall file a contest not later than thirty days after notice of the registration, but if the contesting party does not reside in the United States, the contest must be filed not later than sixty days after notice of the registration.

(c) If the nonregistering party fails to contest the registered convention support order by the time specified in subsection (b) of this section, the order is enforceable.

(d) A contest of a registered convention support order may be based only on grounds set forth in section 708 [§48-16-708]. The contesting party bears the burden of proof.

(e) In a contest of a registered convention support order, a tribunal of this state:
(1) Is bound by the findings of fact on which the foreign tribunal based its jurisdiction; and

(2) May not review the merits of the order.

(f) A tribunal of this state deciding a contest of a registered convention support order shall promptly notify the parties of its decision.

(g) A challenge or appeal, if any, does not stay the enforcement of a convention support order unless there are exceptional circumstances.

§48-16-708. Recognition and enforcement of registered convention support order.

(a) Except as otherwise provided in subsection (b) of this section, a tribunal of this state shall recognize and enforce a registered convention support order.

(b) The following grounds are the only grounds on which a tribunal of this state may refuse recognition and enforcement of a registered convention support order:

(1) Recognition and enforcement of the order is manifestly incompatible with public policy, including the failure of the issuing tribunal to observe minimum standards of due process, which include notice and an opportunity to be heard;

(2) The issuing tribunal lacked personal jurisdiction consistent with section 201 [§48-16-201];

(3) The order is not enforceable in the issuing country;

(4) The order was obtained by fraud in connection with a matter of procedure;

(5) A record transmitted in accordance with section 706 [§48-16-706] lacks authenticity or integrity;
(6) A proceeding between the same parties and having the same purpose is pending before a tribunal of this state and that proceeding was the first to be filed;

(7) The order is incompatible with a more recent support order involving the same parties and having the same purpose if the more recent support order is entitled to recognition and enforcement under this article in this state;

(8) Payment, to the extent alleged arrears have been paid in whole or in part;

(9) In a case in which the respondent neither appeared nor was represented in the proceeding in the issuing foreign country:

(A) If the law of that country provides for prior notice of proceedings, the respondent did not have proper notice of the proceedings and an opportunity to be heard; or

(B) If the law of that country does not provide for prior notice of the proceedings, the respondent did not have proper notice of the order and an opportunity to be heard in a challenge or appeal on fact or law before a tribunal; or

(10) The order was made in violation of section 711 [§48-16-711].

(c) If a tribunal of this state does not recognize a convention support order under subsection (b)(2) [§48-16-708 (b)(2)], (4) [§48-16-708(b)(4)], or (9) [§48-16-708(b)(9);

(1) The tribunal may not dismiss the proceeding without allowing a reasonable time for a party to request the establishment of a new convention support order; and

(2) The Bureau for Child Support Enforcement shall take all appropriate measures to request a child support order for the
§48-16-708. Obligee, interest in payment of support.

If a tribunal of this state does not recognize and enforce a convention support order in its entirety, it shall enforce any interest in the payment of support that is not time-barred.

§48-16-709. Partial enforcement.

If a tribunal of this state does not recognize and enforce a convention support order in its entirety, it shall enforce any severable part of the order. An application or direct request may seek recognition and partial enforcement of a convention support order.

§48-16-710. Foreign support agreement.

(a) Except as otherwise provided in subsections (c) and (d) of this section, a tribunal of this state shall recognize and enforce a foreign support agreement registered in this state.

(b) An application or direct request for recognition and enforcement of a foreign support agreement must be accompanied by:

(1) A complete text of the foreign support agreement; and

(2) A record stating that the foreign support agreement is enforceable as an order of support in the issuing country.

(c) A tribunal of this state may vacate the registration of a foreign support agreement only if, acting on its own motion, the tribunal finds that recognition and enforcement would be manifestly incompatible with public policy.

(d) In a contest of a foreign support agreement, a tribunal of this state may refuse recognition and enforcement of the agreement if it finds:

(1) Recognition and enforcement of the agreement is manifestly incompatible with public policy;
(2) The agreement was obtained by fraud or falsification;

(3) The agreement is incompatible with a support order involving the same parties and having the same purpose in this state, another state or a foreign country if the support order is entitled to recognition and enforcement under this article in this state; or

(4) The record submitted under subsection (b) of this section lacks authenticity or integrity.

(e) A proceeding for recognition and enforcement of a foreign support agreement must be suspended during the pendency of a challenge to or appeal of the agreement before a tribunal of another state or a foreign country.

§48-16-711. Modification of convention child support order.

(a) A tribunal of this state may not modify a convention child support order if the obligee remains a resident of the foreign country where the support order was issued unless:

(1) The obligee submits to the jurisdiction of a tribunal of this state, either expressly or by defending on the merits of the case without objecting to the jurisdiction at the first available opportunity; or

(2) The foreign tribunal lacks or refuses to exercise jurisdiction to modify its support order or issue a new support order.

(b) If a tribunal of this state does not modify a convention child support order because the order is not recognized in this state, section 708(c) [§48-16-708(c)] applies.

§48-16-712. Personal information: limit on use.

Personal information gathered or transmitted under this article may be used only for the purposes for which it was gathered or transmitted.
§48-16-713. Record original language: English translation.

A record filed with a tribunal of this state under this article must be in the original language, and, if not in English, must be accompanied by an English translation.

PART VIII. INTERSTATE RENDITION.

§48-16-801. Grounds for rendition.

(a) For purposes of this article, “Governor” includes an individual performing the functions of Governor or the executive authority of a state covered by this article.

(b) The Governor of this state may:

(1) Demand that the Governor of another state surrender an individual found in the other state who is charged criminally in this state with having failed to provide for the support of an obligee; or

(2) On the demand of the Governor of another state, surrender an individual found in this state who is charged criminally in the other state with having failed to provide for the support of an obligee.

(c) A provision for extradition of individuals not inconsistent with this article applies to the demand even if the individual whose surrender is demanded was not in the demanding state when the crime was allegedly committed and has not fled therefrom.

§48-16-802. Conditions of rendition.

(a) Before making a demand that the Governor of another state surrender an individual charged criminally in this state with having failed to provide for the support of an obligee, the Governor of this state may require a prosecutor of this state to demonstrate that at least sixty days previously the obligee had
6 initiated proceeding for support pursuant to this article or that the proceeding would be of no avail.

8 (b) If, under this article or a law substantially similar to this article, the Governor of another state makes a demand that the Governor of this state surrender an individual charged criminally in that state with having failed to provide for the support of a child or other individual to whom a duty of support is owed, the Governor may require a prosecutor to investigate the demand and report whether a proceeding for support has been initiated or would be effective. If it appears that a proceeding would be effective but has not been initiated, the Governor may delay honoring the demand for a reasonable time to permit the initiation of a proceeding.

19 (c) If a proceeding for support has been initiated and the individual whose rendition is demanded prevails, the Governor may decline to honor the demand. If the petitioner prevails and the individual whose rendition is demanded is subject to a support order, the Governor may decline to honor the demand if the individual is complying with the support order.

PART IX. MISCELLANEOUS PROVISIONS.

§48-16-902. Transitional provision.

This article applies to proceedings begun on or after the effective date of the amendments to this article enacted during the 2015 regular session of the West Virginia Legislature, to establish a support order or determine parentage of a child or to register, recognize, enforce, or modify a prior support order, determination, or agreement, whenever issued or entered.

§48-16-903. Severability.

If any provision of this article or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this article which can
be given effect without the invalid provision or application and
to this end the provisions of this article are severable.

CHAPTER 240

(Com. Sub. for S. B. 316 - Senators D. Hall, Leonhardt, Trump, Stollings, Plymale, Kirkendoll 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 §59-1-2 and §59-1-2a of the Code of West Virginia, 1931, as amended, all relating to veteran-owned businesses; defining terms; exempting new veteran-owned businesses from certain fees paid to the Secretary of State; and exempting new veteran-owned businesses from paying annual report fees for the first four years after their initial registration.

Be it enacted by the Legislature of West Virginia:

That §59-1-2 and §59-1-2a of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 1. FEES AND ALLOWANCES.

§59-1-2. Fees to be charged by Secretary of State.

(a) Except as may be otherwise provided in this code, the Secretary of State shall charge for services rendered in his or her office the following fees to be paid by the person to whom the service is rendered at the time it is done:

(1) For filing, recording, indexing, preserving a record of and issuing a certificate relating to the formation, amendment,
change of name, registration of trade name, merger, consolidation, conversion, renewal, dissolution, termination, cancellation, withdrawal revocation and reinstatement of business entities organized within the state, as follows:

(A) Articles of incorporation of for-profit corporation.......................... $50.00

(B) Articles of incorporation of nonprofit corporation.......................... 25.00

(C) Articles of organization of limited liability company ......................... 100.00

(D) Agreement of a general partnership.............................. 50.00

(E) Certificate of a limited partnership........................................ 100.00

(F) Agreement of a voluntary association............................... 50.00

(G) Articles of organization of a business trust....................... 50.00

(H) Amendment or correction of articles of incorporation, including change of name or increase of capital stock, in addition to any applicable license tax................................. 25.00

(I) Amendment or correction, including change of name, of articles of organization of business trust, limited liability partnership, limited liability company or professional limited liability company or of certificate of limited partnership or agreement of voluntary association................................. 25.00

(J) Amendment and restatement of articles of incorporation, certificate of limited partnership, agreement of voluntary association or articles of organization of limited liability partnership, limited liability company or professional limited liability company or business trust................................. 25.00
(K) Registration of trade name, otherwise designated as a true name, fictitious name or D.B.A. (doing business as) name for any domestic business entity as permitted by law... 25.00

(L) Articles of merger of two corporations, limited partnerships, limited liability partnerships, limited liability companies or professional limited liability companies, voluntary associations or business trusts. .................... 25.00

(M) Plus for each additional party to the merger in excess of two. ................................. 15.00

(N) Statement of conversion, when permitted, from one business entity into another business entity, in addition to the cost of filing the appropriate documents to organize the surviving entity. ......................... 25.00

(O) Articles of dissolution of a corporation, voluntary association or business trust, or statement of dissolution of a general partnership......................... 25.00

(P) Revocation of voluntary dissolution of a corporation, voluntary association or business trust. ............... 15.00

(Q) Articles of termination of a limited liability company, cancellation of a limited partnership or statement of withdrawal of limited liability partnership......................... 25.00

(R) Reinstatement of a limited liability company or professional limited liability company after administrative dissolution. ......................... 25.00

(2) For filing, recording, indexing, preserving a record of and issuing a certificate relating to the registration, amendment, change of name, merger, consolidation, conversion, renewal, withdrawal or termination within this state of business entities organized in other states or countries, as follows:
<table>
<thead>
<tr>
<th></th>
<th>Description</th>
<th>Fee</th>
</tr>
</thead>
<tbody>
<tr>
<td>63</td>
<td>(A) Certificate of authority of for-profit corporation</td>
<td>$100.00</td>
</tr>
<tr>
<td>64</td>
<td></td>
<td></td>
</tr>
<tr>
<td>65</td>
<td>(B) Certificate of authority of nonprofit corporation</td>
<td>50.00</td>
</tr>
<tr>
<td>66</td>
<td></td>
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</tr>
<tr>
<td>67</td>
<td>(C) Certificate of authority of foreign limited liability companies</td>
<td>150.00</td>
</tr>
<tr>
<td>68</td>
<td></td>
<td></td>
</tr>
<tr>
<td>69</td>
<td>(D) Certificate of exemption from certificate of authority</td>
<td>25.00</td>
</tr>
<tr>
<td>70</td>
<td></td>
<td></td>
</tr>
<tr>
<td>71</td>
<td>(E) Registration of a general partnership</td>
<td>50.00</td>
</tr>
<tr>
<td>72</td>
<td></td>
<td></td>
</tr>
<tr>
<td>73</td>
<td>(F) Registration of a limited partnership</td>
<td>150.00</td>
</tr>
<tr>
<td>74</td>
<td></td>
<td></td>
</tr>
<tr>
<td>75</td>
<td>(G) Registration of a limited liability partnership for two-year term</td>
<td>500.00</td>
</tr>
<tr>
<td>76</td>
<td></td>
<td></td>
</tr>
<tr>
<td>77</td>
<td>(H) Registration of a voluntary association</td>
<td>50.00</td>
</tr>
<tr>
<td>78</td>
<td></td>
<td></td>
</tr>
<tr>
<td>79</td>
<td>(I) Registration of a trust or business trust</td>
<td>50.00</td>
</tr>
<tr>
<td>80</td>
<td></td>
<td></td>
</tr>
<tr>
<td>81</td>
<td>(J) Amendment or correction of certificate of authority of a foreign corporation, including change of name or increase of capital stock, in addition to any applicable license tax</td>
<td>25.00</td>
</tr>
<tr>
<td>82</td>
<td></td>
<td></td>
</tr>
<tr>
<td>83</td>
<td>(K) Amendment or correction of certificate of limited partnership, limited liability partnership, limited liability company or professional limited liability company, voluntary association or business trust</td>
<td>25.00</td>
</tr>
<tr>
<td>84</td>
<td></td>
<td></td>
</tr>
<tr>
<td>85</td>
<td>(L) Registration of trade name, otherwise designated as a true name, fictitious name or D.B.A. (doing business as) name for any foreign business entity as permitted by law</td>
<td>25.00</td>
</tr>
<tr>
<td>86</td>
<td></td>
<td></td>
</tr>
<tr>
<td>87</td>
<td>(M) Amendment and restatement of certificate of authority or of registration of a corporation, limited partnership, limited liability company or professional limited liability company</td>
<td>25.00</td>
</tr>
</tbody>
</table>
liability partnership, limited liability company or professional
limited liability company, voluntary association or business
trust.......................................................... 25.00

(N) Articles of merger of two corporations, limited
partnerships, limited liability partnerships, limited liability
companies or professional limited liability companies, voluntary
associations or business trusts. ......................... 25.00

(O) Plus for each additional party to the merger in excess of
two. ....................................................... 5.00

(P) Statement of conversion, when permitted, from one
business entity into another business entity, in addition to the
cost of filing the appropriate articles or certificate to organize the
surviving entity. ................................. 25.00

(Q) Certificate of withdrawal or cancellation of a
corporation, limited partnership, limited liability partnership,
limited liability company, voluntary association or business
trust.......................................................... 25.00

Notwithstanding any other provision of this section to the
contrary, after June 30, 2008, the fees described in this
subdivision that are collected for the issuance of a certificate
relating to the initial registration of a corporation, limited
partnership, domestic limited liability company or foreign
limited liability company shall be deposited in the general
administrative fees account established by this section.

(3) For receiving, filing and recording a change of the
principal or designated office, change of the agent of process
and/or change of officers, directors, partners, members or
managers, as the case may be, of a corporation, limited
partnership, limited liability partnership, limited liability
company or other business entity as provided by law. . $15.00
(4) For receiving, filing and preserving a reservation of a name for each one hundred twenty days or for any other period in excess of seven days prescribed by law for a corporation, limited partnership, limited liability partnership or limited liability company. $15.00

(5) For issuing a certificate relating to a corporation or other business entity, as follows:

(A) Certificate of good standing of a domestic or foreign corporation. $10.00

(B) Certificate of existence of a domestic limited liability company and certificate of authorization foreign limited liability company. 10.00

(C) Certificate of existence of any business entity, trademark or service mark registered with the Secretary of State . . . 10.00

(D) Certified copy of corporate charter or comparable organizing documents for other business entities. . . . 15.00

(E) Plus, for each additional amendment, restatement or other additional document. 5.00

(F) Certificate of registration of the name of a foreign corporation, limited liability company, limited partnership or limited liability partnership. 25.00

(G) And for the annual renewal of the name registration. 10.00

(H) Any other certificate not specified in this subdivision. 10.00

(6) For issuing a certificate other than those relating to business entities, as provided in this subsection, as follows:
(A) Certificate or apostille relating to the authority of certain public officers, including the membership of boards and commissions........................................ $10.00

(B) Plus, for each additional certificate pertaining to the same transaction........................................ 5.00

(C) Any other certificate not specified in this subdivision........................................ 10.00

(D) For acceptance, indexing and recordation of service of process any corporation, limited partnership, limited liability partnership, limited liability company, voluntary association, business trust, insurance company, person or other entity as permitted by law........................................ 15.00

(E) For shipping and handling expenses for execution of service of process by certified mail upon any defendant within the United States, which fee is to be deposited to the special revenue account established in this section for the operation of the office of the Secretary of State........................................ 5.00

(F) For shipping and handling expenses for execution of service of process upon any defendant outside the United States by registered mail, which fee is to be deposited to the special revenue account established in this section for the operation of the office of the Secretary of State........................................ 15.00

(G) For a search of records of the office conducted by employees of or at the expense of the Secretary of State upon request, as follows:

(A) For any search of archival records maintained at sites other than the office of the Secretary of State no less than........................................ $10.00

(B) For searches of archival records maintained at sites other than the office of the Secretary of State which require more than
one hour, for each hour or fraction of an hour consumed in
making a search. ........................................... 10.00

(C) For any search of records maintained on site for the
purpose of obtaining copies of documents or printouts of
data.......................................................... 5.00

(D) For any search of records maintained in electronic
format which requires special programming to be performed by
the state information services agency or other vendor any actual
cost, but not less than................................. 25.00

(E) The cost of the search is in addition to the cost of any
copies or printouts prepared or any certificate issued pursuant to
or based on the search.

(F) For recording any paper for which no specific fee is
prescribed.................................................... 5.00

(G) For producing and providing photocopies or printouts of
electronic data of specific records upon request, as follows:

(A) For a copy of any paper or printout of electronic data, if
one sheet..................................................... $1.00

(B) For each sheet after the first ....................... .50

(C) For sending the copies or lists by fax
transmission................................................ 5.00

(D) For producing and providing photocopies of lists,
reports, guidelines and other documents produced in multiple
copies for general public use, a publication price to be
established by the Secretary of State at a rate approximating
$2.00 plus .10 per page and rounded to the nearest dollar.

(E) For electronic copies of records obtained in data format
on disk, the cost of the record in the least expensive available
(b) The Secretary of State may propose rules for legislative approval, in accordance with the provisions of article three, chapter twenty-nine-a of this code, for charges for on-line electronic access to database information or other information maintained by the Secretary of State.

(c) For any other work or service not enumerated in this section, the fee prescribed elsewhere in this code or a rule promulgated under the authority of this code.

(d) The records maintained by the Secretary of State are prepared and indexed at the expense of the state and those records shall not be obtained for commercial resale without the written agreement of the state to a contract including reimbursement to the state for each instance of resale.

(e) The Secretary of State may provide printed or electronic information free of charge as he or she considers necessary and efficient for the purpose of informing the general public or the news media.

(f) There is hereby continued in the State Treasury a special revenue account to be known as the Service Fees and Collections Account. Expenditures from the account shall be used for the operation of the office of the Secretary of State 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. Notwithstanding any other provision of this code to the contrary, except as provided in subsection (h) of this section and section two-a of this article, one half of all the fees and service charges established in the
following sections and for the following purposes shall be deposited by the Secretary of State or other collecting agency to that special revenue account and used for the operation of the office of the Secretary of State:

(1) The annual attorney-in-fact fee for corporations and limited partnerships established in section five, article twelve-c, chapter eleven of this code;

(2) The fees received for the sale of the State Register, Code of State Rules and other copies established by rule and authorized by section seven, article two, chapter twenty-nine-a of this code;

(3) The registration fees, late fees and legal settlements charged for registration and enforcement of the charitable organizations and professional solicitations established in sections five, nine and fifteen-b, article nineteen, chapter twenty-nine of this code;

(4) The annual attorney-in-fact fee for limited liability companies as designated in section one hundred eight, article one, chapter thirty-one-b of this code and established in section two hundred eleven, article two of said chapter: Provided, That after June 30, 2008, the annual report fees designated in section one hundred eight, article one, chapter thirty-one-b of this code shall upon collection be deposited in the general administrative fees account described in subsection (h) of this section;

(5) The filing fees and search and copying fees for uniform commercial code transactions established by section five hundred twenty-five, article nine, chapter forty-six of this code;

(6) The annual attorney-in-fact fee for licensed insurers established in section twelve, article four, chapter thirty-three of this code;
(7) The fees for the application and record maintenance of all notaries public established by section twenty, article four, chapter thirty-nine of this code;

(8) The fees for registering credit service organizations as established by section five, article six-c, chapter forty-six-a of this code;

(9) The fees for registering and renewing a West Virginia limited liability partnership as established by section one, article ten, chapter forty-seven-b of this code;

(10) The filing fees for the registration and renewal of trademarks and service marks established in section seventeen, article two, chapter forty-seven of this code;

(11) All fees for services, the sale of photocopies and data maintained at the expense of the Secretary of State as provided in this section; and

(12) All registration, license and other fees collected by the Secretary of State not specified in this section.

(g) Any balance in the service fees and collections account established by this section which exceeds $500,000 as of June 30, 2003, and each year thereafter, shall be expired to the state fund, General Revenue Fund.

(h)(1) Effective July 1, 2008, there is hereby created in the State Treasury a special revenue account to be known as the General Administrative Fees Account. Expenditures from the account shall be used for the operation of the office of the Secretary of State 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 eleven-b of this code:
Provided. That for the fiscal year ending June 30, 2009, expenditures are authorized from collections rather than pursuant to an appropriation by the Legislature. Any balance in the account at the end of each fiscal year shall not revert to the General Revenue Fund, but shall remain in the fund and be expended as provided by this subsection.

(2) After June 30, 2008, all the fees and service charges established in section two-a of this article for the following purposes shall be collected and deposited by the Secretary of State or other collecting agency in the general administrative fees account and used for the operation of the office of the Secretary of State:

(A) The annual report fees paid to the Secretary of State by corporations, limited partnerships, domestic limited liability companies and foreign limited liability companies;

(B) The fees for the issuance of a certificate relating to the initial registration of a corporation, limited partnership, domestic limited liability company or foreign limited liability company described in subdivision (2), subsection (a) of this section; and

(C) The fees for the purchase of date and updates related to the state’s Business Organizations Database described in section two-a of this article.

(i) There is continued in the office of the Secretary of State a noninterest-bearing, escrow account to be known as the Prepaid Fees and Services Account. This account shall be for the purpose of allowing customers of the Secretary of State to prepay for services, with payment to be held in escrow until services are rendered. Payments deposited in the account shall remain in the account until services are rendered by the Secretary of State and at that time the fees will be reallocated to the appropriate general or special revenue accounts. There shall
be no fee charged by the Secretary of State to the customer for
the use of this account and the customer may request the return
of any moneys maintained in the account at any time without
penalty. The assets of the prepaid fees and services account do
not constitute public funds of the state and are available solely
for carrying out the purposes of this section.

(j) A veteran-owned business, as defined in paragraph
thirteen, subsection (a), section two-a of this article, commenced
on or after July 1, 2015, is exempt from paying the fees
prescribed in paragraphs (A), (B), (C), (D), (E), (F) and (G),
subdivision (1), subsection (a) of this section.

§59-1-2a. Annual business fees to be paid to the Secretary of State;
   filing of annual reports; purchase of data.

(a) Definitions. — As used in this section:

1. “Annual report fee” means the fee described in
   subsection (c) of this section that is to be paid to the Secretary of
   State each year by corporations, limited partnerships, domestic
   limited liability companies and foreign limited liability
   companies. After June 30, 2008, any reference in this code to a
   fee paid to the Secretary of State for services as a statutory
   attorney in fact shall mean the annual report fee described in this
   section.

2. “Business activity” means all activities engaged in or
   caused to be engaged in with the object of gain or economic
   benefit, direct or indirect, but does not mean any of the activities
   of foreign corporations enumerated in subsection (b), section one
   thousand five hundred one, article fifteen, chapter thirty-one-d
   of this code, except for the activity of conducting affairs in
   interstate commerce when activity occurs in this state, nor does
   it mean any of the activities of foreign limited liability
   companies enumerated in subsection (a), section one thousand
three, article ten, chapter thirty-one-b of this code, except for the
activity of conducting affairs in interstate commerce when
activity occurs in this state.

(3) “Corporation” means a “domestic corporation”, a
“foreign corporation” or a “nonprofit corporation”.

(4) “Deliver or delivery” means any method of delivery used
in conventional commercial practice, including, but not limited
to, delivery by hand, mail, commercial delivery and electronic
transmission.

(5) “Domestic corporation” means a corporation for profit
which is not a foreign corporation incorporated under or subject
to chapter thirty-one-d of this code.

(6) “Domestic limited liability company” means a limited
liability company which is not a foreign limited liability
company under or subject to chapter thirty-one-b of this code.

(7) “Foreign corporation” means a for-profit corporation
incorporated under a law other than the laws of this state.

(8) “Foreign limited liability company” means a limited
liability company organized under a law other than the laws of
this state.

(9) “Limited partnership” means a partnership as defined by
section one, article nine, chapter forty-seven of this code.

(10) “Nonprofit corporation” means a nonprofit corporation
as defined by section one hundred fifty, article one, chapter
thirty-one-e of this code.

(11) “Registration fee” means the fee for the issuance of a
certificate relating to the initial registration of a corporation,
limited partnership, domestic limited liability company or
foreign limited liability company described in subdivision (2), subsection (a), section two of this article. The term “initial registration” also means the date upon which the registration fee is paid.

(12) “Veteran” means the term as defined by subsection (a), section seven, article one, chapter nine-a of this code. Notwithstanding anything in this code to the contrary, a veteran must be honorably discharged or under honorable conditions, and as described in 38 U. S. C. §101.

(13) “Veteran-owned business” means a business that meets the following criteria:

(A) Is at least fifty-one percent unconditionally owned by one or more veterans; or

(B) In the case of a publically owned business, at least fifty-one percent of the stock is unconditionally owned by one or more veterans.

(b) Required payment of annual report fee and filing of annual report. — After June 30, 2008, no corporation, limited partnership, domestic limited liability company or foreign limited liability company may engage in any business activity in this state without paying the annual report fee and filing the annual report as required by this section.

(c) Annual report fee. — After June 30, 2008, each corporation, limited partnership, domestic limited liability company and foreign limited liability company engaged in or authorized to do business in this state shall pay an annual report fee of $25 for the services of the Secretary of State as attorney-in-fact for the corporation, limited partnership, domestic limited liability company or foreign limited liability company and for such other administrative services as may be imposed by law upon the Secretary of State. The fee is due and
payable each year after the initial registration of the corporation, limited partnership, domestic limited liability company or foreign limited liability company with the annual report described in subsection (d) of this section on or before the dates specified in subsection (e) of this section. The fee is due and payable each year with the annual report from corporations, limited partnerships, domestic limited liability companies and foreign limited liability companies that paid the registration fee prior to July 1, 2008, on or before the dates specified in subsection (e) of this section. The annual report fees received by the Secretary of State pursuant to this subsection shall be deposited by the Secretary of State in the general administrative fees account established by section two of this article.

(d) Annual report. —

(1) After June 30, 2008, each corporation, limited partnership, domestic limited liability company and foreign limited liability company engaged in or authorized to do business in this state shall file an annual report. The report is due each year after the initial registration of the corporation, limited partnership, domestic limited liability company or foreign limited liability company with the annual report fee described in subsection (c) of this section on or before the dates specified in subsection (e) of this section. The report is due each year from corporations, limited partnerships, domestic limited liability companies and foreign limited liability companies that paid the registration fee prior to July 1, 2008, on or before the dates specified in subsection (e) of this section.

(2) (A) The annual report shall be filed with the Secretary of State on forms provided by the Secretary of State for that purpose. The annual report shall, in the case of corporations, contain: (i) The address of the corporation’s principal office; (ii) the names and mailing addresses of its officers and directors; (iii) the name and mailing address of the person on whom notice
of process may be served; (iv) the name and address of the
corporation’s parent corporation and of each subsidiary of the
corporation licensed to do business in this state; (v) in the case
of limited partnerships, domestic limited liability companies and
foreign limited liability companies, similar information with
respect to their principal or controlling interests as determined
by the Secretary of State or otherwise required by law to be
reported to the Secretary of State; (vi) the county or county code
in which the principal office address or mailing address of the
company is located; (vii) business class code; and (viii) any
other information the Secretary of State considers appropriate.

(B) Notwithstanding any other provision of law to the
contrary, the Secretary of State shall, upon request of any person,
disclose, with respect to corporations: (i) The address of the
corporation’s principal office; (ii) the names and addresses of its
officers and directors; (iii) the name and mailing address of the
person on whom notice of process may be served; (iv) the name
and address of each subsidiary of the corporation and the
corporation’s parent corporation; (v) the county or county code
in which the principal office address or mailing address of the
company is located; and (vi) the business class code. The
Secretary of State shall provide similar information with respect
to information in its possession relating to limited partnerships
domestic limited liability companies and foreign limited liability
companies, similar information with respect to their principal or
controlling interests.

(e) Annual reports and fees due July 1. — Each domestic
and foreign corporation, limited partnership, limited liability
company and foreign limited liability company shall file with the
Secretary of State the annual report and pay the annual report fee
by July 1 of each year.

(f) Deposit of fees. — The annual report fees received by the
Secretary of State pursuant to this section shall be deposited by
the Secretary of State in the general administrative fees account established by section two of this article.

(g) (1) Duty to pay. — It shall be the duty of each corporation, limited partnership, limited liability company and foreign limited liability company required to pay the annual report fees imposed under this article, to remit them with a properly completed annual report to the Secretary of State, and if it fails to do so it shall be subject to the late fees prescribed in subsection (h) of this article and dissolution or revocation, pursuant to this code: Provided, That before dissolution or revocation for failure to pay fees may occur, the Secretary of State shall notify the entity by certified mail, return receipt requested, of its failure to pay, all late fees or bad check fees associated with the failure to pay and the date upon which dissolution or revocation will occur if all fees are not paid in full. The certified mail required by this subdivision shall be postmarked at least thirty days before the dissolution or revocation date listed in the notice.

(2) Bad check fee. — If any corporation, limited partnership, limited liability company or foreign limited liability company submits payment by check or money order for the annual report fee imposed under this article and the check or money order is rejected because there are insufficient funds in the account or the account is closed, the Secretary of State shall assess a bad check fee to the corporation, limited partnership, limited liability company or foreign limited liability company that is equivalent to the service charge paid by the Secretary of State due to the rejected check or money order. The bad check fee assessed under this subdivision shall be deposited into the account or accounts from which the Secretary of State paid the service charge.

(h) Late fees. —

(1) The following late fees shall be in addition to any other penalties and remedies available elsewhere in this code:
(A) Administrative late fee. — The Secretary of State shall assess upon each corporation, limited partnership, limited liability company and foreign limited liability company delinquent in the payment of an annual report fee or the filing of an annual report an administrative late fee in the amount of $50.

(B) Administrative late fees for nonprofit corporations. — The Secretary of State shall assess each nonprofit corporation delinquent in the payment of an annual report fee or the filing of an annual report an administrative late fee in the amount of $25.

(2) The Secretary of State shall deposit the first $25,000 of fees collected under this subsection into the General Administrative Fees Account established in subsection (h), section two of this article and shall deposit any additional fees collected under this section into the General Revenue Fund of the state.

(i) Reports to Tax Commissioner; suspension, cancellation or withholding of business registration certificate. —

(1) The Secretary of State shall, within twenty days after the close of each month, make a report to the Tax Commissioner for the preceding month, in which he or she shall set out the name of every business entity to which he or she issued a certificate to conduct business in the State of West Virginia during that month. The report shall set out the names and addresses of all corporations, limited partnerships, limited liability companies and foreign limited liability companies to which he or she issued certificates of change of name or of change of location of principal office, dissolution, withdrawal or merger. If the Secretary of State fails to make the report, it shall be the duty of the Tax Commissioner to report such failure to the Governor. A writ of mandamus shall lie for correction of such failure.

(2) Notwithstanding any other provisions of this code to the contrary, upon receipt of notice from the Secretary of State that
a corporation, limited partnership, limited liability company and
foreign limited liability company is more than thirty days
delinquent in the payment of annual report fees or in the filing of
an annual report required by this section, the Tax Commissioner
may suspend, cancel or withhold a business registration
certificate issued to or applied for by the delinquent corporation,
limited partnership, limited liability company or foreign limited
liability company until the same is paid and filed in the manner
provided for the suspension, cancellation or withholding of
business registration certificates for other reasons under article
twelve, chapter eleven of this code.

(j) Purchase of data. — The Secretary of State will provide
electronically, for purchase, any data maintained in the Secretary
of State’s Business Organizations Database. For the electronic
purchase of the entire Business Organizations Database, the cost
is $12,000. For the purchase of the monthly updates of the
Business Organizations Database, the cost is $1,000 per month.
The fees received by the Secretary of State pursuant to this
subsection shall be deposited by the Secretary of State in the
general administrative fees account established by section two of
this article.

(k) The Secretary of State is authorized to collect the service
fee per transaction, if any, charged for an online service from
any customer who purchases data or conducts transactions
through an online service.

(l) Rules. — The Secretary of State may propose rules for
legislative approval, in accordance with the provisions of article
three, chapter twenty-nine-a of this code, to implement this
article.

(m) A veteran-owned business, as defined in paragraph
thirteen, subsection (a) of this section, commenced on or after
July 1, 2015, is exempt from paying the annual report fee,
required by this section, for the first four years after its initial registration: *Provided*, That a veteran-owned business is not exempt from any filing deadlines or other fees required by this section.

CHAPTER 241

(Com. Sub. for S. B. 277 - By Senators Miller, D. Hall, Laird, Williams and Kirkendoll)

[Passed March 9, 2015; in effect ninety days from passage.]
[Approved by the Governor on March 27, 2015.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §16-5-21a, relating to creating “Noah’s Law”; defining terms; providing for a certificate of birth for a stillborn child; allowing only the mother to request a certificate in certain circumstances; allowing State Registrar to charge a fee for a certificate; specifying the contents of a certificate; and effect of the certificate.

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 §16-5-21a, to read as follows:

ARTICLE 5. VITAL STATISTICS.

§16-5-21a. Noah’s Law; certificate of birth for a stillbirth; and contents of certificate.

1 (a) This section of the code shall be known as “Noah’s Law”. 
(b) For the purposes of this section, the term “stillbirth” or “stillborn” means an unintended intrauterine fetal death occurring in this state.

(c) Following a report of fetal death as required by section twenty-one of this article, either the mother or father of a stillborn child may request that a certificate of birth resulting in stillbirth be issued by the State Registrar. Only the mother of the child may request a certificate if:

(1) The child has not been legitimized;

(2) A court has not determined the paternity of the child;

(3) If no father has been identified; or

(4) If the child was conceived as a result of a sexual assault as defined in article eight-b, chapter sixty-one of this code.

(d) The State Registrar may charge a fee for the issuance of the certificate. The fee shall be the same as the fee for a death certificate issued by the State Registrar.

(e) The certificate shall include, but is not limited to:

(1) The name of the stillborn child;

(2) The date of delivery;

(3) The county of delivery;

(4) The mother’s name and birthplace;

(5) The father’s name and birthplace; and

(6) The statement: “This certificate is not proof of live birth.”
(f) The certificate does not affect the registration, filing or record requirements of this article, nor does the issuance of the certificate impose upon a coroner or medical examiner any additional duties to conduct an investigation.

CHAPTER 242


[Passed March 14, 2015; in effect ninety days from passage.] [Approved by the Governor on April 2, 2015.]

AN ACT to amend and reenact §20-2-4, §20-2-5, §20-2-5a, §20-2-5g, §20-2-22a and §20-2-42w of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §20-2-5h, all relating to wildlife; disallowing elk to be possessed if struck by motor vehicle; requiring persons required to deliver wildlife to official checking station to electronically register wildlife; increasing fine for illegal taking of elk; prohibiting hunting wildlife with night vision technology, drone or other unmanned aircraft; clarifying when a person may carry certain firearms; permitting a person to carry firearm for self defense while in the woods; clarifying when a shotgun or rifle is unloaded; permitting hunting with crossbows during certain seasons and with certain limitations; establishing elk management area in Southern West Virginia; establishing elk damage fund; providing for criminal penalties for the illegal taking of elk; clarifying bear laws and Class Y permits; authorizing director to propose legislative rules; and making technical corrections.
Be it enacted by the Legislature of West Virginia:

That §20-2-4, §20-2-5, §20-2-5a, §20-2-5g, §20-2-22a and §20-2-42w 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 §20-2-5h, all to read as follows:

ARTICLE 2. WILDLIFE RESOURCES.

§20-2-4. Possession of wildlife.

(a) Except for wildlife, lawfully taken, killed or obtained, no person may have in his or her possession any wildlife, or parts thereof, during closed seasons. It is unlawful to possess any wildlife, or parts thereof, which have been illegally taken, killed or obtained. Any wildlife illegally taken, killed or possessed shall be forfeited to the state and shall be counted toward the daily, seasonal, bag, creel and possession limit of the person in possession of, or responsible for, the illegal taking or killing of any wildlife.

(b) Wildlife lawfully taken outside of this state is subject to the same laws and rules as wildlife taken within this state.

(c) Migratory wild birds may be possessed only in accordance with the Migratory Bird Treaty Act, 16 U. S. C. §703, et seq., and its regulations.

(d) The restrictions in this section do not apply to the director or duly authorized agents, who may take or maintain in captivity any wildlife for the purpose of carrying out the provisions of this chapter.

(e) Wildlife, except protected birds, elk, spotted fawn, and bear cubs, killed or mortally wounded as a result of being accidentally or inadvertently struck by a motor vehicle may be lawfully possessed if the possessor of the wildlife provides
notice of the claim within twelve hours to a relevant
law-enforcement agency, and obtains a nonhunting game tag
within twenty-four hours of possession. The director shall
propose administrative policy which addresses the means,
methods and administrative procedures for implementing the
provisions of this section.

(f) Persons required to deliver wildlife to an official
checking station shall, in accordance with rules promulgated by
the director, electronically register the wildlife in lieu of the
delivery to an official checking station. “Electronically register”
means submission of all necessary and relevant information to
the division, in the manner designated by rule, in lieu of delivery
of the wildlife to an official checking station. The director may
promulgate rules, pursuant to article three, chapter twenty-nine-a
of this code, governing the electronic registration of wildlife.

§20-2-5. Unlawful methods of hunting and fishing and other
unlawful acts.

Except as authorized by the director or by law, it is unlawful
at any time for any person to:

(1) Shoot at any wild bird or wild animal unless it is plainly
visible;

(2) Dig out, cut out, smoke out, or in any manner take or
attempt to take any live wild animal or wild bird out of its den or
place of refuge;

(3) Use or attempt to use any artificial light or any night
vision technology, including image intensification, thermal
imaging or active illumination while hunting, locating,
attracting, taking, trapping or killing any wild bird or wild
animal: Provided, That it is lawful to hunt or take coyote, fox,
raccoon, opossum or skunk by the use of artificial light or night
vision technology.
Any person violating this subdivision is guilty of a misdemeanor and, upon conviction thereof, shall for each offense be fined not less than $100 nor more than $500, and shall be confined in jail for not less than ten days nor more than one hundred days;

(4) Hunt, take, kill, wound or shoot at wild animals or wild birds from an airplane or other airborne conveyance, a drone or other unmanned aircraft, an automobile or other land conveyance, or from a motor-driven water conveyance;

(5) Use a drone or other unmanned aircraft to hunt, take or kill a wild bird or wild animal, or to use a drone or other unmanned aircraft to drive or herd any wild bird or wild animal for the purposes of hunting, trapping or killing;

(6) Take any beaver or muskrat by any means other than a trap;

(7) Catch, capture, take, hunt or kill by seine, net, bait, trap or snare or like device a bear, wild turkey, ruffed grouse, pheasant or quail;

(8) Intentionally destroy or attempt to destroy the nest or eggs of any wild bird or have in his or her possession the nest or eggs;

(9) Carry an uncased or loaded firearm in the woods of this state with the following permissible exceptions:

(A) A person in possession of a valid license or permit during open firearms hunting season for wild animals and nonmigratory wild birds;

(B) A person hunting or taking unprotected species of wild animals, wild birds and migratory wild birds during the open season, in the open fields, open water and open marshes of the state;
(C) A person carrying a firearm pursuant to sections six and
six-a of this article; or

(D) A person carrying a firearm for self defense who is not
prohibited from possessing firearms by section seven, article
seven, chapter sixty-one of this code;

(10) Have in his or her possession a crossbow with a nocked
bolt, or a rifle or shotgun with cartridges that have not been
removed or a magazine that has not been detached, in or on any
vehicle or conveyance, or its attachments,. For the purposes of
this section, a rifle or shotgun whose magazine readily detaches
is considered unloaded if the magazine is detached and no
cartridges remain in the rifle or shotgun itself. Except that
between five o’clock post meridian of day one and seven o’clock
ante meridian, Eastern Standard Time, of the following day, any
unloaded firearm or crossbow may be carried only when in a case
or taken apart and securely wrapped. During the period from
July 1 to September 30, inclusive, of each year, the requirements
relative to carrying unloaded firearms are permissible only from
eight-thirty o’clock post meridian to five o’clock ante meridian,
Eastern Standard Time: Provided, That the time periods for
carrying unloaded and uncased firearms are extended for one
hour after the post meridian times and one hour before the ante
meridian times established in this subdivision, if a person is
transporting or transferring the firearms to or from a hunting site,
campsite, home or other abode;

(11) Hunt, catch, take, kill, trap, injure or pursue with
firearms or other implement by which wildlife may be taken
after the hour of five o’clock ante meridian on Sunday on private
land without the written consent of the landowner any wild
animals or wild birds except when a big game season opens on
a Monday, the Sunday prior to that opening day will be closed
for any taking of wild animals or birds after five o’clock ante
meridian on that Sunday: Provided, That traps previously and
legally set may be tended after the hour of five o’clock ante
meridian on Sunday and the person tending the traps may carry
firearms for the purpose of humanely dispatching trapped
animals. Any person violating this subdivision is guilty of a
misdemeanor and, upon conviction thereof, in addition to any
fines that may be imposed by this or other sections of this code,
is subject to a $100 fine;

(12) Hunt, catch, take, kill, injure or pursue a wild animal or
wild bird with the use of a ferret;

(13) Buy raw furs, pelts or skins of fur-bearing animals
unless licensed to do so;

(14) Catch, take, kill or attempt to catch, take or kill any fish
by any means other than by rod, line and hooks with natural or
artificial lures: Provided, That snaring of any species of suckers,
carp, fallfish and creek chubs is lawful;

(15) Employ, hire, induce or persuade, with money, things
of value or by any means, any person to hunt, take, catch or kill
any wild animal or wild bird except those species in which there
is no closed season; or to fish for, catch, take or kill any fish,
amphibian or aquatic life that is protected by rule, or the sale of
which is otherwise prohibited;

(16) Hunt, catch, take, kill, capture, pursue, transport,
possess or use any migratory game or nongame birds except as
permitted by the Migratory Bird Treaty Act, 16 U. S. C. §703, et
seq., and its regulations;

(17) Kill, take, catch, sell, transport or have in his or her
possession, living or dead, any wild bird other than a game bird
including the plumage, skin or body of any protected bird,
irrespective of whether the bird was captured in or out of this
state, except the English or European sparrow (Passer
domesticus), starling (Sturnus vulgaris) and cowbird (Molothrus ater), which may be killed at any time;

(18) Use dynamite, explosives or any poison in any waters of the state for the purpose of killing or taking fish. Any person violating this subdivision is guilty of a felony and, upon conviction thereof, shall be fined not more than $500 or imprisoned for not less than six months nor more than three years, or both fined and imprisoned;

(19) Have a bow and gun, or have a gun and any arrow, in the fields or woods at the same time;

(20) Have a crossbow in the woods or fields, or use a crossbow to hunt for, take or attempt to take any wildlife except as otherwise provided in sections five-g and forty-two-w of this article;

(21) Take or attempt to take turkey, bear, elk or deer with any arrow unless the arrow is equipped with a point having at least two sharp cutting edges measuring in excess of three fourths of an inch wide;

(22) Take or attempt to take any wildlife with an arrow having an explosive head or shaft, a poisoned arrow or an arrow which would affect wildlife by any chemical action;

(23) Shoot an arrow across any public highway;

(24) Permit any dog owned or under his or her control to chase, pursue or follow the tracks of any wild animal or wild bird, day or night, between May 1 and August 15: Provided, That dogs may be trained on wild animals and wild birds, except deer and wild turkeys, and field trials may be held or conducted on the grounds or lands of the owner, or by his or her bona fide tenant, or upon the grounds or lands of another person with his or her written permission, or on public lands at any time.
Nonresidents may not train dogs in this state at any time except during the legal small game hunting season. A person training dogs may not have firearms or other implements in his or her possession during the closed season on wild animals and wild birds;

(25) Conduct or participate in a trial, including a field trial, shoot-to-retrieve field trial, water race or wild hunt: Provided, That any person, group of persons, club or organization may hold a trial upon obtaining a permit pursuant to section fifty-six of this article. The person responsible for obtaining the permit shall prepare and keep an accurate record of the names and addresses of all persons participating in the trial and make the records readily available for inspection by any natural resources police officer upon request;

(26) Hunt, catch, take, kill or attempt to hunt, catch, take or kill any wild animal, wild bird or wild fowl except during open seasons;

(27) Hunting on public lands on Sunday after five o’clock ante meridian is prohibited;

(28) Hunt, catch, take, kill, trap, injure or pursue with firearms or other implement which wildlife can be taken, on private lands on Sunday after the hour of five o’clock ante meridian: Provided, That the provisions of this subdivision do not apply in any county until the county commission of the county holds an election on the question of whether the provisions of this subdivision prohibiting hunting on Sunday shall apply within the county and the voters approve the allowance of hunting on Sunday in the county. The election is determined by a vote of the resident voters of the county in which the hunting on Sunday is proposed to be authorized. The county commission of the county in which Sunday hunting is proposed shall give notice to the public of the election by...
publication of the notice as a Class II-0 legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code and the publication area for the publication is the county in which the election is to be held. The date of the last publication of the notice shall fall on a date within the period of the fourteen consecutive days next preceding the election.

On the local option election ballot shall be printed the following:

Shall hunting on Sunday be authorized on private lands only with the consent of the land owner in ________ County?

[ ] Yes

[ ] No

(Place a cross mark in the square opposite your choice.)

Any local option election to approve or disapprove of the proposed authorization of Sunday hunting within a county shall be in accordance with procedures adopted by the commission. The local option election may be held in conjunction with a primary or general election or at a special election. Approval shall be by a majority of the voters casting votes on the question of approval or disapproval of Sunday hunting at the election.

If a majority votes against allowing Sunday hunting, an election on the issue may not be held for a period of one hundred four weeks. If a majority votes “yes”, an election reconsidering the action may not be held for a period of five years. A local option election may thereafter be held if a written petition of qualified voters residing within the county equal to at least five percent of the number of persons who were registered to vote in the next preceding general election is received by the county commission of the county in which Sunday hunting is authorized. The petition may be in any number of counterparts.
The election shall take place at the next primary or general election scheduled more than ninety days following receipt by the county commission of the petition required by this subsection: Provided, That the issue may not be placed on the ballot until all statutory notice requirements have been met. No local law or regulation providing any penalty, disability, restriction, regulation or prohibition of Sunday hunting may be enacted and the provisions of this article preempt all regulations, rules, ordinances and laws of any county or municipality in conflict with this subdivision.

Amendments to this subdivision promulgated during the 2015 regular session of the Legislature shall have no effect upon the results of elections held prior to their enactment; and

(29) Hunt or conduct hunts for a fee when the person is not physically present in the same location as the wildlife being hunted within West Virginia.

§20-2-5a. Forfeiture by person causing injury or death of game or protected species of animal; additional replacement costs for antlered deer; forfeiture procedures and costs.

(a) Any person who is convicted of violating a criminal law of this state that results in the injury or death of game, as defined in section two, article one of this chapter, or a protected species of animal, in addition to any other penalty to which he or she is subject, shall forfeit the cost of replacing the game or protected species of animal to the state as follows:

(1) For each game fish or each fish of a protected species taken illegally other than by pollution kill, $10 for each pound and any fraction thereof;

(2) For each bear, $500;
(3) For each deer or raven, $200;

(4) For each wild turkey, hawk or owl, $100;

(5) For each beaver, otter or mink, $25;

(6) For each muskrat, raccoon, skunk or fox, $15;

(7) For each rabbit, squirrel, opossum, duck, quail, woodcock, grouse or pheasant, $10;

(8) For each wild boar, $200;

(9) For each bald eagle, $5,000;

(10) For each golden eagle, $5,000;

(11) For each elk, $4,500; and

(12) For any other game or protected species of animal, $100.

(b) In addition to the replacement value for deer in subdivision (3), subsection (a) of this section, the following cost shall also be forfeited to the state by any person who is convicted of violating any criminal law of this state and the violation causes the injury or death of antlered deer:

(1) For any deer in which the inside spread of the main beams of the antlers measured at the widest point equals 14 inches or greater but less than 16 inches, $1,000;

(2) For any deer in which the inside spread of the main beams of the antlers measured at the widest point equals 16 inches or greater but less than 18 inches, $1,500;

(3) For any deer in which the inside spread of the main beams of the antlers measured at the widest point equals 18 inches or greater but less than 20 inches, $2,000; and
(4) For any deer in which the inside spread of the main beams of the antlers measured at the widest point equals 20 inches or greater, $2,500.

(5) Any person convicted of a second or subsequent violation of any criminal law of this state which violation causes the injury or death of antlered deer is subject to double the authorized range of cost to be forfeited.

(c) Upon conviction, the court shall order the person to forfeit to the state the amount set forth in this section for the injury or death of the game or protected species of animal. If two or more defendants are convicted for the same violation causing the injury or death of game or protected species of animal, the forfeiture shall be paid by each person in an equal amount. The forfeiture shall be paid by the person so convicted within the time prescribed by the court not to exceed sixty days. In each instance, the court shall pay the forfeiture to the Division of Natural Resources to be deposited into the License Fund-Wildlife Resources and used only for the replacement, habitat management or enforcement programs for injured or killed game or protected species of animal.

§20-2-5g. Use of a crossbow to hunt.

(a) Notwithstanding any other provision of this code to the contrary, any person lawfully entitled to hunt may hunt with a crossbow during big game firearms season. A person who possesses a valid Class Y permit may also hunt with a crossbow in accordance with section forty-two-w of this article. Further, the director shall designate a separate season for crossbow hunting and identify which species of wildlife may be hunted with a crossbow.

(b) Only crossbows meeting all of the following specifications may be used for hunting in West Virginia:
The crossbow has a minimum draw weight of one hundred twenty-five pounds;

(2) The crossbow has a working safety; and

(3) The crossbow is used with bolts and arrows not less than eighteen inches in length with a broad head having at least two sharp cutting edges, measuring at least three fourths of an inch in width.

§20-2-5h. Elk management area; elk damage fund; criminal penalties; rule-making.

(a) Findings. — The Legislature finds that Eastern Elk were once a common, native species in the state prior to and following its formation, but historical records indicate native elk were extirpated from the state around 1875. Until recently, free roaming elk have not been present in the state. However, elk are now migrating to the state from Kentucky, which has an active elk restoration program. Therefore, the Division of Natural Resources has established an active elk restoration program in Southern West Virginia.

(b) Elk management area. — The division has established an elk restoration management plan to reintroduce elk to all of Logan County, Mingo County, McDowell County and Wyoming County, and part of Boone County, Lincoln County and Wayne County. The director and the division may not expand the elk management area without statutory authorization.

(c) Elk damage fund. — There is hereby created a special revenue account in the State Treasury to be known as the Elk Damage Fund to be administered by the division. Ten percent from all application fees for the hunting of elk are to be deposited into the Elk Damage Fund.” Expenditures from the fund shall be for the payment of damages caused to agricultural crops, agricultural fences and personal gardens by elk.
(d) **Criminal penalties.** — It shall be unlawful for any person to hunt, capture or kill any elk, or have in his or her possession elk or elk parts, except for elk lawfully taken, killed or obtained during an established open hunting season for elk or by permit.

(1) Any person who commits a violation of the provisions of this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than $1,000 nor more than $5,000, or confined in jail not less than thirty nor more than one hundred days, or both fined and confined.

(2) Any person who commits a second violation of the provisions of this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than $2,000 nor more than $7,500, or confined in jail not less than thirty days nor more than one year, or both fined and confined.

(3) Any person who commits a third or subsequent violation of the provisions of this section is guilty of a felony and, upon conviction thereof, shall be fined not less than $5,000 nor more than $10,000, or imprisoned in a state correctional facility not less than one year nor more than five years, or both fined and imprisoned.

(e) **Rulemaking.** — The director shall propose rules for promulgation in accordance with the provisions of article three, chapter twenty-nine-a of this code to:

(1) Set forth the parameters of the elk management plan;

(2) Establish the procedures for the issuance of depredation permits to persons suffering damage from elk;

(3) Establish protocols for the control of elk outside the elk management area;

(4) Establish hunting application fees and procedures;
(5) Establish procedures for reimbursement from the elk
damage fund to those with damage to agricultural crops,
agricultural fences and personal gardens caused by elk; and

(6) Establish protocols for ensuring elk imported to the state
are healthy, tested for tuberculosis, brucellosis and other diseases
of critical concern, and from an area where chronic wasting
disease has not been detected.

§20-2-22a. Hunting, tagging and reporting bear; procedures
applicable to property destruction by bear; penalties.

(a) A person may not hunt, capture, or kill any bear, or have
in his or her possession any bear or bear parts, except during the
hunting season for bear in the manner designated by rule or law,
and as provided in this section. For the purposes of this section,
bear parts include, but are not limited to, the pelt, gallbladder,
skull and claws of bear.

(b) A person who kills a bear shall, within twenty-four hours
after the killing, electronically register the bear. A game tag
number shall be issued to the person and recorded in writing
with the person’s name and address, or on a field tag and shall
remain on the skin until it is tanned or mounted. Any bear or
bear parts not properly tagged shall be forfeited to the state for
disposal to a charitable institution, school or as otherwise
designated by the director.

(c) It is unlawful:

(1) To hunt bear without a bear damage stamp, as prescribed
in section forty-four-b of this article, in addition to a hunting
license as prescribed in this article;

(2) To hunt a bear with:
(A) A shotgun using ammunition loaded with more than one solid ball; or

(B) A rifle of less than twenty-five caliber using rimfire ammunition;

(3) To kill or attempt to kill any bear through the use of poison, explosives, snares, steel traps or deadfalls;

(4) To shoot at or kill:

(A) A bear weighing less than seventy-five pounds live weight or fifty pounds field dressed weight, after removal of all internal organs;

(B) Any bear accompanied by a cub; or

(C) Any bear cub so accompanied, regardless of its weight;

(5) To possess any part of a bear not tagged in accordance with the provisions of this section;

(6) To enter a state game refuge with firearms for the purpose of pursuing or killing a bear except under the direct supervision of division personnel;

(7) To hunt bear with dogs or to cause dogs to chase bear during seasons other than those designated by the division for the hunting of bear;

(8) To pursue a bear with a pack of dogs other than the pack used at the beginning of the hunt once the bear is spotted and the chase has begun;

(9) To possess, harvest, sell or purchase bear parts obtained from bear killed in violation of this section;

(10) To organize for commercial purposes or to professionally outfit a bear hunt, or to give or receive any
consideration whatsoever or any donation in money, goods or services in connection with a bear hunt, notwithstanding the provisions of sections twenty-three and twenty-four of this article; or

(11) For any person who is not a resident of this state to hunt bear with dogs or to use dogs in any fashion for the purpose of hunting bear in this state except in legally authorized hunts.

(d) The following provisions apply to bear destroying property:

(1) (A) Any property owner or lessee who has suffered damage to real or personal property, including loss occasioned by the death or injury of livestock or the unborn issue of livestock, caused by an act of a bear may complain to any natural resources police officer of the division for protection against the bear.

(B) Upon receipt of the complaint, the officer shall immediately investigate the circumstances of the complaint. If the officer is unable to personally investigate the complaint, he or she shall designate a wildlife biologist to investigate on his or her behalf.

(C) If the complaint is found to be justified, the officer or designated person may, together with the owner and other residents, proceed to hunt, destroy or capture the bear that caused the property damage: Provided, That only the natural resources police officer or the wildlife biologist may determine whether to destroy or capture the bear and whether to use dogs to capture or destroy the bear: Provided, however, That, if out-of-state dogs are used in the hunt, the owners of the dogs are the only nonresidents permitted to participate in hunting the bear.

(2) (A) When a property owner has suffered damage to real or personal property as the result of an act by a bear, the owner
shall file a report with the director of the division. The report shall state whether or not the bear was hunted and destroyed and, if so, the sex, weight and estimated age of the bear. The report shall also include an appraisal of the property damage occasioned by the bear duly signed by three competent appraisers fixing the value of the property lost.

(B) The report shall be ruled upon and the alleged damages examined by a commission comprised of the complaining property owner, an officer of the division and a person to be jointly selected by the officer and the complaining property owner.

(C) The division shall establish the procedures to be followed in presenting and deciding claims under this section in accordance with article three, chapter twenty-nine-a of this code.

(D) All claims shall be paid in the first instance from the Bear Damage Fund provided in section forty-four-b of this article. In the event the fund is insufficient to pay all claims determined by the commission to be just and proper, the remainder due to owners of lost or destroyed property shall be paid from the special revenue account of the division.

(3) In all cases where the act of the bear complained of by the property owner is the killing of livestock, the value to be established is the fair market value of the livestock at the date of death. In cases where the livestock killed is pregnant, the total value is the sum of the values of the mother and the unborn issue, with the value of the unborn issue to be determined on the basis of the fair market value of the issue had it been born.

(e) Criminal penalties. – (1) Any person who commits a violation of the provisions of this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than $1,000 nor more than $5,000, which is not subject to
suspension by the court, confined in jail not less than thirty nor
more than one hundred days, or both fined and confined. Further, the person’s hunting and fishing licenses shall be
suspended for two years.

(2) Any person who commits a second violation of the
provisions of this section is guilty of a misdemeanor and, upon
conviction thereof, shall be fined not less than $2,000 nor more
than $7,500, which is not subject to suspension by the court,
confined in jail not less than thirty days nor more than one year,
or both fined and confined. The person’s hunting and fishing
licenses shall be suspended for life.

(3) Any person who commits a third or subsequent violation
of the provisions of this section is guilty of a felony and, upon
conviction thereof, shall be fined not less than $5,000 nor more
than $10,000, which is not subject to suspension by the court,
imprisoned in a correctional facility not less than one year nor
more than five years, or both fined and imprisoned.

§20-2-42w. Class Y special crossbow hunting permit for certain
disabled persons.

(a) A Class Y permit is a special statewide hunting permit
entitling a person to hunt all wildlife during established archery
and firearm seasons if the person meets the following
requirements:

(1) He or she holds a Class Q permit;

(2) He or she has a permanent and substantial loss of
function in one or both hands while failing to meet the minimum
standards of the upper extremity pinch, grip and nine-hole peg
tests administered under the direction of a licensed physician; or

(3) He or she has a permanent and substantial loss of
function in one or both shoulders while failing to meet the
minimum standards of the shoulder strength test administered
under the direction of a licensed physician.

(b) The application form shall include a written statement or
report prepared by the physician conducting the test no more
than six months preceding the application and verifying that the
applicant is physically disabled as described in this section. As
part of the application, the applicant shall authorize, by written
release, an examination of all medical records regarding his or
her qualifying disability. When completed, the permit form
constitutes a Class Y permit. The Class Y permit and a
completed license application shall be submitted to the Division,
which will issue a wallet-sized card to the permittee. The card
and all other documents and identification required to be carried
by this article shall be in the permittee’s possession when
hunting.

(c) A Class Y permit must be accompanied by a valid
statewide hunting license or the applicant must be exempt from
hunting licenses as provided in this chapter.

CHAPTE R 243

(Com. Sub. for H. B. 2011 - By Delegate(s) Hanshaw,
Shott, E. Nelson, Rohrbach, Sobonya, Weld, Espinosa,
Statler and Miller)

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

AN ACT to amend and reenact §23-4-2 of the Code of West Virginia,
1931, as amended, relating generally to a workplace employee
injury caused by the deliberate intention of the employer required
for the employer to lose immunity from a lawsuit; defining actual
knowledge; eliminating obsolete language referring to the West Virginia Workers Compensation Fund and board of managers; establishing standards related to blood tests administered after accident; providing that intoxication shown by a positive blood test for alcohol or drugs that meet certain thresholds is the proximate cause of any injury; clarifying provisions outlining who may assert claims on behalf of an employee under this section; requiring that a claim for worker’s compensation benefits be filed prior to bringing a cause of action under this section unless good cause is shown; providing that actual knowledge must be specifically proven by the employee or other person seeking to recover under this section and shall not be deemed or presumed; providing an employee may prove actual knowledge by evidence of an employer’s intentional or deliberate failure to conduct a legally required inspection, audit or assessment; establishing actual knowledge is not established by what an employee’s immediate supervisor or management personnel should have known had they exercised reasonable care or been more diligent; establishing that proof of actual knowledge of prior accidents, near misses, safety complaints or citations must be proven by documentary or other credible evidence; defining a commonly accepted and well-known safety standard within the industry or business of the employer; exempting certain codes or standards from applying to volunteer fire departments, municipal fire departments and emergency medical response personnel if those entities have followed rules promulgated by the Fire Commission; requiring that if the unsafe working condition relates to a violation of a state or federal safety provision that safety provision must address the specific work, working conditions and hazards involved; establishing that the applicability of state or federal safety provisions is a matter for judicial determination; defining generally serious compensable injury; establishing four categories of serious compensable injury including an injury rated at a whole person impairment of at least thirteen percent (13%) and other threshold requirements, an injury or condition likely to result in death within eighteen (18) months from the date of the filing of the complaint, an injury not capable
of whole person impairment if it causes permanent serious disfigurement, causes permanent loss or significant impairment of function of any bodily organ or system, or results in objectively verifiable bilateral or multi-level dermatomal radiculopathy and is not a physical injury that has no objective medical evidence to support a diagnosis, or if an employee suffers from complicated pneumoconiosis or pulmonary massive fibrosis and that condition has resulted in an impairment rating of at least fifteen percent (15%); establishing certification requirements for the categories of serious compensable injury; requiring that a verified statement submitted from a person with knowledge and expertise of the workplace safety, statutes, rules, regulations and consensus industry standards specifically applicable to the industry and workplace involved in an injury be served with any complaint asserting certain causes of action brought under this section; providing for the minimum contents of the required verified statement; limiting the use of the required verified statement during litigation; providing for consideration of bifurcation of discovery in certain circumstances; establishing the venue in which claims under this section may be brought; providing that actions accruing prior to the effective date are not affected; and establishing the effective date of July 1, 2015, for the amendments to this section.

Be it enacted by the Legislature of West Virginia:

That §23-4-2 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE  4. DISABILITY AND DEATH BENEFITS.

§23-4-2. Disbursement where injury is self-inflicted or intentionally caused by employer; legislative declarations and findings; “deliberate intention” defined.

(a) Notwithstanding anything contained in this chapter, no employee or dependent of any employee is entitled to receive
any sum under the provisions of this chapter on account of any personal injury to or death to any employee caused by a self-inflicted injury or the intoxication of the employee. Upon the occurrence of an injury which the employee asserts, or which reasonably appears to have, occurred in the course of and resulting from the employee’s employment, the employer may require the employee to undergo a blood test for the purpose of determining the existence or nonexistence of evidence of intoxication: Provided, That the employer must have a reasonable and good faith objective suspicion of the employee’s intoxication and may only test for the purpose of determining whether the person is intoxicated. If any blood test for intoxication is given following an accident, at the request of the employer or otherwise, and if any of the following are true, the employee is deemed intoxicated and the intoxication is the proximate cause of the injury:

(1) If a blood test is administered within two hours of the accident and evidence that there was, at that time, more than five hundredths of one percent, by weight, of alcohol in the employee’s blood; or

(2) If there was, at the time of the blood test, evidence of either on or off the job use of a nonprescribed controlled substance as defined in the West Virginia Uniform Controlled Substances Act, West Virginia Code §60A-2-201, et seq., Schedules I, II, III, IV and V.

(b) For the purpose of this chapter, the commission may cooperate with the Office of Miners’ Health, Safety and Training and the State Division of Labor in promoting general safety programs and in formulating rules to govern hazardous employments.

(c) If injury results to any employee from the deliberate intention of his or her employer to produce the injury or death,
the employee, or, if the employee has been found to be incompetent, his or her conservator or guardian, may recover under this chapter and bring a cause of action against the employer, as if this chapter had not been enacted, for any excess of damages over the amount received or receivable in a claim for benefits under this chapter. If death results to any employee from the deliberate intention of his or her employer to produce the injury or death, the representative of the estate may recover under this chapter and bring a cause of action, pursuant to section six, article seven of chapter fifty-five of this code, against the employer, as if this chapter had not been enacted, for any excess of damages over the amount received or receivable in a claim for benefits under this chapter. To recover under this section, the employee, the employee’s representative or dependent, as defined under this chapter, must, unless good cause is shown, have filed a claim for benefits under this chapter.

(d)(1) It is declared that enactment of this chapter and the establishment of the workers’ compensation system in this chapter was and is intended to remove from the common law tort system all disputes between or among employers and employees regarding the compensation to be received for injury or death to an employee except as expressly provided in this chapter and to establish a system which compensates even though the injury or death of an employee may be caused by his or her own fault or the fault of a co-employee; that the immunity established in sections six and six-a, article two of this chapter is an essential aspect of this workers’ compensation system; that the intent of the Legislature in providing immunity from common lawsuit was and is to protect those immunized from litigation outside the workers’ compensation system except as expressly provided in this chapter; that, in enacting the immunity provisions of this chapter, the Legislature intended to create a legislative standard for loss of that immunity of more narrow application and containing more specific mandatory elements than the common law tort system concept and standard of willful, wanton and
reckless misconduct; and that it was and is the legislative intent
to promote prompt judicial resolution of the question of whether
a suit prosecuted under the asserted authority of this section is or
is not prohibited by the immunity granted under this chapter.

(2) The immunity from suit provided under this section and
under sections six and six-a, article two of this chapter may be
lost only if the employer or person against whom liability is
asserted acted with “deliberate intention”. This requirement may
be satisfied only if:

(A) It is proved that the employer or person against whom
liability is asserted acted with a consciously, subjectively and
deliberately formed intention to produce the specific result of
injury or death to an employee. This standard requires a showing
of an actual, specific intent and may not be satisfied by
allegation or proof of: (i) Conduct which produces a result that
was not specifically intended; (ii) conduct which constitutes
negligence, no matter how gross or aggravated; or (iii) willful,
wanton or reckless misconduct; or

(B) The trier of fact determines, either through specific
findings of fact made by the court in a trial without a jury, or
through special interrogatories to the jury in a jury trial, that all
of the following facts are proven:

(i) That a specific unsafe working condition existed in the
workplace which presented a high degree of risk and a strong
probability of serious injury or death;

(ii) That the employer, prior to the injury, had actual
knowledge of the existence of the specific unsafe working
condition and of the high degree of risk and the strong
probability of serious injury or death presented by the specific
unsafe working condition.

(I) In every case actual knowledge must specifically be
proven by the employee or other person(s) seeking to recover
under this section, and shall not be deemed or presumed:

Provided, That actual knowledge may be shown by evidence of intentional and deliberate failure to conduct an inspection, audit or assessment required by state or federal statute or regulation and such inspection, audit or assessment is specifically intended to identify each alleged specific unsafe working condition.

(II) Actual knowledge is not established by proof of what an employee’s immediate supervisor or management personnel should have known had they exercised reasonable care or been more diligent.

(III) Any proof of the immediate supervisor or management personnel’s knowledge of prior accidents, near misses, safety complaints or citations from regulatory agencies must be proven by documentary or other credible evidence.

(iii) That the specific unsafe working condition was a violation of a state or federal safety statute, rule or regulation, whether cited or not, or of a commonly accepted and well-known safety standard within the industry or business of the employer.

(I) If the specific unsafe working condition relates to a violation of a commonly accepted and well-known safety standard within the industry or business of the employer, that safety standard must be a consensus written rule or standard promulgated by the industry or business of the employer, such as an organization comprised of industry members: Provided, That the National Fire Protection Association Codes and Standards or any other industry standards for Volunteer Fire Departments shall not be cited as an industry standard for Volunteer Fire Departments, Municipal Fire Departments and Emergency Medical Response Personnel as an unsafe working condition as long as the Volunteer Fire Departments, Municipal Fire Departments and the Emergency Medical Response Personnel have followed the Rules that have been promulgated by the Fire Commission.
(II) If the specific unsafe working condition relates to a violation of a state or federal safety statute, rule or regulation that statute, rule or regulation:

(a) Must be specifically applicable to the work and working condition involved as contrasted with a statute, rule, regulation or standard generally requiring safe workplaces, equipment or working conditions;

(b) Must be intended to address the specific hazard(s) presented by the alleged specific unsafe working condition; and

(c) The applicability of any such state or federal safety statute, rule or regulation is a matter of law for judicial determination.

(iv) That notwithstanding the existence of the facts set forth in subparagraphs (i) through (iii), inclusive, of this paragraph, the person or persons alleged to have actual knowledge under subparagraph (ii) nevertheless intentionally thereafter exposed an employee to the specific unsafe working condition; and

(v) That the employee exposed suffered serious compensable injury or compensable death as defined in section one, article four, chapter twenty-three as a direct and proximate result of the specific unsafe working condition. For the purposes of this section, serious compensable injury may only be established by one of the following four methods:

(I) It is shown that the injury, independent of any preexisting impairment:

(a) Results in a permanent physical or combination of physical and psychological injury rated at a total whole person impairment level of at least thirteen percent (13%) as a final award in the employees workers’ compensation claim; and
(b) Is a personal injury which causes permanent serious disfigurement, causes permanent loss or significant impairment of function of any bodily organ or system, or results in objectively verifiable bilateral or multi-level dermatomal radiculopathy; and is not a physical injury that has no objective medical evidence to support a diagnosis; or

(II) Written certification by a licensed physician that the employee is suffering from an injury or condition that is caused by the alleged unsafe working condition and is likely to result in death within eighteen (18) months or less from the date of the filing of the complaint. The certifying physician must be engaged or qualified in a medical field in which the employee has been treated, or have training and/or experience in diagnosing or treating injuries or conditions similar to those of the employee and must disclose all evidence upon which the written certification is based, including, but not limited to, all radiographic, pathologic or other diagnostic test results that were reviewed.

(III) If the employee suffers from an injury for which no impairment rating may be determined pursuant to the rule or regulation then in effect which governs impairment evaluations pursuant to this chapter, serious compensable injury may be established if the injury meets the definition in subclause (I)(b).

(IV) If the employee suffers from an occupational pneumoconiosis, the employee must submit written certification by a board certified pulmonologist that the employee is suffering from complicated pneumoconiosis or pulmonary massive fibrosis and that the occupational pneumoconiosis has resulted in pulmonary impairment as measured by the standards or methods utilized by the West Virginia Occupational Pneumoconiosis Board of at least fifteen percent (15%) as confirmed by valid and reproducible ventilatory testing. The certifying pulmonologist must disclose all evidence upon which
the written certification is based, including, but not limited to, all radiographic, pathologic or other diagnostic test results that were reviewed: *Provided*, That any cause of action based upon this clause must be filed within one year of the date the employee meets the requirements of the same.

(C) In cases alleging liability under the provisions of paragraph (B) of this subdivision:

(i) The employee, the employee’s guardian or conservator, or the representative of the employee’s estate shall serve with the complaint a verified statement from a person with knowledge and expertise of the workplace safety statutes, rules, regulations and consensus industry safety standards specifically applicable to the industry and workplace involved in the employee’s injury, setting forth opinions and information on:

(I) The person’s knowledge and expertise of the applicable workplace safety statutes, rules, regulations and/or written consensus industry safety standards;

(II) The specific unsafe working condition(s) that were the cause of the injury that is the basis of the complaint; and

(III) The specific statutes, rules, regulations or written consensus industry safety standards violated by the employer that are directly related to the specific unsafe working conditions: *Provided, however*, That this verified statement shall not be admissible at the trial of the action and the Court, pursuant to the Rules of Evidence, common law and subclause two-c, subparagraph (iii), paragraph (B), subdivision (2), subsection (d), section two, article four, chapter twenty-three of this code, retains responsibility to determine and interpret the applicable law and admissibility of expert opinions.

(ii) No punitive or exemplary damages shall be awarded to the employee or other plaintiff;
(iii) Notwithstanding any other provision of law or rule to the contrary, and consistent with the legislative findings of intent to promote prompt judicial resolution of issues of immunity from litigation under this chapter, the employer may request and the court shall give due consideration to the bifurcation of discovery in any action brought under the provisions of subparagraphs (i) through (v), of paragraph (B) such that the discovery related to liability issues be completed before discovery related to damage issues. The court shall dismiss the action upon motion for summary judgment if it finds pursuant to rule 56 of the rules of civil procedure that one or more of the facts required to be proved by the provisions of subparagraphs (i) through (v), inclusive, paragraph (B) of this subdivision do not exist, and the court shall dismiss the action upon a timely motion for a directed verdict against the plaintiff if after considering all the evidence and every inference legitimately and reasonably raised thereby most favorably to the plaintiff, the court determines that there is not sufficient evidence to find each and every one of the facts required to be proven by the provisions of subparagraphs (i) through (v), inclusive, paragraph (B) of this subdivision; and

(iv) The provisions of this paragraph and of each subparagraph thereof are severable from the provisions of each other subparagraph, subsection, section, article or chapter of this code so that if any provision of a subparagraph of this paragraph is held void, the remaining provisions of this act and this code remain valid.

(e) Any cause of action brought pursuant to this section shall be brought either in the circuit court of the county in which the alleged injury occurred or the circuit court of the county of the employer’s principal place of business. 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.
(f) The reenactment of this section in the regular session of the Legislature during the year 2015 does not in any way affect the right of any person to bring an action with respect to or upon any cause of action which arose or accrued prior to the effective date of the reenactment.

(g) The amendments to this section enacted during the 2015 session of the Legislature shall apply to all injuries occurring on or after July 1, 2015.

AN ACT to amend and reenact §23-4-8d of the Code of West Virginia, 1931, as amended; and to amend and reenact §23-5-7 of said code, all relating to authorization of compromise and settlement of occupational disease claims; permitting final settlement of medical benefits for nonorthopedic occupational disease claims; and requiring claimant be represented by legal counsel in these claims.

Be it enacted by the Legislature of West Virginia:

That §23-4-8d of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that §23-5-7 of said code be amended and reenacted, all to read as follows:
ARTICLE 4. DISABILITY AND DEATH BENEFITS.

§23-4-8d. Occupational pneumoconiosis claims never closed for medical benefits with exception of settled claims.

1 Notwithstanding the provisions of subdivision (4), subsection (a), section sixteen of this article, with the exception of claims settled pursuant to article five, section seven of this chapter, a request for medical services, durable medical goods or other medical supplies in an occupational pneumoconiosis claim may be made at any time.

ARTICLE 5. REVIEW.


1 (a) The claimant, the employer and the Workers’ Compensation Commission, the successor to the commission, other private insurance carriers and self-insured employers, whichever is applicable, may negotiate a final settlement of any and all issues in a claim wherever the claim is in the administrative or appellate processes: Provided, That in the settlement of medical benefits for nonorthopedic occupational disease claims, the claimant shall be represented by legal counsel. If the employer is not active in the claim, the commission, the successor to the commission, other private insurance carriers and self-insured employers, whichever is applicable, may negotiate a final settlement with the claimant and the settlement shall be made a part of the claim record. Except in cases of fraud, no issue that is the subject of an approved settlement agreement may be reopened by any party, including the commission, the successor to the commission, other private insurance carriers and self-insured employers, whichever is applicable. Any settlement agreement may provide for a lump-sum payment or a structured payment plan, or any combination thereof, or any other basis as the parties may agree.
If a self-insured employer later fails to make the agreed-upon payment, the commission shall assume the obligation to make the payments and shall recover the amounts paid or to be paid from the self-insurer employer and its sureties or guarantors or both as provided in sections five and five-a, article two of this chapter.

(b) Each settlement agreement shall provide the toll-free number of the West Virginia State Bar Association and shall provide the injured worker with five business days to revoke the executed agreement. The Insurance Commissioner may void settlement agreements entered into by an unrepresented injured worker which are determined to be unconscionable pursuant to criteria established by rule of the commissioner.

(c) The amendments to this section enacted during the regular session of the Legislature in the year 2015 apply to all settlement agreements executed after the effective date.
# DISPOSITION OF BILLS ENACTED

The first column gives the number of the bill and the second column gives the chapter assigned to it.

## Regular Session, 2015

### HOUSE BILLS

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## DISPOSITION OF BILLS ENACTED

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### Regular Session, 2015

### SENATE BILLS

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# DISPOSITION OF BILLS ENACTED

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## Regular Session, 2015

House Bills = 4 Digits  
Senate Bills = 2, 3 Digits

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