# **ACTS**

OF THE

# LEGISLATURE

OF

# **WEST VIRGINIA**



Regular Session, 2016 First Extraordinary Session, 2016 Second Extraordinary Session, 2016

> Volume II Chapters 145 - 255 Chapters 1 - 12 Chapter 1



# WEST VIRGINIA HOUSE OF DELEGATES HONORABLE TIM ARMSTEAD

SPEAKER OF THE HOUSE

COMPILED AND PUBLISHED UNDER THE DIRECTION

OF

# STEPHEN J. HARRISON

CLERK OF THE HOUSE



# CLERK'S OFFICE LEGISLATIVE GROUP

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#### MEMBERS OF THE HOUSE OF DELEGATES

# **REGULAR SESSION, 2016**

#### **OFFICERS**

Speaker – Tim Armstead, Elkview

Clerk – Stephen J. Harrison, Cross Lanes

Sergeant-at-Arms – Marshall Clay, Fayetteville

Doorkeeper – Frank Larese, Belle

District	Name	Address	Occupation or Profession	Legislative Service
First	Pat McGeehan (R)	Chester	Business Sales/Author	79th; 82nd
	Mark Zatezalo (R)	Wierton	Hydrogeologist	82 <sup>nd</sup>
Second	Ryan W. Weld (R)	Wellsburg	Legal Assistant	82 <sup>nd</sup>
Third	Shawn Fluharty (D)	Wheeling	Attorney	82 <sup>nd</sup>
	Erikka Storch (R)	Wheeling	Financial Officer	$80^{th}$ - $82^{nd}$
Fourth	David A. Evans (R)	Cameron	Retired Teacher	81st - 82nd
	Michael T. Ferro (D)	McMechen	Retired Educator/Coach	79 <sup>th</sup> - 82 <sup>nd</sup>
Fifth	Dave Pethtel (D)	Hundred	Retired Teacher	69th - 71st;
				74th - 82nd
Sixth	William Roger Romine (R)	Sistersville	Retired School	
			Administrator	75 <sup>th</sup> - 82 <sup>nd</sup>
Seventh	Lynwood "Woody" Ireland (R).	Pullman	Retired Chemical	
	•		Engineer/Farmer	78th - 82nd
Eighth	W. "Bill" Anderson, Jr. (R)	Williamstown		
	Anna Border Sheppard (R)			
	11 , ,			80 <sup>th</sup> - 82 <sup>nd</sup>
Tenth	Mike Azinger (R)	Parkersburg	Manager	82 <sup>nd</sup>
	Frank Deem (R)	Vienna	Businessman	52 <sup>nd</sup> - 58 <sup>th</sup> ; 82 <sup>nd</sup>
	John R. Kelly (R)			
Eleventh	Martin Atkinson, III (R)			Appt. 10/2/2015;
		-		82 <sup>nd</sup>
Twelfth	Steve Westfall (R)	Ripley	Insurance Agent	81st - 82nd
Thirteenth	Scott Cadle (R)	Letart	Trucking/Excavating	81st - 82nd
	Michael Ihle (R)	Ravenswood	Mayor	82nd
Fourteenth	Jim Butler (R)	Henderson	Excavating Contractor	81st - 82nd
Fifteenth	Geoff Foster (R)	Winfield	Construction Supply	82 <sup>nd</sup>
Sixteenth	Sean Hornbuckle (D)	Huntington	Financial Services	
			Broker	82 <sup>nd</sup>
	Carol Miller (R)	Huntington	Small Business Owner/	
			Property Management	$78^{th}$ - $82^{nd}$
	Jim Morgan (D)	Huntington	Retired	69th- 70th; Appt.
		-		2/23/2001, 75th;
				76 <sup>th</sup> - 82 <sup>nd</sup>
Seventeenth	Doug Reynolds (D)	Huntington	Engineering and	
			Construction Executive.	$78^{th}$ - $82^{nd}$
	Matthew Rohrbach (R)	Huntington	Physician	82 <sup>nd</sup>

# MEMBERS OF THE HOUSE OF DELEGATES - Continued

District	Name	Address	Occupation or Profession	Legislative Service
Fighteenth	Kelli Sobonya (R)	Rarboursville	Realtor	76th - 82nd
-	Kenneth Paul Hicks (D)			
1 vineteentii	Don C. Perdue (D)		-	
Twentieth	Justin J. Marcum (D)			
Twenty-first	Phyllis White (D)	Gilbert	Educator/Principal	
Twenty-second.	Jeff Eldridge (D)	Alum Creek	Self Employed	$77^{th}$ - $79^{th};81^{st}$ - $82^{nd}$
	Michel Moffatt (R)	Hurricane	Former Manufacturing	
			Manager	82 <sup>nd</sup>
Twenty-third	Joshua Nelson (R)	Danville	Coal Miner	81st - 82nd
Twenty-fourth.	Rupert Phillips, Jr. (D)	Lorado	Sales Manager	$80^{th}$ - $82^{nd}$
	Ralph Rodighiero (D)	Logan	UPS Delivery Driver	$78^{th}$ - $80^{th}$ ; $82^{nd}$
Twenty-fifth	Frank L. Blackwell (D)	Mullens	Retired Superintendent	
			of Schools	Appt. 1/12/2016, 82 <sup>nd</sup>
Twenty-sixth..	Clif Moore (D)	$Thorpe.\ \dots \dots$	Administrator	$77^{th}$ - $82^{nd}$
Twenty-seventh.	Joe Ellington (R)	Princeton	Physician	80 <sup>th</sup> - 82 <sup>nd</sup>
	Marty Gearheart (R)	Bluefield	Businessman	80 <sup>th</sup> - 82 <sup>nd</sup>
	John H. Shott (R)	Bluefield	Attorney	79 <sup>th</sup> , Resigned 5/2010;
				81st - 82nd
Twenty-eighth.	Roy G. Cooper (R)	Wayside	Retired U. S. Navy	
Twenty-ninth	John D. O'Neal, IV (R) Ricky Moye (D)	•		80 <sup>th</sup> - 82 <sup>nd</sup>
			Bus Operator	78th - 82nd
	Mick Bates (D) Karen "Lynne" Arvon (R)	•	•	82 <sup>nd</sup>
			Social Services	
Thirty-second.	Tom Fast (R)	Fayetteville	Attorney	82 <sup>nd</sup>
	Kayla Kessinger (R)	Mount Hope	Director of Human	
			Resources	
	David G. Perry (D)			
•	. Roger Hanshaw (R)		•	
-	Brent Boggs (D)	-	_	
Thirty-fifth	Andrew D. Byrd (D)		•	
	John B. McCuskey (R)		•	81 <sup>st</sup> - 82 <sup>nd</sup>
	Eric Nelson (R)	Charleston		ooth on-d
		GL 1	Management	
mu ·	Chris Stansbury (R)			82 <sup>nd</sup>
Thirty-sixth	Nancy Peoples Guthrie (D)	Charleston		noth cand
	I I D (70)	Cl. 1	Business Owner	
	Larry L. Rowe (D)			
TPL:	Brad White (R)			
-	Mike Pushkin (D)			
i nirty-eighth	Patrick Lane (R)	Cross Lanes	Auorney/Entrepreneur	//" - 82" <sup>u</sup>

# MEMBERS OF THE HOUSE OF DELEGATES - Continued

District	Name	Address	Occupation or Profession	Legislative Service
Thirty-ninth	Ron Walters (R)	Charleston	Insurance Executive/	
y miuli	Ton uncors (x)	Charleston	President	71 <sup>st</sup> - 73 <sup>rd</sup> ; 75 <sup>th</sup> - 82 <sup>nd</sup>
Fortieth	Tim Armstead (R)	Elkview	Attorney	~-
Forty-first	Jordan Hill (R)	Mt. Nebo	Human Resources	
Forty-second	George "Boogie" Ambler (R)	Fort Springs		
			Educator/Farmer	
	Ray Canterbury (R)		-	75 <sup>th</sup> - 82 <sup>nd</sup>
Forty-third	Denise L. Campbell (D)	Elkins	_	
			Home Administrator	80 <sup>th</sup> - 82 <sup>nd</sup>
	William G. Hartman (D)	Elkins	-	
			Insurance Agent	
•	Dana L. Lynch (D)			81 <sup>st</sup> - 82 <sup>std</sup>
Forty-fifth	Bill Hamilton (R)	Buckhannon	Insurance	
			Agency Owner	
Forty-sixth	Peggy Donaldson Smith (D)	Weston	$Attorney/Professor. \dots. \\$	79 <sup>th</sup> - 82 <sup>nd</sup>
Forty-seventh.	Danny Wagner (R)	Philippi		
			Coach	82 <sup>nd</sup>
Forty-eighth	Danny Hamrick (R)	Clarksburg		
			Media Production	
	Tim Miley (D)			77 <sup>th</sup> - 82 <sup>nd</sup>
			$Communications.\ \dots.$	82 <sup>nd</sup>
	Theresa Waxman (R)	$Bridgeport.\ \dots\dots$	$Homemaker. \dots \dots \dots$	82nd
	Amy Summers (R)			82nd
Fiftieth	Mike Caputo (D)	Fairmont	UMWA, District 31	
			Vice-President	
	Linda Longstreth (D)			
	Tim Manchin (D)		•	76 <sup>th</sup> - 82 <sup>nd</sup>
Fifty-first	Barbara Evans Fleischauer (D).	Morgantown	-	
			Business Owner	
				78 <sup>th</sup> - 82 <sup>nd</sup>
	Cindy Frich (R)	Morgantown	Sales/Writer/Consultant.	
				81 <sup>st</sup> - 82 <sup>nd</sup>
	Brian Kurcaba (R)	-		
	William Flanigan (R)	Morgantown	Attorney	••
	I Cod (D)	0	D :: 1	1/15/2016, 82 <sup>nd</sup>
F:6 1	Joe Statler (R)			
FIITy-second	Steven Shaffer (D)	I unnelton	Attorney	Appt. 4/29/2015, 82 <sup>nd</sup>
•	Randy E. Smith (R)			
	Allen V. Evans (R)			
-	Isaac Sponaugle (D)		-	
Fifty-sixth	Gary G. Howell (R)	Keyser	Small Business Owner	80 <sup>th</sup> - 82 <sup>nd</sup>

# MEMBERS OF THE HOUSE OF DELEGATES - Continued

District	Name	Address	Occupation or Profession	Legislative Service
Fifty-seventh	Ruth Rowan (R)	Points	Retired Educator	77 <sup>th</sup> - 82 <sup>nd</sup>
Fifty-eighth	Daryl E. Cowles (R)	Berkeley Springs	Businessman	78th - 82nd
Fifty-ninth	Saira Blair (R)	Martinsburg	Student	82nd
Sixtieth	Larry W. Faircloth (R)	Inwood	Small Business	
			Consulting	81st - 82nd
Sixty-first	Walter E. Duke (R)	Martinsburg	Retired Educator	$76^{th}$ - $80^{th}$ ; $82^{nd}$
Sixty-second	John Overington (R)	Martinsburg	Public Relations/	
			Former Educator	$67^{th}$ - $82^{nd}$
Sixty-third	Michael "Mike" Folk (R)	Martinsburg	Airline Pilot/Farmer	81st - 82nd
Sixty-fourth	Eric L. Householder (R)	Martinsburg	Small Business Owner	$80^{th}$ - $82^{nd}$
Sixty-fifth	Jill Upson (R)	Charles Town	Former Retail Manager/	
			Student	82nd
Sixty-sixth	Paul Espinosa (R)	Charles Town	General Manager, Frontie	er
			Communications	81st - 82nd
Sixty-seventh.	Stephen Skinner (D)	Shepherdstown	Attorney	81st - 82nd

## MEMBERS OF THE SENATE

# **REGULAR SESSION, 2016**

#### **OFFICERS**

President – William P. Cole, III, Bluefield

Clerk – Clark S. Barnes, French Creek

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

Doorkeeper – Jeffrey L. Branham, Cross Lanes

District	Name	Address	Occupation or Profession	Legislative Service
First	Ryan Ferns (R)	Wheeling	Physical Therapist	(House 80 <sup>th</sup> - 81 <sup>st</sup> ):
	Jack Yost (D).	Wellsburg	Retired	(House 76 <sup>th</sup> - 78 <sup>th</sup> ); 79 <sup>th</sup> - 82 <sup>nd</sup>
Second	Jeffrey V. Kessler (D)	Glen Dale	Attorney	Appt. 11/1997, 73rd; 74 <sup>th</sup> - 82 <sup>nd</sup>
	Kent Leonhardt (R)	Fairview	Retired USMC/farmer	82 <sup>nd</sup>
Third	Donna J. Boley (R)	St. Marys	Retired	Appt. 5/14/1985, 67 <sup>th</sup> ; 68 <sup>th</sup> - 82 <sup>nd</sup>
	Bob Ashley (R)	Spencer	Insurance Agent	$67^{th}$ - $73^{rd}$ , $75^{th}$ - $82^{nd}$
Fourth	Mitch B. Carmichael (R)	Ripley	Director of	
			Commercial Sales	(House 75 <sup>th</sup> - 80 <sup>th</sup> ); 82 <sup>nd</sup>
	Mike Hall (R)	Winfield	Businessman	(House $72^{nd} - 74^{th}$ ); $78^{th} - 82^{nd}$
Fifth	Robert H. Plymale (D)	Ceredo	Businessman	71st - 82nd
	William P. Cole III (R)			
	Mark R. Maynard (R)	Genoa	Automobile Dealer	82 <sup>nd</sup>
Seventh	Art Kirkendoll (D)			
	Ron Stollings (D)	Madison	Physician	78th - 82nd
Eighth	Ed Gaunch (R)	Charleston	Retired	82 <sup>nd</sup>
	Chris Walters (R)	Nitro	Insurance	
Ninth	Sue Cline (R)	Brenton		Appt. 1/22/2016, 82 <sup>nd</sup>
	Jeff Mullins (R)	Shady Spring	Insurance	82 <sup>nd</sup>
Tenth	William Laird IV (D)	Oak Hill	Retired/Self-Employed	(House 73rd - 75 <sup>th</sup> ); 79 <sup>th</sup> - 82 <sup>nd</sup>
	Ronald F. Miller (D)	Lewisburg	Self-Employed	$80^{th}$ - $82^{nd}$
Eleventh	Greg Boso (R)			
	Robert L. Karnes (R)	$Tall man sville. \dots.$	Information and	
			Technology Field	
			Services	82 <sup>nd</sup>

# MEMBERS OF THE SENATE - Continued

District	Name	Address	Occupation or Profession	Legislative Service
Twelfth	Douglas Facemire (D)	Sutton	Grocery Chain Owner	79 <sup>th</sup> - 82 <sup>nd</sup>
	Mike Romano (D)	Clarksburg	Attorney/CPA	82nd
Thirteenth	Robert D. Beach (D)	Morgantown	Executive Director	
			of College Foundation	(House, Appt. 5/1998, 73 <sup>rd</sup> ; 74 <sup>th</sup> - 79 <sup>th</sup> ); 80 <sup>th</sup> - 82 <sup>nd</sup>
	Roman W. Prezioso, Jr. (D).	Fairmont	Administrator	(House $69^{\text{h}}$ - $72^{\text{nd}}$ ); $73^{\text{rd}}$ - $82^{\text{nd}}$
Fourteenth	Dave Sypolt (R)	Kingwood	Professional	
			Land Surveyor	$78^{th}$ - $82^{nd}$
	Bob Williams (D)	Grafton	Real Estate Appraiser	79th - 82nd
Fifteenth	Craig P. Blair (R)	Martinsburg	Small Business Owner/	
			President	(House $76^h$ - $79^h$ ); $82^{nd}$
	Charles S. Trump IV (R)	Berkeley Springs	Attorney	House 71st - 78th); 81st - 82nd
Sixteenth	Herb Snyder (D)	Shenandoah Junction.	Director, Environmental	
	220		Chemistry	73rd - 76 <sup>th</sup> ; 79 <sup>th</sup> - 82 <sup>nd</sup>
	John R. Unger II (D)	Martinsburg	Pastor	$74^{th} - 82^{nd}$
Seventeenth	Corey Palumbo (D)			
	Tom Takubo (R)	Charleston	Physician	82 <sup>nd</sup>

#### HOUSE OF DELEGATES COMMITTEES

## COMMITTEES OF THE HOUSE OF DELEGATES Regular Session, 2016

### **STANDING**

#### AGRICULTURE AND NATURAL RESOURCES

A. Evans (Chair of Agriculture), Romine (Vice Chair of Agriculture), Hamilton (Chair of Natural Resources), Ambler (Vice Chair of Natural Resources), Anderson, Atkinson, Border, Cadle, Canterbury, Cooper, Folk, Ireland, Miller, R. Smith, Summers, Wagner, Blackwell, Eldridge (Minority Chair of Agriculture), Sponaugle (Minority Vice Chair of Agriculture), Lynch (Minority Chair of Natural Resources), Guthrie (Minority Vice Chair of Natural Resources), Campbell, Rodighiero, Shaffer and P. White.

#### **BANKING AND INSURANCE**

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

#### **EDUCATION**

Espinosa (*Chair*), Duke (*Vice Chair*), Ambler, Cooper, Ellington, D. Evans, Hamrick, Kelly, Kurcaba, Rohrbach, Romine, Rowan, Statler, Upson, Wagner, Westfall, Perry (*Minority Chair*), Moye (*Minority Vice Chair*), Blackwell, Campbell, Hicks, Hornbuckle, Perdue, Rodighiero and Trecost.

#### HOUSE OF DELEGATES COMMITTEES

#### **ENERGY**

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

#### **FINANCE**

E. Nelson (*Chair*), Householder (*Vice Chair*), Anderson, Butler, Canterbury, Espinosa, A. Evans, Frich, Gearheart, Hamilton, Miller, O'Neal, Storch, Walters, Waxman, Westfall, Boggs (*Minority Chair*), Guthrie (*Minority Vice Chair*), Bates, Reynolds, Longstreth, Moye, Perry, Pethtel and P. Smith.

#### **GOVERNMENT ORGANIZATION**

Howell (*Chair*), Arvon (*Vice Chair*), Atkinson, Blair, Border, Cadle, Faircloth, Flanigan, Hamrick, Hill, Ihle, McGeehan, Moffatt, J. Nelson, R. Smith, Stansbury, Morgan (*Minority Chair*), Ferro (*Minority Vice Chair*), Caputo, Eldridge, Hartman, Lynch, Pushkin, Sponaugle and P. White.

#### HEALTH AND HUMAN RESOURCES

Ellington (*Chair*), Summers (*Vice Chair*), Arvon, Atkinson, Cooper, Faircloth, Hill, Householder, Kurcaba, Lane, Rohrbach, Sobonya, Stansbury, Waxman, Westfall, B. White, Fleischauer (*Minority Chair*), Campbell (*Minority Vice Chair*), Bates, Fluharty, Longstreth, Moore, Perdue, Pushkin and Rodighiero.

#### HOUSE OF DELEGATES COMMITTEES.

#### INDUSTRY AND LABOR

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

#### INTERSTATE COOPERATION

Storch (*Chair*), Faircloth (*Vice Chair*), Ellington, Hamrick, Romine, Ferro and P. Smith.

#### **JUDICIARY**

Shott (*Chair*), Lane (*Vice Chair*), Azinger, Deem, Fast, Folk, Foster, Hanshaw, Ireland, Kessinger, McCuskey, Overington, Sobonya, Summers, Weld, Zatezalo, Manchin (*Minority Chair*), Skinner (*Minority Vice Chair*), Byrd, Fleischauer, Fluharty, Marcum, Moore, Rowe and Shaffer.

#### PENSIONS AND RETIREMENT

Canterbury (*Chair*), Folk (*Vice Chair*), Hamilton, Kurcaba, Walters, Marcum and Pethtel.

#### POLITICAL SUBDIVISIONS

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

#### HOUSE OF DELEGATES COMMITTEES

#### ROADS AND TRANSPORTATION

Gearheart (*Chair*), Hamrick (*Vice Chair*), Ambler, Arvon, Butler, Cadle, Espinosa, A. Evans, D. Evans, Fast, Foster, Howell, Moffatt, Rohrbach, Statler, Wagner, Trecost (*Minority Chair*), Guthrie (*Minority Vice Chair*), Blackwell, Boggs, Longstreth, Moye, Reynolds, P. Smith and Sponaugle.

#### RULES

Armstead (*Chair*), Anderson, Cowles, Espinosa, Howell, Ireland, Lane, Miller, E. Nelson, O'Neal, Overington, Shott, Sobonya, Boggs, Campbell, Caputo, Fleischauer, Guthrie, Manchin and Miley.

#### PREVENTION AND TREATMENT OF SUBSTANCE ABUSE

Ellington (*Chair*), Stansbury (*Vice Chair*), Frich, Hanshaw, Sobonya, Storch, Upson, Bates, Boggs, Perdue and Shaffer.

#### SENIOR CITIZEN ISSUES

Rowan (*Chair*), Border (*Vice Chair*), Canterbury, Deem, Duke, Faircloth, Hamilton, Hill, Kelly, E. Nelson, Overington, Rohrbach, Romine, Walters, B. White, Zatezalo, Moye (*Minority Chair*), Pethtel (*Minority Vice Chair*), Campbell, Ferro, Hartman, Moore, Perry, Phillips and Shaffer.

#### HOUSE OF DELEGATES COMMITTEES

# SMALL BUSINESS, ENTREPRENEURSHIP AND ECONOMIC DEVELOPMENT

Miller (*Chair*), Hill (*Vice Chair*), Blair, Ellington, Espinosa, Faircloth, Flanigan, Hanshaw, Kelly, Kessinger, Lane, Stansbury, Storch, Waxman, Westfall, Zatezalo, Skinner (*Minority Chair*), Rowe (*Minority Vice Chair*), Bates, Hartman, Hornbuckle, Manchin, Miley, Morgan and P. White.

#### **VETERANS' AFFAIRS AND HOMELAND SECURITY**

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

#### **ENROLLED BILLS**

McCuskey (*Chair*), Westfall (*Vice Chair*), Hanshaw, Marcum and Sponaugle.

# COMMITTEES OF THE SENATE Regular Session, 2016

## STANDING

#### AGRICULTURE AND RURAL DEVELOPMENT

Senators Karnes (*Chair*), Leonhardt (*Vice Chair*), Blair, Cline, Maynard, Sypolt, Beach, Laird, Miller, Williams and Woelfel.

#### **BANKING AND INSURANCE**

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

#### **CONFIRMATIONS**

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

#### ECONOMIC DEVELOPMENT

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

#### **EDUCATION**

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

#### ENERGY, INDUSTRY AND MINING

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

#### ENROLLED BILLS

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

#### **FINANCE**

Senators 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*), Ashley, 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*), Ferns (*Vice Chair*), Ashley, Carmichael, Cline, Gaunch, Karnes, Leonhardt, Maynard, Beach, Kirkendoll, Miller, Palumbo, Romano, Snyder, Williams and Woelfel.

#### LABOR

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

#### **MILITARY**

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

#### **NATURAL RESOURCES**

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

#### **PENSIONS**

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

#### RULES

Senators Cole (*Chair*), Blair, Carmichael, 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.

# CHAPTER 145

#### (S. B. 494 - By Senators Beach and Plymale)

[Passed March 10, 2016; in effect ninety days from passage.] [Approved by the Governor on March 30, 2016.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §4-14-1, §4-14-2, §4-14-3, §4-14-4 and §4-14-5, all relating to creating the Legislative Oversight Commission on Department of Transportation Accountability; setting forth findings, purpose and intent; defining terms; designating makeup and compensation of commission; authorizing meetings of the commission; stating powers and duties of commission; providing a limited subpoena power to the commission; and requiring certain reports.

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 §4-14-1, §4-14-2, §4-14-3, §4-14-4 and §4-14-5, all to read as follows:

# ARTICLE 14. LEGISLATIVE OVERSIGHT COMMISSION ON DEPARTMENT OF TRANSPORTATION ACCOUNTABILITY.

## §4-14-1. Findings, purpose and intent.

- 1 (a) The Legislature hereby finds and declares that:
- 2 (1) Investment in infrastructure is crucial to the well-being
- 3 of West Virginians and West Virginia businesses;

- 4 (2) The state must spend funds wisely on infrastructure in 5 order to get the best return on investment and must make 6 long-term plans for investment;
- 7 (3) The federal government is an unpredictable and 8 unreliable partner in providing consistent funding for 9 infrastructure investment:
- 10 (4) The Legislature directed a Division of Highways 11 performance and efficiency audit in 2015; and
- 12 (5) In order to maintain proper oversight to ensure that 13 sufficient transportation planning is made, funds are spent wisely 14 and efficiently, and the Department of Transportation is 15 functioning appropriately, the Legislative Oversight Commission 16 on Department of Transportation Accountability is hereby 17 created.
- 18 (b) It is the intent of the Legislature that all actions taken 19 pursuant to the provisions of this article by the Legislature and 20 the Department of Transportation serve the following core set of 21 principles:
- 22 (1) That all Department of Transportation infrastructure 23 investments be coordinated to maximize efficiencies and 24 minimize cost thereby addressing the needs of the citizens more 25 effectively;
- 26 (2) That communication be facilitated among the various 27 agencies within the Department of Transportation and between 28 the department and the Legislature;
- 29 (3) That policy changes, not made by legislative rule, be 30 discussed with the commission for purposes of coordinating 31 those policies with stated goals;
- 32 (4) That programs or policies implemented in accordance 33 with federal mandates be communicated to the commission;

- 34 (5) That in developing and implementing programs with
- private or federal grant moneys, the various agencies 35
- communicate their efforts to the commission to ensure and 36
- 37 facilitate future state funding; and
- 38 (6) That any Department of Transportation agencies
- exempted from rule-making review by federal or state statutes 39
- advise the commission of program changes which may affect 40
- infrastructure investment in West Virginia. 41

#### §4-14-2. Definitions.

- As used in this article: 1
- 2 (1) "Agency" means each agency, authority, board,
- 3 committee, commission or division of the Department of
- 4 Transportation;
- 5 (2) "Commission" means the Legislative Oversight
- Commission on Transportation Accountability, as created in
- 7 section three of this article; and
- 8 (3) "Department" means the Department of Transportation.

# §4-14-3. Creation of a Legislative Oversight Commission on **Department of Transportation Accountability.**

- (a) There is hereby created a joint commission of the 1
- Legislature known as the Legislative Oversight Commission on
- Department of Transportation Accountability. The commission 3
- 4 shall be composed of seven members of the Senate appointed by
- the President of the Senate and seven members of the House of
- Delegates appointed by the Speaker of the House of Delegates. 6
- 7 No more than four of the seven members appointed by the
- President of the Senate and the Speaker of the House of
- 9 Delegates, respectively, may be members of the same political
- 10 party. In addition, the President of the Senate and Speaker of the

- 11 House of Delegates shall be ex officio nonvoting members of the
- 12 commission. The co-chairs of the commission shall be the chair
- 13 of the Senate Transportation and Infrastructure Committee and
- 14 the chair of the House Roads and Transportation Committee. At
- 15 least one of the Senate appointees and at least one of the House
- of Delegates appointees shall be a member of the committee on
- 17 finance of the Senate and House of Delegates, respectively. The
- 18 members shall serve until their successors shall have been
- 19 appointed as heretofore provided.
- 20 (b) Members of the commission shall receive such
- 21 compensation and expenses as provided in article two-a, chapter
- 22 four of this code. Such expenses and all other expenses including
- 23 those incurred in the employment of legal, technical,
- 24 investigative, clerical, stenographic, advisory and other
- 25 personnel shall be paid from an appropriation to be made
- 26 expressly for the Legislative Oversight Commission on
- 27 Department of Transportation Accountability: Provided, That if
- 28 no such appropriation be made, such expenses shall be paid from
- 29 the appropriation under Fund No. 0175 for Joint Expenses
- 30 created pursuant to the provisions of said chapter: Provided,
- 31 however, That no expense of any kind payable under the account
- 32 for joint expenses shall be incurred unless first approved by the
- 33 Joint Committee on Government and Finance.
- 34 (c) The commission shall meet at any time both during
- 35 sessions of the Legislature and in the interim or as often as may
- 36 be necessary.
- 37 (d) The President of the Senate and Speaker of the House of
- 38 Delegates shall assign such staff as may be deemed necessary to
- 39 aid the commission in carrying out the provisions of this article.

#### §4-14-4. Powers and duties of commission.

- 1 (a) The powers, duties and responsibilities of the
- 2 commission include the following:

- 3 (1) Make a continuing investigation, study and review of the 4 practices, policies and procedures of the department;
- 5 (2) Make a continuing investigation, study and review of all
- 6 matters related to transportation policy in the state;
- 7 (3) Review long-term plans by the various agencies of the
- 8 Department of Transportation and how they impact the citizens
- 9 of West Virginia;
- 10 (4) Conduct studies on:
- 11 (A) The amount of state, federal and other funds expended
- 12 in infrastructure investment in the state and the plan for future
- 13 funds:
- 14 (B) The costs associated with failure to invest in the
- 15 infrastructure of this state to citizens and businesses;
- 16 (C) The extent to which the state is maximizing available
- 17 federal programs and other moneys in providing transportation
- 18 investment to the citizens of this state:
- 19 (D) The operation of the Department of Transportation as a
- 20 whole or its individual agencies; and
- 21 (E) The roles of the public, private and private nonprofit
- 22 sectors in collaborating for improved infrastructure investment;
- 23 (5) Review and study the funding mechanisms for the State
- 24 Road Fund and review any plans to adjust funding to ensure the
- 25 necessary investment is made;
- 26 (6) Review and study the feasibility and financial impact
- 27 upon the state of the long-term transportation plans in place in
- 28 the department and its agencies; and

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- 29 (7) Review and study the feasibility and financial impact 30 upon the state of the establishment of alternative long-term 31 transportation plans and alternative funding sources.
- 32 (b) The commission shall make annual reports to the 33 Legislature regarding the results of all investigations, studies and 34 reviews pursuant to the provisions of section five of this article.

### 35 (c) Limited subpoena power: —

- (1) For purposes of carrying out its duties, the commission is hereby empowered and authorized to examine witnesses and to subpoena such persons and books, records, documents, papers or any other tangible things as it believes should be examined to make a complete investigation.
- 41 (2) All witnesses appearing before the commission under 42 subpoena shall testify under oath or affirmation. Any member of 43 the commission may administer oaths or affirmations to such 44 witnesses.
  - (3) To compel the attendance of witnesses at such hearings or the production of any books, records, documents, papers or any other tangible thing, the commission is hereby empowered and authorized to issue subpoenas, signed by one of the co-chairs, in accordance with section five, article one, chapter four of this code. Such subpoenas shall be served by any person authorized by law to serve and execute legal process and service shall be made without charge. Witnesses subpoenaed to attend hearings shall be allowed the same mileage and per diem as is allowed witnesses before any petit jury in this state.
  - (4) If any person subpoenaed to appear at any hearing refuses to appear or to answer inquiries there propounded, or fails or refuses to produce books, records, documents, papers or any other tangible thing within his or her control when the same

- 59 are demanded, the commission shall report the facts to the circuit
- 60 court of Kanawha County or any other court of competent
- 61 jurisdiction and such court may compel obedience to the
- 62 subpoena as though such subpoena had been issued by such
- 63 court in the first instance.

### §4-14-5. Legislative reports.

- 1 (a) The department shall report to the commission annually
- 2 on or before December 31 of each year and provide detailed
- 3 reports as directed by the commission. The commission shall
- 4 describe to the department, in writing, the criteria to be
- 5 addressed in each report. Reports required by this subsection
- 6 may be provided in a format as directed by the commission.
- 7 (b) The commission shall submit annual reports to the
- 8 Legislature, as required by the provisions of section four of this
- 9 article, which such reports shall describe and evaluate in a
- 10 concise manner:
- 11 (1) The major activities of the Department of Transportation
- 12 and its agencies for the fiscal year immediately past, including
- 13 important policy decisions reached on initiatives undertaken
- 14 during that year, especially as such activities, decisions and
- 15 initiatives relate to infrastructure investment, long-term planning
- 16 for infrastructure investment, use of federal funds and any
- 17 public-private partnerships for infrastructure investment.
- 18 (2) Other information considered by the commission to be
- 19 important, including recommendations for statutory, fiscal or
- 20 policy reforms and reasons for such recommendations.
- 21 (c) The reports may specify in what manner any practice,
- 22 policy or procedure may or should be modified to satisfy the
- 23 goal of efficient and effective delivery of infrastructure
- 24 investment and to improve the quality of roads, bridges and other
- 25 transportation infrastructure in the state.



### CHAPTER 146

(Com. Sub. for S. B. 619 - By Senators Blair, Carmichael, Cline, Gaunch, Karnes, Mullins and Trump)

[Passed March 12, 2016; in effect ninety days from passage.] [Approved by the Governor on April 1, 2016.]

AN ACT to amend and reenact §29A-3-5 and §29A-3-11 of the Code of West Virginia, 1931, as amended; to amend said code by adding thereto two new sections, designated §29A-3-19 and §29A-3-20; and to amend said code by adding thereto a new section, designated §29A-3A-20, all relating generally to legislative rulemaking; requiring agencies to respond to public comments received during the rule-making process; requiring agencies to explain reason for comments being included or excluded from the rule; providing that failure of an agency to adequately explain why or why not public comments were incorporated into the rule may be grounds for rejection of the proposed rule; making changes to the procedures for the submission of a proposed legislative rule; allowing copies of proposed rule to be submitted in electronic or paper form at the request of the Legislative Rule-Making Review Committee; requiring additional information to be included when an agency submits proposed rules to the Legislative Rule-Making Review Committee; adding determinations the Legislative Rule-Making Review Committee shall make as part of its review of a proposed legislative rule; allowing the Legislative Rule-Making Review Committee to recommend rejection of the proposed legislative rule as one of the recommendations the Legislative Rule-Making Review Committee may make to the Legislature following its committee review; providing for a five-year sunset provision for all new legislative rules promulgated after April 1, 2016; requiring sunset provisions in all future

modifications of existing legislative rules after April 1, 2016; allowing for renewal for an additional term of years; clarifying that statutory sunset provisions take precedence over sunset provisions in a rule; expressly exempting rules promulgated by the Department of Environmental Protection from the sunset requirement; expressly exempting emergency rules from the sunset requirement; providing that the existence of a sunset provision shall not preclude the repeal of the legislative rule prior to the expiration of the sunset provision; authorizing the Legislative Rule-Making Review Committee to establish a procedure for timely review of rules prior to the expiration of the sunset provision; requiring the Secretary of State to provide notice to agencies at least eighteen months prior to an agency's rule sunset date; requiring executive agencies with rulemaking authority to submit a report to the Joint Committee on Government and Finance and to the Legislative Rule-Making Review Committee on or before November 1, 2017, indicating a description of state rules, guidelines, policies and recommendations that are more stringent than federal counterparts as well as public comments received relating to the same; requiring agencies with rulemaking authority to perform certain actions, evaluations, determinations and public comment period in preparation of the report; requiring each executive agency with rulemaking authority to review each of its rules, make certain determinations, within four years and submit a report to the Legislative Rule-Making Review Committee on or before July 1, 2020; setting forth the information to be included in the report to the Legislative Rule-Making Review Committee; requiring a five-year sunset provision for all new legislative rules promulgated after April 1, 2016, by the Higher Education Policy Commission or other higher education entity defined as a board under section one, article three-a, chapter twenty-nine-a of the code; requiring sunset provisions in all future modifications of existing legislative rules promulgated after April 1, 2016, by the Higher Education Policy Commission or other higher education entity defined as a board under section one, article three-a, chapter

twenty-nine-a of the code; allowing for renewal for an additional term of years; clarifying that statutory sunset provisions take precedence over sunset provisions in a rule; expressly exempting emergency rules from the sunset requirement; providing that the existence of a sunset provision shall not preclude the repeal of the legislative rule prior to the expiration of the sunset provision; authorizing the Legislative Oversight Commission on Education Accountability to establish a procedure for timely review of rules prior to the expiration of the sunset provision; and requiring the Secretary of State to provide notice to the Higher Education Policy Commission or other higher education entity defined as a board under section one, article three-a, chapter twenty-nine-a of the code at least eighteen months prior to an agency's rule sunset date.

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

That §29A-3-5 and §29A-3-11 of the Code of West Virginia, 1931, as amended, be amended and reenacted; that said code be amended by adding thereto two new sections, designated §29A-3-19 and §29A-3-20; and that said code be amended by adding thereto a new section, designated §29A-3A-20, all to read as follows:

#### ARTICLE 3. RULEMAKING.

### §29A-3-5. Notice of proposed rulemaking.

- 1 When an agency proposes to promulgate a rule other than an
- 2 emergency rule, it shall file with the Secretary of State, for
- 3 publication in the State Register, a notice of its action, including
- 4 therein any request for the submission of evidence to be
- 5 presented on any factual determinations or inquiries required by
- 6 law to promulgate such rule. At the time of filing the notice of its
- 7 action, the agency shall also file with the Secretary of State a
- 8 copy of the full text of the rule proposed and a fiscal note as
- 9 defined in subsection (b), section four of this article. If the
- $10\quad agency is considering alternative draft proposals, it may also file$
- 11 with the Secretary of State the full text of such draft proposals.

The notice shall fix a date, time and place for the receipt of public comment in the form of oral statements, written statements and documents bearing upon any findings and determinations which are a condition precedent to the final approval by the agency of the proposed rule and shall contain a general description of the issues to be decided. If no specific findings and determinations are required as a condition precedent to the final approval by the agency of the approved rule, the notice shall fix a date, time and place for the receipt of general public comment on the proposed rule. To comply with the public comment provisions of this section, the agency may hold a public hearing or schedule a public comment period for the receipt of written statements and documents, or both.

If findings and determinations are a condition precedent to the promulgation of such rule, then an opportunity for general public comment on the merits of the rule shall be afforded after such findings and determinations are made. In such event, notice of the hearing or of the period for receiving public comment on the proposed rule shall be attached to and filed as a part of the findings and determinations of the agency when filed in the State Register.

In any hearing for public comment on the merits of the rule, the agency may limit presentations to written material. The time, date and place fixed in the notice shall constitute the last opportunity to submit any written material relevant to any hearing, all of which may be earlier submitted by filing with the agency. After the public hearing or the close of the public comment period, whichever is later, the agency shall not permit the filing or receipt of, nor shall it consider, any attempted ex parte communications directed to it in the form of additional comment prior to the submission of its final agency-approved rule to the Legislative Rule-Making Review Committee pursuant to the provisions of section eleven of this article.

- The agency may also, at its expense, cause to be published
- 46 as a Class I legal publication in every county of the state any
- 47 notice required by this section.
- 48 Any citizen or other interested party may appear and be
- 49 heard at such hearings as are required by this section.
- Prior to the submission of any agency-approved proposed
- 51 rule to the Secretary of State, the agency shall respond to public
- 52 comments received during the rule-making process and explain
- 53 the reasoning for comments being incorporated or not
- 54 incorporated into the rule. Failure to adequately respond to
- 55 public comments may be grounds for rejection of the proposed
- 56 rule.

# §29A-3-11. Submission of legislative rules to the Legislative Rule-Making Review Committee.

- 1 (a) When an agency finally approves a proposed legislative
- 2 rule for submission to the Legislature, pursuant to the provisions
- 3 of section nine of this article, the secretary of the executive
- 4 department which administers the agency pursuant to the
- 5 provisions of article two, chapter five-f of this code shall submit
- 6 to the Legislative Rule-Making Review Committee at its offices
- 7 or at a regular meeting of such committee a number of copies in
- 8 electronic or paper form as requested by the committee, which
- 9 shall include the following information:
- 10 (1) The full text of the legislative rule as finally approved by
- 11 the agency, with new language underlined and with language to
- 12 be deleted from any existing rule stricken through but clearly
- 13 legible;
- 14 (2) A brief summary of the content of the legislative rule and
- 15 a description and a copy of any existing rule which the agency
- 16 proposes to amend or repeal;

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- 17 (3) A statement of the circumstances which require the rule;
- 18 (4) A detailed description of the rule's purpose and all proposed changes to the rule;
- 20 (5) A fiscal note containing all information included in a 21 fiscal note for either house of the Legislature and a statement of 22 the economic impact of the rule on the state or its residents;
- 23 (6) One copy of any relevant federal statutes or regulations;
- 24 (7) An explanation of the statutory authority for the rule, 25 including a detailed summary of the effect of each provision of 26 the rule with citation to the specific statute which empowers the 27 agency to enact such provision;
- 28 (8) All public comments for each proposed rule. An agency 29 may consolidate substantially similar comments in the interest 30 of efficiency;
- 31 (9) All written responses by the agency to the substance of any public comments received, including whether the agency 32 33 chose to modify the proposed rule in response to the comments or, if no changes were made, the rationale for declining to 34 35 incorporate or make any suggested changes responding to the 36 public comments. An agency may consolidate substantially 37 similar responses in the interest of efficiency: Provided, That 38 the agency's response shall address each issue and concern expressed by all comments received; and 39
  - (10) Any other information which the committee may request or which may be required by law. If the agency is an agency, board or commission which is not administered by an executive department as provided for in article two, chapter five-f of this code, the agency shall submit the final agency-approved rule as required by this subsection.

46	(b) The committee shall review each proposed legislative
47	rule and, in its discretion, may hold public hearings thereon.
48	Such review shall include, but not be limited to, a determination
49	of:

- 50 (1) Whether the agency has specific statutory authority to 51 propose the rule and has not exceeded the scope of its statutory 52 authority in approving the proposed legislative rule;
- 53 (2) Whether the proposed legislative rule is in conformity 54 with the legislative intent of the statute which the rule is 55 intended to implement, extend, apply, interpret or make specific;
- 56 (3) Whether the proposed legislative rule overlaps, 57 duplicates or conflicts with any other provision of this code, any 58 other rule adopted by the same or a different agency, with 59 federal statutes and rules, or with local laws and rules;
- 60 (4) Whether federal funding will be impacted by its 61 expiration and explanation as to such;
- (5) Whether the proposed legislative rule is necessary to
   fully accomplish the objectives of the statute under which the
   rule was proposed for promulgation;
- (6) Whether the proposed legislative rule is reasonable,
   especially as it affects the convenience of the general public or
   of persons particularly affected by it;
- 68 (7) Whether the proposed legislative rule could be made less 69 complex or more readily understandable by the general public; 70 and
- 71 (8) Whether the proposed legislative rule was proposed for 72 promulgation in compliance with the requirements of this article 73 and with any requirements imposed by any other provision of 74 this code.

- 75 (c) After reviewing the legislative rule, the committee shall recommend that the Legislature:
- 77 (1) Authorize the promulgation of the legislative rule;
- 78 (2) Authorize the promulgation of part of the legislative rule;
- 79 (3) Authorize the promulgation of the legislative rule with 80 certain amendments:
- 81 (4) Recommend that the proposed rule be withdrawn; or
- 82 (5) Reject the proposed rule.
- The committee shall file notice of its action in the State
- 84 Register and with the agency proposing the rule: *Provided*, That
- 85 when the committee makes the recommendations of subdivision
- 86 (2), (3), (4) or (5) of this subsection, the notice shall contain a
- 87 statement of the reasons for such recommendation.
- 88 (d) When the committee recommends that a rule be
- 89 authorized, in whole or in part, by the Legislature, the committee
- 90 shall instruct its staff or the office of Legislative Services to draft
- 91 a bill authorizing the promulgation of all or part of the legislative
- 92 rule and incorporating such amendments as the committee
- 93 desires. If the committee recommends that the rule not be
- 94 authorized, it shall include in its report a draft of a bill
- 95 authorizing promulgation of the rule together with a
- recommendation. Any draft bill prepared under this section shall
   contain a legislative finding that the rule is within the legislative
- 98 intent of the statute which the rule is intended to implement,
- on the statute which the full is intended to implement,
- 99 extend, apply or interpret and shall be available for any member
- 100 of the Legislature to introduce to the Legislature.

### §29A-3-19. Sunset provision in rules.

- 1 (a) Any new legislative rule promulgated pursuant to this
- 2 article after April 1, 2016, shall include a sunset provision

- 3 terminating the rule after five years: *Provided*, That the rule may
- 4 be renewed for additional terms of five years or less by the
- 5 Legislature pursuant to the rule-making procedures and authority
- 6 in this article: *Provided*, *however*, That if a different sunset or
- 7 termination provision exists in the statute under which the
- 8 proposed rule is promulgated, the enabling statute's provision
- 9 shall control: Provided further, That this subsection shall not
- 10 apply to rules promulgated by the Department of Environmental
- 11 Protection or emergency rules promulgated pursuant to section
- 12 fifteen of this article.
- 13 (b) Any legislative rule existing as of April 1, 2016, that is 14 thereafter modified pursuant to this article shall include a sunset 15 provision as part of the modification setting forth a termination
- date for the rule: *Provided*, That the rule may be renewed for
- 17 additional terms of years by the Legislature pursuant to the
- 18 rule-making procedures and authority in this article: *Provided*,
- 19 however, That if a different sunset or termination provision
- 20 exists in the statute under which the proposed rule is
- 21 promulgated, the enabling statute's provision shall control:
- 22 Provided further, That this subsection shall not apply to rules
- 23 promulgated by the Department of Environmental Protection or
- 24 emergency rules promulgated pursuant to section fifteen of this
- 25 article.
- (c) The existence of a sunset provision terminating a rule
   shall not preclude the repeal of such rule by the Legislature prior
- 28 to the expiration of the sunset provision.
- 29 (d) As part of its rule review under this article, the
- 30 Legislative Rule-Making Review Committee is authorized to
- 31 establish a procedure for timely review of rules prior to the
- 32 expiration for those agencies that have affirmatively sought
- 33 renewal prior to expiration. The procedure may include a
- 34 requirement that the agency show cause as to why the expiring

- rule is required and necessary to be continued for another term of years.
- 37 (e) The Secretary of State shall provide notice to the
- 38 promulgating agency at least eighteen months prior to every
- 39 rule's expiration date.

# §29A-3-20. Executive review of agency rules, guidelines, policies and recommendations.

- 1 (a) All executive agencies with rule-making authority shall:
- 2 (1) Review and evaluate all state rules, guidelines, policies
- 3 and recommendations under their jurisdiction that have similar
- 4 federal rules, guidelines, policies and recommendations;
- 5 (2) Determine whether the state rules, guidelines, policies
- 6 and recommendations are more stringent than federal
- 7 counterparts;
- 8 (3) Provide for a comment period for all rules, guidelines,
- 9 policies and recommendations; and
- 10 (4) Submit a report to the Joint Committee on Government
- 11 and Finance and the Legislative Rule-Making Review
- 12 Committee on or before November 1, 2017, which shall include:
- 13 (A) A description of the state rules, guidelines, policies and
- 14 recommendations that are more stringent than federal
- 15 counterparts; and
- 16 (B) Comments received from the comment period provided
- 17 for in subdivision (3) of this subsection.
- 18 (b) Within four years of the enactment of this law, each
- 19 executive agency with rule-making authority shall review all of
- 20 its rules and determine whether the rules should be continued

- 21 without change, modified or repealed. On or before July 1, 2020,
- 22 each agency shall submit a report to the Legislative Rule-Making
- 23 Review Committee which includes the following information for
- 24 each rule under the agency's jurisdiction:
- 25 (1) A description of the rule;
- 26 (2) A determination of whether the rule should continue
- 27 without change, be modified or repealed; and
- 28 (3) The reasoning for said determination.

#### ARTICLE 3A. HIGHER EDUCATION RULEMAKING.

### §29A-3A-20. Sunset provision in rules.

- 1 (a) Any new legislative rule promulgated pursuant to this
- 2 article after April 1, 2016, shall include a sunset provision
- 3 terminating the rule after five years: *Provided*, That the rule may
- 4 be renewed for additional terms of five years or less by the
- 5 Legislature pursuant to the rule-making procedures and authority
- 6 in this article: Provided, however, That if a different sunset or
- 7 termination provision exists in the statute under which the
- 8 proposed rule is promulgated, the enabling statute's provision
- 9 shall control: *Provided further*, That this subsection shall not
- 10 apply to emergency rules promulgated pursuant to section
- 11 sixteen of this article.
- 12 (b) Any legislative rule existing as of April 1, 2016, that is
- 13 thereafter modified pursuant to this article shall include a sunset
- 14 provision as part of the modification setting forth a termination
- 15 date for the rule: *Provided*, That the rule may be renewed for
- 16 additional terms of years by the Legislature pursuant to the
- 17 rule-making procedures and authority in this article: *Provided*,
- 18 however, That if a different sunset or termination provision
- 19 exists in the statute under which the proposed rule is

- 20 promulgated, the enabling statute's provision shall control:
- 21 Provided further, That this subsection shall not apply to
- 22 emergency rules promulgated pursuant to section sixteen of this
- 23 article.
- 24 (c) The existence of a sunset provision terminating a rule
- 25 shall not preclude the repeal of such rule by the Legislature prior
- 26 to the expiration of the sunset provision.
- 27 (d) As part of its rule review under this article, the
- 28 Legislative Oversight Commission on Education Accountability
- 29 is authorized to establish a procedure for timely review of a rule
- 30 prior to its expiration if the board has affirmatively sought
- 31 renewal prior to expiration. The procedure may include a
- 32 requirement that the board show cause as to why the expiring
- 33 rule is required and necessary to be continued for another term
- 34 of years.
- 35 (e) The Secretary of State shall provide notice to the board
- 36 at least eighteen months prior to every rule's sunset date.



### CHAPTER 147

(H. B. 4617 - By Delegates Espinosa and Duke)

[Passed March 8, 2016; in effect ninety days from passage.] [Approved by the Governor on March 15, 2016.]

AN ACT to amend and reenact §18B-17-2 of the Code of West Virginia, 1931, as amended, relating to authorizing legislative rules of the Higher Education Policy Commission regarding the Underwood-Smith Teacher Scholarship Program and Nursing Scholarship Program.

Be it enacted by the Legislature of West Virginia:

That §18B-17-2 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

#### ARTICLE 17. LEGISLATIVE RULES.

## §18B-17-2. Authorizing rules of Higher Education Policy Commission.

- 1 (a) The legislative rule filed in the State Register on October
- 2 15, 2004, relating to the Higher Education Policy Commission
- 3 (Underwood-Smith Teacher Scholarship Program rule) is
- 4 authorized.
- 5 (b) The legislative rule filed in the State Register on October
- 6 15, 2004, relating to the Higher Education Policy Commission
- 7 (West Virginia Engineering, Science and Technology
- 8 Scholarship Program rule) is authorized.
- 9 (c) The legislative rule filed in the State Register on October
- 10 15, 2004, relating to the Higher Education Policy Commission
- 11 (Medical Education Fee and Medical Student Loan Program
- 12 rule) is authorized.
- 13 (d) The legislative rule filed in the State Register on October
- 14 27, 2005, relating to the Higher Education Policy Commission
- 15 (Authorization of degree-granting institutions) is authorized.
- (e) The legislative rule filed in the State Register on August
- 17 23, 2006, relating to the Higher Education Policy Commission
- 18 (West Virginia Higher Education Grant Program) is authorized.
- 19 (f) The legislative rule filed in the State Register on January
- 20 4, 2008, relating to the Higher Education Policy Commission
- 21 (Providing Real Opportunities for Maximizing In-state Student
- 22 Excellence PROMISE) is authorized.

- 23 (g) The legislative rule filed in the State Register on August
- 24 25, 2008, relating to the Higher Education Policy Commission
- 25 (Research Trust Program) is authorized.
- 26 (h) The legislative rule filed in the State Register on January
- 27 8, 2009, relating to the Higher Education Policy Commission
- 28 (Guidelines for Governing Boards in Employing and Evaluating
- 29 Presidents) is authorized.
- 30 (i) The legislative rule filed in the State Register on
- 31 September 10, 2008, relating to the Higher Education Policy
- 32 Commission (Medical Student Loan Program) is authorized,
- 33 with the following amendment:
- On page 2, subsection 5.1, following the words "financial aid
- 35 office" by inserting a new subdivision 5.1.3 to read as follows:
- 36 "United States citizenship or legal immigrant status while
- 37 actively pursuing United States citizenship."
- 38 (j) The legislative rule filed in the State Register on
- 39 December 1, 2008, relating to the Higher Education Policy
- 40 Commission (West Virginia Higher Education Grant Program)
- 41 is authorized.
- 42 (k) The legislative rule filed in the State Register on January
- 43 26, 2009, relating to the Higher Education Policy Commission
- 44 (Accountability System) is authorized.
- 45 (1) The legislative rule filed in the State Register on May 20,
- 46 2009, relating to the Higher Education Policy Commission
- 47 (Energy and Water Savings Revolving Loan Fund Program) is
- 48 authorized.
- 49 (m) The legislative rule filed in the State Register on January
- 50 27, 2010, relating to the Higher Education Policy Commission
- 51 (Providing Real Opportunities for Maximizing In-state Student
- 52 Excellence PROMISE) is authorized.

- 53 (n) The legislative rule filed in the State Register on
- 54 December 8, 2010, relating to the Higher Education Policy
- 55 Commission (Authorization of Degree Granting Institutions) is
- 56 authorized.
- On page 28, subsection 9.1.b, following the words "Good
- 58 cause shall consist of" by inserting the words "any one or more
- 59 of the following".
- 60 (o) The legislative rule filed in the State Register on
- 61 December 12, 2011, relating to the Higher Education Policy
- 62 Commission (Tuition and Fee Policy) is authorized.
- (p) The legislative rule filed in the State Register on August
- 64 10, 2012, relating to the Higher Education Policy Commission
- 65 (Authorization of Degree Granting Institutions) is authorized.
- 66 (q) The legislative rule filed in the State Register on August
- 67 10, 2012, relating to the Higher Education Policy Commission
- 68 (Annual Reauthorization of Degree Granting Institutions) is
- 69 authorized.
- 70 (r) The legislative rule filed in the State Register on March
- 71 20, 2013, relating to the Higher Education Policy Commission
- 72 (Human Resources Administration) is authorized.
- 73 (s) The legislative rule filed in the State Register on January
- 74 24, 2014, relating to the Higher Education Policy Commission
- 75 (Capital Project Management) is authorized.
- 76 (t) The legislative rule filed in the State Register on April 4,
- 77 2014, relating to the Higher Education Policy Commission
- 78 (Underwood-Smith Teacher Scholarship Program) is authorized.
- 79 (u) The legislative rule filed in the State Register on August
- 80 4, 2014, relating to the Higher Education Policy Commission
- 81 (Nursing Scholarship Program) is authorized.

- (v) The legislative rule filed in the State Register on October
- 83 28, 2015, relating to the Higher Education Policy Commission
- 84 (Underwood-Smith Teacher Scholarship Program) is authorized.
- (w) The legislative rule filed in the State Register on October
- 86 28, 2015, relating to the Higher Education Policy Commission
- 87 (Nursing Scholarship Program) is authorized.



### **CHAPTER 148**

(Com. Sub. for H. B. 4046 - By Delegates Sobonya, Frich and Moffatt)

[Passed March 12, 2016; in effect ninety days from passage.] [Approved by the Governor on March 29, 2016.]

AN ACT to amend and reenact article 2, chapter 64 of the Code of West Virginia, 1931, as amended, relating generally to administrative rules of the Department of Administration; 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 amendments by the Legislature; repealing certain legislative, procedural or interpretative rules that are no longer authorized or are obsolete of certain agencies and commissions under Department of Administration; authorizing the Department of Administration to promulgate a legislative rule relating to the purchasing division; repealing Department of Administration legislative rule relating to the availability of state surplus buildings and equipment to charity food banks; authorizing the Consolidated Public Retirement Board to promulgate a legislative rule relating to benefit determination and appeal; authorizing the Consolidated

Public Retirement Board to promulgate a legislative rule relating to the Teachers' Defined Contribution System; authorizing the Consolidated Public Retirement Board to promulgate a legislative rule relating to the Teachers' Retirement System; authorizing the Consolidated Public Retirement Board to promulgate a legislative rule relating to refund, reinstatement, retroactive service, loan and correction of error interest factors; authorizing the Consolidated Public Retirement Board to promulgate a legislative rule relating to service credit for accrued and unused sick leave; authorizing the Consolidated Public Retirement Board to promulgate a legislative rule relating to the West Virginia State Police; authorizing the Consolidated Public Retirement Board to promulgate a legislative rule relating to the Deputy Sheriff Retirement System; not authorizing the Ethics Commission to promulgate a legislative rule relating to the public use of names or likenesses; repealing Ethics Commission legislative rule relating to advisory opinions; repealing Ethics Commission legislative rule relating to guidelines and standards for determining the existence of disqualifying financial interests; repealing Ethics Commission legislative rule relating to contributions; authorizing the Division of Personnel to promulgate a legislative rule relating to the administrative rule of the West Virginia Division of Personnel; repealing State Building Commission procedural rule relating to procedural rules for meetings; repealing Public Employees Insurance Agency procedural rules relating to procedural rules for the Public Employees Insurance Agency Advisory Board; and repealing Board of Risk and Insurance Management legislative rule relating to discontinuation of professional malpractice insurance.

Be it enacted by the Legislature of West Virginia:

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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 THE DEPARTMENT OF ADMINISTRATION TO PROMULGATE

# LEGISLATIVE RULES; REPEALING UNAUTHORIZED AND OBSOLETE RULES OF THE DEPARTMENT OF ADMINISTRATION.

### §64-2-1. Department of Administration.

- 1 (a) The legislative rule filed in the State Register on
- 2 September 1, 2015, authorized under the authority of section
- 3 four, article three, chapter five-a, of this code, relating to the
- 4 Department of Administration (Purchasing Division, 148 CSR
- 5 1), is authorized.
- 6 (b) The legislative rule effective on April 3, 1991, authorized
- 7 under the authority of section seven, article eight, chapter nine
- 8 of this code, relating to the Department of Administration
- 9 (availability of state surplus buildings and equipment to charity
- 10 food banks, 148 CSR 5), is repealed.

### §64-2-2. Consolidated Public Retirement Board.

- 1 (a) The legislative rule filed in the State Register on July 28,
- 2 2015, authorized under the authority of section one, article ten-d,
- 3 chapter five, of this code, modified by the Consolidated Public
- 4 Retirement Board to meet the objections of the Legislative
- 5 Rule-making Review Committee and refiled in the State Register
- 6 on November 5, 2015, relating to the Consolidated Public
- 7 Retirement Board (benefit determination and appeal, 162 CSR
- 8 2), is authorized.
- 9 (b) The legislative rule filed in the State Register on July 28,
- 10 2015, authorized under the authority of section one, article ten-d,
- 11 chapter five, of this code, modified by the Consolidated Public
- 12 Retirement Board to meet the objections of the Legislative
- 13 Rule-making Review Committee and refiled in the State Register
- 14 on September 22, 2015, relating to the Consolidated Public

- 15 Retirement Board (Teachers' Defined Contribution System, 162
- 16 CSR 3), is authorized with the following amendment:
- On page 7, subsection 7.4.1, line 4, following the word
- 18 "amounts" and the period, by adding the following: "Using
- 19 irrevocably forfeited amounts pursuant to the authority of this
- 20 subsection will reduce the employer contributions in future years
- 21 as required by W. Va. Code §18-7B-11.".
- (c) The legislative rule filed in the State Register on July 28,
- 23 2015, authorized under the authority of section one, article ten-d,
- 24 chapter five, of this code, modified by the Consolidated Public
- 25 Retirement Board to meet the objections of the Legislative
- 26 Rule-making Review Committee and refiled in the State Register
- 27 on September 22, 2015, relating to the Consolidated Public
- 28 Retirement Board (Teachers' Retirement System, 162 CSR 4),
- 29 is authorized.
- 30 (d) The legislative rule filed in the State Register on July 28,
- 31 2015, authorized under the authority of section one, article ten-d,
- 32 chapter five, of this code, modified by the Consolidated Public
- 33 Retirement Board to meet the objections of the Legislative
- 34 Rule-making Review Committee and refiled in the State Register
- on September 22, 2015, relating to the Consolidated Public
- 36 Retirement Board (refund, reinstatement, retroactive service,
- 37 loan and correction of error interest factors, 162 CSR 7), is
- 38 authorized.
- 39 (e) The legislative rule filed in the State Register on July 28,
- 40 2015, authorized under the authority of section one, article ten-d,
- 41 chapter five, of this code, relating to the Consolidated Public
- 42 Retirement Board (service credit for accrued and unused sick
- 43 leave, 162 CSR 8), is authorized.
- 44 (f) The legislative rule filed in the State Register on July 28,
- 45 2015, authorized under the authority of section one, article ten-d,

- 46 chapter five, of this code, modified by the Consolidated Public
- 47 Retirement Board to meet the objections of the Legislative
- 48 Rule-making Review Committee and refiled in the State Register
- 49 on November 5, 2015, relating to the Consolidated Public
- 50 Retirement Board (West Virginia State Police, 162 CSR 9), is
- 51 authorized.
- 52 (g) The legislative rule filed in the State Register on July 28,
- 53 2015, authorized under the authority of section one, article ten-d,
- 54 chapter five, of this code, modified by the Consolidated Public
- 55 Retirement Board to meet the objections of the Legislative
- 56 Rule-making Review Committee and refiled in the State Register
- 57 on November 5, 2015, relating to the Consolidated Public
- 58 Retirement Board (Deputy Sheriff Retirement System, 162 CSR
- 59 10), is authorized.

### §64-2-3. Ethics Commission.

- 1 (a) The legislative rule filed in the State Register on June 30,
- 2 2015, authorized under the authority of section five-c, article
- 3 two, chapter six-b, of this code, relating to the Ethics
- 4 Commission (public use of names or likenesses, 158 CSR 21),
- 5 is not authorized.
- 6 (b) The legislative rule effective on September 1, 1993,
- 7 authorized under the authority of section two, article two,
- 8 chapter six-b of this code, relating to Ethics Commission
- 9 (advisory opinions, 158 CSR 2), is repealed.
- 10 (c) The legislative rule effective on April 10, 1995,
- 11 authorized under the authority of section twenty-eight, article
- 12 twenty, chapter thirty-one of this code, relating to Ethics
- 13 Commission (guidelines and standards for determining the
- 14 existence of disqualifying financial interests, 158 CSR 4), is
- 15 repealed.

- 16 (d) The legislative rule effective on June 1, 1992, authorized
- 17 under the authority of section one, article two, chapter six-b of
- 18 this code, relating to Ethics Commission (contributions, 158
- 19 CSR 10), is repealed.

### §64-2-4. Division of Personnel.

- 1 The legislative rule filed in the State Register on July 21,
- 2 2015, authorized under the authority of section ten, article six,
- 3 chapter twenty-nine, of this code, relating to the Division of
- 4 Personnel (administrative rule of the West Virginia Division of
- 5 Personnel, 143 CSR 1), is authorized with the following
- 6 amendment:
- 7 On page 48, by removing the strikethrough of subparagraph
- 8 14.3.f.1, and restoring the original language, with modification,
- 9 to read as follows:
- 10 14.3.f.1. An employee may elect to be paid in installments
- 11 at his or her usual rate and frequency of pay as if employment
- 12 were continuing until the pay period during which the accrued
- 13 annual leave is exhausted. If the last day for which leave
- 14 payment is due falls before the day on which the pay period
- 15 ends, terminal annual leave payment for those days within that
- 16 pay period shall be calculated using the daily rate for pay period
- 17 in which the last day on payroll occurs. Employees in positions
- 18 allocated to job classes assigned to an hourly pay schedule or per
- 19 diem pay schedule approved by the Board shall be paid
- 20 according to those standard procedures;
- 21 And renumbering the subparagraphs thereafter; and
- On page 50, by removing the strikethrough in subparagraph
- 23 14.4.e.2, and restoring the original language of subparagraph
- 24 14.4.e.2.

### §64-2-5. State Building Commission.

- 1 The procedural rule effective on July 21, 1995, authorized
- 2 under the authority of section three, article nine-a, chapter six of
- 3 this code, relating to the State Building Commission (procedural
- 4 rules for meetings, 159 CSR 1), is repealed.

### §64-2-6. Public Employees Insurance Agency.

- 1 The procedural rule effective on June 20, 1991, authorized
- 2 under the authority of section six, article sixteen, chapter five of
- 3 this code, relating to the Public Employees Insurance Agency
- 4 (procedural rules for the Public Employees Insurance Agency
- 5 Advisory Board, 151 CSR 5), is repealed.

### §64-2-7. Board of Risk and Insurance Management.

- 1 The legislative rule effective on April 14, 1992, authorized
- 2 under the authority of section five, article twelve, chapter
- 3 twenty-nine of this code, relating to the Board of Risk and
- 4 Insurance Management (discontinuation of professional
- 5 malpractice insurance, 115 CSR 4), is repealed.



### **CHAPTER 149**

(Com. Sub. for S. B. 195 - By Senator Maynard)

[Passed March 10, 2016; in effect from passage.] [Approved by the Governor on March 30, 2016.]

AN ACT to amend and reenact article 5, chapter 64 of the Code of West Virginia, 1931, as amended, all relating generally to the promulgation of administrative rules by the Department of Health and Human Resources, the Human Rights Commission and the Health Care Authority; 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 amendments recommended by the Legislature; authorizing certain agencies and commissions under the Department of Health and Human Resources to repeal certain legislative, procedural or interpretive rules that are no longer authorized or are obsolete; authorizing the Department of Health and Human Resources to promulgate a legislative rule relating to the preliminary requirement for approval by the West Virginia Department of Health of a laboratory for a specified technique; repealing the Department of Health and Human Resources legislative rule relating to ice cream and frozen milk; repealing the Department of Health and Human Resources legislative rule relating to establishment of a Controlled Substances Therapeutic Research Program and the certification of patients, practitioners and hospital pharmacies; repealing the Department of Health and Human Resources legislative rule relating to the installation of medication in the eyes of newborns and disseminating advice and information concerning the dangers of inflammation of the eyes of the newborn; repealing Department of Health and Human Resources legislative rule relating to health facilities plan for the fiscal years 1985-1989; repealing the Department of Health and Human Resources legislative rule relating to design, information and procedural manual for mobile home parks; authorizing the Department of Health and Human Resources to promulgate a legislative rule regarding West Virginia clearance for emergency medical services; authorizing the Department of Health and Human Resources to promulgate a legislative rule relating to fees for services; repealing the Department of Health and Human Resources legislative rule relating to pertussis guidelines; repealing the Department of Health and Human Resources legislative rule relating to hazardous materials treatment

information repository; authorizing the Department of Health and Human Resources to promulgate a legislative rule relating to infectious medical waste; repealing the Department of Health and Human Resources legislative rule relating to immunization criteria for transfer students; authorizing the Department of Health and Human Resources to promulgate a legislative rule relating to AIDS-related medical testing and confidentiality; repealing the Department of Health and Human Resources legislative rule specialized health procedures in public schools; authorizing the Department of Health and Human Resources to promulgate a legislative rule relating to tuberculosis testing, control, treatment and commitment; authorizing the Department of Health and Human Resources to promulgate a legislative rule relating to farmers market vendors; authorizing the Department of Health and Human Resources to promulgate a legislative rule relating to the certification of opioid overdose prevention and treatment training programs; repealing the Department of Health and Human Resources legislative rule relating to procedural rules for the advisory Committee for the Omnibus Health Care Act; authorizing the Department of Health and Human Resources to promulgate a legislative rule regarding chronic pain management licensure; authorizing the Department of Health and Human Resources to promulgate a legislative rule regarding neonatal abstinence centers; authorizing the Department of Health and Human Resources to promulgate a legislative rule relating to West Virginia clearance for access; registry and employment screening; authorizing the Department of Health and Human Resources to promulgate a legislative rule relating to child care licensing requirement; repealing the Department of Health and Human Resources legislative rule relating to incorporation of the handicapped children services manual; repealing the Department of Health and Human Resources legislative rule relating to termination of income withholding; repealing the Department of Health and Human Resources obtaining support from federal and state income tax refunds; repealing the Department of Health and Human Resources legislative rule relating to interstate income withholding; repealing

the Department of Health and Human Resources legislative rule relating to providing information to credit reporting agencies; authorizing the Department of Health and Human Resources to promulgate a legislative rule relating to the family child care facility licensing requirements; authorizing the Department of Health and Human Resources to promulgate a legislative rule relating to the family child care home registration requirements; authorizing the Department of Health and Human Resources to promulgate a legislative rule relating to West Virginia Works program sanctions; authorizing the Department of Health and Human Resources to promulgate a legislative rule relating to qualifications for a restricted provisional license to practice as a social worker within the department; authorizing the Department of Health and Human Resources to promulgate a legislative rule relating to goals for foster children; repealing the Health Care Authority's legislative rule relating to freeze on hospital rates and granting temporary rate increases; repealing the Health Care Authority's legislative rule relating to the Utilization Review and Quality Assurance Program; repealing the Health Care Authority's legislative rule relating to limitation on hospital gross patient revenue; repealing the Health Care Authority's legislative rule relating to exemption for rural primary care hospitals; and authorizing the Human Rights Commission to promulgate a legislative rule relating to the Pregnant Workers' Fairness Act.

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.

- 1 (a) The legislative rule effective on December 29, 1967,
- 2 authorized under the authority of section seven, article one,

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- 3 chapter sixteen of this code, relating to the Department of Health
- 4 and Human Resources (preliminary requirement for approval by
- 5 the West Virginia Department of Health of a laboratory for a
- 6 specified technique, 64 CSR 26), is repealed.
- 7 (b) The legislative rule effective on December 29, 1967, 8 authorized under the authority of section seven, article one, 9 chapter sixteen of this code, relating to the Department of Health 10 and Human Resources (ice cream and frozen milk, 64 CSR 28), 11 is repealed.
- 12 (c) The legislative rule effective on May 16, 1983, 13 authorized under the authority of section seven, article five-a, 14 chapter sixteen of this code, relating to the Department of Health 15 and Human Resources (establishment of a Controlled Substances 16 Therapeutic Research Program and the certification of patients, 17 practitioners and hospital pharmacies, 64 CSR 33), is repealed.
  - (d) The legislative rule effective on May 30, 1983, authorized under the authority of section twelve, article three, chapter sixteen of this code, relating to the Department of Health and Human Resources (instillation of medication in the eyes of the newborn and the dissemination of advice and information concerning the dangers of inflammation of the eyes of the newborn, 64 CSR 35), is repealed.
  - (e) The interpretive rule effective on April 6, 1984, authorized under the authority of section fifteen-a, article one, chapter sixteen of this code, relating to the Department of Health and Human Resources (health facilities plan for the fiscal years 1985-89, 64 CSR 37), is repealed.
- 30 (f) The interpretive rule effective on October 1, 1971, 31 authorized under the authority of section seven, article one, 32 chapter sixteen of this code, relating to the Department of Health 33 and Human Resources (design, information and procedural 34 manual for mobile home parks, 64 CSR 41), is repealed.

- 35 (g) The legislative rule filed in the State Register on July 31,
- 36 2015, authorized under the authority of section four, article one,
- 37 chapter sixteen of this code, modified by the Department of
- 38 Health and Human Resources to meet the objections of the
- 39 Legislative Rule-Making Review Committee and refiled in the
- 40 State Register on December 8, 2015, relating to the Department
- 41 of Health and Human Resources (emergency medical services,
- 42 64 CSR 48), is authorized with the following amendments:
- On page thirty-one, paragraph 6.5.d.2, by striking out the
- 44 phrase "one (1) year" and inserting in lieu thereof, the phrase
- 45 "one hundred twenty (120) days";
- On page thirty-one, paragraph 6.5.d.3, by striking out the
- 47 phrase "one (1) year" and inserting in lieu thereof, the phrase
- 48 "one hundred twenty (120) days";
- 49 On page thirty-one, paragraph 6.6., by striking out the phrase
- 50 "two (2)" and inserting "four (4)";
- On page thirty-five, paragraph 6.14b, after the word
- 52 "establish" by removing the words "by a procedural rule" and
- 53 inserting the word "a";
- 54 And,
- On page fifty-seven, by inserting a new section twelve to
- 56 read as follows:

### **"§64-48-12. Community Paramedicine Demonstration Projects.**

- 1 12.1 Establishment of community paramedicine
- 2 demonstration projects. The Director may establish up to 6
- 3 demonstration projects for the purpose of developing and
- 4 evaluating a community paramedicine program. A demonstration
- 5 project established pursuant to this section may not exceed 2
- 6 years in duration.

- 7 12.2 As used in this section, "community paramedicine"
- 8 means the practice by an emergency medical services provider
- 9 primarily in an out-of-hospital setting of providing episodic
- 10 patient evaluation, advice, and care directed at preventing or
- 11 improving a particular medical condition which may require
- 12 emergency medical services providers to function outside their
- 13 customary emergency response and transport roles, as
- 14 specifically requested or directed by a physician, in ways that
- 15 facilitate more appropriate use of emergency care resources and
- 16 enhance access to primary care for medically vulnerable
- 17 populations.
- 18 12.3 The Director shall establish the requirements and
- 19 application and approval process of demonstration projects
- 20 established pursuant to this section. At a minimum, an
- 21 emergency medical services provider that conducts a
- 22 demonstration project shall:
- 23 12.3.a. Demonstrate the financial sustainability of its project
- 24 through reliable funding sources;
- 25 12.3.b. Work with an identified primary care medical
- 26 director and have an emergency medical services medical
- 27 director:
- 28 12.3.c. Submit protocols for approval by the MPCC and the
- 29 Commissioner; and
- 30 12.3.d. Collect and submit data and written reports to the
- 31 Director, in accordance with requirements established by the
- 32 Director.
- 33 12.4. At the end of two years any demonstration project
- 34 authorized by the Director will terminate and the Director shall
- 35 submit a written report to the Commissioner, including specific
- 36 data on utilization of the program, the improvement in quality of

- 37 care and care coordination in the community, and the reduction
- 38 of health care costs with respect to ambulance transportation,
- 39 hospital emergency department visits, and hospital readmissions.
- 40 Upon receipt of the annual report, OEMS and the Commissioner
- 41 shall evaluate the demonstration project and determine how to
- 42 further develop community paramedicine and whether to expand
- 43 its scope."
- (h) The legislative rule filed in the State Register on July 27,
- 45 2015, authorized under the authority of section four, article one,
- 46 chapter sixteen of this code, relating to the Department of Health
- 47 and Human Resources (fees for service, 64 CSR 51), is
- 48 authorized with the following amendments:
- To Appendix A of 64 CSR 51 at Section1. (Fees for
- 50 Environmental Chemistry Laboratory Services), B. Organic
- 51 Compounds, by including a new paragraph 8 to read as follows:
- Harmful Algae Bloom (HAB)
- a. Screening analyses for each individual toxin:
- Analyses may include, but are not limited to, Microcystin,
- 55 Cylindrospermopsin, Anatoxin-a, Saxitoxin and
- 56 B-Methylamino-L-alanine. \$65
- 57 b. Confirmation of each individual toxin:
- Analyses may include, but are not limited to, Microcystin,
- 59 Cylindrospermopsin, Anatoxin-a, Saxitoxin and
- 60 B-Methylamino-L-alanine. \$65
- 61 (i) The interpretive rule effective on August 1, 1987,
- authorized under the authority of article three-b, chapter sixteen
- of this code, relating to the Department of Health and Human
- Resources (pertussis guidelines, 64 CSR 52), is repealed.

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- (j) The legislative rule effective on June 1, 1987, authorized under the authority of section two, article three-a, chapter sixteen of this code, relating to the Department of Health and Human Resources (hazardous materials treatment information repository, 64 CSR 53), is repealed.
- 70 (k) The legislative rule filed in the State Register on July 27, 71 2015, authorized under the authority of section four, article one, chapter sixteen of this code, modified by the Department of 72 73 Health and Human Resources to meet the objections of the Legislative Rule-Making Review Committee and refiled in the 74 75 State Register on September 23, 2015, relating to the Department 76 of Health and Human Resources (infectious medical waste, 64 77 CSR 56), is authorized.
- 78 (1) The legislative rule effective on April 18, 1988, 79 authorized under the authority of section four, article three, 80 chapter sixteen of this code, relating to the Department of Health 81 and Human Resources (immunization criteria for transfer 82 students, 64 CSR 58), is repealed.
  - (m) The legislative rule filed in the State Register on July 27, 2015, authorized under the authority of section four, article one, chapter sixteen of this code, relating to the Department of Health and Human Resources (AIDS-related medical testing and confidentiality, 64 CSR 64), is authorized.
  - (n) The legislative rule effective on April 22, 1992, authorized under the authority of section twenty-two, article five, chapter eighteen of this code, relating to the Department of Health and Human Resources (specialized health procedures in public schools, 64 CSR 66), is repealed.
- (o) The legislative rule filed in the State Register on July 27,
   2015, authorized under the authority of section two, article
   three-d, chapter sixteen of this code, relating to the Department

- of Health and Human Resources (tuberculosis testing, control,treatment and commitment, 64 CSR 76), is authorized.
- 98 (p) The legislative rule filed in the State Register on July 27, 99 2015, authorized under the authority of section four, article 100 thirty-five, chapter nineteen of this code, modified by the 101 Department of Health and Human Resources to meet the 102 objections of the Legislative Rule-Making Review Committee 103 and refiled in the State Register on October 23, 2015, relating to 104 the Department of Health and Human Resources (farmers market vendors, 64 CSR 102), is authorized with the following 105 106 amendments:
- On page 5, section 4, subsection 9, subdivision b, by striking out the words "30th day of June" and inserting in lieu thereof the words "31st day of December".
- 110 (q) The legislative rule filed in the State Register on July 27, 111 2015, authorized under the authority of section four, article one, 112 chapter sixteen of this code, modified by the Department of 113 Health and Human Resources to meet the objections of the 114 Legislative Rule-Making Review Committee and refiled in the 115 State Register on September 23, 2015, relating to the Department 116 of Health and Human Resources (the certification of opioid 117 overdose prevention and treatment training programs, 64 CSR 118 104), is authorized.
- 119 (r) The procedural rule effective on December 28, 1989, 120 authorized under the authority of section three, article nine-a, 121 chapter six of this code, relating to the Department of Health and 122 Human Resources (procedural rules for the advisory Committee 123 for the Omnibus Health Care Act, 69 CSR 4), is repealed.
- 124 (s) The legislative rule filed in the State Register on July 31, 125 2015, authorized under the authority of section four, article one, 126 chapter sixteen of this code, modified by the Department of

- 127 Health and Human Resources to meet the objections of the
- 128 Legislative Rule-Making Review Committee and refiled in the
- 129 State Register on December 8, 2015, relating to the Department
- 130 of Health and Human Resources (chronic pain management
- 131 licensure, 69 CSR 8), is authorized with the following
- 132 amendments:
- "On page 3, after subsection 2.24, by inserting new
- 134 language as follows:
- 135 '2.25. Terminal Condition an illness or disease that cannot
- be cured and the medical prognosis is that the individual's life
- 137 expectancy is six months or less if the illness runs its normal
- 138 course.'
- And, renumbering the remaining subsections.
- 140 And,
- On page 3, subdivision 3.1.b, by striking the word
- 142 'prescribers' and inserting 'clinic' and inserting after the word
- 143 'conditions' the phrase 'that are not terminal'. On page three,
- subdivision 3.1.b, by reinserting the stricken language 'in any
- 145 one month':
- 146 And.
- On page 3, subdivision 3.1.c, after the word, 'office' by
- 148 reinserting the stricken language 'in any one month' and after
- 149 the word, 'office' by reinserting the stricken language 'in any
- 150 one month':
- 151 And.
- On page 4, subdivision 3.1.c, by inserting after the word
- 153 'pain' the phrase 'for conditions that are not terminal';

- 154 And,
- On page 4, subdivision 3.1.d, by inserting after the period
- 156 the following language:
- 157 'Clinics below the fifty percent patient calculation threshold
- 158 will be subject to continued monitoring by the Office of Health
- 159 Facility Licensure and Certification for changes in the patient
- 160 ratio. Failure to cooperate with requests for information to
- verify patient calculations may subject the clinic to penalties and
- equitable relief pursuant to Section 18 of this rule.';
- 163 And,
- On page 4, after subdivision 3.1.d, inserting new language as
- 165 follows:
- 166 '3.1.e. A pain clinic shall not offer a bounty, monetary or
- 167 equipment or merchandise reward, or free services for
- individuals in exchange for recruitment of new patients into the
- 169 clinic. A pain clinic shall not recruit new patients for the
- purpose of attempting to circumvent the licensure requirements
- 171 of this rule.':
- 172 And,
- On page 5, by striking subparagraph 3.2.i.2. in its entirety;
- 174 And,
- On page 5, subdivision 4.1.d., by inserting the word
- 176 'designated' before the term 'physician owner';
- 177 And.
- On page 9, subsection 5.4, by inserting after the period the
- 179 following:

- 'If access is denied, a judge of any court of record in this state having criminal jurisdiction, and upon proper oath or affirmation showing probable cause, may issue administrative warrants for the purpose of conducting inspections and seizures of property appropriate to the inspections.':
- 185 And,
- On page 16, subparagraph 10.2.c.6, after the word, every by removing, '90' and inserting '60';
- 188 And,
- On page 20, by inserting new subdivision 11.7.n to read as follows: '11.7.n A record of all cash transactions.':
- 191 And.
- On page 26, section 19, by inserting before the word suspended the word 'denied,'."
- 194 (t) The legislative rule filed in the State Register on July 31, 195 2015, authorized under the authority of section four, article one, 196 chapter sixteen of this code, modified by the Department of 197 Health and Human Resources to meet the objections of the 198 Legislative Rule-Making Review Committee and refiled in the 199 State Register on December 8, 2015, relating to the Department 200 of Health and Human Resources (neonatal abstinence centers, 69 201 CSR 9), is authorized with the following amendments:
- On page 14, paragraph 5.5.a.1, after the word, 'field' by inserting the words, 'at the discretion of the governing body'; and On page 14, paragraph 5.5.a.2, after the word, 'field' by inserting the words, 'at the discretion of the governing body';
- 206 And,

- On page 21, subdivision 6.8.a, by striking it in its entirety and inserting in lieu thereof, '6.8.a The center shall be located
- 209 within fifteen minutes of a hospital.';
- 210 And,
- On page 22, subdivision 6.9.b, by striking 'sources such as
- 212 railroads, freight yards, traffic arteries and airports';
- 213 And,
- On page 30, subdivision 7.9.f by striking the word,
- 215 'Mothers' and inserting the word, 'Parents';
- 216 And,
- On page 36 subdivision 9.5.a by striking the word, 'shall'
- and inserting the word, 'may';
- 219 And,
- On page 37, subdivision 9.8.a, after the word, 'all' by
- inserting, 'patient care'; On page 37, subdivision 9.8.b, after the
- word, 'all' by inserting, 'patient care'; On page 37, subdivision
- 223 9.8.c, after the word, 'all' by inserting, 'patient care'; and On
- page 38, subdivision 9.8.d, after the word, 'new' by inserting,
- 225 'patient care'
- 226 And,
- On page 52, subsection 14.1 by striking the word, 'Mothers'
- 228 and inserting the word, 'Parents'; On page 53, subdivision
- 229 14.2.a. by striking the word, 'Mothers' and inserting the word,
- 230 'Parents'; and On page 53, subdivision 14.2.b. by striking the
- word, 'Mothers' and inserting the word, 'Parents'."
- (u) The legislative rule filed in the State Register on July 31,
- 233 2015, authorized under the authority of section nine, article

- 234 forty-nine, chapter sixteen of this code, modified by the
- 235 Department of Health and Human Resources to meet the
- 236 objections of the Legislative Rule-Making Review Committee
- 237 and refiled in the State Register on October 23, 2015, relating to
- 238 the Department of Health and Human Resources (West Virginia
- 239 clearance for access; registry and employment screening, 69
- 240 CSR 10), is authorized, with the following amendments:
- On page two, subsection 2.5, by deleting the period at the
- 242 end of the subsection, and by inserting a comma and new
- 243 language as follows: "and any provider authorized by the
- 244 Secretary."
- 245 And.
- On page three, subdivisions 2.11.i. and 2.11.j. by
- renumbering them 2.10.i and 2.10.j. and by inserting the word
- 248 "Felony" before the word "crimes";
- 249 And,
- On page four, after subsection 5.2, insert new language as
- 251 follows:
- 252 "5.3 If the Secretary's review of an applicant's criminal
- 253 history record information reveals a pending charge that has not
- 254 received a final disposition, the following shall apply:
- 5.3.a. If the pending charge is a disqualifying misdemeanor
- 256 offense, and the applicant has not had a conviction for a
- 257 disqualifying offense in the last seven years, the Secretary shall
- 258 provide written notice to the covered provider or covered
- 259 contractor advising that the applicant is eligible for work.
- 5.3.b. If the pending charge is a disqualifying felony offense,
- 261 the Secretary shall provide written notice to the covered provider
- or covered contractor advising that the applicant is ineligible for
- work, unless a variance has been requested or granted.

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- 264 5.3.c. Once a final disposition has been made on the pending 265 charge, the Secretary shall review the criminal history record 266 information de novo in accordance with the provisions of this rule and W.Va. Code §16-49-1 et seq." 267
- 268 And renumber the remaining subsections.
- 269 (v) The legislative rule filed in the State on July 31, 2015, 270 authorized under the authority of section one hundred 271 twenty-one, article two, chapter forty-nine of this code, relating 272 to the Department of Health and Human Resources (child care
- 273 licensing requirements, 78 CSR 1), is authorized.
- 274 (w) The legislative rule effective on November 1, 1985, 275 authorized under the authority of article four, chapter forty-nine 276 of this code, relating to the Department of Health and Human 277 Resources (incorporation of the handicapped children services manual, 78 CSR 9), is repealed. 278
- 279 (x) The legislative rule effective on June 15, 1989, 280 authorized under the authority of section three, article five, 281 chapter forty-eight-a of this code, relating to the Department of 282 Health and Human Resources (termination of income 283 withholding, 78 CSR 11), is repealed.
  - (y) The legislative rule effective on June 15, 1989, authorized under the authority of section fifteen, article two, chapter forty-eight-a of this code, relating to the Department of Health and Human Resources (obtaining support from federal and state income tax refunds, 78 CSR 12), is repealed.
- 289 (z) The legislative rule effective on June 15, 1989, 290 authorized under the authority of section eleven, article two, 291 chapter forty-eight-a of this code, relating to the Department of 292 Health and Human Resources (interstate income withholding, 78 293 CSR 13), is repealed.

- 294 (aa) The legislative rule effective on June 15, 1989, 295 authorized under the authority of section nineteen, article two, 296 chapter forty-eight-a of this code, relating to the Department of 297 Health and Human Resources (providing information to credit 298 reporting agencies, 78 CSR 14), is repealed.
- 299 (bb) The legislative rule filed in the State Register on July 300 31, 2015, authorized under the authority of section one hundred 301 twenty-one, article two, chapter forty-nine of this code, relating 302 to the Department of Health and Human Resources (family child 303 care facility licensing requirements, 78 CSR 18), is authorized.
- 304 (cc) The legislative rule filed in the State Register on July 305 31, 2015, authorized under the authority of section one hundred 306 twenty-one, article two, chapter forty-nine of this code, modified by the Department of Health and Human Resources to meet the 307 308 objections of the Legislative Rule-making Review Committee 309 and refiled in the State Register on October 28, 2015, relating to 310 the Department of Health and Human Resources (family child 311 care home registration requirements, 78 CSR 19), is authorized.
- 312 (dd) The legislative rule filed in the State Register on July 313 31, 2015, authorized under the authority of section eleven, article 314 nine, chapter nine of this code, modified by the Department of 315 Health and Human Resources to meet the objections of the 316 Legislative Rule-making Review Committee and refiled in the 317 State Register on November 13, 2015, relating to the Department of Health and Human Resources (W.Va. Works Program 318 319 sanctions, 78 CSR 23), is authorized with the following 320 amendments:
- On page 3, by striking section 4 in its entirety and inserting in lieu thereof a new section four to read as follows:
- 323 "The sanctions are applied in the form of termination of 324 benefits for a specific length of time. The length of termination 325 of benefits is determined as follows:

authorized.

326	First	$sanction \ -$	entire	assistance	group	in eligible	for	one

- 327 month;
- Second sanction entire assistance group ineligible for six months;
- Third sanction entire assistance group ineligible for one year; but may reapply within one year."
- 332 (ee) The legislative rule filed in the State Register on July 333 31, 2015, authorized under the authority of section sixteen, 334 article thirty, chapter thirty of this code, modified by the 335 Department of Health and Human Resources to meet the 336 objections of the Legislative Rule-Making Review Committee 337 and refiled in the State Register on December 8, 2015, relating 338 the Department of Health and Human Resources 339 (qualifications for a restricted provisional license to practice as a social worker within the department, 78 CSR 24), is 340
- 342 (ff) The legislative rule filed in the State Register on July 31, 343 2015, authorized under the authority of section one hundred 344 twenty-six, article two, chapter forty-nine of this code, modified 345 by the Department of Health and Human Resources to meet the 346 objections of the Legislative Rule-Making Review Committee 347 and refiled in the State Register on December 22, 2015, relating 348 to the Department of Health and Human Resources (goals for 349 foster children, 78 CSR 25), is authorized.

#### §64-5-2. Health Care Authority.

- 1 (a) The legislative rule effective on May 5, 1984, authorized
- 2 under the authority of section one, article twenty-nine-b, chapter
- 3 sixteen of this code, relating to the Health Care Authority (freeze
- 4 on hospital rates and granting of temporary rate increases, 65
- 5 CSR 2), is repealed.

- 6 (b) The legislative rule effective on May 20, 1985,
- 7 authorized under the authority of section eight, article
- 8 twenty-nine-b, chapter sixteen of this code, relating to the Health
- 9 Care Authority (Utilization Review and Quality Assurance
- 10 Program Phase 1, 65 CSR 4), is repealed.
- 11 (c) The legislative rule effective on April 10, 1984,
- 12 authorized under the authority of section one, article
- 13 twenty-nine-b, chapter sixteen of this code, relating to the Health
- 14 Care Authority (limitation on hospital gross patient revenue, 65
- 15 CSR 8), is repealed.
- 16 (d) The legislative rule effective on June 24, 1993,
- 17 authorized under the authority of section four, article two-d,
- 18 chapter sixteen of this code, relating to the Health Care
- 19 Authority (exemption for rural primary care hospitals, 65 CSR
- 20 25), is repealed.

#### §64-5-3. Human Rights Commission.

- 1 The legislative rule filed in the State Register on July 31,
- 2 2015, authorized under the authority of section four, article
- 3 eleven-b, chapter five of this code, modified by the Human
- 4 Rights Commission to meet the objections of the Legislative
- 5 Rule-Making Review Committee and refiled in the State
- 6 Register on December 8, 2015, relating to the Human Rights
- 7 Commission (Pregnant Workers' Fairness Act, 77 CSR 10), is
- 8 authorized with the amendments set forth below:
- 9 On pages 1 through 3, sections 1 through 5, by striking out
- 10 all of sections 1 through 5 and inserting in lieu thereof the
- 11 following:

#### §77-10-1. General.

- 1 1.1. Scope. The following legislative rule series, filed
- 2 pursuant to the West Virginia Pregnant Workers' Fairness Act

- 3 (PWFA), W. Va. Code §5-11B-1 et seq., sets forth definitions
- 4 and identifies some reasonable accommodations addressing
- 5 known limitations related to pregnancy, childbirth, or related
- 6 medical conditions.
- 7 1.2. Authority. W. Va. Code §5-11B-4.
- 8 1.3. Filing date. July 31, 2015.
- 9 1.4. Effective Date. –

#### **§77-10-2. Definitions.**

- 1 2.1. "Affected by pregnancy" means a woman who is
- 2 pregnant or is experiencing medical conditions related to her
- 3 pregnancy which has ended.
- 4 2.2. "Undue hardship" In general, the term "undue
- 5 hardship" means an action requiring significant difficulty or
- 6 expense, when considered in light of the factors set forth in
- 7 subdivision 2.2.1.
- 8 2.2.1. Factors to be considered. In determining whether an
- 9 accommodation would impose an undue hardship on a covered
- 10 entity, factors to be considered include:
- 11 2.2.1.a. The nature and cost of the accommodation needed
- 12 under this article:
- 2.2.1.b. The overall financial resources of the facility or
- 14 facilities involved in the provision of the reasonable
- 15 accommodation; the number of persons employed at such
- 16 facility; the effect on expenses and resources, or the impact
- 17 otherwise of such accommodation upon the operation of the
- 18 facility;
- 19 2.2.1.c. The overall financial resources of the covered entity;
- 20 the overall size of the business of a covered entity with respect

- 21 to the number of its employees; the number, type, and location
- 22 of its facilities; and
- 23 2.2.1.d. The type of operation or operations of the covered
- 24 entity, including the composition, structure, and functions of the
- 25 workforce of such entity; the geographic separateness,
- 26 administrative, or fiscal relationship of the facility or facilities in
- 27 question to the covered entity.
- 28 2.3. "Reasonable accommodation" The term "reasonable
- 29 accommodation" may include:
- 30 2.3.1. Making existing facilities used by employees readily
- 31 accessible to and usable by individuals with disabilities; and
- 32 2.3.2. Job restructuring, part-time or modified work
- 33 schedules, reassignment to a vacant position, acquisition or
- 34 modification of equipment or devices, appropriate adjustment or
- 35 modifications of examinations, training materials or policies, the
- 36 provision of qualified readers or interpreters, and other similar
- 37 accommodations for individuals with disabilities.
- 38 2.4. "Related medical conditions" means physical and
- 39 mental symptoms or limitations relating to or caused by a
- 40 pregnancy, including but not limited to, miscarriage,
- 41 complications of pregnancy or childbirth, gestational diabetes,
- 42 pregnancy-induced hypertension, after-effects of delivery,
- 43 post-partum depression, and lactation: *Provided*, That an elective
- 44 abortion shall not be considered a related medical condition.
- 45 2.5. "Covered Entity" means the state, or any political
- 46 subdivision thereof, and any person employing twelve or more
- 47 persons within the state for twenty or more calendar weeks in the
- 48 calendar year in which the act of discrimination allegedly took
- 49 place or the preceding calendar year: *Provided*, That such terms
- shall not be taken, understood or construed to include a private
- 51 club.

- 52 2.6. "Person" means one or more individuals, partnerships,
- 53 associations, organizations, corporations, labor organizations,
- 54 cooperatives, legal representatives, trustees in
- 55 bankruptcy, receivers and other organized groups of persons.

#### §77-10-3. Examples of Reasonable Accommodations.

- 1 3.1. Reasonable accommodations that may be made by a
- 2 covered entity include, but are not limited to:
- 3 3.1.1. Bathroom breaks;
- 4 3.1.2. Breaks for increased water intake;
- 5 3.1.3. Periodic rest:
- 6 3.1.4. Assistance with manual labor;
- 7 3.1.5. Providing time off for prenatal medical appointments;
- 8 3.1.6. Modified work policies or procedures;
- 9 3.1.7. Temporary transfers to less strenuous or less
- 10 hazardous work:
- 3.1.8. Allowing for more time or more frequent eating;
- 12 3.1.9. Allowing time for taking prescribed medications; and
- 3.1.10. Providing access to existing facilities that are more
- 14 convenient and usable by a woman affected by pregnancy.



# CHAPTER 150

(Com. Sub. for H. B. 4060 - By Delegates Sobonya, Frich and Moffatt)

[Passed March 12, 2016; in effect from passage.] [Approved by the Governor on March 29, 2016.]

AN ACT to amend and reenact article 6, chapter 64 of the Code of West Virginia, 1931, as amended, relating generally to administrative rules of the Department of Military Affairs and Public Safety; repealing certain legislative, procedural or interpretive rules promulgated by certain agencies, commissions and boards which are no longer authorized or are obsolete; repealing certain legislative rules by certain agencies and commissions under the Department of Military Affairs and Public Safety; repealing the Division of Corrections legislative rule relating to a furlough program for adult inmates; repealing the Division of Corrections legislative rule relating to employment of displaced correctional employees; repealing the Division of Corrections legislative rule relating to parole supervision; repealing the Division of Corrections legislative rule relating to recording of inmate phone calls; repealing the Division of Corrections legislative rule relating to monitoring inmate mail; repealing the Division of Corrections interpretive rule relating to charges assessed against inmates for services provided by state medical co-payment; repealing the Division of Corrections procedural rule relating to inmate grievance procedures; repealing the Jails and Prison Standards Commission legislative rule relating to minimum standards for construction, operation and management of holding facilities; authorizing certain agencies to promulgate certain legislative rules with various modifications presented to and recommended by the Legislative Rule-Making Review Committee; authorizing the Fire Commission to promulgate a

legislative rule relating to the fire code; authorizing the Fire Commission to promulgate a legislative rule relating to the state building code; and authorizing the Fire Commission to promulgate a legislative rule relating to the standards for the certification of continuing education of municipal, county and other public sector building code officials, inspectors and plans examiners.

#### 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 AND REPEAL OF UNAUTHORIZED AND OBSOLETE LEGISLATIVE RULES RELATING TO THE DEPARTMENT OF MILITARY AFFAIRS AND PUBLIC SAFETY.

#### §64-6-1. Division of Corrections.

- 1 (a) The legislative rule effective on May 22, 1995,
- 2 authorized under the authority of section thirteen, article one,
- 3 chapter twenty-five of this code, relating to the Division of
- 4 Corrections (furlough program for adult inmates, 90 CSR 3), is
- 5 repealed.
- 6 (b) The legislative rule effective on May 22, 1995,
- 7 authorized under the authority of section twenty-one, article one,
- 8 chapter twenty-five of this code, relating to the Division of
- 9 Corrections (employment of displaced correctional employees,
- 10 90 CSR 4), is repealed.
- 11 (c) The legislative rule effective on April 1, 2007, authorized
- 12 under the authority of section two, article thirteen, chapter

- sixty-two of this code, relating to the Division of Corrections (parole supervision, 90 CSR 2), is repealed.
- 15 (d) The legislative rule effective on April 5, 2010, authorized
- 16 under the authority of section seventeen, article one, chapter
- 17 twenty-five of this code, relating to the Division of Corrections
- 18 (recording of inmate phone calls, 90 CSR 5), is repealed.
- 19 (e) The legislative rule effective on April 5, 2010, authorized
- 20 under the authority of section eighteen, article one, chapter
- 21 twenty-five of this code, relating to the Division of Corrections
- 22 (monitoring inmate mail, 90 CSR 7), is repealed.
- 23 (f) The interpretive rule effective on March 8, 1999,
- 24 authorized under the authority of section twenty-one, article one,
- 25 chapter twenty-five of this code, relating to the Division of
- 26 Corrections (charges assessed against inmates for services
- 27 provided by state medical co-payment, 90 CSR 6), is repealed.
- 28 (g) The procedural rule effective on January 1, 2014,
- 29 authorized under the authority of section two, article one-a,
- 30 chapter twenty-five of this code, relating to the Division of
- 31 Corrections (inmate grievance procedures, 90 CSR 9), is
- 32 repealed.

#### §64-6-2. Jails and Prison Standards Commission.

- 1 The legislative rule effective on November 2, 1993,
- 2 authorized under the authority of section nine, article twenty,
- 3 chapter thirty-one of this code, relating to the Jails and Prison
- 4 Standards Commission (minimum standards for construction,
- 5 operation and management of holding facilities, 95 CSR 3), is
- 6 repealed.

#### §64-6-3. State Fire Commission.

- 1 (a) The legislative rule filed in the State Register on June 29,
- 2 2015, authorized under the authority of section five, article three,

- 3 chapter twenty-nine, of this code, relating to the State Fire
- 4 Commission (Fire Code, 87 CSR 1), is authorized.
- 5 (b) The legislative rule filed in the State Register on June 29,
- 6 2015, authorized under the authority of section five-b, article
- 7 three, chapter twenty-nine of this code, modified by the State
- 8 Fire Commission to meet the objections of the Legislative Rule
- 9 Committee and refiled in the State Register on December 10,
- 10 2015, relating to the State Fire Commission (State Building
- 11 Code, 87 CSR 4), is authorized with the following amendment:
- On page 3, subparagraph 4.1.e.1., in the first sentence before
- 13 the words "If the owner of a premises" and adding the words
- 14 "Unless authorized by W.Va. Code §8-12-16, or absent the
- 15 express consent of the owner,".
- 16 (c) The legislative rule filed in the State Register on June 29,
- 17 2015, authorized under the authority of section five-b, article
- 18 three, chapter twenty-nine of this code, modified by the State
- 19 Fire Commission to meet the objections of the Legislative Rule
- 20 Committee and refiled in the State Register on December 10,
- 21 2015, relating to the State Fire Commission (Standards for the
- 22 Certification and Continuing Education of Municipal, County
- 23 and other Public Sector Building Code Officials, Inspectors and
- 24 Plans Examiners, 87 CSR 7), is authorized.

# **CHAPTER 151**

(Com. Sub. for S. B. 150 - By Senator Maynard)

[Passed February 22, 2016; in effect from passage.] [Approved by the Governor on March 2, 2016.]

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; 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 Office of Administrative Hearings to promulgate a legislative rule relating to appeal procedures; authorizing the Division of Highways to promulgate a legislative rule relating to the state transportation infrastructure fund program; and authorizing the Division of Public Transit to promulgate a legislative rule relating to rail-fixed guideway systems state safety oversight.

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. Office of Administrative Hearings.

- 1 The legislative rule filed in the State Register on July 31,
- 2 2015, authorized under the authority of section four-a, article

- 3 five-c, chapter seventeen-c of this code, modified by the Office
- 4 of Administrative Hearings to meet the objections of the
- 5 Legislative Rule-Making Review Committee and refiled in the
- 6 State Register on November 5, 2015, relating to the Office of
- 7 Administrative Hearings (appeal procedures, 105 CSR 1), is
- 8 authorized with the following amendments:
- 9 On page 16, subsection 18.1, by striking the last sentence.
- On page 16, subsection 18.5, by striking the remainder of the
- 11 paragraph after the words "subsection 3 of this section."

#### §64-8-2. Division of Highways.

- The legislative rule filed in the State Register on July 31,
- 2 2015, authorized under the authority of section five, article
- 3 seventeen-b, chapter seventeen of this code, modified by the
- 4 Division of Highways to meet the objections of the Legislative
- 5 Rule-Making Review Committee and refiled in the State
- 6 Register on September 30, 2015, relating to the Division of
- 7 Highways (state transportation infrastructure fund program, 157
- 8 CSR 11), is authorized with the following amendments:
- 9 On page one, subsection 2.1, following the words "Board'
- 10 means the", by striking out the words "board of directors of the
- 11 fund" and inserting in lieu thereof the words "State
- 12 Transportation Infrastructure Fund Advisory Board";
- On page three, subsection 3.1, line one, by striking out the
- 14 words "A Board is hereby created" and inserting in lieu thereof
- 15 the words "The State Transportation Infrastructure Fund
- 16 Advisory Board is hereby created";
- 17 And,
- On page three, following subsection 3.3, by striking out all
- 19 of subsection four and inserting in lieu thereof the following:

- 20 "157-11-4. Powers and Duties of the Commissioner.
- 4.1 The Commissioner, in consultation with the Board, shall
- 22 adopt policies and procedures consistent with W.Va. Code
- 23 §17-17B-1 et seq., for the administration of the fund's affairs
- 24 and the implementation of the fund's functions, including, but
- 25 not limited to, the identification and selection of eligible
- 26 borrowers, eligible costs, and eligible projects as well as the
- 27 determination of the amount of initial assistance and the manner
- 28 in which the fund shall be capitalized.
- 29 4.2 The Commissioner shall have the following powers:
- 30 4.2.a. Make loans to eligible borrowers to finance the
- 31 eligible costs of eligible projects and to acquire, hold, and
- 32 subordinate loan obligations in a manner as the Board
- 33 determines advisable;
- 34 4.2.b. Provide eligible borrowers with other financial
- 35 assistance necessary to defray eligible costs of an eligible
- 36 project;
- 37 4.2.c. Enter into contracts, arrangements, and agreements
- 38 with eligible borrowers and other persons and execute and
- 39 deliver all financing agreements and other instruments necessary
- 40 or convenient to the exercise of the powers granted by W.Va.
- 41 Code §17-17B-1 et seq.;
- 42 4.2.d. Enter into agreements with a government unit, private
- 43 entity, department, agency, or instrumentality of the United
- 44 States or of this State or another state for the purpose of planning
- 45 and providing for the financing of eligible projects;
- 46 4.2.e. Establish policies and procedures for the making and
- 47 administering of loans and other financial assistance and fiscal
- 48 controls and accounting procedures to ensure proper accounting

- 49 and reporting of the fund, government units, eligible borrowers,
- 50 and private entities;
- 51 4.2.f. Collect or authorize the trustee under any trust
- 52 indenture securing any bonds to collect amounts due under any
- 53 loan obligations owned by it, including taking the action
- 54 required to obtain payment of any sums in default;
- 4.2.g. Consent to any modification with respect to the rate of
- 56 interest, time, and payment of any installment of principal or
- 57 interest, or any other term of any loan obligations owned by it;
- 58 4.2.h. Expend funds to obtain accounting, management,
- 59 legal, financial consulting, and other professional services
- 60 necessary to the operations of the fund;
- 4.2.i. Expend funds credited to the fund as the Board
- 62 determines necessary for the costs of administering the
- 63 operations of the fund;
- 4.2.j. Procure insurance against losses in connection with its
- 65 property, assets, or activities including insurance against liability
- 66 for its acts or the acts of its employees or agents or to establish
- 67 cash reserves to enable it to act as a self-insurer against any and
- 68 all such losses:
- 69 4.2.k. Collect fees and charges in connection with its loans
- 70 or other financial assistance:
- 71 4.2.1. Apply for, receive and accept from any source, aid,
- 72 grants, and contributions of money, property, labor, or other
- 73 things of value to be used to carry out the purposes of the fund;
- 4.2.m. Enter into contracts or agreements for the servicing
- 75 and processing of financial agreements;
- 4.2.n. Enter into loan obligations and loans that may be
- 77 secured or unsecured;

- 78 4.2.o. Accept notes and other forms of obligation to evidence
- 79 any indebtedness as well as mortgages, liens, pledges,
- 80 assignments or other security interests to secure such
- 81 indebtedness:
- 4.2.p. Take all actions that are appropriate to protect security
- 83 interests, ensure repayment of any indebtedness, and safeguard
- 84 against losses of the fund, including, but not limited to, initiating
- 85 foreclosures, default proceedings, and all other forms of redress,
- 86 whether legal or equitable in nature;
- 4.2.q. Determine future capital needs of the fund. The future
- 88 capital needs of the fund may be determined each year based on
- 89 an actuarial valuation that reflects, among other things,
- 90 anticipated revenues, project revenues, amounts in federal
- 91 accounts and state accounts, fund costs, loan defaults and related
- 92 risk exposure to the extent such valuation is consistent with the
- 93 Actuarial Standards of Practice published by the Actuarial
- 94 Standards Board.
- 95 4.2.r. Do all other things necessary or convenient to exercise
- 96 powers granted or reasonably implied by W.Va. Code §17-17B-1
- 97 et seq."

#### §64-8-3. Division of Public Transit.

- The legislative rule filed in the State Register on July 31,
- 2 2015, authorized under the authority of section three, article
- 3 sixteen-e, chapter seventeen of this code, modified by the
- 4 Division of Public Transit to meet the objections of the
- 5 Legislative Rule-Making Review Committee and refiled in the
- 6 State Register on September 30, 2015, relating to the Division of
- 7 Public Transit (rail fixed guideway systems state safety
- 8 oversight, 225 CSR 1), is authorized with the following
- 9 amendment:
- On page 6, subsection 7.4, by striking the words "Todd
- 11 Dorcas" and the comma.

# **CHAPTER 152**

(S. B. 588 - By Senators Trump, Maynard, Ferns, Carmichael, Cline, Karnes, Gaunch, Leonhardt, Ashley, Snyder, Palumbo, Beach, Miller, Kirkendoll, Romano, Woelfel and Williams)

[Passed March 12, 2016; in effect from passage.] [Approved by the Governor on April 1, 2016.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §64-8-4, relating generally to repealing certain legislative, procedural and interpretive rules promulgated by certain agencies under the Department of Transportation; repealing certain legislative, procedural or interpretive rules promulgated by certain agencies, boards and commissions which are no longer authorized or are obsolete; repealing the Division of Motor Vehicles legislative rule relating to rules and regulations; repealing the Division of Motor Vehicles legislative rule relating to special permits; repealing the Division of Motor Vehicles legislative rule relating to a safety and treatment program; repealing the Division of Motor Vehicles procedural rule relating to dealer and financial institution applicant or licensee administrative hearings; repealing the Division of Motor Vehicles legislative rule relating to seizure of driver's license, issuance of the temporary driver's license; repealing the Division of Motor Vehicles legislative rule relating to the Federal Safety Standards Inspection Program; and repealing the Division of Motor Vehicles interpretive rule relating to dealer issuance of temporary registration plates.

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 §64-8-4, to read as follows:

# ARTICLE 8. AUTHORIZATION FOR DEPARTMENT OF TRANSPORTATION TO PROMULGATE LEGISLATIVE RULES AND REPEALING UNAUTHORIZED AND OBSOLETE RULES OF THE DEPARTMENT OF TRANSPORTATION.

#### §64-8-4. Division of Motor Vehicles.

- 1 (a) The legislative rule effective on January 1, 1964,
- 2 authorized under the authority of section twelve, article two,
- 3 chapter seventeen-a of this code, relating to the Division of
- 4 Motor Vehicles (rules and regulations, 91 CSR 2), is repealed.
- 5 (b) The legislative rule effective on October 24, 1971,
- 6 authorized under the authority of section nine, article two,
- 7 chapter seventeen-a of this code, relating to the Division of
- 8 Motor Vehicles (special permits, 91 CSR 7), is repealed.
- 9 (c) The legislative rule effective on May 4, 1984, authorized
- 10 under the authority of section three, article five-a, chapter
- 11 seventeen-c of this code, relating to the Division of Motor
- 12 Vehicles (safety and treatment program, 91 CSR 15), is repealed.
- 13 (d) The procedural rule effective on July 9, 1984, authorized
- 14 under the authority of section nine, article two, chapter
- 15 seventeen-a of this code, relating to the Division of Motor
- 16 Vehicles (dealer and financial institution applicant or licensee
- 17 administrative hearings, 91 CSR 17), is repealed.
- 18 (e) The legislative rule effective on June 12, 1987,
- 19 authorized under the authority of section nine, article two,
- 20 chapter seventeen-a of this code, relating to the Division of
- 21 Motor Vehicles (seizure of driver's license, issuance of the
- 22 temporary driver's license, 91 CSR 20), is repealed.
- 23 (f) The legislative rule effective on June 12, 1987, authorized
- 24 under the authority of section nine, article two, chapter

- 25 seventeen-a of this code, relating to the Division of Motor
- 26 Vehicles (Federal Safety Standards Inspection Program, 91 CSR
- 27 21), is repealed.

- 28 (g) The interpretive rule effective on September 23, 1988,
- 29 authorized under the authority of section nine, article two,
- 30 chapter seventeen-a, relating to the Division of Motor Vehicles
- 31 (dealer issuance of temporary registration plates, 91 CSR 18), is
- 32 repealed.



# **CHAPTER 153**

(Com. Sub. for S. B. 202 - By Senator Maynard)

[Passed March 11, 2016; in effect from passage.] [Approved by the Governor on March 30, 2016.]

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 Department of Commerce; 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 presented to and recommended by the Legislative Rule-Making Review Committee and with various amendments recommended by the Legislature; directing various agencies to amend and promulgate certain legislative rules; authorizing the Division of Natural Resources to promulgate a legislative rule relating to prohibitions when hunting and trapping; authorizing the Division of Natural

Resources to promulgate a legislative rule relating to general hunting; authorizing the Division of Natural Resources to promulgate a legislative rule relating to deer hunting; authorizing the Division of Natural Resources to promulgate a legislative rule relating to wild boar hunting; authorizing the Division of Natural Resources to promulgate a legislative rule relating to elk restoration and management; directing the Division of Labor to promulgate rules relating to the Contractor Licensing Board; authorizing the Division of Labor to promulgate a legislative rule relating to the Elevator Safety Act; authorizing the Division of Labor to promulgate a legislative rule relating to the licensing of elevator mechanics and technicians and registration of apprentices; authorizing the Office of Miners' Health, Safety and Training to promulgate a legislative rule relating to substance abuse screening standards and procedures; directing the Tourism Commission to amend and promulgate a Division of Tourism rule relating to the direct advertising grants program, repealing certain legislative and procedural rules of certain agencies and boards of the Department of Commerce; authorizing WorkForce West Virginia promulgate a legislative rule relating to prevailing wage; the repealing the Commercial Whitewater Advisory Board legislative rule relating to commercial whitewater outfitters; repealing the Commercial Whitewater Advisory Board procedural rule relating to regulations for open governmental proceedings; repealing the Commissioner of Employment Security legislative rule relating to regulations of the Commissioner of Employment Security; repealing the Commissioner of Employment Security legislative rule relating to implementation of a pilot employment supplemental matching program; repealing the Division of Forestry procedural rule relating to Freedom of Information Act requests; repealing the Division of Labor legislative rule relating to the West Virginia safety code for aerial passenger tramways, lifts and tows; repealing the Division of Labor legislative rule relating to the West Virginia Prevailing Wage Act; repealing the Minimum Wage Rate Board legislative rule relating to the West

Virginia Prevailing Wage Act; repealing the Division of Natural Resources legislative rule relating to shoreline camping of government owned reservoir areas in West Virginia; repealing the Division of Natural Resources legislative rule relating to special bear hunting; and repealing the Division of Natural Resources procedural rule relating to rules for open government proceedings.

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 DEPARTMENT OF COMMERCE TO **PROMULGATE** LEGISLATIVE RULES.

#### §64-10-1. Division of Natural Resources.

- 1 (a) The legislative rule filed in the State Register on July 30,
- 2015, authorized under the authority of section seven, article
- 3 one, chapter twenty of this code, modified by the Division of
- Natural Resources to meet the objections of the Legislative
- 5 Rule-Making Review Committee and refiled in the State
- Register on October 8, 2015, relating to the Division of Natural
- Resources (prohibitions when hunting and trapping, 58 CSR 47),
- 8 is authorized.
- 9 (b) The legislative rule filed in the State Register on July 30,
- 2015, authorized under the authority of section seven, article 10
- one, chapter twenty of this code, relating to the Division of 11
- Natural Resources (general hunting, 58 CSR 49), is authorized. 12
- 13 (c) The legislative rule filed in the State Register on July 30,
- 2015, authorized under the authority of section seven, article 14
- one, chapter twenty of this code, relating to the Division of 15
- Natural Resources (deer hunting, 58 CSR 50), is authorized. 16

- 17 (d) The legislative rule filed in the State Register on July 30,
- 18 2015, authorized under the authority of section seven, article
- 19 one, chapter twenty of this code, relating to the Division of
- 20 Natural Resources (wild boar hunting, 58 CSR 52), is authorized.
- 21 (e) The legislative rule filed in the State Register on July 30,
- 22 2015, authorized under the authority of section five-h, article
- 23 two, chapter twenty of this code, modified by the Division of
- 24 Natural Resources to meet the objections of the Legislative
- 25 Rule-Making Review Committee and refiled in the State
- 26 Register on October 29, 2015, relating to the Division of Natural
- 27 Resources (elk restoration and management, 58 CSR 74), is
- 28 authorized with the following amendment:
- On page one, section three, after the section heading "\$58-74-3. Elk Management Plan.", by adding the following:
- 31 "3.1. An Elk Management Plan has been developed by the
- 32 Division which will guide the Division's management decisions
- 33 as it relates to the state's active elk restoration project.
- 34 3.1.a. The elk management plan will follow an adaptive
- 35 management approach and the plan will be updated on a 5-year
- 36 basis.
- 37 3.1.b. The Division shall solicit public comments on the
- 38 draft elk management plan and will take public input under
- 39 consideration prior to finalizing the plan.
- 40 3.1.c. The elk management plan will include, but is not
- 41 limited to, the following plan components.
- 42 3.1.c.1. Elk biology and life history.
- 43 3.1.c.2. Overview of elk reintroduction feasibility studies".
- 44 (f) The legislative rule effective on January 1, 1983,
- 45 authorized under the authority of section seven, article one,

- 46 chapter twenty of this code, relating to the Division of Natural
- 47 Resources (shoreline camping of government owned reservoir
- 48 areas in West Virginia, 58 CSR 30), is repealed.
- 49 (g) The legislative rule effective on May 9, 1995, authorized
- 50 under the authority of section seven, article one, chapter twenty
- 51 of this code, relating to the Division of Natural Resources
- 52 (special bear hunting, 58 CSR 48), is repealed.
- 53 (h) The procedural rule effective on October 9, 1996,
- 54 authorized under the authority of section seven, article one,
- 55 chapter twenty of this code, relating to the Division of Natural
- 56 Resources (rules for open government proceedings, 58 CSR 1),
- 57 is repealed.

#### §64-10-2. Division of Labor.

- 1 (a) The Legislature directs the West Virginia Contractor
- 2 Licensing Board to promulgate the legislative rule filed in the
- 3 State Register on May 13, 2005, authorized under the authority
- 4 of section five, article eleven, chapter twenty-one of this code,
- 5 relating to the West Virginia Contractor Licensing Act (West
- 6 Virginia Contractor Licensing Act, 28 CSR 2), with the
- 7 amendment set forth below:
- 8 On page seven, subsection 3.29 by striking "\$15,000" and
- 9 inserting in lieu thereof "\$40,000."
- 10 (b) The legislative rule filed in the State Register on July 31,
- 11 2015, authorized under the authority of section nine, article five,
- 12 chapter twenty-one of this code, modified by the Division of
- 13 Labor to meet the objections of the Legislative Rule-Making
- 14 Review Committee and refiled in the State Register on
- 15 December 9, 2015, relating to the Division of Labor (wage
- 16 payment and collection, 42 CSR 5), is authorized with the
- 17 following amendment:

- On page seven, by striking out subsection 10.4 and subdivisions 10.4.1 and 10.4.2 and inserting in lieu thereof the
- 20 following:
- "10.4. The employer and the claimant shall be entitled to a status conference upon request to the Division.
- 23 10.4.1. At that time, the employer and the claimant shall
- 24 have the opportunity to review all records collected by the
- 25 Division during its investigation relating to the wage claim with
- 26 respect to all portions of the investigation that the Division has
- 27 not resolved in favor of the employer.
- 28 10.4.2. Within twenty (20) days of the conclusion of the
- 29 status conference, an employer or the claimant may prepare and
- 30 submit a written statement and/or evidence for consideration by
- 31 the Division."
- 32 (c) The legislative rule filed in the State Register on July 31,
- 33 2015, authorized under the authority of section one, article
- 34 five-c, chapter twenty-one, of this code, modified by the
- 35 Division of Labor to meet the objections of the Legislative
- 36 Rule-making Review Committee and refiled in the State Register
- 37 on December 9, 2015, relating to the Division of Labor
- 38 (minimum wage and maximum hours, 42 CSR 8), is authorized
- 39 with the following amendments:
- 40 On page 1, section 2, by adding a new subsection, designated
- 41 subsection 2.2, to read as follows:
- 42 "2.2. Pursuant to W. Va. Code § 21-5C-1(e), the provisions
- 43 of this rule relating to maximum hours and overtime
- 44 compensation are not enforceable against or applicable to any
- 45 individual, partnership, association, corporation, person or group
- 46 of persons or similar unit if eighty percent of the persons
- 47 employed by him or her are subject to any federal act relating to
- 48 maximum hours and overtime compensation."

- 49 And, renumbering the remaining subsection.
- On page 8, former subsection 6.3, by striking out the remainder of the subsection.
- 52 (d) The legislative rule filed in the State Register on July 31,
- 53 2015, authorized under the authority of section eleven, article
- 54 three-c, chapter twenty-one of this code, modified by the
- 55 Division of Labor to meet the objections of the Legislative
- 56 Rule-Making Review Committee and refiled in the State
- 57 Register on November 17, 2015, relating to the Division of
- 58 Labor (Elevator Safety Act, 42 CSR 21), is authorized with the
- 59 following amendment:
- On page 1, subsection 3.1, by striking out the word "Three" and inserting in lieu thereof the word "Two".
- (e) The legislative rule filed in the State Register on July 31,
- 63 2015, authorized under the authority of section eleven, article
- 64 three-c, chapter twenty-one of this code, relating to the Division
- 65 of Labor (licensing of elevator mechanics and technicians and
- 66 registration of apprentices, 42 CSR 21A), is authorized with the
- 67 following amendment:
- On page 1, subsection 3.2, by striking out the word "Three"
- and inserting in lieu thereof the word "Two".
- 70 (f) The legislative rule effective on May 26, 1983, authorized
- 71 under the authority of section two, article three, chapter
- 72 twenty-one of this code, relating to the Division of Labor (West
- 73 Virginia safety code for aerial passenger tramways, lifts and
- 74 tows, 42 CSR 2), is repealed.
- 75 (g) The legislative rule effective on December 31, 1982,
- 76 authorized under the authority of article five-a, chapter
- 77 twenty-one of this code, relating to the Division of Labor (West
- 78 Virginia Prevailing Wage Act, 42 CSR 7), is repealed.

#### §64-10-3. Office of Miners' Health, Safety and Training.

- The legislative rule filed in the State Register on July 30,
- 2 2015, authorized under the authority of section fourteen, article
- 3 six, chapter twenty-two-a of this code, relating to the Office of
- 4 Miners' Health, Safety and Training (substance abuse screening
- 5 standards and procedures, 56 CSR 19), is authorized.

#### §64-10-4. Tourism Commission.

- 1 The legislature directs the Tourism Commission, pursuant to
- 2 the authority given to the Commission in section nine, article
- 3 two, chapter five-b of this code, to promulgate the legislative
- 4 rule filed in the State Register by the Department of Tourism on
- 5 May 3, 2010, relating to the Direct Advertising Grants Program
- 6 (144 CSR 1), with the amendments set forth below:
- 7 By amending the title of the rule to replace the authorizing
- 8 agency, currently identified as the Division of Tourism, with the
- 9 Tourism Commission;
- On page one, section two, by striking out all of subdivision
- 11 2.4.2 and inserting in lieu thereof a new subdivision 2.4.2 to read
- 12 as follows:
- 13 2.4.2. Entertainment establishments which include, but are
- 14 not limited to, pari-mutuel gaming establishments, live
- 15 performing art centers, sporting organizations or arenas,
- 16 vineyards or wineries, craft breweries, distilleries, and
- 17 mini-distilleries;
- On pages one and two, section two, by striking out all of
- 19 subdivision 2.7.4 and inserting in lieu thereof a new subdivision
- 20 2.7.4 to read as follows:
- 21 2.7.4. Entertainment establishments which include, but are
- 22 not limited to, pari-mutuel gaming establishments, live

- 23 performing art centers, sporting organizations or arenas,
- 24 vineyards or wineries, craft breweries, distilleries, and
- 25 mini-distilleries:
- On page six, section six, by striking out all of subsection 6.2
- 27 and inserting in lieu thereof a new subsection 6.2 to read as
- 28 follows:
- 29 6.2. Seventy-five percent (75%) of a project's direct
- 30 advertising must be directed toward areas outside of the local
- 31 market or in major out-of-state markets, except for direct
- 32 advertising for a fair or festival grant authorized by subsection
- 33 7.3 of this rule. The Commission reserves the right on a case by
- 34 case basis to allow local market media in excess of 25% of a
- 35 project's direct advertising that cost effectively reaches a
- 36 well-researched target market.;
- On page eight, section seven, by striking out all of
- 38 subsection 7.2 and inserting in lieu thereof a new subsection 7.2
- 39 to read as follows:
- 40 7.2. There is hereby established a small grants program to be
- 41 administered by the Division. Awards under this program shall
- 42 not exceed \$7,500 per applicant and no applicant shall receive
- 43 more than one grant per fiscal year. The applicant and partner(s)
- 44 must provide a minimum of 25 percent of the total project cost.
- 45 Total grants awarded under this program in any fiscal year shall
- 46 be used by the applicant solely for advertising purposes. Small
- 47 grant awards shall require the approval of the director of the
- 48 Division. Grant applications must be received by established
- 49 deadlines. No applicant who has received a grant larger than
- 50 \$7,500 in any fiscal year may apply for a small grant under this
- 51 section during the same fiscal year.
- On page eight, section seven, by striking out all of
- 53 subsection 7.3 and inserting in lieu thereof a new subsection 7.3
- 54 to read as follows:

55 7.3. There is hereby established a Fairs and Festivals grants 56 program to be administered by the Division. Awards under this program shall be limited to Fairs and Festivals, and grants shall 57 not exceed \$5,000 per applicant per year. The applicant must 58 provide a minimum of 50 percent of the total project cost, but the 59 60 requirements of subsection 5.5 of these rules shall not apply to the Fairs and Festivals grants program. Total grants awarded 61 under this program shall be used by the applicant solely for 62 advertising purposes. Fairs and Festivals grant awards shall 63 require the approval of the Director of the Division. Grant 64

#### §64-10-5. WorkForce West Virginia.

1 The legislative rule filed in the State Register on November

applicants must be received by established deadlines.

- 2 6, 2015, authorized under the authority of section eleven, article
- 3 five-a, chapter twenty-one of this code, modified by the
- 4 WorkForce West Virginia to meet the objections of the
- 5 Legislative Rule-Making Review Committee and refiled in the
- 6 State Register on December 4, 2015, relating to the WorkForce
- 7 West Virginia (West Virginia Prevailing Wage Act, 96 CSR 4),
- 8 is authorized.

#### §64-10-6. Commercial Whitewater Advisory Board.

- 1 (a) The legislative rule effective on October 8, 1987,
- 2 authorized under the authority of section twenty-three-a, article
- 3 two, chapter twenty of this code, relating to the Commercial
- 4 Whitewater Advisory Board (commercial whitewater outfitters,
- 5 182 CSR 1), is repealed.
- 6 (b) The procedural rule effective on August 31, 1987,
- 7 authorized under the authority of section three, article nine-a,
- 8 chapter twenty of this code, relating to the Commercial
- 9 Whitewater Advisory Board (regulations for open governmental
- 10 proceedings, 182 CSR 2), is repealed.

#### §64-10-7. Commissioner of Employment Security.

- 1 (a) The legislative rule effective on May 1, 1991, authorized
- 2 under the authority of article two, chapter twenty-one-a of this
- 3 code, relating to the Commissioner of Employment Security
- 4 (regulations of the Commissioner of Employment Security, 83
- 5 CSR 1), is repealed.
- 6 (b) The legislative rule effective on September 2, 1983,
- 7 authorized under the authority of section five, article two-a,
- 8 chapter twenty-one-a of this code, relating to Commissioner of
- 9 Employment Security (implementation of a pilot employment
- 10 supplemental matching program, 84 CSR 2), is repealed.

#### §64-10-8. Division of Forestry.

- 1 The procedural rule effective on June 1, 2004, authorized
- 2 under the authority of section three, article three, chapter
- 3 twenty-nine-a of this code, relating to the Division of Forestry
- 4 (Freedom of Information Act requests, 22 CSR 4), is repealed.

#### §64-10-9. Minimum Wage Rate Board.

- 1 The legislative rule effective on January 1, 1983, authorized
- 2 under the authority of article five-a, chapter twenty-one of this
- 3 code, relating to the Minimum Wage Rate Board (West Virginia
- 4 Prevailing Wage Act, 43 CSR 1), is repealed.

# **CHAPTER 154**

#### (S. B. 469 - By Senators Williams and Sypolt)

[Passed March 9, 2106; in effect ninety days from passage.] [Approved by the Governor on March 16, 2016.]

AN ACT to amend and reenact §38-5A-3 of the Code of West Virginia, 1931, as amended; and to amend and reenact §38-8-1 of said code, all relating to suggestions of salary and wages of persons engaged in private employment and exemptions from levy; increasing the amount of salary or wages that are protected from a suggestee execution from thirty times the federal minimum hourly wage then in effect to fifty times the federal minimum hourly wage then in effect; removing wages and salary from items subject to the one-time, \$15,000 exemption; providing that wages and salary are automatically exempted from levy execution up to a certain amount; and clarifying that wages and salary above that automatic exemption may not be exempted from levy.

Be it enacted by the Legislature of West Virginia:

That §38-5A-3 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that §38-8-1 of said code be amended and reenacted, all to read as follows:

#### CHAPTER 38. LIENS.

ARTICLE 5A. SUGGESTIONS OF SALARY AND WAGES OF PERSONS ENGAGED IN PRIVATE EMPLOYMENT.

§38-5A-3. Application for suggestee execution against salary or wages; extent of lien and continuing levy; exemption; priority among suggestee executions.

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(a) A judgment creditor may apply to the court in which the judgment was recovered or a court having jurisdiction of the same, without notice to the judgment debtor, for a suggestee execution against any money due or to become due within one year after the issuance of such execution to the judgment debtor as salary or wages arising out of any private employment. If satisfactory proof shall be made, by affidavit or otherwise, of such facts and the fact that the amount due or to become due as salary or wages after the deduction of all state and federal taxes exceeds in any week fifty times the federal minimum hourly wage then in effect, the court, if not a court of record, or if a court of record the clerk thereof, shall issue a suggestee execution against the salary or wages of the judgment debtor and upon presentation of such execution by the officer to whom delivered for collection to the person or persons from which such salary or wages are due and owing or thereafter may become due and owing to the judgment debtor, the execution and the expenses thereof shall become a lien and continuing levy upon the salary or wages due or to become due to the judgment debtor within one year after the issuance of the same, unless sooner vacated or modified as hereinafter provided, to an amount equal to twenty percent thereof and no more, but in no event shall the payments in satisfaction of such an execution reduce the amount payable to the judgment debtor to an amount per week that is less than fifty times the federal minimum hourly wage then in effect. Only one such execution shall be satisfied, at one time, except that in the event two or more such executions have been served and satisfaction of the one having priority is completed without exhausting the amount of the salary or wages then due and payable that is subject to suggestion under this article the balance of such amount shall be paid in satisfaction, in the order of their priority, of junior suggestee executions against such salary or wages theretofore served.

(b) The suggestee execution by the judgment creditor provided in this section shall include, to the extent possible, the

- 36 present address, the last four digits of the Social Security number
- 37 and date of birth of the judgment debtor, which information shall
- 38 be made available for the purpose of properly identifying the
- 39 judgment debtor whose salary or wages are being levied upon.

#### ARTICLE 8. EXEMPTIONS FROM LEVY.

#### §38-8-1. Exemptions of personal property.

- 1 (a) Any individual residing in this state, or the dependent of
- 2 such individual, may set apart and hold as exempt from
- 3 execution or other process the following personal property:
- 4 (1) Such individual's interest, not to exceed \$5,000 in value.
- 5 in one motor vehicle:
- 6 (2) Such individual's interest, not to exceed \$8,000 in
- 7 aggregate value, in household goods, furniture, toys, animals,
- 8 appliances, books and wearing apparel that are held primarily for
- 9 the personal, family or household use of such individual;
- 10 (3) Such individual's aggregate interest, not to exceed
- 11 \$3,000, in any implements, professional books or tools of such
- 12 individual's trade:
- 13 (4) Such individual's funds on deposit in a federally insured
- 14 financial institution, not to exceed \$1,100; and
- 15 (5) Funds on deposit in an individual retirement account
- 16 (IRA), including a simplified employee pension (SEP), in the
- 17 name of such individual: *Provided*, That the amount is exempt
- 18 only to the extent it is not, or has not been, subject to an excise
- 19 or other tax on excess contributions under Section 4973 or
- 20 Section 4979 of the Internal Revenue Code of 1986, or both
- 21 sections, or any successor provisions, regardless of whether the
- 22 tax is or has been paid.

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- 23 (b) Notwithstanding the foregoing, in no case may an 24 individual residing in this state, or the dependent of such 25 individual, exempt from execution or other process more than 26 \$15,000 in the aggregate in personal property listed in 27 subdivisions (1), (2), (3) and (4), subsection (a) of this section.
  - (c) Wages or salary are automatically exempt from execution or other process but only to the extent set forth in section three, article five-a of this chapter. No person may file for an exemption of wages or salary pursuant to this section in an amount above that set forth in section three, article five-a of this chapter.



# **CHAPTER 155**

(Com. Sub. for S. B. 602 - By Senator Trump)

[Passed March 12, 2016; in effect July 1, 2016.] [Approved by the Governor on March 29, 2016.]

AN ACT to amend and reenact §29-12B-10 of the Code of West Virginia, 1931, as amended; to amend and reenact §29-12D-1 and §29-12D-3 of said code; to amend said code by adding thereto a new section, designated §29-12D-1a; to amend and reenact §55-7B-9 and §55-7B-9c of said code; and to amend and reenact §59-1-11 and §59-1-28a of said code, all relating generally to the Patient Injury Compensation Fund; transferring funds from Medical Liability Fund to Patient Injury Compensation Fund and thereafter closing Medical Liability Fund; prohibiting direct recovery of legal fees from Patient Injury Compensation Fund; providing that fund may not compensate claimants who have not filed a claim with the fund before July 1, 2016; imposing an assessment on medical licenses; providing exceptions to assessment on medical licenses; prohibiting granting or renewal of

medical license for failure to pay assessment; imposing an assessment on trauma centers based upon the number of patients treated; imposing an assessment on claims filed under the Medical Professional Liability Act; defining "qualifying claim"; establishing a date for purposes of determining applicability of section; directing entities collecting assessments to remit payment to Board of Risk and Insurance Management; setting schedule for remittance of payments to Board of Risk and Insurance Management; providing for termination of assessments upon certain deadlines being met; limiting authority of court reviewing an award from the board to approval or disapproval of final award; clarifying authority of Board of Risk and Insurance Management make periodic payments or place claims in nonpayment status in its discretion; permitting trier of fact to consider fault of all alleged parties, including fault of persons who have settled claims with plaintiff arising out of same medical injury, in assessing percentages of fault; clarifying manner in which damages are to be determined with respect to each defendant for purposes of entering judgment when there is no pre-verdict settlement; providing for limit on liability for economic damages in causes of actions against a trauma facility to be adjusted for inflation annually beginning January 1, 2016; setting limit on inflation increase; authorizing plaintiff who, as a result of an injury suffered prior to or after July 1, 2016, suffers or has suffered economic damages in excess of limit of liability to collect economic damages up to an additional \$1 million; clarifying that additional economic liability limit is not subject to inflation; providing that a claimant's attorney fees may not be paid out of the fund; providing that several liability applies in all cases under the Medical Professional Liability Act; increasing filing fee for causes of action under the Medical Professional Liability Act; and directing clerk of court to deposit a portion of the filing fee into Patient Injury Compensation Fund.

Be it enacted by the Legislature of West Virginia:

That §29-12B-10 of the Code of West Virginia, 1931, as amended, be amended and reenacted; that §29-12D-1 and §29-12D-3 of said code

be amended and reenacted; that said code be amended by adding thereto a new section, designated §29-12D-1a; that §55-7B-9 and §55-7B-9c of said code be amended and reenacted; and that §59-1-11 and §59-1-28a of said code be amended and reenacted, all to read as follows:

#### CHAPTER 29. MISCELLANEOUS BOARDS AND OFFICES.

## ARTICLE 12B. WEST VIRGINIA HEALTH CARE PROVIDER PROFESSIONAL LIABILITY INSURANCE AVAILABILITY ACT.

#### §29-12B-10. Deposit, expenditure and investment of premiums.

- 1 (a) The premiums charged and collected by the board under
- 2 this article shall be deposited into a special revenue account
- 3 hereby created in the state Treasury known as the "Medical
- 4 Liability Fund", and shall not be part of the general revenues of
- 5 the state. Disbursements from the special revenue fund shall be
- 6 upon requisition of the executive director and in accordance with
- 7 the provisions of chapter five-a of this code. Disbursements shall
- $8\quad \text{pay operating expenses of the board attributed to these programs}$
- 9 and the board's share of any judgments or settlements of medical 10 malpractice claims. Funds shall be invested with the
- in marpractice claims. Funds shall be invested with the
- 11 consolidated fund managed by the West Virginia Investment
- 12 Management Board and interest earned shall be used for
- 13 purposes of this article.
- (b) Start-up operating expenses of the medical liability fund,
- 15 not to exceed \$500,000, may be transferred to the medical
- 16 liability fund pursuant to an appropriation by the Legislature
- 17 from any special revenue funds available. The medical liability
- 18 fund shall reimburse the board within twenty-four months of the
- 19 date of the transfer.
- 20 (c) For purposes of establishing a pool from which
- 21 settlements and judgments may be paid, notwithstanding any

- 22 other provision of this code to the contrary, a portion of the
- 23 initial capitalization of the pool may be provided through a
- 24 transfer of no greater than \$4,000,000 from the State Special
- 25 Insurance Fund established in section five, article twelve of this
- 26 chapter. All funds transferred pursuant to this section are to be
- 27 repaid by transfer from the Medical Liability Fund to the State
- 28 Special Insurance Fund, together with interest that would have
- 29 accrued in the State Special Insurance Fund, by July 1, 2006.
- 30 Funds are to be transferred only as needed for expenditures from
- 31 the Medical Liability Fund created in this section. The Treasurer
- 32 shall effect these transfers pursuant to this section upon written
- 33 request of the Director of the Board of Risk and Insurance
- 34 Management.
- 35 (d) On July 1, 2016, all funds in the Medical Liability Fund,
- 36 including all funds currently invested pursuant to the terms of
- 37 subsection (a) of this section, shall be transferred to the West
- 38 Virginia Patient Injury Compensation Fund established by
- 39 section one, article twelve-d of this chapter. Thereafter, the
- 40 Medical Liability Fund established pursuant to this section shall
- 41 be closed.

### ARTICLE 12D. WEST VIRGINIA PATIENT INJURY COMPENSATION FUND.

## §29-12D-1. Creation of the Patient Injury Compensation Fund; purpose; initial funding of Patient Injury Compensation Fund.

- 1 (a) There is created the West Virginia Patient Injury
- 2 Compensation Fund, for the purpose of providing fair and
- 3 reasonable compensation to claimants in medical malpractice
- 4 actions for any portion of economic damages awarded that is
- 5 uncollectible as a result of limitations on economic damage
- 6 awards for trauma care, or as a result of the operation of the joint
- 7 and several liability principles and standards, set forth in article

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8 seven-b, chapter fifty-five of this code. The fund shall consist of 9 all contributions, revenues and moneys which may be paid into 10 the fund, from time to time, by the State of West Virginia or 11 from any other source whatsoever, together with any and all 12 interest, earnings, dividends, distributions, moneys or revenues 13 of any nature whatsoever accruing to the fund.

(b) Initial funding for the fund shall be provided as follows: during fiscal year 2005, \$2,200,000 of the revenues that would otherwise be transferred to the tobacco account established in subsection (b), section two, article eleven-a, chapter four of this code pursuant to the provisions of section fourteen, article three, chapter thirty-three of this code shall be transferred to the fund; during fiscal year 2006, \$2,200,000 of the revenues that would otherwise be transferred to the tobacco account established in subsection (b), section two, article eleven-a, chapter four of this code pursuant to the provisions of section fourteen, article three, chapter thirty-three of this code shall be transferred to the fund; and during fiscal year 2007, \$2,200,000 of the revenues that would otherwise be transferred to the tobacco account established in subsection (b), section two, article eleven-a, chapter four of this code pursuant to the provisions of section fourteen, article three, chapter thirty-three of this code shall be transferred to the fund.

Beginning fiscal year 2008, if and to the extent additional funding for the fund is required, from time to time, to maintain the actuarial soundness of the fund, the additional funding may be provided by further act of the Legislature, either from the revenue stream identified in this subsection or otherwise. Payments to the tobacco fund shall be extended until the tobacco fund is repaid in full.

(c) The fund is not and shall not be considered a defendant in any civil action arising under article seven-b, chapter fifty-five of this code.

- 41 (d) The fund is not and shall not be considered an insurance 42 company or insurer for any purpose under this code.
- 43 (e) Legal fees of claimants may not be recovered directly 44 from the fund.
- 45 (f) The fund shall not provide compensation to claimants 46 who file a claim with the Patient Injury Compensation Fund on 47 or after July 1, 2016.

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

- 1 (a) Annual assessment on licensed physicians. —
- 2 (1) The Board of Medicine and the Board of Osteopathic
- 3 Medicine shall collect a biennial assessment in the amount of
- 4 \$125 from every physician licensed by each board for the
- 5 privilege of practicing medicine in this state. The assessment is
- 6 to be imposed and collected on forms prescribed by each
- 7 licensing board. The assessment shall be collected as part of
- 8 licensure or license renewal beginning July 1, 2016 for licenses
- 9 issued or renewed in calendar year 2016 through calendar year
- 10 2019: *Provided*, That the following physicians shall be exempt
- 11 from the assessment:
- 12 (A) A resident physician who is a graduate of a medical
- 13 school or college of osteopathic medicine enrolled and who is
- 14 participating in an accredited full-time program of post-graduate
- 15 medical education in this state:
- (B) A physician who has presented suitable proof that he or
- 17 she is on active duty in the armed forces of the United States and
- 18 who will not be reimbursed by the armed forces for the
- 19 assessment;

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- 20 (C) A physician who practices solely under a special 21 volunteer medical license authorized by section ten-a, article 22 three, chapter thirty of this code, or section twelve-b, article fourteen of said chapter; 23
- 24 (D) A physician who holds an inactive license pursuant to 25 subsection (j), section twelve, article three, chapter thirty of this 26 code or section ten, article fourteen, of said chapter, or a 27 physician who voluntarily surrenders his or her license: Provided, That a retired osteopathic physician who submits to 28 29 the Board of Osteopathic Medicine an affidavit asserting that he or she receives no monetary remuneration for any medical 30 31 services provided, executed under the penalty of perjury and if 32 executed outside the State of West Virginia, verified, may be 33 considered to be licensed on an inactive basis: Provided. however, That if a physician or osteopathic physician elects to 34 35 resume an active license to practice in the state and the physician or osteopathic physician has not paid the assessments during his 36 37 or her inactive status, then as a condition of receiving an active 38 status license, the physician or osteopathic physician shall pay 39 the assessment due in the year in which physicians or the 40 osteopathic physician resumes an active license; and
  - (E) A physician who practices less than forty hours a year providing medical genetic services to patients within this state.
  - (2) The entire proceeds of the annual assessment collected pursuant to subsection (a) of this section shall be dedicated to the Patient Injury Compensation Fund. The Board of Medicine and the Board of Osteopathic Medicine shall promptly pay over to the Board of Risk and Insurance Management all amounts collected pursuant to this subsection for deposit in the fund.
- 49 (3) Notwithstanding any provision of the code to the 50 contrary, a physician required to pay the annual assessment who fails to do so shall not be granted a license or renewal of an

- 52 existing license by the Board of Medicine or the Board of 53 Osteopathic Medicine. Any license which expires as a result of 54 a failure to pay the required assessment shall not be reinstated or 55 reactivated until the assessment is paid in full.
- 56 (b) Assessment on trauma centers. — From July 1, 2016 57 through June 30, 2020, an assessment of \$25 shall be levied by 58 the Board of Risk and Insurance Management on trauma centers 59 for each trauma patient treated at a health care facility designated 60 by the Office of Emergency Medical Services as a trauma center, 61 as reported to the West Virginia Trauma Registry. Beginning July 1, 2016, and annually thereafter until June 30, 2020, the 62 63 Board of Risk and Insurance Management shall assess each 64 trauma center for trauma patients treated from January 1 to December 31 of the previous year: Provided, That the 65 assessment to be collected by the Board of Risk and Insurance 66 67 Management on June 30, 2017, shall be based on each trauma 68 patient treated from January 1, 2016, to December 31, 2016.
- 69 (c) Assessment on claims filed under the Medical 70 Professional Liability Act. — From July 1, 2016, through June 71 30, 2020, an assessment of one percent of the gross amount of 72 any settlement or judgment in a qualifying claim shall be levied.
- 73 (1) For purposes of this subsection, a qualifying claim is any 74 claim for which a screening certificate of merit, as that term is 75 defined in section six, article seven-b, chapter fifty-five of this 76 code, is required.

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

- 85 (3) For any assessment levied pursuant to this subsection on 86 a settlement entered into by the parties, the date on which the agreement is formalized in writing by the parties shall be used to 87 88 determine applicability of this provision. At the time that an action alleging a qualified claim is dismissed by the parties, the 89 90 assessment shall be paid to the clerk of the court, who shall then 91 remit the assessment to the Board of Risk and Insurance 92 Management to be deposited in the fund. Collected assessments 93 shall be remitted no less often than quarterly. If a qualifying claim is settled prior to the filing of an action, the plaintiff, or his 94 95 or her counsel, shall remit the payment to the Board of Risk and Insurance Management within sixty days of the date of the 96 97 settlement agreement to be paid into the fund.
- 98 (d) Termination of assessments. — The requirements of this 99 section shall terminate on the dates set forth in this section or sooner if the liability of the Patient Injury Compensation Fund 100 101 has been paid or has been funded in its entirety. The Board of 102 Risk and Insurance Management shall submit a report to the 103 Joint Committee of Government and Finance each year beginning January 1, 2018, giving recommendations based on 104 105 actuarial analysis of the fund's liability. The recommendations shall include, but not be limited to, discontinuance of the 106 assessments provided for in this section, closure of the fund and 107 108 transfer of the fund's liability.

#### §29-12D-3. Payments from the Patient Injury Compensation Fund.

- 1 (a) Other than payments in connection with the ongoing 2 operation and administration of the fund, no payments may be 3 made from the fund other than in satisfaction of claims for 4 economic damages to qualified claimants who would have 5 collected economic damages but for the operation of the limits 6 on economic damages set forth in article seven-b, chapter
- 7 fifty-five of this code.

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- 8 (b) For purposes of this article, a qualified claimant must be 9 both a "patient" and a "plaintiff" as those terms are defined in article seven-b, chapter fifty-five of this code.
- 11 (c) Any qualified claimant seeking payment from the fund 12 must establish to the satisfaction of the board that he or she has 13 exhausted all reasonable means to recover from all applicable 14 liability insurance an award of economic damages, following 15 procedures prescribed by the board by legislative rule.
- 16 (d) Upon a determination by the board that a qualified 17 claimant to the fund for compensation has exhausted all 18 reasonable means to recover from all applicable liability insurance an award of economic damages arising under article 19 20 seven-b, chapter fifty-five of this code, the board shall make a payment or payments to the claimant for economic damages. 21 The economic damages must have been awarded but be 22 23 uncollectible after the exhaustion of all reasonable means of 24 recovery of applicable insurance proceeds. In no event shall the amount paid by the board in respect to any one occurrence 25 26 exceed \$1 million or the maximum amount of money that could have been collected from all applicable insurance prior to the 27 28 creation of the patient injury compensation fund under this article, regardless of the number of plaintiffs or the number of 29 defendants or, in the case of wrongful death, regardless of the 30 number of distributees. 31
  - (e) The board, in its discretion, may make payments to a qualified claimant in a lump sum amount or in the form of periodic payments. Periodic payments are to be based upon the present value of the total amount to be paid by the fund to the claimant by using federally approved qualified assignments.
  - (f) In its discretion, the board may make a payment or payments out of the fund to a qualified claimant in connection with the settlement of claims arising under article seven-b,

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- 40 chapter fifty-five of this code all according to rules promulgated
- 41 by the board. The board shall prior to making payment determine
- 42 that payment from the fund to a qualified claimant is in the best
- 43 interests of the fund. When the claimant and the board agree
- 44 upon a settlement amount, the following procedure shall be
- 45 followed:
- 46 (1) A petition shall be filed by the claimant with the court in 47 which the action is pending, or if none is pending, in a court of 48 appropriate jurisdiction, for approval of the agreement between 49 the claimant and the board.
- 50 (2) The court shall set the petition for hearing as soon as the 51 court's calendar permits. Notice of the time, date and place of 52 hearing shall be given to the claimant and to the board.
- 53 (3) The authority of the court is limited to denial of the final 54 proposed settlement or, if the court finds it to be valid, just and 55 equitable, approval of the proposed settlement.
  - (g) If and to the extent that any payment to one or more qualified claimants under this section would deplete the fund during any fiscal year, payments to and among qualified claimant's shall, at the discretion of the board, be prorated, made in periodic installments during the fiscal year according to the rules promulgated by the board or be placed in a nonpayment status until such time as sufficient moneys are received by the fund to initiate or resume payments. Any amounts due and unpaid to qualified claimants in any fiscal year shall be paid in subsequent fiscal years from available funds, but only to the extent funds are available in any fiscal year, according to the board's rules.
- 68 (h) The claimant may appeal a final decision made by the 69 board pursuant to the provisions of article five, chapter 70 twenty-nine-a of this code.

### CHAPTER 55. ACTIONS, SUITS AND ARBITRATION; JUDICIAL SALE.

#### ARTICLE 7B. MEDICAL PROFESSIONAL LIABILITY.

#### §55-7B-9. Several liability.

- 1 (a) In the trial of a medical professional liability action under
- 2 this article involving multiple defendants, the trier of fact shall
- 3 report its findings on a form provided by the court which
- 4 contains each of the possible verdicts as determined by the court.
- 5 Unless otherwise agreed by all the parties to the action, the jury
- 6 shall be instructed to answer special interrogatories, or the court,
- 7 acting without a jury, shall make findings as to:
- 8 (1) The total amount of compensatory damages recoverable
- 9 by the plaintiff;
- 10 (2) The portion of the damages that represents damages for
- 11 noneconomic loss;
- 12 (3) The portion of the damages that represents damages for
- 13 each category of economic loss;
- 14 (4) The percentage of fault, if any, attributable to each
- 15 plaintiff; and
- 16 (5) The percentage of fault, if any, attributable to each of the
- 17 defendants.
- 18 (b) The trier of fact shall, in assessing percentages of fault,
- 19 consider the fault of all alleged parties, including the fault of any
- 20 person who has settled a claim with the plaintiff arising out of
- 21 the same medical injury.
- (c) If the trier of fact renders a verdict for the plaintiff, the
- 23 court shall enter judgment of several, but not joint, liability

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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 pre-verdict 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 prejudgment interest recoverable by the plaintiff, 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. To determine the amount of judgment to be entered against each defendant when there is no preverdict settlement, the court shall first, after adjusting the verdict as provided in section nine-a of this article, multiply the total amount of damages remaining with any prejudgment interest recoverable by the plaintiff, 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 amount recoverable damages against each defendant.
- (e) 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.

56 (g) Nothing in this article is meant to preclude a health care provider from being held responsible for the portion of fault 57 attributed by the trier of fact to any person acting as the health 58 care provider's agent or servant or to preclude imposition of 59 fault otherwise imputable or attributable to the health care 60 61 provider under claims of vicarious liability. A health care 62 provider may not be held vicariously liable for the acts of a nonemployee pursuant to a theory of ostensible agency unless 63 the alleged agent does not maintain professional liability 64 insurance covering the medical injury which is the subject of the 65 66 action in the aggregate amount of at least \$1 million for each 67 occurrence.

# §55-7B-9c. Limit on liability for treatment of emergency conditions for which patient is admitted to a designated trauma center; exceptions; emergency rules.

- 1 (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 3 rendered in good faith and necessitated by an emergency condition for which the patient enters a health care facility 4 designated by the Office of Emergency Medical Services as a 5 trauma center, including health care services or assistance rendered in good faith by a licensed emergency medical services 7 authority or agency, certified emergency medical service 8 personnel or an employee of a licensed emergency medical 9 services authority or agency, the total amount of civil damages 10 recoverable may not exceed \$500,000, for each occurrence, 11 exclusive of interest computed from the date of judgment, and 12 regardless of the number of plaintiffs or the number of 13 defendants or, in the case of wrongful death, regardless of the 14 15 number of distributees.
- 16 (b) On January 1, 2016, and in each year thereafter, the 17 limitation on the total amount of civil damages contained in

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- subsection (a) of this section shall increase to account for inflation as determined by the Consumer Price Index published by the United States Department of Labor: *Provided*, That increases on the limitation of damages shall not exceed one hundred fifty percent of the amounts specified in said subsection.
  - (c) Beginning July 1, 2016, a plaintiff who, as a result of an injury suffered prior to or after said date, suffers or has suffered economic damages, as determined by the trier of fact or the agreement of the parties, in excess of the limitation of liability in section (a) of this section and for whom recovery from the Patient Injury Compensation Fund is precluded pursuant to section one, article twelve-d, chapter twenty-nine of this code may recover additional economic damages of up to \$1 million. This amount is not subject to the adjustment for inflation set forth in subsection (b) of this section.
  - (d) 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.
- 38 (e) The limitation on liability provided under subsection (a) 39 of this section does not apply to any act or omission in rendering 40 care or assistance which:
- 41 (1) Occurs after the patient's condition is stabilized and the 42 patient is capable of receiving medical treatment as a 43 nonemergency patient; or
- 44 (2) Is unrelated to the original emergency condition.
- 45 (f) In the event that: (1) A physician provides follow-up care 46 to a patient to whom the physician rendered care or assistance 47 pursuant to subsection (a) of this section; and (2) a medical

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- 48 condition arises during the course of the follow-up care that is 49 directly related to the original emergency condition for which 50 care or assistance was rendered pursuant to said subsection, there 51 is rebuttable presumption that the medical condition was the 52 result of the original emergency condition and that the limitation 53 on liability provided by said subsection applies with respect to
- 54 that medical condition.
  - (g) 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.
- (h) 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.
- 77 (i) The Office of Emergency Medical Services shall, prior to 78 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.
  - (j) 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 (i) 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.
  - (k) 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.
  - (1) 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.
- 109 (m) The Legislature hereby finds that an emergency exists 110 compelling promulgation of an emergency rule, consistent with

- 111 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
- 114 system. The Legislature therefore directs the Secretary of the
- Department of Health and Human Resources to file, on or before
- 116 July 1, 2003, emergency rules specifying the criteria for
- designation of a facility as a trauma center or provisional trauma
- 118 center in accordance with nationally accepted and recognized
- 119 standards and governing the implementation of a statewide
- 120 trauma/emergency care system. The rules governing the
- 121 statewide trauma/emergency care system shall include, but not
- 122 be limited to:
- 123 (1) System design, organizational structure and operation,
- 124 including integration with the existing emergency medical
- 125 services system;
- 126 (2) Regulation of facility designation, categorization and
- 127 credentialing, including the establishment and collection of
- 128 reasonable fees for designation; and
- 129 (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
- The second secon
- 134 rights and protections established in article three-c, chapter thirty
- 135 of this code.

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

#### ARTICLE 1. FEES AND ALLOWANCES.

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

- 1 (a) The clerk of a circuit court shall charge and collect for
- 2 services rendered by the clerk the following fees which shall be

- 3 paid in advance by the parties for whom services are to be 4 rendered:
- 5 (1) Except as provided in subdivisions (2) and (3) of this 6 subsection, for instituting any civil action under the Rules of
- 7 Civil Procedure, any statutory summary proceeding, any
- 8 extraordinary remedy, the docketing of civil appeals or removals
- 9 of civil cases from magistrate court, or any other action, cause,
- suit or proceeding, \$200, of which \$30 shall be deposited in the
- 11 Courthouse Facilities Improvement Fund created by section six,
- 12 article twenty-six, chapter twenty-nine of this code and \$45 shall
- 13 be deposited in the special revenue account designated the Fund
- 14 for Civil Legal Services for Low Income Persons, established by
- paragraph (B), subdivision (4), subsection (c), section ten of this
- article, and \$20 deposited in the special revenue account created
- 17 in section six hundred three, article twenty-six, chapter
- 18 forty-eight of this code to provide legal services for domestic
- 19 violence victims:
- 20 (2) For instituting an action for medical professional
- 21 liability, \$400, of which \$10 shall be deposited in the Courthouse
- 22 Facilities Improvement Fund created by section six, article
- 23 twenty-six, chapter twenty-nine of this code;
- 24 (3) Beginning on and after July 1, 1999, for instituting an
- 25 action for divorce, separate maintenance or annulment, \$135;
- 26 (4) For petitioning for the modification of an order involving
- 27 child custody, child visitation, child support or spousal support,
- 28 \$85;
- 29 (5) For petitioning for an expedited modification of a child support order, \$35; and
- 31 (6) For filing any pleading that includes a counterclaim,
- 32 cross claim, third-party complaint or motion to intervene, \$200,
- 33 which shall be deposited in the special revenue account

- 34 designated the Fund for Civil Legal Services for Low Income
- 35 Persons, established by paragraph (B), subdivision (4),
- 36 subsection (c), section ten of this article: Provided, That this
- 37 subdivision and the fee it imposes does not apply in family court
- 38 cases nor may more than one such fee be imposed on any one
- 39 party in any one civil action.
- 40 (b) In addition to the foregoing fees, the following fees shall
- 41 be charged and collected:
- 42 (1) For preparing an abstract of judgment, \$5;
- 43 (2) For a transcript, copy or paper made by the clerk for use
- 44 in any other court or otherwise to go out of the office, for each
- 45 page, \$1;
- 46 (3) For issuing a suggestion and serving notice to the debtor
- 47 by certified mail, \$25;
- 48 (4) For issuing an execution, \$25;
- 49 (5) For issuing or renewing a suggestee execution and
- serving notice to the debtor by certified mail, \$25;
- 51 (6) For vacation or modification of a suggestee execution,
- 52 \$1;
- 53 (7) For docketing and issuing an execution on a transcript of
- 54 judgment from magistrate court, \$3;
- 55 (8) For arranging the papers in a certified question, writ of
- 56 error, appeal or removal to any other court, \$10, of which \$5
- 57 shall be deposited in the Courthouse Facilities Improvement
- 58 Fund created by section six, article twenty-six, chapter
- 59 twenty-nine of this code;
- 60 (9) For each subpoena, on the part of either plaintiff or
- 61 defendant, to be paid by the party requesting the same, 50 cents;

- 62 (10) For additional service, plaintiff or appellant, where any 63 case remains on the docket longer than three years, for each 64 additional year or part year, \$20; and
- 65 (11) For administering funds deposited into a federally 66 insured interest-bearing account or interest-bearing instrument 67 pursuant to a court order, \$50, to be collected from the party 68 making the deposit. A fee collected pursuant to this subdivision 69 shall be paid into the general county fund.
- 70 (c) In addition to the foregoing fees, a fee for the actual 71 amount of the postage and express may be charged and collected 72 for sending decrees, orders or records that have not been ordered 73 by the court to be sent by mail or express.
- 74 (d) The clerk shall tax the following fees for services in a 75 criminal case against a defendant convicted in such court:
- 76 (1) In the case of a misdemeanor, \$85; and
- 77 (2) In the case of a felony, \$105, of which \$10 shall be 78 deposited in the Courthouse Facilities Improvement Fund 79 created by section six, article twenty-six, chapter twenty-nine of 80 this code.
- 81 (e) The clerk of a circuit court shall charge and collect a fee 82 of \$25 per bond for services rendered by the clerk for processing 83 of criminal bonds and the fee shall be paid at the time of 84 issuance by the person or entity set forth below:
- 85 (1) For cash bonds, the fee shall be paid by the person tendering cash as bond;
- 87 (2) For recognizance bonds secured by real estate, the fee 88 shall be paid by the owner of the real estate serving as surety;
- (3) For recognizance bonds secured by a surety company, the fee shall be paid by the surety company;

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- 91 (4) For ten percent recognizance bonds with surety, the fee 92 shall be paid by the person serving as surety; and
  - (5) For ten percent recognizance bonds without surety, the fee shall be paid by the person tendering ten percent of the bail amount.

96 In instances in which the total of the bond is posted by more 97 than one bond instrument, the above fee shall be collected at the 98 time of issuance of each bond instrument processed by the clerk 99 and all fees collected pursuant to this subsection shall be 100 deposited in the Courthouse Facilities Improvement Fund 101 created by section six, article twenty-six, chapter twenty-nine of 102 this code. Nothing in this subsection authorizes the clerk to 103 collect the above fee from any person for the processing of a 104 personal recognizance bond.

- (f) The clerk of a circuit court shall charge and collect a fee of \$10 for services rendered by the clerk for processing of bail piece and the fee shall be paid by the surety at the time of issuance. All fees collected pursuant to this subsection shall be deposited in the Courthouse Facilities Improvement Fund created by section six, article twenty-six, chapter twenty-nine of this code.
- (g) No clerk is required to handle or accept for disbursement any fees, cost or amounts of any other officer or party not payable into the county treasury except on written order of the court or in compliance with the provisions of law governing such fees, costs or accounts.
  - (h) Fees for removal of civil cases from magistrate court shall be collected by the magistrate court when the case is still properly before the magistrate court. The magistrate court clerk shall forward the fees collected to the circuit court clerk.

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

- 1 (a) Except for those payments to be made from amounts 2 equaling filing fees received for the institution of divorce actions 3 as prescribed in subsection (b) of this section, and except for those payments to be made from amounts equaling filing fees 4 5 received for the institution of actions for divorce, separate maintenance and annulment as prescribed in said subsection, for 6 each civil action instituted under the rules of civil procedure, any 7 8 statutory summary proceeding, any extraordinary remedy, the docketing of civil appeals or any other action, cause, suit or 9 proceeding in the circuit court the clerk of the court shall, at the 10 end of each month, pay into the funds or accounts described in 11 this subsection an amount equal to the amount set forth in this 12 subsection of every filing fee received for instituting the action 13 14 as follows:
- (1) Into the Regional Jail and Correctional Facility Authority
   Fund in the State Treasury established pursuant to the provisions
   of section ten, article twenty, chapter thirty-one of this code the
   amount of \$60;
- 19 (2) Into the Court Security Fund in the State Treasury 20 established pursuant to the provisions of section fourteen, article 21 three, chapter fifty-one of this code the amount of \$5; and
- (3) Into the Regional Jail Operations Partial Reimbursement
   Fund established pursuant to the provisions of section ten-b,
   article twenty, chapter thirty-one of this code the amount of \$20.
- 25 (b) For each action for divorce, separate maintenance or 26 annulment instituted in the circuit court, the clerk of the court 27 shall, at the end of each month, report to the Supreme Court of 28 Appeals the number of actions filed by persons unable to pay 29 and pay into the funds or accounts in this subsection an amount

- equal to the amount set forth in this subsection of every filing feereceived for instituting the divorce action as follows:
- (1) Into the Regional Jail and Correctional Facility Authority
   Fund in the State Treasury established pursuant to the provisions
   of section ten, article twenty, chapter thirty-one of this code the
   amount of \$10;
- 36 (2) Into the special revenue account of the State Treasury, 37 established pursuant to section six hundred four, article two, 38 chapter forty-eight of this code an amount of \$30;
- 39 (3) Into the Family Court Fund established under section 40 twenty-two, article two-a, chapter fifty-one of this code an 41 amount of \$70; and
- 42 (4) Into the Court Security Fund in the State Treasury, 43 established pursuant to the provisions of section fourteen, article 44 three, chapter fifty-one of this code the amount of \$5.

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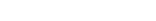
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- (c) Notwithstanding any provision of subsection (a) or (b) of this section to the contrary, the clerk of the court shall, at the end of each month, pay into the Family Court Fund established under section twenty-two, article two-a, chapter fifty-one of this code an amount equal to the amount of every fee received for petitioning for the modification of an order involving child custody, child visitation, child support or spousal support as determined by subdivision (3), subsection (a), section eleven of this article and for petitioning for an expedited modification of a child support order as provided in subdivision (4) of said subsection.
- (d) The clerk of the court from which a protective order is
   issued shall, at the end of each month, pay into the Family Court
   Fund established under section twenty-two, article two-a, chapter
   fifty-one of this code an amount equal to every fee received

pursuant to the provisions of section five hundred eight, articletwenty-seven, chapter forty-eight of this code.

- (e) Of every fee for service received in any criminal case against any respondent convicted in circuit court, the clerk of each circuit court shall, at the end of each month, pay into the Regional Jail and Correctional Facility Authority Fund in the State Treasury an amount equal to \$40, into the Court Security Fund in the State Treasury established pursuant to the provisions of section fourteen, article three, chapter fifty-one of this code an amount equal to \$5 and into the Regional Jail Operations Partial Reimbursement Fund established pursuant to the provisions of section ten-b, article twenty, chapter thirty-one of this code an amount equal to \$30.
- (f) The clerk of the circuit court shall, at the end of each month, pay into the Medical Liability Fund established under article twelve-b, chapter twenty-nine of this code, an amount equal to \$285 of every filing fee received for instituting a medical professional liability action: Provided, That effective July 1, 2016, payment shall be into the Patient Injury Compensation Fund created by the provisions of article twelve-d, chapter twenty-nine of this code.
  - (g) The clerk of the circuit court shall, at the end of each month, pay into the Courthouse Facilities Improvement Fund created by section six, article twenty-six, chapter twenty-nine of this code those amounts received by the clerk which are dedicated for deposit in the fund.
  - (h) The clerk of each circuit court shall, at the end of each month, pay into the Regional Jail Operations Partial Reimbursement Fund established in the State Treasury pursuant to the provisions of section ten-b, article twenty, chapter thirty-one of this code those amounts received by the clerk which are dedicated for deposit in the fund.



#### **CHAPTER 156**

### (H. B. 4735 - By Delegates McCuskey, Ireland, Shaffer, Kessinger, Sobonya, Summers and Azinger)

[Passed March 7, 2016; in effect ninety days from passage.] [Approved by the Governor on March 10, 2016.]

AN ACT to amend and reenact §55-7B-2 of the Code of West Virginia, 1931, as amended, relating to the definition of health care provider, and clarifying that speech-language pathologists and audiologists are two separate providers.

Be it enacted by the Legislature of West Virginia:

That §55-7B-2 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

#### ARTICLE 7B. MEDICAL PROFESSIONAL LIABILITY.

#### §55-7B-2. Definitions.

- 1 (a) "Board" means the State Board of Risk and Insurance
- 2 Management.
- 3 (b) "Collateral source" means a source of benefits or
- 4 advantages for economic loss that the claimant has received
- 5 from:
- 6 (1) Any federal or state act, public program or insurance
- 7 which provides payments for medical expenses, disability
- 8 benefits, including workers' compensation benefits, or other
- 9 similar benefits. Benefits payable under the Social Security Act
- 10 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:
- 20 (3) Any group accident, sickness or income disability 21 insurance, any casualty or property insurance, including 22 automobile and homeowners' insurance, which provides medical 23 benefits, income replacement or disability coverage, or any other 24 similar insurance benefits, except life insurance, to the extent that someone other than the insured, including the insured's 25 26 employer, has paid all or part of the premium or made an economic contribution on behalf of the plaintiff; or 27
- 28 (4) Any contractual or voluntary wage continuation plan 29 provided by an employer or otherwise or any other system 30 intended to provide wages during a period of disability.
- 31 (c) "Consumer Price Index" means the most recent 32 Consumer Price Index for All Consumers published by the 33 United States Department of Labor.
- 34 (d) "Emergency condition" means any acute traumatic injury 35 or acute medical condition which, according to standardized 36 criteria for triage, involves a significant risk of death or the 37 precipitation of significant complications or disabilities, 38 impairment of bodily functions or, with respect to a pregnant 39 woman, a significant risk to the health of the unborn child.
- 40 (e) "Health care" means:

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- 41 (1) Any act, service or treatment provided under, pursuant to 42 or in the furtherance of a physician's plan of care, a health care 43 facility's plan of care, medical diagnosis or treatment;
- 44 (2) Any act, service or treatment performed or furnished, or 45 which should have been performed or furnished, by any health care provider or person supervised by or acting under the 46 direction of a health care provider or licensed professional for, 47 to or on behalf of a patient during the patient's medical care, 48 treatment or confinement, including, but not limited to, staffing, 49 50 medical transport, custodial care or basic care, infection control, 51 positioning, hydration, nutrition and similar patient services; and
- 52 (3) The process employed by health care providers and 53 health care facilities for the appointment, employment, 54 contracting, credentialing, privileging and supervision of health 55 care providers.
- (f) "Health care facility" means any clinic, hospital, 56 pharmacy, nursing home, assisted living facility, residential care 57 community, end-stage renal disease facility, home health agency, 58 child welfare agency, group residential facility, behavioral health 59 care facility or comprehensive community mental health center, 60 intellectual/developmental disability center or program, or other 61 62 ambulatory health care facility, in and licensed, regulated or 63 certified by the State of West Virginia under state or federal law 64 and any state-operated institution or clinic providing health care 65 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, 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.
- 104 (k) "Noneconomic loss" means losses, including, but not 105 limited to, pain, suffering, mental anguish and grief.

- 106 (1) "Patient" means a natural person who receives or should 107 have received health care from a licensed health care provider 108 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.
- 112 (n) "Related entity" means any corporation, foundation, partnership, joint venture, professional limited liability company, 113 limited liability company, trust, affiliate or other entity under 114 common control or ownership, whether directly or indirectly, 115 116 partially or completely, legally, beneficially or constructively, with a health care provider or health care facility; or which owns 117 118 directly, indirectly, beneficially or constructively any part of a 119 health care provider or health care facility.
- 120 (o) "Representative" means the spouse, parent, guardian, 121 trustee, attorney or other legal agent of another.



#### **CHAPTER 157**

#### (S. B. 311 - By Senators Snyder, Romano, Gaunch, Kessler and Blair)

[Passed March 12, 2016; in effect ninety days from passage.] [Approved by the Governor on March 29, 2016.]

AN ACT to amend and reenact §31-17-8 and §31-17-17 of the Code of West Virginia, 1931, as amended, all relating to exceptions from certain requirements for certain mortgage modifications or refinancing loans; authorizing exception from certain requirements for mortgage modifications or refinancing loans made in participation with and in compliance with the federal Homes

Affordable Modification Program or any other mortgage modification or refinancing loan eligible under any government sponsored enterprise requirements or funded through any federal or state program or litigation settlement; and allowing exceptions from nullification or actions brought for certain mortgage modifications or refinancing loans made in participation with and in compliance with the federal Homes Affordable Modification Program or any other mortgage modification or refinancing loan eligible under any government sponsored enterprise requirements or funded through any federal or state program or litigation settlement.

Be it enacted by the Legislature of West Virginia:

That §31-17-8 and §31-17-17 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

### ARTICLE 17. WEST VIRGINIA RESIDENTIAL MORTGAGE LENDER, BROKER AND SERVICER ACT.

- §31-17-8. Maximum interest rate on subordinate loans; prepayment rebate; maximum points, fees and charges; overriding of federal limitations; limitations on lien documents; prohibitions on primary and subordinate mortgage loans; civil remedy.
  - 1 (a) The maximum rate of finance charges on or in
  - 2 connection with any subordinate mortgage loan may not exceed
  - 3 eighteen percent per year on the unpaid balance of the amount
  - 4 financed.
  - 5 (b) A borrower has the right to prepay his or her debt, in
  - 6 whole or in part, at any time and shall receive a rebate for any
  - 7 unearned finance charge, exclusive of any points, investigation
  - 8 fees and loan origination fees, which rebate shall be computed
  - 9 under the actuarial method.

- 10 (c) Except as provided by section one hundred nine, article three, chapter forty-six-a of this code and by subsection (g) of 11 12 this section, no additional charges may be made, nor may any 13 charge permitted by this section be assessed unless the loan is 14 made: Provided, That in the event the loan is not made, the licensee is not required to refund an appraisal fee that is 15 16 collected from a loan applicant by the licensee and paid to an 17 unrelated third-party appraiser unless the fee is required to be 18 refunded pursuant to federal law.
- 19 (d) Where loan origination fees, investigation fees or points 20 have been charged by the licensee, the charges may not be imposed again in any refinancing of that loan or any additional 21 22 loan on that property made within twenty-four months thereof, 23 unless the new loan has a reasonable, tangible net benefit to the 24 borrower considering all of the circumstances, including the 25 terms of both the new and the refinanced loans, the cost of the 26 new loan and the borrower's circumstances. The licensee shall 27 document this benefit in writing on a form prescribed by the commissioner and maintain the documentation in the loan file. 28 29 To the extent this subdivision overrides the preemption on 30 limiting points and other charges on first lien residential 31 mortgage loans contained in the United States Depository 32 Institutions Deregulation and Monetary Control Act of 1980, 12 33 U. S. C. §1735f-7a, the state law limitations contained in this 34 section apply.
  - (e) Notwithstanding other provisions of this section, a delinquent charge or late charge may be charged on any installment made ten or more days after the regularly scheduled due date in accordance with section one hundred twelve or one hundred thirteen, article three, chapter forty-six-a of this code, whichever is applicable. The charge may be made only once on any one installment during the term of the primary or subordinate mortgage loan.

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43 (f) Hazard insurance may be required by the lender. The 44 charges for any insurance shall not exceed the standard rate approved by the Insurance Commissioner for the insurance. 45 46 Proof of all insurance in connection with primary and subordinate mortgage loans subject to this article shall be 47 48 furnished to the borrower within thirty days from and after the 49 date of application therefor by the borrower.

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- (g) Except for fees for services provided by unrelated third parties for appraisals, inspections, title searches and credit reports, no application fee is allowed whether or not the 52 53 mortgage loan is consummated; however, the borrower may be required to reimburse the licensee for actual expenses incurred by the licensee in a purchase money transaction after acceptance and approval of a mortgage loan proposal made in accordance 56 with the provisions of this article which is not consummated 57 because of:
  - (1) The borrower's willful failure to close the loan; or
- 60 (2) The borrower's false or fraudulent representation of a 61 material fact which prevents closing of the loan as proposed.
- 62 (h) A licensee may not make, offer to make, accept or offer 63 to accept any primary or subordinate mortgage loan except on 64 the terms and conditions authorized in this article.
  - (i) A licensee may not induce or permit any borrower to become obligated to the licensee under this article, directly or contingently, or both, under more than one subordinate mortgage loan at the same time for the purpose or with the result of obtaining greater charges than would otherwise be permitted under the provisions of this article.
- 71 (i) An instrument evidencing or securing a primary or 72 subordinate mortgage loan may not contain:

- 73 (1) A power of attorney to confess judgment;
- 74 (2) A provision whereby the borrower waives any rights accruing to him or her under the provisions of this article;
- 76 (3) A requirement that more than one installment be payable in any one installment period, or that the amount of any 77 78 installment be greater or less than that of any other installment, 79 except for the final installment which may be in a lesser amount, 80 or unless the loan is structured as a revolving line of credit having no set final payment date: *Provided*, That this prohibition 81 does not apply to any mortgage modification or refinancing loan 82 made in participation with and in compliance with the federal 83 Making Homes Affordable program, or any other mortgage 84 modification or refinancing loan eligible under any government 85 sponsored enterprise requirements or funded through any federal 86 or state program or litigation settlement; 87
- 88 (4) An assignment of or order for the payment of any salary, 89 wages, commissions or other compensation for services, or any 90 part thereof, earned or to be earned;
  - (5) A requirement for compulsory arbitration which does not comply with federal law; or

- 93 (6) Blank or blanks to be filled in after the consummation of 94 the loan. A borrower must be given a copy of every signed 95 document executed by the borrower at the time of closing.
- 96 (k) A licensee may not charge a borrower or receive from a 97 borrower money or other valuable consideration 98 compensation before completing performance of all services the licensee has agreed to perform for the borrower unless the 99 100 licensee also registers and complies with all requirements set 101 forth for credit service organizations in article six-c, chapter forty-six-a of this code, including all additional bonding 102 103 requirements as may be established therein.

- 104 (1) A licensee may not make or broker revolving loans 105 secured by a primary or subordinate mortgage lien for the retail 106 purchase of consumer goods and services by use of a lender 107 credit card.
- 108 (m) In making any primary or subordinate mortgage loan, a 109 licensee may not, and a primary or subordinate mortgage 110 lending transaction may not, contain terms which:
- 111 (1) Collect a fee not disclosed to the borrower; collect any 112 attorney fee at closing in excess of the fee that has been or will 113 be remitted to the attorney; collect a fee for a product or service 114 where the product or service is not actually provided; 115 misrepresent the amount charged by or paid to a third party for 116 a product or service; or collect duplicate fee or points to act as 117 both broker and lender for the same mortgage loan, however, fees and points may be divided between the broker and the 118 lender as they agree, but may not exceed the total charges 119 120 otherwise permitted under this article: Provided, That the fact of 121 any fee, point or compensation is disclosed to the borrower 122 consistent with the solicitation representation made to the 123 borrower;
  - (2) Compensate, whether directly or indirectly, coerce or intimidate an appraiser for the purpose of influencing the independent judgment of the appraiser with respect to the value of real estate that is to be covered by a deed of trust or is being offered as security according to an application for a primary or subordinate mortgage loan;

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(3) Make or assist in making any primary or subordinate mortgage loan with the intent that the loan will not be repaid and that the lender will obtain title to the property through foreclosure: *Provided*, That this subdivision shall not apply to reverse mortgages obtained under the provisions of article twenty-four, chapter forty-seven of this code;

- 136 (4) Require the borrower to pay, in addition to any periodic 137 interest, combined fees, compensation or points of any kind to the lender and broker to arrange, originate, evaluate, maintain or 138 139 service a loan secured by any encumbrance on residential 140 property that exceed, in the aggregate, six percent of the loan 141 amount financed, including any yield spread premium paid by 142 the lender to the broker: *Provided*, That reasonable closing costs, 143 as defined in section one hundred two, article one, chapter 144 forty-six-a of this code, payable to unrelated third parties may 145 not be included within this limitation: *Provided*, *however*. That 146 no yield spread premium is permitted for any loan for which the 147 annual percentage rate exceeds eighteen percent per year on the unpaid balance of the amount financed: Provided further, That 148 149 if no yield spread premium is charged, the aggregate of fees, compensation or points can be no greater than five percent of the 150 151 loan amount financed. The financing of the fees and points are permissible and, where included as part of the finance charge, 152 153 does not constitute charging interest on interest. To the extent 154 that this section overrides the preemption on limiting points and 155 other charges on first lien residential mortgage loans contained 156 in the United States Depository Institutions Deregulation and Monetary Control Act of 1980, 12 U. S. C. §1735f-7a, the state 157 158 law limitations contained in this section apply;
- 159 (5) Secure a primary or subordinate mortgage loan by any 160 security interest in personal property unless the personal property is affixed to the residential dwelling or real estate;

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- (6) Allow or require a primary or subordinate mortgage loan to be accelerated because of a decrease in the market value of the residential dwelling that is securing the loan:
- (7) Require terms of repayment which do not result in continuous monthly reduction of the original principal amount of the loan: *Provided*, That the provisions of this subdivision do not apply to reverse mortgage loans obtained under article twenty-four, chapter forty-seven of this code, home equity,

- 170 open-end lines of credit, bridge loans used in connection with the
- 171 purchase or construction of a new residential dwelling or
- 172 commercial loans for multiple residential purchases;
- 173 (8) Secure a primary or subordinate mortgage loan in a 174 principal amount that, when added to the aggregate total of the 175 outstanding principal balances of all other primary or 176 subordinate mortgage loans secured by the same property, 177 exceeds the fair market value of the property on the date that the 178 latest mortgage loan is made. For purposes of this paragraph, a 179 broker or lender may rely upon a bona fide written appraisal of the property made by an independent third-party appraiser, duly 180 licensed or certified by the West Virginia Real Estate Appraiser 181 Licensing and Certification Board and prepared in compliance 182 183 with the uniform standards of professional appraisal practice: 184 *Provided*, That this prohibition does not apply to any mortgage modification or refinancing loan made in participation with and 185 186 in compliance with the federal Making Homes Affordable 187 program, or any other mortgage modification or refinancing loan eligible under any 188 government sponsored enterprise
- 191 (9) Advise or recommend that the consumer not make timely 192 payments on an existing loan preceding loan closure of a 193 refinancing transaction; or

requirements or funded through any federal or state program or

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litigation settlement;

194 (10) Knowingly violate any provision of any other 195 applicable state or federal law regulating primary or subordinate 196 mortgage loans, including, without limitation, chapter forty-six-a 197 of this code.

### §31-17-17. Loans made in violation of this article void; agreements to waive article void.

1 (a) If any primary or subordinate mortgage loan is made in 2 willful violation of the provisions of this article, except as a

- 3 result of a bona fide error, such loan may be canceled by a court
- 4 of competent jurisdiction: *Provided*, That it may not be
- 5 construed to have been a willful violation of the provisions of
- 6 this article if the violation is due to a violation of subdivision (3),
- 7 subsection (j) or subdivision (8), subsection (m), section eight of
- 8 this article for a mortgage modification or refinancing loan made
- 9 after May 1, 2009, in participation with and in compliance with
- 10 the federal Making Homes Affordable program, or any other
- 11 mortgage modification or refinancing loan eligible under any
- 12 government sponsored enterprise requirements or funded
- 13 through any federal or state program or litigation settlement.
- (b) Any agreement whereby the borrower waives the benefits
   of this article shall be deemed to be against public policy and
   void.
- 17 (c) Any residential mortgage loan transaction in violation of 18 this article shall be subject to an action, which may be brought 19 in a circuit court having jurisdiction, by the borrower seeking damages, reasonable attorneys fees and costs: Provided, That 20 this action may not be brought if the violation is due to a 21 violation of subdivision (3), subsection (j) or subdivision (8), 22 23 subsection (m), section eight of this article for a mortgage 24 modification or refinancing loan made after May 1, 2009, in participation with and in compliance with the federal Making 25 Homes Affordable program, or any other mortgage modification 26 or refinancing loan eligible under any government sponsored 27 enterprise requirements or funded through any federal or state 28 29 program or litigation settlement.
  - (d) A licensee who, when acting in good faith in a lending transaction, inadvertently and without intention, violates any provision of this article or fails to comply with any provision of this article, will be excused from such violation if within thirty days of becoming aware of such violation, or being notified of such violation, and prior to the institution of any civil action or

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- 36 criminal proceeding against the licensee, the licensee notifies the
- 37 borrower of the violation, makes full restitution of any
- 38 overcharges, and makes all other adjustments as are necessary to
- 39 make the lending transaction comply with this article.



#### **CHAPTER 158**

(Com. Sub. for S. B. 686 - By Senators Maynard, Carmichael, Gaunch, Karnes, Takubo, Walters and Blair)

[Passed March 12, 2016; in effect ninety days from passage.] [Approved by the Governor on March 30, 2016.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §7-1-3qq; and to amend said code by adding thereto a new section, designated §8-12-5g, all relating to authorizing local governing authorities to hold sanctioned motor vehicle races on public roads or municipal streets or airports under their jurisdiction; defining terms; authorizing regional airport authorities to hold sanctioned motor vehicle races on airports under their jurisdiction; requiring issuance of permit in relation to racing event; authorizing charging reasonable fee for issuance of a permit; setting forth conditions upon which a permit may be issued; authorizing local governing authorities to modify or exempt traffic laws to facilitate a racing event; requiring local governing authorities to provide at least sixty days' written notice to the West Virginia Department of Transportation - Traffic Engineering Division of any racing permit issued; requiring written notice to identify plans for a racing event; declaring that a racing event is for public purposes; providing immunity from damages; and declaring that an authorized racing event is not a nuisance or subject to speed restrictions.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §7-1-3qq; and that said code be amended by adding thereto a new section, designated §8-12-5g, all to read as follows:

#### CHAPTER 7. COUNTY COMMISSIONS AND OFFICERS.

#### ARTICLE 1. COUNTY COMMISSIONS GENERALLY.

## §7-1-3qq. Authorizing county commissions to hold motor vehicle racing events on public roads, municipal streets or airports.

- 1 (a) In addition to all other powers and duties not conferred
- 2 by law upon county commissions, such commissions are
- 3 empowered to organize and hold motor vehicle racing events on
- 4 roads and airports in counties in this state; to require a permit; to
- 5 provide for the issuance of a permit; to prescribe certain
- 6 requirements for obtaining a permit; to provide for certain
- 7 powers and duties of the permit holder and the county in relation
- 8 to a racing event; and to declare that such a racing event is not a
- 9 nuisance or subject to speed restrictions.

#### 10 (b) As used in this section:

- 11 (1) "Person" shall mean an individual, sole proprietorship,
- 12 partnership, corporation or other legal entity;
- 13 (2) "Public road" shall mean a road or open country highway
- 14 under the control of the county court or the governing body of a
- 15 municipality which is not classified in the state road system;
- 16 (3) "Municipal street" shall mean an urban or suburban
- 17 street under the control of the governing body of a municipality
- 18 which is not classified in the state road system;

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- 19 (4) "Motor vehicle" shall mean and include any mechanical 20 device for the conveyance, drawing or other transportation of 21 persons or property upon the public roads, whether operated on 22 wheels or runners or by other means, except those propelled or 23 drawn by human power or those used exclusively upon rails; and
  - (5) "Racing event" shall mean a motor vehicle race which is sanctioned by a nationally or internationally recognized racing organization and includes preparations, practices and qualifications for the race.
  - (c) A county commission may provide for the issuance of a permit allowing the person to whom the permit is issued to conduct a racing event on a public road or municipal street or at airports located within its jurisdiction. A person shall not conduct a racing event unless the person has been issued a permit under this section: *Provided*, That the decision to issue a permit for any airport formed pursuant to chapter eight, article twenty-nine of this code shall be made by the governing body of the Regional Airport Authority.
- (d) The county commission may charge a reasonable fee forthe issuance of a permit under this section.
- 39 (e) Before a county commission issues a racing event permit 40 under subsections (c) and (d) of this section, the county 41 commission shall determine all of the following:
- 42 (1) That the person applying for the permit has adequate 43 insurance to pay any damages incurred because of loss or injury 44 to any person or property;
- 45 (2) That adequate security, emergency services and 46 necessary facilities will be provided during the racing event; and
- 47 (3) That the person applying for the permit has demonstrated 48 the ability to protect the health, safety and welfare of the citizens

- of the county, the race participants and those attending the racing event.
- 51 (f) For purposes of a racing event held under this section, the
- 52 county commission may do all of the following:
- 53 (1) Provide for the temporary closing or obstructing of roads,
- 54 streets, alleys, sidewalks and airport runways;
- 55 (2) Reroute pedestrian and vehicular traffic; and
- 56 (3) Waive ordinances and traffic regulations including speed
- 57 limits and traffic control devices.
- 58 (g) No less than sixty days prior to a scheduled racing event,
- 59 a county commission shall provide written notice to the West
- 60 Virginia Department of Transportation Traffic Engineering
- 61 Division of any racing event permit issued under this section.
- 62 The written notice shall identify the following:
- (1) The time, date and location of the event;
- 64 (2) The nationally or internationally recognized racing organization sponsoring the event;
- os organization sponsoring the event,
- 66 (3) A road closure plan that specifies the public roads,
- 67 municipal streets, alleys, sidewalks and airport runways that will
- 68 be temporarily closed or obstructed during the event;
- 69 (4) A traffic control plan that specifies the on-site traffic
- 70 controls and detour route to be used during the event; and
- 71 (5) The names and phone numbers of emergency and
- 72 law-enforcement contacts overseeing the event.
- 73 (h) A racing event held under this section and any action
- 74 taken under subsections (e) and (f) of this section shall be

- 75 considered as being for public purposes, including the promotion
- 76 of commerce and tourism for the benefit of the citizens of the
- 77 county and state.
- 78 (i) A county that issues a permit under this section shall not
- 79 be liable for any damages that may result from the racing event
- 80 because of loss or injury to any person or property. After a
- 81 permit is issued, the state shall not be liable for any damages that
- 82 may result from the racing event because of loss or injury to any
- 83 person or property.
- 84 (j) The provisions related to road obstructions and public
- 85 nuisance set forth in section one, article sixteen, chapter
- 86 seventeen of this code do not apply to an authorized racing event
- 87 held under this section.
- 88 (k) The provisions of article six, chapter seventeen-c of this
- 89 code shall not apply to an authorized racing event held under this
- 90 section.

#### CHAPTER 8. MUNICIPAL CORPORATIONS.

# ARTICLE 12. GENERAL AND SPECIFIC POWERS, DUTIES AND ALLIED RELATIONS OF MUNICIPALITIES, GOVERNING BODIES, MUNICIPAL OFFICES AND EMPLOYEES; SUITS AGAINST MUNICIPALITIES.

## §8-12-5g. Authorizing municipalities to hold motor vehicle racing events on public roads, municipal streets or runways.

- 1 (a) In addition to all other powers and duties not conferred
- 2 by law upon municipalities, such municipalities are empowered
- 3 to organize and hold motor vehicle racing events on roads and
- 4 airports in this state under their jurisdiction; to require a permit;
- 5 to provide for the issuance of a permit; to prescribe certain

- requirements for obtaining a permit; to provide for certain
- 7 powers and duties of the permit holder and the municipality in
- relation to a racing event; and to declare that such a racing event
- is not a nuisance or prohibited street racing.
- 10 (b) As used in this section:
- 11 (1) "Person" shall mean an individual, sole proprietorship,
- 12 partnership, corporation or other legal entity;
- 13 (2) "Public road" shall mean a road or open country highway
- 14 under the control of the county court or the governing body of a
- 15 municipality which is not classified in the state road system;
- 16 (3) "Municipal street" shall mean an urban or suburban
- 17 street under the control of the governing body of a municipality
- 18 which is not classified in the state road system;
- 19 (4) "Motor vehicle" shall mean and include any mechanical
- 20 device for the conveyance, drawing or other transportation of
- 21 persons or property upon the public roads, whether operated on
- 22 wheels or runners or by other means, except those propelled or
- drawn by human power or those used exclusively upon rails; and 23
- 24 (5) "Racing event" shall mean a motor vehicle race which is
- 25 sanctioned by a nationally or internationally recognized racing
- 26 organization and includes preparations, practices and
- qualifications for the race. 27
- 28 (c) A municipality may provide for the issuance of a permit
- 29 allowing the person to whom the permit is issued to conduct a
- 30 racing event on a public road, municipal street or airport located
- within its jurisdiction. A person shall not conduct a racing event 31
- 32 unless the person has been issued a permit under this section.
- 33 (d) The municipality may charge a reasonable fee for the
- issuance of a permit under this section. 34

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35	(e) Before a municipality issues a racing event permit under
36	subsections (c) and (d) of this section, the municipality shall
37	determine all of the following:
38	(1) That the person applying for the permit has adequate
39	insurance to pay any damages incurred because of loss or injury
40	to any person or property;
41	(2) That adequate security, emergency services and
42	necessary facilities will be provided during the racing event; and
43	(3) That the person applying for the permit has demonstrated
44	the ability to protect the health, safety and welfare of the citizens
45	of the municipality, the race participants and those attending the
46	racing event.
47	(f) For purposes of a racing event held under this section, the
48	municipality may do all of the following:
49	(1) Provide for the temporary closing or obstructing of roads,
50	streets, alleys, sidewalks and airport runways;
51	(2) Reroute pedestrian and vehicular traffic; and
52	(3) Waive ordinances and traffic regulations including speed
53	limits and traffic control devices.
54	(g) No less than sixty days prior to a scheduled racing event,
55	a municipality shall provide written notice to the West Virginia
56	Department of Transportation - Traffic Engineering Division of
57	any racing event permit issued under this section. The written
58	notice shall identify the following:
59	(1) The time, date and location of the event;

(2) The nationally or internationally recognized racing

organization sponsoring the event;

- 62 (3) A road closure plan that specifies the public roads, 63 municipal streets, alleys, sidewalks and airport runways that will
- 64 be temporarily closed or obstructed during the event;
- 65 (4) A traffic control plan that specifies the on-site traffic 66 controls and detour route to be used during the event; and
- 67 (5) The names and phone numbers of emergency and law-enforcement contacts overseeing the event.
- 69 (h) A racing event held under this section and any action 70 taken under subsections (e) and (f) of this section shall be 71 considered as being for public purposes, including the promotion 72 of commerce and tourism for the benefit of the citizens of the 73 municipality and state.
- (i) A municipality that issues a permit under this section shall not be liable for any damages that may result from the racing event because of loss or injury to any person or property. After a permit is issued, the state shall not be liable for any damages that may result from the racing event because of loss or injury to any person or property.
- (j) The provisions related to road obstructions and public nuisance set forth in section one, article sixteen, chapter seventeen of this code do not apply to an authorized racing event held under this section.
- (k) The provisions of article six, chapter seventeen-c of this code shall not apply to an authorized racing event held under this section.

#### **CHAPTER 159**

(Com. Sub. for H. B. 4228 - By Delegates Cowles, B. White, Shott, Espinosa, E. Nelson, Howell, Upson, Trecost, Reynolds, Gearheart and Hamrick)

[Passed March 5, 2016; in effect July 1, 2016.] [Approved by the Governor on March 15, 2016.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article designated §17-29-1, §17-29-2, \$17-29-3, \$17-29-4, \$17-29-5, \$17-29-6, \$17-29-7, \$17-29-8, \$17-29-9, \$17-29-10, \$17-29-11, \$17-29-12, \$17-29-13, §17-29-14, §17-29-15, §17-29-16, §17-29-17, §17-29-18 and §17-29-19, all relating to transportation network companies; providing definitions; declaring not common carriers, taxi cabs or for-hire vehicle services; requiring permits from the Division of Motor Vehicles for TNCs to operate in the state; outlining requirements for such permits including payment of an annual permit fee; requiring an agent for service of process; providing for fare collection, identification of TNC vehicles and drivers, and electronic receipts; requiring financial responsibility and disclosure thereof; providing for different level of financial responsibility based on circumstances; requiring disclosures of financial responsibility to TNC drivers; allowing automobile insurers to exclude certain coverages; defining the relationship between drivers and transportation network companies; providing that workers compensation coverage not required under certain circumstances; requiring transportation network companies to adopt a policy of zero tolerance of alcohol or drug use for drivers; requiring for certain record keeping practices; providing requirements for drivers; requiring background checks and other requirements before drives may accept trip requests for TNCs;

establishing criteria which disqualify persons from acting as TNC drivers; requiring vehicle inspections; requiring transportation network companies to adopt policies prohibiting solicitation or acceptance of cash payments and a policy of nondiscrimination; prohibiting additional charges for providing services to persons with physical disabilities; requiring customer records to be kept; prescribing certain tax requirements, limitations and exemptions; and prohibiting certain political subdivisions from imposition of licensure or other requirements or fees.

#### 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 \$17-29-1, \$17-29-2, \$17-29-3, \$17-29-4, \$17-29-5, \$17-29-6, \$17-29-7, \$17-29-8, \$17-29-9, \$17-29-10, \$17-29-11, \$17-29-12, \$17-29-13, \$17-29-14, \$17-29-15, \$17-29-16, \$17-29-17, \$17-29-18 and \$17-29-19, all to read as follows:

#### ARTICLE 29. TRANSPORTATION NETWORK COMPANIES.

#### §17-29-1. Definitions.

- 1 As used in this article:
- 2 (1) "Personal vehicle" means a vehicle that is:
- 3 (a) Used by a transportation network company driver to
- 4 provide a prearranged ride;
- 5 (b) Owned, leased or otherwise authorized for use by the
- 6 transportation network company driver; and
- 7 (c) Not a taxicab or for-hire vehicle.
- 8 (2) "Digital network" means any online-enabled application,
- 9 software, website or system offered or utilized by a
- 10 transportation network company that enables the prearrangement
- 11 of rides with transportation network company drivers.

- (3) "Transportation network company" means a corporation, partnership, sole proprietorship, or other entity that is licensed pursuant to this article and operating in West Virginia that uses a digital network to connect transportation network company riders to transportation network company drivers who provide prearranged rides. A transportation network company does not control, direct or manage the personal vehicles or transportation network company drivers that connect to its digital network, except where agreed to by written contract.
- 21 (4) "Transportation network company driver" or "driver" 22 means an individual who:
  - (A) Receives connections to potential passengers and related services from a transportation network company in exchange for payment of a fee to the transportation network company; and
  - (B) Uses a personal vehicle to offer or provide a prearranged ride to transportation network company riders upon connection through a digital network controlled by a transportation network company in return for compensation or payment of a fee.
  - (5) "Transportation network company rider" or "rider" means an individual or persons who use a transportation network company's digital network to connect with a transportation network company driver who provides prearranged rides to the rider in the driver's personal vehicle between points chosen by the rider.
  - (6) "Prearranged ride" means the provision of transportation by a driver to a transportation network company rider, beginning when a driver accepts a transportation network company rider's request for a ride through a digital network controlled by a transportation network company, continuing while the driver transports the requesting rider, and ending when the last requesting rider departs from the personal vehicle. A prearranged ride does not include:

- 44 (A) Transportation provided using a taxi, limousine or other 45 for-hire vehicle; or
- 46 (B) Transportation provided under a ridesharing
- 47 arrangement, as defined in section one, article twenty-two,
- 48 chapter seventeen-c of this code or any other type of
- 49 arrangement or service in which the driver receives a fee that
- 50 does not exceed the driver's costs associated with providing the
- 51 ride.

#### §17-29-2. Not other carriers.

- 1 Transportation network companies or transportation
- 2 network company drivers are not common carriers by motor
- 3 vehicle or contract carriers by motor vehicle, or motor carriers,
- 4 as defined in section two, article one, chapter twenty-four-a of
- 5 this code, nor do they provide taxicab or for-hire vehicle
- 6 services.

#### $\S 17\text{-}29\text{-}3$ . Transportation Network Company permit required.

- 1 (a) A person may not operate a transportation network
- 2 company in West Virginia without first having obtained a permit
- 3 from the Division of Motor Vehicles.
- 4 (b) The Division of Motor Vehicles shall issue a permit to
- 5 each applicant that:
- 6 (1) Provides proof of an agent for service of process in the
- 7 State of West Virginia to the Division of Motor Vehicles in
- 8 accordance with section four of this article;
- 9 (2) Provides a copy of a certificate of insurance maintained
- 10 by the transportation network company in accordance with
- 11 section eight of this article;
- 12 (3) Provides a copy of the transportation network company's
- 13 zero tolerance for drug or alcohol use policy to the Division of
- 14 Motor Vehicles in accordance with section twelve of this article;

- (4) Provides a copy of the transportation network company's
   policy prohibiting solicitation or acceptance of street hails to the
   Division of Motor Vehicles in accordance with section fifteen of
- 18 this article:
- (5) Provides a copy of the transportation network company's
   policy prohibiting solicitation or acceptance of cash payments
   from riders to the Division of Motor Vehicles in accordance with
- 22 section sixteen of this article;
- 23 (6) Provides a copy of the transportation network company's 24 policy of nondiscrimination with respect to riders and potential 25 riders to the Division of Motor Vehicles in accordance with 26 section seventeen of this article; and
- 27 (7) Has paid an annual permit fee of \$1,000 to the Division 28 of Motor Vehicles.
- (c) Any fees collected under the provisions of this article
   shall be deposited into the Motor Vehicle Fees Fund established
   in accordance with section twenty-one, article two, chapter
   seventeen-a of this code. The Division of Motor Vehicles shall
   use the fees collected for the payment of the costs and expenses
   necessary for the administration of this article.

#### §17-29-4. Agent.

- 1 A transportation network company shall maintain an agent
- 2 for service of process in this state.

#### §17-29-5. Fare collected for services.

- On behalf of a transportation network company driver, a
- 2 transportation network company may charge a fare for the
- 3 services provided to riders: *Provided*, That if a fare is collected
- 4 from a rider, the transportation network company shall disclose
- 5 to the rider the fare calculation method on its website or within

- 6 the software application service. The transportation network
- 7 company shall also provide riders with the applicable rates being
- 8 charged and the option to receive an estimated fare before the
- 9 rider enters the transportation network company driver's vehicle.

### §17-29-6. Identification of transportation network company vehicles and drivers.

- 1 The transportation network company's software application
- 2 or website shall display a picture of the transportation network
- 3 company driver and the license plate number of the motor
- 4 vehicle utilized for providing the prearranged ride before the
- 5 rider enters the transportation network company driver's vehicle.

#### §17-29-7. Electronic receipt.

- 1 Within a reasonable period of time following the completion
- 2 of a prearranged ride, a transportation network company shall
- 3 transmit an electronic receipt to the rider on behalf of the
- 4 transportation network company driver that lists:
- 5 (a) The origin and destination of the prearranged ride;
- 6 (b) The total time and distance of the prearranged ride; and
- 7 (c) An itemization of the total fare paid, if any.

## §17-29-8. Financial responsibility of transportation network companies.

- 1 (a) On or before July 1, 2016, and thereafter, a transportation
- 2 network company driver or transportation network company on
- 3 the driver's behalf shall maintain primary automobile insurance
- 4 that recognizes that the driver is a transportation network
- 5 company driver or otherwise uses a vehicle to transport
- 6 passengers for compensation and covers the driver:

33 prearranged ride:

7 8 9	(1) While the transportation network company driver is logged on to the transportation network company's digital network; or
10	(2) While the driver is engaged in a prearranged ride.
11 12 13 14 15	(b) The following automobile insurance requirements apply while a participating transportation network company driver is logged on to the transportation network company's digital network and is available to receive transportation requests, but is not engaged in a prearranged ride:
16 17 18 19	(1) Primary automobile liability insurance in the amount of at least \$50,000 for death and bodily injury per person, \$100,000 for death and bodily injury per incident and \$25,000 for property damage; and
20 21 22	(2) Uninsured and underinsured motorists' coverage as required in section thirty-one, article six, chapter thirty-three of this code.
23 24	(3) The coverage requirements of this subsection may be satisfied by any of the following:
25 26	(A) Automobile insurance maintained by the transportation network company driver; or
27 28	(B) Automobile insurance maintained by the transportation network company; or
29 30	(C) Any combination of paragraphs (A) and (B) of this subdivision.
31	(c) The following automobile insurance requirements apply while a transportation network company driver is engaged in a

- 34 (1) Primary automobile liability insurance that provides at 35 least \$1,000,000 for death, bodily injury and property damage;
- 36 and
- 37 (2) Uninsured and underinsured motorists' coverage as 38 required in section thirty-one, article six, chapter thirty-three of 39 this code.
- 40 (3) The coverage requirements of this subsection (c) may be 41 satisfied by any of the following:
- 42 (A) Automobile insurance maintained by the transportation 43 network company driver; or
- 44 (B) Automobile insurance maintained by the transportation 45 network company; or
- 46 (C) Any combination of paragraphs (A) and (B) of this subdivision.
- 48 (d) If insurance maintained by a driver in subsection (b) or
- 49 (c) has lapsed or does not provide the required coverage,
- 50 insurance maintained by a transportation network company shall
- 51 provide the coverage required under this section beginning with
- 52 the first dollar of a claim and have the duty to defend such claim.
- 53 (e) Coverage under an automobile insurance policy
- 54 maintained by the transportation network company shall not be
- 55 dependent on a personal automobile insurer first denying a claim
- 56 nor shall a personal automobile insurance policy be required to
- 57 first deny a claim.
- (f) Insurance required under this section may be placed with
- 59 an insurer authorized to do business in this state or with a surplus
- 60 lines insurer eligible under section five, article twelve-c, chapter
- 61 thirty-three of this code that has a credit rating of no less than
- 62 "A-" from A.M. Best or "A" from Demotech or similar rating

- 63 from another rating agency recognized by the Insurance 64 Commissioner.
- 65 (g) Insurance satisfying the requirements of this section shall be deemed to satisfy the financial responsibility requirement for 66 a motor vehicle under article four, chapter seventeen-d of this 67 68 code.
- 69 (h) A transportation network company driver shall carry proof of coverage satisfying subsections (b) and (c), section 70 71 eight of this article with him or her at all times during his or her 72 use of a personal vehicle in connection with a transportation 73 network company's digital network. In the event of an accident, a transportation network company driver shall provide this 74 75 insurance coverage information to the directly interested parties, automobile insurers and investigating police officers, upon 76 section four, article two-a, chapter 77 request pursuant to 78 seventeen-d of this code. Upon such request, a transportation 79 network company driver shall also disclose to directly interested parties, automobile insurers, and investigating police officers, 80 81 whether he or she was logged on to the transportation network 82 company's digital network or on a prearranged ride at the time 83 of an accident.

#### §17-29-9. Disclosures.

- 1 The transportation network company shall disclose in 2 writing to transportation network company drivers the following 3
- before they are allowed to accept a request for a prearranged ride
- on the transportation network company's digital network: 4
- 5 (1) The insurance coverage, including the types of coverage and the limits for each coverage that the transportation network 6 7 company provides while the transportation network company
- 8 driver uses a personal vehicle in connection with a transportation
- 9 network company's digital network; and

- 10 (2) That the transportation network company driver's own
- 11 automobile insurance policy might not provide any coverage
- 12 while the driver is logged on to the transportation network
- 13 company's digital network and is available to receive
- 14 transportation requests or is engaged in a prearranged ride,
- 15 depending on its terms.

#### §17-29-10. Automobile insurance provisions.

- 1 (a) Insurers that write automobile insurance in this state may
- 2 exclude any and all coverage afforded under the policy issued to
- 3 an owner or operator of a personal vehicle for any loss or injury
- 4 that occurs while a driver is logged on to a transportation
- 5 network company's digital network or while a driver provides
- 6 a prearranged ride. This right to exclude all coverage may apply
- 7 to any coverage included in an automobile insurance policy
- 8 including, but not limited to:
- 9 (1) Liability coverage for bodily injury and property
- 10 damage;
- 11 (2) Uninsured and underinsured motorist coverage;
- 12 (3) Medical payments coverage;
- 13 (4) Comprehensive physical damage coverage; and
- 14 (5) Collision physical damage coverage.
- Such exclusions apply notwithstanding any requirement
- 16 under article four, chapter seventeen-d of this code. Nothing in
- 17 this section implies or requires that a personal automobile
- 18 insurance policy provide coverage while the driver is logged on
- 19 to the transportation network company's digital network, while
- 20 the driver is engaged in a prearranged ride or while the driver
- 21 otherwise uses a vehicle to transport passengers for
- 22 compensation. Nothing shall be deemed to preclude an insurer

- 23 from providing coverage for the transportation network company
- 24 driver's vehicle, if it so chooses to do so by contract or
- 25 endorsement.
- 26 (b) Automobile insurers that exclude the coverage described 27 in section eight of this article have no duty to defend or indemnify any claim expressly excluded thereunder. Nothing in 28 29 this article invalidates or limits an exclusion contained in a 30 policy, including any policy in use or approved for use in this 31 state prior to the enactment of this article that excludes coverage 32 for vehicles used to carry persons or property for a charge or available for hire by the public. An automobile insurer that 33 34 defends or indemnifies a claim against a driver that is excluded 35 under the terms of its policy shall have a right of contribution against other insurers that provide automobile insurance to the 36 37 same driver in satisfaction of the coverage requirements of 38 section eight of this article at the time of loss.
- 39 (c) In a claims coverage investigation, transportation 40 network companies and any insurer providing coverage under section eight of this article shall cooperate to facilitate the 41 42 exchange of relevant information with directly involved parties and any insurer of the transportation network company driver if 43 applicable, including the precise times that a transportation 44 45 network company driver logged on and off of the transportation 46 network company's digital network in the twelve hour period immediately preceding and in the twelve hour period 47 immediately following the accident and disclose to one another 48 49 a clear description of the coverage, exclusions and limits provided under any automobile insurance maintained under 50 section eight of this article. 51

#### §17-29-11. Limitation on transportation network companies.

- 1 (a) Drivers are independent contractors and not employees
- 2 of the transportation network company if all of the following
- 3 conditions are met:

- 4 (1) The transportation network company does not prescribe 5 specific hours during which a transportation network company 6 driver must be logged into the transportation network company's 7 digital network;
- 8 (2) The transportation network company imposes no 9 restrictions on the transportation network company driver's 10 ability to utilize digital networks from other transportation 11 network companies;
- 12 (3) The transportation network company does not assign a 13 transportation network company driver a particular territory in 14 which to operate;
- 15 (4) The transportation network company does not restrict a 16 transportation network company driver from engaging in any 17 other occupation or business; and
- 18 (5) The transportation network company and transportation 19 network company driver agree in writing that the driver is an 20 independent contractor of the transportation network company.
- 21 (b) A transportation network company operating under this 22 article is not required to provide workers' compensation 23 coverage to a transportation network company driver that is 24 classified as an independent contractor pursuant to this section.

#### §17-29-12. Zero tolerance for drug or alcohol use.

(a) The transportation network company shall implement a 1 zero tolerance policy regarding a transportation network 2 company driver's activities while accessing the transportation 3 network company's digital network. The zero tolerance policy 4 shall address the use of drugs or alcohol while a transportation 5 network company driver is providing prearranged rides or is 6 logged into the transportation network company's digital 7 network but is not providing prearranged rides, and the 8

- 9 transportation network company shall provide notice of this
- 10 policy on its website, as well as procedures to report a complaint
- 11 about a driver with whom a rider was matched and whom the
- 12 rider reasonably suspects was under the influence of drugs or
- 13 alcohol during the course of the trip.
- 14 (b) Upon receipt of such rider complaint alleging a violation
- 15 of the zero tolerance policy, the transportation network company
- 16 shall immediately suspend such transportation network company
- 17 driver's access to the transportation network company's digital
- 18 network and shall conduct an investigation into the reported
- 19 incident. The suspension shall last the duration of the
- 20 investigation.
- 21 (c) The transportation network company shall maintain
- 22 records relevant to the enforcement of this requirement for a
- 23 period of at least two years from the date that a rider complaint
- 24 is received by the transportation network company.

#### §17-29-13. Transportation network company driver requirements.

- 1 (a) Before allowing an individual to accept trip requests
- 2 through a transportation network company's digital platform:
- 3 (1) The individual shall submit an application to the
- 4 transportation network company, which includes information
- 5 regarding his or her address, age, driver's license, motor vehicle
- 6 registration, automobile liability insurance and other information
- 7 required by the transportation network company;
- 8 (2) The transportation network company shall conduct, or
- 9 have a third party conduct, a local and national criminal
- 10 background check for each applicant that shall include:
- 11 (A) Multistate/multijurisdiction criminal records locator or
- 12 other similar commercial nationwide database with validation
- 13 (primary source search); and

- (B) National Sex Offender Registry database.
- 15 (3) The transportation network company shall review, or
- 16 have a third party review, a driving history research report for
- 17 such individual.
- 18 (b) The transportation network company shall not permit an
- 19 individual to act as a transportation network company driver on
- 20 its digital network who:
- 21 (1) Has had more than three moving violations in the prior
- 22 three-year period, or one major violation in the prior three-year
- 23 period, including, but not limited to, attempting to evade the
- 24 police, reckless driving or driving on a suspended or revoked
- 25 license;
- 26 (2) Has been convicted, within the past seven years, of any
- 27 felony or misdemeanor, driving under the influence, reckless
- 28 driving, hit and run, or any misdemeanor violent offense or
- 29 sexual offense, or more than three misdemeanors of any kind;
- 30 (3) Is a match in the National Sex Offender Registry
- 31 database:
- 32 (4) Does not possess a valid driver's license;
- 33 (5) Does not possess proof of registration for the motor
- 34 vehicle(s) used to provide prearranged rides;
- 35 (6) Does not possess proof of automobile liability insurance
- 36 for the motor vehicle(s) used to provide prearranged rides; or
- 37 (7) Is not at least nineteen years of age.

#### §17-29-14. Vehicle safety and emissions.

- 1 The transportation network company shall require any motor
- 2 vehicle that a transportation network company driver will use to

- 3 provide transportation network company services to meet the
- 4 inspection requirements of section four, article sixteen, chapter
- 5 seventeen-c of this code or the inspection requirements for a
- 6 private motor vehicle of the state in which the motor vehicle is
- 7 registered.

#### §17-29-15. No street hails.

- 1 A transportation network company driver may not solicit or
- 2 accept street hails.

#### §17-29-16. No cash trips.

- 1 The transportation network company shall adopt a policy
- 2 prohibiting solicitation or acceptance of cash payments from
- 3 riders and notify transportation network company drivers of such
- 4 policy. Transportation network company drivers may not solicit
- 5 or accept cash payments from riders. Any payment for
- 6 prearranged rides shall be made only electronically using the
- 7 transportation network company's digital network or software
- 8 application.

#### §17-29-17. No discrimination; accessibility.

- 1 (a) The transportation network company shall adopt a policy
- of nondiscrimination with respect to riders and potential riders
- 3 and notify transportation network company drivers of such
- 4 policy: Provided, That no provision of this article may be
- 5 construed to require that the policy of nondiscrimination with
- 6 respect to riders and potential riders be more stringent than state
- 7 law governing unlawful discriminatory practices.
- 8 (b) Transportation network company drivers shall comply
- 9 with all applicable laws regarding nondiscrimination against
- 10 riders or potential riders.

- 11 (c) Transportation network company drivers shall comply
- 12 with all applicable laws relating to accommodation of service
- 13 animals.
- 14 (d) A transportation network company may not impose
- 15 additional charges for providing services to persons with
- 16 physical disabilities due to those disabilities.

#### §17-29-18. Records.

- 1 A transportation network company shall maintain the
- 2 following customer records:
- 3 (a) Individual trip records of rider customers for at least two
- 4 years from the date each trip was provided; and
- 5 (b) Individual records of transportation network company
- 6 driver customers at least until the two year anniversary of the
- 7 date on which a transportation network company driver's
- 8 customer relationship with the transportation network company
- 9 has ended.

#### §17-29-19. Controlling authority.

- 1 (a) Notwithstanding any provision of chapter twenty-four or
- 2 any other provision of this code to the contrary, the regulation of
- 3 the business activities of transportation network companies and
- 4 transportation network company drivers is governed exclusively
- 5 by this article.
- 6 (b) Taxation. No municipality, county or other local
- 7 governmental entity or special district may impose a special
- 8 district excise tax, sales tax, use tax, business and occupation
- 9 tax, or any other tax or fee on, or require a license for, a
- 10 transportation network company, a transportation network
- 11 company driver, or a personal vehicle used by a transportation
- 12 network company driver, where such tax or license relates to, or

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- is imposed upon, the service or privilege of providing prearranged transportation of persons or property. No municipal consumer's sales and service tax and use tax or special district excise tax may be imposed on the customers of a transportation network company or a transportation network company driver for, or with relation to, purchases of transportation network company transportation services.
- 20 (c) Licensure, registration and qualification. — No 21 municipality, county or other local governmental entity or 22 special district may require a transportation network company 23 driver to obtain a business license or any other similar 24 authorization to operate within the jurisdiction, or subject a 25 transportation network company or transportation network 26 company driver to any licensure requirement, fee, tax, entry requirement, registration requirement, operating or operational 27 28 requirement or any other requirement.

#### (d) Consumers sales and service tax and use tax exemptions.—

- (1) The provision of prearranged transportation service by a transportation network company driver is exempt from the consumers sales and service tax and use tax imposed under articles fifteen and fifteen-a, chapter eleven of this code.
- (2) Transportation network companies may assert a lawful and timely exemption from the consumer sales and service tax and use tax, in accordance with section nine, article fifteen, chapter eleven of this code, for purchases of tangible personal property and services directly used in transportation.

#### (e) Limitations and interpretation. —

40 (1) No provision of this section or this article shall be 41 interpreted to void, abrogate, restrict or affect imposition of the 42 ad valorem property tax on tangible personal property of a

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- transportation network company or of a transportation network company driver by any levying body.
- 45 (2) No provision of this section or this article shall be 46 interpreted to void, abrogate, restrict or affect imposition of the 47 state personal income tax or state corporation net income tax on 48 a transportation network company or a transportation network 49 company driver.
- 50 (3) No provision of this section or this article shall be 51 interpreted to void, abrogate, restrict or affect imposition of the 52 motor fuel excise tax on any taxable motor fuel or alternative 53 fuel purchased by any transportation network company or 54 transportation network company driver.
- 55 (4) No provision of this section or this article shall be 56 interpreted to void, abrogate, restrict or affect the requirements 57 of chapter eleven of this code for issuance of a business 58 registration certificate for transportation network companies and 59 transportation network drivers.
- 60 (5) No provision of this section or this article voids, 61 abrogates, restricts or affects any requirement of state law with 62 relation to licensure of drivers or motor vehicles.
  - (6) Transportation network company drivers may not assert the exemption from the consumer sales and service tax and use tax, for purchases of tangible personal property and services directly used in transportation under section nine, article fifteen, chapter eleven of this code.

### CHAPTER 160

#### (S. B. 516 - By Senators Leonhardt and Woelfel)

[Passed March 10, 2016; in effect ninety days from passage.] [Approved by the Governor on March 23, 2016.]

AN ACT to amend and reenact §17B-2A-2 of the Code of West Virginia, 1931, as amended, relating to registration for selective service.

Be it enacted by the Legislature of West Virginia:

That §17B-2A-2 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

### ARTICLE 2A. REQUIREMENT OF COMPLIANCE WITH SELECTIVE SERVICE REGISTRATION.

### §17B-2A-2. Compliance with registration requirements of Military Selective Service Act.

- 1 For each application for the issuance, renewal or duplicate
- 2 of an instruction permit, a driver's license, a professional
- 3 driver's license, a commercial driver's license or an
- 4 identification card by which those persons required to register in
- 5 compliance with the requirements of section three of the Military
- 6 Selective Service Act, 50 U. S. C. App. 451, et seq., the division
- 7 shall automatically enroll persons required to register who have
- 8 not previously registered and shall forward required information
- 9 to the selective service system. The signature on the application
- 10 may serve as his or her consent to registration with the selective
- 11 service system.

#### **CHAPTER 161**

#### (Com. Sub. for S. B. 634 - By Senators Cole (Mr. President), and Kessler) [By Request of the Executive]

[Passed March 12, 2016; in effect ninety days from passage.] [Approved by the Governor on March 29, 2016.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §17B-7-1, §17B-7-2, §17B-7-3, §17B-7-4, §17B-7-5, §17B-7-6, §17B-7-7, §17B-7-8, §17B-7-9 and §17B-7-10, all relating to creation of the Second Chance Driver's License Act; creating short title and designating that the article may be cited as the William R. Laird IV Second Chance Driver's License Act; setting forth legislative findings and purpose; defining terms; establishing program; directing the Director of the Division of Justice and Community Services to administer program; setting eligibility requirements to become program participant; requiring application from person wishing to participate; directing the director to coordinate with courts and Commissioner of the Division of Motor Vehicles to verify total amount of unpaid court costs; setting deadlines for providing information regarding unpaid court costs to director; requiring courts to provide an accounting that separately identifies the portion of court costs that constitute fine, forfeiture or penalty; prohibiting separate collection of unreported unpaid court costs while applicant is participant of program; directing how unreported court costs are to be handled; requiring notification to applicant concerning acceptance into program within thirty days; directing the director to develop consolidated repayment schedule for participant; setting certain requirements for consolidated repayment schedule; permitting modification of consolidated

repayment schedule; permitting hardship waiver; clarifying that participant is under no obligation to make separate or additional payments directly to court if those costs are included in consolidated repayment schedule; establishing moratorium on collection of unpaid court fees by a court or its designee while participant is in good standing with program; requiring monthly remittance of payments to director; directing issuance of certificate of compliance, certificate of noncompliance, program removal notice and program completion certificate under certain circumstances; directing courts to enter order acknowledging receipt of program completion certificate; directing Division of Motor Vehicles to place stay or lift stay on suspension or revocation of participant's driver's license under certain circumstances; authorizing Division of Motor Vehicles to place certain restrictions on driver's license of program participant; permitting Division of Motor Vehicles to require retesting under certain circumstances; exempting participants from certain retesting fees and reinstatement fees; creating Second Chance Driver's License Program Account; providing for administration of account; directing deposit of funds into account; authorizing expenditure of funds from account for certain purposes; providing legislative and emergency rule-making authority for Division of Justice and Community Services; and providing legislative and emergency rule-making authority for Division of Motor Vehicles.

#### 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 \$17B-7-1, \$17B-7-2, \$17B-7-3, \$17B-7-4, \$17B-7-5, \$17B-7-6, \$17B-7-7, \$17B-7-8, \$17B-7-9 and \$17B-7-10, all to read as follows:

## ARTICLE 7. SECOND CHANCE DRIVER'S LICENSE PROGRAM.

#### §17B-7-1. Short Title.

- 1 This article is known as and may be cited as the William R.
- 2 Laird IV Second Chance Driver's License Act.

#### §17B-7-2. Legislative findings and purpose.

- 1 (a) The Legislature finds that allowing individuals who have
- 2 been unable to obtain a driver's license or to have their driver's
- 3 licenses reinstated due to unpaid court costs to obtain a stay of
- 4 the driver's license suspension or revocation will better enable
- 5 these individuals to return to the workforce and repay unpaid
- 6 court costs in a timely manner.
- 7 (b) The purpose of this article is to create a program that
- 8 allows the commissioner to temporarily stay a driver's license
- 9 suspension or revocation for individuals who are accepted into
- 10 the second chance driver's license program if the individual
- 11 thereafter remains current in the repayment of unpaid court costs
- 12 as required by the program.

#### §17B-7-3. Definitions.

- 1 For the purposes of this article:
- 2 (1) "Commissioner" means the Commissioner of the
- 3 Division of Motor Vehicles, or his or her designee;
- 4 (2) "Consolidated repayment schedule" means the schedule
- 5 by which a participant is expected to make monthly payments
- 6 for unpaid court costs consistent with the requirements of the
- 7 program as established by the director;
- 8 (3) "Court" means a municipal court, magistrate court,
- 9 circuit court, family court or drug court in the State of West
- 10 Virginia and the Supreme Court of Appeals of West Virginia;

- 11 (4) "Director" means Director of the Division of Justice and 12 Community Services, or his or her designee;
- 13 (5) "Good standing" means compliance by a participant with
- 14 the requirements of the program, as set forth in this article and
- 15 legislative rules promulgated hereunder;
- 16 (6) "Monthly payment" means the amount that a participant
- 17 is scheduled to remit to the director each month pursuant to the
- 18 consolidated repayment schedule;
- 19 (7) "Participant" means a person who applies for, and is
- 20 accepted into, the second chance driver's license program by the
- 21 director;
- 22 (8) "Second chance driver's license program" or "program"
- 23 means the program created under this article that establishes a
- 24 payment structure for a participant to consolidate unpaid court
- 25 costs into monthly payments over a defined period of time,
- 26 coordinates the acceptance and distribution of monthly payments
- 27 from a participant and certifies that a participant in good
- 28 standing is eligible for a temporary stay of a driver's license
- 29 suspension or revocation due to certain unpaid court costs; and
- 30 (9) "Unpaid court costs" means any fee, fine, expense, cost
- 31 or other moneys that are required to be paid by a person to a
- 32 court, pursuant to one or more valid court orders, and have not
- 33 been paid in full.

## §17B-7-4. Second chance driver's license program established; creation and administration by director; program eligibility.

- 1 (a) There is hereby established the second chance driver's
- 2 license program which shall be administered by the director
- 3 pursuant to the requirements of this article.

- 4 (b) To be eligible to participate in the program, a person 5 must:
- 6 (1) Have his or her driver's license suspended or revoked for 7 failure to remit unpaid court costs pursuant to section three-a or 8 section three-c, article three, chapter seventeen-b of this code;
- 9 (2) Be at least twelve months delinquent in payment of unpaid court costs to a court or courts;
- 11 (3) Not have any unpaid court costs incurred from charges 12 that involve driving a commercial motor vehicle or which 13 otherwise violate the commercial driver's license requirements
- 14 in chapter seventeen-e of this code; and
- 15 (4) Meet other eligibility requirements established pursuant 16 to the rules developed under section nine of this article.

## §17B-7-5. Program acceptance; development of consolidated repayment schedule; no other court fee payments required.

- 1 (a) A person wishing to participate in the second chance
- 2 driver's license program shall complete an application form
- 3 prepared by the director.
- 4 (b) Upon receipt of a person's application, the director shall
- 5 coordinate with the courts and the commissioner to verify the
- 6 total amount of the applicant's unpaid court costs in the State of
- 7 West Virginia at the time of the application.
- 8 (c) All courts shall provide a full accounting of all unpaid
- 9 court costs assignable to the applicant within thirty days of the
- 10 request of the director. The accounting shall separately identify
- 11 the portion of the court costs that constitute a fine, forfeiture or
- 12 penalty remaining unpaid by the applicant for each order of the
- 13 court for which unpaid balances remain.

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- (d) Any unpaid court costs not reported to the director by a court as provided by subsection (c) of this section may not be collected separately by the court during the time in which the applicant is a participant in the program.
- 18 (e) If a participant completes the program, any unpaid court 19 costs, except for unpaid fines, not submitted to the director pursuant to subsection (c) of this section shall be deemed waived 20 21 unless the unpaid court costs were part of an order entered after the date upon which the director requested information for a 22 participant. The driver's license suspension or revocation with 23 24 respect to any unpaid fine not reported by a court shall be released upon completion of the program by the participant. 25
  - (f) Within thirty days after receipt of information concerning unpaid court costs, the director shall determine if the applicant is eligible to participate in the program. Upon determination, the director shall promptly notify the applicant of his or her acceptance into the program.
  - (g) Upon acceptance of the applicant as a participant in the program, the director shall develop a consolidated repayment schedule for the participant, which will require the participant to remit payments on a monthly basis to the director according to guidelines established by the director in legislative rules, subject to the following conditions:
- 37 (1) The monthly payment shall be determined based on the 38 participant's monthly income and expenditures, but may not be 39 less than \$50 per month; and
- 40 (2) The consolidated repayment schedule shall require full payment of the unpaid court costs within one year.
- 42 (h) The consolidated repayment schedule may be amended 43 to reflect changes in a participant's circumstances.

- 44 (i) The director, in his or her discretion, may permit a hardship waiver of the requirements of subsection (g) of this 45 46 section, upon a determination that the applicant's circumstances 47 may have changed, and that the objectives of this article are best accomplished if the consolidated repayment schedule requires a 48 49 lesser monthly payment or a longer period of time to remit the unpaid court costs: Provided, That the director may not waive 50 51 the total amount of unpaid court costs submitted by the courts 52 according to subsection (c) of this section.
- 53 (j) Upon acceptance into the program, a participant in good 54 standing with the program is under no obligation to make 55 separate or additional payments of unpaid court costs directly to 56 a court if those unpaid court costs are included in the 57 consolidated repayment schedule.

## §17B-7-6. Payments to be made to director; certificate of compliance; failure to comply with consolidated repayment schedule.

- 1 (a) Upon acceptance into the program and establishment of 2 a consolidated repayment schedule, the participant shall remit 3 monthly payments to the director in the manner prescribed by 4 the director and in compliance with the consolidated repayment 5 schedule.
- 6 (b) Upon receipt of the first monthly payment required by
  7 the participant's consolidated repayment schedule, the director
  8 shall issue to the commissioner, in writing or electronically, a
  9 certificate of compliance verifying the participant's good
  10 standing in the program.
- 11 (c) If a participant fails to make a monthly payment within 12 thirty days of a deadline set by the consolidated repayment 13 schedule, the director shall immediately issue, in writing or 14 electronically, a certificate of noncompliance to the

- commissioner stating that the participant is not in good standing in the program.
- 17 (1) If a participant, after failing to make one or more timely
  18 monthly payments, remits the total amount due at that time
  19 according to the consolidated repayment schedule, the director
  20 shall issue a certificate of compliance to the commissioner
  21 stating that the participant is once again in good standing in the
  22 program.
  - (2) If a participant fails to make timely monthly payments in accordance with the consolidated repayment schedule on three occasions, the director shall remove the participant from the program and shall issue a program removal notice to the commissioner and applicable courts receiving payments under the program stating that the participant is no longer a participant in the program.
  - (d) If a participant is convicted of a subsequent criminal offense after acceptance into the program, the director shall remove the participant from the program and, upon removal, the director shall issue a program removal notice to the commissioner and applicable courts receiving payments under the program stating that the participant is no longer a participant in the program.
  - (e) Upon completion of all monthly payments in the consolidated repayment schedule by the participant, the director shall issue a program completion certificate to the commissioner and the court or courts to whom the participant owed unpaid court costs under the program, stating that the participant completed the program in good standing.
  - (f) Upon receipt of a program completion certificate by the director stating that the participant has completed the program in good standing, the court or courts whose unpaid court costs were

- 46 paid according to the consolidated repayment schedule shall
- 47 enter an order acknowledging payment in full of the unpaid court
- 48 costs.

#### §17B-7-7. Stay of driver's license suspension or revocation.

- 1 (a) Upon receipt of a certificate of compliance prepared by
- 2 the director, the Division of Motor Vehicles shall stay the
- 3 participant's driver's license suspension or revocation for unpaid
- 4 court costs: *Provided*, That the participant's driver's license shall
- 5 be subject to restrictions upon where and when the participant
- 6 may operate a motor vehicle during this stay of the suspension
- 7 or revocation, as determined by the commissioner.
- 8 (b) The Division of Motor Vehicles may require retesting for
- 9 a driver's license for any participant who has not had a valid
- 10 driver's license within the six months prior to the date of receipt
- 11 of the certificate of compliance. Notwithstanding any other
- 12 provision of the code to the contrary, a participant shall not be
- 13 required to pay any fees to the Division of Motor Vehicles for
- 14 retesting.
- 15 (c) Upon receipt of a certificate of noncompliance prepared
- 16 by the director, the commissioner shall remove the stay of the
- 17 participant's driver's license suspension or revocation until
- 18 further notice from the director regarding the participant's status
- 19 in the program.
- 20 (d) Upon receipt of a program removal notice issued by the
- 21 director, the commissioner shall remove the stay of the
- 22 participant's driver's license suspension or revocation.
- 23 (e) Notwithstanding any other provision of code to the
- 24 contrary, no participant in the program shall be required to pay
- 25 any reinstatement fees for unpaid court costs within the scope of
- 26 the consolidated repayment schedule.

#### §17B-7-8. Second chance driver's license program account created.

- 1 There is hereby created in the State Treasury an account to
- 2 be known as the Second Chance Driver's License Program
- 3 Account. The account shall consist of all moneys received from
- 4 individuals participating in the program. The fund shall be
- 5 administered by the Division of Justice and Community Services
- 6 solely for the purposes of this article. Any moneys remaining in
- 7 the fund at the close of a fiscal year shall be carried forward for
- 8 use in the next fiscal year. Funds in the account shall not be
- 9 invested, used, withdrawn or transferred out of the account
- 10 except for the purposes allowed in the provisions of this article.

## §17B-7-9. Deposit of funds into account; disbursement of funds from account.

- 1 (a) The director shall deposit all moneys received from
- 2 participants pursuant to a consolidated repayment schedule into
- 3 the Second Chance Driver's License Program Account. The
- 4 director shall prorate, separate and identify the portion of each
- 5 payment that constitutes payment of a fine, forfeiture or penalty
- 6 in accordance with the information provided to the director
- 7 pursuant to subsection (c), section five of this article.
- 8 (b) After deposit of a participant's monthly payment into this
- 9 account, the director shall make disbursements from this account
- 10 as follows:

- 11 (1) Portions of payments identified as payment of a fine,
- 12 forfeiture or penalty shall be disbursed to the courts identified in
- 13 the repayment schedule;
- 14 (2) Ninety-five percent of the portions of the payments
- 15 remaining after payment as required in subdivision (1) of this
- 16 subsection shall be disbursed to the courts identified in the
- 17 participant's consolidated repayment schedule. Courts shall

- 18 accept and document these payments of ninety-five percent of
- 19 the total unpaid court costs, not including court costs received
- 20 pursuant to subdivision (1) of this subsection, as payment in full
- 21 of the amount owed by the participant to the court for this
- 22 portion of court costs owed; and
- 23 (3) The portion of the payments remaining in the account
- 24 after payment of the court costs in subdivisions (1) and (2) of
- 25 this subsection may be appropriated by the Legislature to be
- 26 expended for costs incurred by the director in the administration
- 27 of this article.
- 28 (c) Courts that receive disbursements pursuant to subsection
- 29 (b) of this section are responsible for making statutory
- 30 disbursements of amounts received in satisfaction of unpaid
- 31 court costs according to the requirements of the code.

#### §17B-7-10. Rule-making Authority.

- 1 (a) To implement the provisions of this article, the director,
- 2 in consultation with the commissioner, shall promulgate
- 3 emergency and legislative rules pursuant to the provisions of
- 4 article three, chapter twenty-nine-a of this code, which shall
- 5 include, but not be limited to, the following:
- 6 (1) The form, content and information required to be
- 7 furnished in the application forms;
- 8 (2) The procedure and requirements of the eligibility review
- 9 process;
- 10 (3) Guidelines for creation of a consolidated repayment
- 11 schedule of unpaid court costs;
- 12 (4) Terms and conditions for acceptance into the program,
- 13 maintenance of good standing, and completion of the program;

- 14 (5) Forms for certificates of compliance, certificates of 15 noncompliance, program removal notice and program 16 completion certificate; and
- 17 (6) The procedures for removal or suspension from the program.
- 19 (b) To implement the provisions of this article, the 20 commissioner shall promulgate emergency and legislative rules 21 pursuant to the provisions of article three, chapter twenty-nine-a 22 of this code, which may include, but are not limited to, the 23 following:
- 24 (1) Establishing the procedures for issuing a stay of a 25 participant's driver's license suspension or revocation; and
- 26 (2) Establishing the restrictions upon where and when a 27 participant may utilize his or her driver's license to operate a 28 motor vehicle during the stay of the suspension or revocation 29 authorized by this article.



(S. B. 507 - By Senators Carmichael, Blair, Gaunch, Plymale, Prezioso and Trump)

[Passed March 5, 2016; in effect from passage.] [Approved by the Governor on March 16, 2016.]

AN ACT to amend and reenact §24A-1-3 of the Code of West Virginia, 1931, as amended, relating generally to the jurisdiction of the Public Service Commission over motor carriers; and exempting vehicles engaged in nonemergency transportation of Medicaid members from permit requirements.

Be it enacted by the Legislature of West Virginia:

That §24A-1-3 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

#### ARTICLE 1. PURPOSES, DEFINITIONS AND EXEMPTIONS.

#### §24A-1-3. Exemptions from chapter.

- The provisions of this chapter, except where specifically otherwise provided, do not apply to:
- 3 (1) Motor vehicles operated exclusively in the transportation
- 4 of United States mail or in the transportation of newspapers:
- 5 *Provided*, That the vehicles and their operators are subject to the
- 6 safety rules promulgated by the commission;
- 7 (2) Motor vehicles owned and operated by the United States
- 8 of America, the State of West Virginia or any county,
- 9 municipality or county board of education, urban mass
- 10 transportation authority established and maintained pursuant to
- 11 article twenty-seven, chapter eight of this code, or by any of their
- 12 departments, and any motor vehicles operated under a contract
- 13 with a county board of education exclusively for the
- 14 transportation of children to and from school or other legitimate
- 15 transportation for the schools as the commission may
- 16 specifically authorize;
- 17 (3) Motor vehicles used exclusively in the transportation of
- 18 agricultural or horticultural products, livestock, poultry and dairy
- 19 products from the farm or orchard on which they are raised or
- 20 produced to markets, processing plants, packing houses,
- 21 canneries, railway shipping points and cold storage plants, and
- 22 in the transportation of agricultural or horticultural supplies to
- 23 farms or orchards where they are to be used: Provided, That the
- 24 vehicles that are exempted by this subdivision and are also
- 25 operated by common carriers by motor vehicle or contract

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- 26 carriers by motor vehicle, and their operators are subject to the
- 27 safety and insurance rules promulgated by the commission;
- 28 (4) Motor vehicles used exclusively in the transportation of human or animal excreta:
- (5) Motor vehicles used exclusively in ambulance service orduly chartered rescue squad service;
- 32 (6) Motor vehicles used exclusively for volunteer fire 33 department service;
- 34 (7) Motor vehicles used exclusively in the transportation of 35 coal from mining operations to loading facilities for further 36 shipment by rail or water carriers: *Provided*, That the vehicles and their operators are subject to the safety rules promulgated by 37 38 the commission and the vehicles that are exempted by this 39 subdivision and are also operated by common carriers by motor vehicle or contract carriers by motor vehicle, and their operators 40 41 are subject to the insurance rules promulgated by the 42 commission:
  - (8) Motor vehicles used by petroleum commission agents and oil distributors solely for the transportation of petroleum products and related automotive products when the transportation is incidental to the business of selling the products: *Provided*, That the vehicles and their operators are subject to the safety rules promulgated by the commission and the vehicles that are exempted by this subdivision and are also operated by common carriers by motor vehicle or contract carriers by motor vehicle, and their operators are subject to the insurance rules promulgated by the commission;
  - (9) Motor vehicles owned, leased by or leased to any person and used exclusively for the transportation of processed source-separated recycled materials, generated by commercial,

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- 56 institutional and industrial customers, transported free of charge 57 or by a nonprofit recycling cooperative association in accordance 58 with subdivision (1), subsection (d), section one, article four, 59 chapter nineteen of this code from the customers to a facility for 60 further processing: Provided, That the vehicles and their 61 operators shall be subject to the safety rules promulgated by the 62 commission and the vehicles that are exempted by this 63 subdivision and are also operated by common carriers by motor vehicle or contract carriers by motor vehicle, and their operators 64 65 are subject to the insurance rules promulgated by the 66 commission:
- 67 (10) Motor vehicles specifically preempted from state 68 economic regulation of intrastate motor carrier operations by the provisions of 49 U. S. C. §14501 as amended by Title I, Section 69 103 of the federal Interstate Commerce Commission 70 71 Termination Act of 1995: *Provided*. That the vehicles and their 72 operators are subject to the safety regulations promulgated by the 73 commission and the vehicles that are exempted by this 74 subdivision and are also operated by common carriers by motor 75 vehicle or contract carriers by motor vehicle, and their operators 76 are subject to the insurance rules promulgated by the 77 commission;
  - (11) Motor vehicles designated by the West Virginia Bureau of Senior Services for use and operation by local county aging programs: *Provided*, That the vehicles and their operators are subject to the safety rules promulgated by the commission;
- 82 (12) Motor vehicles designated by the West Virginia 83 Division of Public Transit operated by organizations that receive 84 federal grants from the Federal Transit Administration: 85 *Provided*, That the vehicles and their operators are subject to the 86 safety and insurance rules promulgated by the commission; and

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(13) Motor vehicles used exclusively in the nonemergency medical transportation of Medicaid members by community action agencies as designated by the Governor, although these vehicles and their operators shall be subject to the safety rules promulgated by the commission.



### **CHAPTER 163**

(Com. Sub. for H. B. 4186 - By Delegates Cadle, Cooper, Foster, Ambler, Howell, Butler, Householder, Moffatt, R. Smith, Westfall and Hamrick)

[Passed March 12, 2016; in effect from passage.] [Approved by the Governor on March 25, 2016.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §24A-2-2b, relating to Public Service Commission; requiring the Public Service Commission promulgate rules related to rates charged by a carrier for the recovery, towing, hauling, carrying or storing of a wrecked or disabled vehicle; establishing a complaint review process; developing a process for aggrieved parties to recover charges; providing the burden of proof be on the carrier; establishing factors for Public Service Commission to consider in determining whether rates are fair, effective and reasonable; requiring carriers to list rates on invoices; providing for promulgated rules to sunset; and requiring a review of rules by the Legislative Auditor.

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 §24A-2-2b, to read as follows:

## CHAPTER 24A. MOTOR CARRIERS OF PASSENGERS AND PROPERTY FOR HIRE.

#### ARTICLE 2. COMMON CARRIERS BY MOTOR VEHICLES.

- §24A-2-2b. Rule-making authority; establishing rates for recovering, towing, hauling, carrying, or storing wrecked or disabled vehicles; complaint process; and required Legislative Audit.
  - 1 (a) On or before July 1, 2016, the Commission shall 2 promulgate rules to effectuate the provisions of this article.
  - 3 (b) The rules promulgated pursuant to the provisions of this section shall describe:
  - 5 (1) Factors determining the fair, effective and reasonable
  - 6 rates levied by a carrier for recovering, towing, hauling, carrying
  - 7 or storing a wrecked or disabled vehicle. The commission shall
  - 8 consider, but shall not be limited to:
  - 9 (A) Tow vehicle(s) and special equipment required to 10 complete recovery/tow;
  - (B) Total time to complete the recovery or tow;
  - 12 (C) Number of regular and extra employees required to
  - 13 complete the recovery or tow;
  - 14 (D) Location of vehicle recovered or towed;
  - 15 (E) Materials or cargo involved in recovery or tow;
  - 16 (F) Comparison with reasonable prices in the region;
  - 17 (G) Weather conditions; and
  - 18 (H) Any other relevant information having a direct effect on
  - 19 the pricing of the recovery, towing and storage of a recovered or
  - 20 towed vehicle;

- 22 (2) The process for filing a complaint, the review and investigation process to ensure it is fair, effective and timely: 23 *Provided*, That in any formal complaint against a carrier relating 24 to a third-party tow, the burden of proof to show that the 25 carrier's charges are just, fair and reasonable shall be upon the 26 carrier:
- 27 (3) The process for aggrieved parties to recover the cost, 28 from the carrier, for the charge or charges levied by a carrier for 29 recovering, towing, hauling, carrying or storing a wrecked or 30 disabled vehicle where the commission determines that such 31 charge or charges are not otherwise just, fair or reasonable; and
- 32 (4) The process to review existing maximum statewide 33 wrecker rates and special rates for the use of special equipment 34 in towing and recovery work to ensure that rates are just, fair and 35 reasonable: *Provided*, That the commission shall generally 36 disapprove hourly and flat rates for ancillary equipment.
- 37 (c) All carriers regulated under this article shall list their 38 approved rates, fares and charges on every invoice provided to 39 an owner, operator or insurer of a wrecker or disabled motor 40 vehicle.
- 41 (d) The rules promulgated pursuant to this article shall sunset on July 1, 2021, unless reauthorized.
- 43 (e) On or before December 31, 2020, the Legislative Auditor shall review the rules promulgated by the Public Service 44 Commission under this section. The audit shall evaluate the 45 rate-making policy for reasonableness, the complaint process for 46 timeliness, the penalties for effectiveness and any other metrics 47 48 the Legislative Auditor deems appropriate. The Legislative 49 Auditor may recommend that the rule be reauthorized, 50 reauthorized with amendment or repealed.



(S. B. 415 - By Senator Ashley)

[Passed March 8, 2016; in effect ninety days from passage.] [Approved by the Governor on March 15, 2016.]

AN ACT to amend and reenact §8-13-22a of the Code of West Virginia, 1931, as amended, relating to lengthening the maximum term of negotiable certificates of deposit that municipal funds are permitted to hold.

That §8-13-22a of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

#### ARTICLE 13. TAXATION AND FINANCE.

#### §8-13-22a. Investment of municipal funds.

- 1 All municipal funds, the investment of which is not
- 2 governed by other provisions of this code and not required for
- 3 the payment of current obligations and not otherwise prohibited,
- 4 may be invested and reinvested in:
- 5 (1) Any direct obligation of, or obligation guaranteed as to
- 6 the payment of both principal and interest by, the United States
- 7 of America;
- 8 (2) Any evidence of indebtedness issued by any United
- 9 States government agency guaranteed as to the payment of both
- 10 principal and interest, directly or indirectly, by the United States
- 11 of America including, but not limited to, the following:
- 12 Government National Mortgage Association, federal land banks,
- 13 federal home loan banks, federal intermediate credit banks.
- 14 banks for cooperatives, Tennessee Valley Authority, United

- 15 States postal service, farmers home administration,
- 16 export-import bank, federal financing bank, federal home loan
- 17 mortgage corporation, student loan marketing association and
- 18 federal farm credit banks;

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- 19 (3) Any evidence of indebtedness issued by the Federal 20 National Mortgage Association to the extent such indebtedness 21 is guaranteed by the government National Mortgage Association;
- 22 (4) Any evidence of indebtedness that is secured by a first 23 lien deed of trust or mortgage upon real property situate within 24 this state, if the payment thereof is substantially insured or 25 guaranteed by the United States of America or any agency 26 thereof:
- 27 (5) Direct and general obligations of this state;
  - (6) Any undivided interest in a trust, the corpus of which is restricted to mortgages on real property and, unless all of such property is situate within the state and insured, the trust at the time of the acquisition of the undivided interest, is rated in one of the three highest rating grades by an agency which is nationally known in the field of rating pooled mortgage trusts;
  - (7) Any bond, note, debenture, commercial paper or other evidence of indebtedness of any private corporation or association: *Provided*, That any such security is, at the time of its acquisition, rated in one of the three highest rating grades by an agency which is nationally known in the field of rating corporate securities: *Provided*, *however*, That if any commercial paper or any such security will mature within one year from the date of its issuance, it shall, at the time of its acquisition, be rated in one of the two highest rating grades by any such nationally known agency and commercial paper or other evidence of indebtedness of any private corporation or association shall be purchased only upon the written recommendation from an investment advisor that has over \$300 million in other funds under its management;

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- (8) Negotiable certificates of deposit issued by any bank, trust company, national banking association or savings institution which mature in no more than five years and are fully collateralized:
- 51 (9) Interest earning deposits including certificates of deposit, with any duly designated state depository, which deposits are 52 53 fully secured by a collaterally secured bond as provided in section four, article one, chapter twelve of this code: Provided, 54 55 That a banking institution is not required to provide this 56 collaterally secured bond, or other security in lieu of bond, if the deposits accepted are placed in certificates of deposit meeting 57 the following requirements: (A) The funds are invested through 58 a designated state depository selected by the municipality; (B) 59 the selected depository arranges for the deposit of the funds in 60 61 certificates of deposit in one or more banks or savings and loan 62 associations wherever located in the United States, for the account of the municipality; (C) the full amount of principal and 63 64 accrued interest of each certificate of deposit is insured by the Federal Deposit Insurance Corporation; (D) the selected 65 depository acts as custodian for the municipality with respect to 66 such certificates of deposit issued for the municipality's account; 67 68 and (E) at the same time that the municipality's funds are deposited and the certificates of deposit are issued, the selected 69 depository receives an amount of deposits from customers of 70 other financial institutions wherever located in the United States 71 equal to or greater than the amount of the funds invested by the 72 73 municipality through the selected depository;
- 74 (10) Mutual funds registered with the Securities and 75 Exchange Commission which have assets in excess of \$300 76 million; and
  - (11) Deposits with any duly designated state depository that is selected and authorized by the municipality to arrange for the redeposit of the funds through a deposit placement program that meets the following conditions:

(a) On or after the date that the municipal funds are received the selected depository: (i) Arranges for the redeposit of the funds into deposit accounts in one or more federally insured banks or savings and loan associations that are located in the United States; and (ii) serves as custodian for the municipality with respect to the funds deposited into such accounts.

- (b) Municipal funds deposited in a selected depository in accordance with this section and held at the close of business in the selected depository in excess of the amount insured by the Federal Deposit Insurance Corporation shall be secured in accordance with section four, article one, chapter twelve of this code.
- (c) The full amount of the funds of the municipality redeposited by the selected depository into deposit accounts in banks or savings and loan associations pursuant to this subsection (plus accrued interest, if any) shall be insured by the Federal Deposit Insurance Corporation.
- (d) On the same date that the funds of the municipality are redeposited pursuant to this subsection, the selected depository receives an amount of deposits from customers of other financial institutions through the direct placement program that are equal to the amount of the municipality's funds redeposited by the selected depository.

(Com. Sub. for H. B. 4163 - By Delegates Howell, Arvon, Moffatt, Westfall, McCuskey, Miller, Cadle, Walters, Zatezalo, Kelly and Ellington)

[Passed March 2, 2016; in effect ninety days from passage.] [Approved by the Governor on March 8, 2016.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto four new sections, designated §8-13-24, §8-13-25, §8-13-26 and §8-13-27, all relating to providing municipalities plenary power and authority to adopt an ordinance providing for the publication of delinquent business and occupation taxes; providing notice requirements; requiring policies and procedures regarding the preparation, publication and posting of a delinquent business and occupation list; and allowing for a reasonable charge to be added to the amount owed by a delinquent taxpayer to cover the costs of preparing, publishing and posting a delinquent list.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto four new sections, designated §8-13-24, §8-13-25, §8-13-26 and §8-13-27, to read as follows:

#### ARTICLE 13. TAXATION AND FINANCE.

#### §8-13-24. Notice of delinquency.

- 1 Plenary power and authority is hereby conferred upon all
- 2 municipalities to adopt an ordinance providing for the
- 3 publication of delinquent business and occupation taxes, subject
- 4 to the requirements and limitations set forth herein. The

- 5 ordinance shall set forth the time, place and manner in which the
- 6 publication shall occur and shall identify the official or officials
- 7 responsible for conducting and overseeing the publication. Any
- 8 such ordinance shall provide for notice of the delinquency to the
- 9 taxpayer at least thirty days prior to publication. Said notice may
- 10 be by mail to each delinquent taxpayer or may be by general
- 11 notice of the forthcoming publication by publishing a Class II-0
- 12 legal advertisement in compliance with the provisions of article
- 13 three, chapter fifty-nine of this code, and the publication area for
- 14 such publication shall be the municipality. No delinquency shall
- 15 be published by the municipality unless the delinquency has
- 16 lasted for at least for at least four consecutive quarters.

#### §8-13-25. Delinquent list preparation.

- 1 (a) The official designated to conduct publication of
- 2 delinquent business and occupation taxes provided for by section
- 3 twenty-four of this article shall prepare the delinquent list in a
- 4 manner set forth in the ordinance, so long as it is consistent with
- 5 the requirements and limitations set forth herein. The ordinance
- 6 shall require the designated code official adopt policies and
- 7 procedures designed to verify each delinquency prior to
- 8 publication.
- 9 (b) The delinquent list may include the name of the 10 delinquent taxpayer and the year(s) in which the delinquency
- 11 arises.
- (c) For each delinquent list published by the municipality,
- 13 and prior to such publication, the official designated in the
- 14 ordinance to oversee or conduct the publication shall take an
- oath, to be included in or attached to the delinquent list, certified
- 16 by the city clerk or some other person duly authorized to
- 17 administer oaths, in form and effect as follows:
- 18 "I, \_\_\_\_\_ (municipal official title) of
- 19 \_\_\_\_\_, do swear, to the best of my knowledge and

belief, that the foregoing list of delinquent business and occupation taxes to be published on \_\_\_\_\_\_\_, is complete and accurate, and, as of the date of this oath, that I have not received payment from any of the entities listed for the delinquent amounts included in the list."

#### §8-13-26. Publication and posting of delinquent tax list; costs.

- 1 (a) A copy of a delinquent list may be posted at the front
- 2 door of city hall or other municipal buildings used to conduct
- 3 municipal business, and may be published as a Class I-0 legal
- 4 advertisement in the newspaper or other media in compliance
- 5 with the provisions of article three, chapter fifty-nine of this
- 6 code, on the municipality's website or in such other reasonable
- 7 manner as determined by the municipality to provide notice of
- 8 the delinquency without incurring unnecessary costs related to
- 9 the publication.
- 10 (b) To cover the costs of preparing, publishing and posting
- 11 a delinquent list, a reasonable charge may be added to the
- 12 amount owed by a taxpayer included in any such list, in addition
- 13 to the tax, interest and penalty already owed by the taxpayer.

# §8-13-27. Notice of delinquent lists to city council and retention of list by city.

- 1 A copy of each published delinquent list shall be provided to
- 2 the city council of the municipality not later than the first regular
- 3 meeting of the city council after the publication. A copy of the
- 4 delinquent list shall be retained by the official designated in the
- 5 ordinance for a period of not less than three years.



(S. B. 334 - By Senator Karnes)

[Passed March 9, 2016; in effect ninety days from passage.] [Approved by the Governor on March 21, 2016.]

AN ACT to amend and reenact §20-1-2 of the Code of West Virginia, 1931, as amended, relating to classification of certain species; identifying coyote as a fur-bearing animal; identifying woodchuck as a game animal; identifying coyote, porcupine and all species of cervids as wild animals; and providing an exception.

Be it enacted by the Legislature of West Virginia:

That §20-1-2 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

#### ARTICLE 1. ORGANIZATION AND ADMINISTRATION.

#### §20-1-2. Definitions.

- 1 As used in this chapter, unless the context clearly requires a
- 2 different meaning:
- 3 "Agency" means any branch, department or unit of the state
- 4 government, however designated or constituted.
- 5 "Alien" means any person not a citizen of the United States.
- 6 "Bag limit" or "creel limit" means the maximum number of
- 7 wildlife which may be taken, caught, killed or possessed by any
- 8 person.
- 9 "Big game" means elk, deer, black bears, wild boars and
- 10 wild turkeys.

- "Bona fide resident, tenant or lessee" means a person who
- 12 permanently resides on the land.
- "Citizen" means any native-born citizen of the United States
- 14 and foreign-born persons who have procured their final
- 15 naturalization papers.
- "Closed season" means the time or period during which it
- 17 shall be unlawful to take any wildlife as specified and limited by
- 18 this chapter.
- "Commission" means the Natural Resources Commission.
- 20 "Commissioner" means a member of the advisory
- 21 commission of the Natural Resources Commission.
- 22 "Director" means the Director of the Division of Natural
- 23 Resources.
- 24 "Fishing" or "to fish" means the taking, by any means, of
- 25 fish, minnows, frogs or other amphibians, aquatic turtles and
- 26 other forms of aquatic life used as fish bait.
- 27 "Fur-bearing animals" includes: (a) The mink; (b) the
- 28 weasel; (c) the muskrat; (d) the beaver; (e) the opossum; (f) the
- 29 skunk and civet cat, commonly called polecat; (g) the otter; (h)
- 30 the red fox; (i) the gray fox; (j) the wildcat, bobcat or bay lynx;
- 31 (k) the raccoon; (l) the fisher; and (m) can is latrans var., more
- 32 commonly known as the coyote.
- "Game" means game animals, game birds and game fish as
- 34 herein defined.
- "Game animals" includes: (a) The elk; (b) the deer; (c) the
- 36 cottontail rabbits and hares; (d) the fox squirrels, commonly
- 37 called red squirrels, and gray squirrels and all their color phases
- 38 red, gray, black or albino; (e) the raccoon; (f) the black bear;

- 39 (g) the wild boar; and (h) the marmot monax, more commonly
- 40 known as woodchuck or groundhog. The term "game animals"
- 41 does not include captive cervids regulated pursuant to article
- 42 two-h, chapter nineteen of this code.
- "Game birds" includes: (a) The anatidae, commonly known
- 44 as swan, geese, brants and river and sea ducks; (b) the rallidae,
- 45 commonly known as rails, sora, coots, mudhens and gallinule;
- 46 (c) the limicolae, commonly known as shorebirds, plover, snipe,
- 47 woodcock, sandpipers, yellow legs and curlews; (d) the
- 48 galliformes, commonly known as wild turkey, grouse, pheasants,
- 49 quails and partridges (both native and foreign species); (e) the
- 50 columbidae, commonly known as doves; (f) the icteridae,
- 51 commonly known as blackbirds, redwings and grackle; and (g)
- 52 the corvidae, commonly known as crows.
- "Game fish" includes: (a) Brook trout; (b) brown trout; (c)
- 54 rainbow trout; (d) golden rainbow trout; (e) largemouth bass; (f)
- 55 smallmouth bass; (g) spotted bass; (h) striped bass; (i) chain
- 56 pickerel; (j) muskellunge; (k) walleye; (l) northern pike; (m)
- 57 rock bass; (n) white bass; (o) white crappie; (p) black crappie;
- 58 (q) all sunfish species; (r) channel catfish; (s) flathead catfish; (t)
- 59 blue catfish; (u) sauger; and (v) all game fish hybrids.
- "Hunt" means to pursue, chase, catch or take any wild birds
- 61 or wild animals. However, the definition of "hunt" does not
- 62 include an officially sanctioned and properly licensed field trial,
- 63 water race or wild hunt as long as that field trial is not a
- 64 shoot-to-retrieve field trial.
- 65 "Lands" means land, waters and all other appurtenances
- 66 connected therewith.
- 67 "Migratory birds" means any migratory game or nongame
- 68 birds included in the terms of conventions between the United
- 69 States and Great Britain and between the United States and

- 70 United Mexican States, known as the Migratory Bird Treaty Act,
- 71 for the protection of migratory birds and game mammals
- 72 concluded, respectively, August 16, 1916, and February 7, 1936.
- 73 "Nonresident" means any person who is a citizen of the
- 74 United States and who has not been a domiciled resident of the
- 75 State of West Virginia for a period of thirty consecutive days
- 76 immediately prior to the date of his or her application for a
- 77 license or permit except any full-time student of any college or
- 78 university of this state, even though he or she is paying a
- 79 nonresident tuition.
- "Open season" means the time during which the various
- 81 species of wildlife may be legally caught, taken, killed or chased
- 82 in a specified manner and shall include both the first and the last
- 83 day of the season or period designated by the director.
- 84 "Person", except as otherwise defined elsewhere in this
- 85 chapter, means the plural "persons" and shall include
- 86 individuals, partnerships, corporations or other legal entities.
- 87 "Preserve" means all duly licensed private game farmlands,
- 88 or private plants, ponds or areas, where hunting or fishing is
- 89 permitted under special licenses or seasons other than the regular
- 90 public hunting or fishing seasons. The term "preserve" does not
- 91 include captive cervid farming facilities regulated pursuant to
- 92 article two-h, chapter nineteen of this code.
- 93 "Protected birds" means all wild birds not included within
- 94 the definitions of "game birds" and "unprotected birds".
- 95 "Resident" means any person who is a citizen of the United
- 96 States and who has been a domiciled resident of the State of
- 97 West Virginia for a period of thirty consecutive days or more
- 98 immediately prior to the date of his or her application for license
- 99 or permit. However, a member of the Armed Forces of the
- 100 United States who is stationed beyond the territorial limits of this

- state, but who was a resident of this state at the time of his or her entry into such service and any full-time student of any college or university of this state, even though he or she is paying a nonresident tuition, shall be considered a resident under this chapter.
- "Roadside menagerie" means any place of business, other than a commercial game farm, commercial fish preserve, place or pond, where any wild bird, game bird, unprotected bird, game animal or fur-bearing animal is kept in confinement for the attraction and amusement of the people for commercial purposes.
- "Small game" includes all game animals, fur-bearing animals and game birds except elk, deer, black bears, wild boars and wild turkeys.
- "Take" means to hunt, shoot, pursue, lure, kill, destroy, catch, capture, keep in captivity, gig, spear, trap, ensnare, wound or injure any wildlife, or attempt to do so. However, the definition of "take" does not include an officially sanctioned and properly licensed field trial, water race or wild hunt as long as that field trial is not a shoot-to-retrieve field trial.
- "Unprotected birds" shall include: (a) The English sparrow; 122 (b) the European starling; and (c) the cowbird.
- "Wild animals" means all mammals native to the State of West Virginia occurring either in a natural state or in captivity, except house mice or rats, and includes coyotes and porcupines and all species of cervids. The term "wild animals" does not include captive cervids owned and possessed by persons licensed pursuant to article two-h, chapter nineteen of this code.
- "Wild birds" shall include all birds other than: (a) *Domestic* poultry chickens, ducks, geese, guinea fowl, peafowls and

- turkeys; (b) psittacidae, commonly called parrots and parakeets;
- and (c) other foreign cage birds such as the common canary,
- exotic finches and ring dove. All wild birds, either: (i) Those
- 134 occurring in a natural state in West Virginia; or (ii) those
- imported foreign game birds, such as waterfowl, pheasants,
- 136 partridges, quail and grouse, regardless of how long raised or
- 137 held in captivity, shall remain wild birds under the meaning of
- 138 this chapter.
- "Wildlife" means wild birds, wild animals, game and
- 140 fur-bearing animals, fish (including minnows), reptiles,
- 141 amphibians, mollusks, crustaceans and all forms of aquatic life
- used as fish bait, whether dead or alive. The term "wildlife" does
- 143 not include captive cervids regulated pursuant to article two-h,
- 144 chapter nineteen of this code.
- "Wildlife refuge" means any land set aside by action of the
- 146 director as an inviolate refuge or sanctuary for the protection of
- 147 designated forms of wildlife.



(S. B. 333 - By Senators Karnes and Leonhardt)

[Passed March 10, 2016; in effect ninety days from passage.] [Approved by the Governor on March 24, 2016.]

AN ACT to amend and reenact \$20-2-4, \$20-2-21 and \$20-2-22 of the Code of West Virginia, 1931, as amended, all relating to wildlife; clarifying that it is unlawful to possess live wildlife unless authorized; clarifying electronic registration and tagging of certain wildlife; and providing procedure for persons not required to obtain licenses or permits to register certain wildlife.

Be it enacted by the Legislature of West Virginia:

That §20-2-4, §20-2-21 and §20-2-22 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

#### ARTICLE 2. WILDLIFE RESOURCES.

#### §20-2-4. Possession of wildlife.

- 1 (a) Except for wildlife lawfully taken, killed or obtained, no
- 2 person may have in his or her possession any wildlife, or parts
- 3 thereof, during closed seasons. It is unlawful to possess any
- 4 wildlife, or parts thereof, which have been illegally taken, killed
- 5 or obtained. Any wildlife illegally taken, killed or possessed
- 6 shall be forfeited to the state and shall be counted toward the
- 7 daily, seasonal, bag, creel and possession limit of the person in
- 8 possession of, or responsible for, the illegal taking or killing of
- 9 any wildlife. It is unlawful to take, obtain, purchase, possess or
- 10 maintain in captivity any live wildlife, wild animals, wild birds,
- 11 game or fur-bearing animals except as provided by this chapter
- 12 or any rule promulgated thereunder.
- 13 (b) Wildlife lawfully taken outside of this state is subject to
- 14 the same laws and rules as wildlife taken within this state.
- 15 (c) Migratory wild birds may be possessed only in
- 16 accordance with the Migratory Bird Treaty Act, 16 U. S. C.
- 17 §703, et seq., and its regulations.
- 18 (d) The restrictions in this section do not apply to the
- 19 director or duly authorized agents, who may take or maintain in
- 20 captivity any wildlife for the purpose of carrying out the
- 21 provisions of this chapter.
- 22 (e) Wildlife, except protected birds, elk, spotted fawn and
- 23 bear cubs, killed or mortally wounded as a result of being

- 24 accidentally or inadvertently struck by a motor vehicle may be
- 25 lawfully possessed if the possessor of the wildlife provides
- 26 notice of the claim within twelve hours to a relevant
- 27 law-enforcement agency and obtains a nonhunting game tag
- 28 within twenty-four hours of possession. The director shall
- 29 propose administrative policy which addresses the means,
- 30 methods and administrative procedures for implementing the
- 31 provisions of this section.
- 32 (f) Persons are required to electronically register deer, bear,
- 33 turkey, wild boar, bobcat, beaver, otter and fisher in accordance
- 34 with rules promulgated by the director. "Electronically register"
- 35 means submission of all necessary and relevant information to
- 36 the division, in the manner designated by rule governing the
- 37 electronic registration of wildlife. The director may promulgate
- 38 rules, pursuant to article three, chapter twenty-nine-a of this
- 39 code, governing the electronic registration of wildlife: *Provided*,
- 40 That the rules shall include a procedure for persons who are not
- 41 required to obtain licenses or permits under section twenty-eight
- 42 of this article to register wildlife using identification other than
- 43 a social security number. The rules may use a system of a
- 44 combination of the last four digits of the social security number,
- 45 date of birth and last name of the person.

### §20-2-21. Reporting beaver and otter pelts taken and tagged.

- Each trapper shall electronically register each beaver and
- 2 otter, or each pelt, to a game checking station or representative
- 3 of the division within thirty days after the close of a legal season.
- 4 A game tag number shall be issued to the person and recorded in
- 5 writing with the person's name and address, or on a field tag, and
- 6 shall be affixed to each otter and remain attached to the animal
- 7 or pelt until it is processed into commercial fur. A game tag
- 8 number for each beaver shall be issued to the person and
- 9 recorded in writing with the person's name and address and
- 10 either attached to each beaver or pelt, or the tag number shall be

- 11 retained by the person in possession of the beavers. The game
- 12 tag numbers shall remain attached to the animal or pelt or
- 13 retained by the owner until it is processed into commercial fur.

## §20-2-22. Tagging, removing, transporting and reporting bear, deer, wild boar and wild turkey.

- 1 (a) Each person killing a bear, deer, wild boar or wild turkey
- 2 found in a wild state shall either attach a completed field tag to
- 3 the animal or remain with the animal and have upon his or her
- 4 person a completed field tag before removing the carcass in any
- 5 manner from where it was killed.
- 6 (b) While transporting the carcass of a bear, deer, wild boar
- 7 or wild turkey from where it was killed, each person shall either
- 8 attach a completed field tag to the animal or have upon his or her
- 9 person a completed field tag.
- 10 (c) Upon arriving at a residence, camp, hunting lodge,
- vehicle or vessel each person shall attach a field tag to the killed
- bear, deer, wild boar or wild turkey. The field tag shall remain
- 13 on the carcass until the animal is electronically registered. A
- 14 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
- 16 shall remain on the carcass until it is dressed for consumption.
- 17 The game tag number shall remain on the skin or hide until it is
- 18 tanned or mounted.
- 19 (d) If a person who does not possess a field tag kills a bear,
- 20 deer, wild boar or wild turkey, he or she shall make a tag. The
- 21 field tag shall bear the name, address and, if applicable, the
- 22 license number of the hunter and the time, date and county of
- 23 killing.
- 24 (e) A person who kills a bear shall treat the carcass and
- 25 remains in accordance with the provisions of section
- 26 twenty-two-a of this article.

- 27 (f) For each violation of this section a person is subject to the penalties provided in this article.

(H. B. 4411 - By Delegates R. Smith, J. Nelson,D. Evans, Rohrbach, Anderson, Hamrick, Ihle,Wagner and Stansbury)

[Passed March 11, 2016; in effect from passage.] [Approved by the Governor on March 24, 2016.]

AN ACT to amend and reenact §20-2-5a of the Code of West Virginia, 1931, as amended, relating to replacement costs for native brook trout taken illegally.

Be it enacted by the Legislature of West Virginia:

That §20-2-5a of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

#### ARTICLE 2. WILDLIFE RESOURCES.

- §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.
  - 1 (a) Any person who is convicted of violating a criminal law
  - 2 of this state that results in the injury or death of game, as defined
  - 3 in section two, article one of this chapter, or a protected species
  - 4 of animal, in addition to any other penalty to which he or she is
  - 5 subject, shall forfeit the cost of replacing the game or protected
  - 6 species of animal to the state as follows:

- 7 (1) For each game fish or each fish of a protected species
- 8 taken illegally other than by pollution kill, \$10 for each pound
- 9 and any fraction thereof: Provided, That for each native brook
- 10 trout that exceeds the creel limit, \$100 for the first five illegally
- 11 taken and \$20 for each thereafter:
- 12 (2) For each bear, \$500;
- 13 (3) For each deer or raven, \$200;
- (4) For each wild turkey, hawk or owl, \$100;
- 15 (5) For each beaver, otter or mink, \$25;
- 16 (6) For each muskrat, raccoon, skunk or fox, \$15;
- 17 (7) For each rabbit, squirrel, opossum, duck, quail,
- 18 woodcock, grouse or pheasant, \$10;
- 19 (8) For each wild boar, \$200;
- 20 (9) For each bald eagle, \$5,000;
- 21 (10) For each golden eagle, \$5,000;
- 22 (11) For each elk, \$4,500; and
- 23 (12) For any other game or protected species of animal,
- 24 \$100.
- 25 (b) In addition to the replacement value for deer in
- 26 subdivision (3), subsection (a) of this section, the following cost
- 27 shall also be forfeited to the state by any person who is convicted
- 28 of violating any criminal law of this state and the violation
- 29 causes the injury or death of antlered deer:
- 30 (1) For any deer in which the inside spread of the main
- 31 beams of the antlers measured at the widest point equals 14
- 32 inches or greater but less than 16 inches, \$1,000;

- 33 (2) For any deer in which the inside spread of the main 34 beams of the antlers measured at the widest point equals 16 35 inches or greater but less than 18 inches, \$1,500;
- 36 (3) For any deer in which the inside spread of the main 37 beams of the antlers measured at the widest point equals 18 38 inches or greater but less than 20 inches, \$2,000; and
- 39 (4) For any deer in which the inside spread of the main 40 beams of the antlers measured at the widest point equals 20 inches or greater, \$2,500.
- 42 (5) Any person convicted of a second or subsequent 43 violation of any criminal law of this state which violation causes 44 the injury or death of antlered deer is subject to double the 45 authorized range of cost to be forfeited.
- 46 (c) Upon conviction, the court shall order the person to 47 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 48 49 or more defendants are convicted for the same violation causing 50 the injury or death of game or protected species of animal, the 51 forfeiture shall be paid by each person in an equal amount. The forfeiture shall be paid by the person so convicted within the 52 53 time prescribed by the court not to exceed sixty days. In each 54 instance, the court shall pay the forfeiture to the Division of 55 Natural Resources to be deposited into the License 56 Fund-Wildlife Resources and used only for the replacement, 57 habitat management or enforcement programs for injured or 58 killed game or protected species of animal.



## (H. B. 4346 - By Delegates Hamilton, A. Evans, Romine, Wagner and Guthrie)

[Passed March 10, 2016; in effect from passage.] [Approved by the Governor on March 21, 2016.]

AN ACT to amend and reenact §20-2-22a of the Code of West Virginia, 1931, as amended, relating to bear; clarifying bear hunting and baiting; requiring transported bear parts be tagged; revising provisions relating to bear damaging or destroying property; clarifying the issuance of depredation permits, recommendations and reports; providing bear damage claim limit for property used to feed or bait wildlife; clarifying that claims be made against personal insurance; requiring payments from bear damage fund be reduced by insurance payments; assessing points and suspensions against hunting and fishing license for criminal violations; and decreasing criminal penalties and fines.

Be it enacted by the Legislature of West Virginia:

That §20-2-22a of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

#### ARTICLE 2. WILDLIFE RESOURCES.

§20-2-22a. Hunting, tagging and reporting bear; procedures applicable to property destruction by bear; penalties.

- 1 (a) A person may not hunt, capture, or kill any bear, or have
- 2 in his or her possession any bear or bear parts, except during the
- 3 hunting season for bear in the manner designated by rule or law.

- 4 For the purposes of this section, bear parts include, but are not
- 5 limited to, the pelt, gallbladder, skull and claws of bear.
- 6 (b) A person who kills a bear shall, within twenty-four hours
- 7 after the killing, electronically register the bear. A game tag
- 8 number shall be issued to the person and recorded in writing
- 9 with the person's name and address, or on a field tag and shall
- 10 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
- 12 disposal to a charitable institution, school or as otherwise
- 13 designated by the director.
- 14 (c) Training dogs on bears or pursuing bears with dogs is the
- 15 hunting of bear for all purposes of this chapter, including all
- 16 applicable regulations and license requirements.
- 17 (d) It is unlawful:
- 18 (1) To hunt bear without a bear damage stamp, as prescribed
- 19 in section forty-four-b of this article, in addition to a hunting
- 20 license as prescribed in this article;
- 21 (2) To hunt a bear with:
- 22 (A) A shotgun using ammunition loaded with more than one
- 23 solid ball; or
- 24 (B) A rifle of less than twenty-five caliber using rimfire
- 25 ammunition;
- 26 (3) To kill or attempt to kill, or wound or attempt to wound,
- 27 any bear through the use of bait, poison, explosives, traps or
- 28 deadfalls or to feed bears at any time. For purposes of this
- 29 section, bait includes, but is not limited to, corn and other grains,
- 30 animal carcasses or animal remains, grease, sugars in any form,
- 31 scent attractants and other edible enticements, and an area is
- 51 Seem difficulties and other edition entirements, and an area is
- 32 considered baited for ten days after all bait has been removed;

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#### NATURAL RESOURCES

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- 33 (4) To shoot at or kill:
- 34 (A) A bear weighing less than seventy-five pounds live
- 35 weight or fifty pounds field dressed weight, after removal of all
- 36 internal organs;
- 37 (B) Any bear accompanied by a cub; or
- 38 (C) Any bear cub so accompanied, regardless of its weight;
- 39 (5) To transport or possess any part of a bear not tagged in accordance with the provisions of this section;
- 41 (6) To possess, harvest, sell or purchase bear parts obtained
- 42 from bear killed in violation of this section; or
- 43 (7) To organize for commercial purposes or to professionally
- 44 outfit a bear hunt, or to give or receive any consideration
- 45 whatsoever or any donation in money, goods or services in
- 46 connection with a bear hunt, notwithstanding the provisions of
- 47 sections twenty-three and twenty-four of this article.
- 48 (e) The following provisions apply to bear damaging or
- 49 destroying property:
- 50 (1)(A) Any property owner or lessee who has suffered
- 51 damage to real or personal property, including loss occasioned
- 52 by the death or injury of livestock or the unborn issue of
- 53 livestock, caused by an act of a bear may complain to any natural
- 54 resources police officer of the division for protection against the
- 55 bear.
- 56 (B) Upon receipt of the complaint, the officer shall
- 57 immediately investigate the circumstances of the complaint. If
- 58 the officer is unable to personally investigate the complaint, he
- 59 or she shall designate a wildlife biologist to investigate on his or
- 60 her behalf.

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- 61 (C) If the complaint is found to be justified, the officer or designated wildlife biologist may issue a permit to kill the bear 62 63 that caused the property damage or may authorize the owner and 64 other residents to proceed to hunt, destroy or capture the bear 65 that caused the property damage: *Provided*, That only the natural 66 resources police officer or the wildlife biologist may 67 recommend other measures to end or minimize property damage: 68 Provided, however, That, if out-of-state dogs are used in the 69 hunt, the owners of the dogs are the only nonresidents permitted 70 to participate in hunting the bear.
- 71 (2) (A) When a property owner has suffered damage to real 72 or personal property as the result of an act by a bear, the owner 73 shall file a report with the director of the division. A bear 74 damage report shall be completed by a representative of the 75 division and shall state whether or not the bear was hunted and 76 destroyed or killed under authorization of a depredation permit 77 and, if so, the sex and weight shall be recorded and a premolar 78 tooth collected from the bear, all of which shall be submitted 79 with the report. The report shall also include an appraisal of the 80 property damage occasioned by the bear fixing the value of the property lost. Bear damage claims will not be accepted for 81 personal and real property which is commonly used for the 82 83 purposes of feeding, baiting, observing or hunting wildlife, 84 including, but not limited to, hunting blinds, tree stands, artificial 85 feeders, game or trail cameras and crops planted for the purposes 86 of feeding or baiting wildlife.
  - (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.
- 92 (C) The division shall establish the procedures to be 93 followed in presenting and deciding claims, issuing bear

- depredation permits and organizing bear hunts 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: *Provided*, That the claimant shall submit accurate information as to whether he or she is insured for the damages caused by the acts of bear on forms prescribed by the director, and all damage claims shall first be made by the claimant against any insurance policies before payment may be approved from the Bear Damage Fund. Claims for an award of compensation from the Bear Damage Fund shall be reduced or denied in the amount the claimant is actually reimbursed by insurance for the economic loss upon which the claim is based. 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.
  - (f) 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 \$500 nor more than \$1,000, which is not subject to suspension by the court, confined in jail not less than ten nor more than thirty days, or both fined and confined. Further, the person's hunting and fishing licenses shall be assigned six points, however, the hunting and fishing licenses of any person

- convicted of a violation of this section which results in the killing or death of a bear 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 \$1,000 nor more than \$3,000, which is not subject to suspension by the court, confined in jail not less than thirty days nor more than one hundred days, or both fined and confined. The persons hunting and fishing licenses shall be suspended for five years.
- (3) Any person who commits a third or subsequent violation of the provisions of this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than \$2,500 nor more than \$5,000, which is not subject to suspension by the court, confined in jail not less than six months nor more than one year, or both fined and confined. The person's hunting and fishing licenses shall be suspended for ten years.

(Com. Sub. for S. B. 303 - By Senators Blair, Walters, Boso, Gaunch, Maynard, Palumbo, Snyder and Woelfel)

[Passed March 5, 2016; in effect ninety days from passage.] [Approved by the Governor on March 15, 2016.]

AN ACT to amend and reenact \$20-2-420 of the Code of West Virginia, 1931, as amended; to amend said code by adding thereto a new section, designated \$20-2-42z; and to amend and reenact \$20-2B-9 of said code, all relating to fishing licenses; and providing Class L resident five-day fishing license.

Be it enacted by the Legislature of West Virginia:

That \$20-2-420 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 \$20-2-42z; and that \$20-2B-9 of said code be amended and reenacted, all to read as follows:

#### ARTICLE 2. WILDLIFE RESOURCES.

## §20-2-420. Class O resident and Class OO nonresident trout fishing stamp.

- 1 A Class O stamp is a resident trout fishing stamp. A Class
- 2 OO stamp is a nonresident trout fishing stamp. These stamps
- 3 entitle the licensee to fish for trout in all counties of the state,
- 4 except as prohibited by rules of the director or Natural Resources
- 5 Commission. The fee for a Class O stamp is \$10 and the fee for
- 6 a Class OO stamp is \$15. The revenue derived from the sale of
- 7 these stamps shall be deposited in the State Treasury and
- 8 credited to the Division of Natural Resources and shall be used
- 9 and paid out, upon order of the director, for state trout program
- 10 expenses. These stamps, issued in a form prescribed by the
- 11 director, shall be in addition to a Class AB-L, B, B-L, F, L, LL,
- 12 X, XJ or XXJ license or Class Q permit. These stamps require
- 13 that the licensee purchase the appropriate base license before
- 14 participating in the activities specified in this section, except as
- 15 noted.

### §20-2-42z. Class L resident five-day fishing license.

- 1 A Class L license is a resident fishing license and entitles the
- 2 licensee to fish for all legal fish except trout and to take frogs in
- 3 all counties of the state for five consecutive calendar dates
- 4 chosen by the buyer and which will be specified on the license,
- 5 except as prohibited by rules of the director or Natural Resources
- 6 Commission and except when additional licenses, stamps or
- 7 permits are required. To fish for trout, a Class L licensee must

- 8 purchase and carry a valid Class O trout stamp. The fee for the
- 9 license is \$8. This is a base license and does not require the
- 10 purchase of a prerequisite license to participate in the activities
- 11 specified in this section, except as noted.

#### ARTICLE 2B. WILDLIFE ENDOWMENT FUND.

#### §20-2B-9. Class CS resident conservation stamp; purposes, etc.

- 1 A resident hunter, angler or trapper licensed to hunt, fish or
- 2 trap in this state shall have, in addition to a Class A, B or L
- 3 license, a Class CS conservation stamp. The fee for the stamp is
- 4 \$5.
- 5 The revenue derived from the sale of conservation stamps
- 6 shall be deposited in the State Treasury and shall be credited to
- 7 the Division of Natural Resources. The revenue shall be used
- 8 and paid out, upon order of the director, for capital
- 9 improvements and land purchases or leases benefitting wildlife
- 10 except that at the discretion of the director, a maximum of
- 11 twenty percent of the revenue may be used for the operation and
- 12 maintenance of capital improvements and lands: *Provided*, That
- 13 none of this revenue shall be expended for the purchase of
- 14 wetlands, or for land to be flooded so as to create wetlands, to
- 15 attract migratory waterfowl within sixty air miles of any
- 16 established poultry industry: Provided, however, That no
- 17 expenditures of the revenue derived from the sale of the
- 18 conservation stamps shall be made for recreational facilities or
- 19 activities that are used by, or for the benefit of, the general
- 20 public rather than by or for purchasers of hunting, fishing or
- 21 trapping licenses. Any unexpended moneys derived from the sale
- 22 of conservation stamps shall be carried forward to the next fiscal
- 23 year.

## **CHAPTER 171**

(H. B. 4330 - By Delegates Cadle, Ihle, Butler, Weld, Ireland, Zatezalo, Azinger, Kelly, Anderson, Sobonya and Deem)

[Passed March 7, 2016; in effect from passage.] [Approved by the Governor on March 16, 2016.]

AN ACT to amend and reenact \$20-2-64 of the Code of West Virginia, 1931, as amended, relating to making it unlawful to take, give or receive, or agree to take, give or receive, any fish, water animal or other aquatic organism from state waters to stock a commercial fishing preserve or other privately owned pond for commercial purposes.

Be it enacted by the Legislature of West Virginia:

That §20-2-64 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

#### ARTICLE 2. WILDLIFE RESOURCES.

## §20-2-64. Regulating release of fish, water animal and other aquatic organisms; stocking permit.

- 1 (a) It is unlawful for any person: (i) To release any fish,
- 2 water animal or other aquatic organism, alive or dead, or any
- 3 part, nest or egg thereof into the waters of this state except as
- 4 authorized by a stocking permit issued by the director; or (ii) to
- 5 take, give or receive, or agree to take, give or receive, any fish,
- 6 water animal or other aquatic organism taken from the waters of
- 7 this state for purposes of stocking any commercial fishing
- 8 preserve, or other privately owned ponds, for commercial
- 9 purposes: *Provided*, That this subsection does not restrict:

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- 10 (1) The release of fish, water animal or other aquatic 11 organism into the waters of this state from which they were 12 taken by lawful methods; or
- 13 (2) The release of native or established species of fish in 14 privately owned ponds for noncommercial purposes.
- 15 (b) A stocking permit is not required for the stocking of trout 16 in waters of the state provided that the trout originate from a 17 source within the state or meet the disease-free certification 18 requirements for imported salmondiae set forth in section 19 thirteen of this article.
- 20 (c) A stocking permit is not required for the stocking of 21 black bass provided that the Division of Natural Resources is 22 notified prior to stocking and is provided a disease-free 23 certification.
  - (d) It is unlawful for any person to possess, sell, offer for sale, import, bring or cause to be brought or imported into this state or release into the waters of this state, in a live state, any bighead carp (Hypophthalmichthys nobilis), silver carp (Hypophthalmichthys molitrix), black carp (Mylopharyngodon piceus), largescale silver carp (Hypophthalmichthys harmandi), diploid white amur (Ctenopharyngodon idella) or snakehead (Channa spp.), gametes or eggs of the same, or any hybrids of these species. The director may not issue a stocking permit to any person for the species and their hybrids listed in this subsection, but may issue written authorization for the importation or possession of these species or their hybrids into this state if the importation or possession does not violate any federal law and if the use is limited to scientific research.



(Com. Sub. for H. B. 3019 - By Delegates Ireland, Overington, Foster, Fast, Lynch, Azinger, Shott, Hicks and Hanshaw)

[Passed February 25, 2016; in effect ninety days from passage.] [Approved by the Governor on March 4, 2016.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §2-2-13, all relating to requiring official business and records of the state and its political subdivisions be conducted in English, and providing exceptions, limitations, and a definition.

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 §2-2-13, to read as follows:

# ARTICLE 2. LEGAL HOLIDAYS; SPECIAL MEMORIAL DAYS; CONSTRUCTION OF STATUTES; DEFINITIONS; LANGUAGE.

## §2-2-13. Official business and records of the state to be in English; exceptions; definition.

- 1 (a) All official business of this state shall be conducted in
- 2 the English language. All official records, documents, rules,
- 3 orders, and publications shall be printed in English and all
- 4 official programs, meetings, transactions, and actions conducted
- 5 by or on behalf of the state and all its political subdivisions shall
- 6 be in English.
- 7 (b) Other languages may be used by government officials,
- 8 and in official documents, whenever necessary to:

- 9 (1) Protect public health and safety;
- 10 (2) Teach or study other languages;
- 11 (3) Protect the rights of criminal defendants or victims of 12 crime;
- 13 (4) Promote trade, tourism or commerce;
- 14 (5) Facilitate activities pertaining to the compilation of any 15 census:
- 16 (6) Comply with the federal Individuals with Disabilities 17 Education Act, PL 101-476;
- 18 (7) Use proper names, terms of art, legal terms or phrases 19 from languages other than English; or
- 20 (8) Comply with the Constitution and laws of the United 21 States of America or the Constitution of West Virginia. Except 22 in exigent circumstances, when an official government document 23 is translated into any language other than English under this 24 section, an English translation shall also be provided in the same 25 document, appearing in such a manner as to afford the reader the 26 opportunity to observe the English translation of all phrases used. 27
- (c) This section may not be construed to:
- (1) Diminish the usage of, prevent the study or development
   of, or discourage the use of, any Native American language in
   any context or for any purpose;
- (2) Prohibit an elected official from speaking to any person
   in a language other than English while campaigning or providing
   constituent services. However, those officials are encouraged to
   use English as much as possible to promote fluency in English;

- (3) Disparage any language or discourage any person fromlearning or using any language; or
- 38 (4) Prohibit informal and nonbinding translations or 39 communications among or between representatives of 40 government and other persons if the activity does not affect or 41 impair supervision, management, conduct, or execution of 42 official actions and if the representatives of government make 43 clear that these translations or communications are unofficial and 44 not binding on the state or any political subdivision of the state.
- 45 (d) Any examination related to employment administered by 46 any state, municipal or county entity may be administered in a 47 language other than English if the test is available in that 48 language.
- 49 (e) As used in this section, "official" means any government 50 action or document that binds the government, is required by 51 law, or is authorized by law.



## CHAPTER 173

(S. B. 107 - By Senator Trump)

[Passed March 12, 2016; in effect ninety days from passage.] [Approved by the Governor on March 24, 2016.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §56-12-1, §56-12-2, §56-12-3, §56-12-4, §56-12-5, §56-12-6, §56-12-7 and §56-12-8, all relating to creating and adopting the Uniform Interstate Depositions and Discovery Act; establishing the short and citation title of the act; defining terms; creating the procedure governing

issuance of subpoenas by clerks of the court in this state; clarifying the rules governing service of such subpoenas; establishing application of the West Virginia Rules of Civil Procedure to subpoenas issued under the act; requiring that any application or motion to enforce, quash or modify a subpoena issued under the act comply with the rules and statutes of this state, including where to file any such application or motion; encouraging consideration of uniformity of the law with respect to the act whenever it is applied or construed; and establishing the application of the effective date of the act.

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

That the Code of West Virginia, 1931, as amended, be amended and reenacted by adding thereto a new article, designated §56-12-1, §56-12-2, §56-12-3, §56-12-4, §56-12-5, §56-12-6, §56-12-7 and §56-12-8, all to read as follows:

## ARTICLE 12. UNIFORM INTERSTATE DEPOSITIONS AND DISCOVERY ACT.

#### §56-12-1. Short title.

- 1 This article may be cited as the Uniform Interstate
- 2 Depositions and Discovery Act.

#### **§56-12-2.** Definitions.

- 1 In this article:
- 2 "Foreign jurisdiction" means a state other than this state.
- 3 "Foreign subpoena" means a subpoena issued under
- 4 authority of a court of record of a foreign jurisdiction.
- 5 "Person" means an individual, corporation, business trust,
- 6 estate, trust, partnership, limited liability company, association,

- 7 joint venture, public corporation, government, or governmental
- 8 subdivision, agency or instrumentality, or any other legal or
- 9 commercial entity.
- "State" means a state of the United States, the District of
- 11 Columbia, Puerto Rico, the United States Virgin Islands, or any
- 12 territory or insular possession subject to the jurisdiction of the
- 13 United States.
- "Subpoena" means a document, however denominated,
- 15 issued under authority of a court of record requiring a person to:
- 16 (1) Attend and give testimony at a deposition;
- 17 (2) Produce and permit inspection and copying of designated
- 18 books, documents, records, electronically stored information or
- 19 tangible things in the possession, custody or control of the
- 20 person; or
- 21 (3) Permit inspection of premises under the control of the
- 22 person.

#### §56-12-3. Issuance of subpoena.

- 1 (a) To request issuance of a subpoena under this section, a
- 2 party must submit a foreign subpoena to a clerk of court in the
- 3 county in which discovery is sought to be conducted in this state.
- 4 A request for the issuance of a subpoena under this act does not
- 5 constitute an appearance in the courts of this state.
- 6 (b) When a party submits a foreign subpoena to a clerk of
- 7 court in this state, the clerk, in accordance with that court's
- 8 procedure, shall promptly issue a subpoena for service upon the
- 9 person to which the foreign subpoena is directed.
- 10 (c) A subpoena under subsection (b) of this section must:

- 11 (1) Incorporate the terms used in the foreign subpoena; and
- 12 (2) Contain or be accompanied by the names, addresses and
- 13 telephone numbers of all counsel of record in the proceeding to
- 14 which the subpoena relates and of any party not represented by
- 15 counsel.

#### §56-12-4. Service of subpoena.

- 1 A subpoena issued by a clerk of court under section three of
- 2 this article must be served in compliance with West Virginia
- 3 Rules of Civil Procedure.

#### §56-12-5. Deposition, production and inspection.

- 1 The West Virginia Rules of Civil Procedure apply to
- 2 subpoenas issued under section three of this article.

#### §56-12-6. Application to court.

- 1 An application to the court for a protective order or to
- 2 enforce, quash, or modify a subpoena issued by a clerk of court
- 3 under section three of this article must comply with the rules or
- 4 statutes of this state and be submitted to the court in the county
- 5 in which discovery is to be conducted.

#### §56-12-7. Uniformity of application and construction.

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

#### §56-12-8. Application to pending actions.

- 1 This article applies to requests for discovery in cases
- 2 pending on the effective date of this article.

### **CHAPTER 174**

(Com. Sub. for H. B. 4517 - By Delegates Manchin, Shott, Shaffer, Byrd, Skinner, Caputo, Longstreth, Lane, McCuskey and Hanshaw)

[Passed March 10, 2016; in effect ninety days from passage.] [Approved by the Governor on March 24, 2016.]

AN ACT to amend and reenact §39B-1-114 of the Code of West Virginia, 1931, as amended; and to amend and reenact §39B-2-101 of said code, all relating to limiting the ability of an agent under a power of attorney to take self-benefiting actions; creating a presumption that an act is not within the scope of authority granted in a power of attorney when an agent benefits from the act to the detriment of an ancestor, spouse, heir, or descendant, unless the authority to perform the act is expressly provided with particularity in identifying the existing property interest in the power of attorney; and prohibiting an agent from exercising authority under a power of attorney to create in the agent, or in an individual to whom the agent owes a legal obligation of support, an interest in the principal's property, whether by gift, right of survivorship, beneficiary designation, disclaimer, or otherwise, unless the power of attorney expresses in the grant of authority the specific act and identifies the existing property interest with particularity, rather than in general terms.

Be it enacted by the Legislature of West Virginia:

That §39B-1-114 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that §39B-2-101 of said code be amended and reenacted, all to read as follows:

#### ARTICLE 1. GENERAL PROVISIONS.

#### §39B-1-114. Agent's duties.

- 1 (a) Notwithstanding provisions in the power of attorney, an
- 2 agent who has accepted appointment shall:
- 3 (1) Act in accordance with the principal's reasonable
- 4 expectations to the extent actually known by the agent and,
- 5 otherwise, in the principal's best interest;
- 6 (2) Act in good faith; and
- 7 (3) Act only within the scope of authority granted in the 8 power of attorney.
- 9 (b) Except as otherwise provided in the power of attorney, an agent who has accepted appointment shall:
- 11 (1) Act loyally for the principal's benefit;
- 12 (2) Act so as not to create a conflict of interest that impairs
- 13 the agent's ability to act impartially in the principal's best
- 14 interest:
- 15 (3) Act with the care, competence and diligence ordinarily
- 16 exercised by agents in similar circumstances;
- 17 (4) Keep a record of all receipts, disbursements and
- 18 transactions made on behalf of the principal;
- 19 (5) Cooperate with a person that has authority to make
- 20 health-care decisions for the principal to carry out the principal's
- 21 reasonable expectations to the extent actually known by the
- 22 agent and, otherwise, act in the principal's best interest; and
- 23 (6) Attempt to preserve the principal's estate plan, to the
- 24 extent actually known by the agent, if preserving the plan is
- 25 consistent with the principal's best interest based on all relevant
- 26 factors, including:

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- 27 (A) The value and nature of the principal's property;
- 28 (B) The principal's foreseeable obligations and need for 29 maintenance:
- 30 (C) Minimization of taxes, including income, estate, 31 inheritance, generation-skipping transfer and gift taxes; and
- 32 (D) Eligibility for a benefit, a program or assistance under a statute or regulation.
- 34 (c) An agent that acts in good faith is not liable to any 35 beneficiary of the principal's estate plan for failure to preserve 36 the plan.
- 37 (d) An agent that acts with care, competence and diligence 38 for the best interest of the principal is not liable solely because 39 the agent also benefits from the act or has an individual or 40 conflicting interest in relation to the property or affairs of the principal. However, when the agent benefits from the act to the 41 42 substantial and direct detriment of an ancestor, spouse, heir or descendant of the principal a presumption is created that the act 43 44 was not within the scope of authority granted in the power of 45 attorney, unless the authority to perform that specific act is 46 expressed with particularity in identifying the existing property 47 interest and provided in the power of attorney.
  - (e) If an agent is selected by the principal because of special skills or expertise possessed by the agent or in reliance on the agent's representation that the agent has special skills or expertise, the special skills or expertise must be considered in determining whether the agent has acted with care, competence and diligence under the circumstances.
- 54 (f) Absent a breach of duty to the principal, an agent is not 55 liable if the value of the principal's property declines.

- (g) An agent who exercises authority to delegate to another person the authority granted by the principal or who engages another person on behalf of the principal is not liable for an act, error of judgment or default of that person if the agent exercises care, competence and diligence in selecting and monitoring the person.
- 62 (h) Except as otherwise provided in the power of attorney, an agent is not required to disclose receipts, disbursements or 63 transactions conducted on behalf of the principal or provide an 64 accounting unless: ordered by a court or requested by the 65 principal, a guardian, a conservator, another fiduciary acting for 66 the principal, a governmental agency having authority to protect 67 the welfare of the principal or, upon the death of the principal, 68 by the personal representative or successor in interest of the 69 principal's estate. If so requested, within thirty days the agent 70 shall comply with the request or provide a writing or other 71 72 record substantiating why additional time is needed and shall 73 comply with the request within an additional thirty days. If an agent fails or refuses to comply with the provisions of this 74 75 section, the court may award the principal or other authorized 76 party requesting the disclosure reimbursement of reasonable attorneys fees and costs incurred. 77

#### ARTICLE 2. AUTHORITY.

# §39B-2-101. Authority that requires specific grant; grant of general authority.

- 1 (a) An agent under a power of attorney may do the following
- on behalf of the principal or with the principal's property only if
- 3 the power of attorney expressly grants the agent the authority
- 4 and exercise of the authority is not otherwise prohibited by
- 5 another agreement or instrument to which the authority or
- 6 property is subject to:
- 7 (1) Create, amend, revoke or terminate an inter vivos trust;

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8	(2) Make a gift;
9	(3) Create or change rights of survivorship;
10	(4) Create or change a beneficiary designation;
11	(5) Delegate authority granted under the power of attorney;
12 13 14	(6) Waive the principal's right to be a beneficiary of a joint and survivor annuity, including a survivor benefit under a retirement plan;
15 16	(7) Exercise fiduciary powers that the principal has authority to delegate; or
17	(8) Disclaim property, including a power of appointment.
18 19 20 21 22 23 24 25 26	(b) Notwithstanding a grant of authority to do an act described in this section, an agent may not exercise authority under a power of attorney to create in the agent, or in an individual to whom the agent owes a legal obligation of support, an interest in the principal's property, whether by gift, right of survivorship, beneficiary designation, disclaimer or otherwise, unless the power of attorney expresses in the grant of authority the specific act and identifies the existing property interest with particularity, rather than in general terms.
27 28 29 30 31	(c) Subject to subsections (a), (b), (d) and (e) of this section, if a power of attorney grants to an agent authority to do all acts that a principal could do, the agent has the general authority described in section one hundred four through section one hundred sixteen of this article.
32 33	(d) Unless the power of attorney otherwise provides, a grant of authority to make a gift is subject to the provisions of section

34 one hundred seventeen of this article.

- 35 (e) Subject to subsections (a), (b) and (d) of this section, if 36 the subjects over which authority is granted in a power of 37 attorney are similar or overlap, the broadest authority controls.
- 38 (f) Authority granted in a power of attorney is exercisable 39 with respect to property that the principal has when the power of 40 attorney is executed or acquires later, whether or not the property 41 is located in this state and whether or not the authority is 42 exercised or the power of attorney is executed in this state.
- 43 (g) An act performed by an agent pursuant to a power of 44 attorney has the same effect and inures to the benefit of and 45 binds the principal and the principal's successors in interest as 46 if the principal had performed the act.

### CHAPTER 175

(H. B. 4334 - By Delegates Summers, Campbell, Miller, Sobonya, Faircloth, Bates, Westfall, Householder, Cooper and Fleischauer)

[Passed March 12, 2016; in effect ninety days from passage.] [Approved by the Governor on March 29, 2016.]

AN ACT to repeal §30-15-1, §30-15-2, §30-15-3, §30-15-4, §30-15-5, §30-15-6, §30-15-7, §30-15-7a, §30-15-7b, §30-15-7c and §30-15-8 of the Code of West Virginia, 1931, as amended; to amend and reenact §16-5-19 of said code; to amend and reenact §30-7-1, §30-7-2, §30-7-4, §30-7-6, §30-7-7, §30-7-15a, §30-7-15b and §30-7-15c of said code; and to amend said code by adding thereto two new sections, designated §30-7-15d and §30-7-15e, all relating to the regulation of the practice of advanced practice registered nurses authority relating to death certificates; defining terms; requiring a license to practice as an advanced practice registered

nurse; modifying license requirements for an advanced practice registered nurse; modifying requirements for prescriptive authority; providing rule-making authority; providing emergency rule-making authority; modifying prescriptive authority of certain controlled substances; providing collaborative requirements; modifying the requirements for application for prescription authority; permitting the board review qualifications of applicants; authorizing advanced practice registered nurses be granted prescriptive authority without the requirement of a collaborative agreement upon application; requiring an advanced practice registered nurses complete certain prerequisites; requiring certain reports; permitting the board to discipline advanced practice registered nurses; eliminating required qualifications of the executive secretary of the board; creating a Joint Advisory Council; providing the council's composition; providing council members' terms; providing powers of the council; providing duties of the council; providing advance practice registered nurses with certain signatory authority; and requiring certain training.

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

That §30-15-1, §30-15-2, §30-15-3, §30-15-4, §30-15-5, §30-15-6, §30-15-7, §30-15-7a, §30-15-7b, §30-15-7c and §30-15-8 of the Code of West Virginia, 1931, as amended, be repealed; that §16-5-19 of said code be amended and reenacted; that §30-7-1, §30-7-2, §30-7-4, §30-7-6, §30-7-7, §30-7-15a, §30-7-15b and §30-7-15c of said code be amended and reenacted; and that said code be amended by adding thereto two new sections, designated §30-7-15d and §30-7-15e, all to read as follows:

#### CHAPTER 16. PUBLIC HEALTH.

#### ARTICLE FIVE. VITAL STATISTICS.

#### §16-5-19. Death registration.

- 1 (a) A certificate of death for each death which occurs in this
- 2 state shall be filed with the section of vital statistics, or as

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- 3 otherwise directed by the state Registrar, within five days after
- 4 death, and prior to final disposition, and shall be registered if it
- 5 has been completed and filed in accordance with this section.
- 6 (1) If the place of death is unknown, but the dead body is 7 found in this state, the place where the body was found shall be 8 shown as the place of death.
- 9 (2) If the date of death is unknown, it shall be approximated.
  10 If the date cannot be approximated, the date found shall be
  11 shown as the date of death.
- 12 (3) If death occurs in a moving conveyance in the United 13 States and the body is first removed from the conveyance in this 14 state, the death shall be registered in this state and the place 15 where it is first removed shall be considered the place of death.
- 16 (4) If death occurs in a moving conveyance while in 17 international waters or air space or in a foreign country or its air 18 space and the body is first removed from the conveyance in this 19 state, the death shall be registered in this state but the certificate 20 shall show the actual place of death insofar as can be 21 determined.
- 22 (5) In all other cases, the place where death is pronounced shall be considered the place where death occurred.
- 24 (b) The funeral director or other person who assumes 25 custody of the dead body shall:
  - (1) Obtain the personal data from the next of kin or the best qualified person or source available including the deceased person's social security number or numbers, which shall be placed in the records relating to the death and recorded on the certificate of death;
- 31 (2) Within forty-eight hours after death, provide the 32 certificate of death containing sufficient information to identify

- 33 the decedent to the physician nurse responsible for completing
- 34 the medical certification as provided in subsection (c) of this
- 35 section; and
- 36 (3) Upon receipt of the medical certification, file the 37 certificate of death: *Provided*, That for implementation of 38 electronic filing of death certificates, the person who certifies to 39 cause of death will be responsible for filing the electronic 40 certification of cause of death as directed by the state Registrar and in accordance with legislative rule.
- 42 (c) The medical certification shall be completed and signed 43 within twenty-four hours after receipt of the certificate of death 44 by the physician or advanced practice registered nurse in charge 45 of the patient's care for the illness or condition which resulted in 46 death except when inquiry is required pursuant to chapter 47 sixty-one, article twelve or other applicable provisions of this 48 code.
- 49 (1) In the absence of the physician or advanced practice registered nurse or with his or her approval, the certificate may 50 51 be completed by his or her associate physician, any physician who has been placed in a position of responsibility for any 52 53 medical coverage of the decedent, the chief medical officer of 54 the institution in which death occurred, or the physician who performed an autopsy upon the decedent, provided inquiry is not 55 56 required pursuant to chapter sixty-one, article twelve of this 57 code.
  - (2) The person completing the cause of death shall attest to its accuracy either by signature or by an approved electronic process.
- (d) When inquiry is required pursuant to article twelve,
   chapter sixty one, or other applicable provisions of this code, the
   state Medical Examiner or designee or county medical examiner

- or county coroner in the jurisdiction where the death occurred or where the body was found shall determine the cause of death and shall complete the medical certification within forty-eight hours after taking charge of the case.
- (1) If the cause of death cannot be determined within forty-eight hours after taking charge of the case, the medical examiner shall complete the medical certification with a "Pending" cause of death to be amended upon completion of medical investigation.
  - (2) After investigation of a report of death for which inquiry is required, if the state Medical Examiner or designee or county medical examiner or county coroner decline jurisdiction, the state Medical Examiner or designee or county medical examiner or county coroner may direct the decedent's family physician or the physician who pronounces death to complete the certification of death: *Provided*, That the physician is not civilly liable for inaccuracy or other incorrect statement of death unless the physician willfully and knowingly provides information he or she knows to be false.
  - (e) When death occurs in an institution and the person responsible for the completion of the medical certification is not available to pronounce death, another physician may pronounce death. If there is no physician available to pronounce death, then a designated licensed health professional who views the body may pronounce death, attest to the pronouncement by signature or an approved electronic process and, with the permission of the person responsible for the medical certification, release the body to the funeral director or other person for final disposition: *Provided*, That if the death occurs in an institution during court-ordered hospitalization, in a correctional facility or under custody of law-enforcement authorities, the death shall be reported directly to a medical examiner or coroner for investigation, pronouncement and certification.

- (f) If the cause of death cannot be determined within the time prescribed, the medical certification shall be completed as provided by legislative rule. The attending physician or medical examiner, upon request, shall give the funeral director or other person assuming custody of the body notice of the reason for the delay, and final disposition of the body may not be made until authorized by the attending physician, medical examiner or other persons authorized by this article to certify the cause of death.
- (g) Upon receipt of autopsy results, additional scientific study, or where further inquiry or investigation provides additional information that would change the information on the certificate of death from that originally reported, the certifier, or any State Medical Examiner who provides such inquiry under authority of article twelve, chapter sixty-one of this code shall immediately file a supplemental report of cause of death or other information with the section of vital statistics to amend the record, but only for purposes of accuracy.
- (h) When death is presumed to have occurred within this state but the body cannot be located, a certificate of death may be prepared by the state Registrar only upon receipt of an order of a court of competent jurisdiction which shall include the finding of facts required to complete the certificate of death. The certificate of death will be marked "Presumptive" and will show on its face the date of death as determined by the court and the date of registration, and shall identify the court and the date of the order.
- (i) The local registrar shall transmit each month to the county clerk of his or her county a copy of the certificates of all deaths occurring in the county, and if any person dies in a county other than the county within the state in which the person last resided prior to death, then the state Registrar shall furnish a copy of the death certificate to the clerk of the county commission of the county where the person last resided, from

- which copies the clerk shall compile a register of deaths, in a
- 131 form prescribed by the state Registrar. The register shall be a
- 132 public record.

#### ARTICLE 7. REGISTERED PROFESSIONAL NURSES.

#### §30-7-1. Definitions.

- 1 As used in this article:
- 2 (a) "Advanced practice registered nurse" means a registered
- 3 nurse who has acquired advanced clinical knowledge and skills
- 4 preparing him or her to provide direct and indirect care to
- 5 patients as a certified nurse practitioner, certified nurse-midwife,
- 6 certified registered nurse anesthetist, or clinical nurse specialist,
- 7 who has completed a board-approved graduate-level education
- 8 program and who has passed a board-approved national
- 9 certification examination.
- 10 (b) "Board" means the West Virginia Board of Examiners 11 for Registered Professional Nurses;
- 12 (c) "Collaborative relationship" means a working
- 13 relationship, structured through a written agreement, in which an
- 14 advanced practice registered nurse may prescribe drugs in
- 15 collaboration with a qualified physician;
- 16 (d) "Practice of registered professional nursing" or
- 17 "registered professional nursing" means the performance for
- 18 compensation of any service requiring substantial specialized
- 19 judgment and skill based on knowledge and application of
- 20 principles of nursing derived from the biological, physical and
- 21 social sciences, such as responsible supervision of a patient
- 22 requiring skill in observation of symptoms and reactions and the
- 23 accurate recording of the facts, or the supervision and teaching
- 24 of other persons with respect to such principles of nursing, or in

- 25 the administration of medications and treatments as prescribed
- 26 by a licensed physician, a licensed dentist or a licensed advanced
- 27 practice registered nurse, or the application of such nursing
- 28 procedures as involve understanding of cause and effect in order
- 29 to safeguard life and health of a patient and others; and
- 30 (e) "Temporary permit" means a permit authorizing the
- 31 holder to practice registered professional nursing in this state
- 32 until such permit is no longer effective or the holder is granted
- 33 a license by the West Virginia State Board of Examiners for
- 34 Registered Professional Nurses.

#### §30-7-2. License required to practice.

- 1 (a) It is unlawful for any person not licensed under the
- 2 provisions of this article to practice or to offer to practice
- 3 registered professional nursing in this state, or to use any title,
- 4 sign, card or device to indicate that such person is a registered
- 5 professional nurse: Provided, That any professional nurse
- 6 holding an active, unencumbered license to practice in another
- 7 state, who accompanies a patient to whom he or she administers
- 8 nursing care while such patient is in transit or being transported
- 9 into, out of, or through this state, may practice without a license
- 10 issued under this article with the following limitations: (1) Such
- 11 nurse may only administer nursing care to the patient whom they
- 12 are accompanying in this state; and (2) under no circumstances
- 13 is any such nurse authorized to practice nursing in this state for
- 14 longer than forty-eight hours within any three-month period; and
- 15 (3) under no circumstances shall any such nurse hold him or
- 16 herself out as a registered professional nurse licensed in this
- 17 state. Such forty-eight hour period shall commence and run from
- 18 the time such nurse first enters the borders of this state in the
- 19 company of his or her patient and therefrom run continuously,
- 20 whether or not such nurse dispenses nursing care, until such
- 21 forty-eight hour period has elapsed.

22 (b) To practice as an advanced practice registered nurse in 23 this state, a person must have a valid advanced practice registered nurse license issued by the board. It is unlawful for 24 25 any person to practice or offer to practice as an advanced 26 practice registered nurse, to use any title, sign, card or device to indicate or give the impression that such person is an advanced 27 28 practice registered nurse or to practice as, perform the role of, or use any title, sign, card or device to indicate that the person is a 29 30 certified registered nurse anesthetist, certified nurse-midwife, clinical nurse specialist or certified nurse practitioner, unless that 31 person is currently licensed by the board as an advanced practice 32 33 registered nurse.

# \*§30-7-4. Organization and meetings of board; quorum; powers and duties generally; executive secretary; funds.

- 1 The board shall meet at least once each year and shall elect
- 2 from its members a president and a secretary. The secretary shall
- 3 also act as treasurer of the board. The board may hold such other
- 4 meetings during the year as it may deem necessary to transact its
- 5 business. A majority, including one officer, of the board shall
- 6 constitute a quorum at any meeting. The board is hereby
- 7 authorized and empowered to:
- 8 (a) Adopt and, from time to time, amend such rules and 9 regulations, not inconsistent with this article, as may be 10 necessary to enable it to carry into effect the provisions of this 11 article:
- 12 (b) Prescribe standards for educational programs preparing 13 persons for licensure to practice registered professional nursing 14 under this article;

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<sup>\*</sup> NOTE: This section was also amended by H. B.4654 (Chapter 182), which passed prior to this act.

- (c) Provide for surveys of such educational programs at suchtime as it may deem necessary;
- 17 (d) Accredit such educational programs for the preparation
- 18 of practitioners of registered professional nursing as shall meet
- 19 the requirements of this article and of the board;
- 20 (e) Deny or withdraw accreditation of educational programs
- 21 for failure to meet or maintain prescribed standards required by
- 22 this article and by the board;
- 23 (f) Examine, license and renew the licenses of duly qualified 24 applicants;
- 25 (g) Conduct hearings upon charges calling for discipline of
- 26 a licensee or revocation or suspension of a license;
- (h) Keep a record of all proceedings of the board;
- 28 (i) Make a biennial report to the Governor and the
- 29 Legislative Oversight Commission for Health and Human
- 30 Resources Accountability;
- 31 (j) Appoint and employ a qualified person, who shall not be
- 32 a member of the board, to serve as executive secretary to the
- 33 board;
- 34 (k) Define the duties and fix the compensation for the
- 35 executive secretary; and
- 36 (1) Employ such other persons as may be necessary to carry
- 37 on the work of the board.
- 38 All fees and other moneys collected by the board pursuant to
- 39 the provisions of this article shall be kept in a separate fund and
- 40 expended solely for the purpose of this article. No part of this
- 41 special fund shall revert to the General Funds of this state. The

- 42 compensation provided by this article and all expenses incurred
- under this article shall be paid from this special fund. No 43
- 44 compensation or expense incurred under this article shall be a
- 45 charge against the General Funds of this state.

#### §30-7-6. Qualifications; licensure; fees; temporary permits.

- 1 (a) To obtain a license to practice registered professional
- 2 nursing, an applicant for such license shall submit to the board
- 3 written evidence, verified by oath, that he or she: (1) Is of good
- moral character; (2) has completed an approved four-year high 4
- school course of study or the equivalent thereof, as determined 5
- by the appropriate educational agency; and (3) has completed an 6
- accredited program of registered professional nursing education 7
- 8 and holds a diploma of a school accredited by the board.
- 9 (b) The applicant shall also be required to pass a written examination in such subjects as the board may determine. Each
- written examination may be supplemented by an oral 11
- examination. Upon successfully passing such examination or 12
- examinations, the board shall issue to the applicant a license to 13
- practice registered professional nursing. The board shall 14
- 15 determine the times and places for examinations. In the event an
- applicant shall have failed to pass examinations on two 16
- occasions, the applicant shall, in addition to the other 17
- 18 requirements of this section, present to the board such other
- evidence of his or her qualifications as the board may prescribe. 19
- 20 (c) The board may, upon application, issue a license to
- 21 practice registered professional nursing by endorsement to an
- 22 applicant who has been duly licensed as a registered professional
- nurse under the laws of another state, territory or foreign country 23
- 24 if in the opinion of the board the applicant meets the
- qualifications required of registered professional nurses at the 25
- 26 time of graduation.

- (d) The board may, upon application and proper identification determined by the board, issue a temporary permit to practice registered professional nursing by endorsement to an applicant who has been duly licensed as a registered professional nurse under the laws of another state, territory or foreign country. Such temporary permit authorizes the holder to practice registered professional nursing in this state while the temporary permit is effective. A temporary permit shall be effective for ninety days, unless the board revokes such permit prior to its expiration, and such permit may not be renewed. Any person applying for a temporary license under the provisions of this paragraph shall, with his or her application, pay to the board a nonrefundable fee of \$10.
  - (e) Any person holding a valid license designated as a "waiver license" may submit an application to the board for a license containing no reference to the fact that such person has theretofore been issued such "waiver license." The provisions of this section relating to examination and fees and the provisions of all other sections of this article shall apply to any application submitted to the board pursuant to the provisions of this paragraph.
- (f) Any person applying for a license to practice registered professional nursing under the provisions of this article shall, with his or her application, pay to the board a fee of \$40: *Provided*, That the fee to be paid for the year commencing July 1, 1982, shall be \$70: *Provided*, *however*, That the board in its discretion may, by rule or regulation, decrease either or both said license fees. In the event it shall be necessary for the board to reexamine any applicant for a license, an additional fee shall be paid to the board by the applicant for reexamination: *Provided further*, That the total of such additional fees shall in no case exceed \$100 for any one examination.
- (g) Any person holding a license heretofore issued by the West Virginia state Board of Examiners for Registered Nurses

- and which license is valid on the date this article becomes effective shall be deemed to be duly licensed under the provisions of this article for the remainder of the period of any such license heretofore issued. Any such license heretofore issued shall also, for all purposes, be deemed to be a license issued under this article and to be subject to the provisions hereof.
  - (h) The board shall, upon receipt of a duly executed application for licensure and of the accompanying fee of \$70, issue a temporary permit to practice registered professional nursing to any applicant who has received a diploma from a school of nursing approved by the board pursuant to this article after the date the board last scheduled a written examination for persons eligible for licensure: *Provided*, That no such temporary permit shall be renewable nor shall any such permit be valid for any purpose subsequent to the date the board has announced the results of the first written examination given by the board following the issuance of such permit.
  - (i) To obtain a license to practice as an advanced practice registered nurse, an applicant must submit a written application, verified by oath, to the board together with an application fee established by the board through an authorized legislative rule. The requirements for a license to practice as an advanced practice registered nurse in this state are listed below and must be demonstrated to the board through satisfactory evidence submitted with the application for a license:
- 87 (1) The applicant must be licensed in good standing with the 88 board as a registered professional nurse;
  - (2) The applicant must have satisfactorily completed a graduate-level program accredited by a national accreditation body that is acceptable to the board; and
- 92 (3) The applicant must be currently certified by a national certification organization, approved by the board, in one or more

- 94 of the following nationally recognized advance practice
- 95 registered nursing roles: certified registered nurse anesthetist,
- 96 certified nurse-midwife, clinical nurse specialist or certified
- 97 nurse practitioner.

## §30-7-7. Qualifications and licensure of persons not citizens of United States.

- 1 (a) The board may, upon application, issue a license to
- 2 practice registered professional nursing by endorsement to any
- 3 person who is not a citizen of the United States of America if
- 4 such person: (1) Has been duly licensed as a registered
- 5 professional nurse under the laws of another state, territory or
- 6 foreign country; and (2) shall, in any such state, territory or
- 7 foreign country, have passed a written examination in the
- 8 English language which, in the opinion of the board, is
- 9 comparable in content and scope to the type of written
- 10 examination that is required in subsection (b) of section six of
- 11 this article.
- 12 (b) All other provisions of this article shall be applicable to
- 13 any application for or license issued pursuant to this section.

# §30-7-15a. Prescriptive authority for prescription drugs; coordination with Board of Pharmacy; rule-making authority.

- 1 (a) The board may, in its discretion, authorize an advanced
- 2 practice registered nurse to prescribe prescription drugs in
- 3 accordance with this article and all other applicable state and
- 4 federal laws. An authorized advanced practice registered nurse
- 5 may write or sign prescriptions or transmit prescriptions verbally
- 6 or by other means of communication.
- 7 (b) The board shall promulgate legislative rules in
- 8 accordance with chapter twenty-nine-a of this code governing

- 9 the eligibility and extent to which an advanced practice 10 registered nurse may prescribe drugs. Such rules shall provide, at a minimum, a state formulary classifying those categories of 11 drugs which shall not be prescribed by an advanced practice 12 registered nurse including, but not limited to, Schedules I and II 13 14 of the Uniform Controlled Substances Act, antineoplastics, radiopharmaceuticals and general anesthetics. Drugs listed under 15 Schedule III shall be limited to a thirty day supply without refill. 16 17 In addition to the above referenced provisions and restrictions 18 and pursuant to a collaborative agreement as set forth in section fifteen-b of this article, the rules shall permit the prescribing of 19 20 an annual supply of any drug, with the exception of controlled 21 substances, which is prescribed for the treatment of a chronic 22 condition, other than chronic pain management. For the purposes of this section, a "chronic condition" is a condition which lasts 23 three months or more, generally cannot be prevented by 24 25 vaccines, can be controlled but not cured by medication and does 26 not generally disappear. These conditions, with the exception of chronic pain, include, but are not limited to, arthritis, asthma, 27 28 cardiovascular disease, cancer, diabetes, epilepsy and seizures, and obesity. The prescriber authorized in this section shall note 29 30 on the prescription the chronic disease being treated.
- 31 (c) The board may promulgate emergency rules to 32 implement the provisions of this article pursuant to section 33 fifteen, article three, chapter twenty-nine-a of this code.
- (d) The board shall transmit to the Board of Pharmacy a list
   of all advanced practice registered nurses with prescriptive
   authority. The list shall include:
- 37 (1) The name of the authorized advanced practice registered as nurse;
- 39 (2) The prescriber's identification number assigned by the 40 board; and

41 (3) The effective date of prescriptive authority.

## §30-7-15b. Eligibility for prescriptive authority; application; fee; collaborative relationships and agreements.

- 1 (a) An advanced practice registered nurse shall be eligible to
- 2 apply for authorization to prescribe drugs pursuant to section
- 3 fifteen-a of this article after satisfying the following
- 4 requirements:
- 5 (1) Be licensed and certified in West Virginia as an 6 advanced practice registered nurse;
- 7 (2) Be at least eighteen years of age;
- 8 (3) Have completed forty-five contact hours of education in
- 9 pharmacology and clinical management of drug therapy under a
- 10 program approved by the board, fifteen hours of which shall
- 11 have been completed within the two-year period immediately
- 12 prior to entering into a prerequisite collaborative relationship;
- 13 (4) Provide the board with evidence that he or she is a person
- 14 of good moral character and not addicted to alcohol or the use of
- 15 controlled substances;
- 16 (5) Does not have his or her advanced practice registered
- 17 nursing license, certification or registration in any jurisdiction
- 18 suspended, limited or revoked; and
- 19 (6) Submit a completed, notarized application to the board,
- 20 accompanied by a fee as established by the board by rule.
- 21 (b) The board shall authorize an applicant to prescribe
- 22 prescription drugs under the terms of a collaborative agreement
- 23 and in accordance with section fifteen-a of this article and
- 24 applicable legislative rules if the applicant has met the
- 25 prerequisites of subsection (a) of this section and the following
- 26 additional prerequisites are satisfied:

- 27 (1) The board is satisfied that the collaborating physician is 28 licensed in good standing;
- 29 (2) The collaborative agreement is sufficient in form;
- 30 (3) The applicant has completed the education requirements;
- 31 and
- 32 (4) The applicant has submitted a completed application on
- 33 forms developed by the board and paid an application fee
- 34 established by the board in legislative rule.
- 35 (c) A collaborative agreement for a collaborative
- 36 relationship for prescriptive practice between a physician and an
- 37 advanced practice registered nurse shall be set forth in writing
- 38 and include, but not be limited to, the following:
- 39 (1) Mutually agreed upon written guidelines or protocols for
- 40 prescriptive authority as it applies to the advanced practice
- 41 registered nurse's clinical practice;
- 42 (2) Statements describing the individual and shared
- 43 responsibilities of the advanced practice registered nurse and the
- 44 collaborating physician;
- 45 (3) Periodic and joint evaluation of prescriptive practice; and
- 46 (4) Periodic joint review and updating of the written
- 47 guidelines or protocols.
- 48 (d) Verification of a collaborative agreement shall be filed
- 49 with the board by the advanced practice registered nurse with
- 50 documentation of completion of the education requirements
- 51 described in subsection (a) of this section. The board shall
- 52 forward a copy of the verified agreement to the board through
- 53 which the collaborative physician is licensed.

- 54 (e) The board shall, upon application, authorize an advanced 55 practice registered nurse to prescribe prescription drugs in 56 accordance with section fifteen-a of this article without the 57 further requirement of a collaborative agreement if the applicant 58 has satisfied the following prerequisites:
- 59 (1) Has practiced at least three years in a duly-documented 60 collaborative relationship with granted prescriptive authority;
- 61 (2) Licensed in good standing with the board; and
- 62 (3) Has submitted a completed application on forms 63 developed by the board and paid an application fee established 64 by the board in legislative rule.
- (f) Notwithstanding the provisions of subsection (e) of this section, the board may require an advanced practice registered nurse to practice in a collaborative agreement if the board determines, by order arising out of the board's complaint process, that a collaborative relationship is necessary for the rehabilitation of a licensee or for protection of the public.

## §30-7-15c. Form of prescriptions; termination of authority; renewal; notification of termination of authority.

- 1 (a) Prescriptions authorized by an advanced practice
- 2 registered nurse must comply with all applicable state and
- 3 federal laws; must be signed by the prescriber with the initials
- 4 "A.P.R.N." or the designated certification title of the prescriber;
- 5 and must include the prescriber's identification number assigned
- 6 by the board or the prescriber's national provider identifier
- 7 assigned by the National Provider System pursuant to 45 C. F. R.
- 8 §162.408.
- 9 (b) Prescriptive authorization shall be terminated if the 10 advanced practice registered nurse has:

- 11 (1) Not maintained current authorization as an advanced 12 practice registered nurse; or
- 13 (2) Prescribed outside the advanced practice registered
- 14 nurse's scope of practice or has prescribed drugs for other than
- 15 therapeutic purposes; or
- 16 (3) Has not filed verification of a collaborative agreement
- 17 with the board if such an agreement is required.
- 18 (c) Prescriptive authority for an advanced practice registered
- 19 nurse must be renewed biennially. Documentation of eight
- 20 contact hours of pharmacology during the previous two years
- 21 must be submitted at the time of renewal.
- 22 (d) The board shall notify the Board of Pharmacy within
- 23 twenty-four hours after termination of, or change in, an advanced
- 24 practice registered nurse's prescriptive authority.

#### §30-7-15d. Advanced practice registered nurse signatory authority.

- 1 (a) An advanced practice registered nurse may provide an
- 2 authorized signature, certification, stamp, verification, affidavit
- 3 or endorsement on documents within the scope of their practice,
- 4 including, but not limited to, the following documents:
- 5 (1) Death certificates: *Provided*, That the advanced practice
- 6 registered nurse has received training from the board on the
- 7 completion of death certificates;
- 8 (2) "Physician orders for life sustaining treatment,"
- 9 "physician orders for scope of treatment" and "do not
- 10 resuscitate" forms;
- 11 (3) Handicap hunting certificates; and
- 12 (4) Utility company forms requiring maintenance of utilities
- 13 regardless of ability to pay.

- 14 (b) An advanced practice registered nurse may not sign a
- 15 certificate of merit for a medical malpractice claim against a
- 16 physician.

## §30-7-15e. Joint Advisory Council on Limited Prescriptive Authority.

- 1 (a) On July 1, 2016, there is created the Joint Advisory
- 2 Council on Limited Prescriptive Authority. The purpose of the
- 3 Council is to advise the board regarding collaborative
- 4 agreements and prescriptive authority for advanced practice
- 5 registered nurses.
- 6 (b) The Governor shall appoint:
- 7 (1) Two allopathic physicians as recommended by the Board
- 8 of Medicine who are in a collaborative relationship with
- 9 advanced practice registered nurses;
- 10 (2) Two osteopathic physicians who are in active
- 11 collaborative relationships as recommended by the Board of
- 12 Osteopathic Medicine who are in a collaborative relationship
- 13 with advanced practice registered nurses;
- 14 (3) Six advanced practice registered nurses as recommended
- 15 by the Board of Examiners for Registered Professional Nurses
- 16 who have at least three years full-time practice experience, and
- 17 shall include at least one certified nurse practitioner, one
- 18 certified nurse-midwife, and one certified registered nurse
- 19 anesthetist, all of whom actively prescribe prescription drugs;
- 20 (4) One licensed pharmacist as recommended by the Board
- 21 of Pharmacy;
- 22 (5) One consumer representative; and
- 23 (6) One representative from a school of public health of an
- 24 institution of higher education.

- (c) All members of the Council who are healthcare providers
   shall have at least three years full-time practice experience and
   hold active state licenses.
- (d) Each member shall serve for a term of three years. The
  Governor shall stagger the terms so that no more than five
  appointments shall expire annually. Prior to the election of a
  chairman, the board shall be called together by the representative
  from a school of public health of an institution of higher
  education.
- 34 (e) A majority of members appointed to the Council shall constitute a quorum to conduct official business.
- 36 (f) The Council shall choose its own chairman and shall meet at the call of the chairman at least biannually.
- 38 (g) The Council may perform the following duties:
- 39 (1) Review and evaluate applications for advanced practice 40 registered nurses to prescribe without a collaborative agreement;
- 41 (2) Assist advanced practice registered nurses with entering 42 into collaborative agreements in non-emergency situations, 43 including providing the contact information for physicians with 44 whom the advanced practice registered nurses may collaborate;
- 45 (3) Advise the board in emergency situations of a rescinded collaborative agreement, giving a sixty day grace period;
- 47 (4) Assist the board in developing and proposing emergency rules;
- 49 (5) Review and advise on complaints against advanced 50 practice registered nurses;
- 51 (6) Develop pilot project allowing independent prescribing 52 of controlled substances by advanced practice registered nurses 53 and study results to assure patient/public safety;

- 54 (7) Develop other studies and/or pilot projects, including but 55 not limited to:
- 56 (A) Issues of access, outcomes and cost effectiveness of services;
- 58 (B) The development of recommendations for reciprocity;
- 59 (C) The optimal length of time for transition into 60 independent prescribing; and
- 61 (D) Methods to foster effective interprofessional 62 communication.



## CHAPTER 176

(H. B. 4340 - By Delegates Howell, Foster, Canterbury, Summers, Waxman, Azinger, Rohrbach, Storch, Cadle, R. Smith and Perdue)

[Passed March 9, 2016; in effect from passage.] [Approved by the Governor on March 25, 2016.]

AN ACT to amend and reenact §30-1-5 of the Code of West Virginia, 1931, as amended; and to amend said code by adding there to a new article, designated §30-1D-1, all relating generally to boards of examination for licensure; amending licensing requirements for an act which may be called Lynette's Law; requiring information regarding completed disciplinary actions in which discipline was ordered, to be posted on a website with public access; and requiring certain boards regulating professions to require national criminal background checks on applicants being licensed for the first time in West Virginia.

Be it enacted by the Legislature of West Virginia:

That §30-1-5 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 §30-1D-1, all to read as follows:

# ARTICLE 1. GENERAL PROVISIONS APPLICABLE TO ALL STATE BOARDS OF EXAMINATION OR REGISTRATION REFERRED TO IN CHAPTER.

#### §30-1-5. Meetings; quorum; investigatory powers; duties.

- 1 (a) Every board referred to in this chapter shall hold at least
- 2 one meeting each year, at such time and place as it may prescribe
- 3 by rule, for the examination of applicants who desire to practice
- 4 their respective professions or occupations in this state and to
- 5 transact any other business which may legally come before it.
- 6 The board may hold additional meetings as may be necessary,
- 7 which shall be called by the secretary at the direction of the
- 8 president or upon the written request of any three members. A
- 9 majority of the members of the board constitutes a quorum for
- 10 the transaction of its business.
- 11 (b) The board may compel the attendance of witnesses, to
- 12 issue subpoenas, to conduct investigations and hire an
- 13 investigator and to take testimony and other evidence concerning
- 14 any matter within its jurisdiction. The president and secretary of
- 15 the board may administer oaths for these purposes.
- 16 (c) Every board referred to in this chapter shall investigate
- 17 and resolve complaints which it receives and shall, within six
- 18 months of the complaint being filed, send a status report to the
- 19 party filing the complaint by certified mail with a signed return
- 20 receipt and within one year of the status report's return receipt
- 21 date issue a final ruling, unless the party filing the complaint and
- 22 the board agree in writing to extend the time for the final ruling.

- 23 (d) Every board shall provide public access to the record of the disposition of the complaints which it receives in accordance 24 with the provisions of chapter twenty-nine-b of this code, and 25 26 shall provide public access on a website to all completed 27 disciplinary actions in which discipline was ordered. If a board 28 is unable to provide access, the Attorney General shall provide 29 a link to this information on the consumer protection division website, together with a link to the website of all other boards 30 31 subject to this chapter. Every board shall report violations of individual practice acts contained in this chapter to the board by 32 which the individual may be licensed and shall do so in a timely 33 34 manner upon receiving notice of the violations. Every person 35 licensed or registered by a board shall report to the board which licenses or registers him or her a known or observed violation of 36 the practice act or the board's rules by any other person licensed 37 38 or registered by the same board and shall do so in a timely 39 manner. Law-enforcement agencies or their personnel and courts shall report in a timely manner to the appropriate board any 40 violations of individual practice acts by any individual. 41
- 42 (e) Whenever a board referred to in this chapter obtains 43 information that a person subject to its authority has engaged in, is engaging in or is about to engage in any act which constitutes 44 45 or will constitute a violation of the provisions of this chapter which are administered and enforced by that board, it may apply 46 to the circuit court for an order enjoining the act. Upon a 47 showing that the person has engaged, is engaging or is about to 48 engage in any such act, the court shall order an injunction, 49 restraining order or other order as the court may deem 50 51 appropriate.

### ARTICLE 1D. PROVISIONS AFFECTING CERTAIN BOARDS OF LICENSURE.

# §30-1D-1. Criminal background checks required of new applicants.

1 (a) This article shall be known as "Lynette's Law."

- 2 (b) The requirements in subsection (c) of this section for 3 criminal background checks apply to those persons applying to be licensed in West Virginia for the first time by the boards 4 governing licensing under the following sections: Section ten, 5 article three of this chapter; section four, article three-e of this 6 chapter; section eight, article four of this chapter; section nine, 8 article five of this chapter; section six, article seven of this chapter; section three, article seven-a of this chapter; section 9 eight, article eight of this chapter; section eight, article ten of this 10 chapter; section four, article fourteen of this chapter; and section 11 seven, article twenty-one of this chapter. 12
- (c) A person applying for licensing to a board listed in subsection (b) of this section must submit to a state and national criminal history record check, as set forth in this subsection: *Provided*, That an applicant for a license who is an attorney at law may submit a letter of good standing from the Clerk of the Supreme Court of Appeals of West Virginia in lieu of submitting to a state and national criminal history record check.
- 20 (1) This requirement is found not to be against public policy.
- 21 (2) The criminal history record check shall be based on 22 fingerprints submitted to the West Virginia State Police or its 23 assigned agent for forwarding to the Federal Bureau of 24 Investigation.
- 25 (3) The applicant shall meet all requirements necessary to accomplish the state and national criminal history record check, 27 including:
- 28 (A) Submitting fingerprints for the purposes set forth in this 29 subsection; and
- 30 (B) Authorizing the board, the West Virginia State Police 31 and the Federal Bureau of Investigation to use all records

- 32 submitted and produced for the purpose of screening the
- 33 applicant for a license.
- 34 (4) The results of the state and national criminal history
- 35 record check may not be released to or by a private entity except:
- 36 (A) To the individual who is the subject of the criminal
- 37 history record check;
- 38 (B) With the written authorization of the individual who is
- 39 the subject of the criminal history record check; or
- 40 (C) Pursuant to a court order.
- 41 (5) The criminal history record check and related records are
- 42 not public records for the purposes of chapter twenty-nine-b of
- 43 this code.
- 44 (6) The applicant shall pay the actual costs of the
- 45 fingerprinting and criminal history record check.
- 46 (d) Before implementing the provisions of this subsection,
- 47 the board shall propose rules for legislative approval in
- 48 accordance with article three, chapter twenty-nine-a of this code.
- 49 The rules shall set forth the requirements and procedures for the
- 50 criminal history check and must be consistent with standards
- 51 established by the Federal Bureau of Investigation and the
- 52 National Crime Prevention and Privacy Compact as authorized
- 53 by 42 U. S. C. A. §14611, et seq.

### **CHAPTER 177**

(Com. Sub. for H. B. 4360 - By Delegates Shaffer, Sponaugle, Shott, Reynolds, Miley, Mr. Speaker (Mr. Armstead), Hanshaw and Weld)

[Passed March 11, 2016; in effect ninety days from passage.] [Approved by the Governor on March 23, 2016.]

AN ACT to amend and reenact §30-2-4 of the Code of West Virginia, 1931, as amended, relating to the unauthorized practice of law; increasing the criminal penalties for the unlawful practice of law; setting penalties for a second or subsequent offense; removing antiquated language; and providing that a lawyer may advertise services or hire a person to assist in advertising services as permitted by the Rules of Professional Conduct.

Be it enacted by the Legislature of West Virginia:

That §30-2-4 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

#### ARTICLE 2. ATTORNEYS-AT-LAW.

### §30-2-4. Practice without license or oath; penalty; qualification after institution of suits.

- 1 (a) It is unlawful for any person to practice or appear as an
- 2 attorney-at-law for another in a court in this state or to make it
- 3 a business to solicit employment for any attorney, or to hold
- 4 himself or herself out to the public or any member thereof as
- 5 being entitled to practice law, or in any other manner to assume,
- 6 use or advertise the title of lawyer, attorney and
- 7 counselor-at-law, attorney and counselor or equivalent terms in

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8 any language, in such manner as to convey the impression that

- 9 he or she is a legal practitioner of law, or in any manner to
- 10 advertise that he or she, either alone or together with other
- 11 persons, has, owns, conducts or maintains a law office, without
- 12 first having been duly and regularly licensed and admitted to
- 13 practice law in the courts of this state, and without having
- 14 subscribed and taken the oath required by the provisions of
- 15 section three of this article.
  - (b) Any person violating the provisions of subsection (a) of this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than \$5,000, or confined in jail not more than ninety days, or both fined and confined, and on any subsequent offense, is guilty of a misdemeanor and shall be fined not more than \$10,000, or confined in jail not more than one year, or both fined and confined: *Provided*, That nothing herein prohibits a lawyer from advertising services or hiring a person to assist in advertising services as permitted by the Rules of Professional Conduct.



### **CHAPTER 178**

(S. B. 47 - By Senator Ferns)

[Passed March 10, 2016; in effect ninety days from passage.] [Approved by the Governor on March 23, 2016.]

AN ACT to amend and reenact §30-3-13 of the Code of West Virginia, 1931, as amended, relating to practice of medicine; rewriting licensing requirements for practice of medicine and surgery or podiatry; making exceptions; providing for unauthorized practice; requiring notice; establishing criminal penalties; making exceptions; and defining terms.

Be it enacted by the Legislature of West Virginia:

That §30-3-13 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

#### ARTICLE 3. WEST VIRGINIA MEDICAL PRACTICE ACT.

# §30-3-13. Licensing requirements for the practice of medicine and surgery or podiatry; exceptions; unauthorized practice; notice; criminal penalties.

- 1 (a) It is unlawful for any person who does not hold an active,
- 2 unexpired license issued pursuant to this article, or who is not
- 3 practicing pursuant to the licensure exceptions set forth in this
- 4 section, to:
- 5 (1) Engage in the practice of medicine and surgery or 6 podiatry in this state;
- 7 (2) Represent that he or she is a physician, surgeon or
- 8 podiatrist authorized to practice medicine and surgery or
- 9 podiatry in this state; or
- 10 (3) Use any title, word or abbreviation to indicate or induce
- 11 others to believe that he or she is licensed to practice medicine
- 12 and surgery or podiatry in this state.
- 13 (b) It is unlawful for any person who does not hold an active,
- 14 unexpired license issued pursuant to this article to engage in the
- 15 practice of telemedicine within this state. As used in this
- 16 section, the "practice of telemedicine" means the practice of
- 17 medicine using communication tools such as electronic
- 18 communication, information technology or other means of
- 19 interaction between a licensed health care professional in one
- 20 location and a patient in another location, with or without an
- 21 intervening health care provider, and typically involves secure

- 22 real time audio/video conferencing or similar secure audio/video
- 23 services, remote monitoring, interactive video and store and
- 24 forward digital image or health data technology to provide or
- 25 support health care delivery by replicating the interaction of a
- 26 traditional in person encounter between a provider and a patient.
- 27 The practice of telemedicine occurs in this state when the patient
- 28 receiving health care services through a telemedicine encounter
- 29 is physically located in this state.
- 30 (c) It is not unlawful for a person:
- 31 (1) Who is a licensed health care provider under this code to
- 32 act within his or her scope of practice;
- 33 (2) Who is not a licensed health care professional in this
- 34 state to provide first aid care in an emergency situation; or
- 35 (3) To engage in the bona fide religious tenets of any
- 36 recognized church in the administration of assistance to the sick
- 37 or suffering by mental or spiritual means.
- 38 (d) The following persons are exempt from the licensure
- 39 requirements under this article:
- 40 (1) A person enrolled in a school of medicine approved by
- 41 the Liaison Committee on Medical Education or by the board;
- 42 (2) A person enrolled in a school of podiatric medicine
- 43 approved by the Council of Podiatry Education or by the board;
- 44 (3) A person engaged in graduate medical training in a
- 45 program approved by the Accreditation Council for Graduate
- 46 Medical Education or the board;
- 47 (4) A person engaged in graduate podiatric training in a
- 48 program approved by the Council on Podiatric Education or by
- 49 the board:

- 50 (5) A physician or podiatrist engaged in the performance of
- 51 his or her official duties holding one or more licenses from
- 52 another state or foreign country and who is a commissioned
- 53 medical officer of, a member of or employed by:
- 54 (A) The United States Military;
- (B) The Department of Defense;
- 56 (C) The United States Public Health Service; or
- 57 (D) Any other federal agency;
- 58 (6) A physician or podiatrist holding one or more
- 59 unrestricted licenses granted by another state or foreign country
- 60 serving as visiting medical faculty engaged in education, training
- or research duties at a medical school or institution recognized
- 62 by the board for up to six months if:
- 63 (A) The physician does not engage in the practice of
- 64 medicine and surgery or podiatry outside of the auspices of the
- 65 sponsoring school or institution; and
- 66 (B) The sponsoring medical school or institution provides
- 67 prior written notification to the board including the physician's
- 68 name, all jurisdictions of licensure and the beginning and end
- 69 date of the physician's visiting medical faculty status;
- 70 (7) A physician or podiatrist holding one or more
- 71 unrestricted licenses granted by another state present in the state
- 72 as a member of an air ambulance treatment team or organ
- 73 harvesting team;
- 74 (8) A physician or podiatrist holding one or more
- 75 unrestricted licenses granted by another state or foreign country
- 76 providing a consultation on a singular occasion to a licensed
- 77 physician or podiatrist in this state, whether the consulting

- 78 physician or podiatrist is physically present in the state for the consultation or not;
- 80 (9) A physician or podiatrist holding one or more 81 unrestricted licenses granted by another state or foreign country 82 providing teaching assistance, in a medical capacity, for a period 83 not to exceed seven days;
- 84 (10) A physician or podiatrist holding one or more 85 unrestricted licenses granted by another state or foreign country 86 serving as a volunteer in a noncompensated role for a charitable 87 function for a period not to exceed seven days; and
- 88 (11) A physician or podiatrist holding one or more 89 unrestricted licenses granted by another state or foreign country 90 providing medical services to a college or university affiliated 91 and/or sponsored sports team or an incorporated sports team if:
- 92 (A) He or she has a written agreement with that sports team 93 to provide care to team members, band member, cheerleader, 94 mascot, coaching staff and families traveling with the team for 95 a specific sporting event, team appearance or training camp 96 occurring in this state;
- 97 (B) He or she may only provide care or consultation to team 98 members, coaching staff and families traveling with the team no 99 longer than seven consecutive days per sporting event;
- 100 (C) He or she is not authorized to practice at a health care 101 facility or clinic, acute care facility or urgent care center located 102 in this state, but the physician may accompany the patient to the 103 facility and consult; and
- 104 (D) The physician or podiatrist may be permitted, by written 105 permission from the executive director, to extend his or her 106 authorization to practice medicine for a maximum of seven

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- additional consecutive days if the requestor shows good cause for the extension.
- (e) A physician or podiatrist who does not hold a license issued by the board and who is practicing medicine in this state pursuant to the exceptions to licensure set forth in this section may practice in West Virginia under one or more of the licensure exceptions for no greater than a cumulative total of thirty days in any one calendar year.
- 115 (f) The executive director shall send by certified mail to a 116 physician not licensed in this state a written order that revokes 117 the privilege to practice medicine under this section if the 118 executive director finds good cause to do so. If no current 119 address can be determined, the order may be sent by regular mail 120 to the physician's last known address.
  - (g) A person who engages in the unlawful practice of medicine and surgery or podiatry while holding a license issued pursuant to this article which has been classified by the board as expired for ninety days or fewer is guilty of a misdemeanor and, upon conviction, shall be fined not more than \$5,000 or confined in jail not more than twelve months, or both fined and confined.
  - (h) A person who is found to be engaging in the practice of medicine and: (1) Has never been licensed by the board under this article; (2) holds a license which has been classified by the board as expired for greater than ninety days; or (3) holds a license which has been placed in inactive status, revoked, suspended or surrendered to the board is guilty of a felony and, upon conviction, shall be fined not more than \$10,000 or imprisoned in a correctional facility for not less than one year nor more than five years or both fined and imprisoned.
- (i) Upon a determination by the board that any report or complaint submitted to it concerns allegations of the unlawful

138	practice of medicine and surgery by an individual who is
139	licensed under another article of this chapter, the board shall
140	refer the complaint to the appropriate licensing authority.
141	Additionally, whenever the board receives credible information
142	that an individual is engaging in the unlawful practice of
143	medicine and surgery or podiatry in violation of this section, the
144	board may report such information to the appropriate state and/or

federal law enforcement authority and/or prosecuting attorney.

### **CHAPTER 179**

(Com. Sub. for H. B. 4463 - By Delegates Rohrbach, Sobonya, Waxman, Stansbury, Ellington, Summers, Kurcaba, Arvon, Perdue and Miller)

[Passed on March 11, 2016; in effect ninety days from passage.] [Approved by the Governor on March 24, 2016.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §30-3-13a; and to amend said code by adding thereto a new section, designated §30-14-12d, all relating to the practice of medicine, permitting the practice of telemedicine; establishing requirements and exceptions for licensure; providing for establishment of physician-patient or podiatrist-patient relationship through telemedicine encounter; establishing certain requirements for physician or podiatrist using telemedicine technologies to practice medicine or podiatry; establishing standard of care for telemedicine medical practice; providing requirements regarding establishment and maintenance of patient records in use of telemedicine; providing limitations on prescriptions which may be made in telemedicine encounters; providing exceptions when in-person physician-patient or podiatrist-patient relationship is established; allowing rulemaking

for legislative approval by Board of Medicine and Board of Osteopathic Medicine; and preserving traditional physician-patient and podiatrist-patient relationships.

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 §30-3-13a; and to amend said code by adding thereto a new section, designated §30-14-12d, all to read as follows.

#### ARTICLE 3. WEST VIRGINIA MEDICAL PRACTICE ACT.

# §30-3-13a. Telemedicine practice; requirements; exceptions; definitions; rule-making

- 1 (a) *Definitions*. For the purposes of this section:
- 2 (1) "Chronic nonmalignant pain" means pain that has
- 3 persisted after reasonable medical efforts have been made to
- 4 relieve the pain or cure its cause and that has continued, either
- 5 continuously or episodically, for longer than three continuous
- 6 months. "Chronic non-malignant pain" does not include pain
- 7 associated with a terminal condition or illness or with a
- 8 progressive disease that, in the normal course of progression,
- 9 may reasonably be expected to result in a terminal condition or
- 10 illness.
- 11 (2) "Physician" means a person licensed by the West
- 12 Virginia Board of Medicine to practice allopathic medicine in
- 13 West Virginia.
- 14 (3) "Store and forward telemedicine" means the
- 15 asynchronous computer-based communication of medical data
- 16 or images from an originating location to a physician or
- 17 podiatrist at another site for the purpose of diagnostic or
- 18 therapeutic assistance.

- 19 (4) "Telemedicine" means the practice of medicine using 20 tools such as electronic communication, information technology, 21 store and forward telecommunication, or other means of 22 interaction between a physician or podiatrist in one location and 23 a patient in another location, with or without an intervening 24 healthcare provider.
- 25 (5) "Telemedicine technologies" means technologies and devices which enable secure electronic communications and 26 27 information exchange in the practice of telemedicine, and typically involve the application of secure real-time audio/video 28 29 conferencing or similar secure video services, remote 30 monitoring, or store and forward digital image technology to 31 provide or support healthcare delivery by replicating the 32 interaction of a traditional in-person encounter between a 33 physician or podiatrist and a patient.

#### 34 (b) *Licensure*. —

- 35 (1) The practice of medicine occurs where the patient is located at the time the telemedicine technologies are used.
- 37 (2) A physician or podiatrist who practices telemedicine 38 must be licensed as provided in this article.
- 39 (3) This section does not apply to:
- 40 (A) An informal consultation or second opinion, at the 41 request of a physician or podiatrist who is licensed to practice 42 medicine or podiatry in this state, provided that the physician or 43 podiatrist requesting the opinion retains authority and 44 responsibility for the patient's care; and
- 45 (B) Furnishing of medical assistance by a physician or 46 podiatrist in case of an emergency or disaster, if no charge is 47 made for the medical assistance.

- 48 (c) Physician-Patient or Podiatrist-Patient Relationship
- 49 Through Telemedicine Encounter.
- 50 (1) A physician-patient or podiatrist-patient relationship may
- 51 not be established through:
- 52 (A) Audio-only communication;
- 53 (B) Text-based communications such as e-mail, internet
- 54 questionnaires, text-based messaging or other written forms of
- 55 communication; or
- 56 (C) Any combination thereof.
- 57 (2) If an existing physician-patient or podiatrist-patient
- 58 relationship does not exist prior to the utilization to telemedicine
- 59 technologies, or if services are rendered solely through
- 60 telemedicine technologies, a physician-patient or
- 61 podiatrist-patient relationship may only be established:
- 62 (A) Through the use of telemedicine technologies which
- 63 incorporate interactive audio using store and forward
- 64 technology, real-time videoconferencing or similar secure video
- 65 services during the initial physician-patient or podiatrist-patient
- 66 encounter; or
- (B) For the practice of pathology and radiology, a
- 68 physician-patient relationship may be established through store
- and forward telemedicine or other similar technologies.
- 70 (3) Once a physician-patient or podiatrist-patient relationship
- 71 has been established, either through an in-person encounter or in
- 72 accordance with subsection (c)(2) of this section, the physician
- 73 or podiatrist may utilize any telemedicine technology that meets
- 74 the standard of care and is appropriate for the particular patient
- 75 presentation.

- 76 (d) *Telemedicine Practice*. A physician or podiatrist using telemedicine technologies to practice medicine or podiatry shall:
- 78 (1) Verify the identity and location of the patient;
- 79 (2) Provide the patient with confirmation of the identity and qualifications of the physician or podiatrist;
- 81 (3) Provide the patient with the physical location and contact 82 information of the physician;
- 83 (4) Establish or maintain a physician-patient or 84 podiatrist-patient relationship that conforms to the standard of 85 care;
- 86 (5) Determine whether telemedicine technologies are 87 appropriate for the particular patient presentation for which the 88 practice of medicine or podiatry is to be rendered;
- 89 (6) Obtain from the patient appropriate consent for the use 90 of telemedicine technologies;
- 91 (7) Conduct all appropriate evaluations and history of the 92 patient consistent with traditional standards of care for the 93 particular patient presentation; and
- 94 (8) Create and maintain healthcare records for the patient 95 which justify the course of treatment and which verify 96 compliance with the requirements of this section.
- 97 (9) The requirements of subdivisions (1) through (8) of 98 subsection (d) in this section do not apply to the practice of 99 pathology or radiology medicine through store and forward 100 telemedicine.
- 101 (e) Standard of Care. —

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102 The practice of medicine or podiatry provided via telemedicine technologies, including the establishment of a 103 physician-patient or podiatrist-patient relationship and issuing a 104 prescription via electronic means as part of a telemedicine 105 106 encounter, are subject to the same standard of care, professional practice requirements and scope of practice limitations as 107 108 traditional in-person physician-patient or podiatrist-patient encounters. Treatment, including issuing a prescription, based 109 110 solely on an online questionnaire, does not constitute an acceptable standard of care. 111

#### (f) Patient Records. —

113 The patient record established during the use of telemedicine technologies shall be accessible and documented for both the 114 physician or podiatrist and the patient, consistent with the laws 115 and legislative rules governing patient healthcare records. All 116 117 laws governing the confidentiality of healthcare information and 118 governing patient access to medical records shall apply to records of practice of medicine or podiatry provided through 119 120 telemedicine technologies. A physician or podiatrist solely providing services using telemedicine technologies shall make 121 122 documentation of the encounter easily available to the patient, 123 and subject to the patient's consent, to any identified care provider of the patient. 124

#### (g) Prescribing Limitations. —

- 126 (1) A physician or podiatrist who practices medicine to a 127 patient solely through the utilization of telemedicine 128 technologies may not prescribe to that patient any controlled 129 substances listed in Schedule II of the Uniform Controlled 130 Substances Act.
- 131 (2) A physician or podiatrist may not prescribe any 132 pain-relieving controlled substance listed in Schedules II through

133 V of the Uniform Controlled Substance Act as part of	a course
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- of treatment for chronic non-malignant pain solely based upon
- 135 a telemedicine encounter.
- 136 (h) Exceptions. —
- This article does not prohibit the use of audio-only or
- 138 text-based communications by a physician or podiatrist who is:
- 139 (1) Responding to call for patients with whom a
- 140 physician-patient or podiatrist-patient relationship has been
- established through an in-person encounter by the physician or
- 142 podiatrist;
- 143 (2) Providing cross coverage for a physician or podiatrist
- 144 who has established a physician-patient or podiatrist-patient
- relationship with the patient through an in-person encounter; or
- 146 (3) Providing medical assistance in the event of an
- 147 emergency situation.
- 148 (i) Rulemaking. —
- The West Virginia Board of Medicine and West Virginia
- 150 Board of Osteopathic Medicine may propose joint rules for
- 151 legislative approval in accordance with article three, chapter
- 152 twenty-nine-a of this code to implement standards for and
- 153 limitations upon the utilization of telemedicine technologies in
- the practice of medicine and podiatry in this state.
- 155 (j) Preserving Traditional Physician-Patient or
- 156 Podiatrist-Patient Relationship. —
- Nothing in this section changes the rights, duties, privileges,
- 158 responsibilities and liabilities incident to the physician-patient or
- 159 podiatrist-patient relationship, nor is it meant or intended to
- 160 change in any way the personal character of the

- 161 physician-patient or podiatrist-patient relationship. This section
- does not alter the scope of practice of any healthcare provider or
- authorize the delivery of healthcare services in a setting, or in a
- manner, not otherwise authorized by law.

#### ARTICLE 14. OSTEOPATHIC PHYSICIANS AND SURGEONS.

# §30-14-12d. Telemedicine practice; requirements; exceptions; definitions; rulemaking.

- 1 (a) *Definitions*. For the purposes of this section:
- 2 (1) "Chronic non-malignant pain" means pain that has
- 3 persisted after reasonable medical efforts have been made to
- 4 relieve the pain or cure its cause and that has continued, either
- 5 continuously or episodically, for longer than three continuous
- 6 months. "Chronic non-malignant pain" does not include pain
- 7 associated with a terminal condition or illness or with a
- 8 progressive disease that, in the normal course of progression,
- 9 may reasonably be expected to result in a terminal condition or
- 10 illness.
- 11 (2) "Physician" means a person licensed by the West
- 12 Virginia Board of Osteopathic Medicine to practice osteopathic
- 13 medicine in West Virginia.
- 14 (3) "Store and forward telemedicine" means the
- 15 asynchronous computer-based communication of medical data
- 16 or images from an originating location to a physician at another
- 17 site for the purpose of diagnostic or therapeutic assistance.
- 18 (4) "Telemedicine" means the practice of medicine using
- 19 tools such as electronic communication, information technology,
- 20 store and forward telecommunication, or other means of
- 21 interaction between a physician in one location and a patient in
- 22 another location, with or without an intervening healthcare
- 22 another location, with or without all intervening hearthcare
- 23 provider.

24	(5) "Telemedicine technologies" means technologies and
25	devices which enable secure electronic communications and
26	information exchange in the practice of telemedicine, and
27	typically involve the application of secure real-time audio/video
28	conferencing or similar secure video services, remote
29	monitoring, or store and forward digital image technology to
30	provide or support healthcare delivery by replicating the
31	interaction of a traditional in-person encounter between a
32	physician and a patient.

#### (b) Licensure. —

- 34 (1) The practice of medicine occurs where the patient is 35 located at the time the telemedicine technologies are used.
- 36 (2) A physician who practices telemedicine must be licensed37 as provided in this article.
- 38 (3) This section does not apply to:
- 39 (A) An informal consultation or second opinion, at the 40 request of a physician who is licensed to practice medicine in 41 this state, provided that the physician requesting the opinion 42 retains authority and responsibility for the patient's care; and
- 43 (B) Furnishing of medical assistance by a physician in case 44 of an emergency or disaster if no charge is made for the medical 45 assistance.
- 46 (c) Physician-Patient Relationship Through Telemedicine 47 Encounter.—
- 48 (1) A physician-patient relationship may not be established 49 through:
- 50 (A) Audio-only communication;

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- 51 (B) Text-based communications such as e-mail, internet 52 questionnaires, text-based messaging or other written forms of
- 53 communication; or
- 54 (C) Any combination thereof.
- 55 (2) If an existing physician-patient relationship is not present 56 prior to the utilization to telemedicine technologies, or if services 57 are rendered solely through telemedicine technologies, a 58 physician-patient relationship may only be established:
- 59 (A) Through the use of telemedicine technologies which 60 incorporate interactive audio using store and forward 61 technology, real-time videoconferencing or similar secure video 62 services during the initial physician-patient encounter; or
- 63 (B) For the practice of pathology and radiology, a 64 physician-patient relationship may be established through store 65 and forward telemedicine or other similar technologies.
  - (3) Once a physician-patient relationship has been established, either through an in-person encounter or in accordance with subsection (c)(2) of this section, the physician may utilize any telemedicine technology that meets the standard of care and is appropriate for the particular patient presentation.
- 71 (d) Telemedicine Practice. —
- A physician using telemedicine technologies to practice medicine shall:
- 74 (1) Verify the identity and location of the patient;
- 75 (2) Provide the patient with confirmation of the identity and qualifications of the physician;
- 77 (3) Provide the patient with the physical location and contact 78 information of the physician;

- 79 (4) Establish or maintain a physician-patient relationship 80 which conforms to the standard of care;
- 81 (5) Determine whether telemedicine technologies are 82 appropriate for the particular patient presentation for which the 83 practice of medicine is to be rendered;
- 84 (6) Obtain from the patient appropriate consent for the use 85 of telemedicine technologies;
- 86 (7) Conduct all appropriate evaluations and history of the 87 patient consistent with traditional standards of care for the 88 particular patient presentation; and
- 89 (8) Create and maintain healthcare records for the patient 90 which justify the course of treatment and which verify 91 compliance with the requirements of this section.
- 92 (9) The requirements of subdivisions (1) through (7) of 93 subsection (d) in this section do not apply to the practice of 94 pathology or radiology medicine through store and forward 95 telemedicine.

#### (e) Standard of Care. —

97 The practice of medicine provided via telemedicine 98 technologies, including the establishment of a physician-patient 99 relationship and issuing a prescription via electronic means as part of a telemedicine encounter, are subject to the same standard 100 101 of care, professional practice requirements and scope of practice 102 limitations as traditional in-person physician-patient encounters. Treatment, including issuing a prescription, based solely on an 103 104 online questionnaire does not constitute an acceptable standard 105 of care.

#### (f) Patient Records. —

107 The patient record established during the use of telemedicine 108 technologies shall be accessible and documented for both the 109 physician and the patient, consistent with the laws and legislative 110 rules governing patient healthcare records. All laws governing 111 the confidentiality of healthcare information and governing 112 patient access to medical records shall apply to records of 113 practice of medicine provided through telemedicine technologies. A physician solely providing services using 114 115 telemedicine technologies shall make documentation of the 116 encounter easily available to the patient, and subject to the patient's consent, to any identified care provider of the patient. 117

#### (g) Prescribing Limitations. —

- 119 (1) A physician who practices medicine to a patient solely 120 through the utilization of telemedicine technologies may not 121 prescribe to that patient any controlled substances listed in 122 Schedule II of the Uniform Controlled Substances Act.
- 123 (2) A physician may not prescribe any pain-relieving 124 controlled substance listed in Schedules II through V of the 125 Uniform Controlled Substances Act as part of a course of 126 treatment for chronic nonmalignant pain solely based upon a 127 telemedicine encounter.

#### 128 (h) Exceptions. —

- This section does not prohibit the use of audio-only or text-based communications by a physician who is:
- 131 (1) Responding to call for patients with whom a 132 physician-patient relationship has been established through an 133 in-person encounter by the physician;
- 134 (2) Providing cross coverage for a physician who has 135 established a physician-patient or relationship with the patient 136 through an in-person encounter; or

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#### PROFESSIONS AND OCCUPATIONS

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137	(3)	Providing	medical	assistance	in	the	event	of	an
138	emergency situation.								

#### 139 (i) Rulemaking. —

- The West Virginia Board of Medicine and West Virginia Board of Osteopathic Medicine may propose joint rules for legislative approval in accordance with article three, chapter twenty-nine-a of this code to implement standards for and limitations upon the utilization of telemedicine technologies in the practice of medicine in this state.
- 146 (j) Preservation of the Traditional Physician-Patient 147 Relationship. —
- Nothing in this section changes the rights, duties, privileges, responsibilities and liabilities incident to the physician-patient relationship, nor is it meant or intended to change in any way the personal character of the physician-patient relationship. This section does not alter the scope of practice of any healthcare provider or authorize the delivery of healthcare services in a setting, or in a manner, not otherwise authorized by law.



### **CHAPTER 180**

(S. B. 627 - By Senators Takubo, Maynard, Mulllins, Stollings, Trump and Plymale)

[Passed March 10, 2016; in effect ninety days from passage.] [Approved by the Governor on March 23, 2016.]

AN ACT to amend and reenact §30-3A-2 of the Code of West Virginia, 1931, as amended; and to amend and reenact §55-7-23 of

said code, all relating to permitting physicians to decline prescribing controlled substance in certain circumstances; limiting disciplinary action by a licensing board on a health care provider with prescriptive authority for declining to prescribe, or declining to continue to prescribe, any controlled substance in certain circumstances; and providing that a health care provider with prescriptive authority is not liable to a patient or third party for declining to prescribe, or declining to continue to prescribe, any controlled substance in certain circumstances.

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

That §30-3A-2 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that §55-7-23 of said code be amended and reenacted, all to read as follows:

#### CHAPTER 30. PROFESSIONS AND OCCUPATIONS.

#### ARTICLE 3A. MANAGEMENT OF INTRACTABLE PAIN.

## §30-3A-2. Limitation on disciplinary sanctions or criminal punishment related to management of pain.

- 1 (a) A physician is not subject to disciplinary sanctions by a
- 2 licensing board or criminal punishment by the state for
- 3 prescribing, administering or dispensing pain-relieving
- 4 controlled substances for the purpose of alleviating or
- 5 controlling pain if:
- 6 (1) In the case of a dying patient experiencing pain, the
- 7 physician practices in accordance with an accepted guideline as
- 8 defined in section one of this article and discharges his or her
- 9 professional obligation to relieve the dying patient's pain and
- 10 promote the dignity and autonomy of the dying patient; or
- 11 (2) In the case of a patient who is not dying and is 12 experiencing pain, the physician discharges his or her

- professional obligation to relieve the patient's pain, if the physician can demonstrate by reference to an accepted guideline that his or her practice substantially complied with that accepted guideline. Evidence of substantial compliance with an accepted guideline may be rebutted only by the testimony of a clinical expert. Evidence of noncompliance with an accepted guideline is not sufficient alone to support disciplinary or criminal action.
  - (b) A health care provider, as defined in section two, article seven-b, chapter fifty-five of this code, with prescriptive authority is not subject to disciplinary sanctions by a licensing board or criminal punishment by the state for declining to prescribe, or declining to continue to prescribe, any controlled substance to a patient which the health care provider with prescriptive authority is treating if the health care provider with prescriptive authority in the exercise of reasonable prudent judgment believes the patient is misusing the controlled substance in an abusive manner or unlawfully diverting a controlled substance legally prescribed for their use.
  - (c) A licensed registered professional nurse is not subject to disciplinary sanctions by a licensing board or criminal punishment by the state for administering pain-relieving controlled substances to alleviate or control pain, if administered in accordance with the orders of a licensed physician.
  - (d) A licensed pharmacist is not subject to disciplinary sanctions by a licensing board or criminal punishment by the state for dispensing a prescription for a pain-relieving controlled substance to alleviate or control pain, if dispensed in accordance with the orders of a licensed physician.
  - (e) For purposes of this section, the term "disciplinary sanctions" includes both remedial and punitive sanctions imposed on a licensee by a licensing board, arising from either formal or informal proceedings.

(f) The provisions of this section apply to the treatment of all patients for pain, regardless of the patient's prior or current chemical dependency or addiction. The board may develop and issue policies or guidelines establishing standards and procedures for the application of this article to the care and treatment of persons who are chemically dependent or addicted.

### CHAPTER 55. ACTIONS, SUITS AND ARBITRATION; JUDICIAL SALE.

#### ARTICLE 7. ACTIONS FOR INJURIES.

## §55-7-23. Prescription drugs and medical devices; limiting health care providers' liability exposure.

- 1 (a) No health care provider, as defined in section two, article seven-b of this chapter, is liable to a patient or third party for injuries sustained as a result of the ingestion of a prescription 3 drug or use of a medical device that was prescribed or used by 4 5 the health care provider in accordance with instructions approved by the U. S. Food and Drug Administration regarding 6 the dosage and administration of the drug, the indications for 7 which the drug should be taken or device should be used, and the 8 contraindications against taking the drug or using the device: 9 10 *Provided*, That the provisions of this section do not apply if: (1) The health care provider had actual knowledge that the drug or 11 12 device was inherently unsafe for the purpose for which it was prescribed or used; or (2) a manufacturer of the drug or device 13 14 publicly announces changes in the dosage or administration of the drug or changes in contraindications against taking the drug 15 16 or using the device and the health care provider fails to follow the publicly announced changes and the failure proximately 17 caused or contributed to the plaintiff's injuries or damages. 18
- 19 (b) A health care provider with prescriptive authority is not 20 liable to a patient or third party for declining to prescribe, or

- 21 declining to continue to prescribe, any controlled substance to a
- 22 patient which the health care provider with prescriptive authority
- 23 is treating if the health care provider with prescriptive authority
- 24 in the exercise of reasonable prudent judgment believes the
- 25 patient is misusing the controlled substance in an abusive
- 26 manner or unlawfully diverting a controlled substance legally
- 27 prescribed for their use.
- 28 (c) The provisions of this section are not intended to create a new cause of action.



### **CHAPTER 181**

(H. B. 4033 - By Delegates Ellington, Summers, Householder, Rohrbach, Stansbury, Waxman, Perdue and Rodighiero)

[Passed March 12, 2016; in effect ninety days from passage.] [Approved by the Governor on March 24, 2016.]

AN ACT to amend and reenact §30-5-12b and §30-5-34 of the Code of West Virginia, 1931, as amended, all relating to prohibiting the practice of pharmacist care without a license; prohibiting assistance to practice of pharmacist care without a registration; establishing a criminal penalty for the illegal practice or pharmacy care or assisting in the practice of pharmacy care; permitting the board to contact law enforcement with information concerning a criminal offense; permitting the fining of a person practicing with an encumbered license; permitting the fining of a person practicing with an encumbered registration; and establishing a fine.

Be it enacted by the Legislature of West Virginia:

That §30-5-12b and §30-5-34 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

#### §30-5-12b. Definitions; selection of generic drug products; exceptions; records; labels: manufacturing rules: notice of substitution: standards: complaints; notice and hearing; immunity.

- 1 (a) As used in this section:
- (1) "Brand name" means the proprietary or trade name 2 selected by the manufacturer and placed upon a drug or drug 3 product, its container, label or wrapping at the time of 5 packaging.
- 6 (2) "Generic name" means the official title of a drug or drug combination for which a new drug application, or an abbreviated 7 new drug application, has been approved by the United States 8 Food and Drug Administration and is in effect. 9
- 10 (3) "Substitute" means to dispense without the prescriber's express authorization a therapeutically equivalent generic drug 11 product in the place of the drug ordered or prescribed. 12
- 13 (4) "Equivalent" means drugs or drug products which are the 14 same amounts of identical active ingredients and same dosage 15 form and which will provide the same therapeutic efficacy and toxicity when administered to an individual and is approved by 16 17 the United States Food and Drug Administration.
- 18 (b) A pharmacist who receives a prescription for a brand 19 name drug or drug product shall substitute a less expensive 20 equivalent generic name drug or drug product unless in the exercise of his or her professional judgment the pharmacist 21 believes that the less expensive drug is not suitable for the 22 particular patient: Provided, That no substitution may be made 23 by the pharmacist where the prescribing practitioner indicates 24 that, in his or her professional judgment, a specific brand name 25
- drug is medically necessary for a particular patient. 26

- (c) A written prescription order shall permit the pharmacist to substitute an equivalent generic name drug or drug product except where the prescribing practitioner has indicated in his or her own handwriting the words "Brand Medically Necessary". The following sentence shall be printed on the prescription form. "This prescription may be filled with a generically equivalent drug product unless the words 'Brand Medically Necessary' are written, in the practitioner's own handwriting, on this prescription form.": Provided, That "Brand Medically Necessary" may be indicated on the prescription order other than in the prescribing practitioner's own handwriting unless otherwise required by federal mandate.
- (d) A verbal prescription order shall permit the pharmacist
   to substitute an equivalent generic name drug or drug product
   except where the prescribing practitioner shall indicate to the
   pharmacist that the prescription is "Brand Necessary" or "Brand
   Medically Necessary". The pharmacist shall note the instructions
   on the file copy of the prescription or chart order form.
  - (e) No person may by trade rule, work rule, contract or in any other way prohibit, restrict, limit or attempt to prohibit, restrict or limit the making of a generic name substitution under the provisions of this section. No employer or his or her agent may use coercion or other means to interfere with the professional judgment of the pharmacist in deciding which generic name drugs or drug products shall be stocked or substituted: *Provided*, That this section shall not be construed to permit the pharmacist to generally refuse to substitute less expensive therapeutically equivalent generic drugs for brand name drugs and that any pharmacist so refusing shall be subject to the penalties prescribed in section thirty-four of this article.
  - (f) A pharmacist may substitute a drug pursuant to the provisions of this section only where there will be a savings to the buyer. Where substitution is proper, pursuant to this section,

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- or where the practitioner prescribes the drug by generic name,
- 61 the pharmacist shall, consistent with his or her professional
- 62 judgment, dispense the lowest retail cost, effective brand which
- 63 is in stock.
- 64 (g) All savings in the retail price of the prescription shall be 65 passed on to the purchaser; these savings shall be equal to the 66 difference between the retail price of the brand name product and the customary and usual price of the generic product 67 substituted therefor: Provided, That in no event shall such 68 69 savings be less than the difference in acquisition cost of the 70 brand name product prescribed and the acquisition cost of the 71 substituted product.
  - (h) Each pharmacy shall maintain a record of any substitution of an equivalent generic name drug product for a prescribed brand name drug product on the file copy of a written, electronic or verbal prescription or chart order. Such record shall include the manufacturer and generic name of the drug product selected.
  - (i) All drugs shall be labeled in accordance with the instructions of the practitioner.
  - (j) Unless the practitioner directs otherwise, the prescription label on all drugs dispensed by the pharmacist shall indicate the generic name using abbreviations, if necessary, and either the name of the manufacturer or packager, whichever is applicable in the pharmacist's discretion. The same notation will be made on the original prescription retained by the pharmacist.
- 86 (k) A pharmacist may not dispense a product under the 87 provisions of this section unless the manufacturer has shown that 88 the drug has been manufactured with the following minimum 89 good manufacturing standards and practices by:

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- 90 (1) Labeling products with the name of the original 91 manufacturer and control number:
- 92 (2) Maintaining quality control standards equal to or greater 93 than those of the United States Food and Drug Administration;
- 94 (3) Marking products with identification code or monogram; 95 and
- 96 (4) Labeling products with an expiration date.
- 97 (1) The West Virginia Board of Pharmacy shall promulgate rules in accordance with the provisions of chapter twenty-nine-a 98 99 of this code which establish a formulary of generic type and 100 brand name drug products which are determined by the board to 101 demonstrate significant biological or therapeutic inequivalence 102 and which, if substituted, would pose a threat to the health and safety of patients receiving prescription medication. The 103 104 formulary shall be promulgated by the board within ninety days 105 of the date of passage of this section and may be amended in 106 accordance with the provisions of chapter twenty-nine-a of this 107 code.
  - (m) No pharmacist shall substitute a generic-named therapeutically equivalent drug product for a prescribed brand name drug product if the brand name drug product or the generic drug type is listed on the formulary established by the West Virginia Board of Pharmacy pursuant to this article or is found to be in violation of the requirements of the United States Food and Drug Administration.
  - (n) Any pharmacist who substitutes any drug shall, either personally or through his or her agent, assistant or employee, notify the person presenting the prescription of such substitution. The person presenting the prescription shall have the right to refuse the substitution. Upon request the pharmacist shall relate

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- the retail price difference between the brand name and the drug substituted for it.
  - (o) Every pharmacy shall post in a prominent place that is in clear and unobstructed public view, at or near the place where prescriptions are dispensed, a sign which shall read: "West Virginia law requires pharmacists to substitute a less expensive generic-named therapeutically equivalent drug for a brand name drug, if available, unless you or your physician direct otherwise." The sign shall be printed with lettering of at least one and one-half inches in height with appropriate margins and spacing as prescribed by the West Virginia Board of Pharmacy.
- 131 (p) The West Virginia Board of Pharmacy shall promulgate 132 rules in accordance with the provisions of chapter twenty-nine-a 133 of this code setting standards for substituted drug products, 134 obtaining compliance with the provisions of this section and 135 enforcing the provisions of this section.
- (q) Any person shall have the right to file a complaint with the West Virginia Board of Pharmacy regarding any violation of the provisions of this article. Such complaints shall be investigated by the Board of Pharmacy.
- 140 (r) Fifteen days after the board has notified, by registered 141 mail, a person, firm, corporation or copartnership that such 142 person, firm, corporation or copartnership is suspected of being in violation of a provision of this section, the board shall hold a 143 144 hearing on the matter. If, as a result of the hearing, the board 145 determines that a person, firm, corporation or copartnership is 146 violating any of the provisions of this section, it may, in addition 147 to any penalties prescribed by section twenty-two of this article, suspend or revoke the permit of any person, firm, corporation or 148 149 copartnership to operate a pharmacy.
- 150 (s) No pharmacist or pharmacy complying with the 151 provisions of this section shall be liable in any way for the

- dispensing of a generic-named therapeutically equivalent drug,
- 153 substituted under the provisions of this section, unless the
- 154 generic-named therapeutically equivalent drug was incorrectly
- 155 substituted.
- (t) In no event where the pharmacist substitutes a drug under
- 157 the provisions of this section shall the prescribing physician be
- 158 liable in any action for loss, damage, injury or death of any
- 159 person occasioned by or arising from the use of the substitute
- 160 drug unless the original drug was incorrectly prescribed.
- (u) Failure of a practitioner to specify that a specific brand
- 162 name is necessary for a particular patient shall not constitute
- evidence of negligence unless the practitioner had reasonable
- 164 cause to believe that the health of the patient required the use of
- a certain product and no other.

#### §30-5-34. Criminal offenses.

- 1 (a) When, as a result of an investigation under this article or
- 2 otherwise, the board has reason to believe that a person
- 3 authorized under this article has committed a criminal offense
- 4 under this article, the board may bring its information to the
- 5 attention of an appropriate law-enforcement official.
- 6 (b) Any person who intentionally practices, or presents
- 7 himself or herself out as qualified to practice pharmacist care or
- 8 to assist in the practice of pharmacist care, or uses any title, word
- 9 or abbreviation to indicate to or induce others to believe he or
- 10 she is licensed to practice as a pharmacist or pharmacist
- 11 technician without obtaining an active, valid West Virginia
- 12 license to practice that profession; or
- With a license that is:
- 14 (1) Expired, suspended or lapsed; or

- 15 (2) Inactive, revoked, suspended as a result of disciplinary
- 16 action, or surrendered; is guilty of a misdemeanor and, upon
- 17 conviction thereof, shall be fined not more than ten thousand
- 18 dollars.



### **CHAPTER 182**

### (H. B. 4654 - By Delegates Summers, Campbell, Ellington, Householder and Rohrbach)

[Passed March 7, 2016; in effect from passage.] [Approved by the Governor on March 10, 2016.]

AN ACT to amend and reenact §30-7-4 of the Code of West Virginia, 1931, as amended, relating to the West Virginia Board of Examiners for Registered Professional Nurses; and eliminating required qualifications of the executive secretary to the board.

Be it enacted by the Legislature of West Virginia:

That §30-7-4 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

#### ARTICLE 7. REGISTERED PROFESSIONAL NURSES.

# \*§30-7-4. Organization and meetings of board; quorum; powers and duties generally; executive secretary; funds.

- 1 The board shall meet at least once each year and shall elect
- 2 from its members a president and a secretary. The secretary shall
- 3 also act as treasurer of the board. The board may hold other

<sup>\*</sup> NOTE: This section was also amended by H. B. 4334 (Chapter 175), which passed subsequent to this act.

- 4 meetings during the year as it considers necessary to transact its
- 5 business. A majority, including one officer, of the board is a
- 6 quorum at any meeting. The board may:
- 7 (a) Adopt and, from time to time, amend rules, not
- 8 inconsistent with this article, necessary to enable it to carry into
- 9 effect the provisions of this article;
- 10 (b) Prescribe standards for educational programs preparing
- 11 persons for licensure to practice registered professional nursing
- 12 under this article;
- 13 (c) Provide for surveys of educational programs at times it
- 14 considers necessary;
- 15 (d) Accredit educational programs for the preparation of
- 16 practitioners of registered professional nursing that meet the
- 17 requirements of this article and of the board;
- (e) Deny or withdraw accreditation of educational programs
- 19 for failure to meet or maintain prescribed standards required by
- 20 this article and by the board;
- 21 (f) Examine, license and renew the licenses of duly qualified
- 22 applicants;
- 23 (g) Conduct hearings upon charges calling for discipline of
- 24 a licensee or revocation or suspension of a license;
- 25 (h) Keep a record of all proceedings of the board;
- (i) Make a biennial report to the Governor;
- 27 (j) Appoint and employ a qualified person, who may not be
- 28 a member of the board, to serve as executive secretary to the
- 29 board:
- 30 (k) Define the duties and fix the compensation for the
- 31 executive secretary; and

- 32 (1) Employ other persons necessary to carry on the work of the board.
- All fees and other moneys collected by the board pursuant to the provisions of this article shall be kept in a separate fund and expended solely for the purpose of this article. No part of this special fund reverts to the General Funds of this state. The compensation provided by this article and all expenses incurred under this article shall be paid from this special fund. No compensation or expense incurred under this article is a charge



### CHAPTER 183

against the General Funds of this state.

(H. B. 4428 - By Delegates Householder, Faircloth, Rodighiero, Campbell, Perry and B. White)

[Passed on March 12, 2016; in effect ninety days from passage.] [Approved by the Governor on April 1, 2016.]

AN ACT to amend and reenact §30-8-9 of the Code of West Virginia, 1931, as amended, relating to clarifying that optometrists may continue to exercise the same prescriptive authority which they possessed prior to hydrocodone being reclassified as a Schedule II substance.

Be it enacted by the Legislature of West Virginia:

That §30-8-9 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

#### ARTICLE 8. OPTOMETRISTS.

### §30-8-9. Scope of practice.

- 1 (a) A licensee may:
- 2 (1) Examine, diagnose and treat diseases and conditions of
- 3 the human eye and its appendage within the scope established in
- 4 this article or associated rules;
- 5 (2) Administer or prescribe any drug for topical application
- 6 to the anterior segment of the human eye for use in the
- 7 examination, diagnosis or treatment of diseases and conditions
- 8 of the human eye and its appendages: Provided, That the
- 9 licensee has first obtained a certificate;
- 10 (3)(A) Administer or prescribe any drug from the drug
- 11 formulary, as established by the board pursuant to section six of
- 12 this article, for use in the examination, diagnosis or treatment of
- 13 diseases and conditions of the human eye and its appendages:
- 14 *Provided*. That the licensee has first obtained a certificate;
- 15 (B) New drugs and new drug indications may be added to
- 16 the drug formulary by approval of the board;
- 17 (4) Administer epinephrine by injection to treat emergency
- 18 cases of anaphylaxis or anaphylactic shock;
- 19 (5) Prescribe and dispense contact lenses that contain and
- 20 deliver pharmaceutical agents and that have been approved by
- 21 the Food and Drug Administration as a drug;
- 22 (6) Prescribe, fit, apply, replace, duplicate or alter lenses,
- 23 prisms, contact lenses, orthoptics, vision training, vision
- 24 rehabilitation:
- 25 (7) Perform the following procedures:
- 26 (A) Remove a foreign body from the ocular surface and
- 27 adnexa utilizing a nonintrusive method;

- 28 (B) Remove a foreign body, external eye, conjunctival,
- 29 superficial, using topical anesthesia;
- 30 (C) Remove embedded foreign bodies or concretions from
- 31 conjunctiva, using topical anesthesia, not involving sclera;
- 32 (D) Remove corneal foreign body not through to the second
- 33 layer of the cornea using topical anesthesia;
- 34 (E) Epilation of lashes by forceps;
- 35 (F) Closure of punctum by plug; and
- 36 (G) Dilation of the lacrimal puncta with or without
- 37 irrigation;
- 38 (8) Furnish or provide any prosthetic device to correct or
- 39 relieve any defects or abnormal conditions of the human eye and
- 40 its appendages;
- 41 (9) Order laboratory tests rational to the examination,
- 42 diagnosis, and treatment of a disease or condition of the human
- 43 eye and its appendages;
- 44 (10) Use a diagnostic laser; and
- 45 (11) A licensee is also permitted to perform those procedures
- 46 authorized by the board prior to January 1, 2010.
- 47 (b) A licensee may not:
- 48 (1) Perform surgery except as provided in this article or by
- 49 legislative rule;
- 50 (2) Use a therapeutic laser;
- 51 (3) Use Schedule II controlled substances. However, an oral
- 52 pharmaceutical certified licensee may prescribe hydrocodone

- and hydrocodone containing drugs for a duration of no more than
- 54 three days;
- 55 (4) Treat systemic disease; or
- 56 (5) Present to the public that he or she is a specialist in surgery of the eye.



(S. B. 271 - By Senators Ferns and Gaunch)

[Passed March 7, 2016; in effect ninety days from passage.] [Approved by the Governor on March 15, 2016.]

AN ACT to amend and reenact §30-9-2, §30-9-3 and §30-9-7 of the Code of West Virginia, 1931, as amended, and to amend said code by adding thereto two new sections, designated as §30-9-33 and §30-9-34, all relating to regulation of the practice of accountancy; redefining attest services; protecting board members from civil liability; revising requirements for issuance of certificate as certified public accountant including criminal background check; requiring Mandatory Training in federal antitrust law and state action immunity for members of the board of accountancy and their representatives from the Attorney General's office; and providing for indemnification for board members.

Be it enacted by the Legislature of West Virginia:

That §30-9-2, §30-9-3 and §30-9-7 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 as §30-9-33 and §30-9-34, all to read as follows:

#### ARTICLE 9. ACCOUNTANTS.

### §30-9-2. Definitions.

- 1 As used in this article, the following words and terms have
- 2 the following meanings, unless the context or associated
- 3 language clearly indicates otherwise:
- 4 (1) "Affiliated entity" means an entity that controls, is
- 5 controlled by, or is under common control with, a firm. For
- 6 purposes of this definition, an entity controls another entity if the
- 7 entity directly or indirectly or acting in concert with one or more
- 8 other affiliated entities, or through one or more subsidiaries,
- 9 owns, controls, holds with power to vote, or holds proxies
- 10 representing, more than fifty percent of the voting interest in
- 11 such entity.
- 12 (2) "Assurance" means any act or action, whether written or
- 13 oral, expressing an opinion or conclusion about the reliability of
- 14 a financial statement or about its conformity with any financial
- 15 accounting standards.
- 16 (3) "Attest services" means providing the following services:
- 17 (A) Any audit or other engagement to be performed in
- 18 accordance with the statements on Auditing Standards (SAS);
- 19 (B) Any review of a financial statement to be performed in
- 20 accordance with the statements on Standards for Accounting and
- 21 Review Services (SSARS);
- 22 (C) Any examination of prospective financial information to
- 23 be performed in accordance with applicable Statements on
- 24 Standards for Attestation Engagements (SSAE);
- 25 (D) Any engagement to be performed in accordance with the
- 26 Auditing Standards of the Public Company Accounting
- 27 Oversight Board (PCAOB); or

- 28 (E) Any examination, review or agreed upon procedures 29 engagement to be performed in accordance with the statements 30 on Standards for Attestation Engagements (SSAE), other than an 31 examination described in paragraph (C) of this subdivision.
- 32 (4) "Audit" means expressing an opinion about the fairness 33 of presentation of financial statements in accordance with the 34 statements on Auditing Standards.
- 35 (5) "Authorization" means an authorization issued pursuant 36 to this article that entitles a permit holder or an individual 37 practitioner to perform attest or compilation services.
- 38 (6) "Board" means the West Virginia Board of Accountancy.
- 39 (7) "Business entity" means any corporation, partnership,
- 40 limited partnership, limited liability partnership, professional
- 41 limited liability partnership, limited liability company,
- 42 professional limited liability company, joint venture, business
- 43 trust or any other form of business organization. The term
- 44 "business entity" includes a firm.
- 45 (8) "Certificate" means a certificate as a certified public 46 accountant issued or renewed by the board pursuant to this 47 article or corresponding provisions of prior law.
- 48 (9) "Certified public accountant" or "CPA" means the holder of a certificate.
- 50 (10) "Client" means a person or entity that agrees with a 51 licensee or licensee's employer to receive any professional 52 service.
- 53 (11) "Commission" means compensation, except a referral 54 fee, for recommending or referring any product or service to be 55 supplied by another person.

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- 56 (12) "Compilation services" means providing a service 57 performed in accordance with the statements on Standards for 58 Accounting and Review Services that presents, in the form of a 59 financial statement, information that is the representation of 60 management without an expression of assurance on the 61 statement: *Provided*, That this definition does not apply to the 62 use of the term "compilation" in section thirty-one of this article.
  - (13) "Contingent fee" means a fee established for the performance of any service pursuant to an arrangement in which no fee will be charged unless a specified finding or result is attained, or in which the amount of the fee is otherwise dependent upon the finding or result of the service. A fee fixed by a court, taxing authority or other public authority is not a contingent fee.
- 70 (14) "Examination", when used with reference to 71 prospective financial statements, means expressing an opinion 72 about the fairness of presentation of financial information in 73 accordance with the statements on Standards for Attestation 74 Engagements.
- 75 (15) "Financial statement" means a writing or other 76 presentation, including accompanying notes, which presents, in 77 whole or in part, historical or prospective financial position, 78 results of operations or changes in financial position of any 79 person, corporation, partnership or other entity.
  - (16) "Firm" means any business entity, including, but not limited to, accounting corporations and professional limited liability companies, in which two or more certified public accountants or public accountants hold an ownership or membership interest, in terms of the financial interests and voting rights of all partners, officers, shareholders, members or managers, and the primary business activity of which is the

- provision of professional services to the public by certified public accountants or public accountants.
- 89 (17) "Firm ownership requirements" means, with respect to:
- 90 (A) Any professional limited liability company organized 91 pursuant to article thirteen, chapter thirty-one-b of this code, 92 consisting of one or more licensed certified public accountants 93 or licensed public accountants;
- 94 (B) Any other firm where:
- 95 (i) A simple majority of ownership of the firm, in terms of 96 financial interests and voting rights of all partners, officers, shareholders, members or managers, belongs either to:
- 98 (I) Certified public accountants holding a certificate under 99 section twelve of this article or the equivalent provision of 100 another state: or
- 101 (II) Public accountants who have met the continuing 102 professional education requirements of subsection (b), section 103 twelve of this article and who are not subject to the exemption or 104 limitation set forth in subdivisions (1) or (2), subsection (b), 105 section twelve of this article or similar provisions of another 106 state.
- 107 (ii) All owners of the firm who are not certified public 108 accountants or public accountants are active participants in the 109 firm or in affiliated entities.
- 110 (18) "Foreign" means any country other than the United 111 States.
- 112 (19) "Good moral character" means lack of a history of 113 dishonesty or felonious activity.

- 114 (20) "Home office" means the client's office address.
- 115 (21) "Individual practitioner" means a certified public
- 116 accountant or a public accountant who offers professional
- services to the public but who does not practice in a firm.
- 118 (22) "License" means a certificate, permit, registration or
- 119 authorization.
- 120 (23) "Licensee" means the holder of a license.
- 121 (24) "Manager" means a manager of a professional limited
- 122 liability company.
- 123 (25) "Member" means a member of a professional limited
- 124 liability company.
- 125 (26) "Nonlicensee" means a person or business entity that
- 126 does not hold a license.
- 127 (27) "Out-of-state certificate" means a valid certificate as a
- 128 certified public accountant or equivalent designation issued or
- 129 renewed under the laws of another state: *Provided*. That
- 130 "out-of-state certificate" does not include any certificate as a
- 131 certified public accountant or equivalent designation that was
- issued or renewed solely by virtue of a holder's prior status as a
- 133 public accountant or its equivalent in the state of issuance and
- 134 not by virtue of the holder's having met the certification
- 135 requirements of the state of issuance.
- 136 (28) "Out-of-state permit" means a valid permit as a firm of
- 137 certified public accountants or another designation equivalent to
- 138 a permit issued or renewed by the board and that is issued or
- 139 renewed under the laws of another state.
- 140 (29) "Peer Review" means a study, appraisal or review of
- 141 one or more aspects of the professional work of a licensee by a

- person who holds a certificate or an out-of-state certificate and
- 143 who is not affiliated with the licensee being reviewed.
- 144 (30) "Permit" means a permit issued to a firm pursuant to
- 145 this article.
- 146 (31) "Principal place of business" means the licensee's
- office location in the state where the licensee holds a certificate
- 148 or registration.
- 149 (32) "Professional services" means those services that
- 150 involve the specialized knowledge and skills of a certified public
- 151 accountant or a public accountant delivered by any means,
- 152 including but not limited to, in person, by mail, telephone or by
- 153 electronic means.
- 154 (33) "Public accountant" means a person holding a
- registration who is not a certified public accountant.
- 156 (34) "Referral fee" means compensation for recommending
- 157 or referring any service of a licensee to any person.
- 158 (35) "Registration" means a registration as a public
- 159 accountant issued by the board pursuant to prior law governing
- 160 the registration of public accountants and renewed by the board
- 161 pursuant to this article.
- 162 (36) "Report", when used with reference to financial
- statements, means an opinion or disclaimer of opinion or other
- 164 form of language or representation which states or implies any
- 165 form of assurance or denial of assurance.
- 166 (37) "Rule" means any rule proposed for legislative approval
- 167 by the board pursuant to this article.
- 168 (38) "State" means any state of the United States, the
- 169 District of Columbia, Puerto Rico, the U.S. Virgin Islands or
- 170 Guam.

- 171 (39) "Substantial equivalency" or "substantially equivalent" 172 means or refers to a determination by the board or its designee 173 that the education, examination and experience requirements 174 contained in the statutes or rules of another state are comparable 175 to or exceed the education, examination and experience 176 requirements contained in the Uniform Accountancy Act, or that 177 individual certified public accountant's education, 178 examination and experience qualifications are comparable to or 179 exceed the education, examination and experience requirements contained in the Uniform Accountancy Act. 180
- 181 (40) "Substantial equivalency practitioner" means any 182 individual whose principal place of business is not in this state, 183 who holds a certificate from another state and has complied with 184 the provisions of section sixteen of this article.
- 185 (41) "Uniform Accountancy Act" means the Uniform 186 Accountancy Act, fifth edition, revised (July 2007), jointly 187 published by the American Institute of Certified Public 188 Accountants and the National Association of State Boards of 189 Accountancy.

# §30-9-3. Board of accountancy; appointment; terms, qualifications of members; removal of members; compensation of members; civil liability protection for members.

- 1 (a) The West Virginia board of accountancy is hereby 2 continued.
- 3 (b) (1) Commencing with the board terms beginning July 1,
- 4 2001, the board shall consist of seven members appointed for
- 5 terms of three years by the Governor with the advice and consent
- 6 of the Senate. Five members must be certified public
- 7 accountants; one member must be a public accountant so long as
- 8 twenty-five or more public accountants are registered by the
- 9 board, but if there are fewer than twenty-five public accountants

- 10 registered by the board, then the member may be either a public 11 accountant or a certified public accountant; and one member 12 must be a citizen member who is a resident of this state, who is 13 not licensed under the provisions of this article and who also is not a bookkeeper, enrolled agent or a person who provides or 14 15 offers to provide to the public any bookkeeping, tax preparation, 16 financial advisory or insurance service: Provided, That the members of the board in office on July 1, 2001, shall continue to 17 18 serve until their respective terms expire.
- 19 (2) Each licensed member of the board, at the time of his or 20 her appointment, must have held a license in this state for a 21 period of not less than five years immediately preceding the 22 appointment and each member must be a resident of this state 23 during the appointment term.
- 24 (3) Each appointment of a public accountant, whether for a 25 full term or to fill a vacancy, must be made by the Governor from among three nominees selected by the West Virginia Public 26 27 Accountants Association and each appointment of a certified public accountant, whether for a full term or to fill a vacancy, 28 must be made by the Governor from among three nominees 29 selected by the West Virginia Society of Certified Public 30 Accountants: Provided, That when the appointment of a certified 31 public accountant is to fill the seat held on July 1, 2001, by a 32 public accountant, then the appointment, whether for a full term 33 or to fill a vacancy, must be made by the Governor from among 34 three nominees selected by the West Virginia Public 35 36 Accountants Association. When the appointment is for a full 37 term, the nominations must be submitted to the Governor not 38 later than eight months prior to the date on which the appointment will become effective. When the appointment is to 39 fill a vacancy, the nominations must be submitted to the 40 Governor within ten days after a request for the nominations has 41 been made by the Governor to the president of the West Virginia 42 43 Society of Certified Public Accountants or president of the West

- 44 Virginia Public Accountants Association. If the society or the
- 45 association fails to submit to the Governor nominations for an
- 46 appointment in accordance with the requirements of this section,
- 47 the Governor may make the appointment without the
- 48 nominations.
- 49 (c) No member may serve more than two consecutive full
- 50 terms, and any member having served two full terms may not be
- 51 appointed for one year after completion of his or her second full
- 52 term. A member shall continue to serve until his or her successor
- 53 has been appointed and qualified.
- 54 (d) If a board member is unable to complete a term, the
- 55 Governor shall appoint a person of similar qualifications to
- 56 complete the unexpired term: Provided, That if the board
- 57 member is a certified public accountant or public accountant, the
- 58 Governor shall appoint a person from any nominees submitted
- 59 pursuant to subdivision (3), subsection (b) of this section. Each
- 60 vacancy occurring on the board must be filled by appointment
- 61 within sixty days after the vacancy is created.
- (e) The Governor may remove any member from the board
- 63 for neglect of duty, incompetency or official misconduct.
- 64 (f) Any member of the board shall immediately and
- automatically forfeit his or her membership if he or she has his
- 66 or her certificate or registration suspended or revoked by the
- 67 board, is convicted of a felony under the laws of any state or the
- 68 United States, or becomes a nonresident of this state.
- 69 (g) Each member of the board shall receive compensation
- 70 and expense reimbursement in accordance with section eleven,
- 71 article one of this chapter.
- (h) Board members are exempt from civil liability for any
- 73 decision made or any act done in good faith in the performance

of any duty or the exercise of any power granted under this article.

# §30-9-7. Issuance of certificate; certificates issued prior to the first day of July, two thousand one.

- 1 (a) The board shall issue an original certificate to an 2 applicant who demonstrates that:
- 3 (1) He or she has met one of the following qualifications for 4 a certificate:
- 5 (A) He or she meets the qualifications for a certificate set 6 forth in section eight of this article;
- 7 (B) He or she holds an out-of-state certificate and meets the 8 requirements of section nine of this article;
- 9 (C) He or she holds an out-of-state certificate, does not meet 10 the requirements of section nine of this article but does meet the 11 requirements of section ten of this article; or
- 12 (D) He or she holds a substantially equivalent foreign 13 designation and meets the requirements of section eleven of this 14 article.
- 15 (2) He or she has submitted an application, in writing, on a 16 form prescribed by the board: *Provided*, That the application 17 must require an applicant to list all states in which he or she has 18 applied for or holds an out-of-state certificate and any past 19 denial, revocation or suspension of an out-of-state certificate;
- 20 (3) He or she is trustworthy and of good moral character;
- 21 (4) He or she has paid the appropriate fee prescribed by the 22 board;

- 23 (5) He or she has submitted to a state and national criminal
- 24 history record check, as set forth in this subdivision.
- 25 (A) This requirement is found not to be against public 26 policy.
- 27 (B) The criminal history record check shall be based on
- 28 fingerprints submitted to the West Virginia State Police or its
- 29 assigned agent for forwarding to the Federal Bureau of
- 30 Investigation.
- 31 (C) The applicant shall meet all requirements necessary to
- 32 accomplish the state and national criminal history record check,
- 33 including:
- 34 (i) Submitting fingerprints for the purposes set forth in this
- 35 subsection; and
- 36 (ii) Authorizing the board, the West Virginia State Police
- 37 and the Federal Bureau of Investigation to use all records
- 38 submitted and produced for the purpose of screening the
- 39 applicant for a certificate.
- 40 (D) The results of the state and national criminal history
- 41 record check may not be released to or by a private entity except:
- 42 (i) To the individual who is the subject of the criminal
- 43 history record check;
- 44 (ii) With the written authorization of the individual who is
- 45 the subject of the criminal history record check; or
- 46 (iii) Pursuant to a court order.
- 47 (E) The criminal history record check and related records are
- 48 not public records for the purposes of chapter twenty-nine-b of
- 49 this code.

- 50 (F) The applicant shall pay the actual costs of the 51 fingerprinting and criminal history record check.
- 52 (G) The board may propose rules to implement the
- 53 provisions of this section for legislative approval in accordance
- 54 with article three, chapter twenty-nine-a of this code. The rules
- 55 must be consistent with standards established by the Federal
- 56 Bureau of Investigation and the National Crime Prevention and
- 57 Privacy Compact as authorized by 42 U. S. C. §14611, et seq.
- 58 (b) Certificates will initially be issued for a period to expire 59 on June 30 following the date of issue.
- 60 (c) A certificate issued by the board prior to July 1, 2001,
- 61 will for all purposes be considered a certificate issued under this
- 62 section: Provided, That a person holding a certificate issued
- 63 prior to July 1, 2001, must renew the certificate pursuant to
- 64 section twelve of this article.

# §30-9-33. Mandatory training in federal antitrust law and state action immunity.

- 1 It shall be required of the West Virginia Board of
- 2 Accountancy, and their representatives from the Attorney
- 3 General's office, to obtain initial training on the subject of
- federal antitrust law and state action immunity by July 1, 2016,
- 5 and thereafter on an annual basis. The purpose of the training is
- 6 to provide those members with the knowledge to be able to
- 7 identify the risks of any action that may be taken by the board
- 8 that could be construed as possible antitrust violations.

### §30-9-34. Indemnification.

- 1 In the event that a lawsuit is filed alleging violation of
- 2 federal antitrust laws, the board may indemnify its board
- 3 members and current and former employees for expenses
- 4 reasonably incurred in connection with judicial or administrative

- 5 proceedings to which they are or may become parties by reason
- 6 of the performance of their official duties.



(Com. Sub. for S. B. 376 - By Senators Trump, Palumbo, Gaunch, Williams, Beach, Yost, Miller and Maynard)

[Passed March 10, 2016; in effect ninety days from passage.] [Approved by the Governor on March 23, 2016.]

AN ACT to amend and reenact §30-18-10 of the Code of West Virginia, 1931, as amended, relating to background checks for applicants for private investigator and security guard licensure; requiring each applicant to submit to a state and national criminal history record check; requiring criminal history record check to be based on fingerprints submitted to West Virginia Secretary of State or its assigned agent for forwarding to Federal Bureau of Investigation; requiring applicant to meet all requirements necessary to accomplish criminal history record check; providing that results of criminal history record check may not be released to or by a private entity except under certain circumstances; providing criminal history record check and related records are not public records; directing applicant to ensure that criminal history record check is completed as soon as possible after date of original application for registration; and providing that applicant pay actual costs of fingerprinting and criminal history record check.

Be it enacted by the Legislature of West Virginia:

That §30-18-10 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

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### ARTICLE 18. PRIVATE INVESTIGATIVE AND SECURITY SERVICES.

### §30-18-10. Authority of Secretary of State.

- (a) When the Secretary of State is satisfied as to the good 1 2 character, competency and integrity of an applicant, of all employees or individuals conducting the private investigation 3 business or security guard services under a firm license and, if 4 the applicant is a firm, of each member, officer or partner, he or 5 6 she shall issue and deliver to the applicant a certificate of license. Each license issued shall be for a period of one year and 8 is revocable at all times for cause shown pursuant to subsection 9 (b) of this section or any rules promulgated pursuant thereto.
- 10 (b) The Secretary of State may propose for promulgation in accordance with the provisions of chapter twenty-nine-a of this 11 code legislative rules necessary for the administration and 12 13 enforcement of this article and for the issuance, suspension and 14 revocation of licenses issued under the provisions of this article. The Secretary of State shall afford any applicant an opportunity 15 to be heard in person or by counsel when a determination is 16 made to deny, revoke or suspend an applicant's license or 17 application for license, including a renewal of a license. The 18 applicant has fifteen days from the date of receiving written 19 notice of the Secretary of State's adverse determination to 20 request a hearing on the matter of denial, suspension or 21 revocation. The action of the Secretary of State in granting, 22 renewing, or in refusing to grant or to renew, a license is subject 23 24 to review by the circuit court of Kanawha County or other court of competent jurisdiction. 25
  - (c) At any hearing before the Secretary of State to challenge an adverse determination by the Secretary of State on the matter of a denial, suspension or revocation of a license, if the adverse determination is based upon a conviction for a crime which

- 30 would bar licensure under the provisions of this article, the
- 31 hearing shall be an identity hearing only and the sole issue which
- 32 may be contested is whether the person whose application is
- 33 denied or whose license is suspended or revoked is the same
- 34 person convicted of the crime.
- 35 (d) The Secretary of State shall require each applicant to
- 36 submit to a state and national criminal history record check, as
- 37 set forth in this subsection:
- 38 (1) The criminal history record check shall be based on
- 39 fingerprints submitted to the West Virginia State Police or its
- 40 assigned agent for forwarding to the Federal Bureau of
- 41 Investigation.
- 42 (2) The applicant shall meet all requirements necessary to
- 43 accomplish the state and national criminal history record check,
- 44 including:
- 45 (A) Submitting fingerprints for the purposes set forth in this
- 46 section: and
- 47 (B) Authorizing the Secretary of State, the West Virginia
- 48 State Police and the Federal Bureau of Investigation to use all
- 49 records submitted and produced for the purpose of screening the
- 50 applicant for a license.
- 51 (3) The results of the state and national criminal history
- 52 record check may not be released to or by a private entity except:
- 53 (A) To the individual who is the subject of the criminal
- 54 history record check;
- (B) With the written authorization of the individual who is
- 56 the subject of the criminal history record check; or
- 57 (C) Pursuant to a court order.

- 58 (4) The criminal history record check and related records are
- 59 not public records for the purposes of chapter twenty-nine-b of
- 60 this code.
- 61 (5) The applicant shall ensure that the criminal history
- 62 record check is completed as soon as possible after the date of
- 63 the original application for registration.
- 64 (6) The applicant shall pay the actual costs of the 65 fingerprinting and criminal history record check.



### **CHAPTER 186**

(H. B. 4594 - By Delegates Howell, Sponaugle, Cadle, Hartman, Morgan, Blair, Hamilton and Butler)

[Passed on March 11, 2016; in effect ninety days from passage.] [Approved by the Governor on March 25, 2016.]

AN ACT to amend and reenact §30-21-7 of the Code of West Virginia, 1931, as amended, relating to predoctoral psychology internship qualifications; and requiring that in order to be eligible for a license to engage in the practice of psychology, an applicant with a doctor of philosophy degree or its equivalent must have at least one thousand eight hundred hours from a doctoral internship.

Be it enacted by the Legislature of West Virginia:

That §30-21-7 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

### ARTICLE 21. PSYCHOLOGISTS; SCHOOL PSYCHOLOGISTS.

### §30-21-7. Qualifications of applicants; exceptions; applications; fee.

- 1 (a) To be eligible for a license to engage in the practice of 2 psychology, the applicant must:
- 3 (1) Be at least eighteen years of age;
- 4 (2) Be of good moral character;
- (3) Be a holder of a doctor of philosophy degree or its 5 equivalent or a master's degree in psychology from an accredited 6 institution of higher learning, with adequate course study at such institution in psychology, the adequacy of any such course study 8
- 9 to be determined by the board;
- 10 (4) When the degree held is a doctor of philosophy degree or
- 11 its equivalent, at least one thousand and eight hundred hours
- must be a predoctoral internship in the performance of any of the 12
- psychological services described in subdivision (e), section two 13
- of this article, including those activities excluded from the 14
- definition of the term "practice of psychology" in said 15
- 16 subdivision (e), and, when the degree held is a master's degree,
- have at least five years' experience subsequent to receiving said 17
- degree in the performance of any of the psychological services 18
- described in said subdivision (e), including those activities 19
- 20 excluded from the definition of the term "practice of
- psychology" in said subdivision (e); 21
- 22 (5) Have passed the examination prescribed by the board,
- 23 which examination shall cover the basic subject matter of
- 24 psychology and psychological skills and techniques;
- 25 (6) Not have been convicted of a felony or crime involving 26 moral turpitude; and
- 27 (7) Not, within the next preceding six months, have taken
- and failed to pass the examination required by subdivision (5), 28
- 29 subsection (a) of this section.

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- 30 (b) The following persons shall be eligible for a license to 31 engage in the practice of psychology without examination:
- 32 (1) Any applicant who holds a doctor of philosophy degree 33 or its equivalent from an institution of higher learning, with 34 adequate course study at such institution in psychology and who 35 is a diplomate of the "American Board of Examiners in 36 Professional Psychology"; and
- 37 (2) Any person who holds a license or certificate to engage 38 in the practice of psychology issued by any other state, the 39 requirements for which license or certificate are found by the 40 board to be at least as great as those provided in this article.
  - (c) Any person who is engaged in the practice of psychology in this state, or is engaged in any of the activities described in subdivision (e), (1), (2) or (3), section two of this article, in this state, on the effective date of this article and has been so engaged for a period of two consecutive years immediately prior thereto shall be eligible for a license to engage in the practice of psychology without examination and without meeting the requirements of subdivision (4), subsection (a) of this section, if application for such license is made within six months after the effective date of this article and if such person meets the requirements of subdivisions (1), (2), (3) and (6), subsection (a) of this section: *Provided*, That an equivalent of a master's degree in psychology may be considered by the board, only for the purpose of this subsection (c), as meeting the requirements of subdivision (3), subsection (a) of this section.
  - (d) Any applicant for any such license shall submit an application therefor at such time (subject to the time limitation set forth in subsection (c) of this section), in such manner, on such forms and containing such information as the board may from time to time by reasonable rule and regulation prescribe, and pay to the board an application fee.



### **CHAPTER 187**

# (H. B. 4651 - By Delegates Howell, Arvon, Ihle, Hamrick, P. White and Stansbury)

[Passed March 9, 2016; in effect from passage.] [Approved by the Governor on March 25, 2016.]

AN ACT to amend and reenact §30-26-4, §30-26-6 and §30-26-7 of the Code of West Virginia, 1931, as amended, all relating to professional examination requirements for hearing-aid dealers and fitters; requiring applicants for professional licensure to pass the International Licensing Examination for Hearing Healthcare Professionals or an equivalent examination; requiring applicants for professional licensure to pass a nationally recognized practical examination, or a practical examination designed by the West Virginia Board of Hearing-Aid Dealers to test certain demonstrated skills and techniques; requiring applicants to pass an examination, designed by the board, to test knowledge of certain local laws and practices; eliminating the requirement that the board provide applicants with certain details pertaining to an applicant's failure of an examination; and authorizing emergency and legislative rulemaking.

Be it enacted by the Legislature of West Virginia:

That §30-26-4, §30-26-6 and §30-26-7 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

#### ARTICLE 26. HEARING-AID DEALERS AND FITTERS.

### §30-26-4. Administrative duties; examinations; register; use of fees.

- 1 (a) Effective July 1, 2012, the administrative work of the
- 2 board shall be performed by the board. The board shall keep full

- 3 and complete records of all of their proceedings and accounts,
- 4 which said records and accounts shall be open to public
- 5 inspection at all reasonable times.
- 6 (b) The board may conduct, supervise and administer the
- 7 qualifying examinations authorized and required by this article,
- 8 to maintain for a register or record of persons who apply for a
- 9 license or a temporary trainee permit as well as a register or
- 10 record of the name and last-known business address of all
- persons to whom a license or trainee permit is issued pursuant to
- 12 this article.
- 13 (c) Effective July 1, 2012, the board shall bear the costs of
- 14 carrying out the powers and duties granted to it by this article
- 15 from the fees collected by it for these purposes.

### §30-26-6. Standards, scope and subject of examination.

- 1 (a) Before obtaining a license to engage in the practice of
- 2 dealing in or fitting of hearing- aids, an applicant must meet the
- 3 following requirements:
- 4 (1) The applicant must pass the International Licensing
- 5 Examination for Hearing Healthcare Professionals, prepared by
- 6 the International Hearing Society, or an equivalent examination
- 7 selected by the board.
- 8 (2) The applicant must pass a practical examination, which
- 9 shall be a nationally recognized test selected by the board, or a
- 10 test designed by the board to test the applicant's proficiency in
- 11 the following techniques as they pertain to the fitting of hearing
- 12 aids:
- 13 (A) Pure tone audiometry, including air conduction testing;
- 14 (B) Live voice or recorded voice speech audiometry,
- 15 including speech reception threshold testing and speech
- 16 discrimination testing; and

- 17 (C) Masking when indicated and effective masking.
- 18 (3) The applicant must pass an examination, which shall be
- 19 developed by the board, to test an applicant's competency in the
- 20 following subjects:
- 21 (A) Ability to counsel the person or family who will receive
- 22 the hearing aid relative to the care and use of the instrument;
- 23 (B) Knowledge regarding the medical and rehabilitative
- 24 facilities for hearing-handicapped children and adults in the area
- 25 being served;
- 26 (C) Knowledge and understanding of the grounds for
- 27 revocation, suspension, or probation of a license as outlined in
- 28 this article; and
- 29 (D) Knowledge and understanding of criminal offenses as
- 30 outlined in this article.
- 31 (b) The board may promulgate rules to implement the
- 32 requirements of this section, including emergency rules
- 33 promulgated pursuant to the provisions of article three, chapter
- 34 twenty-nine-a of this code.
- 35 (c) The examinations required by this section shall be
- 36 collectively referred to in this article as "the examination."

# §30-26-7. Results of examination disclosed to applicant; issuance of license; fees.

- 1 (a) Any person who has taken the examination shall be
- 2 notified by the board within thirty days following such
- 3 examination as to whether he or she has satisfactorily passed the
- 4 examination. Such person shall also be advised of his or her
- 5 right to take the examination in the future.

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- If such applicant has satisfactorily passed the examination, he or she shall be advised of that fact by the board and, upon payment of the prescribed fee, the board shall register the applicant as a licensee and shall issue a license to such applicant. Such license shall remain in effect until the next succeeding June 30.
- 12 (b) Within six months following the effective date of this 13 article, any applicant for a license who has been engaged in the practice of dealing in or fitting of hearing aids in this state for a 14 period of three years immediately prior to such effective date, 15 16 shall be so registered and issued a license without being required to undergo or take the examination required by this article: 17 18 *Provided*, That such person meets all other requirements of this article and the rules and regulations promulgated pursuant 19 thereto. All of the fees which such prospective licensee would be 20 21 otherwise required to pay shall be paid by such prospective licensee in the same manner and to the same extent as if such 22 prospective licensee had not so engaged in such practice in this 23 state for such three-year period. 24
  - (c) The issuance of a license by the board must have the concurrence of a majority of its members.



### **CHAPTER 188**

(Com. Sub. for S. B. 524 - By Senator Blair)

[Passed March 12, 2016; in effect ninety days from passage.] [Approved by the Governor on April 1, 2016.]

AN ACT to amend and reenact §30-27-1, §30-27-3, §30-27-4, §30-27-5, §30-27-8, §30-27-8a, §30-27-9, §30-27-10, §30-27-11,

§30-27-12, §30-27-13, §30-27-14, §30-27-16, §30-27-17, §30-27-18 and §30-27-19 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §30-27-8b, all relating to the Board of Barbers and Cosmetologists; providing jurisdiction to the board over hairstyling, waxing and shampoo assisting; amending definitions and providing for required clock hours of training; licensing of schools or programs by the Department of Education; modifying composition of the board; requiring examinations meet national standards; requiring licensed schools have one chair per student; regulation of on-site and temporary services; barber apprentice program; requirements to sponsor a barber apprentice; providing for certifications; providing for certification of waxing specialists; modifying reciprocity standards; modifying continuing education requirements; modifying instructor certification; and eliminating biennial license renewal.

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

That \$30-27-1, \$30-27-3, \$30-27-4, \$30-27-5, \$30-27-8, \$30-27-8a, \$30-27-9, \$30-27-10, \$30-27-11, \$30-27-12, \$30-27-13, \$30-27-14, \$30-27-16, \$30-27-17, \$30-27-18 and \$30-27-19 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 \$30-27-8b, all to read as follows:

### ARTICLE 27. BOARD OF BARBERS AND COSMETOLOGISTS.

### §30-27-1. Unlawful acts.

- 1 (a) It is unlawful for any person to practice or offer to
- 2 practice barbering, barber permanent waving, cosmetology,
- 3 hairstyling, waxing, shampoo assisting, aesthetics or nail care in
- 4 this state without a license or certification issued under the
- 5 provisions of this article, or advertise or use any title or

- 6 description tending to convey the impression that the person is
- 7 a licensed or certified aesthetician, barber, barber crossover,
- 8 barber permanent wavist, cosmetologist, cosmetologist
- 9 crossover, hairstylist, shampoo assistant, waxing specialist or
- 10 nail technician unless the person has been licensed or obtained
- 11 certification under the provisions of this article and the license
- 12 or certification has not expired, been suspended or revoked.
- 13 (b) No salon, except through a licensee or certification, may
- 14 render any service or engage in any activity which, if rendered
- 15 or engaged in by an individual, would constitute the practices
- 16 licensed or certified under the provisions of this article.
- 17 (c) No school, except through a certified instructor, may
- 18 instruct, render any service or engage in any activity which, if
- 19 taught, rendered or engaged in by an individual, would constitute
- 20 the practices licensed under the provisions of this article.

#### §30-27-3. Definitions.

- 1 As used in this article, the following words and terms have
- 2 the following meanings, unless the context clearly indicates
- 3 otherwise:
- 4 (a) "Aesthetics" or "esthetics" means any one or any
- 5 combination of the following acts when done on the human body
- 6 for compensation and not for the treatment of disease:
- 7 (1) Administering cosmetic treatments to enhance or
- 8 improve the appearance of the skin, including cleansing, toning,
- 9 performing effluerage or other related movements, stimulating,
- 10 exfoliating or performing any other similar procedure on the skin
- 11 of the human body or scalp;
- 12 (2) Applying, by hand or with a mechanical or electrical
- 13 apparatus, any cosmetics, makeups, oils, powders, clays,
- 14 antiseptics, tonics, lotions, creams or chemical preparations

- 15 necessary for the practice of aesthetics to another person's face,
- 16 neck, back, shoulders, hands, elbows and feet up to and
- 17 including the knee;
- 18 (3) The rubbing, cleansing, exercising, beautifying or
- 19 grooming of another person's face, neck, back, shoulders, hands,
- 20 elbows and feet up to and including the knee;
- 21 (4) The waxing and tweezing of hair on another person's
- 22 body;
- 23 (5) The wrapping of another person's body in a body wrap;
- 24 (6) Applying artificial eyelashes and eyebrows; and
- 25 (7) The lightening of hair on the body except the scalp.
- 26 (b) "Aesthetician" or "esthetician" means a person licensed
- 27 under the provisions of this article who engages in the practice
- 28 of aesthetics and has completed six hundred clock hours of
- 29 training.
- 30 (c) "Applicant" means a person making application for a
- 31 professional license, license, certificate, registration, permit or
- 32 renewal under the provisions of this article.
- 33 (d) "Barber" means a person licensed under the provisions
- 34 of this article who engages in the practice of barbering and has
- 35 completed a twelve hundred clock-hour barber training program
- 36 without chemical services or a fifteen hundred clock-hour barber
- 37 training program with chemical services, or has successfully
- 38 completed the barber apprenticeship program.
- 39 (e) "Barbering" means any one or any combination of the
- 40 following acts when done on the head and neck for
- 41 compensation and not for the treatment of disease:

- 42 (1) Shaving, shaping and trimming the beard, or both;
- 43 (2) Cutting, singeing, shampooing, arranging, dressing,
- 44 tinting, bleaching, or applying lotions or tonics on human hair,
- 45 or a wig or hairpiece; and
- 46 (3) Applications, treatments or rubs of the scalp, face, or
- 47 neck with oils, creams, lotions, cosmetics, antiseptics, powders,
- 48 or other preparations in connection with the shaving, cutting or
- 49 trimming of the hair or beard.
- (f) "Barber crossover" is a person who has completed twelve
- 51 hundred or fifteen hundred clock hours of training, is licensed as
- 52 a barber, and completed additional hours of training in nails,
- 53 aesthetics and/or chemical services, to the total amount of
- 54 twenty-one hundred hours, to perform cosmetology.
- 55 (g) "Barber permanent waving" means the following acts
- 56 performed on the head and neck for compensation and not for
- 57 the treatment of disease:
- 58 (1) The bleaching or tinting of hair; and
- 59 (2) The permanent waving of hair.
- (h) "Barber permanent wavist" means a person who has
- 61 completed two thousand clock hours of training and was licensed
- 62 to perform barbering and barber permanent waiving enrolled by
- 63 August 28, 2012.
- (i) "Board" means the West Virginia Board of Barbers and
- 65 Cosmetologists.
- (j) "Certificate" means an instructor certificate to teach in a
- 67 school under the provisions of this article or a document issued
- 68 by the board for certification obtained pursuant to section eight-b
- 69 of this article.

- 70 (k) "Certificate holder" means a person certified as an 71 instructor to teach in a school under the provisions of this article 72 or who has obtained a certification pursuant to section eight-b of 73 this article.
- 74 (I) "Cosmetologist" means a person licensed under the 75 provisions of this article who engages in the practice of 76 cosmetology and who has completed eighteen hundred clock 77 hours of training.
- 78 (m) "Cosmetology" means any one or any combination of 79 the following acts when done on the human body for 80 compensation and not for the treatment of disease:
- 81 (1) Cutting, styling, shaping, arranging, braiding, weaving, 82 dressing, adding extensions, curling, waving, permanent waving, 83 relaxing, straightening, shampooing, cleansing, singeing, 84 bleaching, tinting, coloring, waxing, tweezing, or similarly work 85 on human hair, or a wig or hairpiece, by any means, including 86 hands, mechanical or electrical devices or appliances;

### 87 (2) Nail care;

- (3) Applying by hand or with a mechanical or electrical device or appliance, any cosmetics, makeups, oils, powders, clays, antiseptics, tonics, lotions, creams or chemical preparations necessary for the practice of aesthetics to another person's face, neck, shoulders, hands, elbows and feet up to and including the knee;
- 94 (4) The rubbing, cleansing, exercising, beautifying or 95 grooming of another person's face, neck, shoulders, hands, 96 elbows and feet up to and including the knee;
- 97 (5) The wrapping of another person's body in a body wrap; 98 and

- 99 (6) Performing aesthetics.
- 100 (n) "Cosmetology crossover" is a person who has completed 101 eighteen hundred clock hours of training, is licensed as a 102 cosmetologist and completes an additional three hundred hours 103 of training in clipper cuts and face shaving to perform barbering,
- 104 for a total of twenty-one hundred hours.
- (o) "General supervision" means:
- 106 (1) For schools, a master or certified instructor is on the 107 premises and is quickly and easily available; or
- 108 (2) For salons, a professional licensee is on the premises and 109 is quickly and easily available.
- 110 (p) "Hair styling" means any one or any combination of the 111 following acts when done on the head and neck for 112 compensation and not for the treatment of disease:
- Cutting, styling, shaping, arranging, braiding, weaving, dressing, adding extensions, curling, facial hair trimming, scalp treatments, waving, permanent waving, relaxing, straightening, shampooing, singeing, bleaching, tinting, coloring, or similarly work on human hair, or a wig or hairpiece, by any means, including hands, mechanical or electrical devices or appliances.
- 119 (q) "Hair stylist" means a person licensed under the 120 provisions of this article who engages in the practice of hair 121 styling and who has completed one thousand clock hours of 122 training, effective July 1, 2016.
- 123 (r) "License" means a professional license, a salon license or 124 a school license.
- 125 (s) "Licensed school" means a facility which has been 126 approved by the West Virginia Council for Community and

- 127 Technical College Education (CCTCE), Department of
- 128 Education in conjunction with CCTCE or Department of
- 129 Education in conjunction with the Department of Corrections
- pursuant to section nine, article two-b, chapter eighteen-b of this
- code to educate persons to be licensed or issued certain permits
- 132 under the provisions of this article.
- 133 (t) "Licensee" means a person, corporation or firm holding
- 134 a license issued under the provisions of this article.
- (u) "Nail care" means any one or any combination of the
- 136 following acts when done on the human body for compensation
- and not for the treatment of disease:
- (1) The cleansing, dressing, or polishing of nails of a person;
- 139 (2) Performing artificial nail service; and
- 140 (3) The cosmetic treatment of the feet up to the knee and the
- 141 hands up to the elbow.
- (v) "Nail technician" or "manicurist" means a person
- 143 licensed under the provisions of this article who engages in the
- practice of nail care and has completed four hundred clock hours
- 145 of training.
- (w) "Permit" means a work permit.
- (x) "Permitee" means a person holding a work permit.
- (y) "Professional license" means a license to practice as an
- aesthetician, barber, barber crossover, barber permanent wavist,
- 150 cosmetologist, cosmetologist crossover, hairstylist or nail
- 151 technician.
- (z) "Registration" means a registration issued by the board
- 153 to a person who rents or leases a booth or chair from a licensed

- salon owner and operator, or both, or a registration issued by the
- board to a person who is a student in a school.
- 156 (aa) "Registrant" means a person who holds a registration
- 157 under the provisions of this article.
- (bb) "Salon" means a shop or other facility where a person
- 159 practices under a professional license.
- 160 (cc) "Salon license" means a license to own and operate a
- 161 salon.
- (dd) "Student registration" means a registration issued by the
- 163 board to a student to study at a school licensed under the
- 164 provisions of this article.
- (ee) "Waxing specialist" means a person certified under the
- 166 provisions of this article who engages in the practice of waxing
- and tweezing of hair on another person's body.
- 168 (ff) "Shampoo assistant" means a person certified under the
- 169 provisions of this article who engages in the practice of
- 170 shampooing and rinsing hair; removing rollers or permanent rods
- and cleansing or other sink-related functions not requiring the
- 172 skill of a license. They must work at all times under the direct
- supervision of a licensed barber, hairstylist or cosmetologist.
- (gg) Hair braiding, threading and any other item not spelled
- out are not regulated by the West Virginia Board of Barbers and
- 176 Cosmetologists.

### §30-27-4. Board of Barbers and Cosmetologists.

- 1 (a) The West Virginia Board of Barbers and Cosmetologists
- 2 is continued. The members of the board in office on July 1,
- 3 2016, shall, unless sooner removed, continue to serve until their
- 4 respective terms expire and until their successors have been
- 5 appointed and qualified.

- (b) The Governor, by and with the advice and consent of the 6 7 Senate, shall appoint:
- 8 (1) One licensed cosmetologist;
- 9 (2) One licensed barber or barber permanent wavist;
- 10 (3) One licensed aesthetician who is not a cosmetologist;
- 11 (4) One licensed nail technician who is not a cosmetologist;
- 12 (5) One representative from a privately owned beauty school
- licensed by the West Virginia Council for Community and 13
- 14 Technical College Education (CCTCE), Department of
- 15 Education in conjunction with CCTCE or Department of
- 16 Education with the Department of Corrections; and
- 17 (6) Four citizen members representing the public;
- 18 (c) After the initial appointment term, the term shall be for
- five years. All appointments to the board shall be made by the 19
- 20 Governor by and with the advice and consent of the Senate.
- 21 (d) Each licensed member of the board, at the time of his or
- her appointment, must have held a professional license in this 22
- 23 state for a period of not less than three years immediately
- 24 preceding the appointment.
- 25 (e) Each member of the board must be a resident of this state
- 26 during the appointment term.
- 27 (f) A member may not serve more than two consecutive full
- 28 terms. A member may continue to serve until a successor has
- 29 been appointed and has qualified. A member serving on the
- board on June 30, 2016, may be reappointed in accordance with 30
- 31 the provisions of this section.

- (g) A vacancy on the board shall be filled by appointment by
   the Governor for the unexpired term of the member whose office
   is vacant and the appointment shall be made within sixty days of
   the vacancy.
- 36 (h) The Governor may remove any member from the board 37 for neglect of duty, incompetency or official misconduct.
- 38 (i) A member of the board immediately and automatically 39 forfeits membership to the board if his or her license to practice 40 is suspended or revoked, is convicted of a felony under the laws 41 of any jurisdiction or becomes a nonresident of this state.
- 42 (j) The board shall elect annually one of its members as 43 chairperson who serves at the will of the board.
- 44 (k) Each member of the board is entitled to compensation 45 and expense reimbursement in accordance with article one of 46 this chapter.
- 47 (1) A majority of the members of the board constitutes a 48 quorum.
- (m) The board shall hold at least two annual meetings. Other meetings may be held at the call of the chairperson or upon the written request of two members, at the time and place as designated in the call or request.
- 53 (n) Prior to commencing his or her duties as a member of the 54 board, each member shall take and subscribe to the oath required 55 by section five, article IV of the constitution of this state.

### §30-27-5. Powers and duties of the board.

- 1 (a) The board has all the powers and duties set forth in this
- 2 article, by rule, provided such rule does not contradict the
- 3 provisions of this article and does not exceed the authorities

- 4 granted in this article, in article one of this chapter and elsewhere
- 5 in law.
- 6 (b) The board shall:
- 7 (1) Hold meetings, conduct hearings and administer 8 examinations:
- 9 (2) Establish requirements for licenses, permits, certificates and registrations;
- 11 (3) Establish procedures for submitting, approving and
- 12 rejecting applications for licenses, permits, certificates and
- 13 registrations;
- 14 (4) Determine the qualifications of any applicant for
- 15 licenses, permits, certificates and registrations;
- 16 (5) Prepare, conduct, administer and grade examinations for
- 17 professional licenses and certificates: Provided, That the
- 18 examinations must meet national standards:
- 19 (6) Determine the passing grade for the examinations;
- 20 (7) Maintain records of the examinations the board or a third
- 21 party administers, including the number of persons taking the
- 22 examinations and the pass and fail rate;
- 23 (8) Set operational standards and requirements for licensed
- 24 schools: *Provided*, That a licensed school shall have a minimum
- 25 of one chair per student available during practical instruction;
- 26 (9) Hire, discharge, establish the job requirements and fix
- 27 the compensation of the executive director;
- 28 (10) Maintain an office and hire, discharge, establish the job
- 29 requirements and fix the compensation of employees,

- 30 investigators/inspectors and contracted employees necessary to
- 31 enforce the provisions of this article: Provided, That any
- 32 investigator/inspector employed by the board on July 1, 2009,
- 33 shall retain their coverage under the classified service, including
- 34 job classification, job tenure and salary, until that person retires
- 35 or is dismissed: Provided, however, That nothing may prohibit
- 36 the disciplining or dismissal of any investigator/inspector for
- 37 cause:
- 38 (11) Investigate alleged violations of the provisions of this
- 39 article, legislative rules, orders and final decisions of the board;
- 40 (12) Establish the criteria for the training of
- 41 investigators/inspectors;
- 42 (13) Set the requirements for investigations and inspections;
- 43 (14) Conduct disciplinary hearings of persons regulated by
- 44 the board:
- 45 (15) Determine disciplinary action and issue orders;
- 46 (16) Institute appropriate legal action for the enforcement of
- 47 the provisions of this article;
- 48 (17) Report violations of the provisions of this article, and
- 49 legislative rules promulgated pursuant to this article, alleged to
- 50 have been committed by a licensed school to the West Virginia
- 51 Council for Community and Technical College Education or the
- 52 Department of Education. If the board determines that probable
- 53 cause exists that a violation occurred, the board immediately
- 54 shall advise and provide its investigation file to the West
- 55 Virginia Council for Community and Technical College
- 56 Education or the Department of Education;
- 57 (18) Maintain an accurate registry of names and addresses of
- all persons regulated by the board;

- 59 (19) Keep accurate and complete records of its proceedings,
- and certify the same as may be necessary and appropriate;
- 61 (20) Establish the continuing education requirements for
- 62 professional licensees and certificate holders;
- 63 (21) Issue, renew, combine, deny, suspend, revoke or
- 64 reinstate licenses, permits, certificates and registrations;
- 65 (22) Establish a fee schedule;
- 66 (23) Propose rules in accordance with the provisions of
- article three, chapter twenty-nine-a of this code to implement the
- 68 provisions of this article; and
- 69 (24) Take all other actions necessary and proper to effectuate
- 70 the purposes of this article.
- 71 (c) The board may:
- 72 (1) Establish joint licenses;
- 73 (2) Contract with third parties to administer the examinations
- 74 required under the provisions of this article;
- 75 (3) Sue and be sued in its official name as an agency of this
- 76 state;
- 77 (4) Confer with the Attorney General or his or her assistant
- 78 in connection with legal matters and questions.
- 79 (d) Notwithstanding any other provision of this code, the
- 80 board may not restrict a certificate holder or licensee from
- 81 practicing his or her licensed craft at temporary on-site events in
- 82 connection with, but not limited to: Fairs, carnivals, weddings,
- 83 pageants or photographs: *Provided*, That the certificate holder or
- pugamina or prioregruphism volvinions, rimit and constraint increases or
- 84 licensee is compliant with all other prescribed requirements and

- 85 rules under this code. If an out-of-state licensee works in a
- 86 temporary capacity, less than five days, in connection with an
- 87 event or temporary commercial enterprise, he or she may be
- 88 granted a temporary permit to work after submitting his or her
- 89 current license certification to this state and paying the
- 90 applicable fee: Provided, however, That the licensee shall
- 91 display or have immediately available their license for the
- 92 duration of his or her practice at a temporary event.

### §30-27-8. Professional license requirements.

- 1 (a) An applicant for a professional license to practice as an
- 2 aesthetician, barber, barber crossover, cosmetologist, hair stylist,
- 3 cosmetologist crossover or nail technician shall present
- 4 satisfactory evidence that he or she:
- 5 (1) Is at least eighteen years of age;
- 6 (2) Is of good moral character;
- 7 (3) Has a high school diploma, a GED, or has passed the
- 8 "ability to benefit test" approved by the United States
- 9 Department of Education;
- 10 (4) Has graduated from a licensed school which has been
- 11 approved by the West Virginia Council for Community and
- 12 Technical College Education (CCTCE), Department of
- 13 Education in conjunction with CCTCE or Department of
- 14 Education with the Department of Corrections or has completed
- 15 education requirements in another state and meets the licensure
- 16 provisions of the board;
- 17 (5) Has passed an examination that tests the applicant's
- 18 knowledge of subjects specified by the board: *Provided*, That the
- 19 board may recognize a certificate or similar license in lieu of the
- 20 examination or part of the examination that the board requires:

- 21 Provided, however, That any examination meets national
- 22 standards;
- 23 (6) Has paid the applicable fee;
- 24 (7) Presents a certificate of health from a licensed physician;
- 25 (8) Is a citizen of the United States or is eligible for
- 26 employment in the United States; and
- 27 (9) Has fulfilled any other requirement specified by the
- 28 board.
- 29 (b) A license to practice issued by the board prior to July 1,
- 30 2016, shall for all purposes be considered a professional license
- 31 issued under this article: Provided, That a person holding a
- 32 license issued prior to July 1, 2016, must renew the license
- 33 pursuant to the provisions of this article.

## §30-27-8a. Barber apprentice.

- 1 (a) The board may establish an apprenticeship program to
- 2 become a barber. A barber apprentice shall work at all times
- 3 under the direct supervision of a licensed barber and any permit
- 4 issued by the board to work as a barber apprentice does not allow
- 5 a person to practice individually as a barber.
- 6 (b) An applicant for a barber apprenticeship shall present
- 7 satisfactory evidence that he or she:
- 8 (1) Is at least sixteen years of age;
- 9 (2) Is of good moral character;
- 10 (3) Is in high school or has a high school diploma, a GED, or
- 11 has passed the "ability to benefit test" approved by the United
- 12 States Department of Education;

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- 13 (4) Has paid the applicable fee;
- 14 (5) Has a certificate of health from a licensed physician;
- 15 (6) Is a citizen of the United States or is eligible for
- 16 employment in the United States; and
- 17 (7) Has fulfilled any other requirement specified by the board.
- 19 (c) An applicant for a sponsor of a barber apprentice shall 20 present satisfactory evidence that he or she:
- 21 (1) Is licensed as a barber under the provisions of this article;
- 22 (2) Has paid the applicable fee; and
- 23 (3) Has fulfilled any other requirement specified by the board.
- 25 (d) A sponsor of a barber apprentice shall be a current 26 licensed barber with at least five years' experience and has
- 27 worked in a shop for the last five years.
- 28 (e) The board may propose emergency rules and rules for
- 29 legislative approval, in accordance with the provisions of article
- 30 three, chapter twenty-nine-a of this code, to implement the
- 31 provisions of this section, including:
- 32 (1) The requirements for:
- 33 (A) The barber apprenticeship program;
- 34 (B) The barber apprentice permit; and
- 35 (C) A licensed barber to sponsor a barber apprentice;
- 36 (2) Procedures for an examination;

- 37 (3) A fee schedule; and
- 38 (4) Any other rules necessary to effectuate the provisions of
- 39 this section.

### §30-27-8b. Certifications.

- 1 (a) The board shall issue a certification to an applicant who
- 2 obtains training at a licensed school or continuing education
- 3 provider, in West Virginia, in the following area:
- 4 Waxing Specialist.—
- 5 An applicant for a waxing specialist shall present
- 6 satisfactory evidence that he or she:
- 7 (A) Is at least eighteen years of age;
- 8 (B) Is of good moral character;
- 9 (C) Has a high school diploma, a GED, or has passed the
- 10 "ability to benefit test" approved by the United States
- 11 Department of Education;
- 12 (D) Has paid the applicable fee;
- 13 (E) Has a certificate of health from a licensed physician;
- 14 (F) Is a citizen of the United States or is eligible for
- 15 employment in the United States;
- 16 (G) Has completed a one hundred-hour class that consists of:
- 17 Professional requirements, safety and health, skin structure,
- 18 disorders and diseases, removal of superfluous hair and
- 19 twenty-five hours on the clinic floor, supervised, for a total of
- 20 one hundred twenty-five hours;
- 21 (H) If not currently licensed, must take the West Virginia
- 22 state law test; and

- 23 (I) Has fulfilled any other requirement specified by the 24 board.
- 25 (b) The board shall issue to any barber the fifteen hundred
- 26 clock-hour level licensure who has previously completed a
- 27 twelve hundred clock-hour training program, and who
- 28 subsequently completes a three hundred clock-hour certification
- 29 program in chemical services.

# §30-27-9. Professional license from another state; license to practice in this state.

- 1 (a) The board may issue a professional license to practice to
- 2 an applicant of good moral character who holds a valid license
- 3 or other authorization to practice in that particular field from
- 4 another state, if the applicant demonstrates that he or she:
- 5 (1) Holds a license or other authorization to practice in
- 6 another state which was granted after completion of educational
- 7 requirements substantially equivalent to those required in this
- 8 state and passed an examination that is substantially equivalent
- 9 to the examination required in this state;
- 10 (2) Does not have charges pending against his or her license
- 11 or other authorization to practice and has never had a license or
- 12 other authorization to practice revoked;
- 13 (3) Has not previously failed an examination for professional
- 14 licensure in this state;
- 15 (4) Has paid the applicable fee;
- 16 (5) Is at least eighteen years of age;
- 17 (6) Has a high school diploma, a GED, or has passed the
- 18 "ability to benefit test" approved by the United States
- 19 Department of Education;

- 20 (7) Is a citizen of the United States or is eligible for 21 employment in the United States;
- 22 (8) Has presented a certificate of health issued by a licensed
- 23 physician; and
- 24 (9) Has fulfilled any other requirement specified by the
- 25 board.
- 26 (b) In its discretion, the board may examine a person by a
- 27 written, oral or skills test for licensing under this section, and
- 28 may enter into agreements for reciprocal licensing with other
- 29 jurisdictions having substantially similar requirements for
- 30 licensure.

# §30-27-10. Professional license and certificate renewal requirements.

- 1 (a) A professional licensee and certificate holder shall
- 2 annually on or before January 1, renew his or her professional
- 3 license or certificate by completing a form prescribed by the
- 4 board, paying the renewal fee and submitting any other
- 5 information required by the board.
- 6 (b) The board shall charge a fee for each renewal of a license
- 7 or certificate, and a late fee for any renewal not paid by the due
- 8 date.
- 9 (c) The board shall require as a condition of renewal of a
- 10 professional license or certificate that each licensee or certificate
- 11 holder complete continuing education: *Provided*, That a barber
- 12 who has been licensed for twenty years or more is exempt from
- 13 the continuing education requirement of this subsection but must
- 14 take a three-hour sanitation class every other year up to twenty
- 15 years: Provided, however, That the board shall approve for
- 16 continuing education credit any education course providing
- 17 instruction in any curriculum, subject matter or discipline

- 18 included in the education required for licensure that is submitted
- 19 to the board or offered by:
- 20 (1) A licensed school or instructor, outside of school
- 21 instruction;
- 22 (2) A manufacturer or distributor of barbering, aesthetics,
- 23 nail technology or cosmetology products;
- 24 (3) A barber or cosmetology trade organization; or
- 25 (4) Any course offered at an accredited private or public
- 26 university, college or community college in this state that relates
- 27 to the profession or a general business class.
- 28 (d) The board may deny an application for renewal for any
- 29 reason which would justify the denial of an original application
- 30 for a license or certificate.
- 31 (e) The board shall recognize reciprocity for military barbers
- 32 for the purpose of the state examination for barbers.

#### §30-27-11. Work permit.

- 1 (a) The board may issue a work permit to practice to an 2 applicant who meets the following conditions:
- 3 (1) Has graduated from a licensed school approved by the
- 4 West Virginia Council for Community and Technical College
- 5 Education (CCTCE), Department of Education in conjunction
- 6 with CCTCE or Department of Education with the Department
- 7 of Corrections or has completed education requirements in
- 8 another state and meets the licensure provisions of the board;
- 9 (2) Is waiting to take the examination;
- 10 (3) Has employment in the field in which he or she applied
- 11 to take the examination and is working under the general
- 12 supervision of a professional licensee;

- 13 (4) Has paid the work permit fee;
- 14 (5) Has presented a certificate of health issued by a licensed
- 15 physician;
- 16 (6) Is a citizen of the United States or is eligible for
- 17 employment in the United States; and
- 18 (7) Meets all the other requirements specified by the board.
- 19 (b) A work permit expires at the end of the month after
- 20 issuance following the next examination in the specific field. A
- 21 work permit may be renewed once.
- 22 (c) While in effect, a work permitee is subject to the
- 23 restrictions and requirements imposed by this article.

### §30-27-12. Student registration.

- 1 (a) Prior to commencing studies in a licensed school, a
- 2 student shall acquire a student registration issued by the board.
- 3 (b) An applicant for a student registration shall present
- 4 satisfactory evidence that he or she meets the following
- 5 conditions:
- 6 (1) Is enrolled as a student in a licensed school;
- 7 (2) Is of good moral character;
- 8 (3) Has paid the required fee;
- 9 (4) Has presented a certificate of health issued by a licensed
- 10 physician; and
- 11 (5) Is a citizen of the United States or is eligible for
- 12 employment in the United States.

- 13 (c) The student registration is good during the prescribed 14 period of study for the student.
- 15 (d) The student may perform acts constituting barbering,
- 16 hairstyling, cosmetology, aesthetics or nail care in a school under
- 17 the general supervision of a master or certified instructor.

## §30-27-13. Display of professional license and permits.

- 1 (a) The board shall prescribe the form for a professional
- 2 license and work and student permits, including a photograph,
- 3 and may issue a duplicate license or permit upon payment of a
- 4 fee.
- 5 (b) Every professional licensee and work permitee shall
- 6 display his or her license or permit in a conspicuous place at his
- 7 or her work station.
- 8 (c) Every student shall have available his or her student
- 9 permit and be able to produce it upon request.
- 10 (d) Every professional licensee, work permitee, or certificate
- 11 holder must present such license, permit, certification or
- 12 registration to an investigator/inspector or a board member upon
- 13 request.

# §30-27-14. Health certificate requirements.

- 1 (a) It is unlawful for a person to practice as a professional
- 2 licensee, certificate holder or be a permitee or be a certified
- 3 instructor while having an infectious, contagious or
- 4 communicable disease.
- 5 (b) The board may, with cause, require a professional
- 6 licensee, permitee, certificate holder or certified instructor to
- 7 submit to a physical examination and file a certificate of health.

# §30-27-16. Certification requirements to be an instructor in a school.

- 1 (a) The board may issue a certificate to be an instructor in a
- 2 school to an applicant who meets the following requirements:
- 3 (1) Meets the educational requirements established by the 4 board;
- 5 (2) Has completed and passed a course in teaching
- 6 techniques at a post-secondary educational level;
- 7 (3) Has passed the instructor examination;
- 8 (4) Has paid the appropriate fees;
- 9 (5) Presents a certificate of health from a licensed physician;
- 10 (6) Is a citizen of the United States or is eligible for 11 employment in the United States; and
- 12 (7) Has fulfilled any other requirement specified by the
- 13 board.
- (b) All instructor certifications must be renewed annually or
- 15 biennially on or before January 1 and pay a renewal fee.
- 16 (c) A certification to be an instructor issued by the board
- 17 prior to January 1, 2009, shall for all purposes be considered a
- 18 certification issued under this article: *Provided*, That a person
- 19 holding a certification issued prior to January 1, 2009, must
- 20 renew the certification pursuant to the provisions of this article.
- 21 (d) An instructor with an expired certificate must comply
- 22 with the following to renew his or her certificate:
- 23 (1) Notify the board that he or she wants to be placed on
- 24 inactive status; or

- 25 (2) Pay all lapsed renewal fees;
- 26 (3) Present a new certificate of health; and
- 27 (4) Meet the qualifications for certification set out in this
- 28 article.
- 29 (e) A certified instructor is not required to have an active
- 30 professional license, unless the instructor is in fact practicing
- 31 outside the scope of his or her employment as an instructor.

## §30-27-17. Salon license requirements.

- 1 (a) Prior to opening a salon, any person, firm or corporation
- 2 owning and/or operating a salon, and any person, firm or
- 3 corporation practicing in a field authorized by this article, shall
- 4 meet the following requirements to acquire a salon license to do
- 5 business:
- 6 (1) The salon has been approved by the board as having met
- 7 all the requirements and qualifications for the place of business
- 8 as are required by this article;
- 9 (2) Notify the board, in writing, at least twenty days before
- 10 the proposed opening date, so there can be an inspection of the
- 11 salon: *Provided*, That if an inspection is not made within ten
- 12 days of the opening of the salon, or a salon license to open has
- 13 not been granted or refused, then the salon may open
- 14 provisionally subject to a later inspection and to all other
- 15 provisions and rules provided in this article;
- 16 (3) Pay all applicable fees;
- 17 (4) All rooms, facilities, bathrooms, toilets and adjoining
- 18 rooms used in the place of business are kept clean, sanitary, well
- 19 lighted and ventilated at all times. The use of chunk alum,
- 20 powder puffs and styptic pencils in any shop is prohibited;

- 21 (5) Every professional licensee, certificate holder, or 22 permitee in the place of business thoroughly cleans his or her
- 23 hands with soap and water immediately before serving any
- 24 patron; and
- 25 (6) Every patron is served with clean, freshly laundered linen
- 26 that is kept in a closed cabinet used for that purpose only. All
- 27 linens, immediately after being used, must be placed in a
- 28 receptacle used for that purpose only.
- 29 (b) All rules shall be kept posted in a conspicuous place in 30 each place of business.
- 31 (c) All salon licenses must be renewed annually on or before
- 32 July 1 and pay a renewal fee.
- 33 (d) A license to operate a salon issued by the board prior to
- 34 July 1, 2009, shall for all purposes be considered a salon license
- 35 issued under this article: Provided, That a person holding a
- 36 license issued prior to July 1, 2009, must renew the license
- 37 pursuant to the provisions of this article.
- 38 (e) The salon license shall be permanently displayed in the
- 39 salon and a suitable sign shall be displayed at the main entrance
- 40 of the salon which shall plainly indicate what type of salon is
- 41 being operated.

# §30-27-18. Salon management requirements.

- 1 (a) Every salon in this state offering the services set forth in
- 2 this article shall be operated under the supervision and
- 3 management of a professional licensee or certificate holder
- 4 licensed under this article.
- 5 (b) Any services set forth in this article may be conducted
- 6 within the same salon. A suitable sign shall be displayed at the
- 7 main entrance of all salons plainly indicating the business
- 8 conducted therein.

# §30-27-19. Booth or chair rental registration requirements.

- 1 (a) Any professional licensee or certificate holder who elects
- 2 to rent or lease a booth or chair from a licensed salon owner
- 3 and/or operator must comply with the following to receive a
- 4 registration from the board:
- 5 (1) Register with the board;
- 6 (2) Register with the state Tax Division and present the
- 7 registration to the board;
- 8 (3) Pay a registration fee;
- 9 (4) Notify the board of the length of any rental or lease 10 agreement;
- 11 (5) State the name of the person or salon from which a chair
- 12 or booth is being rented or leased; and
- 13 (6) State the effective date of the rental or lease.
- 14 (b) If a person registered with the board pursuant to this
- 15 section elects to move from one salon to rent or lease a chair or
- 16 booth from another salon, then he or she must register again with
- 17 the board and pay a fee.
- (c) Each licensed salon owner and/or operator who elects to
- 19 rent or lease chairs or booths shall notify the board in writing of
- 20 such rental or lease within ten days of the effective date of the
- 21 rental or lease.
- 22 (d) The board shall quarterly notify the state Tax
- 23 Commissioner of all persons registered pursuant to this section
- 24 during the previous quarter. Such notice shall be in writing and
- 25 shall include the following:

- 26 (1) The names of all the registered professional licensees or certificate holders:
- 28 (2) The names of the salons where space is being rented or 29 leased; and
- 30 (3) The length of time of each rental or lease agreement.
- 31 (e) All registrations must be renewed annually on or before 32 July 1 and pay a renewal fee.
- 33 (f) A registration to rent or lease a booth or chair issued by 34 the board prior to July 1, 2009, shall for all purposes be 35 considered a registration issued under this article: *Provided*, That 36 a person holding a registration to rent or lease a booth or chair 37 issued prior to July 1, 2009, must renew the registration pursuant 38 to the provisions of this article.

# **CHAPTER 189**

(Com. Sub. for H. B. 4225 - By Delegates Overington, Sobonya, Hanshaw, Gearheart, Cadle, Householder, Butler, Moffatt, Frich, Rowan and Kelly)

[Passed March 8, 2016; in effect ninety days from passage.] [Approved by the Governor on March 16, 2016.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §5-6-17, relating to patriotic displays at public buildings; providing legislative findings; allowing for the national motto, "In God We Trust", to be displayed on public buildings; allowing for the display of the POW-MIA flag at public buildings; authorizing costs associated

with display of national motto or POW-MIA flag may be paid with any private donation, gifts, grants and bequests received by the governing authority; and requiring the Department of Administration to develop guidelines for appropriate display of the motto and flag.

### 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 §5-6-17, to read as follows:

### ARTICLE 6. STATE BUILDINGS.

## §5-6-17. Display of the national motto and POW-MIA flag.

- 1 (a) The Legislature finds and declares that the national motto
  - 2 of "In God We Trust," is an important part of our country's
  - 3 history and heritage. Additionally, the POW-MIA flag is a
  - 4 symbol of citizen concern for U.S. military personnel taken as
  - 5 prisoners of war (POW) or listed as missing in action (MIA).
  - 6 These patriotic displays enhance our national pride and
  - 7 awareness, both of the sacrifices made by service members and
  - 8 our heritage as Americans.
  - 9 (b) The governing authority of any public property, public
- 10 buildings and any building, designed, constructed and
- 11 maintained with public funds from the state, a county or a
- 12 municipality may prominently display on the property or
- 13 building, the American national motto, "In God We Trust."
- 14 Costs associated with the display of the motto may be paid with
- 15 any private donations, gifts, grants and bequests received by the
- 16 governing authority.
- 17 (c) The governing authority of any public property, public
- 18 buildings and any building, designed, constructed and
- 19 maintained with public funds from the state, a county or a

- 20 municipality may prominently display on the property or
- 21 building, the POW-MIA flag in the same manner as prescribed
- 22 by this code for the required display of national and state flags.
- 23 Costs associated with the display of the POW-MIA flag may be
- 24 paid with any private donations, gifts, grants and bequests
- 25 received by the governing authority.
- 26 (d) The Department of Administration shall develop 27 guidelines for display of the motto and POW-MIA flag.

# CHAPTER 190

(Com. Sub. for S. B. 520 - By Senators Gaunch, Trump, Ashley, Prezioso and Blair)

[Passed March 10, 2016; in effect ninety days from passage.] [Approved by the Governor on March 23, 2016.]

AN ACT to amend and reenact §5-16-12 and §5-16-12a of the Code of West Virginia, 1931, as amended, all relating to willful misrepresentation to gain benefits or payment under the Public Employees Insurance Act; establishing certain acts as violations of the act; providing for civil liability for improperly received benefits, overpayments or other sums; authorizing set off by the director to recover overpayment; authorizing investigation by the director of misrepresentations by an employer, employee or providers under the Public Employees Insurance Act; authorizing the director to issue administrative subpoenas; providing requirements for service of subpoenas; authorizing fees for service and witnesses; establishing a process to compel obedience with a subpoena; authorizing the agency to recover benefits or claims obtained by fraud through administrative hearing; providing for the confidentiality of data; and providing criminal penalties.

Be it enacted by the Legislature of West Virginia:

That §5-16-12 and §5-16-12a of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

# ARTICLE 16. WEST VIRGINIA PUBLIC EMPLOYEES INSURANCE ACT.

# §5-16-12. Misrepresentation by employer, employee or provider; penalty.

- 1 (a) It shall be a violation of this article for any person to:
- 2 (1) Knowingly secure or attempt to secure benefits payable
- 3 under this article to which they are not entitled;
- 4 (2) Knowingly secure or attempt to secure greater benefits
- 5 than those to which the person is entitled;
- 6 (3) Willfully misrepresent the presence or extent of benefits
- 7 to which the person is entitled under a collateral insurance
- 8 source:
- 9 (4) Willfully misrepresent any material fact relating to any
- 10 other information requested by the director;
- 11 (5) Willfully overcharge for services provided; or
- 12 (6) Willfully misrepresent a diagnosis or nature of the
- 13 service provided.
- Any person who has violated any of the foregoing provisions
- 15 shall be civilly liable for the amount of benefits, overpayment or
- 16 other sums improperly received in addition to any other relief
- 17 available in a court of competent jurisdiction.
- 18 (b) If, after notice and an administrative proceeding, it is
- 19 determined the person has violated the article, the person is

- 20 liable for any overpayment received. The director shall withhold
- 21 and set off any payment of any benefits or other payment due to
- 22 that person until any overpayment is recovered.
- 23 (c) In addition to any civil liability for a violation pursuant 24 to subsection (a) of this section, any person who knowingly secures or attempts to secure benefits payable under this article, 25 26 or knowingly attempts to secure greater benefits than those to 27 which the person is entitled, by willfully misrepresenting or aiding in the misrepresentation of any material fact relating to 28 employment, diagnosis or services rendered is guilty of a felony, 29 30 and upon conviction thereof, shall be fined not more than 31 \$1,000, imprisoned for not less than one nor more than five 32 years, or both. Errors in coding for billing purposes shall not be considered a violation of this subsection absent other evidence 33 34 of willful wrongdoing.
- 35 (d) Any person who violates any provision of this article 36 which results in a loss to, or overpayment from, the plan, or to 37 the State of West Virginia of less than \$1,000, and for which no other penalty is specifically provided, is guilty of a misdemeanor 38 and, upon conviction thereof, is subject to a fine of not less than 39 40 \$100 but not more than \$500, or imprisonment for a period of not less than twenty-four hours but not more than fifteen days, 41 or both. Any person who violates any provision of this article 42 which results in a loss to, or overpayment from, the plan or the 43 State of West Virginia of \$1,000 or more, and for which no other 44 penalty is specifically provided, is guilty of a felony and, upon 45 46 conviction thereof, is subject to a fine of not less than \$1,000 but 47 not more than \$5,000, or imprisonment for a period of not less 48 than one nor more than five years, or both.

## §5-16-12a. Inspections; violations and penalties.

1 (a) Employers and employees participating in any of the 2 Public Employees Insurance Agency plans shall provide, to the

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- 3 director, upon request, all documentation reasonably required for
- 4 the director to discharge the responsibilities under this article.
- 5 This documentation includes, but is not limited to, employment
- 6 or eligibility records sufficient to verify actual full-time
- 7 employment and eligibility of employees who participate in the
- 8 Public Employees Insurance Agency plans.
- 9 (b) Upon a determination of the director or his or her designated representative that there is probable cause to believe 10 11 that fraud, abuse or other illegal activities involving transactions with the agency has occurred, the director or his or her 12 13 designated representative is authorized to refer the alleged 14 violations to the Insurance Commissioner for investigation and, 15 if appropriate, prosecution, pursuant to article forty-one, chapter thirty-three of this code. For purposes of this section, 16 "transactions with the agency" includes, but is not limited to, 17 18 application by any insured or dependent, any employer or any type of health care provider for payment to be made to that 19 person or any third party by the agency. 20
  - (c) The Public Employees Insurance Agency is authorized through administrative proceeding to recover any benefits or claims paid to or for any employee, or their dependents, who obtained or received benefits through fraud. The Public Employees Insurance Agency is also authorized through administrative proceeding to recover any funds due from an employer that knowingly allowed or provided benefits or claims to be fraudulently paid to an employee or dependents.
  - (d) For the purpose of any investigation or proceeding under this article, the director or any officer designated by him or her may administer oaths and affirmations, issue administrative subpoenas, take evidence, and require the production of any books, papers, correspondences, memoranda, agreements or other documents or records which may be relevant or material to the inquiry.

- (1) Administrative subpoenas shall be served by personal service by a person over the age of eighteen, or by registered or certified mail addressed to the entity or person to be served at his or her residence, principal office or place of business. Proof of service, when necessary, shall be made by a return completed by the person making service, or in the case of registered or certified mail, such return shall be accompanied by the post office receipt of delivery of the subpoena. A party requesting the administrative subpoena is responsible for service and payment of any fees for service. Any person who serves the administrative subpoena pursuant to this section is entitled to the same fee as sheriffs who serve witness subpoenas for the circuit courts of this state.
- (2) Fees for the attendance and travel of witnesses subpoenaed shall be the same as for witnesses before the circuit courts of this state. All such fees related to any administrative subpoena issued at the request of a party to an administrative proceeding shall be paid by the requesting party. All requests by parties for administrative subpoenas shall be in writing and shall contain a statement acknowledging that the requesting party agrees to pay such fees.
- (3) In case of disobedience or neglect of any administrative subpoena served, or the refusal of any witness to testify to any matter for which he or she may be lawfully interrogated, or to produce documents subpoenaed, the circuit court of the county in which the hearing is being held, or the judge thereof in vacation, upon application by the director, may compel obedience by attachment proceedings for contempt as in the case of disobedience of the requirements of a subpoena or subpoena duces tecum issued from such circuit court or a refusal to testify therein. Witnesses at such hearings shall testify under oath or affirmation.
- 68 (e) Only authorized employees or agents shall have access 69 to confidential data or systems and applications containing

70 confidential data within the Public Employees Insurance 71 Agency.



# **CHAPTER 191**

(Com. Sub. for S. B. 517 - By Senators Gaunch and Trump)

[Passed March 11, 2016; in effect ninety days from passage.] [Approved by the Governor on March 23, 2016.]

AN ACT to amend and reenact §5-16-22 of the Code of West Virginia, 1931, as amended, relating to Public Employees Insurance Agency; clarifying that plans established and administered by Public Employees Insurance Agency are exempt from regulation by Insurance Commissioner unless specifically stated otherwise; and providing that Public Employees Insurance Agency is not an insurer or in the business of insurance.

Be it enacted by the Legislature of West Virginia:

That §5-16-22 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

# ARTICLE 16. WEST VIRGINIA PUBLIC EMPLOYEES INSURANCE ACT.

# §5-16-22. Permissive participation; exemptions.

- 1 The provisions of this article are not mandatory upon any
- 2 employee or employer who is not an employee of, or is not, the
- 3 State of West Virginia, its boards, agencies, commissions,
- 4 departments, institutions or spending units or a county board of
- 5 education and nothing contained in this article compels any
- 6 employee or employer to enroll in or subscribe to any insurance
- 7 plan authorized by the provisions of this article.

Those employees enrolled in the insurance program authorized under the provisions of article two-b, chapter twenty-one-a of this code are not required to enroll in or subscribe to an insurance plan or plans authorized by the provisions of this article, and the employees of any department which has an existing insurance program for its employees to which the government of the United States contributes any part or all of the premium or cost of the premium may be exempted from the provisions of this article. Any employee or employer exempted under the provisions of this paragraph may enroll in any insurance program authorized by the provisions of this article at any time, to the same extent as any other qualified employee or employer, but employee or employer may not remain enrolled in both programs. 

Any plan established or administered by the Public Employees Insurance Agency pursuant to this article is exempt from the provisions of chapter thirty-three of this code unless explicitly stated. Notwithstanding any provision of this code to the contrary, the Public Employees Insurance Agency is not an insurer or engaged in the business of insurance as defined in chapter thirty-three of this code.

Employers, other than the State of West Virginia, its boards, agencies, commissions, departments, institutions, spending units or a county board of education, are exempt from participating in the insurance program provided for by the provisions of this article unless participation by the employer has been approved by a majority vote of the employer's governing body. It is the duty of the clerk or secretary of the governing body of an employer who by majority vote becomes a participant in the insurance program to notify the director not later than ten days after the vote.

Any employer, whether the employer participates in the Public Employees Insurance Agency insurance program as a

41 group or not, which has retired employees, their dependents or 42 surviving dependents of deceased retired employees who participate in the Public Employees Insurance Agency insurance 43 44 program as authorized by this article, shall pay to the agency the same contribution toward the cost of coverage for its retired 45 46 employees, their dependents or surviving dependents of deceased 47 retired employees as the State of West Virginia, its boards, 48 agencies, commissions, departments, institutions, spending units 49 or a county board of education pay for their retired employees, 50 their dependents and surviving dependents of deceased retired employees, as determined by the finance board: Provided, That 51 52 after June 30, 1996, an employer not mandated to participate in 53 the plan is only required to pay a contribution toward the cost of 54 coverage for its retired employees, their dependents or the 55 surviving dependents of deceased retired employees who elect 56 coverage when the retired employee participated in the plan as 57 an active employee of the employer for at least five years: 58 *Provided, however,* That those retired employees of an employer not participating in the plan who retire on or after July 1, 2010, 59 60 who have participated in the plan as active employees of the employer for less than five years are responsible for the entire 61 premium cost for coverage and the Public Employees Insurance 62 Agency shall bill for and collect the entire premium from the 63 64 retired employees, unless the employer elects to pay the 65 employer share of the premium. Each employer is hereby 66 authorized and required to budget for and make such payments 67 as are required by this section.



# (Com. Sub. for S. B. 454 - By Senator Kessler) [By Request of the Executive]

[Passed March 12, 2016; in effect ninety days from passage.] [Approved by the Governor on March 29, 2016.]

AN ACT to amend and reenact §16-1-4 of the Code of West Virginia, 1931, as amended; to amend said code by adding thereto a new article, designated §16-5Y-1, §16-5Y-2, §16-5Y-3, §16-5Y-4, \$16-5Y-5, \$16-5Y-6, \$16-5Y-7, \$16-5Y-8, \$16-5Y-9, \$16-5Y-10, §16-5Y-11, §16-5Y-12 and §16-5Y-13; and to amend and reenact \$60A-9-4, \$60A-9-5, \$60A-9-5a, \$60A-9-7 and \$60A-9-8 of said code, all relating to regulation of medication-assisted treatment programs for substance use disorders; repealing regulation of opioid treatment programs; setting out purpose; providing definitions; creating licenses for opioid treatment programs; creating categories of licenses; setting out licensing requirements; providing for registration of office-based medication-assisted programs; providing for application, fees and inspections of office-based medication-assisted programs; setting operational requirements for medication-assisted treatment programs; providing for a program sponsor and medical director; setting forth staffing requirements; providing for regulation by Office of Health Facility Licensure and Certification; designating necessity for a medical director; prescribing minimum qualifications for a medical director; allowing enrollment as a Medicaid provider; providing billing requirements; setting forth minimum certification requirements; mandating state and federal criminal background checks; designating who may prescribe and dispense medication-assisted treatment medications; setting certain minimum practice standards for any medication-assisted treatment

program providing medication-assisted treatment medications; permitting the use of telehealth; requiring the Board of Pharmacy to make certain notifications; requiring the medication-assisted treatment program to have a drug testing program; requiring certain information be reported in the patients; medical record; setting certain minimum patient treatment standards for any medication-assisted treatment program; providing medication-assisted treatment medications; requiring review of the West Virginia Controlled Substances Monitoring Program database for each patient at least quarterly; setting compliance requirements for a medication-assisted treatment program; providing for patient protocols, treatment plans and profiles; allowing liquid methadone to be provided as allowed by legislative rule; setting notification requirements of operation changes; restricting location of medication-assisted treatment programs; allowing for waivers from certain standards; allowing for variances from certain standards; permitting inspection warrants; providing for an administrative review; providing an appeal process; allowing civil monetary penalties; designating license limitations for deviation for accepted practice or patient treatment standards; permitting the secretary to promulgate rules; permitting the secretary to promulgate emergency rules; providing advertisement requirements; continuing the moratorium on new opioid treatment programs; establishing state authority for medication-assisted treatment programs; establishing state oversight authority for medication-assisted treatment programs; mandating data collection; granting Office of Health Facility Licensure and Certification access to the West Virginia Controlled Substances Monitoring Program database for use in regulation of health facilities; requiring reporting when an opioid antagonist is dispensed by certain persons; clarifying statutory language related to seventy-two hour prescriptions; prohibiting licensing boards from issuing or reissuing licenses to practitioners who have not registered for the West Virginia Controlled Substances Monitoring Program database; establishing a civil penalties; providing

exceptions to penalties; clarifying language related to the Fight Substance Abuse Fund; placing administrative authority over the Fight Substance Abuse Fund with the Bureau for Public Health; revising statutory language to use defined terms; reorganizing existing language; and creating a pilot program.

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

That §16-1-4 of the Code of West Virginia, 1931, as amended, be amended and reenacted; that said code be amended by adding thereto a new article designated §16-5Y-1, §16-5Y-2, §16-5Y-3, §16-5Y-4, §16-5Y-5, §16-5Y-6, §16-5Y-7, §16-5Y-8, §16-5Y-9, §16-5Y-10, §16-5Y-11, §16-5Y-12 and §16-5Y-13; and that §60A-9-4, §60A-9-5, §60A-9-5a, §60A-9-7 and §60A-9-8 of said code be amended and reenacted, all to read as follows:

### **CHAPTER 16. PUBLIC HEALTH.**

#### ARTICLE 1. STATE PUBLIC HEALTH SYSTEM.

### §16-1-4. Proposal of rules by the secretary.

- 1 (a) The secretary may propose rules in accordance with the
- 2 provisions of article three, chapter twenty-nine-a of this code
- 3 that are necessary and proper to effectuate the purposes of this
- 4 chapter. The secretary may appoint or designate advisory
- 5 councils of professionals in the areas of hospitals, nursing
- 6 homes, barbers and beauticians, postmortem examinations,
- 7 mental health and intellectual disability centers and any other
- 8 areas necessary to advise the secretary on rules.
- 9 (b) The rules may include, but are not limited to, the 10 regulation of:
- 11 (1) Land usage endangering the public health: *Provided*,
- 12 That no rules may be promulgated or enforced restricting the
- 13 subdivision or development of any parcel of land within which

- 14 the individual tracts, lots or parcels exceed two acres each in
- 15 total surface area and which individual tracts, lots or parcels
- 16 have an average frontage of not less than one hundred fifty feet
- 17 even though the total surface area of the tract, lot or parcel
- 18 equals or exceeds two acres in total surface area, and which
- 19 tracts are sold, leased or utilized only as single-family dwelling
- 20 units. Notwithstanding the provisions of this subsection, nothing
- 21 in this section may be construed to abate the authority of the
- 22 department to:

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- 23 (A) Restrict the subdivision or development of a tract for any 24 more intense or higher density occupancy than a single-family 25 dwelling unit;
- 26 (B) Propose or enforce rules applicable to single-family 27 dwelling units for single-family dwelling unit sanitary sewerage 28 disposal systems; or
- 29 (C) Restrict any subdivision or development which might 30 endanger the public health, the sanitary condition of streams or 31 sources of water supply;
  - (2) The sanitary condition of all institutions and schools, whether public or private, public conveyances, dairies, slaughterhouses, workshops, factories, labor camps, all other places open to the general public and inviting public patronage or public assembly, or tendering to the public any item for human consumption and places where trades or industries are conducted;
- 39 (3) Occupational and industrial health hazards, the sanitary 40 conditions of streams, sources of water supply, sewerage 41 facilities and plumbing systems and the qualifications of 42 personnel connected with any of those facilities, without regard 43 to whether the supplies or systems are publicly or privately 44 owned; and the design of all water systems, plumbing systems,

- 45 sewerage systems, sewage treatment plants, excreta disposal
- 46 methods and swimming pools in this state, whether publicly or
- 47 privately owned;
- 48 (4) Safe drinking water, including:
- 49 (A) The maximum contaminant levels to which all public
- water systems must conform in order to prevent adverse effects 50 51 on the health of individuals and, if appropriate, treatment
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- techniques that reduce the contaminant or contaminants to a 53
- level which will not adversely affect the health of the consumer.
- 54 The rule shall contain provisions to protect and prevent
- 55 contamination of wellheads and well fields used by public water
- 56 supplies so that contaminants do not reach a level that would
- adversely affect the health of the consumer; 57
- 58 (B) The minimum requirements for: Sampling and testing;
- 59 system operation; public notification by a public water system on
- 60 being granted a variance or exemption or upon failure to comply
- 61 with specific requirements of this section and rules promulgated
- 62 under this section; record keeping; laboratory certification; as
- 63 well as procedures and conditions for granting variances and
- exemptions to public water systems from state public water 64
- 65 systems rules; and
- 66 (C) The requirements covering the production and
- distribution of bottled drinking water and may establish 67
- requirements governing the taste, odor, appearance and other 68
- 69 consumer acceptability parameters of drinking water;
- 70 (5) Food and drug standards, including cleanliness,
- proscription of additives, proscription of sale and other 71
- requirements in accordance with article seven of this chapter as 72
- 73 are necessary to protect the health of the citizens of this state;
- 74 The training and examination requirements for 75 emergency medical service attendants and emergency medical

76 care technician-paramedics; the designation of the health care 77 facilities, health care services and the industries and occupations in the state that must have emergency medical service attendants 78 and emergency medical care technician-paramedics employed 79 and the availability, communications 80 and equipment 81 requirements with respect to emergency medical service 82 and emergency medical attendants to care technician-paramedics. Any regulation of emergency medical 83 84 attendants and emergency medical technician-paramedics may not exceed the provisions of article 85 86 four-c of this chapter;

- 87 (7) The health and sanitary conditions of establishments 88 commonly referred to as bed and breakfast inns. For purposes of this article, "bed and breakfast inn" means an establishment 89 providing sleeping accommodations and, at a minimum, a 90 91 breakfast for a fee. The secretary may not require an owner of a bed and breakfast providing sleeping accommodations of six or 92 fewer rooms to install a restaurant-style or commercial food 93 94 service facility. The secretary may not require an owner of a bed 95 and breakfast providing sleeping accommodations of more than six rooms to install a restaurant-type or commercial food service 96 facility if the entire bed and breakfast inn or those rooms 97 98 numbering above six are used on an aggregate of two weeks or 99 less per year;
- 100 (8) Fees for services provided by the Bureau for Public 101 Health including, but not limited to, laboratory service fees, 102 environmental health service fees, health facility fees and permit 103 fees;
- 104 (9) The collection of data on health status, the health system 105 and the costs of health care;
- 106 (c) The secretary shall propose a rule for legislative approval 107 in accordance with the provisions of article three, chapter

- 108 twenty-nine-a of this code for the distribution of state aid to local 109 health departments and basic public health services funds. 110 The rule shall include the following provisions: 111 Base allocation amount for each county; 112 Establishment and administration of an emergency fund of 113 no more than two percent of the total annual funds of which 114 unused amounts are to be distributed back to local boards of 115 health at the end of each fiscal year; 116 A calculation of funds utilized for state support of local 117 health departments; 118 Distribution of remaining funds on a per capita weighted 119 population approach which factors coefficients for poverty, 120 health status, population density and health department interventions for each county and a coefficient which encourages 121 122 counties to merge in the provision of public health services; 123 A hold-harmless provision to provide that each local health department receives no less in state support for a period of four 124 125 years beginning in the 2009 budget year. 126 The Legislature finds that an emergency exists and, therefore, the secretary shall file an emergency rule to implement 127 128 the provisions of this section pursuant to the provisions of 129 section fifteen, article three, chapter twenty-nine-a of this code. 130 The emergency rule is subject to the prior approval of the 131 Legislative Oversight Commission on Health and Human 132 Resources Accountability prior to filing with the Secretary of 133 State.
- 134 (d) The secretary may propose rules for legislative approval 135 that may include the regulation of other health-related matters 136 which the department is authorized to supervise and for which 137 the rule-making authority has not been otherwise assigned.

# ARTICLE 5Y. MEDICATION-ASSISTED TREATMENT PROGRAM LICENSING ACT.

## §16-5Y-1. Purpose.

1	The	purpose	of	this	act	is	to	establish	licensing	and

- 2 registration requirements for facilities and physicians that treat
- 3 patients with substance use disorders to ensure that patients may
- 4 be lawfully treated by the use of medication and drug screens, in
- 5 combination with counseling and behavioral therapies, to
- 6 provide a holistic approach to the treatment of substance use
- 7 disorders and comply with oversight requirements developed by
- 8 the Department of Health and Human Resources. The
- 9 Legislature recognizes the problem of substance use disorders in
- 10 West Virginia and the need for quality, safe treatment of
- 11 substance use disorders to adequately protect the people of West
- 12 Virginia.

## §16-5Y-2. Definitions.

- 1 (a) "Addiction" means a primary, chronic disease of brain
- 2 reward, motivation, memory and related circuitry. Dysfunction
- 3 in these circuits leads to characteristic biological, psychological,
- 4 social and spiritual manifestations, which is reflected in an
- 5 individual pathologically pursuing reward or relief by substance
- 6 use, or both, and other behaviors. Addiction is characterized by
- 7 inability to consistently abstain; impairment in behavioral
- 8 control; craving; diminished recognition of significant problems
- 9 with one's behaviors; interpersonal problems with one's
- 10 behaviors and interpersonal relationships; a dysfunctional
- 11 emotional response; and as addiction is currently defined by the
- 12 American Society of Addiction Medicine.
- 13 (b) "Administrator" means an individual designated by the
- 14 governing body to be responsible for the day-to-day operation of
- 15 the opioid treatment programs.

16 (c) "Advanced alcohol and drug abuse counselor" means an 17 alcohol and drug abuse counselor who is certified by the West 18 Virginia Certification Board for Addiction and Prevention 19 Professionals who demonstrates a high degree of competence in 20 the addiction counseling field.

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- (d) "Alcohol and drug abuse counselor" means a counselor certified by the West Virginia Certification Board for Addiction and Prevention Professionals for specialized work with patients who have substance use problems.
- 25 (e) "Biopsychosocial" means of, relating to, or concerned 26 with, biological, psychological and social aspects in contrast to 27 the strictly biomedical aspects of disease.
- 28 (f) "Center for Substance Abuse Treatment" means the 29 center under the Substance Abuse and Mental Health Services 30 Administration that promotes community-based substance abuse 31 treatment and recovery services for individuals and families in 32 the community and provides national leadership to improve 33 access, reduce barriers and promote high quality, effective 34 treatment and recovery services.
- (g) "Controlled Substances Monitoring Program database"
   means the database maintained by the West Virginia Board of
   Pharmacy pursuant to section three, article nine, chapter sixty-a
   of this code that monitors and tracks certain prescriptions written
   or dispensed by dispensers and prescribers in West Virginia.
- 40 (h) "Director" means the Director of the Office of Health41 Facility Licensure and Certification.
- 42 (i) "Dispense" means the preparation and delivery of a 43 medication-assisted treatment medication in an appropriately 44 labeled and suitable container to a patient by a 45 medication-assisted treatment program or pharmacist.

- (j) "Governing body" means the person or persons identified as being legally responsible for the operation of the opioid treatment program. A governing body may be a board, a single entity or owner, or a partnership. The governing body must comply with the requirements prescribed in rules promulgated pursuant to this article.
- 52. (k) "Medical director" means a physician licensed within the State of West Virginia who assumes responsibility for 53 54 administering all medical services performed by medication-assisted treatment program, either by performing 55 56 them directly or by delegating specific responsibility to 57 authorized program physicians and health care professionals 58 functioning under the medical director's direct supervision and functioning within their scope of practice. 59
  - (1) "Medication-assisted treatment" means the use of medications and drug screens, in combination with counseling and behavioral therapies, to provide a holistic approach to the treatment of substance use disorders.

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- (m) "Medication-assisted treatment program" means all publicly and privately owned opioid treatment programs and office based medication-assisted treatment programs, which prescribe medication-assisted treatment medications and treat substance use disorders, as those terms are defined in this article.
- (n) "Medication-assisted treatment medication" means any medication that is approved by the United States Food and Drug Administration under section 505 of the Federal Food, Drug and Cosmetic Act, 21 U. S. C. § 355, for use in the treatment of substance use disorders that is an opioid agonist and is listed on the schedule of controlled substances in article two, chapter sixty-a of this code.
- 76 (o) "Office based medication-assisted treatment" means all 77 publicly or privately owned medication-assisted treatment

78 programs in clinics, facilities, offices or programs that treat 79 individuals with substance use disorders through the 80 prescription, administration or dispensing of a 81 medication-assisted treatment medication in the form of a partial 82 opioid agonist or other medication-assisted medication approved

for use in office based medication-assisted treatment setting.

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- (p) "Opioid agonist" means substances that bind to and activate the opiate receptors resulting in analgesia and pain regulation, respiratory depression and a wide variety of behavioral changes. As used in this article, the term "opioid agonist" does not include partial agonist medications used as an alternative to opioid agonists in the treatment of opioid addiction.
- 91 (q) "Opioid treatment program" means all publicly or 92 privately owned medication-assisted treatment programs in 93 clinics, facilities, offices or programs that treat individuals with 94 substance use disorders through on-site administration or 95 dispensing of a medication-assisted treatment medication in the 96 form of an opioid agonist or partial opioid agonist.
- 97 (r) "Owner" means any person, partnership, association or 98 corporation listed as the owner of a medication-assisted 99 treatment program on the licensing or registration forms required 100 by this article.
  - (s) "Partial opioid agonist" means a Federal Drug Administration approved medication that is used as an alternative to opioid agonists for the treatment of substance use disorders and that binds to and activates opiate receptors, but not to the same degree as full agonists.
- 106 (t) "Physician" means an individual licensed in this state to 107 practice allopathic medicine or surgery by the West Virginia 108 Board of Medicine or osteopathic medicine or surgery by the

- West Virginia Board of Osteopathic Medicine and that meets the requirements of this article.
- (u) "Prescriber" means a person authorized in this state, working within their scope of practice, to give direction, either orally or in writing, for the preparation and administration of a remedy to be used in the treatment of substance use disorders.
- (v) "Program sponsor" means the person named in the application for the certification and licensure of a opioid treatment program who is responsible for the administrative operation of the opioid treatment program, and who assumes responsibility for all of its employees, including any practitioners, agents or other persons providing medical, rehabilitative or counseling services at the program.
- 122 (w) "Secretary" means the Secretary of the West Virginia 123 Department of Health and Human Resources or his or her 124 designee.
- 125 (x) "State opioid treatment authority" means the agency or 126 individual designated by the Governor to exercise the 127 responsibility and authority of the state for governing the 128 treatment of substance use disorders, including, but not limited 129 to, the treatment of opiate addiction with opioid drugs.
- 130 (y) "State oversight agency" means the agency or office of 131 state government identified by the secretary to provide 132 regulatory oversight of medication-assisted treatment programs 133 on behalf of the State of West Virginia.
- 134 (z) "Substance" means the following:
- 135 (1) Alcohol;
- 136 (2) Controlled substances defined by section two hundred 137 four, article two, chapter sixty-a; section two hundred six, article

- 138 two, chapter sixty-a; section two hundred eight, article two,
- 139 chapter sixty-a and section two hundred ten, article two, chapter
- 140 sixty-a of this code; or
- 141 (3) Any chemical, gas, drug or medication consumed which
- 142 causes clinically and functionally significant impairment, such
- 143 as health problems, disability and failure to meet major
- 144 responsibilities at work, school or home.
- 145 (aa) "Substance Abuse and Mental Health Services
- 146 Administration" means the agency under the United States
- 147 Department of Health and Human Services responsible for the
- 148 accreditation and certification of medication-assisted treatment
- 149 programs and that provides leadership, resources, programs,
- 150 policies, information, data, contracts and grants for the purpose
- 151 of reducing the impact of substance abuse and mental or
- 152 behavioral illness.
- (bb) "Substance use disorder" means patterns of symptoms
- resulting from use of a substance that the individual continues to
- take, despite experiencing problems as a result; or as defined in
- 156 the most recent edition of the American Psychiatric
- 157 Association's Diagnostic and Statistical Manual of Mental
- 158 Disorders.
- (cc) "Telehealth" means the mode of delivering health care
- 160 services and public health via information and communication
- 161 technologies to facilitate the diagnosis, consultation, treatment
- education, care management, and self-management of a patient's
- health care while the patient is at the originating site and the
- 164 health care.
- (dd) "Variance" means written permission granted by the
- 166 secretary to a medication-assisted treatment program that a
- requirement of this article or rules promulgated pursuant to this

- article may be accomplished in a manner different from the manner set forth in this article or associated rules.
- 170 (ee) "Waiver" means a formal, time-limited agreement
- 171 between the designated oversight agency and the
- 172 medication-assisted treatment program that suspends a rule,
- 173 policy or standard for a specific situation so long as the health
- 174 and safety of patients is better served in the situation by
- suspension of the rule, policy or standard than by enforcement.

# §16-5Y-3. Opioid treatment programs to obtain license; application; fees and inspections.

- 1 (a) No person, partnership, association or corporation may
- 2 operate an opioid treatment program without first obtaining a
- 3 license from the secretary in accordance with the provisions of
- 4 this article and the rules lawfully promulgated pursuant to this
- 5 article.
- 6 (b) Any person, partnership, association or corporation
- 7 desiring a license to operate an opioid treatment program in this
- 8 state shall file with the Office of Health Facility Licensure and
- 9 Certification an application in such form and with such
- 10 information as the secretary shall prescribe and furnish
- 11 accompanied by an application fee.
- 12 (c) The Director of the Office of Health Facility Licensure
- 13 and Certification or his or her designee shall inspect each facility
- 14 and review all documentation submitted with the application.
- 15 The director shall then provide a recommendation to the
- 16 secretary whether to approve or deny the application for a
- 17 license. The secretary shall issue a license if the facility is in
- 18 compliance with the provisions of this article and with the rules
- 19 lawfully promulgated pursuant to this article.
- 20 (d) A license shall be issued in one of three categories:

21 (1) An initial twelve month license shall be issued to an 22 opioid treatment program establishing a new program or service 23 for which there is insufficient consumer participation to 24 demonstrate substantial compliance with this article and with all 25 rules promulgated pursuant to this article;

- (2) A provisional license shall be issued when an opioid treatment program seeks a renewal license, or is an existing program as of the effective date of this article and is seeking an initial license, and the opioid treatment program is not in substantial compliance with this article and with all rules promulgated pursuant to this article, but does not pose a significant risk to the rights, health and safety of a consumer. It shall expire not more than six months from the date of issuance, and may not be consecutively reissued; or
- 35 (3) A renewal license shall be issued when an opioid 36 treatment program is in substantial compliance with this article 37 and with all rules promulgated pursuant to this article. A renewal 38 license shall expire not more than one year from the date of 39 issuance.
  - (e) At least sixty days prior to the license expiration date, an application for renewal shall be submitted by the opioid treatment program to the secretary on forms furnished by the secretary. A license shall be renewed if the secretary determines that the applicant is in compliance with this article and with all rules promulgated pursuant to this article. A license issued to one program location pursuant to this article is not transferrable or assignable. Any change of ownership of a licensed medication-assisted treatment program requires submission of a new application. The medication-assisted treatment program shall notify the secretary of any change in ownership within ten days of the change and must submit a new application within the time frame prescribed by the secretary.

- (f) Any person, partnership, association or corporation that seeks to obtain or renew a license for an opioid treatment program in this state must submit to the secretary the following documentation:
- 57 (1) Full operating name of the program as advertised;
- 58 (2) Legal name of the program as registered with the West 59 Virginia Secretary of State;
- 60 (3) Physical address of the program;
- 61 (4) Preferred mailing address for the program;
- 62 (5) Email address to be used as the primary contact for the program;
- (6) Federal Employer Identification Number assigned to theprogram;
- (7) All business licenses issued to the program by this state,
   the state Tax Department, the Secretary of State and all other
   applicable business entities;
- 69 (8) Brief description of all services provided by the program;
- 70 (9) Hours of operation;
- 71 (10) Legal Registered Owner Name name of the person 72 registered as the legal owner of the program. If more than one 73 legal owner (i.e., partnership, corporation, etc.) list each legal 74 owner separately, indicating the percentage of ownership;
- (11) Medical director's full name, medical license number,
   Drug Enforcement Administration registration number, and a list
   of all current certifications;
- 78 (12) For each employee of the program, provide the 79 following:

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80		(A) Employee's role and occupation within the program	;
81		(B) Full legal name;	
82		(C) Medical license, if applicable;	
83 84		(D) Drug Enforcement Administration registration numb pplicable;	er,
85 86		(E) Drug Enforcement Administration identification numbers rescribe buprenorphine for addiction, if applicable; and	ber
87		(F) Number of hours per week worked at program;	
88 89		(13) Name and location address of all programs owned erated by the applicant;	or
90		(14) Notarized signature of applicant;	
91 92	fee	(15) Check or money order for licensing fee and inspect;	on
93 94 95 96	cou the	(16) Verification of education and training for all physicianselors and social workers practicing at or used by referral program such as fellowships, additional education reditations, board certifications and other certifications;	by
97 98 99	Rep	(17) Board of Pharmacy Controlled Substance Prescribort for each prescriber practicing at the program for the thinths preceding the date of application; and	
100 101 102		(18) If applicable, a copy of a valid Certificate of Need of exemption from the West Virginia Health Charity.	
103 104 105		(g) Upon satisfaction that an applicant has met all of uirements of this article, the secretary shall issue a license trate an opioid treatment program. An entity that obtains t	to

- license may possess, have custody or control of, and dispense
- 107 drugs indicated and approved by the United States Food and
- 108 Drug Administration for the treatment of substance use
- 109 disorders.
- (h) The opioid treatment program shall display the current
- 111 license in a prominent location where services are provided and
- in clear view of all patients.
- (i) The secretary or his or her designee shall inspect on a
- periodic basis all opioid treatment programs that are subject to
- this article and all rules adopted pursuant to this article to ensure
- 116 continued compliance.
- (i) Any license in effect at the time of the passage of this
- 118 section in the 2016 regular session of the Legislature shall
- 119 remain in effect until such time as new legislative rules
- 120 promulgated pursuant to this article become effective. Upon the
- 121 effective date of the new rules any licensee shall file for a new
- 122 license within six months pursuant to the licensing procedures
- and requirements of this section and the new rules promulgated
- 124 hereunder. The existing license shall remain effective until
- 125 receipt of the new license.

# §16-5Y-4. Office based medication-assisted treatment programs to obtain registration; application; fees and inspections.

- 1 (a) No person, partnership, association or corporation may
- 2 operate an office based medication-assisted treatment program
- 3 without first obtaining a registration from the secretary in
- 4 accordance with the provisions of this article and the rules
- 5 lawfully promulgated pursuant to this article.
- 6 (b) Any person, partnership, association or corporation
- 7 desiring a registration to operate an office based
- 8 medication-assisted treatment program in this state shall file

9 with the Office of Health Facility Licensure and Certification an 10 application in such form and with such information as the 11 secretary shall prescribe and furnish accompanied by an 12 application fee.

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- (c) The Director of the Office of Health Facility Licensure and Certification or his or her designee shall inspect and review all documentation submitted with the application. The director shall then provide a recommendation to the secretary whether to approve or deny the application for registration. The secretary shall issue a registration if the facility is in compliance with the provisions of this article and with the rules lawfully promulgated pursuant to this article.
- 21 (d) A registration shall be issued in one of three categories:
  - (1) An initial twelve month registration shall be issued to an office based medication-assisted treatment program establishing a new program or service for which there is insufficient consumer participation to demonstrate substantial compliance with this article and with all rules promulgated pursuant to this article;
- 28 (2) A provisional registration shall be issued when an office 29 based medication-assisted treatment program seeks a renewal registration, or is an existing program as of the effective date of 30 31 this article and is seeking an initial registration, and the office based medication-assisted treatment program is not in substantial 32 compliance with this article and with all rules promulgated 33 pursuant to this article, but does not pose a significant risk to the 34 35 rights, health and safety of a consumer. It shall expire not more 36 than six months from the date of issuance, and may not be consecutively reissued; or 37
- 38 (3) A renewal registration shall be issued when an office 39 based medication-assisted treatment program is in substantial

- 40 compliance with this article and with all rules promulgated 41 pursuant to this article. A renewal registration shall expire not 42 more than one year from the date of issuance.
- 43 (e) At least sixty days prior to the registration expiration date, an application for renewal shall be submitted by the office 44 45 based medication-assisted treatment program to the secretary on 46 forms furnished by the secretary. A registration shall be renewed if the secretary determines that the applicant is in 47 48 compliance with this article and with all rules promulgated 49 pursuant to this article. A registration issued to one program 50 location pursuant to this article is not transferrable or assignable. 51 Any change of ownership of a registered medication-assisted treatment program requires submission of a new application. The 52 53 medication-assisted treatment program shall notify the secretary 54 of any change in ownership within ten days of the change and must submit a new application within the time frame prescribed 55 56 by the secretary.
- 57 (f) Any person, partnership, association or corporation 58 seeking to obtain or renew a registration for an office based 59 medication-assisted treatment program in this state must submit 60 to the secretary the following documentation:
- (1) Full operating name of the program as advertised;
- (2) Legal name of the program as registered with the WestVirginia Secretary of State;
- 64 (3) Physical address of the program;
- 65 (4) Preferred mailing address for the program;
- 66 (5) Email address to be used as the primary contact for the 67 program;
- 68 (6) Federal Employer Identification Number assigned to the program;

- 70 (7) All business licenses issued to the program by this state,
- 71 the state Tax Department, the Secretary of State and all other
- 72 applicable business entities;
- 73 (8) Brief description of all services provided by the program;
- 74 (9) Hours of operation;
- 75 (10) Legal Registered Owner Name name of the person
- 76 registered as the legal owner of the program. If more than one
- 77 legal owner (i.e., partnership, corporation, etc.) list each legal
- 78 owner separately, indicating the percentage of ownership;
- 79 (11) Medical director's full name, medical license number,
- 80 Drug Enforcement Administration registration number, and a
- 81 listing of all current certifications;
- 82 (12) For each physician, counselor or social worker of the
- 83 program, provide the following:
- 84 (A) Employee's role and occupation within the program;
- 85 (B) Full legal name;
- 86 (C) Medical license, if applicable;
- 87 (D) Drug Enforcement Administration registration number,
- 88 if applicable;
- 89 (E) Drug Enforcement Administration identification number
- 90 to prescribe buprenorphine for addiction, if applicable; and
- 91 (F) Number of hours worked at program per week;
- 92 (13) Name and location address of all programs owned or
- 93 operated by the applicant;
- 94 (14) Notarized signature of applicant;

- 95 (15) Check or money order for registration fee;
- 96 (16) Verification of education and training for all physicians, 97 counselors and social workers practicing at or used by referral by 98 the program such as fellowships, additional education, 99 accreditations, board certifications and other certifications;
- 100 (17) Board of Pharmacy Controlled Substance Prescriber 101 Report for each prescriber practicing at the program for the three 102 months preceding the date of application; and
- 103 (18) If applicable, a copy of a valid Certificate of Need or a 104 letter of exemption from the West Virginia Health Care 105 Authority.
- 106 (g) Upon satisfaction that an applicant has met all of the 107 requirements of this article, the secretary shall issue a 108 registration to operate an office based medication-assisted 109 treatment program. An entity that obtains this registration may 110 possess, have custody or control of, and dispense drugs indicated 111 and approved by the United States Food and Drug 112 Administration for the treatment of substance use disorders.
  - (h) The office based medication-assisted treatment program shall display the current registration in a prominent location where services are provided and in clear view of all patients.

- (i) The secretary or his or her designee shall perform complaint and verification inspections on all office based medication-assisted treatment programs that are subject to this article and all rules adopted pursuant to this article to ensure continued compliance.
- 121 (j) Any person, partnership, association or corporation 122 operating a medication-assisted treatment program shall be 123 permitted to continue operation until the effective date of the 124 new rules promulgated pursuant to this article. At that time a

- 125 person, partnership, association or corporation shall file for
- 126 registration within six months pursuant to the licensing
- 127 procedures and requirements of this section and the new rules
- 128 promulgated hereunder. The existing procedures of the person,
- 129 partnership, association or corporation shall remain effective
- 130 until receipt of the registration.

#### §16-5Y-5. Operational requirements.

- 1 (a) The medication-assisted treatment program shall be
- 2 licensed and registered in this state with the secretary, the
- 3 Secretary of State, the state Tax Department and all other
- 4 applicable business or licensing entities.
- 5 (b) The program sponsor need not be a licensed physician
- 6 but shall employ a licensed physician for the position of medical
- 7 director, when required by the rules promulgated pursuant to this
- 8 article.
- 9 (c) Each medication-assisted treatment program shall
- 10 designate a medical director. If the medication-assisted treatment
- 11 program is accredited by a Substance Abuse and Mental Health
- 12 Services Administration (SAMHSA) approved accrediting body
- 13 that meets nationally accepted standards for providing
- 14 medication-assisted treatment, including the Commission on
- 15 Accreditation of Rehabilitation Facilities (CARF) or the Joint
- 16 Commission on Accreditation of Healthcare Organizations, then
- 17 the program may designate a medical director to oversee all
- 18 facilities associated with the accredited medication-assisted
- 19 treatment program. The medical director shall be responsible for
- 20 the operation of the medication-assisted treatment program, as
- 21 further specified in the rules promulgated pursuant to this article.
- 22 He or she may delegate the day to day operation of
- 23 medication-assisted treatment program as provided in rules
- 24 promulgated pursuant to this article. Within ten days after
- 25 termination of a medical director, the medication-assisted

- 26 treatment program shall notify the director of the identity of
- 27 another medical director for that program. Failure to have a
- 28 medical director practicing at the program may be the basis for
- 29 a suspension or revocation of the program license. The medical
- 30 director shall:
- 31 (1) Have a full, active and unencumbered license to practice
- 32 allopathic medicine or surgery from the West Virginia Board of
- 33 Medicine or to practice osteopathic medicine or surgery from the
- 34 West Virginia Board of Osteopathic Medicine in this state and
- 35 be in good standing and not under any probationary restrictions;
- 36 (2) Meet both of the following training requirements:
- 37 (A) If the physician prescribes a partial opioid agonist, he or
- 38 she shall complete the requirements for the Drug Addiction
- 39 Treatment Act of 2000; and
- 40 (B) Complete other programs and continuing education
- 41 requirements as further described in the rules promulgated
- 42 pursuant to this article;
- 43 (3) Practice at the licensed or registered medication-assisted
- 44 treatment program a sufficient number of hours, based upon the
- 45 type of medication-assisted treatment license or registration
- 46 issued pursuant to this article, to ensure regulatory compliance
- 47 and carry out those duties specifically assigned to the medical
- 48 director as further described in the rules promulgated pursuant
- 49 to this article:
- 50 (4) Be responsible for monitoring and ensuring compliance
- 51 with all requirements related to the licensing and operation of the
- 52 medication-assisted treatment program;
- 53 (5) Supervise, control and direct the activities of each
- 54 individual working or operating at the medication-assisted
- 55 treatment program, including any employee, volunteer or

- 56 individual under contract, who provides medication-assisted
- 57 treatment at the program or is associated with the provision of
- 58 that treatment. The supervision, control and direction shall be
- 59 provided in accordance with rules promulgated by the secretary;
- 60 and
- (6) Complete other requirements prescribed by the secretaryby rule.
- (d) Each medication-assisted treatment program shall
   designate counseling staff, either employee or those used on a
   referral-basis by the program, which meet the requirements of
   this article and the rules promulgated pursuant to this article. The
- 67 individual members of the counseling staff shall have one or
- 68 more of the following qualifications:
- 69 (1) A licensed psychiatrist;
- 70 (2) Certification as an alcohol and drug counselor;
- 71 (3) Certification as an advanced alcohol and drug counselor;
- 72 (4) A counselor, psychologist, marriage and family therapist
- 73 or social worker with a master's level education with a specialty
- 74 or specific training in treatment for substance use disorders, as
- 75 further described in the rules promulgated pursuant to this
- 76 article;
- 77 (5) Under the direct supervision of an advanced alcohol and
- 78 drug counselor, a counselor with a bachelor's degree in social
- 79 work or another relevant human services field: Provided, That
- 80 the individual practicing with a bachelor's degree under
- 81 supervision applies for certification as an alcohol and drug
- 82 counselor within three years of the date of employment as a
- 83 counselor; or
- 84 (6) A counselor with a graduate degree actively working
- 85 toward licensure or certification in the individual's chosen field

under supervision of a licensed or certified professional in that field and/or advanced alcohol and drug counselor.

- (e) The medication-assisted treatment program shall be eligible for, and not prohibited from, enrollment with West Virginia Medicaid and other private insurance. Prior to directly billing a patient for any medication-assisted treatment, a medication-assisted treatment program must receive either a rejection of prior authorization, rejection of a submitted claim, or a written denial from a patient's insurer or West Virginia Medicaid denying coverage for such treatment: *Provided*, That the Secretary may grant a variance from this requirement pursuant to section six of this article. The program shall also document whether a patient has no insurance. At the option of the medication-assisted treatment program, treatment may commence prior to billing.
- (f) The medication-assisted treatment program shall apply
   for and receive approval as required from the United States Drug
   Enforcement Administration, Center for Substance Abuse
   Treatment or an organization designated by Substance Abuse
   and Mental Health and Mental Health Administration.
  - (g) All persons employed by the medication-assisted treatment program shall comply with the requirements for the operation of a medication-assisted treatment program established within this article or by any rule adopted pursuant to this article.
- (h) All employees of an opioid treatment program shall furnish fingerprints for a state and federal criminal records check by the Criminal Identification Bureau of the West Virginia State Police and the Federal Bureau of Investigation. The fingerprints shall be accompanied by a signed authorization for the release of information and retention of the fingerprints by the Criminal Identification Bureau and the Federal Bureau of Investigation. The opioid treatment program shall be subject to the provisions

- of article forty-nine, chapter sixteen of this code and subsequent rules promulgated thereunder.
- 120 (i) The medication-assisted treatment program shall not be 121 owned by, nor shall it employ or associate with, any physician or 122 prescriber:
- 123 (1) Whose Drug Enforcement Administration number is not 124 currently full, active and unencumbered;
- 125 (2) Whose application for a license to prescribe, dispense or 126 administer a controlled substance has been denied by and is not 127 full, active and unencumbered in any jurisdiction; or
- 128 (3) Whose license is anything other than a full, active and 129 unencumbered license to practice allopathic medicine or surgery 130 by the West Virginia Board of Medicine or osteopathic medicine 131 or surgery by the West Virginia Board of Osteopathic Medicine 132 in this state, and, who is in good standing and not under any 133 probationary restrictions.

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(j) A person may not dispense any medication-assisted treatment medication, including a controlled substance as defined by section one hundred one, article one, chapter sixty-a of this code, on the premises of a licensed medication-assisted treatment program, unless he or she is a physician or pharmacist licensed in this state and employed by the medication-assisted treatment program unless the medication-assisted treatment program is a federally-certified narcotic treatment program. Prior to dispensing or prescribing medication-assisted treatment medications, the treating physician must access the Controlled Substances Monitoring Program database to ensure the patient is not seeking medication-assisted treatment medications that are controlled substances from multiple sources, and to assess potential adverse drug interactions, or both. Prior to dispensing or prescribing medication-assisted treatment medications, the

- 149 treating physician shall also ensure that the medication-assisted
- 150 treatment medication utilized is related to an appropriate
- 151 diagnosis of a substance use disorder and approved for such
- The physician shall also review the Controlled 152
- 153 Substances Monitoring Program database no less than quarterly
- 154 and at each patient's physical examination. The results obtained
- 155 from the Controlled Substances Monitoring Program Database
- 156 shall be maintained with the patient's medical records.
- 157 (k) A medication-assisted treatment program responsible for 158
- medication administration shall comply with:
- 159 (1) The West Virginia Board of Pharmacy regulations;
- 160 (2) The West Virginia Board of Examiners for Registered 161 Professional Nurses regulations;
- (3) All applicable federal laws and regulations relating to 162 163 controlled substances; and
- 164 (4) Any requirements as specified in the rules promulgated 165 pursuant to this article.
- 166 (1) Each medication-assisted treatment program location 167 shall be licensed separately, regardless of whether the program is operated under the same business name or management as 168 169 another program.
- 170 (m) The medication-assisted treatment program shall 171 develop and implement patient protocols, treatment plans or treatment strategies and profiles, which shall include, but not be 172 limited by, the following guidelines: 173
- 174 (1) When a physician diagnoses an individual as having a 175 substance use disorder, the physician may treat the substance use 176 disorder by managing it with medication in doses not exceeding 177 those approved by the United States Food and Drug

- 178 Administration as indicated for the treatment of substance use
- 179 disorders and not greater than those amounts described in the
- 180 rules promulgated pursuant to this article. The treating physician
- and treating counselor's diagnoses and treatment decisions shall
- 182 be made according to accepted and prevailing standards for
- 183 medical care;
- 184 (2) The medication-assisted treatment program shall
- 185 maintain a record of all of the following:
- 186 (A) Medical history and physical examination of the 187 individual:
- 188 (B) The diagnosis of substance use disorder of the 189 individual;
- 190 (C) The plan of treatment proposed, the patient's response to 191 the treatment and any modification to the plan of treatment;
- 192 (D) The dates on which any medications were prescribed, 193 dispensed or administered, the name and address of the 194 individual for whom the medications were prescribed, dispensed 195 or administered and the amounts and dosage forms for any 196 medications prescribed, dispensed or administered;
- 197 (E) A copy of the report made by the physician or counselor 198 to whom referral for evaluation was made, if applicable; and
- 199 (F) A copy of the coordination of care agreement, which is 200 to be signed by the patient, treating physician and treating counselor. If a change of treating physician or treating counselor 201 takes place, a new agreement must be signed. The coordination 202 203 of care agreement must be updated or reviewed at least annually. If the coordination of care agreement is reviewed, but not 204 updated, this review must be documented in the patient's record. 205 206 The coordination of care agreement will be provided in a form
- 206 The coordination of care agreement will be provided in a form 207 prescribed and made available by the secretary;

- 208 (3) Medication-assisted treatment programs shall report 209 information, data, statistics and other information as directed in 210 this code, and the rules promulgated pursuant to this article to 211 required agencies and other authorities;
- 212 (4) A physician, physician assistant, or advanced practice 213 registered nurse shall perform a physical examination of a 214 patient on the same day that the prescriber initially prescribes, 215 dispenses or administers a medication-assisted treatment 216 medication to a patient and at intervals as required in the rules 217 promulgated pursuant to this article;
- 218 (5) An alcohol and drug abuse counselor, an advanced alcohol and drug abuse counselor or other qualified counselor, 219 220 psychiatrist, psychologist or social worker shall perform a 221 biopsychosocial assessment, including, but not limited to, a 222 mental status examination of a patient on the same day or no 223 more than seven days prior to the day that the physician initially 224 prescribes, dispenses or administers a medication-assisted 225 treatment medication to a patient and at intervals as required in 226 the rules promulgated pursuant to this article;

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(6) prescriber authorized prescribe to medication-assisted treatment medication who practices at a medication-assisted treatment program is responsible for maintaining the control and security of his or her prescription blanks and any other method used for prescribing a medication-assisted treatment medication. The prescriber shall comply with all state and federal requirements for tamper-resistant prescription paper. In addition to any other requirements imposed by statute or rule, the prescriber shall notify the secretary and appropriate law enforcement agencies in writing within twenty-four hours following any theft or loss of a prescription blank or breach of any other method of prescribing a medication-assisted treatment medication; and

- 240 (7) The medication-assisted treatment program shall have a 241 drug testing program to ensure a patient is in compliance with 242 the treatment strategy.
- 243 (n) Medication-assisted treatment programs shall only 244 prescribe, dispense or administer liquid methadone to patients 245 pursuant to the restrictions and requirements of the rules 246 promulgated pursuant to this article.
- 247 (o) The medication-assisted treatment program shall 248 immediately notify the secretary, or his or her designee, in 249 writing of any changes to its operations that affect the 250 medication-assisted treatment program's continued compliance 251 with the certification and licensure requirements.
- (p) If a physician treats a patient with more than sixteen milligrams per day of buprenorphine then clear medical notes shall be placed in the patient's medical file indicating the clinical reason or reasons for the higher level of dosage.
- (q) If a physician is not the patient's obstetrical or gynecological provider, the physician shall consult with the patient's obstetrical or gynecological provider to the extent possible to determine whether the prescription is appropriate for the patient.
- 261 (r) A practitioner providing medication-assisted treatment 262 may perform certain aspects telehealth if permitted under his or 263 her scope of practice.
- 264 (s) The physician shall follow the recommended 265 manufacturer's tapering schedule for the medication assisted 266 treatment medication. If the schedule is not followed, the 267 physician shall document in the patient's medical record and the 268 clinical reason why the schedule was not followed. The secretary 269 may investigate a medication-assisted treatment program if a

270 high percentage of its patients are not following the 271 recommended tapering schedule.

#### §16-5Y-6. Restrictions; variances and waivers.

- 1 (a) A medication-assisted treatment program shall not be
- 2 located, operated, managed or owned at the same location where
- 3 a chronic pain management clinic licensed and defined in article
- 4 five-h, chapter sixteen of this code is located.
- 5 (b) Medication-assisted treatment programs shall not have
- 6 procedures for offering a bounty, monetary, equipment, or
- 7 merchandise reward, or free services for individuals in exchange
- 8 for recruitment of new patients into the facility.
- 9 (c) Medication-assisted treatment programs shall not be
- 10 located within one-half mile of a public or private licensed day
- 11 care center or public or private K-12 school.
- 12 Existing medication-assisted treatment programs, including
- 13 both opioid treatment programs and office based
- 14 medication-assisted treatment programs that are located within
- 15 one-half mile of a public or private licensed day care center or
- 16 public or private K-12 school, shall be granted a variance,
- 17 provided that the facility demonstrates adequate patient
- 18 population controls and that it may otherwise meet the
- 19 requirements of this article and the rules promulgated pursuant
- 20 to this article.
- 21 (d) The secretary may grant a waiver or a variance from any
- 22 licensure or registration standard, or portion thereof, for the
- 23 period during which the license or registration is in effect.
- 24 (1) Requests for waivers or variances of licensure or
- 25 registration standards shall be in writing to the secretary and
- 26 shall include:

- 27 (A) The specific section of this article or rules promulgated 28 pursuant to this article for which a waiver or variance is sought;
- 29 (B) The rationale for requesting the waiver or variance;
- 30 (C) Documentation by the medication-assisted treatment 31 program's medical director to the secretary that describes how 32 the program will maintain the quality of services and patient
- 33 safety if the wavier or variance is granted; and
- 34 (D) The consequences of not receiving approval of the 35 requested wavier or variance.
- 36 (2) The secretary shall issue a written statement to the 37 medication-assisted treatment program granting or denying a 38 request for a waiver or variance of program licensure or 39 registration standards.
- 40 (3) The medication-assisted treatment program shall 41 maintain a file copy of all requests for waivers or variances and 42 the approval or denial of the requests for the period during which 43 the license or registration is in effect.
- 44 (4) The Office of Health Facility Licensure and Certification shall inspect each medication-assisted treatment program prior 45 to a waiver or variance being granted, including a review of 46 patient records, to ensure and verify that any waiver or variance 47 48 request meets the spirit and purpose of this article and the rules 49 promulgated pursuant to this article. The Office of Health 50 Facility Licensure and Certification may verify, by unannounced inspection, that the medication-assisted treatment program is in 51 52 compliance with any waiver or variance granted by the secretary

### §16-5Y-7. Inspection; inspection warrant.

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for the duration of such waiver or variance

(a) The Office of Health Facility Licensure and Certification
 shall inspect each opioid treatment program annually, including

- 3 a review of the patient records, to ensure that the program
- 4 complies with this article and the applicable rules. A
- 5 pharmacist, employed or contracted by the secretary, licensed in
- 6 this state, and a law-enforcement officer may be present at each
- 7 inspection.
- 8 (b) The Office of Health Facility Licensure and Certification
- 9 shall perform unannounced complaint and verification
- 10 inspections at office based medication-assisted treatment
- 11 programs, including a review of the patient records, to ensure
- 12 that the program complies with this article and the applicable
- 13 rules. A pharmacist, employed or contracted by the secretary,
- 14 licensed in this state and a law-enforcement officer may be
- 15 present at each inspection.
- 16 (c) During an onsite inspection, the inspectors shall make a
- 17 reasonable attempt to discuss each violation with the medical
- 18 director or other owners of the medication-assisted treatment
- 19 program before issuing a formal written notification.
- 20 (d) Any action taken to correct a violation shall be
- 21 documented in writing by the medical director or other owners
- 22 of the medication-assisted treatment program and may be
- 23 verified by follow-up visits by the Office of Health Facility
- 24 Licensure and Certification.
- 25 (e) Notwithstanding the existence or pursuit of any other
- 26 remedy, the secretary may, in the manner provided by law,
- 27 maintain an action in the name of the state for an inspection
- 28 warrant against any person, partnership, association or
- 29 corporation to allow any inspection or seizure of records in order
- 30 to complete any inspection allowed by this article or the rules
- 31 promulgated pursuant to this article, or to meet any other
- 32 purpose of this article or the rules promulgated pursuant to this
- 32 purpose of this article or the rules promulgated pursuant to thi 33 article

- 34 (f) When possible, inspections for annual certification and
- 35 licensure by the medication-assisted treatment programs will be
- done consecutively or concurrently. However, this provision 36
- 37 does not limit the ability to conduct unannounced inspections
- 38 pursuant to a complaint.

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#### §16-5Y-8. License and registration limitation; denial; suspension; revocation.

- (a) The secretary may, by order, impose a ban on the 1 admission of patients or reduce the patient capacity of the medication-assisted treatment program, or any combination 3 thereof, when he or she finds upon inspection of the 4 medication-assisted treatment program that the licensee or 5 6 registrant is not providing adequate care under medication-assisted treatment program's existing patient quota, 7 and that a reduction in quota or imposition of a ban on 8 9 admissions, or any combination thereof, would place the licensee or registrant in a position to render adequate care. Any notice to 10 a licensee or registrant of reduction in quota or ban on new 11 admissions shall include the terms of the order, the reasons 12 13 therefor and the date set for compliance.
- 14 (b) The secretary shall deny, suspend or revoke a license or registration issued pursuant to this article if the provisions of this 15 article or of the rules promulgated pursuant to this article are 16 violated. The secretary may revoke a program's license or 17 registration and prohibit all physicians and licensed disciplines 18 associated with that medication-assisted treatment program from 19 practicing at the program location based upon an annual, 20 periodic, complaint, verification or other inspection and 21 evaluation. 22
- (c) Before any such license or registration is denied, 24 suspended or revoked, however, written notice shall be given to 25 the licensee or registrant, stating the grounds for such denial, suspension or revocation.

- 27 (d) An applicant, licensee or registrant has ten working days after receipt of the secretary's order denying, suspending or 28 revoking a license or registration to request a formal hearing 29 contesting such denial, suspension or revocation of a license or 30 registration under this article. If a formal hearing is requested, 31 the applicant, licensee or registrant and the secretary shall 32 33 proceed in accordance with the provisions of article five, chapter 34 twenty-nine-a of this code.
- 35 (e) If a license or registration is denied or revoked as herein provided, a new application for license or registration shall be 36 considered by the secretary if, when and after the conditions 37 38 upon which the denial or revocation was based have been corrected and evidence of this fact has been furnished. A new 39 40 license or registration shall then be granted after proper 41 inspection, if applicable, has been made and all provisions of this article and rules promulgated pursuant to this article have been 42 43 satisfied.
- 44 (f) Any applicant, licensee or registrant who is dissatisfied 45 with the decision of the secretary as a result of the hearing 46 provided in this section may, within thirty days after receiving 47 notice of the decision, petition the circuit court of Kanawha 48 County, in term or in vacation, for judicial review of the 49 decision.
- 50 (g) The court may affirm, modify or reverse the decision of 51 the secretary and either the applicant, licensee or registrant, or 52 the secretary may appeal from the court's decision to the 53 Supreme Court of Appeals.

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(h) If the license or registration of a medication-assisted treatment program is denied, suspended or revoked, the medical director of the program, any owner of the program or owner or lessor of the medication-assisted treatment program property shall cease to operate the clinic, facility, office or program as a

- 59 medication-assisted treatment program as of the effective date of
- 60 the denial, suspension or revocation. The owner or lessor of the
- 61 medication-assisted treatment program property is responsible
- 62 for removing all signs and symbols identifying the premises as
- 63 a medication-assisted treatment program within thirty days. Any
- 64 administrative appeal of such denial, suspension or revocation
- shall not stay the denial, suspension or revocation.

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- (i) Upon the effective date of the denial, suspension or revocation, the medical director of the medication-assisted treatment program shall advise the secretary and the Board of Pharmacy of the disposition of all medications located on the premises. The disposition is subject to the supervision and approval of the secretary. Medications that are purchased or held by a medication-assisted treatment program that is not licensed may be deemed adulterated.
- 74 (j) If the license or registration of a medication-assisted 75 treatment program is suspended or revoked, any person named in the licensing or registration documents of the program, 76 77 including persons owning or operating the medication-assisted 78 treatment program, may not, as an individual or as part of a 79 group, apply to operate another medication-assisted treatment program for up to five years after the date of suspension or 80 revocation. The secretary may grant a variance pursuant to 81 section six of this article to the prohibition of this subsection. 82
- (k) The period of suspension for the license or registration of a medication-assisted treatment program shall be prescribed by the secretary, but may not exceed one year.

### §16-5Y-9. Violations; penalties; injunction.

- 1 (a) Any person, partnership, association or corporation 2 which establishes, conducts, manages or operates a
- 3 medication-assisted treatment program without first obtaining a

- 4 license or registration as herein provided, or who violates any
- 5 provisions of this article or any rule lawfully promulgated
- 6 pursuant to this article, shall be assessed a civil penalty by the
- 7 secretary in accordance with this subsection. Each day of
- 8 continuing violation after conviction shall be considered a
- 9 separate violation:

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- 10 (1) If a medication-assisted treatment program or any owner 11 or medical director is found to be in violation of any provision 12 of this article, unless otherwise noted herein, the secretary may 13 limit, suspend or revoke the program's license or registration;
- 14 (2) If the program's medical director knowingly and intentionally misrepresents actions taken to correct a violation, 15 the secretary may impose a civil money penalty not to exceed 16 of any owner-operator 17 and, \$10,000 in the case medication-assisted treatment program, limit or revoke a 18 medication-assisted treatment program's license or registration; 19
  - (3) If any owner or medical director of a medication-assisted treatment program concurrently operates an unlicensed or unregistered medication-assisted treatment program, the secretary may impose a civil money penalty upon the owner or medical director, or both, not to exceed \$5,000 per day;
  - (4) If the owner of a medication-assisted treatment program that requires a license or registration under this article fails to apply for a new license or registration for the program upon a change of ownership and operates the program under new ownership, the secretary may impose a civil money penalty upon the owner, not to exceed \$5,000; or
  - (5) If a physician operates, owns or manages an unlicensed or unregistered medication-assisted treatment program that is required to be licensed or registered pursuant to this article; knowingly prescribes or dispenses or causes to be prescribed or

- 35 dispensed, a medication-assisted treatment medication through
- 36 misrepresentation or fraud; procures, or attempts to procure, a
- 37 license or registration for a medication-assisted treatment
- 38 program for any other person by making or causing to be made
- 39 any false representation, the secretary may assess a civil money
- 40 penalty of not more than \$20,000. The penalty may be in
- 41 addition to or in lieu of any other action that may be taken by the
- 42 secretary or any other board, court or entity.

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- (b) Notwithstanding the existence or pursuit of any other remedy, the secretary may, in the manner provided by law, maintain an action in the name of the state for an injunction against any person, partnership, association or corporation to restrain or prevent the establishment, conduct, management or operation of any medication-assisted treatment program or violation of any provision of this article or any rule lawfully promulgated thereunder without first obtaining a license or registration in the manner herein provided.
- 52 (c) In determining whether a penalty is to be imposed and in 53 fixing the amount of the penalty, the secretary shall consider the 54 following factors:
- 55 (1) The gravity of the violation, including the probability 56 that death or serious physical or emotional harm to a patient has 57 resulted, or could have resulted, from the medication-assisted 58 treatment program's actions or the actions of the medical 59 director or any practicing physician, the severity of the action or 60 potential harm, and the extent to which the provisions of the 61 applicable laws or rules were violated;
- 62 (2) What actions, if any, the owner or medical director took 63 to correct the violations;
- 64 (3) Whether there were any previous violations at the 65 medication-assisted treatment program; and

- 66 (4) The financial benefits that the medication-assisted 67 treatment program derived from committing or continuing to 68 commit the violation.
- (d) Upon finding that a physician has violated the provisions
   of this article or rules adopted pursuant to this article, the
   secretary shall provide notice of the violation to the applicable
   licensing board.

#### §16-5Y-10. Advertisement disclosure.

- 1 Any advertisement made by or on behalf of a
- 2 medication-assisted treatment program through public media,
- 3 such as a telephone directory, medical directory, newspaper or
- 4 other periodical, outdoor advertising, radio or television, or
- 5 through written or recorded communication, concerning the
- 6 treatment of substance use disorders, as defined in section two
- 7 of this article, shall include the name of, at a minimum, the
- 8 medical director responsible for the content of the advertisement.

### §16-5Y-11. State Opioid Treatment Authority.

- 1 (a) Prior to establishing, operating, maintaining or
- 2 advertising a medication-assisted treatment program within this
- 3 state, a medication-assisted treatment program shall be approved
- 4 by the state opioid treatment authority for operation of a
- 5 medication-assisted treatment program in this state.
- 6 (b) The state opioid treatment authority shall act as the
- 7 state's coordinator for the development and monitoring of
- 8 medication-assisted treatment programs and it shall serve as a
- 9 liaison with the appropriate federal agencies.
- 10 (c) The designated state oversight agency is responsible for
- 11 licensing, monitoring and investigating complaints and
- 12 grievances regarding medication-assisted treatment programs.

- 13 (d) The powers and duties of the state opioid treatment 14 authority include, but are not limited to, the following:
- 15 (1) Facilitate the development and implementation of rules, 16 regulations, standards and best practice guidelines to ensure the
- 17 quality of services delivered by medication-assisted treatment
- 18 programs;
- 19 (2) Act as a liaison between relevant state and federal 20 agencies;
- 21 (3) Review medication-assisted treatment guidelines, rules, 22 regulations and recovery models for individualized treatment 23 plans of care developed by the federal government and other 24 nationally recognized authorities approved by the secretary;
- (4) Ensure delivery of technical assistance and informational
   materials to medication-assisted treatment programs as needed;
- 27 (5) Perform both scheduled and unscheduled site visits to 28 medication-assisted treatment programs in cooperation with the 29 identified state oversight agency when necessary and 30 appropriate;
- 31 (6) Consult with the federal government regarding approval 32 or disapproval of requests for exceptions to federal regulations, 33 where appropriate;
- 34 (7) Review and approve exceptions to federal and state 35 dosage policies and procedures;
- 36 (8) Receive and refer patient appeals and grievances to the 37 designated state oversight agency when appropriate; and
- 38 (9) Work cooperatively with other relevant state agencies to 39 determine the services needed and the location of a proposed 40 medication-assisted treatment program.

#### §16-5Y-12. Moratorium; certificate of need.

- 1 There is a moratorium on the licensure of new opioid
- 2 treatment programs which do not have a certificate of need as of
- 3 the effective date of the enactment of this section during the
- 4 2016 regular session of the Legislature which shall continue until
- 5 the Legislature determines that there is a necessity for additional
- 6 opioid treatment programs in West Virginia.

# §16-5Y-13. Rules; minimum standards for medication-assisted treatment programs.

- 1 (a) The secretary shall promulgate rules in accordance with
- 2 the provisions of chapter twenty-nine-a of this code for the
- 3 licensure of medication-assisted treatment programs to ensure
- 4 adequate care, treatment, health, safety, welfare and comfort of
- 5 patients at these facilities. These rules shall include, at a
- 6 minimum:
- 7 (1) The process to be followed by applicants seeking a 8 license:
- 9 (2) The qualifications and supervision of licensed and
- 10 nonlicensed personnel at medication-assisted treatment programs
- 11 and training requirements for all facility health care practitioners
- 12 who are not regulated by another board;
- 13 (3) The provision and coordination of patient care, including
- 14 the development of a written plan of care and patient contract;
- 15 (4) The management, operation, staffing and equipping of
- 16 the medication-assisted treatment program;
- 17 (5) The clinical, medical, patient and business records kept
- 18 by the medication-assisted treatment program;
- 19 (6) The procedures for inspections and for review of
- 20 utilization and quality of patient care;

- 21 (7) The standards and procedures for the general operation
- 22 of a medication-assisted treatment program, including facility
- 23 operations, physical operations, infection control requirements,
- 24 health and safety requirements and quality assurance;
- 25 (8) Identification of drugs that may be used to treat 26 substance use disorders that identify a facility as a
- 27 medication-assisted treatment program;
- 28 (9) Any other criteria that identify a facility as a 29 medication-assisted treatment program;
- 30 (10) The standards and procedures to be followed by an
- 31 owner in providing supervision, direction and control of
- 32 individuals employed by or associated with a
- 33 medication-assisted treatment program;
- 34 (11) Data collection and reporting requirements;
- 35 (12) Criteria and requirements related to specific
- 36 medication-assisted treatment medications; and
- 37 (13) Such other standards or requirements as the secretary
- 38 determines are appropriate.
- 39 (b) The Legislature finds that an emergency exists and,
- 40 therefore, the secretary shall file an emergency rule to implement
- 41 the provisions of this section pursuant to the provisions of
- 42 section fifteen, article three, chapter twenty-nine-a of this code.

## CHAPTER 60A. UNIFORM CONTROLLED SUBSTANCES ACT.

#### ARTICLE 9. CONTROLLED SUBSTANCES MONITORING.

### §60A-9-4. Required information.

- 1 (a) Whenever a medical services provider dispenses a
- 2 controlled substance listed in Schedule II, III or IV as established

- 3 under the provisions of article two of this chapter or an opioid
- antagonist, or whenever a prescription for the controlled 4
- 5 substance or opioid antagonist is filled by: (i) A pharmacist or
- pharmacy in this state; (ii) a hospital, or other health care 6
- facility, for out-patient use; or (iii) a pharmacy or pharmacist
- licensed by the Board of Pharmacy, but situated outside this state
- 9 for delivery to a person residing in this state, the medical
- services provider, health care facility, pharmacist or pharmacy 10
- shall, in a manner prescribed by rules promulgated by the board 11
- under this article, report the following information, as 12
- 13 applicable:
- 14 (1) The name, address, pharmacy prescription number and
- Enforcement Administration controlled 15
- registration number of the dispensing pharmacy or the 16
- 17 dispensing physician or dentist;
- 18 (2) The full legal name, address and birth date of the person
- for whom the prescription is written; 19
- 20 The name, address and Drug Enforcement
- 21 Administration controlled substances registration number of the
- 22 practitioner writing the prescription;
- 23 (4) The name and national drug code number of the Schedule
- II, III and IV controlled substance or opioid antagonist 24
- 25 dispensed;
- 26 (5) The quantity and dosage of the Schedule II, III and IV
- 27 controlled substance or opioid antagonist dispensed;
- 28 (6) The date the prescription was written and the date filled;
- (7) The number of refills, if any, authorized by the 29 30 prescription;
- 31 (8) If the prescription being dispensed is being picked up by
- 32 someone other than the patient on behalf of the patient, the first

- 33 name, last name and middle initial, address and birth date of the
- 34 person picking up the prescription as set forth on the person's
- 35 government-issued photo identification card shall be retained in
- 36 either print or electronic form until such time as otherwise
- 37 directed by rule promulgated by the board; and
- 38 (9) The source of payment for the controlled substance 39 dispensed.
- 40 (b) The board may prescribe by rule promulgated under this 41 article the form to be used in prescribing a Schedule II, III, and 42 IV substance or opioid antagonist if, in the determination of the 43 board, the administration of the requirements of this section
- 44 would be facilitated.
- 45 (c) Products regulated by the provisions of article ten of this 46 chapter shall be subject to reporting pursuant to the provisions of 47 this article to the extent set forth in said article.
- 48 (d) Reporting required by this section is not required for a drug administered directly to a patient by a practitioner. 49 Reporting is, however, required by this section for a drug 50 dispensed to a patient by a practitioner: Provided, That the 51 52 quantity dispensed by a prescribing practitioner to his or her own 53 patient may not exceed an amount adequate to treat the patient 54 for a maximum of seventy-two hours with no greater than two 55 seventy-two-hour cycles dispensed in any fifteen-day period of 56 time.
- (e) The Board of Pharmacy shall notify a physician 57 prescribing buprenorphine or buprenorphine/naloxone within 58 59 sixty days of the availability of the an abuse deterrent form of 60 buprenorphine or buprenorphine/naloxone is approved by the 61 Food and Drug Administration as provided in FDA Guidance to 62 Industry. Upon receipt of the notice, a physician may switch 63 their patients using buprenorphine or buprenorphine/naloxone to 64 the abuse deterrent form of the drug.

# §60A-9-5. Confidentiality; limited access to records; period of retention; no civil liability for required reporting.

1 (a)(1) The information required by this article to be kept by the board is confidential and not subject to the provisions of 2 3 chapter twenty-nine-b of this code or obtainable as discovery in civil matters absent a court order and is open to inspection only 4 by inspectors and agents of the board, members of the West 5 Virginia State Police expressly authorized by the Superintendent 6 7 of the West Virginia State Police to have access to the information, authorized agents of local law-enforcement 8 9 agencies as members of a federally affiliated drug task force, authorized agents of the federal Drug Enforcement 10 11 Administration, duly authorized agents of the Bureau for Medical Services, duly authorized agents of the Office of the 12 Chief Medical Examiner for use in post-mortem examinations, 13 14 duly authorized agents of licensing boards of practitioners in this state and other states authorized to prescribe Schedules II, III and 15 controlled substances, prescribing practitioners 16 pharmacists and persons with an enforceable court order or 17 18 regulatory agency administrative subpoena: Provided, That all 19 law-enforcement personnel who have access to the Controlled Substances Monitoring Program database shall be granted access 20 21 in accordance with applicable state laws and the board's legislative rules, shall be certified as a West Virginia 22 law-enforcement officer and shall have successfully completed 23 training approved by the board. All information released by the 24 25 board must be related to a specific patient or a specific individual or entity under investigation by any of the above 26 27 parties except that practitioners who prescribe or dispense controlled substances may request specific data related to their 28 29 Drug Enforcement Administration controlled substance 30 registration number or for the purpose of providing treatment to a patient: Provided, however, That the West Virginia Controlled 31 32 Substances Monitoring Program Database Review Committee

- established in subsection (b) of this section is authorized to query the database to comply with said subsection.
- 35 (2) Subject to the provisions of subdivision (1) of this 36 subsection, the board shall also review the West Virginia 37 Controlled Substance Monitoring Program database and issue 38 reports that identify abnormal or unusual practices of patients who exceed parameters as determined by the advisory committee 39 established in this section. The board shall communicate with 40 41 practitioners and dispensers to more effectively manage the medications of their patients in the manner recommended by the 42 43 advisory committee. All other reports produced by the board 44 shall be kept confidential. The board shall maintain the 45 information required by this article for a period of not less than five years. Notwithstanding any other provisions of this code to 46 47 the contrary, data obtained under the provisions of this article 48 may be used for compilation of educational, scholarly or statistical purposes, and may be shared with the West Virginia 49 Department of Health and Human Resources for those purposes, 50 51 as long as the identities of persons or entities and any personally 52 identifiable information, including protected health information, contained therein shall be redacted, scrubbed or otherwise 53 54 irreversibly destroyed in a manner that will preserve the 55 confidential nature of the information. No individual or entity required to report under section four of this article may be 56 57 subject to a claim for civil damages or other civil relief for the 58 reporting of information to the board as required under and in 59 accordance with the provisions of this article.
- 60 (3) The board shall establish an advisory committee to 61 develop, implement and recommend parameters to be used in 62 identifying abnormal or unusual usage patterns of patients in this 63 state. This advisory committee shall:
- 64 (A) Consist of the following members: A physician licensed 65 by the West Virginia Board of Medicine, a dentist licensed by

- 66 the West Virginia Board of Dental Examiners, a physician
- 67 licensed by the West Virginia Board of Osteopathic Medicine,
- 68 a licensed physician certified by the American Board of Pain
- 69 Medicine, a licensed physician board certified in medical
- 70 oncology recommended by the West Virginia State Medical
- 71 Association, a licensed physician board certified in palliative
- 72 care recommended by the West Virginia Center on End of Life
- 73 Care, a pharmacist licensed by the West Virginia Board of
- 74 Pharmacy, a licensed physician member of the West Virginia
- 75 Academy of Family Physicians, an expert in drug diversion and
- such other members as determined by the board.

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- 77 (B) Recommend parameters to identify abnormal or unusual 78 usage patterns of controlled substances for patients in order to 79 prepare reports as requested in accordance with subsection (a), 80 subdivision (2) of this section.
  - (C) Make recommendations for training, research and other areas that are determined by the committee to have the potential to reduce inappropriate use of prescription drugs in this state, including, but not limited to, studying issues related to diversion of controlled substances used for the management of opioid addiction.
  - (D) Monitor the ability of medical services providers, health care facilities, pharmacists and pharmacies to meet the twenty-four hour reporting requirement for the Controlled Substances Monitoring Program set forth in section three of this article, and report on the feasibility of requiring real-time reporting.
- 93 (E) Establish outreach programs with local law enforcement 94 to provide education to local law enforcement on the 95 requirements and use of the Controlled Substances Monitoring 96 Program database established in this article.

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(b) The board shall create a West Virginia Controlled Substances Monitoring Program Database Review Committee of individuals consisting of two prosecuting attorneys from West Virginia counties, two physicians with specialties which require extensive use of controlled substances and a pharmacist who is trained in the use and abuse of controlled substances. The review committee may determine that an additional physician who is an expert in the field under investigation be added to the team when the facts of a case indicate that the additional expertise is required. The review committee, working independently, may query the database based on parameters established by the advisory committee. The review committee may make determinations on a case-by-case basis on specific unusual prescribing or dispensing patterns indicated by outliers in the system or abnormal or unusual usage patterns of controlled substances by patients which the review committee has reasonable cause to believe necessitates further action by law enforcement or the licensing board having jurisdiction over the practitioners or dispensers under consideration. The review committee shall also review notices provided by the chief medical examiner pursuant to subsection (h), section ten, article twelve, chapter sixty-one of this code and determine on a case-by-case basis whether a practitioner who prescribed or dispensed a controlled substance resulting in or contributing to the drug overdose may have breached professional occupational standards or committed a criminal act when prescribing the controlled substance at issue to the decedent. Only in those cases in which there is reasonable cause to believe a breach of professional or occupational standards or a criminal act may have occurred, the review committee shall notify the appropriate professional licensing agency having jurisdiction over the applicable practitioner or dispenser and appropriate law-enforcement agencies and provide pertinent information from the database for their consideration. The number of cases identified shall be determined by the review committee based on

- 132 a number that can be adequately reviewed by the review
- 133 committee. The information obtained and developed may not be
- shared except as provided in this article and is not subject to the
- provisions of chapter twenty-nine-b of this code or obtainable as
- 136 discovering in civil matters absent a court order.
- (c) The board is responsible for establishing and providing
- 138 administrative support for the advisory committee and the West
- 139 Virginia Controlled Substances Monitoring Program Database
- 140 Review Committee. The advisory committee and the review
- 141 committee shall elect a chair by majority vote. Members of the
- 142 advisory committee and the review committee may not be
- 143 compensated in their capacity as members but shall be
- 144 reimbursed for reasonable expenses incurred in the performance
- 145 of their duties.
- (d) The board shall promulgate rules with advice and consent
- of the advisory committee, in accordance with the provisions of
- article three, chapter twenty-nine-a of this code. The legislative
- 149 rules must include, but shall not be limited to, the following
- 150 matters:
- 151 (1) Identifying parameters used in identifying abnormal or
- unusual prescribing or dispensing patterns;
- 153 (2) Processing parameters and developing reports of
- 154 abnormal or unusual prescribing or dispensing patterns for
- 155 patients, practitioners and dispensers;
- 156 (3) Establishing the information to be contained in reports
- 157 and the process by which the reports will be generated and
- 158 disseminated; and
- 159 (4) Setting up processes and procedures to ensure that the
- privacy, confidentiality, and security of information collected,
- 161 recorded, transmitted and maintained by the review committee
- 162 is not disclosed except as provided in this section.

- 163 (e) Persons or entities with access to the West Virginia 164 Controlled Substances Monitoring Program database pursuant to 165 this section may, pursuant to rules promulgated by the board, 166 delegate appropriate personnel to have access to said database.
- (f) Good faith reliance by a practitioner on information contained in the West Virginia Controlled Substances Monitoring Program database in prescribing or dispensing or refusing or declining to prescribe or dispense a schedule II, III, or IV controlled substance shall constitute an absolute defense in any civil or criminal action brought due to prescribing or dispensing or refusing or declining to prescribe or dispense.
- 174 (g) A prescribing or dispensing practitioner may notify law 175 enforcement of a patient who, in the prescribing or dispensing 176 practitioner's judgment, may be in violation of section four 177 hundred ten, article four of this chapter, based on information 178 obtained and reviewed from the controlled substances 179 monitoring database. A prescribing or dispensing practitioner 180 who makes a notification pursuant to this subsection is immune 181 from any civil, administrative or criminal liability that otherwise 182 might be incurred or imposed because of the notification if the 183 notification is made in good faith.
  - (h) Nothing in the article may be construed to require a practitioner to access the West Virginia Controlled Substances Monitoring Program database except as provided in section five-a of this article.

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188 (i) The board shall provide an annual report on the West 189 Virginia Controlled Substance Monitoring Program to the 190 Legislative Oversight Commission on Health and Human 191 Resources Accountability with recommendations for needed 192 legislation no later than January 1 of each year.

# §60A-9-5a. Practitioner requirements to access database and conduct annual search of the database; required rulemaking.

- (a) All practitioners, as that term is defined in section one 1 hundred-one, article two of this chapter who prescribe or dispense Schedule II, III or IV controlled substances shall 3 register with the West Virginia Controlled Substances 4 Monitoring Program and obtain and maintain online or other 5 electronic access to the program database: Provided, That 6 compliance with the provisions of this subsection must be 7 accomplished within thirty days of the practitioner obtaining a 8 9 new license: Provided, however, That no licensing board may renew a practitioner's license without proof that the practitioner 10 11 meet the requirements of this subsection.
- 12 Upon initially prescribing or dispensing 13 pain-relieving controlled substance for a patient and at least annually thereafter should the practitioner or dispenser continue 14 15 to treat the patient with controlled substances, all persons with prescriptive or dispensing authority and in possession of a valid 16 Drug Enforcement Administration registration identification 17 18 number and, who are licensed by the Board of Medicine as set forth in article three, chapter thirty of this code, the Board of 19 Registered Professional Nurses as set forth in article seven, 20 chapter thirty of this code, the Board of Dental Examiners as set 21 forth in article four, chapter thirty of this code and the Board of 22 23 Osteopathic Medicine as set forth in article fourteen, chapter thirty of this code shall access the West Virginia Controlled 24 Substances Monitoring Program database for information 25 26 regarding specific patients for whom they are providing 27 pain-relieving controlled substances as part of a course of treatment for chronic, nonmalignant pain but who are not 28 suffering from a terminal illness. The information obtained from 29 accessing the West Virginia Controlled Substances Monitoring 30 31 Program database for the patient shall be documented in the

- 32 patient's medical record. A pain-relieving controlled substance
- 33 shall be defined as set forth in section one, article three-a,
- 34 chapter thirty of this code.
- 35 (c) The various boards mentioned in subsection (b) of this
- 36 section above shall promulgate both emergency and legislative
- 37 rules pursuant to the provisions of article three, chapter
- 38 twenty-nine-a of this code to effectuate the provisions of this
- 39 section.

### §60A-9-7. Criminal penalties; and administrative violations.

- 1 (a) Any person who is required to submit information to the
- 2 state Board of Pharmacy pursuant to the provisions of this article
- 3 who fails to do so as directed by the board is guilty of a
- 4 misdemeanor and, upon conviction thereof, shall be fined not
- 5 less than \$100 nor more than \$500.
- 6 (b) Any person who is required to submit information to the
- 7 state Board of Pharmacy pursuant to the provisions of this article
- 8 who knowingly and willfully refuses to submit the information
- 9 required by this article is guilty of a misdemeanor and, upon
- 10 conviction thereof, shall be confined in a county or regional jail
- 11 not more than six months or fined not more than \$1,000, or both
- 12 confined and fined.
- 13 (c) Any person who is required by the provisions of this
- 14 article to submit information to the state Board of Pharmacy who
- 15 knowingly submits thereto information known to that person to
- 16 be false or fraudulent is guilty of a misdemeanor and, upon
- 17 conviction thereof, shall be confined in a county or regional jail
- 18 not more than one year or fined not more than \$5,000, or both
- 19 confined and fined.
- 20 (d) Any person granted access to the information required by
- 21 the provisions of this article to be maintained by the state Board

- 22 of Pharmacy, who shall willfully disclose the information required to be maintained by this article in a manner inconsistent 23 with a legitimate law-enforcement purpose, a legitimate 24 professional regulatory purpose, the terms of a court order or as 25 otherwise expressly authorized by the provisions of this article 26 27 is guilty of a misdemeanor and, upon conviction thereof, shall be 28 confined in a county or regional jail for not more than six months or fined not more than \$1,000, or both confined and 29 30 fined.
- 31 (e) Unauthorized access or use or unauthorized disclosure 32 for reasons unrelated to the purposes of this article of the 33 information in the database is a felony punishable by 34 imprisonment in a state correctional facility for not less than one 35 year nor more than five years or fined not less than \$3,000 nor 36 more than \$10,000, or both imprisoned or fined.

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- (f) Any practitioner who fails to register with the West Virginia Controlled Substances Monitoring Program and obtain and maintain online or other electronic access to the program database as required in subsection (a), section five-a, article nine of this chapter, shall be subject to an administrative penalty of \$1,000 by the licensing board of his or her licensure. All such fines collected pursuant to this subsection shall be remitted by the applicable licensing board to the Fight Substance Abuse Fund created under section eight of this article. The provisions of this subsection shall become effective on July 1, 2016.
- (g) Any practitioner or dispenser who is required to access the information contained in the West Virginia Controlled Substances Monitoring Program database as set forth in subsection (a), section five-a of this article and fails to do so as directed by the rules of his or her licensing board shall be subject to such discipline as the licensing board deems appropriate and on or after July 1, 2016, be subject to a \$100 administrative penalty per violation by the applicable licensing board. All such

- 55 fines collected pursuant to this subsection shall be transferred by
- 56 the applicable licensing board to the Fight Substance Abuse
- 57 Fund created under section eight of this article.
- 58 (h) Lack of available internet connectivity is a defense to any
- 59 action brought pursuant to subsections (d) or (f) of this section.

### §60A-9-8. Creation of Fight Substance Abuse Fund.

- 1 There is hereby created a special revenue account in the state
- 2 treasury, designated the Fight Substance Abuse Fund, which
- shall be an interest-bearing account. The fund shall consist of all 3
- moneys received from whatever source to further the purpose of 4
- 5 this article. The fund shall be administered by the West Virginia
- Bureau for Public Health to provide funding for substance abuse 6
- prevention, treatment, treatment coordination, recovery and
- 8 education. Any moneys remaining in the fund at the close of a
- fiscal year shall be carried forward for use in the next fiscal year. 9
- Fund balances shall be invested with the state's consolidated 10
- investment fund and any and all interest earnings on these 11
- investments shall be used solely for the purposes that moneys 12
- deposited in the fund may be used pursuant to this article. There 13
- 14 is created within the Office of the Secretary of the Department
- of Health and Human Resources the Grant Writer Pilot Project. 15
- The Secretary shall hire a person as a grant writer, who shall be 16
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- placed within the Office of the Secretary. This person shall
- 18 identify, application and monitoring policies and procedures to
- increase grant applications and improve management and 19
- oversight of grants. The grant writer shall focus his or her 20
- abilities on obtaining grants concerning the prevention and 21
- treatment of substance abuse. The grant writer is not eligible for 22
- civil service. The department shall report to the Legislative 23
- Oversight Commission on Health and Human Resources 24
- Accountability on the implementation of the new grant policy; 25
- the number of grants obtained; and an analysis examining the 26
- costs associated with obtaining a grant verses the federal money 27
- 28 received.



### (Com. Sub. for S. B. 625 - By Senators Trump, Kessler, Unger, Walters, Prezioso and Facemire)

[Passed March 11, 2016; in effect from passage.] [Approved by the Governor on March 30, 2016.]

AN ACT to amend and reenact §16-1-9c of the Code of West Virginia, 1931, as amended, relating to source water protection plans generally; and clarifying that public disclosure of certain information regarding potential sources of significant contamination within a zone of critical concern is permitted to the extent it is in the public domain through a federal or state agency.

Be it enacted by the Legislature of West Virginia:

That §16-1-9c of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

### §16-1-9c. Required update or completion of source water protection plans.

- 1 (a) On or before July 1, 2016, each existing public water
- 2 utility which draws and treats water from a surface water supply
- 3 source or a surface water influenced groundwater supply source
- 4 shall submit to the commissioner an updated or completed
- 5 source water protection plan for each of its public water system
- 6 plants with such intakes to protect its public water supplies from
- 7 contamination. Every effort shall be made to inform and engage
- 8 the public, local governments, local emergency planners, local
- 9 health departments and affected residents at all levels of the
- 10 development of the protection plan.

- 11 (b) The completed or updated plan for each affected plant, 12 at a minimum, shall include the following:
- 13 (1) A contingency plan that documents each public water 14 utility's planned response to contamination of its public surface 15 water supply source or its public surface water influenced 16 groundwater supply source;
- 17 (2) An examination and analysis of the public water system's 18 ability to isolate or divert contaminated waters from its surface 19 water intake or groundwater supply and the amount of raw water 20 storage capacity for the public water system's plant;
- 21 (3) An examination and analysis of the public water system's 22 existing ability to switch to an alternative water source or intake 23 in the event of contamination of its primary water source;
- 24 (4) An analysis and examination of the public water system's 25 existing ability to close its water intake in the event the system 26 is advised that its primary water source has become 27 contaminated due to a spill or release into a stream and the 28 duration of time it can keep that water intake closed without 29 creating a public health emergency;
- 30 (5) The following operational information for each plant 31 receiving water supplies from a surface water source:
- 32 (A) The average number of hours the plant operates each 33 day, and the maximum and minimum number of hours of 34 operation in one day at that plant during the past year; and
- 35 (B) The average quantities of water treated and produced by 36 the plant per day, and the maximum and minimum quantities of 37 water treated and produced at that plant in one day during the 38 past year;
- 39 (6) An analysis and examination of the public water system's

40 existing available storage capacity on its system, how its 41 available storage capacity compares to the public water system's 42 normal daily usage and whether the public water system's 43 existing available storage capacity can be effectively utilized to 44 minimize the threat of contamination to its system;

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- (7) The calculated level of unaccounted for water experienced by the public water system for each surface water intake, determined by comparing the measured quantities of water which are actually received and used by customers served by that water plant to the total quantities of water treated at the water plant over the past year. If the calculated ratio of those two figures is less than eighty-five percent, the public water system is to describe all of the measures it is actively taking to reduce the level of water loss experienced on its system;
- (8) A list of the potential sources of significant contamination contained within the zone of critical concern as provided by the Department of Environmental Protection, the Bureau for Public Health and the Division of Homeland Security and Emergency Management. The exact location of the contaminants within the zone of critical concern is not subject to public disclosure in response to a Freedom of Information Act request under article one, chapter twenty-nine-b of this code. However, the location, characteristics and approximate quantities of potential sources of significant contamination within the zone of critical concern shall be made known to one or more designees of the public water utility, and shall be maintained in a confidential manner by the public water utility. Disclosure is permitted on any location, characteristics and approximate quantities of potential sources of significant contamination within the zone of critical concern to the extent they are in the public domain through a state or federal agency. In the event of a chemical spill, release or related emergency, information pertaining to any spill or release of contaminant

shall be immediately disseminated to any emergency responders responding to the site of a spill or release, and the general public shall be promptly notified in the event of a chemical spill, release or related emergency;

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- (9) If the public water utility's water supply plant is served by a single-source intake to a surface water source of supply or a surface water influenced source of supply, the submitted plan shall also include an examination and analysis of the technical and economic feasibility of each of the following options to provide continued safe and reliable public water service in the event its primary source of supply is detrimentally affected by contamination, release, spill event or other reason:
- 85 (A) Constructing or establishing a secondary or backup 86 intake which would draw water supplies from a substantially 87 different location or water source;
  - (B) Constructing additional raw water storage capacity and/or treated water storage capacity, to provide at least two days of system storage, based on the plant's maximum level of production experienced within the past year;
  - (C) Creating or constructing interconnections between the public water system with other plants on the public water utility system or another public water system, to allow the public water utility to receive its water from a different source of supply during a period its primary water supply becomes unavailable or unreliable due to contamination, release, spill event or other circumstance;
- 99 (D) Any other alternative which is available to the public 100 water utility to secure safe and reliable alternative supplies 101 during a period its primary source of supply is unavailable or 102 negatively impacted for an extended period; and

- (E) If one or more alternatives set forth in paragraphs (A) through (D), inclusive, of this subdivision is determined to be technologically or economically feasible, the public water utility shall submit an analysis of the comparative costs, risks and benefits of implementing each of the described alternatives;
- (10) A management plan that identifies specific activities that will be pursued by the public water utility, in cooperation and in concert with the Bureau for Public Health, local health departments, local emergency responders, local emergency planning committee, and other state, county or local agencies and organizations to protect its source water supply from contamination, including, but not limited to, notification to and coordination with state and local government agencies whenever the use of its water supply is inadvisable or impaired, to conduct periodic surveys of the system, the adoption of best management practices, the purchase of property or development rights, conducting public education or the adoption of other management techniques recommended by the commissioner or included in the source water protection plan;
- (11) A communications plan that documents the manner in which the public water utility, working in concert with state and local emergency response agencies, shall notify the local health agencies and the public of the initial spill or contamination event and provide updated information related to any contamination or impairment of the source water supply or the system's drinking water supply, with an initial notification to the public to occur in any event no later than thirty minutes after the public water system becomes aware of the spill, release or potential contamination of the public water system;
- (12) A complete and comprehensive list of the potential sources of significant contamination contained within the zone of critical concern, based upon information which is directly provided or can otherwise be requested and obtained from the

- 136 Department of Environmental Protection, the Bureau for Public
- 137 Health, the Division of Homeland Security and Emergency
- 138 Management and other resources; and

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- 139 (13) An examination of the technical and economic 140 feasibility of implementing an early warning monitoring system.
- 141 (c) Any public water utility's public water system with a 142 primary surface water source of supply or a surface water 143 influenced groundwater source of supply that comes into 144 existence on or after the effective date of this article shall submit 145 prior to the commencement of its operations a source water 146 protection plan satisfying the requirements of subsection (b) of 147 this section.
- 148 (d) The commissioner shall review a plan submitted pursuant 149 to this section and provide a copy to the Secretary of the 150 Department of Environmental Protection. Thereafter, within one 151 hundred eighty days of receiving a plan for approval, the 152 commissioner may approve, reject or modify the plan as may be 153 necessary and reasonable to satisfy the purposes of this article. 154 The commissioner shall consult with the local public health 155 officer and conduct at least one public hearing when reviewing the plan. Failure by a public water system to comply with a plan 156 157 approved pursuant to this section is a violation of this article.
  - (e) The commissioner may request a public water utility to conduct one or more studies to determine the actual risk and consequences related to any potential source of significant contamination identified by the plan, or as otherwise made known to the commissioner.
  - (f) Any public water utility required to file a complete or updated plan in accordance with the provisions of this section shall submit an updated source water protection plan at least every three years or when there is a substantial change in the

- 167 potential sources of significant contamination within the 168 identified zone of critical concern.
- (g) Any public water utility required to file a complete or updated plan in accordance with the provisions of this section shall review any source water protection plan it may currently have on file with the bureau and update it to ensure it conforms with the requirements of subsection (b) of this section on or before July 1, 2016.
- 175 (h) The commissioner's authority in reviewing and 176 monitoring compliance with a source water protection plan may 177 be transferred by the bureau to a nationally accredited local 178 board of public health.



### **CHAPTER 194**

(Com. Sub. for H. B. 4659 - By Delegate Ellington)

[Passed on March 12, 2016; in effect ninety days from passage.] [Approved by the Governor on March 24, 2016.]

AN ACT to amend and reenact §16-2-11 of the Code of West Virginia, 1931, as amended, relating to local health departments; and authorizing local health departments to bill for medical services without obtaining approval from the commissioner and allowing billing to be at a payor's maximum allowable rate.

Be it enacted by the Legislature of West Virginia

That §16-2-11 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

#### ARTICLE 2. LOCAL BOARDS OF HEALTH.

### §16-2-11. Local board of health; powers and duties.

- 1 (a) Each local board of health created, established and 2 operated pursuant to the provisions of this article shall:
- 3 (1) Provide the following basic public health services and 4 programs in accordance with state public health 5 performance-based standards:
- 6 (i) Community health promotion including assessing and reporting community health needs to improve health status, 8 facilitating community partnerships including identifying the 9 community's priority health needs, mobilization of a community 10 around identified priorities and monitoring the progress of 11 community health education services;
- 12 (ii) Environmental health protection including the promoting
  13 and maintaining of clean and safe air, water, food and facilities
  14 and the administering of public health laws as specified by the
  15 commissioner as to general sanitation, the sanitation of public
  16 drinking water, sewage and wastewater, food and milk, and the
  17 sanitation of housing, institutions, and recreation; and
- 18 (iii) Communicable or reportable disease prevention and 19 control including disease surveillance, case investigation and 20 follow-up, outbreak investigation, response to epidemics, and 21 prevention and control of rabies, sexually transmitted diseases, 22 vaccine preventable diseases, HIV/AIDS, tuberculosis and other 23 communicable and reportable diseases;
- 24 (2) Appoint a local health officer to serve at the will and 25 pleasure of the local board of health with approval of the 26 commissioner;
- 27 (3) Submit a general plan of operation to the commissioner 28 for approval, if it receives any state or federal money for health 29 purposes. This program plan shall be submitted annually and

comply with provisions of the local board of health standardsadministrative rule;

- (4) Provide equipment and facilities for the local health department that are in compliance with federal and state law;
- (5) Permit the commissioner to act by and through it, as needed. The commissioner may enforce all public health laws of this state, the rules and orders of the secretary, any county commission orders or municipal ordinances of the board's service area relating to public health, and the rules and orders of the local board within the service area of a local board. The commissioner may enforce these laws, rules and orders when, in the opinion of the commissioner, a public health emergency exists or when the local board fails or refuses to enforce public health laws and rules necessary to prevent and control the spread of a communicable or reportable disease dangerous to the public health. The expenses incurred shall be charged against the counties or municipalities concerned;
  - (6) Deposit all moneys and collected fees into an account designated for local board of health purposes. The moneys for a municipal board of health shall be deposited with the municipal treasury in the service area. The moneys for a county board of health shall be deposited with the county treasury in the service area. The moneys for a combined local board of health shall be deposited in an account as designated in the plan of combination: *Provided*, That nothing contained in this subsection is intended to conflict with the provisions of article one, chapter sixteen of this code;
  - (7) Submit vouchers or other instruments approved by the board and signed by the local health officer or designated representative to the county or municipal treasurer for payment of necessary and reasonable expenditures from the county or municipal public health funds: *Provided*, That a combined local

- 62 board of health shall draw upon its public health funds account
- 63 in the manner designated in the plan of combination;
- 64 (8) Participate in audits, be in compliance with tax 65 procedures required by the state and annually develop a budget
- 66 for the next fiscal year;

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- 67 (9) Perform public health duties assigned by order of a 68 county commission or by municipal ordinance consistent with 69 state public health laws; and
- 70 (10) Enforce the public health laws of this state and any other laws of this state applicable to the local board.
- 72 (b) Each local board of health created, established and 73 operated pursuant to the provisions of this article may:
- 74 (1) Provide primary care services, clinical and categorical programs, and enhanced public health services;
  - (2) Employ or contract with any technical, administrative, clerical or other persons, to serve as needed and at the will and pleasure of the local board of health. Staff and any contractors providing services to the board shall comply with applicable West Virginia certification and licensure requirements. Eligible staff employed by the board shall be covered by the rules of the Division of Personnel under section six, article ten, chapter twenty-nine of this code. However, any local board of health may, in the alternative and with the consent and approval of the appointing authority, establish and adopt a merit system for its eligible employees. The merit system may be similar to the state merit system and may be established by the local board by its order, subject to the approval of the appointing authority, adopting and making applicable to the local health department all, or any portion of any order, rule, standard, or compensation rate in effect in the state merit system as may be desired and as is properly applicable;

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- (3) Adopt and promulgate and from time to time amend rules consistent with state public health laws and the rules of the West Virginia State Department of Health and Human Resources, that are necessary and proper for the protection of the general health of the service area and the prevention of the introduction, propagation and spread of disease. All rules shall be filed with the clerk of the county commission or the clerk or the recorder of the municipality or both and shall be kept by the clerk or recording officer in a separate book as public records;
- (4) Accept, receive and receipt for money or property from any federal, state or local governmental agency, from any other public source or from any private source, to be used for public health purposes or for the establishment or construction of public health facilities:
- (5) Assess, charge and collect fees for permits and licenses for the provision of public health services: Provided, That permits and licenses required for agricultural activities may not be assessed, charged or collected: Provided, however, That a local board of health may assess, charge and collect all of the expenses of inspection of the physical plant and facilities of any distributor, producer or pasteurizer of milk whose milk distribution, production or pasteurization facilities are located outside this state but who sells or distributes in the state, or transports, causes or permits to be transported into this state, milk or milk products for resale, use or consumption in the state and in the service area of the local board of health. A local board of health may not assess, charge and collect the expenses of inspection if the physical plant and facilities are regularly inspected by another agency of this state or its governmental subdivisions or by an agency of another state or its governmental subdivisions certified as an approved inspection agency by the commissioner. No more than one local board of health may act as the regular inspection agency of the physical plant and facilities; when two or more include an inspection of the

- 127 physical plant and facilities in a regular schedule, the 128 commissioner shall designate one as the regular inspection 129 agency;
- 130 (6) Assess, charge and collect fees for services provided by 131 the local health department: *Provided*, That fees for services 132 shall be submitted to and approved by the commissioner: 133 Provided, however, That a local health department may bill 134 health care service fees to a payor which includes, but is not 135 limited to, Medicaid, a Medicaid Managed Care Organization 136 and the Public Employees Insurance Agency for medical 137 services provided: *Provided further*, that health care service fees 138 billed by a local health department are not subject to 139 commissioner approval and may be at the payor's maximum 140 allowable rate.
- 141 (7) Contract for payment with any municipality, county or 142 Board of Education for the provision of local health services or 143 for the use of public health facilities. Any contract shall be in 144 writing and permit provision of services or use of facilities for a 145 period not to exceed one fiscal year. The written contract may 146 include provisions for annual renewal by agreement of the 147 parties; and
- 148 (8) Retain and make available child safety car seats, collect 149 rental and security deposit fees for the expenses of retaining and making available child safety car seats, and conduct public 150 151 education activities concerning the use and preventing the 152 misuse of child safety car seats: Provided, That this subsection 153 is not intended to conflict with the provisions of section 154 forty-six, article fifteen, chapter seventeen-c of this code: 155 Provided, however, That any local board of health offering a 156 child safety car seat program or employee or agent of a local 157 board of health is immune from civil or criminal liability in any action relating to the improper use, malfunction or inadequate 158 159 maintenance of the child safety car seat and in any action

relating to the improper placement, maintenance or securing of a child in a child safety car seat.

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(c) The local boards of health are charged with protecting the health and safety, as well as promoting the interests of the citizens of West Virginia. All state funds appropriated by the Legislature for the benefit of local boards of health shall be used for provision of basic public health services.

## CHAPTER 195

### 6 H D 4265 D D L 4 EW

(Com. Sub. for H. B. 4365 - By Delegates Ellington, Arvon, Bates, Cooper, Householder, Rohrbach, Stansbury, Summers and Waxman)

[Passed March 12, 2016; in effect ninety days from passage.] [Approved by the Governor on March 25, 2016.]

AN ACT to repeal §16-2D-4a, §16-2D-4b, §16-2D-5a, §16-2D-5b, §16-2D-5c, §16-2D-5d, §16-2D-5e and §16-2D-7a of the Code of West Virginia, 1931, as amended; to amend and reenact §16-2D-1, \$16-2D-2, \$16-2D-3, \$16-2D-4, \$16-2D-5, \$16-2D-6, \$16-2D-7, §16-2D-8. §16-2D-9, §16-2D-10, §16-2D-11, §16-2D-12, §16-2D-13, §16-2D-14 and §16-2D-15; and to amend said code by adding thereto five new sections, designated §16-2D-16, §16-2D-17, §16-2D-18, §16-2D-19 and §16-2D-20, all relating to the certificate of need process; providing legislative findings; defining terms; providing powers to the authority; providing duties to the authority; providing rule-making authority; continuing a special revenue account; providing a process to update certificate of need standards; providing a process to update the state health plan; providing a process to review the cost effectiveness of the certificate of need standards; providing a process for the Health Care Authority to review whether a certificate of need is required; providing health services that require a certificate of need; providing health services for which a certificate of need may not be granted; providing an exemption process; providing exemptions to the certificate of need requirement; providing criteria the authority shall use to determine whether to grant a certificate of need; changing the certificate of need process; providing certain timelines; requiring the creation of a process to review an uncontested certificate of need application; requiring the authority to make certain findings to approve a certificate of need; providing an appeal process; prohibiting the transfer of a certificate of need; permitting the authority to perform a compliance review of an issued certificate of need; permitting the revocation of a license; creating an injunction process; establishing a statute of limitations; establishing an administrative penalty.

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

That \$16-2D-4a, \$16-2D-4b, \$16-2D-5a, \$16-2D-5b, \$16-2D-5c, \$16-2D-5d, \$16-2D-5e and \$16-2D-7a of the Code of West Virginia, 1931, as amended, be repealed; that \$16-2D-1, \$16-2D-2, \$16-2D-3, \$16-2D-4, \$16-2D-5, \$16-2D-6, \$16-2D-7, \$16-2D-8, \$16-2D-9, \$16-2D-10, \$16-2D-11, \$16-2D-12, \$16-2D-13, \$16-2D-14 and \$16-2D-15 be amended and reenacted; and that said code be amended by adding thereto five new sections, designated \$16-2D-16, \$16-2D-17, \$16-2D-18, \$16-2D-19 and \$16-2D-20, all to read as follows:

#### ARTICLE 2D. CERTIFICATE OF NEED.

### §16-2D-1. Legislative findings.

- 1 It is declared to be the public policy of this state:
- 2 (1) That the offering or development of all health services
- 3 shall be accomplished in a manner which is orderly, economical

- 4 and consistent with the effective development of necessary and
- 5 adequate means of providing for the health services of the people
- 6 of this state and to avoid unnecessary duplication of health
- 7 services, and to contain or reduce increases in the cost of
- 8 delivering health services.
- 9 (2) That the general welfare and protection of the lives,
- 10 health and property of the people of this state require that the
- 11 type, level and quality of care, the feasibility of providing such
- 12 care and other criteria as provided for in this article, including
- 13 certificate of need standards and criteria developed by the
- 14 authority pursuant to provisions of this article, pertaining to
- 15 health services within this state, be subject to review and
- 16 evaluation before any health services are offered or developed in
- 17 order that appropriate and needed health services are made
- 18 available for persons in the area to be served.

### §16-2D-2. Definitions.

- 1 As used in this article:
- 2 (1) "Affected person" means:
- 3 (A) The applicant;
- 4 (B) An agency or organization representing consumers;
- 5 (C) An individual residing within the geographic area but
- 6 within this state served or to be served by the applicant;
- 7 (D) An individual who regularly uses the health care
- 8 facilities within that geographic area;
- 9 (E) A health care facility located within this state which
- 10 provide services similar to the services of the facility under
- 11 review and which will be significantly affected by the proposed
- 12 project;

- 13 (F) A health care facility located within this state which,
- 14 before receipt by the authority of the proposal being reviewed,
- 15 have formally indicated an intention to provide similar services
- 16 within this state in the future;
- 17 (G) Third-party payors who reimburse health care facilities 18 within this state similar to those proposed for services;
- 19 (H) An agency that establishes rates for health care facilities 20 within this state similar to those proposed; or
- 21 (I) An organization representing health care providers.
- 22 (2) "Ambulatory health care facility" means a facility that 23 provides health services to noninstitutionalized and 24 nonhomebound persons on an outpatient basis.
- 25 (3) "Ambulatory surgical facility" means a facility not 26 physically attached to a health care facility that provides surgical 27 treatment to patients not requiring hospitalization.
- 28 (4) "Applicant" means a person proposing a proposed health 29 service:
- 30 (5) "Authority" means the West Virginia Health Care 31 Authority as provided in article twenty-nine-b of this chapter.
- 32 (6) "Bed capacity" means the number of beds licensed to a 33 health care facility or the number of adult and pediatric beds 34 permanently staffed and maintained for immediate use by 35 inpatients in patient rooms or wards in an unlicensed facility.
- 36 (7) "Behavioral health services" means services provided for 37 the care and treatment of persons with mental illness or 38 developmental disabilities in an inpatient or outpatient setting.
- 39 (8) "Birthing center" means a short-stay ambulatory health 40 care facility designed for low-risk births following normal 41 uncomplicated pregnancy.

- 42 (9) "Campus" means the adjacent grounds and buildings, or 43 grounds and buildings not separated by more than a public 44 right-of-way, of a health care facility.
- 45 (10) "Capital expenditure" means:

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- 46 (A) An expenditure made by or on behalf of a health care 47 facility, which:
- 48 (i) Under generally accepted accounting principles is not 49 properly chargeable as an expense of operation and maintenance; 50 or (ii) is made to obtain either by lease or comparable 51 arrangement any facility or part thereof or any equipment for a 52 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;
- 57 (C) The transfer of equipment or facilities for less than fair 58 market value if the transfer of the equipment or facilities at fair 59 market value would be subject to review; or
  - (D) 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; 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.
- 69 (11) "Charges" means the economic value established for 70 accounting purposes of the goods and services a hospital 71 provides for all classes of purchasers;

- 72 (12) "Community mental health and intellectual disability 73 facility" means a facility which provides comprehensive services 74 and continuity of care as emergency, outpatient, partial 75 hospitalization, inpatient or consultation and education for 76 individuals with mental illness, intellectual disability.
- 77 (13) "Diagnostic imaging" means the use of radiology, 78 ultrasound, mammography, fluoroscopy, nuclear imaging, 79 densitometry to create a graphic depiction of the body parts;
- 80 (14) "Drug and Alcohol Rehabilitation Services" means a 81 medically or psychotherapeutically supervised process for 82 assisting individuals on an inpatient or outpatient basis through 83 the processes of withdrawal from dependency on psychoactive 84 substances.
- 85 (15) "Expenditure minimum" means the cost of acquisition, 86 improvement, expansion of any facility, equipment, or services 87 including the cost of any studies, surveys, designs, plans, 88 working drawings, specifications and other activities, including 89 staff effort and consulting at and above \$5 million.
- 90 (16) "Health care facility" means a publicly or privately 91 owned facility, agency or entity that offers or provides health 92 services, whether a for-profit or nonprofit entity and whether or 93 not licensed, or required to be licensed, in whole or in part.
- 94 (17) "Health care provider" means a person authorized by 95 law to provide professional health service in this state to an 96 individual.
- 97 (18) "Health services" means clinically related preventive, 98 diagnostic, treatment or rehabilitative services.
- 99 (19) "Home health agency" means an organization primarily 100 engaged in providing professional nursing services either

- directly or through contract arrangements and at least one of the following services:
- 103 (A) Home health aide services;
- (B) Physical therapy;
- 105 (C) Speech therapy;
- 106 (D) Occupational therapy;
- 107 (E) Nutritional services; or
- 108 (F) Medical social services to persons in their place of 109 residence on a part-time or intermittent basis.
- 110 (20) "Hospice" means a coordinated program of home and 111 inpatient care provided directly or through an agreement under 112 the direction of a licensed hospice program which provides 113 palliative and supportive medical and other health services to 114 terminally ill individuals and their families.
- 115 (21) "Hospital" means a facility licensed pursuant to the 116 provisions of article five-b of this chapter and any acute care 117 facility operated by the state government, that primarily provides 118 inpatient diagnostic, treatment or rehabilitative services to 119 injured, disabled or sick persons under the supervision of 120 physicians.
- 121 (22) "Intermediate care facility" means an institution that 122 provides health-related services to individuals with conditions 123 that require services above the level of room and board, but do 124 not require the degree of services provided in a hospital or 125 skilled-nursing facility.
- 126 (23) "Like equipment" means medical equipment in which 127 functional and technological capabilities are similar to the

- equipment being replaced; and the replacement equipment is to
- 129 be used for the same or similar diagnostic, therapeutic, or
- 130 treatment purposes as currently in use; and it does not constitute
- 131 a substantial change in health service or a proposed health
- 132 service.
- 133 (24) "Major medical equipment" means a single unit of
- 134 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 the expenditure
- 137 minimum. This term does not include medical equipment
- 138 acquired by or on behalf of a clinical laboratory to provide
- 139 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
- 145 studies, surveys, designs, plans, working drawings,
- studies, surveys, designs, plans, working drawings, specifications and other activities essential to the acquisition of
- 147 such agricument shall be included. If the agricument is acquired
- such equipment shall be included. If the equipment is acquired
- 148 for less than fair market value, the term "cost" includes the fair
- 149 market value.
- 150 (25) "Medically underserved population" means the
- 151 population of an area designated by the authority as having a
- 152 shortage of a specific health service.
- 153 (26) "Nonhealth-related project" means a capital expenditure
- 154 for the benefit of patients, visitors, staff or employees of a health
- 155 care facility and not directly related to health services offered by
- 156 the health care facility.
- 157 (27) "Offer" means the health care facility holds itself out as
- 158 capable of providing, or as having the means to provide,
- 159 specified health services.

- 160 (28) "Person" means an individual, trust, estate, partnership, 161 limited liability corporation, committee, corporation, governing 162 body, association and other organizations such as joint-stock 163 companies and insurance companies, a state or a political 164 subdivision or instrumentality thereof or any legal entity 165 recognized by the state.
- 166 (29) "Personal care agency" means entity that provides 167 personal care services approved by the Bureau of Medical

Services.

- 169 (30) "Personal care services" means personal hygiene; 170 dressing; feeding; nutrition; environmental support and 171 health-related tasks provided by a personal care agency.
- 172 (31) "Physician" means an individual who is licensed by the 173 Board of Medicine or the Board of Osteopathy to practice in 174 West Virginia.
- 175 (32) "Proposed health service" means any service as 176 described in section eight of this article.
- 177 (33) "Purchaser" means an individual who is directly or 178 indirectly responsible for payment of patient care services 179 rendered by a health care provider, but does not include 180 third-party payers.
- 181 (34) "Rates" means charges imposed by a health care facility 182 for health services.
- 183 (35) "Records" means accounts, books and other data related 184 to health service costs at health care facilities subject to the 185 provisions of this article which do not include privileged medical 186 information, individual personal data, confidential information, 187 the disclosure of which is prohibited by other provisions of this 188 code and the laws enacted by the federal government, and

- information, the disclosure of which would be an invasion of privacy.
- 191 (36) "Rehabilitation facility" means an inpatient facility 192 licensed in West Virginia operated for the primary purpose of 193 assisting in the rehabilitation of disabled persons through an 194 integrated program of medical and other services.
- 195 (37) "Related organization" means an organization, whether publicly owned, nonprofit, tax-exempt or for profit, related to a 196 197 health care facility through common membership, governing bodies, trustees, officers, stock ownership, family members, 198 199 partners or limited partners, including, but not limited to, 200 subsidiaries, foundations, related corporations and joint ventures. 201 For the purposes of this subdivision "family members" means parents, children, brothers and sisters whether by the whole or 202 203 half blood, spouse, ancestors and lineal descendants.
- 204 (38) "Skilled nursing facility" means an institution, or a 205 distinct part of an institution, that primarily provides inpatient 206 skilled nursing care and related services, or rehabilitation 207 services, to injured, disabled or sick persons.
- 208 (39) "Standard" means a health service guideline developed 209 by the authority and instituted under section six.
- 210 (40) "State health plan" means a document prepared by the 211 authority that sets forth a strategy for future health service needs 212 in the state.
- 213 (41) "Substantial change to the bed capacity" of a health care 214 facility means any change, associated with a capital expenditure, 215 that increases or decreases the bed capacity or relocates beds 216 from one physical facility or site to another, but does not include 217 a change by which a health care facility reassigns existing beds 218 as swing beds between acute care and long-term care categories

- or a decrease in bed capacity in response to federal rural health initiatives.
- 221 (43) "Substantial change to the health services" means:
- 222 (A) The addition of a health service offered by or on behalf 223 of the health care facility which was not offered by or on behalf 224 of the facility within the twelve-month period before the month 225 in which the service is first offered; or
- 226 (B) The termination of a health service offered by or on 227 behalf of the facility but does not include the termination of 228 ambulance service, wellness centers or programs, adult day care 229 or respite care by acute care facilities.
- 230 (44) "Third-party payor" means an individual, person, 231 corporation or government entity responsible for payment for 232 patient care services rendered by health care providers.
- 233 (45) "To develop" means to undertake those activities which 234 upon their completion will result in the offer of a proposed 235 health service or the incurring of a financial obligation in 236 relation to the offering of such a service.

### §16-2D-3. Powers and duties of the authority.

- 1 (a) The authority shall:
- 2 (1) Administer the certificate of need program;
- 3 (2) Review the state health plan, the certificate of need
- 4 standards, and the cost effectiveness of the certificate of need
- 5 program and make any amendments and modifications to each
- 6 that it may deem necessary, no later than September 1, 2017, and
- 7 biennially thereafter.
- 8 (3) Shall adjust the expenditure minimum annually and 9 publish to its website the updated amount on or before December

- 10 31, of each year. The expenditure minimum adjustment shall be
- 11 based on the DRI inflation index published in the Global Insight
- 12 DRI/WEFA Health Care Cost Review.
- 13 (4) Create a standing advisory committee to advise and assist 14 in amending the state health plan, the certificate of need
- standards, and performing the state agencies' responsibilities.
- 16 (b) The authority may:

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- 17 (1) (A) Order a moratorium upon the offering or 18 development of a health service when criteria and guidelines for 19 evaluating the need for the health service have not yet been 20 adopted or are obsolete or when it determines that the 21 proliferation of the health service may cause an adverse impact 22 on the cost of health services or the health status of the public.
  - (B) 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 eight.
- 30 (2) Issue grants and loans to financially vulnerable health 31 care facilities located in underserved areas that the authority and 32 the Office of Community and Rural Health Services determine 33 are collaborating with other providers in the service area to 34 provide cost effective health services.
- 35 (3) Approve an emerging health service or technology for one year.
- 37 (4) Exempt from certificate of need or annual assessment 38 requirements to financially vulnerable health care facilities 39 located in underserved areas that the state agency and the Office

- 40 of Community and Rural Health Services determine are
- 41 collaborating with other providers in the service area to provide
- 42 cost effective health services.

### §16-2D-4. Rule-making Authority.

- 1 (a) The authority shall propose rules for legislative approval
- 2 in accordance with the provisions of article three, chapter
- 3 twenty-nine-a of this code, to implement the following:
- 4 (1) Information a person shall provide when applying for a 5 certificate of need:
- 6 (2) Information a person shall provide when applying for an 7 exemption;
- 8 (3) Process for the issuance of grants and loans to financially vulnerable health care facilities located in underserved areas;
- 10 (4) The required information in a letter of intent;
- 11 (5) Process for an expedited certificate of need;
- 12 (6) Determine medically underserved population. The
- 13 authority may consider unusual local conditions that are a barrier
- 14 to accessibility or availability of health services. The authority
- 15 may consider when making its determination of a medically
- 16 underserved population designated by the federal Secretary of
- 17 Health and Human Services under Section 330(b)(3) of the
- 18 Public Health Service Act, as amended, Title 42 U.S.C. §254;
- 19 (7) Process to review an approved certificate of need; and
- 20 (8) Process to review approved proposed health services for
- 21 which the expenditure maximum is exceeded or is expected to be
- 22 exceeded.

- 23 (b) The authority shall propose emergency rules by 24 December 31, 2016, to effectuate the changes to this article.
- 25 (c) All of the authority's rules in effect and not in conflict
- 26 with the provisions of this article, shall remain in effect until
- 27 they are amended or rescinded.

### §16-2D-5. Fee; special revenue account; administrative fines.

- 1 (a) All fees and other moneys, except administrative fines,
- 2 received by the board shall be deposited in a separate special
- 3 revenue fund in the State Treasury which is continued and shall
- 4 be known as the "Certificate of Need Program Fund".
- 5 Expenditures from this fund shall be for the purposes set forth in
- 6 this article and are not authorized from collections but are to be
- 7 made only in accordance with appropriation by the Legislature
- 8 and in accordance with the provisions of article three, chapter
- 9 twelve of this code and upon fulfillment of the provisions of
- 10 article two, chapter eleven-b of this code: *Provided*, That for the
- 11 fiscal year ending June 30, 2017, expenditures are authorized
- 12 from collections rather than pursuant to appropriation by the
- 13 Legislature.
- 14 (b) Any amounts received as administrative fines imposed
- 15 pursuant to this article shall be deposited into the General
- 16 Revenue Fund of the State Treasury.

### §16-2D-6. Changes to certificate of need standards.

- 1 (a) When the authority proposes a change to the certificate
- 2 of need standards, it shall file with the Secretary of State, for
- 3 publication in the State Register, a notice of proposed action,
- 4 including the text of all proposed changes, and a date, time and
- 5 place for receipt of general public comment. To comply with the
- 6 public comment requirement of this section, the authority may
- 7 hold a public hearing or schedule a public comment period for
- 8 the receipt of written statements or documents.

- 9 (b) When changing the certificate of need standards, the 10 authority shall identify relevant criteria contained in section 11 twelve and apply those relevant criteria to the proposed health 12 service in a manner that promotes the public policy goals and 13 legislative findings contained in section one.
- 14 (c) The authority shall form task forces to assist it in 15 satisfying its review and reporting requirements. The task forces 16 shall be comprised of representatives of consumers, business, 17 providers, payers and state agencies.
  - (d) The authority shall coordinate the collection of information needed to allow the authority to develop recommended modifications to certificate of need standards.

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- (e) The authority 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 authority's own developed expertise in health planning, data accumulated by the authority or other local, state or federal agency or organization and any other source deemed relevant to the certificate of need standards proposed for change.
- (f) All proposed changes 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 disapproval. Any portions of the amendments or

- 40 modifications not approved by the Governor may be revised and resubmitted.
- 42 (g) The certificate of need standards adopted pursuant to this
- 43 section which are applicable to the provisions of this article are
- 44 not subject to article three, chapter twenty-nine-a of this code.
- 45 The authority shall follow the provisions set forth in this section
- 46 for giving notice to the public of its actions, holding hearings or
- 47 receiving comments on the certificate of need standards. The
- 48 certificate of need standards in effect on July 1, 2016, and all
- 49 prior versions promulgated and adopted in accordance with the
- 50 provisions of this section are and have been in full force and
- 51 effect from each of their respective dates of approval by the
- 52 Governor.
- 53 (h) After approval from the Governor, the authority shall
- 54 prepare a report detailing its review findings and submit the
- 55 report to the Legislative Oversight Commission on Health and
- 56 Human Resources Accountability with its annual report before
- 57 January 1, each year.

#### §16-2D-7. Determination of reviewability.

- 1 A person may make a written request to the authority for it
- 2 to determine whether a proposed health service is subject to the
- 3 certificate of need or exemption process. The authority may
- 4 require that a person submit certain information in order to make
- 5 this determination. A person shall pay a \$100 fee to the
- 6 authority to obtain this determination. A person is not required
- 7 to obtain this determination before filing an application for a
- 8 certificate of need or an exemption.

# §16-2D-8. Proposed health services that require a certificate of need.

- 1 (a) Except as provided in sections nine, ten and eleven of
- 2 this article, the following proposed health services may not be

- acquired, offered or developed within this state except upon
- 4 approval of and receipt of a certificate of need as provided by
- 5 this article:
- 6 (1) The construction, development, acquisition or other 7 establishment of a health care facility;
- 8 (2) The partial or total closure of a health care facility with 9 which a capital expenditure is associated;
- 10 (3) (A) An obligation for a capital expenditure incurred by 11 or on behalf of a health care facility, in excess of the expenditure 12 minimum; or
- 13 (B) An obligation for a capital expenditure incurred by a 14 person to acquire a health care facility.
- 15 (4) An obligation for a capital expenditure is considered to 16 be incurred by or on behalf of a health care facility:
- 17 (i) When a valid contract is entered into by or on behalf of 18 the health care facility for the construction, acquisition, lease or 19 financing of a capital asset;
- 20 (ii) When the health care facility takes formal action to 21 commit its own funds for a construction project undertaken by 22 the health care facility as its own contractor; or
- 23 (iii) In the case of donated property, on the date on which the 24 gift is completed under state law.
- 25 (5) A substantial change to the bed capacity of a health care facility with which a capital expenditure is associated;
- 27 (6) The addition of ventilator services by a hospital;
- 28 (7) The elimination of health services previously offered on 29 a regular basis by or on behalf of a health care facility which is 30 associated with a capital expenditure;

31	(8) (A) A substantial change to the bed capacity or health
32	services offered by or on behalf of a health care facility, whether
33	or not the change is associated with a proposed capital
34	expenditure;
35	(B) If the change is associated with a previous capital
36	expenditure for which a certificate of need was issued; and
37	(C) If the change will account within two years often the data
38	(C) If the change will occur within two years after the date the activity which was associated with the previously approved
39	capital expenditure was undertaken.
39	capital expelluture was undertaken.
40	(9) The acquisition of major medical equipment;
41	(10) A substantial change in an approved health service for
42	which a certificate of need is in effect;
43	(11) An expansion of the service area for hospice or home
44	health agency regardless of the time period in which the
45	expansion is contemplated or made; and
	on much is containfunction in much, and
46	(12) The addition of health services offered by or on behalf
47	of a health care facility which were not offered on a regular basis
48	by or on behalf of the health care facility within the twelve-
49	month period prior to the time the services would be offered.
<b>5</b> 0	42.77
50	(b) The following health services are required to obtain a
51	certificate of need regardless of the minimum expenditure:
52	(1) Constructing, developing, acquiring or establishing of a
53	birthing center;
54	(2) Providing radiation therapy;
_	
55	(3) Providing computed tomography;

(4) Providing positron emission tomography;

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57	(5) Providing cardiac surgery;	
58	(6) Providing fixed magnetic resonance imagin	ng;
59	(7) Providing comprehensive medical rehability	tation;
60	(8) Establishing an ambulatory care center;	
61	(9) Establishing an ambulatory surgical center	;
62	(10) Providing diagnostic imaging;	
63	(11) Providing cardiac catheterization services	;
64 65 66	(12) Constructing, developing, acquiring or es kidney disease treatment centers, including hemodialysis units;	tablishing of freestanding
67	(13) Providing megavoltage radiation therapy;	
68	(14) Providing surgical services;	
69	(15) Establishing operating rooms;	
70	(16) Adding acute care beds;	
71 72	(17) Providing intellectual developmental services;	disabilities
73	(18) Providing organ and tissue transplants;	
74 75	(19) Establishing an intermediate care facility for with intellectual disabilities;	r individuals
76	(20) Providing inpatient services;	
77	(21) Providing hospice services;	
78	(22) Establishing a home health agency: and	

- 79 (23) Providing personal care services.
- 80 (c) A certificate of need previously approved under this
- 81 article remains in effect unless revoked by the authority.

#### §16-2D-9. Health services that cannot be developed.

- 1 Notwithstanding section eight and eleven, these health
- 2 services require a certificate of need but the authority may not
- 3 issue a certificate of need to:
- 4 (1) A health care facility adding intermediate care or skilled
- 5 nursing beds to its current licensed bed complement, except as
- 6 provided in subdivision twenty-three, subsection (c), section
- 7 eleven;
- 8 (2) A person developing, constructing or replacing a skilled
- 9 nursing facility except in the case of facilities designed to
- 10 replace existing beds in existing facilities that may soon be
- 11 deemed unsafe or facilities utilizing existing licensed beds from
- 12 existing facilities which are designed to meet the changing health
- 13 care delivery system;
- 14 (3) Beds in an intermediate care facility for individuals with
- an intellectual disability, except that prohibition does not apply
- 16 to an intermediate care facility for individuals with intellectual
- 17 disabilities beds approved under the Kanawha County circuit
- 18 court order of August 3, 1989, civil action number MISC-81-585
- 19 issued in the case of E.H. v. Matin, 168 W.V. 248, 284 S.E. 2d
- 20 232 (1981); and
- 21 (4) An opioid treatment facility or program.

#### $\S16-2D-10$ . Exemptions from certificate of need.

- 1 Notwithstanding section eight, a person may provide the
- 2 following health services without obtaining a certificate of need
- 3 or applying to the authority for approval:

- 4 (1) The creation of a private office of one or more licensed 5 health professionals to practice in this state pursuant to chapter 6 thirty of this code.
- 7 (2) Dispensaries and first-aid stations located within 8 business or industrial establishments maintained solely for the 9 use of employees that does not contain inpatient or resident beds 10 for patients or employees who generally remain in the facility for more than twenty-four hours;
- 12 (3) A place that provides remedial care or treatment of 13 residents or patients conducted only for those who rely solely 14 upon treatment by prayer or spiritual means in accordance with 15 the creed or tenets of any recognized church or religious 16 denomination.

# §16-2D-11. Exemptions from certificate of need which require approval from the authority.

- 1 (a) To obtain an exemption under this section a person shall:
- 2 (1) File an exemption application;
- 3 (2) Pay the \$1,000 application fee; and
- 4 (3) Provide a statement detailing which exemption applies and the circumstances justifying the approval of the exemption.
- 6 (b) The authority has forty-five days to review the exemption request. The authority may not hold an administrative hearing 7 8 to review the application. An affected party may not file an objection to the request for an exemption. The applicant may 9 request or agree with the authority to a fifteen day extension of 10 11 the timeframe. If the authority does not approve or deny the application within forty-five days, then the exemption is 12 immediately approved. If the authority denies the approval of 13 the exemption, the applicant may appeal the authority's decision 14

- 15 to the Office of Judges or refile the application with the
- 16 authority. The Office of Judges shall follow the procedure
- 17 provided in section sixteen to perform the review.
- 18 (c) Notwithstanding section eight and ten and except as 19 provided in section nine, these health services are exempt from 20 the certificate of need process:
- 21 (1) A computed tomography scanner that is installed in a 22 private office practice where at minimum seventy five percent of 23 the scans are for the patients of the practice and the fair market 24 value of the installation and purchase is less than \$250,000 for 25 calendar year 2016. The authority shall adjust the dollar amount 26 specified in this subdivision annually and publish an update of the amount on or before December 31, of each year. The 27 28 adjustment of the dollar amount shall be based on the DRI 29 inflation index published in the Global Insight DRI/WEFA Health Care Cost Review. The authority may at any time request 30 31 from the private office practice information concerning the 32 number of patients who have been provided scans;
- 33 (2) (A) A birthing center established by nonprofit primary 34 care center that has a community board and provides primary 35 care services to people in their community without regard to 36 ability to pay; or
- 37 (B) A birthing center established by a nonprofit hospital with 38 less than one hundred licensed acute care beds.
- 39 (i) To qualify for this exemption, an applicant shall be 40 located in an area that is underserved with respect to low-risk 41 obstetrical services; and
- 42 (ii) Provide a proposed health service area.
- 43 (3) (A) A health care facility acquiring major medical 44 equipment, adding health services or obligating a capital 45 expenditure to be used solely for research;

- 46 (B) To qualify for this exemption, the health care facility 47 shall show that the acquisition, offering or obligation will not:
- 48 (i) Affect the charges of the facility for the provision of 49 medical or other patient care services other than the services 50 which are included in the research;
- 51 (ii) Result in a substantial change to the bed capacity of the 52 facility; or
- 53 (iii) Result in a substantial change to the health services of 54 the facility.
- 55 (C) For purposes of this subdivision, the term "solely for research" includes patient care provided on an occasional and irregular basis and not as part of a research program;
- 58 (4) The obligation of a capital expenditure to acquire, either 59 by purchase, lease or comparable arrangement, the real property, 60 equipment or operations of a skilled nursing facility.
- 61 (5) Shared health services between two or more hospitals 62 licensed in West Virginia providing health services made 63 available through existing technology that can reasonably be 64 mobile. This exemption does not include providing mobile 65 cardiac catheterization;
- (6) The acquisition, development or establishment of a
   certified interoperable electronic health record or electronic
   medical record system;
- 69 (7) The addition of forensic beds in a health care facility;
- 70 (8) A behavioral health service selected by the Department 71 of Health and Human Resources in response to its request for 72 application for services intended to return children currently 73 placed in out-of-state facilities to the state or to prevent

- 74 placement of children in out-of-state facilities is not subject to a certificate of need:
- 76 (9) The replacement of major medical equipment with like 77 equipment;
- 78 (10) Renovations within a hospital. The renovations may not 79 expand the health care facility's current square footage, incur a 80 substantial change to the health services, or a substantial change 81 to the bed capacity;
- 82 (11) Renovations to a skilled nursing facility;

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- 83 (12) The construction, development, acquisition or other 84 establishment by a licensed West Virginia hospital of an 85 ambulatory heath care facility in the county in which it is located 86 and in a contiguous county within or outside this state;
  - (13) The donation of major medical equipment to replace like equipment for which a certificate of need has been issued and the replacement does not result in a substantial change to health services. This exemption does not include the donation of major medical equipment made to a health care facility by a related organization;
- 93 (14) A person providing specialized foster care personal care 94 services to one individual and those services are delivered in the 95 provider's home;
- 96 (15) A hospital converting the use of beds except a hospital 97 may not convert a bed to a skilled nursing home bed and 98 conversion of beds may not result in a substantial change to 99 health services provided by the hospital;
- 100 (16) The construction, renovation, maintenance or operation 101 of a state owned veterans skilled nursing facilities established 102 pursuant to the provisions of article one-b of this chapter;

- 103 (17) A nonprofit community group designated by a county 104 to develop and operate a nursing home bed facility with no more 105 than thirty-six beds in any county in West Virginia that currently 106 is without a skilled nursing facility;
- 107 (18) A critical access hospital, designated by the state as a 108 critical access hospital, after meeting all federal eligibility 109 criteria, previously licensed as a hospital and subsequently 110 closed, if it reopens within ten years of its closure;
- 111 (19) The establishing of a heath care facility or offering of 112 health services for children under one year of age suffering from 113 Neonatal Abstinence Syndrome;
- 114 (20) The construction, development, acquisition or other 115 establishment of community mental health and intellectual 116 disability facility;
- 117 (21) Providing behavioral health services;
- 118 (22) The construction, development, acquisition or other 119 establishment of kidney disease treatment centers, including 120 freestanding hemodialysis units but only to a medically 121 underserved population;
- 122 (23) The transfer or acquisition of intermediate care or 123 skilled nursing beds from an existing health care facility to a 124 nursing home providing intermediate care and skilled nursing 125 services.
- 126 (24) The construction, development, acquisition or other 127 establishment by a health care facility of a nonhealth related 128 project;
- 129 (25) A facility owned or operated by one or more health 130 professionals authorized or organized pursuant to chapter thirty 131 or ambulatory health care facility which offers laboratory or

- imaging services to patients regardless of the cost associated
- with the proposal. To qualify for this exemption seventy five
- 134 percent of the laboratory services are for the patients of the
- practice or ambulatory health care facility of the total laboratory
- 136 services performed and seventy-five percent of imaging services
- are for the patients of the practice or ambulatory health care
- 138 facility of the total imaging services performed;
- 139 (26) The construction, development, acquisition or other
- 140 establishment of an alcohol or drug treatment facility and drug
- 141 and alcohol treatment services unless the construction,
- 142 development, acquisition or other establishment is an opioid
- treatment facility or programs as set forth in subdivision (4) of
- 144 section nine of this article;
- 145 (27) Assisted living facilities and services; and
- 146 (28) The creation, construction, acquisition or expansion of
- 147 a community-based nonprofit organization with a community
- 148 board that provides or will provide primary care services to
- 149 people without regard to ability to pay and receives approval
- 150 from the Health Resources and Services Administration.

#### §16-2D-12. Minimum criteria for certificate of need reviews.

- 1 (a) A certificate of need may only be issued if the proposed
- 2 health service is:
- 3 (1) Found to be needed; and
- 4 (2) Consistent with the state health plan, unless there are
- 5 emergency circumstances that pose a threat to public health.
- 6 (b) The authority may not grant a certificate of need unless,
- 7 after consideration of the appropriateness of the use of existing
- 8 facilities within this state providing services similar to those
- 9 being proposed, the authority makes each of the following
- 10 findings in writing:

- 11 (1) That superior alternatives to the services in terms of cost, 12 efficiency and appropriateness do not exist within this state and 13 the development of alternatives is not practicable;
- 14 (2) That existing facilities providing services within this 15 state similar to those proposed are being used in an appropriate 16 and efficient manner;
- 17 (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; and
- 21 (4) That patients will experience serious problems in 22 obtaining care within this state of the type proposed in the 23 absence of the proposed health service.
- (c) In addition to the written findings required in this section,
   the authority shall make a written finding regarding the extent to
   which the proposed health service meets the needs of the
   medically underserved population, except in the following cases:
- 28 (1) Where the proposed health service is one described in 29 subsection (d) of this section to eliminate or prevent certain 30 imminent safety hazards or to comply with certain licensure or 31 accreditation standards; or
  - (2) Where the proposed health service is a proposed capital expenditure not directly related to the provision of health services or to beds or to major medical equipment.

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35 (d) Notwithstanding the review criteria in subsection (b), an 36 application for a certificate of need shall be approved, if the 37 authority finds that the facility or service with respect to which 38 such capital expenditure is proposed to be made is needed and 39 that the obligation of such capital expenditure is consistent with 40 the state health plan, for a capital expenditure which is required:

- 41 (1) To eliminate or prevent imminent safety hazards as 42 defined by federal, state or local fire building or life safety 43 codes, statutes or rules.
- 44 (2) To comply with state licensure standards; or
- (3) To comply with accreditation or certification standards.
   Compliance with which is required to receive reimbursement
   under Title XVIII of the Social Security Act or payments under
   the state plan for medical assistance approved under Title XIX
- 49 of such act.
- 50 (e) In the case where an application is made by a health care 51 facility to provide ventilator services which have not previously been provided for a nursing facility bed, the authority shall 52 53 consider the application in terms of the need for the service and whether the cost exceeds the level of current Medicaid services. 54 A facility providing ventilator services, may not provide a higher 55 level of services for a nursing facility bed without demonstrating 56 57 that the change in level of service by provision of the additional
- 58 ventilator services will result in no additional fiscal burden to the
- 59 state.
- 60 (f) The authority shall consider the total fiscal liability to the state for a submitted application.
- 62 (g) Criteria for reviews may vary according to the purpose 63 for which a particular review is being conducted or the types of 64 health services being reviewed.
- 65 (h) An application for a certificate of need may not be made 66 subject to any criterion not contained in this article or in the 67 certificate of need standards.

#### §16-2D-13. Procedures for certificate of need reviews.

- 1 (a) An application for a certificate of need shall be submitted
- 2 to the authority prior to the offering or development of a
- 3 proposed health service.

- 4 (b) A person proposing a proposed health service shall:
- 5 (1) Submit a letter of intent ten days prior to submitting the
- 6 certificate of need application. The information required within
- 7 the letter of intent shall be detailed by the authority in legislative
- 8 rule;
- 9 (2) Submit the appropriate application fee;
- 10 (A) Up to \$1,500,000 a fee of \$1,500.00;
- 11 (B) From \$1,500,001 to \$5,000,000 a fee of \$5,000.00;
- 12 (C) From \$5,000,001 to 25,000,000 a fee of \$25,000.00; and
- 13 (D) From \$25,000,001 and above a fee of \$35,000.00.
- 14 (3) Submit to the Director of the Office of Insurance
- 15 Consumer Advocacy a copy of the application;
- 16 (c) The authority shall determine if the submitted application
- 17 is complete within ten days of receipt of the application. The
- 18 authority shall provide written notification to the applicant of
- 19 this determination. If the authority determines an application to
- 20 be incomplete, the authority may request additional information
- 21 from the applicant.
- 22 (d) Within five days of receipt of a letter of intent, the
- 23 authority shall provide notification to the public through a
- 24 newspaper of general circulation in the area where the health
- 25 service is being proposed and by placing of copy of the letter of
- 26 intent on its website. The newspaper notice shall contain a
- 27 statement that, further information regarding the application is
- 28 on the authority's web site.
- 29 (e) The authority may batch completed applications for
- 30 review on the fifteenth day of the month or the last day of month
- 31 in which the application is deemed complete.

- 32 (f) When the application is submitted, ten days after filing 33 the letter of intent, the application shall be placed on the 34 authority's website.
- 35 (g) An affected party has thirty days starting from the date 36 the application is batched to request the authority hold an 37 administrative hearing.
- 38 (1) A hearing order shall be approved by the authority within 39 fifteen days from the last day an affected person may requests an 40 administrative hearing on a certificate of need application.
- 41 (2) A hearing shall take place no later than three months 42 from that date the hearing order was approved by the authority.
- 43 (3) The authority shall conduct the administrative hearing in 44 accordance with administrative hearing requirements in article 45 five, chapter twenty-nine-a of this code.
- 46 (4) In the administrative hearing an affected person has the 47 right to be represented by counsel and to present oral or written 48 arguments and evidence relevant to the matter which is the 49 subject of the public hearing. An affected person may conduct 50 reasonable questioning of persons who make factual allegations 51 relevant to its certificate of need application.
- 52 (5) The authority shall maintain a verbatim record of the 33 administrative hearing.
- 54 (6) After the commencement of the administrative hearing 55 on the application and before a decision is made with respect to 56 it, there may be no ex parte contacts between:

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(A) The applicant for the certificate of need, any person acting on behalf of the applicant or holder of a certificate of need or any person opposed to the issuance of a certificate for the applicant; and

- 61 (B) Any person in the authority who exercises any 62 responsibility respecting the application.
- 63 (7) The authority may not impose fees to hold the 64 administrative hearing.
- 65 (8) The authority shall render a decision within forty-five days of the conclusion of the administrative hearing.
- 67 (h) If an administrative hearing is not conducted during the 68 review of an application, the authority shall provide a file closing 69 date five days after an affected party may no longer request an administrative hearing, after which date no other factual 70 71 information or evidence may be considered in the determination of the application for the certificate of need. A detailed 72 itemization of documents in the authority's file on a proposed 73 74 health service shall, on request, be made available by the authority at any time before the file closing date. 75
  - (i) The extent of additional information received by the authority from the applicant for a certificate of need after a review has begun on the applicant's proposed health service, with respect to the impact on the proposed health service and additional information which is received by the authority from the applicant, may be cause for the authority to determine the application to be a new proposal, subject to a new review cycle.

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- (j) The authority shall have five days to provide the written status update upon written request by the applicant or an affected person. The status update shall include the findings made in the course of the review and any other appropriate information relating to the review.
- (k) (1) The authority shall annually prepare and publish to its website, a status report of each ongoing and completed certificate of need application reviews.

- 91 (2) For a status report of an ongoing review, the authority 92 shall include in its report all findings made during the course of 93 the review and any other appropriate information relating to the 94 review
- 95 (3) For a status report of a completed review, the authority 96 shall include in its report all the findings made during the course 97 of the review and its detailed reasoning for its final decision.
- 98 (l) The authority shall provide for access by the public to all applications reviewed by the authority and to all other pertinent written materials essential to agency review.

### §16-2D-14. Procedure for an uncontested application for a certificate of need.

- 1 The authority shall review an uncontested certificate of need
- 2 application within sixty days from the date the application is
- 3 batched. An uncontested application is deemed approved if the
- 4 review is not completed within sixty days from the date the
- 5 application is batched, unless an extension, up to fifteen days is
- 6 requested by the applicant.

# §16-2D-15. Agency to render final decision; issue certificate of need; write findings; specify capital expenditure maximum.

- 1 (a) The authority shall render a final decision on an
- 2 application for a certificate of need in the form of an approval,
- 3 a denial or an approval with conditions. The final decision with
- 4 respect to a certificate of need shall be based solely on:
- 5 (1) The authority's review conducted in accordance with
- 6 procedures and criteria in this article and the certificate of need
- 7 standards; and
- 8 (2) The record established in the administrative hearing held
- 9 with respect to the certificate of need.

- (b) Approval with conditions does not give the authority the ability to mandate a health service not proposed by the health care facility. Issuance of a certificate of need or exemption may not be made subject to any condition unless the condition directly relates to criteria in this article, or in the certificate of need standards. Conditions may be imposed upon the operations of the health care facility for not longer than a three-year period.
- 17 (c) The authority shall send its decision along with written 18 findings to the person proposing the proposed health service or 19 exemption and shall make it available to others upon request.
- (d) In the case of a final decision to approve or approve with
   conditions a proposal for a proposed health service, the authority
   shall issue a certificate of need to the person proposing the
   proposed health service.
- 24 (e) The authority shall specify in the certificate of need the 25 maximum amount of capital expenditures which may be 26 obligated. The authority shall adopt legislative rules pursuant to section four to prescribe the method used to determine capital 27 expenditure maximums and a process to review 28 implementation of an approved certificate of need for a proposed 29 30 health service for which the capital expenditure maximum is 31 exceeded or is expected to be exceeded.

#### §16-2D-16. Appeal of certificate of need decision.

- 1 (a) The authority's final decision shall upon request of an 2 affected person be reviewed by the Office of Judges. The request
- 3 shall be received within thirty days after the date of the
- 4 authority's decision. The appeal hearing shall commence within
- 5 thirty days of receipt of the request.
- 6 (b) The office of judges shall conduct its proceedings in 7 conformance with the West Virginia Rules of Civil Procedure

- 8 for trial courts of record and the local rules for use in the civil
- 9 courts of Kanawha County and shall review appeals in
- 10 accordance with the provisions governing the judicial review of
- 11 contested administrative cases in article five, chapter
- 12 twenty-nine-a of this code.
- 13 (c) The decision of the office of judges shall be made in 14 writing within forty-five days after the conclusion of the hearing.
- 15 (d) The written findings of the office of judges shall be sent 16 to the person who requested the review, to the person proposing 17 the proposed health service and to the authority, and shall be
- 18 made available by the authority to others upon request.
- 19 (e) The decision of the office of judges shall be considered 20 the final decision of the authority; however, the office of judges 21 may remand the matter to the authority for further action or 22 consideration.
- 23 (f) Upon the entry of a final decision by the office of judges,
- 24 a person adversely affected by the review may within thirty days
- 25 after the date of the decision of the review agency make an
- 26 appeal in the circuit court of Kanawha County. The decision of
- 27 the office of judges shall be reviewed by the circuit court in
- 28 accordance with the provisions for the judicial review of
- 29 administrative decisions contained in article five, chapter
- 30 twenty-nine-a of this code.

### §16-2D-17. Nontransference, time period compliance and withdrawal of certificate of need.

- 1 (a) A certificate of need is nontransferable and is valid for a
- 2 maximum of one year from the date of issuance. Upon the
- 3 expiration of the certificate or during the certification period, the
- 4 person proposing the proposed health service shall provide the
- 5 authority information on the development of the project as the

- 6 authority may request. The authority shall periodically monitor
- 7 capital expenditures obligated under certificates, determine
- 8 whether sufficient progress is being made in meeting the
- 9 timetable specified in the approved application for the certificate
- 10 and whether there has been compliance with the application and
- 11 any conditions of certification. The certificate of need may be
- 12 extended by the authority for additional periods of time as are
- 13 reasonably necessary to expeditiously complete the project.
- 14 (b) A certificate of need may no longer be in effect, and may 15 no longer be required, after written notice of substantial 16 compliance with the approved application and any conditions of
- 17 certification is issued to the applicant, after the activity is
- 18 undertaken for which the certificate of need was issued, and after
- 19 the authority is provided written notice of such undertaking.
- 20 (c) A person proposing a proposed health service may not be
- 21 issued a license, if applicable, until the authority has issued a
- written notice of substantial compliance with the approved application and any conditions of certification, nor may a
- 24 proposed health service be used until the person has received
- 25 such notice. A proposed health service may not be found to be in
- 26 substantial compliance with the approved application and any
- 27 conditions of certification if there is a substantial change in the
- 28 approved proposed health service for which change a certificate
- 29 of need has not been issued.
- 30 (d) (1) A certificate of need may be withdrawn by the 31 authority for:
- 32 (A) Noncompliance with any conditions of certification;
- 33 (B) A substantial change in an approved proposed health
- 34 service for which change a certificate of need has not been
- 35 issued;
- 36 (C) Material misrepresentation by an applicant upon which
- 37 the authority relied in making its decision; or

- 38 (D) Other reasons that may be established by the authority 39 in legislative rules adopted pursuant to section four of this 40 article.
- 41 (2) Any decision of the authority to withdraw a certificate of 42 need shall be based solely on:
- 43 (A) The provisions of this article and on legislative rules 44 adopted in accordance with section four of this article; and
- 45 (B) The record established in administrative hearing held 46 with respect to the authority's proposal to withdraw the 47 certificate.
- 48 (3) In the case of a proposed withdrawal of a certificate of 49 need:
- 50 (A) After commencement of an administrative hearing on 51 the authority's proposal to withdraw a certificate of need and 52 before a decision is made on withdrawal, there may be no ex 53 parte contacts between:
- 54 (i) The holder of the certificate of need, any person acting on 55 behalf of the holder, or any person in favor of the withdrawal; 56 and
- 57 (ii) Any person in the authority who exercises responsibility 58 respecting withdrawal of the certificate;
- 59 (B) The authority shall follow the review procedure 60 established in section thirteen; and
- 61 (C) Appeals of withdrawals of certificates of need shall be 62 made pursuant to section sixteen of this article.
- (4) A proposed health service may not be acquired, offered,
   or developed within this state if a certificate of need authorizing

- 65 that proposed health service has been withdrawn by the authority
- and the acquisition, offering, or developing of the proposed
- 67 health service is subject to review under this article.

### §16-2D-18. Denial or revocation of license for operating without certificate.

1 A person who violates the provisions of this article is subject to denial or revocation of a license, in whole or in part, to 2 3 operate a proposed health service or health care facility. Upon a 4 showing to the authority that a person is offering or developing 5 a proposed health service without having first obtained a certificate of need or that a person is otherwise in violation of the 6 provisions of this article, the authority shall provide a person 7 with written notice which shall state the nature of the violation 8 9 and the time and place at which the person shall appear to show 10 good cause why its license should not be revoked or denied, at which time and place the person shall be afforded a reasonable 11 opportunity to present testimony and other evidence in support 12 of the person's position. If, thereafter, the authority determines 13 that the person's license to operate the health service or health 14 care facility should be revoked or denied, the authority shall 15 issue a written order to the appropriate licensing agency of the 16 state, requiring that the person's license to operate the proposed 17 health service or health care facility be revoked or denied. The 18 19 order is binding upon the licensing agency.

#### §16-2D-19. Injunctive relief; civil penalty.

- 1 (a) A person who acquires, offers or develops a proposed
- 2 health service for which a certificate of need is required without
- 3 first having a certificate of need therefore or violates any other
- 4 provision of this article, or any legislative rule promulgated
- 5 thereunder, the authority may maintain a civil action in the
- 6 circuit court of the county where the violation has occurred, or
- 7 where the person may be found, to enjoin, restrain or prevent the
- 8 violation. An injunction bond is not required to be filed.

- 9 (b) The authority may assess a civil penalty for violation of 10 this article.
- 11 (c) Upon the authority determining that there is probable 12 cause to believe that a person is in violation of the provisions of 13 this article, or any lawful rule promulgated thereunder, the authority shall provide the person with written notice which 14 states the nature of the alleged violation and the time and place 15 16 at which an administrative hearing shall take place. The hearing 17 shall be conducted in accordance with the administrative hearing 18 provisions of article five, chapter twenty-nine-a of this code.
- (d) If the authority determines that the person is in violation
  of the provisions of this article or legislative rule, the authority
  shall assess a civil penalty of not less than \$500 nor more than
  \$25,000.
  - (e) In determining the amount of the penalty, the authority shall consider the degree and extent of harm caused by the violation and the cost of rectifying the damage.
- 26 (f) A person assessed shall be notified of the assessment in 27 writing, and the notice shall specify the reasons for the assessment. If the person assessed fails to pay the amount of the 28 29 assessment to the authority within thirty days, the authority may institute a civil action in the circuit court of the county where the 30 31 violation has occurred, or where the person may be found to 32 recover the amount of the assessment. In the civil action, the 33 scope of the court's review of the authority's action, which shall include a review of the amount of the assessment, shall be as 34 35 provided in article five, chapter twenty-nine-a of this code for the judicial review of contested administrative cases. 36

#### §16-2D-20. Statute of limitations.

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- 1 The authority has a period of three years to correct violations
- 2 of the provisions of this article. The three-year period begins

- 3 from the date the authority knows or should have known of the
- 4 violation. Each new act of a continuing violation shall provide
- 5 a basis for restarting the calculation of the limitations period.

# CHAPTER 196

(Com. Sub. for S. B. 10 - By Senators Sypolt, Ferns, Gaunch, Karnes, Leonhardt, Trump, Walters, Boley, Boso, Takubo and Blair)

[Passed February 29, 2016; in effect ninety days from passage. Vetoed by the Governor. Repassed notwithstanding the objections of the Governor, March 10, 2016]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §16-2O-1, relating to prohibiting certain abortions; defining terms; prohibiting dismemberment abortions; 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; providing an exception; 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 providing for certain construction of this section.

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 §16-2O-1, to read as follows:

## ARTICLE 20. UNBORN CHILD PROTECTION FROM DISMEMBERMENT ABORTION ACT.

## §16-20-1. Unborn Child Protection from Dismemberment Abortion Act.

- 1 (a) *Definitions*. For purposes of this section:
- 2 (1) "Abortion" means the same as that term is defined in section two, article two-f, chapter sixteen of this code.
- 4 (2) "Attempt to perform an abortion" means the same as that
- 5 term is defined in section two, article two-m, chapter sixteen of
- 6 this code.
- 7 (3) "Dismemberment abortion" means, with the purpose of
- 8 causing the death of an unborn child, purposely to dismember a
- 9 living unborn child and extract him or her one piece at a time
- 10 from the uterus through use of clamps, grasping forceps, tongs,
- 11 scissors or similar instruments that, through the convergence of
- 12 two rigid levers, slice, crush or grasp a portion of the unborn
- 13 child's body to cut or rip it off. The term "dismemberment
- 14 abortion" includes an abortion in which a dismemberment
- 15 abortion is performed to cause the death of an unborn child but
- 16 suction is subsequently used to extract fetal parts after the death
- 17 of the unborn child. The term "dismemberment abortion" does
- 18 not include an abortion which uses suction to dismember the
- 19 body of the unborn child by sucking fetal parts into a collection
- 20 container, an abortion following fetal demise which uses a
- 21 suction curette, suction curettage or forceps to dismember the
- 22 body of a dead unborn child, or when forceps are used following
- 23 an induced fetal demise by other means.
- 24 (4) "Medical emergency" means the same as that term is
- 25 defined in section two, article two-m, chapter sixteen of this
- 26 code.

- 27 (5) "Physician" means the same as that term is defined in section two, article two-m, chapter sixteen of this code.
- 29 (6) "Reasonable medical judgement" means the same as that 30 term is defined in section two, article two-M, chapter sixteen of 31 this code.
- 32 (7) "Woman" means a female human being whether or not 33 she has reached the age of majority.

#### 34 (b) *Prohibition*. —

35 No person may perform, or attempt to perform, a dismemberment abortion as defined in this section, unless in 36 reasonable medical judgment the woman has a condition that, on 37 38 the basis of reasonable medical judgment, so complicates her 39 medical condition as to necessitate the abortion of her pregnancy to avert her death or to avert serious risk of substantial and 40 41 irreversible physical impairment of a major bodily function, not including psychological or emotional conditions. No condition 42 may be deemed a medical emergency if based on a claim or 43 diagnosis that the woman will engage in conduct which she 44 intends to result in her death or in substantial and irreversible 45 46 physical impairment of a major bodily function.

#### 47 (c) Enforcement. —

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- (1) 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.
- 55 (2) Any person, not subject to subdivision (1) of this subsection, who intentionally or recklessly performs or induces

- 57 an abortion in violation of this article is considered to have
- 58 engaged in the unauthorized practice of medicine in violation of
- 59 section thirteen, article three, chapter thirty of this code, and,
- 60 upon conviction, subject to the penalties contained in that
- 61 section.
- 62 (3) In addition to the penalties set forth in subdivisions (1)
- and (2) of this section, a patient may seek any remedy otherwise
- 64 available to such patient by applicable law.
- 65 (4) No penalty may be assessed against any patient upon
- 66 whom an abortion is performed or induced or attempted to be
- 67 performed or induced.
- 68 (d) Miscellaneous Provisions. —
- 69 (1) This section does not prevent an abortion by any other
- 70 method for any reason including rape and incest.
- 71 (2) Nothing in this section may be construed as creating or
- 72 recognizing a right to abortion, nor a right to a particular method
- 73 of abortion



#### **CHAPTER 197**

(Com. Sub. for S. B. 404 - By Senators Ferns, Plymale, Stollings and Prezioso)

[Passed March 12, 2016; in effect ninety days from passage.] [Approved by the Governor on March 29, 2016.]

AN ACT to amend and reenact \$16-3C-2 of the Code of West Virginia, 1931, as amended; and to amend and reenact \$16-4-19 of said code, all relating to testing for HIV and sexually transmitted

diseases; authorizing billing of persons for HIV and sexually transmitted disease testing or sexually transmitted disease treatment done by state or local public health agencies; informing persons who wish to opt-out of HIV-related testing that anonymous testing is available; providing that costs associated with testing may be borne by the state when the person charged with certain sex crimes is financially unable to pay; authorizing billing of a person charged with certain sex crimes health insurance provider; providing for mandatory disease testing when a person renders or receives certain services and comes in contact with infected bodily fluids; providing that the costs for mandated testing and counseling are to be paid by the individual receiving the tests or counseling; providing that a person who is tested for sexually transmitted diseases at a local health department are responsible for the costs of such testing; providing for fee schedules by which local health departments may charge for such testing; removing limitation on amount that can be charged for medication used to treat sexually transmitted diseases; and removing language related to testing of sexually transmitted diseases.

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

That §16-3C-2 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that §16-4-19 of said code be amended and reenacted, all to read as follows:

# ARTICLE 3C. AIDS-RELATED MEDICAL TESTING AND RECORDS CONFIDENTIALITY ACT.

# §16-3C-2. HIV-related testing; methods for obtaining consent; billing patient health care providers.

- 1 (a) HIV-related testing should be recommended by
- 2 healthcare providers as part of a routine screening for treatable
- 3 conditions and as part of routine prenatal and perinatal care. A

- 4 physician, dentist, nurse practitioner, nurse midwife, physician
- 5 assistant or the commissioner may also request targeted testing
- 6 for any of the following:
- 7 (1) When there is cause to believe that the test could be
- 8 positive. Persons who engage in high-risk behavior should be
- 9 encouraged to be screened for HIV at least annually;
- 10 (2) When there is cause to believe that the test could provide information important in the care of the patient; or
- 12 (3) When there is cause to believe that the results of
- 13 HIV-testing of samples of blood or body fluids from a source
- 14 patient could provide information important in the care of
- 15 medical or emergency responders or other persons identified in
- 16 rules proposed by the department for approval by the Legislature
- 17 in accordance with the provisions of article three, chapter
- 18 twenty-nine-a of this code: *Provided*, That the source patient
- to their, line a of any code, 1707, act, 1 the source patrent
- 19 whose blood or body fluids is being tested pursuant to this
- 20 section must have come into contact with a medical or
- 21 emergency responder or other person in such a way that a
- 22 significant exposure has occurred;
- 23 (4) When there is no record of any HIV-related or other
- 24 sexually transmitted disease testing during pregnancy and the
- 25 woman presents for labor and delivery.
- 26 (b) All health care providers, the bureau or a local health
- 27 department that routinely bill insurance companies or other
- 28 third-party providers may bill for HIV-related testing and
- 29 treatment.
- 30 (c) A patient consents to HIV-related testing when:
- 31 (1) The patient is informed either orally or in writing that:
- 32 (A) HIV-related testing will be performed as part of his or
- 33 her routine care;

(A) A human body part, including tissue and blood or blood

(i) A purpose specified under the uniform anatomical gift

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act: or

products, donated for:

62 (ii) Transplant recipients;

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- 63 (B) Semen provided for the purpose of artificial 64 insemination and an HIV-related test is necessary to ensure 65 medical acceptability of a recipient or such gift or semen for the 66 purposes intended;
  - (2) A person is unable or unwilling to grant or withhold consent as the result of a documented bona fide medical emergency, as determined by a treating physician taking into account the nature and extent of the exposure to another person and the HIV-related test results are necessary for medical diagnostic purposes to provide appropriate emergency care or treatment to a medical or emergency responder, or any other person who has come into contact with a source patient in such a way that a significant exposure necessitates HIV testing or to a source patient who is unable to consent in accordance with rules proposed by the department for approval by the Legislature in accordance with article three, chapter twenty-nine-a of this code: Provided, That necessary treatment may not be withheld pending HIV test results: *Provided*, *however*, That all sampling and HIV testing of samples of blood and body fluids, without the opportunity for the source patient or patient's representative to opt-out of the testing, shall be through the use of a pseudonym and in accordance with rules proposed by the department for approval by the Legislature in accordance with article three, chapter twenty-nine-a of this code; or
- 87 (3) The performance of an HIV-related test for the purpose 88 of research if the testing is performed in a manner by which the 89 identity of the test subject is not known and may not be retrieved 90 by the researcher.
- 91 (h) Mandated testing:
- 92 (1) The performance of any HIV-related testing that is or 93 becomes mandatory by court order or other legal process

- 94 described herein does not require consent of the subject but will95 include counseling.
- 96 (2) The court having jurisdiction of the criminal prosecution 97 shall order that an HIV-related test be performed on any persons 98 charged with any of the following crimes or offenses:
- 99 (i) Prostitution; or

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- 100 (ii) Sexual abuse, sexual assault, incest or sexual 101 molestation.
- 102 (3) HIV-related tests performed on persons charged with 103 prostitution, sexual abuse, sexual assault, incest or sexual 104 molestation shall be confidentially administered by a designee 105 of the bureau or the local or county health department having 106 proper jurisdiction. The commissioner may designate health care providers in regional jail facilities to administer HIV-related 107 108 tests on such persons if he or she determines it necessary and 109 expedient.
- (4) Costs associated with tests performed on persons charged with prostitution, sexual abuse, sexual assault, incest or sexual molestation may be charged to the defendant or juvenile respondent unless a court determines that the person charged with prostitution, sexual abuse, sexual assault, incest or sexual molestation is pecuniary unable to pay.
  - (A) If a person charged with prostitution, sexual abuse, sexual assault, incest or sexual molestation who is ordered to be tested is unable to pay, the cost of the HIV testing may be borne by the regional jail or other correctional or juvenile facility, the bureau or the local health department.
- 121 (B) If persons charged with prostitution, sexual abuse, sexual 122 assault, incest or sexual molestation who is ordered to be tested 123 has health insurance, the local health department or other

- 124 providers performing the test may bill the health insurance of the
- 125 person charged with prostitution, sexual abuse, sexual assault,
- incest or sexual molestation for the cost of the test.
- 127 (C) A person charged with prostitution, sexual abuse, sexual assault, incest or sexual molestation ordered to submit to a HIV-related test may not be permitted to remain anonymous and a local health department may administer and bill for the test.
- (5) When the Commissioner of the Bureau of Public Health 131 132 knows or has reason to believe, because of medical or 133 epidemiological information, that a person, including, but not 134 limited to, a person such as an IV drug abuser, or a person who 135 may have a sexually transmitted disease, or a person who has 136 sexually molested, abused or assaulted another, has HIV 137 infection and is or may be a danger to the public health, he or she 138 may issue an order to:
- (i) Require a person to be examined and tested to determine whether the person has HIV infection;
- 141 (ii) Require a person with HIV infection to report to a 142 qualified physician or health worker for counseling; and
- (iii) Direct a person with HIV infection to cease and desistfrom specified conduct which endangers the health of others.
- 145 (6) If any person violates a cease and desist order issued 146 pursuant to this section and, by virtue of that violation, the 147 person presents a danger to the health of others, the 148 commissioner shall apply to the circuit court of Kanawha County 149 to enforce the cease and desist order by imposing any restrictions 150 upon the person that are necessary to prevent the specific 151 conduct that endangers the health of others.
- 152 (7) A person convicted of the offenses described in this 153 section shall be required to undergo HIV-related testing and

154 counseling immediately upon conviction and the court having jurisdiction of the criminal prosecution may not release the 155 convicted person from custody and shall revoke any order 156 admitting the defendant to bail until HIV-related testing and 157 158 counseling have been performed and the result is known. The 159 HIV-related test result obtained from the convicted person is to 160 be transmitted to the court and, after the convicted person is 161 sentenced, made part of the court record. If the convicted person 162 is placed in the custody of the Division of Corrections, the court 163 shall transmit a copy of the convicted person's HIV-related test 164 results to the Division of Corrections. The HIV-related test 165 results shall be closed and confidential and disclosed by the 166 court and the bureau only in accordance with the provisions of 167 section three of this article.

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- (8) The prosecuting attorney shall inform the victim, or parent or guardian of the victim, at the earliest stage of the proceedings of the availability of voluntary HIV-related testing and counseling conducted by the bureau and that his or her best health interest would be served by submitting to HIV-related testing and counseling. HIV-related testing for the victim shall be administered at his or her request on a confidential basis and shall be administered in accordance with the Centers for Disease Control and Prevention guidelines of the United States Public Health Service in effect at the time of such request. The victim who obtains an HIV-related test shall be provided with pre and post-test counseling regarding the nature, reliability and significance of the HIV-related test and the confidential nature of the test. HIV-related testing and counseling conducted pursuant to this subsection shall be performed by the designee of the commissioner of the bureau or by any local or county health department having proper jurisdiction.
- (9) If a person receives counseling or is tested under this subsection and is found to be HIV infected and the person is not incarcerated, the person shall be referred by the health care

188 provider performing the counseling or testing for appropriate medical care and support services. The local or county health 189 departments or any other agency under this subsection may not 190 191 be financially responsible for medical care and support services.

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- (10) The commissioner of the bureau or his or her designees may require a person to undergo an HIV or other sexually transmitted disease test if a person was possibly exposed to HIV or other sexually transmitted disease infected blood or other body fluids as a result of receiving or rendering emergency medical aid, providing funeral services or providing law-enforcement services. The commissioner of the bureau or his or her designees may use the results to determine the appropriate therapy, counseling and psychological support for the exposed person.
- 202 (11) If an HIV-related test required on persons convicted of 203 prostitution, sexual abuse, sexual assault, incest or sexual 204 molestation results in a negative reaction, upon motion of the 205 state, the court having jurisdiction over the criminal prosecution 206 may require the subject of the test to submit to further HIV-related tests performed under the direction of the bureau in 207 208 accordance with the Centers for Disease Control and Prevention 209 guidelines of the United States Public Health Service in effect at 210 the time of the motion of the state.
- (12) The costs of mandated testing and counseling provided 212 under this subsection and pre and postconviction HIV-related 213 testing and counseling provided the victim under the direction of 214 the bureau pursuant to this subsection shall be paid by the by the 215 individual to be tested or counseled or his or her medical 216 insurance provider, if possible.
- 217 (13) The court having jurisdiction of the criminal prosecution shall order a person convicted of prostitution, sexual 218 219 abuse, sexual assault, incest or sexual molestation to pay

- 220 restitution to the state or the victim for the costs of any
- 221 HIV-related testing and counseling provided the convicted
- 222 person and the victim, unless the court has determined the
- 223 convicted person to be indigent.
- 224 (14) Any funds recovered by the state as a result of an award
- 225 of restitution under this subsection shall be paid into the State
- 226 Treasury to the credit of a special revenue fund to be known as
- 227 the HIV-testing Fund which is hereby created. The moneys so
- 228 credited to the fund may be used solely by the bureau for the
- 229 purposes of facilitating the performance of HIV-related testing
- and counseling under the provisions of this article.
- 231 (i) Nothing in this section is applicable to any insurer
- 232 regulated under chapter thirty-three of this code: *Provided*, That
- 233 the commissioner of insurance shall develop standards regarding
- 234 consent for use by insurers which test for the presence of the
- 235 HIV antibody.
- 236 (j) Whenever consent of the subject to the performance of
- 237 HIV-related testing is required under this article, any such
- 238 consent obtained, whether orally or in writing, shall be
- 239 considered to be a valid and informed consent if it is given after
- 240 compliance with the provisions of subsection (c) of this section.

#### ARTICLE 4. SEXUALLY TRANSMITTED DISEASES.

# §16-4-19. Voluntary submission to examination and treatment; charges; disposition of money collected.

- 1 (a)(1) Any person may report to any municipal or county
- 2 health department and voluntarily submit himself or herself to all
- 3 tests and examinations necessary to ascertain whether he or she
- 4 is infected with a sexually transmitted disease; and the health
- 5 department shall conduct and administer all necessary tests and
- 6 examinations to ascertain whether the person has any sexually
- 7 transmitted disease

- 8 (2) A person who is tested for sexually transmitted diseases 9 at a local health department pursuant to this subsection shall be 10 responsible for paying the reasonable costs of testing, either 11 directly or through billing the person's medical provider.
- 12 (3) Local health departments may charge in accordance with 13 their existing fee schedules and may charge patients for such 14 testing on a sliding fee scale.
- (b)(1) If tests and examinations show a person tested and examined pursuant to subsection (a) of this section to have a sexually transmitted disease, then the person shall elect whether he or she will take treatment from a private physician, or whether he or she will take treatment from the local health department.
- 21 (2) If a person elects to take treatment through the local 22 health department, he or she may be required to pay for such 23 treatment either directly or by the local health department billing 24 the person's health insurance provider.
- 25 (3) Local health departments may charge in accordance with 26 their existing fee schedules and may charge patients for 27 treatment on a sliding fee scale.
- (4) No individual may be refused treatment at a local healthdepartment due to a lack of insurance or inability to pay.
- 30 (c) All proper charges for examination and treatment that 31 may be necessary pursuant to this section shall be paid by the 32 individual or by that person's health insurance provider.
- (d) All money collected under this section shall be paid to
   the local health department and the local health officer having
   jurisdiction shall collect and account for such funds collected
   hereunder.



(S. B. 123 - By Senator Stollings)

[Passed February 16, 2015; in effect ninety days from passage.] [Approved by the Governor on February 25, 2016.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §16-4F-1, §16-4F-2, §16-4F-3, §16-4F-4 and §16-4F-5; to amend and reenact §30-3-14 of said code; to amend and reenact §30-3E-17 of said code; to amend and reenact §30-5-14 of said code; to amend and reenact §30-7-11 of said code; and to amend and reenact §30-14-11 of said code, all relating to treatment for sexually transmitted diseases; providing for expedited partner therapy; defining terms; allowing prescribing of antibiotics to sexual partners of patient without prior examination of partner; requiring patient counseling; establishing counseling criteria; requiring informational materials be prepared by the Department of Health and Human Resources; providing limited liability for providing expedited partnership therapy; requiring rulemaking; and providing that physicians, physician assistants, pharmacists and advanced practice registered nurses are not subject to disciplinary action for providing certain treatment for sexually transmitted diseases for sexual partners of patient.

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 §16-4F-1, §16-4F-2, §16-4F-3, §16-4F-4 and §16-4F-5; that §30-3-14 of said code be amended and reenacted; that §30-3E-17 of said code be amended and reenacted; that §30-5-14 of said code be amended and reenacted; that §30-7-11 of said code be amended and reenacted; and that §30-14-11 of said code be amended and reenacted, all to read as follows:

#### **CHAPTER 16. PUBLIC HEALTH.**

#### ARTICLE 4F. EXPEDITED PARTNER THERAPY.

#### §16-4F-1. Definitions.

- 1 As used in this article, unless the context otherwise
- 2 indicates, the following terms have the following meanings:
- 3 (1) "Department" means the West Virginia Department of
- 4 Health and Human Resources.
- 5 (2) "Expedited partner therapy" means prescribing,
- 6 dispensing, furnishing or otherwise providing prescription
- 7 antibiotic drugs to the sexual partner or partners of a person
- 8 clinically diagnosed as infected with a sexually transmitted
- 9 disease without physical examination of the partner or partners.
- 10 (3) "Health care professional" means:
- 11 (A) An allopathic physician licensed pursuant to article
- 12 three, chapter thirty of this code;
- 13 (B) An osteopathic physician licensed pursuant to article
- 14 fourteen, chapter thirty of this code;
- 15 (C) A physician assistant licensed pursuant to section four,
- 16 article three-e, chapter thirty of this code;
- 17 (D) An advanced practice registered nurse authorized with
- 18 prescriptive authority pursuant to section fifteen-a, article seven,
- 19 chapter thirty of this code; or
- 20 (E) A pharmacist licensed pursuant to article five, chapter
- 21 thirty of this code.
- 22 (4) "Sexually transmitted disease" means a disease that may
- 23 be treated by expedited partner therapy as determined by rule of
- 24 the department.

#### §16-4F-2. Expedited partner therapy.

- 1 (a) Notwithstanding any other provision of law to the 2 contrary, a health care professional who makes a clinical 3 diagnosis of a sexually transmitted disease may provide 4 expedited partner therapy for the treatment of the sexually 5 transmitted disease if, in the judgment of the health care 6 professional, the sexual partner is unlikely or unable to present 7 for comprehensive health care, including evaluation, testing and 8 treatment for sexually transmitted diseases. Expedited partner 9 therapy is limited to a sexual partner who may have been 10 exposed to a sexually transmitted disease within the previous
- 12 (b) Any health care professional who provides expedited 13 partner therapy shall comply with all necessary provisions of 14 article four of this chapter.

sixty days and who is able to be contacted by the patient.

15 (c) A health care professional who provides expedited partner therapy shall provide counseling for the patient, 16 17 including advice that all women and symptomatic persons, and in particular women with symptoms suggestive of pelvic 18 inflammatory disease, are encouraged to seek medical attention. 19 20 The health care professional shall also provide in written or electronic format materials provided by the department to be 21 22 given by the patient to his or her sexual partner.

#### §16-4F-3. Informational materials.

- 1 (a) The department shall provide information and technical 2 assistance as appropriate to health care professionals who
- 3 provide expedited partner therapy. The department shall develop
- 4 and disseminate in electronic and other formats the following
- 5 written materials:

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6 (1) Informational materials for sexual partners, as described 7 in subsection (c), section two of this article:

- 8 (2) Informational materials for persons who are repeatedly
- 9 diagnosed with sexually transmitted diseases; and
- 10 (3) Guidance for health care professionals on the safe and 11 effective provision of expedited partner therapy.
- 12 (b) The department may offer educational programs about
- 13 expedited partner therapy for health care professionals.

#### §16-4F-4. Limitation of liability.

- 1 (a) A health care professional who provides expedited
- 2 partner therapy in good faith without fee or compensation under
- 3 this article and provides counseling and written materials as
- 4 required in subsection (c), section two of this article is not
- 5 subject to civil or professional liability in connection with the
- 6 provision of the therapy, counseling and materials, except in the
- 7 case of gross negligence or willful and wanton misconduct. A
- 8 health care professional is not subject to civil or professional
- 9 liability for choosing not to provide expedited partner therapy.
- 10 (b) A pharmacist or pharmacy is not subject to civil or
- 11 professional liability for choosing not to fill a prescription that
- 12 would cause that pharmacist or pharmacy to violate any
- 13 provision of article five, chapter thirty of this code.

#### §16-4F-5. Rulemaking.

- 1 The Secretary of the Department of Health and Human
- 2 Resources shall propose rules for legislative approval in
- 3 accordance with article three, chapter twenty-nine-a of this code
- 4 to designate certain diseases as sexually transmitted diseases
- 5 which may be treated by expedited partner therapy. The
- 6 department shall consider the recommendations and
- 7 classifications of the federal Department of Health and Human
- 8 Services, Centers for Disease Control and Prevention and other

9 nationally recognized medical authorities in making these 10 designations.

#### CHAPTER 30. PROFESSIONS AND OCCUPATIONS.

#### ARTICLE 3. WEST VIRGINIA MEDICAL PRACTICE ACT.

- §30-3-14. Professional discipline of physicians and podiatrists; reporting of information to board pertaining to medical professional liability and professional incompetence required; penalties; grounds for license denial and discipline of physicians and podiatrists; investigations; physical and mental examinations; hearings; sanctions; summary sanctions; reporting by the board; reapplication; civil and criminal immunity; voluntary limitation of license; probable cause determinations.
  - 1 (a) The board may independently initiate disciplinary
  - 2 proceedings as well as initiate disciplinary proceedings based on
  - 3 information received from medical peer review committees,
  - 4 physicians, podiatrists, hospital administrators, professional
  - 5 societies and others.
  - 6 The board may initiate investigations as to professional
  - 7 incompetence or other reasons for which a licensed physician or
  - 8 podiatrist may be adjudged unqualified based upon criminal
  - 9 convictions; complaints by citizens, pharmacists, physicians,
  - 10 podiatrists, peer review committees, hospital administrators,
  - 11 professional societies or others; or unfavorable outcomes arising
  - 12 out of medical professional liability. The board shall initiate an
  - 13 investigation if it receives notice that three or more judgments,
  - 14 or any combination of judgments and settlements resulting in
  - 15 five or more unfavorable outcomes arising from medical
  - 16 professional liability have been rendered or made against the
  - 17 physician or podiatrist within a five-year period. The board may

18 not consider any judgments or settlements as conclusive 19 evidence of professional incompetence or conclusive lack of 20 qualification to practice.

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49 50 (b) Upon request of the board, any medical peer review committee in this state shall report any information that may relate to the practice or performance of any physician or podiatrist known to that medical peer review committee. Copies of the requests for information from a medical peer review committee may be provided to the subject physician or podiatrist if, in the discretion of the board, the provision of such copies will not jeopardize the board's investigation. In the event that copies are provided, the subject physician or podiatrist is allowed fifteen days to comment on the requested information and such comments must be considered by the board.

The chief executive officer of every hospital shall, within sixty days after the completion of the hospital's formal disciplinary procedure and also within sixty days after the commencement of and again after the conclusion of any resulting legal action, report in writing to the board the name of any member of the medical staff or any other physician or podiatrist practicing in the hospital whose hospital privileges have been revoked, restricted, reduced or terminated for any cause, including resignation, together with all pertinent information relating to such action. The chief executive officer shall also report any other formal disciplinary action taken against any physician or podiatrist by the hospital upon the recommendation of its medical staff relating to professional ethics, medical incompetence, medical professional liability, moral turpitude or drug or alcohol abuse. Temporary suspension for failure to maintain records on a timely basis or failure to attend staff or section meetings need not be reported. Voluntary cessation of hospital privileges for reasons unrelated to professional competence or ethics need not be reported.

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Any managed care organization operating in this state which provides a formal peer review process shall report in writing to the board, within sixty days after the completion of any formal peer review process and also within sixty days after the commencement of and again after the conclusion of any resulting legal action, the name of any physician or podiatrist whose credentialing has been revoked or not renewed by the managed care organization. The managed care organization shall also report in writing to the board any other disciplinary action taken against a physician or podiatrist relating to professional ethics, professional liability, moral turpitude or drug or alcohol abuse within sixty days after completion of a formal peer review process which results in the action taken by the managed care organization. For purposes of this subsection, "managed care organization" means a plan that establishes, operates or maintains a network of health care providers who have entered into agreements with and been credentialed by the plan to provide health care services to enrollees or insureds to whom the plan has the ultimate obligation to arrange for the provision of or payment for health care services through organizational arrangements for ongoing quality assurance, utilization review programs or dispute resolutions.

Any professional society in this state comprised primarily of physicians or podiatrists which takes formal disciplinary action against a member relating to professional ethics, professional incompetence, medical professional liability, moral turpitude or drug or alcohol abuse shall report in writing to the board within sixty days of a final decision the name of the member, together with all pertinent information relating to the action.

Every person, partnership, corporation, association, insurance company, professional society or other organization providing professional liability insurance to a physician or podiatrist in this state, including the State Board of Risk and Insurance Management, shall submit to the board the following

information within thirty days from any judgment or settlement of a civil or medical professional liability action excepting product liability actions: The name of the insured; the date of any judgment or settlement; whether any appeal has been taken on the judgment and, if so, by which party; the amount of any settlement or judgment against the insured; and other information required by the board.

Within thirty days from the entry of an order by a court in a medical professional liability action or other civil action in which a physician or podiatrist licensed by the board is determined to have rendered health care services below the applicable standard of care, the clerk of the court in which the order was entered shall forward a certified copy of the order to the board.

Within thirty days after a person known to be a physician or podiatrist licensed or otherwise lawfully practicing medicine and surgery or podiatry in this state or applying to be licensed is convicted of a felony under the laws of this state or of any crime under the laws of this state involving alcohol or drugs in any way, including any controlled substance under state or federal law, the clerk of the court of record in which the conviction was entered shall forward to the board a certified true and correct abstract of record of the convicting court. The abstract shall include the name and address of the physician or podiatrist or applicant, the nature of the offense committed and the final judgment and sentence of the court.

Upon a determination of the board that there is probable cause to believe that any person, partnership, corporation, association, insurance company, professional society or other organization has failed or refused to make a report required by this subsection, the board shall provide written notice to the alleged violator stating the nature of the alleged violation and the time and place at which the alleged violator shall appear to show

118 good cause why a civil penalty should not be imposed. The 119 hearing shall be conducted in accordance with article five, 120 chapter twenty-nine-a of this code. After reviewing the record of 121 the hearing, if the board determines that a violation of this 122 subsection has occurred, the board shall assess a civil penalty of 123 not less than \$1,000 nor more than \$10,000 against the violator. 124 The board shall notify any person so assessed of the assessment 125 in writing and the notice shall specify the reasons for the 126 assessment. If the violator fails to pay the amount of the 127 assessment to the board within thirty days, the Attorney General 128 may institute a civil action in the circuit court of Kanawha 129 County to recover the amount of the assessment. In any civil 130 action, the court's review of the board's action shall be 131 conducted in accordance with section four, article five, chapter 132 twenty-nine-a of this code. Notwithstanding any other provision 133 of this article to the contrary, when there are conflicting views 134 by recognized experts as to whether any alleged conduct 135 breaches an applicable standard of care, the evidence must be 136 clear and convincing before the board may find that the 137 physician or podiatrist has demonstrated a lack of professional 138 competence to practice with a reasonable degree of skill and 139 safety for patients.

Any person may report to the board relevant facts about the conduct of any physician or podiatrist in this state which in the opinion of that person amounts to medical professional liability or professional incompetence.

The board shall provide forms for filing reports pursuant to this section. Reports submitted in other forms shall be accepted by the board.

The filing of a report with the board pursuant to any provision of this article, any investigation by the board or any disposition of a case by the board does not preclude any action by a hospital, other health care facility or professional society

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- 151 comprised primarily of physicians or podiatrists to suspend,
- 152 restrict or revoke the privileges or membership of the physician
- 153 or podiatrist.
- 154 (c) The board may deny an application for license or other
- authorization to practice medicine and surgery or podiatry in this state and may discipline a physician or podiatrist licensed or
- otherwise lawfully practicing in this state who, after a hearing,
- has been adjudged by the board as unqualified due to any of the
- 159 following reasons:
- 160 (1) Attempting to obtain, obtaining, renewing or attempting
- 161 to renew a license to practice medicine and surgery or podiatry
- by bribery, fraudulent misrepresentation or through known error
- of the board:
- 164 (2) Being found guilty of a crime in any jurisdiction, which
- 165 offense is a felony, involves moral turpitude or directly relates
- 166 to the practice of medicine. Any plea of nolo contendere is a
- 167 conviction for the purposes of this subdivision;
- 168 (3) False or deceptive advertising;
- (4) Aiding, assisting, procuring or advising any unauthorized
- 170 person to practice medicine and surgery or podiatry contrary to
- 171 law;
- 172 (5) Making or filing a report that the person knows to be
- 173 false; intentionally or negligently failing to file a report or record
- 174 required by state or federal law; willfully impeding or
- obstructing the filing of a report or record required by state or
- 176 federal law; or inducing another person to do any of the
- 170 rederar law, or inducing another person to do any or the
- 177 foregoing. The reports and records covered in this subdivision
- 178 mean only those that are signed in the capacity as a licensed
- 179 physician or podiatrist;
- 180 (6) Requesting, receiving or paying directly or indirectly a
- 181 payment, rebate, refund, commission, credit or other form of

- profit or valuable consideration for the referral of patients to any person or entity in connection with providing medical or other health care services or clinical laboratory services, supplies of any kind, drugs, medication or any other medical goods, services or devices used in connection with medical or other health care
- 187 services;

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- (7) Unprofessional conduct by any physician or podiatrist in referring a patient to any clinical laboratory or pharmacy in which the physician or podiatrist has a proprietary interest unless the physician or podiatrist discloses in writing such interest to the patient. The written disclosure shall indicate that the patient may choose any clinical laboratory for purposes of having any laboratory work or assignment performed or any pharmacy for purposes of purchasing any prescribed drug or any other medical goods or devices used in connection with medical or other health care services:
- As used in this subdivision, "proprietary interest" does not include an ownership interest in a building in which space is leased to a clinical laboratory or pharmacy at the prevailing rate under a lease arrangement that is not conditional upon the income or gross receipts of the clinical laboratory or pharmacy;
- 203 (8) Exercising influence within a patient-physician 204 relationship for the purpose of engaging a patient in sexual 205 activity;
- 206 (9) Making a deceptive, untrue or fraudulent representation 207 in the practice of medicine and surgery or podiatry;
  - (10) Soliciting patients, either personally or by an agent, through the use of fraud, intimidation or undue influence;
- 210 (11) Failing to keep written records justifying the course of 211 treatment of a patient, including, but not limited to, patient

- 212 histories, examination and test results and treatment rendered, if 213 any;
- 214 (12) Exercising influence on a patient in such a way as to 215 exploit the patient for financial gain of the physician or podiatrist 216 or of a third party. Any influence includes, but is not limited to, 217 the promotion or sale of services, goods, appliances or drugs;

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- (13) Prescribing, dispensing, administering, mixing or otherwise preparing a prescription drug, including any controlled substance under state or federal law, other than in good faith and in a therapeutic manner in accordance with accepted medical standards and in the course of the physician's or podiatrist's professional practice. A physician who discharges his or her professional obligation to relieve the pain and suffering and promote the dignity and autonomy of dying patients in his or her care and, in so doing, exceeds the average dosage of a pain relieving controlled substance, as defined in Schedules II and III of the Uniform Controlled Substance Act, does not violate this article;
- 230 (14) Performing any procedure or prescribing any therapy 231 that, by the accepted standards of medical practice in the 232 community, would constitute experimentation on human subjects 233 without first obtaining full, informed and written consent;
- 234 (15) Practicing or offering to practice beyond the scope 235 permitted by law or accepting and performing professional 236 responsibilities that the person knows or has reason to know he 237 or she is not competent to perform;
- 238 (16) Delegating professional responsibilities to a person 239 when the physician or podiatrist delegating the responsibilities 240 knows or has reason to know that the person is not qualified by 241 training, experience or licensure to perform them;

- 242 (17) Violating any provision of this article or a rule or order 243 of the board or failing to comply with a subpoena or subpoena 244 duces tecum issued by the board;
- 245 (18) Conspiring with any other person to commit an act or 246 committing an act that would tend to coerce, intimidate or 247 preclude another physician or podiatrist from lawfully 248 advertising his or her services;
- 249 (19) Gross negligence in the use and control of prescription 250 forms;
- 251 (20) Professional incompetence; or

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- (21) The inability to practice medicine and surgery or podiatry with reasonable skill and safety due to physical or mental impairment, including deterioration through the aging process, loss of motor skill or abuse of drugs or alcohol. A physician or podiatrist adversely affected under this subdivision shall be afforded an opportunity at reasonable intervals to demonstrate that he or she may resume the competent practice of medicine and surgery or podiatry with reasonable skill and safety to patients. In any proceeding under this subdivision, neither the record of proceedings nor any orders entered by the board shall be used against the physician or podiatrist in any other proceeding.
- (d) The board shall deny any application for a license or other authorization to practice medicine and surgery or podiatry in this state to any applicant who, and shall revoke the license of any physician or podiatrist licensed or otherwise lawfully practicing within this state who, is found guilty by any court of competent jurisdiction of any felony involving prescribing, selling, administering, dispensing, mixing or otherwise preparing any prescription drug, including any controlled substance under state or federal law, for other than generally accepted therapeutic

purposes. Presentation to the board of a certified copy of the 273 274 guilty verdict or plea rendered in the court is sufficient proof thereof for the purposes of this article. A plea of nolo contendere 275 has the same effect as a verdict or plea of guilt. Upon application 276 277 of a physician that has had his or her license revoked because of 278 a drug related felony conviction, upon completion of any 279 of confinement, parole, probation or other 280 court-ordered supervision and full satisfaction of any fines, 281 judgments or other fees imposed by the sentencing court, the 282 board may issue the applicant a new license upon a finding that 283 the physician is, except for the underlying conviction, otherwise 284 qualified to practice medicine: *Provided*, That the board may 285 place whatever terms, conditions or limitations it deems 286 appropriate upon a physician licensed pursuant to this 287 subsection.

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(e) The board may refer any cases coming to its attention to an appropriate committee of an appropriate professional organization for investigation and report. Except for complaints related to obtaining initial licensure to practice medicine and surgery or podiatry in this state by bribery or fraudulent misrepresentation, any complaint filed more than two years after the complainant knew, or in the exercise of reasonable diligence should have known, of the existence of grounds for the complaint shall be dismissed: *Provided*, That in cases of conduct alleged to be part of a pattern of similar misconduct or professional incapacity that, if continued, would pose risks of a serious or substantial nature to the physician's or podiatrist's current patients, the investigating body may conduct a limited investigation related to the physician's or podiatrist's current capacity and qualification to practice and may recommend conditions, restrictions or limitations on the physician's or podiatrist's license to practice that it considers necessary for the the public. Any shall contain protection of report recommendations for any necessary disciplinary measures and

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shall be filed with the board within ninety days of any referral. The recommendations shall be considered by the board and the case may be further investigated by the board. The board after full investigation shall take whatever action it considers appropriate, as provided in this section.

- (f) The investigating body, as provided in subsection (e) of this section, may request and the board under any circumstances may require a physician or podiatrist or person applying for licensure or other authorization to practice medicine and surgery or podiatry in this state to submit to a physical or mental examination by a physician or physicians approved by the board. A physician or podiatrist submitting to an examination has the right, at his or her expense, to designate another physician to be present at the examination and make an independent report to the investigating body or the board. The expense of the examination shall be paid by the board. Any individual who applies for or accepts the privilege of practicing medicine and surgery or podiatry in this state is considered to have given his or her consent to submit to all examinations when requested to do so in writing by the board and to have waived all objections to the admissibility of the testimony or examination report of any examining physician on the ground that the testimony or report is privileged communication. If a person fails or refuses to submit to an examination under circumstances which the board finds are not beyond his or her control, failure or refusal is prima facie evidence of his or her inability to practice medicine and surgery or podiatry competently and in compliance with the standards of acceptable and prevailing medical practice.
- (g) In addition to any other investigators it employs, the board may appoint one or more licensed physicians to act for it in investigating the conduct or competence of a physician.
- 338 (h) In every disciplinary or licensure denial action, the board 339 shall furnish the physician or podiatrist or applicant with written

notice setting out with particularity the reasons for its action. Disciplinary and licensure denial hearings shall be conducted in accordance with article five, chapter twenty-nine-a of this code. However, hearings shall be heard upon sworn testimony and the rules of evidence for trial courts of record in this state shall apply to all hearings. A transcript of all hearings under this section shall be made, and the respondent may obtain a copy of the transcript at his or her expense. The physician or podiatrist has the right to defend against any charge by the introduction of evidence, the right to be represented by counsel, the right to present and cross-examine witnesses and the right to have subpoenas and subpoenas duces tecum issued on his or her behalf for the attendance of witnesses and the production of documents. The board shall make all its final actions public. The order shall contain the terms of all action taken by the board.

(i) In disciplinary actions in which probable cause has been found by the board, the board shall, within twenty days of the date of service of the written notice of charges or sixty days prior to the date of the scheduled hearing, whichever is sooner, provide the respondent with the complete identity, address and telephone number of any person known to the board with knowledge about the facts of any of the charges; provide a copy of any statements in the possession of or under the control of the board; provide a list of proposed witnesses with addresses and telephone numbers, with a brief summary of his or her anticipated testimony; provide disclosure of any trial expert pursuant to the requirements of Rule 26(b)(4) of the West Virginia Rules of Civil Procedure; provide inspection and copying of the results of any reports of physical and mental examinations or scientific tests or experiments; and provide a list and copy of any proposed exhibit to be used at the hearing: Provided, That the board shall not be required to furnish or produce any materials which contain opinion work product information or would be a violation of the attorney-client 374 privilege. Within twenty days of the date of service of the 375 written notice of charges, the board shall disclose any 376 exculpatory evidence with a continuing duty to do so throughout the disciplinary process. Within thirty days of receipt of the 377 378 board's mandatory discovery, the respondent shall provide the 379 board with the complete identity, address and telephone number 380 of any person known to the respondent with knowledge about the 381 facts of any of the charges; provide a list of proposed witnesses 382 with addresses and telephone numbers, to be called at hearing, 383 with a brief summary of his or her anticipated testimony; provide 384 disclosure of any trial expert pursuant to the requirements of 385 Rule 26(b)(4) of the West Virginia Rules of Civil Procedure; 386 provide inspection and copying of the results of any reports of 387 physical and mental examinations or scientific tests or 388 experiments; and provide a list and copy of any proposed exhibit 389 to be used at the hearing.

- 390 (j) Whenever it finds any person unqualified because of any 391 of the grounds set forth in subsection (c) of this section, the 392 board may enter an order imposing one or more of the following:
- 393 (1) Deny his or her application for a license or other authorization to practice medicine and surgery or podiatry;
- 395 (2) Administer a public reprimand;

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- (3) Suspend, limit or restrict his or her license or other authorization to practice medicine and surgery or podiatry for not more than five years, including limiting the practice of that person to, or by the exclusion of, one or more areas of practice, including limitations on practice privileges;
- 401 (4) Revoke his or her license or other authorization to 402 practice medicine and surgery or podiatry or to prescribe or 403 dispense controlled substances for a period not to exceed ten 404 years;

- 405 (5) Require him or her to submit to care, counseling or 406 treatment designated by the board as a condition for initial or 407 continued licensure or renewal of licensure or other 408 authorization to practice medicine and surgery or podiatry;
- 409 (6) Require him or her to participate in a program of 410 education prescribed by the board;
- 411 (7) Require him or her to practice under the direction of a 412 physician or podiatrist designated by the board for a specified 413 period of time; and
- 414 (8) Assess a civil fine of not less than \$1,000 nor more than 415 \$10,000.
- 416 (k) Notwithstanding the provisions of section eight, article 417 one of this chapter, if the board determines the evidence in its 418 possession indicates that a physician's or podiatrist's 419 continuation in practice or unrestricted practice constitutes an 420 immediate danger to the public, the board may take any of the 421 actions provided in subsection (j) of this section on a temporary 422 basis and without a hearing if institution of proceedings for a 423 hearing before the board are initiated simultaneously with the 424 temporary action and begin within fifteen days of the action. The 425 board shall render its decision within five days of the conclusion of a hearing under this subsection. 426
- 427 (l) Any person against whom disciplinary action is taken 428 pursuant to this article has the right to judicial review as 429 provided in articles five and six, chapter twenty-nine-a of this 430 code: *Provided*, That a circuit judge may also remand the matter 431 to the board if it appears from competent evidence presented to 432 it in support of a motion for remand that there is newly 433 discovered evidence of such a character as ought to produce an 434 opposite result at a second hearing on the merits before the board 435 and:

- 436 (1) The evidence appears to have been discovered since the 437 board hearing; and
- 438 (2) The physician or podiatrist exercised due diligence in 439 asserting his or her evidence and that due diligence would not 440 have secured the newly discovered evidence prior to the appeal.

 A person may not practice medicine and surgery or podiatry or deliver health care services in violation of any disciplinary order revoking, suspending or limiting his or her license while any appeal is pending. Within sixty days, the board shall report its final action regarding restriction, limitation, suspension or revocation of the license of a physician or podiatrist, limitation on practice privileges or other disciplinary action against any physician or podiatrist to all appropriate state agencies, appropriate licensed health facilities and hospitals, insurance companies or associations writing medical malpractice insurance in this state, the American Medical Association, the American Podiatry Association, professional societies of physicians or podiatrists in the state and any entity responsible for the fiscal administration of Medicare and Medicaid.

- (m) Any person against whom disciplinary action has been taken under this article shall, at reasonable intervals, be afforded an opportunity to demonstrate that he or she can resume the practice of medicine and surgery or podiatry on a general or limited basis. At the conclusion of a suspension, limitation or restriction period the physician or podiatrist may resume practice if the board has so ordered.
- (n) Any entity, organization or person, including the board, any member of the board, its agents or employees and any entity or organization or its members referred to in this article, any insurer, its agents or employees, a medical peer review committee and a hospital governing board, its members or any committee appointed by it acting without malice and without

gross negligence in making any report or other information available to the board or a medical peer review committee pursuant to law and any person acting without malice and without gross negligence who assists in the organization, investigation or preparation of any such report or information or assists the board or a hospital governing body or any committee in carrying out any of its duties or functions provided by law is immune from civil or criminal liability, except that the unlawful disclosure of confidential information possessed by the board is a misdemeanor as provided in this article.

- (o) A physician or podiatrist may request in writing to the board a limitation on or the surrendering of his or her license to practice medicine and surgery or podiatry or other appropriate sanction as provided in this section. The board may grant the request and, if it considers it appropriate, may waive the commencement or continuation of other proceedings under this section. A physician or podiatrist whose license is limited or surrendered or against whom other action is taken under this subsection may, at reasonable intervals, petition for removal of any restriction or limitation on or for reinstatement of his or her license to practice medicine and surgery or podiatry.
- (p) In every case considered by the board under this article regarding discipline or licensure, whether initiated by the board or upon complaint or information from any person or organization, the board shall make a preliminary determination as to whether probable cause exists to substantiate charges of disqualification due to any reason set forth in subsection (c) of this section. If probable cause is found to exist, all proceedings on the charges shall be open to the public who are entitled to all reports, records and nondeliberative materials introduced at the hearing, including the record of the final action taken: *Provided*, That any medical records, which were introduced at the hearing and which pertain to a person who has not expressly waived his

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or her right to the confidentiality of the records, may not be open to the public nor is the public entitled to the records.

- (q) If the board receives notice that a physician or podiatrist has been subjected to disciplinary action or has had his or her credentials suspended or revoked by the board, a hospital or a professional society, as defined in subsection (b) of this section, for three or more incidents during a five-year period, the board shall require the physician or podiatrist to practice under the direction of a physician or podiatrist designated by the board for a specified period of time to be established by the board.
- 511 (r) Notwithstanding any other provisions of this article, the 512 board may, at any time, on its own motion, or upon motion by 513 the complainant, or upon motion by the physician or podiatrist, or by stipulation of the parties, refer the matter to mediation. The 514 board shall obtain a list from the West Virginia State Bar's 515 516 mediator referral service of certified mediators with expertise in 517 professional disciplinary matters. The board and the physician or 518 podiatrist may choose a mediator from that list. If the board and 519 the physician or podiatrist are unable to agree on a mediator, the board shall designate a mediator from the list by neutral rotation. 520 521 The mediation shall not be considered a proceeding open to the 522 public and any reports and records introduced at the mediation shall not become part of the public record. The mediator and all 523 524 participants in the mediation shall maintain and preserve the 525 confidentiality of all mediation proceedings and records. The 526 mediator may not be subpoenaed or called to testify or otherwise 527 be subject to process requiring disclosure of confidential information in any proceeding relating to or arising out of the 528 disciplinary or licensure matter mediated: Provided, That any 529 530 confidentiality agreement and any written agreement made and signed by the parties as a result of mediation may be used in any 531 proceedings subsequently instituted to enforce the written 532 533 agreement. The agreements may be used in other proceedings if 534 the parties agree in writing.

535 (s) A physician licensed under this article may not be 536 disciplined for providing expedited partner therapy in 537 accordance with article four-f, chapter sixteen of this code.

#### ARTICLE 3E. PHYSICIAN ASSISTANTS PRACTICE ACT.

#### §30-3E-17. Complaint process.

- 1 (a) All hearings and procedures related to denial of a license,
- 2 and all complaints, investigations, hearings and procedures a
- 3 physician assistant licenses and the discipline accorded thereto,
- 4 shall be in accordance with the processes and procedures set
- 5 forth in articles three and/or fourteen of this chapter, depending
- 6 on which board licenses the physician assistant.
- (b) The boards may impose the same discipline, restrictions
   and/or limitations upon the license of a physician assistant as
- 9 they are authorized to impose upon physicians and/or podiatrists.
- 10 (c) The boards shall direct to the appropriate licensing board 11 a complaint against a physician assistant, a supervising physician
- 12 and/or an alternate supervising physician.
- 13 (d) In the event that independent complaint processes are
- 14 warranted by the boards with respect to the professional conduct
- 15 of a physician assistant or a supervising and/or alternate
- 16 supervising physician, the boards are authorized to work
- 17 cooperatively and to disclose to one another information which
- 18 may assist the recipient appropriate licensing board in its
- 19 disciplinary process. The determination of what information, if
- 20 any, to disclose shall be at the discretion of the disclosing board.
- 21 (e) A physician assistant licensed under this article may not
- 22 be disciplined for providing expedited partner therapy in
- 23 accordance with article four-f, chapter sixteen of this code.

## ARTICLE 5. PHARMACISTS, PHARMACY TECHNICIANS, PHARMACY INTERNS AND PHARMACIES.

## §30-5-14. Prohibiting the dispensing of prescription orders in absence of practitioner-patient relationship.

1 A	pharmacist	may	not	compound	or	dispense	any
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- 2 prescription order when he or she has knowledge that the
- 3 prescription was issued by a practitioner without establishing a
- 4 valid practitioner-patient relationship. An online or telephonic
- 5 evaluation by questionnaire, or an online or telephonic
- 6 consultation, is inadequate to establish a valid
- 7 practitioner-patient relationship: *Provided*, That this prohibition
- 8 does not apply:
- 9 (1) In a documented emergency;
- 10 (2) In an on-call or cross-coverage situation;
- 11 (3) For the treatment of sexually transmitted diseases by
- 12 expedited partner therapy as set forth in article four-f, chapter
- 13 sixteen of this code; or
- 14 (4) Where patient care is rendered in consultation with
- 15 another practitioner who has an ongoing relationship with the
- patient and who has agreed to supervise the patient's treatment,
- 17 including the use of any prescribed medications.

#### ARTICLE 7. REGISTERED PROFESSIONAL NURSES.

## §30-7-11. Denial, revocation or suspension of license; grounds for discipline.

- 1 (a) The board shall have the power to deny, revoke or
- 2 suspend any license to practice registered professional nursing
- 3 issued or applied for in accordance with the provisions of this
- 4 article, or to otherwise discipline a licensee or applicant upon
- 5 proof that he or she:

- 6 (1) Is or was guilty of fraud or deceit in procuring or
- 7 attempting to procure a license to practice registered professional
- 8 nursing; or
- 9 (2) Has been convicted of a felony; or
- 10 (3) Is unfit or incompetent by reason of negligence, habits or
- 11 other causes; or
- 12 (4) Is habitually intemperate or is addicted to the use of
- 13 habit-forming drugs; or
- 14 (5) Is mentally incompetent; or
- 15 (6) Is guilty of conduct derogatory to the morals or standing
- 16 of the profession of registered nursing; or
- 17 (7) Is practicing or attempting to practice registered
- 18 professional nursing without a license or reregistration; or
- 19 (8) Has willfully or repeatedly violated any of the provisions
- 20 of this article.
- 21 (b) An Advanced practice registered nurse licensed under
- 22 this article may not be disciplined for providing expedited
- 23 partner therapy in accordance with article four-f, chapter sixteen
- 24 of this code.

#### ARTICLE 14. OSTEOPATHIC PHYSICIANS AND SURGEONS.

## §30-14-11. Refusal, suspension or revocation of license; suspension or revocation of certificate of authorization.

- 1 (a) The board may either refuse to issue or may suspend or
- 2 revoke any license for any one or more of the following causes:
- 3 (1) Conviction of a felony, as shown by a certified copy of
- 4 the record of the trial court:

- 5 (2) Conviction of a misdemeanor involving moral turpitude;
- 6 (3) Violation of any provision of this article regulating the practice of osteopathic physicians and surgeons;
- 8 (4) Fraud, misrepresentation or deceit in procuring or 9 attempting to procure admission to practice;
- 10 (5) Gross malpractice;
- 11 (6) Advertising by means of knowingly false or deceptive statements;
- 13 (7) Advertising, practicing or attempting to practice under a name other than one's own:
- 15 (8) Habitual drunkenness, or habitual addiction to the use of morphine, cocaine or other habit-forming drugs.
- 17 (b) The board shall also have the power to suspend or revoke 18 for cause any certificate of authorization issued by it. It shall 19 have the power to reinstate any certificate of authorization 20 suspended or revoked by it.
- 21 (c) An osteopathic physician licensed under this article may 22 not be disciplined for providing expedited partner therapy in 23 accordance with article four-f, chapter sixteen of this code.



(Com. Sub. for H. B. 4388 - By Delegates Rohrbach, Ellington, Householder, Bates, Byrd, Sobonya, Summers, Upson and B. White)

[Passed March 12, 2016; in effect ninety days from passage.] [Approved by the Governor on March 29, 2016.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section designated §16-5B-18, relating to designating certain hospitals as stroke centers; designating based upon certain criteria; establishing protocols; setting forth reporting requirements; establishing protocols; creating an advisory committee and permitting 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 §16-5B-18, to read as follows:

#### ARTICLE 5B. HOSPITALS AND SIMILAR INSTITUTIONS.

# §16-5B-18. Designation of comprehensive, primary and acute stroke-ready hospitals; reporting requirements; rulemaking.

- 1 (a) A hospital, as that term is defined in section one of this
- 2 article, may apply to the Department of Health and Human
- 3 Resources to be recognized and certified as a comprehensive
- 4 stroke center, a primary stroke center or an acute stroke-ready
- 5 hospital. The appropriate designation shall be granted by the
- 6 Department of Health and Human Resources based upon criteria
- 7 recognized by the American Heart Association, the Joint

- 8 Commission or other nationally recognized organization as set
- 9 forth in legislative rules as provided in subsection (d) of this
- 10 section.

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- 11 (b) The Department of Health and Human Resources shall 12 provide annually, by June 1, a list of all hospitals they have 13 designated pursuant to the provisions of subsection (a) of this 14 section to the medical director of each licensed emergency 15 medical service agency in this state. This list shall be 16 maintained by the Department of Health and Human Resources 17 and shall be updated annually on its website.
- 18 (c) The Secretary of the Department of Health and Human Resources shall establish by legislative rule, as set forth in 19 20 subsection (d) of this section, prehospital care protocols related to assessment, treatment and transport of patients identified as 21 stroke patients. These protocols shall be applicable to all 22 23 emergency medical service agencies, as defined in section three, 24 article four-c of this chapter. These protocols shall include development and implementation of plans for the triage and 25 26 transport within specified timeframes of onset of symptoms of 27 acute stroke patients to the nearest comprehensive, primary or 28 acute stroke ready hospital.
  - (d) The Secretary of the Department of Health and Human Resources shall propose rules for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code to accomplish the goals of this section. These rules shall be proposed after consultation with an advisory committee selected by the Secretary of the Department of Health and Human Resources. The advisory committee shall consist of representatives of the Department of Health and Human Resources, an association with the primary purpose of promoting better heart health, a registered emergency medical technician, hospitals located in rural areas of the state and hospitals located in urban areas of this state.

- 41 These rules shall include:
- 42 (1) An application process;
- 43 (2) The criteria for designation and certification as a
- 44 comprehensive stroke center, a primary stroke center or an acute
- 45 stroke ready center;
- 46 (3) A means for providing a list of designated hospitals to
- 47 emergency medical service agencies;
- 48 (4) Protocols for assessment, treatment and transport of
- 49 stroke patients by licensed emergency medical service agencies;
- 50 and
- 51 (5) Any other requirements necessary to accomplish the
- 52 intent of this section.



### **CHAPTER 200**

## (Com. Sub. for H. B. 4520 - By Delegates Hanshaw and Shott)

[Passed March 8, 2016; in effect ninety days from passage.] [Approved by the Governor on March 23, 2016.]

AN ACT to amend and reenact §16-5G-2 and §16-5G-4 of the Code of West Virginia, 1931, as amended, all relating to hospitals owned or operated by nonprofit corporations, nonprofit associations or local governmental units; clarifying that these hospitals may have only one governing body whose meetings shall be open to the public; enumerating matters which may be acted upon in executive session; and clarifying and expanding authorization for holding of executive sessions.

Be it enacted by the Legislature of West Virginia:

That §16-5G-2 and §16-5G-4 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

#### ARTICLE 5G. OPEN HOSPITAL PROCEEDINGS.

#### §16-5G-2. Definitions.

- 1 As used in this article:
- 2 (1) "Decision" means any determination, action, vote or final
- 3 disposition of a motion, proposal, resolution, order or measure
- 4 on which a vote of the governing body is required at any meeting
- 5 at which a quorum is present;
- 6 (2) "Executive session" means any meeting or part of a
- 7 meeting of the governing body of a hospital that is closed to the
- 8 public;
- 9 (3) "Governing body" means:
- 10 (A) With respect to a hospital owned or operated by a
- 11 nonprofit corporation, the board of directors established pursuant
- 12 to section eight hundred one, article eight, chapter thirty-one-e
- 13 of this code:
- (B) With respect to a county hospital, the board of trustees
- 15 established pursuant to section fifteen, article three, chapter
- 16 seven of this code: or
- 17 (C) With respect to all other hospitals subject to this article,
- 18 the single board of directors, board of trustees, or, if given
- 19 another name, the single group of governing board members
- 20 having the authority to make decisions concerning the
- 21 management and control of a hospital: Provided, That the
- 22 medical staff of a hospital, the executive committee of the

- 23 medical staff of a hospital and any other committee or
- 24 subcommittee of the medical staff of a hospital are not a
- 25 governing body of any hospital described in paragraphs (A), (B)
- 26 and (C) of this subdivision;
- 27 (4) "Hospital" means any hospital owned or operated by a
- 28 nonprofit corporation, nonprofit association or local
- 29 governmental unit;
- 30 (5) "Meeting" means the convening of the governing body
- 31 of a hospital for which a quorum is required in order to make a
- 32 decision or to deliberate toward a decision on any matter:
- 33 *Provided*, That the convening of a committee, subcommittee or
- 34 other subcomponent of the governing body or the convening of
- 35 any group other than the governing body that makes
- 36 recommendations to the governing body is not a meeting within
- 37 the meaning of this article unless the committee, subcommittee,
- 38 subcomponent or group is vested with independent
- 39 decision-making authority and exercises the independent
- 40 decision-making authority at any convening; and
- 41 (6) "Quorum" means, unless otherwise defined by applicable
- 42 law, a simple majority of the constituent membership of the
- 43 governing body.

#### §16-5G-4. Exceptions.

- 1 (a) This article does not prevent the governing body of a
- 2 hospital from holding an executive session during a regular,
- 3 special or emergency meeting, after the presiding officer has
- 4 identified the authorization under this article for the holding of
- 5 the executive session and has presented it to the governing body
- 6 and to the general public, but no official action may be made in
- 7 the executive session, except as is necessary:
- 8 (1) To protect the confidentiality of protected health
- 9 information as defined by the Health Insurance Portability and
- 10 Accountability Act of 1996;

- 11 (2) To preserve the privilege and confidentiality of peer 12 review information as provided in article three-c, chapter thirty 13 of this code;
- 14 (3) To approve confidential legal settlements or otherwise 15 act in connection with matters described in subdivision (5), 16 subsection (b) of this section; or
- (4) To end an executive session and readmit the public to ameeting.
- 19 (b) An executive session may be held only upon a majority 20 affirmative vote of the members present of the governing body 21 of a hospital as defined in this article for the following:

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- (1) The appointment, employment, retirement, promotion, demotion, disciplining, resignation, discharge, dismissal or compensation of any officer or employee, or other personnel matters, or for the purpose of conducting a hearing on a complaint against an officer or employee, unless the officer or employee requests an open meeting;
- 28 (2) The disciplining, suspension or expulsion of any student 29 or trainee enrolled in a program conducted by the hospital, 30 unless the student or trainee requests an open meeting;
  - (3) Investigations and proceedings involving the issuance, denial, suspension or revocation of the authority or privilege of a medical practitioner to use the hospital and to engage in particular kinds of practice or to perform particular kinds of operations, unless the person seeking the authority or privilege or whose authority or privilege was denied, suspended or revoked requests an open meeting;
- 38 (4) Matters concerning the failure or refusal of a medical practitioner to comply with reasonable regulations of a hospital

- with respect to the conditions under which operations are performed and other medical services are delivered;
- 42 (5) To conduct privileged attorney-client communications or 43 to consider the work product of the hospital's attorney or the 44 hospital administration, including materials prepared by an 45 attorney or others in anticipation of litigation, litigation 46 strategies and reports, confidential legal settlements and 47 discussions, negotiations and alternative dispute resolution 48 proceedings conducted in pursuit of a legal settlement;
- 49 (6) The physical or mental health of any person, unless the 50 person requests an open meeting;
- 51 (7) Matters which, if discussed in public, would be likely to 52 affect adversely the reputation of any person;
- 53 (8) Any official investigation or matters relating to crime 54 prevention or law enforcement;
- 55 (9) The development of security personnel or devices;
- (10) Matters involving or affecting the purchase, sale or lease of property, advance construction planning, the investment of public funds or other matters involving competition which, if made public, might adversely affect the financial or other interest of the state or any political subdivision or the hospital; or
- 62 (11) To consider or act upon the matters described in subdivisions (1), (2), (3) and (4), subsection (a) of this section.



## (Com. Sub. for H. B. 4537 - By Delegates Stansbury, Bates, Rohrbach, Perdue, Sobonya and Ellington)

[Passed March 12, 2016; in effect ninety days from passage.] [Approved by the Governor on March 25, 2016.]

AN ACT to amend and reenact \$16-5H-2, \$16-5H-5 and \$16-5H-7 of the Code of West Virginia, 1931, as amended, all relating to the regulation of chronic pain clinics; updating definitions; deleting an exemption for affiliation with a medical school; and clarifying due process concerns regarding the process for hearing notices upon appeal.

Be it enacted by the Legislature of West Virginia:

That §16-5H-2, §16-5H-5 and §16-5H-7 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

#### ARTICLE 5H. CHRONIC PAIN CLINIC LICENSING ACT.

#### §16-5H-2. Definitions.

- 1 (a) "Chronic pain" means pain that has persisted after
- 2 reasonable medical efforts have been made to relieve the pain or
- 3 cure its cause and that has continued, either continuously or
- 4 episodically, for longer than three continuous months. For
- 5 purposes of this article, "chronic pain" does not include pain
- 6 directly associated with a terminal condition.
- 7 (b) "Director" means the Director of the Office of Health
- 8 Facility Licensure and Certification within the Office of the
- 9 Inspector General.

- 10 (c) "Owner" means any person, partnership, association or 11 corporation listed as the owner of a pain management clinic on 12 the licensing forms required by this article.
- 13 (d) "Pain management clinic" means all privately owned 14 pain management clinics, facilities or offices not otherwise 15 exempted from this article and which meets both of the 16 following criteria:
- 17 (1) Where in any month more than fifty percent of patients 18 of the clinic are prescribed or dispensed opioids or other 19 controlled substances specified in rules promulgated pursuant to 20 this article for chronic pain resulting from conditions that are not 21 terminal; and
- 22 (2) The facility meets any other identifying criteria 23 established by the secretary by rule.
- 24 (e) "Physician" means an individual authorized to practice 25 medicine or surgery or osteopathic medicine or surgery in this 26 state.
- 27 (f) "Prescriber" means an individual who is authorized by law to prescribe drugs or drug therapy related devices in the 28 course of the individual's professional practice, including only 29 a medical or osteopathic physician authorized to practice 30 medicine or surgery; a physician assistant or osteopathic 31 32 physician assistant who holds a certificate to prescribe drugs; or 33 an advanced nurse practitioner who holds a certificate to 34 prescribe.
- (g) "Secretary" means the Secretary of the West Virginia
   Department of Health and Human Resources. The secretary may
   define in rules any term or phrase used in this article which is not
   expressly defined.

#### §16-5H-5. Exemptions.

- 1 (a) The following facilities are not pain management clinics
- 2 subject to the requirements of this article:
- (1) A facility that does not prescribe or dispense controlled
   substances for the treatment of chronic pain;
- 5 (2) A hospital licensed in this state, a facility located on the 6 campus of a licensed hospital that is owned, operated or 7 controlled by that licensed hospital, and an ambulatory health 8 care facility as defined by section two, article two-d, chapter
- 9 sixteen of this code that is owned, operated or controlled by a
- 10 licensed hospital;
- 11 (3) A physician practice owned or controlled, in whole or in
- 12 part, by a licensed hospital or by an entity that owns or controls,
- 13 in whole or in part, one or more licensed hospitals;
- 14 (4) A hospice program licensed in this state;
- 15 (5) A nursing home licensed in this state;
- 16 (6) An ambulatory surgical facility as defined by section
- 17 two, article two-d, chapter sixteen of this code; and
- 18 (7) A facility conducting clinical research that may use
- 19 controlled substances in studies approved by a hospital-based
- 20 institutional review board or an institutional review board
- 21 accredited by the association for the accreditation of human
- 22 research protection programs.
- 23 (b) Any facility that is not included in this section may
- 24 petition to the secretary for an exemption from the requirements
- 25 of this article. All such petitions are subject to the administrative
- 26 procedures requirements of chapter twenty-nine-a of this code.

#### §16-5H-7. Suspension; revocation.

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- 1 (a) The secretary may suspend or revoke a license issued 2 pursuant to this article if the provisions of this article or of the 3 rules promulgated pursuant to this article are violated. The 4 secretary may revoke a clinic's license and prohibit all 5 physicians associated with that pain management clinic from 6 practicing at the clinic location based upon an annual or periodic 7 inspection and evaluation.
  - (b) Before any such license is suspended or revoked, however, written notice shall be given to the licensee, stating the grounds of the complaint and shall provide notice of the right to request a hearing. The notice shall be sent by certified mail to the licensee at the address where the pain management clinic concerned is located. The licensee shall be entitled to be represented by legal counsel at the hearing.
  - (c) If a license is revoked pursuant to this article, a new application for a license may be considered by the secretary if, when and after the conditions upon which revocation was based have been corrected, and evidence of this fact has been furnished to the secretary. A new license may then be granted after proper inspection has been made and all provisions of this article and rules promulgated pursuant to this article have been satisfied.
  - (d) All of the pertinent provisions of article five, chapter twenty-nine-a of this code shall apply and govern any hearing authorized and required by the provisions of this article and the administrative procedure in connection therewith.
  - (e) Any applicant or licensee who is dissatisfied with the decision of the secretary as a result of the hearing provided in this section may, within thirty days after receiving notice of the decision, appeal the decision to the circuit court of Kanawha County, in term or in vacation, for judicial review of the decision.

32 (f) The court may affirm, modify or reverse the decision of 33 the secretary and either the applicant or licensee or the secretary 34 may appeal from the court's decision to the Supreme Court of 35 Appeals.

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- (g) If the license of a pain management clinic is revoked or suspended, the designated physician of the clinic, any other owner of the clinic or the owner or lessor of the clinic property shall cease to operate the facility as a pain management clinic as of the effective date of the suspension or revocation. The owner or lessor of the clinic property is responsible for removing all signs and symbols identifying the premises as a pain management clinic within thirty days.
- (h) Upon the effective date of the suspension or revocation, the designated physician of the pain management clinic shall advise the secretary and the Board of Pharmacy of the disposition of all drugs located on the premises. The disposition is subject to the supervision and approval of the secretary. Drugs that are purchased or held by a pain management clinic that is not licensed may be deemed adulterated.
  - (i) If the license of a pain management clinic is suspended or revoked, any person named in the licensing documents of the clinic, including persons owning or operating the pain management clinic, may not, as an individual or as part of a group, apply to operate another pain management clinic for five years after the date of suspension or revocation.
- 57 (j) The period of suspension for the license of a pain 58 management clinic shall be prescribed by the secretary, but may 59 not exceed one year.



#### (Com. Sub. for S. B. 68 - By Senators Ferns and Takubo)

[Passed March 7, 2016; in effect ninety days from passage.] [Approved by the Governor on April 1, 2016.]

AN ACT to repeal \$16-29B-19, \$16-29B-19a, \$16-29B-20, \$16-29B-20a, \$16-29B-21 and \$16-29B-21a of the Code of West Virginia, 1931, as amended; and to amend and reenact \$16-29B-1, \$16-29B-10 and \$16-29B-27 of said code, all relating to the powers of the Health Care Authority; eliminating authority of the Health Care Authority to conduct rate review; eliminating authority of the Health Care Authority to set rates for hospitals; and eliminating antiquated studies to be conducted by the Health Care Authority.

Be it enacted by the Legislature of West Virginia:

That \$16-29B-19, \$16-29B-19a, \$16-29B-20, \$16-29B-20a, \$16-29B-21 and \$16-29B-21a of the Code of West Virginia, 1931, as amended, be repealed; and that \$16-29B-1, \$16-29B-10 and \$16-29B-27 of said code be amended and reenacted to read as follows:

#### ARTICLE 29B. HEALTH CARE AUTHORITY.

### §16-29B-1. Legislative findings; purpose.

- 1 The Legislature hereby finds that the health and welfare of
- 2 the citizens of this state is being threatened by unreasonable
- 3 increases in the cost of health care services, a fragmented system
- 4 of health care, lack of integration and coordination of health care
- 5 services, unequal access to primary and preventative care, lack
- 6 of a comprehensive and coordinated health information system

- 7 to gather and disseminate data to promote the availability of
- 8 cost-effective, high-quality services and to permit effective
- 9 health planning and analysis of utilization, clinical outcomes and
- 10 cost and risk factors. In order to alleviate these threats: (1)
- 11 Information on health care costs must be gathered; and (2) an
- 12 entity of state government must be given authority to ensure the
- 13 containment of health care costs, to gather and disseminate
- 14 health care information; to analyze and report on changes in the
- 15 health care delivery system as a result of evolving market forces,
- 16 and to assure that the state health plan, certificate of need
- 17 program, and information systems serve to promote cost
- 18 containment, access to care, quality of services and prevention.
- 19 Therefore, the purpose of this article is to protect the health and
- 20 well-being of the citizens of this state by guarding against
- 21 unreasonable loss of economic resources as well as to ensure the
- 22 continuation of appropriate access to cost-effective, high-quality
- 23 health care services.

#### §16-29B-10. Jurisdiction of the board.

- 1 Notwithstanding any other provision of this code or state
- 2 law, after July 1, 2016, the jurisdiction of the board or authority
- 3 as to rates for health services care ceases to exist.
- 4 The board shall propose rules for legislative approval in
- 5 accordance with the provisions of article three, chapter
- 6 twenty-nine-a of this code requiring hospitals, as part of its
- 7 annual financial disclosure filings, to provide to the authority the
- 8 average patient charge of the twenty-five most frequently used
- 9 out-patient diagnostic services. The authority shall publish the
- 10 information on its website expressed in terminology that can be
- 11 understood by the general public.

#### §16-29B-27. Penalties for violations.

- 1 In addition to civil remedies set forth, any person or health
- 2 care provider violating any provision of this article or any valid

- 3 order or rule lawfully established hereunder shall be guilty of a
- 4 misdemeanor and, upon conviction thereof, shall be punished by
- 5 a fine of not more than \$1,000. Each day of a continuing
- 6 violation after conviction shall be considered a separate offense.



# **CHAPTER 203**

(Com. Sub. for S. B. 597 - By Senators Ferns and Plymale)

[Passed March 12, 2016; in effect from passage.] [Approved by the Governor on March 18, 2016.]

AN ACT to amend and reenact §16-29B-26 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto two new sections, designated §16-29B-28 and §16-29B-29, all relating generally to the Health Care Authority; exempting certain actions of the Health Care Authority from state and federal antitrust laws; setting forth intent to immunize cooperative agreements approved and subject to supervision by the Health Care Authority; establishing that a cooperative agreement that is not approved and subject to supervision by the Health Care Authority shall not have immunity; defining terms; setting out legislative findings and purpose; allowing cooperative agreements between certain hospitals and other hospitals or health care providers in the state; setting forth goals of a cooperative agreement; granting authority to the Health Care Authority to review proposed cooperative agreements; establishing a review process for cooperative agreements; requiring notification of application and public hearing to be published on Health Care Authority's website and the State Register; providing for public comment period; requiring notice of public hearing to be provided to all persons, groups or organizations who have submitted written comments to proposed cooperative agreements and to individuals, groups or

organizations designated as affected parties in certificate of need proceeding; requiring copy of application to be provided to the Attorney General; setting forth standards for review of cooperative agreements; requiring the Health Care Authority to consult with the Attorney General regarding assessment of approval of proposed cooperative agreement; requiring approval of Health Care Authority to have written concurrence of the Attorney General; providing that the Health Care Authority evaluate the benefits and disadvantages of the proposed cooperative agreement; providing that the Health Care Authority make a determination whether the benefits likely to result from the proposed cooperative agreement outweigh the disadvantages likely to result from a reduction in competition from the proposed cooperative agreement; providing for approval with conditions; providing that the Health Care Authority's decision to approve or deny an application is a final order; granting enforcement powers over cooperative agreements to the Health Care Authority; providing for rulemaking; requiring reporting to the Health Care Authority; setting forth reporting requirements; providing for establishment and assessment of fees; providing that these new provisions shall not undermine the validity of an agreement between a hospital and the Attorney General entered into before the effective date of this legislation; requiring submission of certain proposed rate increases to be provided to the Attorney General for review; authorizing the Attorney General to approve, reject or modify certain proposed rate increases; providing that certain proposed rate increases may only be implemented with the approval of the Attorney General; providing the Health Care Authority maintain on file all approved cooperative agreements, including conditions imposed; requiring notification of termination of cooperative agreement be filed with the Health Care Authority; prohibiting billing or charging for health services resulting from or related to a cooperative agreement until approved by the Health Care Authority; providing that submission of application constitutes agreement to certain regulation and supervision of the Heath Care Authority; and providing for severability.

Be it enacted by the Legislature of West Virginia:

That §16-29B-26 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that said code be amended by adding thereto a two new sections, designated §16-29B-28 and §16-29B-29, all to read as follows:

#### ARTICLE 29B. HEALTH CARE AUTHORITY.

#### §16-29B-26. Exemptions from antitrust laws.

- 1 Actions of the board shall be exempt from antitrust action
- 2 under state and federal antitrust laws. Any actions of hospitals
- 3 and health care providers under the board's jurisdiction, when
- 4 made in compliance with orders, directives, rules, approvals or
- 5 regulations issued or promulgated by the board, shall likewise be
- 6 exempt.
- 7 It is the intention of the Legislature that this chapter shall
- 8 also immunize cooperative agreements approved and subject to
- 9 supervision by the authority and activities conducted pursuant
- 10 thereto from challenge or scrutiny under both state and federal
- 11 antitrust law: *Provided*, That a cooperative agreement that is not
- 12 approved and subject to supervision by the authority shall not
- 13 have such immunity.

## §16-29B-28. Review of Cooperative agreements.

- 1 (a) *Definitions*. "As used in this section the following terms
- 2 have the following meanings:
- 3 (1) "Academic medical center" means an accredited medical
- 4 school, one or more faculty practice plans affiliated with the
- 5 medical school or one or more affiliated hospitals which meet
- 6 the requirements set forth in 42 C. F. R. 411.355(e).
- 7 (2) "Cooperative agreement" means an agreement between
- 8 a qualified hospital which is a member of an academic medical

- 9 center and one or more other hospitals or other health care
- 10 providers. The agreement shall provide for the sharing,
- allocation, consolidation by merger or other combination of 11
- assets, or referral of patients, personnel, instructional programs, 12
- support services and facilities or medical, diagnostic, or 13
- 14 laboratory facilities or procedures or other services traditionally
- 15 offered by hospitals or other health care providers.
- 16 (3) "Commercial health plan" means a plan offered by any
- third party payor that negotiates with a party to a cooperative 17
- agreement with respect to patient care services rendered by 18
- 19 health care providers.
- 20 (4) "Health care provider" means the same as that term is
- 21 defined in section three of this article.
- 22 (5) "Teaching hospital" means a hospital or medical center
- 23 that provides clinical education and training to future and current
- 24 health professionals whose main building or campus is located
- 25 in the same county as the main campus of a medical school
- 26 operated by a state university.
- 27 (6) "Qualified hospital" means a teaching hospital, which
- 28 meets the requirements of 42 C. F. R. 411.355(e) and which has
- 29 entered into a cooperative agreement with one or more hospitals
- 30 or other health care providers but is not a critical access hospital
- 31 for purposes of this section.
- 32 (b) Findings. —
- 33 (1) The Legislature finds that the state's schools of medicine,
- affiliated universities and teaching hospitals are critically 34
- 35 important in the training of physicians and other healthcare
- 36
- providers who practice health care in this state. They provide
- access to healthcare and enhance quality healthcare for the 37
- 38 citizens of this state.

- 39 (2) A medical education is enhanced when medical students, 40 residents and fellows have access to modern facilities, state of 41 the art equipment and a full range of clinical services and that, 42 in many instances, the accessibility to facilities, equipment and 43 clinical services can be achieved more economically and 44 efficiently through a cooperative agreement among a teaching 45 hospital and one or more hospitals or other health care providers.
  - (c) Legislative purpose. The Legislature encourages cooperative agreements if the likely benefits of such agreements outweigh any disadvantages attributable to a reduction in competition. When a cooperative agreement, and the planning and negotiations of cooperative agreements, might be anticompetitive within the meaning and intent of state and federal antitrust laws the Legislature believes it is in the state's best interest to supplant such laws with regulatory approval and oversight by the Health Care Authority as set out in this article. The authority has the power to review, approve or deny cooperative agreements, ascertain that they are beneficial to citizens of the state and to medical education, to ensure compliance with the provisions of the cooperative agreements relative to the commitments made by the qualified hospital and conditions imposed by the Health Care Authority.

## (d) Cooperative Agreements. —

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- 62 (1) A hospital which is a member of an academic medical 63 center may negotiate and enter into a cooperative agreement with 64 other hospitals or health care providers in the state:
- 65 (A) In order to enhance or preserve medical education 66 opportunities through collaborative efforts and to ensure and 67 maintain the economic viability of medical education in this 68 state and to achieve the goals hereinafter set forth; and
  - (B) When the likely benefits outweigh any disadvantages attributable to a reduction in competition that may result from the proposed cooperative agreement.

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72	(2) The goal of any cooperative agreement would be to:
73	(A) Improve access to care;
74	(B) Advance health status;
75	(C) Target regional health issues;
76	(D) Promote technological advancement;
77	(E) Ensure accountability of the cost of care;
78	(F) Enhance academic engagement in regional health;
79	(G) Preserve and improve medical education opportunities;
80	(H) Strengthen the workforce for health-related careers; and
81 82	(I) Improve health entity collaboration and regional integration, where appropriate.
83 84 85 86 87	(3) A qualified hospital located in this state may submit an application for approval of a proposed cooperative agreement to the authority. The application shall state in detail the nature of the proposed arrangement including the goals and methods for achieving:
88	(A) Population health improvement;
89	(B) Improved access to health care services;
90	(C) Improved quality;
91	(D) Cost efficiencies;
92	(E) Ensuring affordability of care;
93 94	$\label{eq:Formula} \textbf{(F)} \ Enhancing \ and \ preserving \ medical \ education \ programs; \\ and$
95 96	(G) Supporting the authority's goals and strategic mission, as applicable.

97 (4) (A) If the cooperative agreement involves a combination 98 of hospitals through merger, consolidation or acquisition, the 99 qualified hospital must have been awarded a certificate of need 100 for the project by the authority, as set forth in article two-d of 101 this chapter prior to submitting an application for review of a 102 cooperative agreement.

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- (B) In addition to a certificate of need, the authority may also require that an application for review of a cooperative agreement as provided in this section be submitted and approved prior to the finalization of the cooperative agreement, if the cooperative agreement involves the merger, consolidation or acquisition of a hospital located within a distance of twenty highway miles of the main campus of the qualified hospital, and the authority shall have determined that combination is likely to produce anti-competitive effects due to a reduction of competition. Any such determination shall be communicated to the parties to the cooperative agreement within seven days from approval of a certificate of need for the project.
- 115 (C) In reviewing an application for cooperative agreement, 116 the authority shall give deference to the policy statements of the 117 Federal Trade Commission.
  - (D) If an application for a review of a cooperative agreement is not required by the authority, the parties to the agreement may then complete the transaction following a final order by the authority on the certificate of need as set forth in article two-d of this code. The qualified hospital may apply to the authority for approval of the cooperative agreement either before or after the finalization of the cooperative agreement.
  - (E) A party who has received a certificate of need prior to the enactment of this provision during the 2016 regular session of the Legislature may apply for approval of a cooperative agreement whether or not the transaction contemplated thereby has been completed.

- 130 (F) The complete record in the certificate of need proceeding 131 shall be part of the record in the proceedings under this section 132 and information submitted by an applicant in the certificate of 133 need proceeding need not be duplicated in proceedings under 134 this section.
  - (e) Procedure for review of cooperative agreements. —
  - (1) Upon receipt of an application, the authority shall determine whether the application is complete. If the authority determines the application is incomplete, it shall notify the applicant in writing of additional items required to complete the application. A copy of the complete application shall be provided by the parties to the Office of the Attorney General simultaneous with the submission to the authority. If an applicant believes the materials submitted contain proprietary information that is required to remain confidential, such information must be clearly identified and the applicant shall submit duplicate applications, one with full information for the authority's use and one redacted application available for release to the public.
  - (2) The authority shall upon receipt of a completed application, publish notification of the application on its website as well as provide notice of such application placed in the State Register. The public may submit written comments regarding the application within ten days following publication. Following the close of the written comment period, the authority shall review the application as set forth in this section. Within thirty days of the receipt of a complete application the authority may:
- 157 (i) Issue a certificate of approval which shall contain any 158 conditions the authority finds necessary for the approval;
- (ii) Deny the application; or

(iii) Order a public hearing if the authority finds it necessaryto make an informed decision on the application.

162 (3) The authority shall issue a written decision within 163 seventy-five days from receipt of the completed application. The 164 authority may request additional information in which case they 165 shall have an additional fifteen days following receipt of the 166 supplemental information to approve or deny the proposed 167 cooperative agreement.

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- (4) Notice of any hearing shall be sent by certified mail to the applicants and all persons, groups or organizations who have submitted written comments on the proposed cooperative agreement as well as to all persons, groups or organizations designated as affected parties in the certificate of need proceeding. Any individual, group or organization who submitted written comments regarding the application and wishes to present evidence at the public hearing shall request to be recognized as an affected party as set forth in article two-d of this chapter. The hearing shall be held no later than forty-five days after receipt of the application. The authority shall publish notice of the hearing on the authority's website fifteen days prior to the hearing. The authority shall additionally provide timely notice of such hearing in the State Register.
- (5) Parties may file a motion for an expedited decision.
- 183 (f) Standards for review of cooperative agreements.—
  - (1) In its review of an application for approval of a cooperative agreement submitted pursuant to this section, the authority may consider the proposed cooperative agreement and any supporting documents submitted by the applicant, any written comments submitted by any person and any written or oral comments submitted, or evidence presented, at any public hearing.
- 191 (2) The authority shall consult with the Attorney General of 192 this state regarding his or her assessment of whether or not to 193 approve the proposed cooperative agreement.

- 194 (3) The authority shall approve a proposed cooperative 195 agreement and issue a certificate of approval if it determines, 196 with the written concurrence of the Attorney General, that the 197 benefits likely to result from the proposed cooperative agreement 198 outweigh the disadvantages likely to result from a reduction in 199 competition from the proposed cooperative agreement.
- 200 (4) In evaluating the potential benefits of a proposed 201 cooperative agreement, the authority shall consider whether one 202 or more of the following benefits may result from the proposed 203 cooperative agreement:
- 204 (A) Enhancement and preservation of existing academic and clinical educational programs;
- 206 (B) Enhancement of the quality of hospital and 207 hospital-related care, including mental health services and 208 treatment of substance abuse provided to citizens served by the 209 authority;
- 210 (C) Enhancement of population health status consistent with 211 the health goals established by the authority;
- (D) Preservation of hospital facilities in geographical proximity to the communities traditionally served by those facilities to ensure access to care:
- 215 (E) Gains in the cost-efficiency of services provided by the 216 hospitals involved;
- 217 (F) Improvements in the utilization of hospital resources and 218 equipment;
- 219 (G) Avoidance of duplication of hospital resources;
- 220 (H) Participation in the state Medicaid program; and

- (I) Constraints on increases in the total cost of care.
- 222 (5) The authority's evaluation of any disadvantages 223 attributable to any reduction in competition likely to result from 224 the proposed cooperative agreement shall include, but need not
- be limited to, the following factors:

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- (A) The extent of any likely adverse impact of the proposed cooperative agreement on the ability of health maintenance organizations, preferred provider organizations, managed health care organizations or other health care payors to negotiate reasonable payment and service arrangements with hospitals, physicians, allied health care professionals or other health care providers;
- 233 (B) The extent of any reduction in competition among 234 physicians, allied health professionals, other health care 235 providers or other persons furnishing goods or services to, or in 236 competition with, hospitals that is likely to result directly or 237 indirectly from the proposed cooperative agreement;
- (C) The extent of any likely adverse impact on patients in the quality, availability and price of health care services; and
- 240 (D) The availability of arrangements that are less restrictive 241 to competition and achieve the same benefits or a more favorable 242 balance of benefits over disadvantages attributable to any 243 reduction in competition likely to result from the proposed 244 cooperative agreement.
  - (6) (A) After a complete review of the record, including, but not limited to, the factors set out in subsection (e) of this section, any commitments made by the applicant or applicants and any conditions imposed by the authority, if the authority determines that the benefits likely to result from the proposed cooperative agreement outweigh the disadvantages likely to result from a reduction in competition from the proposed cooperative

- agreement, the authority shall approve the proposed cooperativeagreement.
- 254 (B) The authority may reasonably condition approval upon 255 the parties' commitments to:
- 256 (i) Achieving improvements in population health;
- 257 (ii) Access to health care services;
- 258 (iii) Quality and cost efficiencies identified by the parties in 259 support of their application for approval of the proposed 260 cooperative agreement; and
- 261 (iv) Any additional commitments made by the parties to the cooperative agreement.
- Any conditions set by the authority shall be fully enforceable by the authority. No condition imposed by the authority, however, shall limit or interfere with the right of a hospital to adhere to religious or ethical directives established by its governing board.
- 268 (7) The authority's decision to approve or deny an application shall constitute a final order or decision pursuant to the West Virginia Administrative Procedure Act (§ 29A-1-1, *et seq.*). The authority may enforce commitments and conditions imposed by the authority in the circuit court of Kanawha County or the circuit court where the principal place of business of a party to the cooperative agreement is located.
- 275 (g) Enforcement and supervision of cooperative 276 agreements. — The authority shall enforce and supervise any 277 approved cooperative agreement for compliance.
- 278 (1) The authority is authorized to promulgate legislative 279 rules in furtherance of this section. Additionally, the authority 280 shall promulgate emergency rules pursuant to the provisions of

- 281 section fifteen, article three, chapter twenty-nine-a of this code
- 282 to accomplish the goals of this section. These rules shall include,
- 283 at a minimum:
- (A) An annual report by the parties to a cooperative
- 285 agreement. This report is required to include:
- 286 (i) Information about the extent of the benefits realized and
- 287 compliance with other terms and conditions of the approval;
- 288 (ii) A description of the activities conducted pursuant to the
- 289 cooperative agreement, including any actions taken in
- 290 furtherance of commitments made by the parties or terms
- 291 imposed by the authority as a condition for approval of the
- 292 cooperative agreement;
- 293 (iii) Information relating to price, cost, quality, access to
- 294 care and population health improvement;
- 295 (iv) Disclosure of any reimbursement contract between a
- 296 party to a cooperative agreement approved pursuant to this
- 297 section and a commercial health plan or insurer entered into
- 298 subsequent to the finalization of the cooperative agreement.
- 299 This shall include the amount, if any, by which an increase in the
- 300 average rate of reimbursement exceeds, with respect to inpatient
- 301 services for such year, the increase in the Consumer Price Index
- for all Urban Consumers for hospital inpatient services as published by the Bureau of Labor Statistics for such year and,
- with respect to outpatient services, the increase in the Consumer
- 305 Price Index for all Urban Consumers for hospital outpatient
- 306 services for such year; and
- 307 (v) Any additional information required by the authority to
- 308 ensure compliance with the cooperative agreement.
- 309 (B) If an approved application involves the combination of 310 hospitals, disclosure of the performance of each hospital with

- 311 respect to a representative sample of quality metrics selected
- 312 annually by the authority from the most recent quality metrics
- 313 published by the Centers for Medicare and Medicaid Services.
- 314 The representative sample shall be published by the authority on
- 315 its website.
- 316 (C) A procedure for a corrective action plan where the
- 317 average performance score of the parties to the cooperative
- 318 agreement in any calendar year is below the fiftieth percentile
- 319 for all United States hospitals with respect to the quality metrics
- 320 as set forth in (B) of this subsection. The corrective action plan
- 321 is required to:
- 322 (i) Be submitted one hundred twenty days from the
- 323 commencement of the next calendar year; and
- 324 (ii) Provide for a rebate to each commercial health plan or
- insurer with which they have contracted an amount not in excess
- 326 of one percent of the amount paid to them by such commercial
- 327 health plan or insurer for hospital services during such two-year
- 328 period if in any two consecutive-year period the average
- 329 performance score is below the fiftieth percentile for all United
- 330 States hospitals. The amount to be rebated shall be reduced by
- 331 the amount of any reduction in reimbursement which may be
- imposed by a commercial health plan or insurer under a quality
- 333 incentive or awards program in which the hospital is a
- 334 participant.
- 335 (D) A procedure where if the excess above the increase in
- 336 the Consumer Price Index for all Urban Consumers for hospital
- inpatient services or hospital outpatient services is two percent
- 338 or greater the authority may order the rebate of the amount
- 339 which exceeds the respective indices by two percent or more to
- 340 all health plans or insurers which paid such excess unless the
- 341 party provides written justification of such increase satisfactory
- to the authority taking into account case mix index, outliers and
- 343 extraordinarily high cost outpatient procedure utilizations.

- 344 (E) The ability of the authority to investigate, as needed, to 345 ensure compliance with the cooperative agreement.
- 346 (F) The ability of the authority to take appropriate action, 347 including revocation of a certificate of approval, if it determines 348
- that:
- 349 (i) The parties to the agreement are not complying with the 350 terms of the agreement or the terms and conditions of approval;
- 351 (ii) The authority's approval was obtained as a result of an 352 intentional material misrepresentation;
- 353 (iii) The parties to the agreement have failed to pay any 354 required fee; or
- 355 (iv) The benefits resulting from the approved agreement no 356 longer outweigh the disadvantages attributable to the reduction 357 in competition resulting from the agreement.
- 358 (G) If the authority determines the parties to an approved 359 cooperative agreement have engaged in conduct that is contrary 360 to state policy or the public interest, including the failure to take 361 action required by state policy or the public interest, the authority may initiate a proceeding to determine whether to 362 require the parties to refrain from taking such action or requiring 363 364 the parties to take such action, regardless of whether or not the 365 benefits of the cooperative agreement continue to outweigh its 366 disadvantages. Any determination by the authority shall be final. The authority is specifically authorized to enforce its 367 368 determination in the circuit court of Kanawha County or the 369 circuit court where the principal place of business of a party to 370 the cooperative agreement is located.
- 371 (H) Fees as set forth in subsection (h).
- 372 (2) Until the promulgation of the emergency rules, the 373 authority shall monitor and regulate cooperative agreements to

- ensure that their conduct is in the public interest and shall have the powers set forth in subdivision (1) of this subsection, including the power of enforcement set forth in paragraph (G),
- 377 subdivision (1) of this subsection.

(h) *Fees.* — The authority may set fees for the approval of a cooperative agreement. These fees shall be for all reasonable and actual costs incurred by the authority in its review and approval of any cooperative agreement pursuant to this section. These fees shall not exceed \$75,000. Additionally, the authority may assess an annual fee not to exceed \$75,000 for the supervision of any cooperative agreement approved pursuant to this section and to support the implementation and administration of the provisions of this section.

#### (i) Miscellaneous provisions. —

- (1) (A) An agreement entered into by a hospital party to a cooperative agreement and any state official or state agency imposing certain restrictions on rate increases shall be enforceable in accordance with its terms and may be considered by the authority in determining whether to approve or deny the application. Nothing in this chapter shall undermine the validity of any such agreement between a hospital party and the Attorney General entered before the effective date of this legislation.
- (B) At least ninety days prior to the implementation of any increase in rates for inpatient and outpatient hospital services and at least sixty days prior to the execution of any reimbursement agreement with a third party payor, a hospital party to a cooperative agreement involving the combination of two or more hospitals through merger, consolidation or acquisition which has been approved by the authority shall submit any proposed increase in rates for inpatient and outpatient hospital services and any such reimbursement agreement to the Office of the West Virginia Attorney General together with such

406 information concerning costs, patient volume, acuity, payor mix 407 and other data as the Attorney General may request. Should the 408 Attorney General determine that the proposed rates may 409 inappropriately exceed competitive rates for comparable services 410 in the hospital's market area which would result in unwarranted 411 consumer harm or impair consumer access to health care, the 412 Attorney General may request the authority to evaluate the 413 proposed rate increase and to provide its recommendations to the 414 Office of the Attorney General. The Attorney General may 415 approve, reject or modify the proposed rate increase and shall 416 communicate his or her decision to the hospital no later than 30 417 days prior to the proposed implementation date. The hospital 418 may then only implement the increase approved by the Attorney Should the Attorney General determine that a 419 General. 420 reimbursement agreement with a third party payor includes 421 pricing terms at anti-competitive levels, the Attorney General 422 may reject the reimbursement agreement and communicate such 423 rejection to the parties thereto together with the rationale 424 therefor in a timely manner.

- 425 (2) The authority shall maintain on file all cooperative 426 agreements the authority has approved, including any conditions 427 imposed by the authority.
- 428 (3) Any party to a cooperative agreement that terminates its 429 participation in such cooperative agreement shall file a notice of 430 termination with the authority thirty days after termination.
- 431 (4) No hospital which is a party to a cooperative agreement 432 for which approval is required pursuant to this section may 433 knowingly bill or charge for health services resulting from, or 434 associated with, such cooperative agreement until approved by 435 the authority. Additionally, no hospital which is a party to a 436 cooperative agreement may knowingly bill or charge for health 437 services resulting from, or associated with, such cooperative 438 agreement for which approval has been revoked or terminated.

439 (5) By submitting an application for review of a cooperative 440 agreement pursuant to this section, the hospitals or health care 441 providers shall be deemed to have agreed to submit to the 442 regulation and supervision of the authority as provided in this 443 section.

#### **§16-29B-29.** Severability.

- 1 If any provision of this article or the application thereof to
- 2 any person or circumstance is held unconstitutional or invalid,
- 3 such unconstitutionality or invalidity shall not affect, impair or
- 4 invalidate other provisions or applications of the article, and to
- 5 this end the provisions of this article are declared to be
- 6 severable.



# **CHAPTER 204**

(Com. Sub. for S. B. 545 - By Senator Boso)

[Passed March 10, 2016; in effect ninety days from passage.] [Approved by the Governor on March 29, 2016.]

AN ACT to amend and reenact §16-32-2 and §16-32-11 of the Code of West Virginia, 1931, as amended, all relating to asbestos abatement on oil and gas pipelines; defining terms; requiring requests for waivers and other matters be made to the Commissioner of the Bureau for Public Health; exempting the removal, repair and maintenance of intact oil and gas pipeline asphaltic wrap which contains asbestos fibers encapsulated or coated by bituminous or resinous compounds from asbestos abatement requirements; and providing specific requirements for that exemption to apply.

Be it enacted by the Legislature of West Virginia:

That §16-32-2 and §16-32-11 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

#### ARTICLE 32. ASBESTOS ABATEMENT.

#### **§16-32-2. Definitions.**

- 1 (a) "Asbestos" means the asbestiform varieties of chrysolite
- 2 (serpentine), crocidolite (riebeckite), amosite (cummintonite-
- 3 grunerite), anthophyllite, tremolite and actinolite.
- 4 (b) "Asbestos analytical laboratory" means a facility or place
- 5 which analyzes asbestos bulk samples or asbestos air samples.
- 6 (c) "Asbestos abatement project designer" means a person
- 7 who specifies engineering controls, methods and work practices
- 8 to be used during asbestos abatement projects.
- 9 (d) "Asbestos abatement supervisor" means a person
- 10 responsible for direction of asbestos abatement projects.
- (e) "Asbestos clearance air monitor" means a person who
- 12 performs air monitoring to confirm clearance levels to establish
- 13 that an area is safe for reoccupancy after an asbestos abatement
- 14 project.
- 15 (f) "Asbestos-containing material" means any material or
- 16 product which contains more than one percent asbestos by
- 17 weight.
- 18 (g) "Asbestos contractor" means a person who enters into
- 19 contract for an asbestos abatement project.
- 20 (h) "Asbestos inspector" means a person employed to
- 21 inspect for the presence of asbestos-containing materials,

- evaluate the condition of such materials and collect samples forasbestos content confirmation.
- 24 (i) "Asbestos management planner" means a person 25 employed to interpret survey results, make hazard assessment, 26 evaluation and selection of control options or develop an 27 operation and maintenance plan.
- (j) "Asbestos abatement project" means an activity involving
  the repair, removal, enclosure or encapsulation of
  asbestos-containing material. "Asbestos abatement project" does
  not include removal, repair and maintenance of intact oil and gas
  pipeline asphaltic wrap which contains asbestos fibers
  encapsulated or coated by bituminous or resinous compounds as
  described in subsection (d), section eleven of this article.
- 35 (k) "Asbestos worker" means a person who works on an 36 asbestos abatement project.
- 37 (1) "Bureau" means the Bureau for Public Health of the 38 Department of Health and Human Resources.
- (m) "Commissioner" means Commissioner of the Bureau forPublic Health or his or her designee.
- 41 (n) "Competent person" means one who is capable of 42 identifying existing asbestos hazards in the workplace and 43 selecting the appropriate control strategy for asbestos exposure 44 and who has the authority to take prompt corrective measures to 45 eliminate them.
- 46 (o) "Contained work area" means designated rooms, spaces 47 or other areas where asbestos abatement activities are being 48 performed, including decontamination structures. The contained 49 work area shall be separated from the uncontaminated 50 environment by polyethylene sheeting or other materials used in

- 51 conjunction with the existing floors, ceilings and walls of the structure.
- 53 (p) "Encapsulate" means the application of any material onto
- 54 any asbestos-containing material to bridge or penetrate the
- 55 material to prevent fiber release.
- 56 (q) "Enclosure" means the permanent confinement of friable
- 57 asbestos-containing materials with an airtight barrier in an area
- 58 not used or designed as an air plenum.
- 59 (r) "Friable" means material which is capable of being
- 60 crumbled, pulverized or reduced to powder by hand pressure of
- 61 which under normal use or maintenance emits or can be expected
- 62 to emit asbestos fibers into the air.
- (s) "Good faith report" means a report of conduct defined in
- 64 this article as wrongdoing or waste which is made without
- 65 malice or consideration of personal benefit and which the person
- 66 making the report has reasonable cause to believe is true.
- 67 (t) "Intact" means that the asbestos-containing material has
- 68 not crumbled, been pulverized or otherwise deteriorated so that
- 69 the asbestos is no longer likely to be bound with its matrix.
- 70 (u) "License" means a document authorizing a person to
- 71 perform certain specific asbestos-related work activities.
- 72 (v) "Person" means a corporation, partnership, sole
- 73 proprietorship, firm, enterprise, franchise, association or any
- 74 individual or entity.
- 75 (w) "Resilient floor covering" means floor tile, sheet vinyl
- and associated adhesives which contain more than one percent
- asbestos by weight.
- 78 (x) "Resilient floor covering worker" means a person who is
- 79 employed to remove resilient floor covering in single-family
- 80 dwellings.

- (y) "Waste" means an employer's conduct or omissions which result in substantial abuse, misuse, destruction or loss of funds or resources belonging to or derived from federal, state or political subdivision sources.
- 85 (z) "Wrongdoing" means a violation which is not of a 86 merely technical or minimal nature of a federal or state statute or 87 regulation, of a political subdivision ordinance or regulation or 88 of a code of conduct or ethics designed to protect the interest of 89 the public or the employer.

#### §16-32-11. Notification; waivers; exemptions.

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- 1 (a) Each owner or other person responsible for the operation
  2 of a building or facility where an asbestos abatement project is
  3 to occur shall notify the commissioner at least ten working days
  4 prior to commencement of each asbestos abatement project and
  5 shall comply with other applicable state and federal legal and
  6 regulatory notification requirements for asbestos abatement
  7 projects.
  - (b) In an emergency that results from a sudden unexpected event that is not a planned renovation or demolition, the commissioner may waive the requirement of ten working days prior notification, but in all cases notification shall be made to the bureau after the emergency within the specified time required by the commissioner.
  - (c) Asbestos abatement projects involving less than one hundred sixty square feet or two hundred sixty linear feet of asbestos containing material are exempt from the prior notification requirement, unless the project takes place in a school for any of grades kindergarten through twelve. A summary of the projects shall be submitted to the bureau within a specified time as required by the commissioner.

- 21 (d) Removal, repair and maintenance of oil and gas pipeline 22 asphaltic wrap which contains asbestos fibers encapsulated or 23 coated by bituminous or resinous compounds is not subject to 24 the requirements of this article if:
- 25 (1) The pipeline asphaltic wrap which contains asbestos 26 fibers encapsulated or coated by bituminous or resinous 27 compounds is not friable prior to disturbance along the length of 28 the pipeline being removed, repaired or maintained;
- 29 (2) The area disturbed in preparing the pipeline for cutting 30 does not exceed two hundred sixty linear feet of removed friable 31 asbestos:
- 32 (3) Before work begins and as needed during the job, a 33 competent person conducts an inspection of the worksite and 34 determines that the material is intact and will likely remain 35 intact;
- 36 (4) All employees performing work covered by this 37 subsection are trained in accordance with OSHA standards, 29 38 CFR 1926.1101(g)(11)(ii), and all other workers shall remain at 39 a safe distance from the site:
- 40 (5) The material is not sanded, abraded or ground. Manual 41 methods which do not render the material nonintact must be 42 used;
- 43 (6) All removal or disturbance of pipeline asphaltic wrap is 44 performed using wet methods; and
- 45 (7) All pipeline and asbestos-containing material removed 46 from the pipeline is disposed of in a lawful manner.
- 47 (e) Persons who remove resilient floor covering materials in 48 single-family dwellings are exempt from notification 49 requirements.



## (S. B. 431 - By Senators Cole (Mr. President), and Kessler) [By Request of the Executive]

[Passed March 12, 2016; in effect ninety days from passage.] [Approved by the Governor on March 29, 2016.]

AN ACT to amend and reenact §16-46-3, §16-46-5 and §16-46-6 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §16-46-3a, all relating to authorizing pharmacist or pharmacy intern to dispense, pursuant to a protocol, an opioid antagonist without a prescription; requiring Board of Pharmacy, in consultation with Bureau for Public Health, to develop a protocol; requiring patient counseling; requiring educational materials; requiring documentation of distribution of opioid antagonists in West Virginia Controlled Substances Monitoring Program database; revising existing reporting requirements; providing limited liability to pharmacist and pharmacy interns; revising reporting requirements; and reorganizing existing code language.

Be it enacted by the Legislature of West Virginia:

That §16-46-3, §16-46-5 and §16-46-6 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 §16-46-3a, all to read as follows:

#### ARTICLE 46. ACCESS TO OPIOID ANTAGONISTS ACT.

§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 1
- professional practice may offer to initial responders a 3 prescription for opioid antagonists, including a standing order,
- to be used during the course of their professional duties as initial 4
- 5 responders.
- 6 (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
- 9 opiate-related overdose, or to a relative, friend, caregiver or
- person in a position to assist a person at risk of experiencing an 10
- opiate-related overdose, a prescription for an opioid antagonist. 11
- 12 (c) All licensed health care providers who prescribe an
- opioid antagonist under this section shall provide educational 13
- materials to any person or entity receiving such a prescription on 14
- opiate-related overdose prevention and treatment programs, as 15
- well as materials on administering the prescribed opioid 16
- 17 antagonist.

## §16-46-3a. Pharmacist or pharmacy intern may dispense, pursuant protocol, opioid antagonists without a prescription; patient counseling required; required educational materials.

- 1 (a) Pursuant to the protocol developed under subsection (f)
- of this section, a pharmacist or pharmacy intern under the
- supervision of a pharmacist may dispense an opioid antagonist 3
- 4 without a prescription.
- 5 (b) A pharmacist or pharmacy intern who dispenses an
- opioid antagonist without a prescription under this section shall 6
- provide patient counseling to the individual for whom the opioid 7

- antagonist is dispensed regarding, but not limited to, the 8 following topics: (1) The proper administration of the opioid 9 antagonist; (2) the importance of contacting emergency services 10 as soon as practicable either before or after administering the 11 opioid antagonist; and (3) the risks associated with failure to 12 13 contact emergency services following administration of an 14 opioid antagonist. The patient counseling described in this 15 section is mandatory and the person receiving the opioid 16 antagonist may not opt out.
- 17 (c) A pharmacist shall document the dispensing of an opioid 18 antagonist without a prescription as set forth in the protocol 19 developed under subsection (f) of this section and the reporting 20 requirements set forth in subsection (a), section four, article nine, 21 chapter sixty-a of this code.

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- (d) All pharmacists or pharmacy interns who dispense an opioid antagonist under this section shall provide educational materials to any person receiving such an opioid antagonist on opiate-related overdose prevention and treatment programs, as well as materials on administering the opioid antagonist.
- 27 (e) This section does not affect the authority of a pharmacist 28 or pharmacy intern to fill or refill a prescription for an opioid 29 antagonist.
- 30 (f) To implement the provisions of this section, the Board of Pharmacy shall, after consulting with the Bureau for Public 31 32 Health: (1) Develop a protocol under which pharmacists or pharmacy interns may dispense an opioid antagonist without a 33 34 prescription; (2) specify educational materials which shall be 35 provided to the individual receiving the opioid antagonist; and 36 (3) develop a form, template or the like to be used by pharmacists and pharmacy interns when dispensing the opioid 37 antagonists without a prescription. The protocol developed by 38 the board may be updated or revised as necessary. 39

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

- 1 (a) A licensed health care provider who is permitted by law
  2 to prescribe drugs, including opioid antagonists, may, if acting
  3 in good faith, prescribe and subsequently dispense or distribute
  4 an opioid antagonist without being subject to civil liability or
  5 criminal prosecution unless prescribing the opioid antagonist
  6 was the result of the licensed health care providers gross
  7 negligence or willful misconduct.
  - (b) For purposes of this chapter and chapter sixty-a of this code, 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.

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- 14 (c) Any person who possesses an opioid antagonist and administers it to a person whom they believe to be suffering 15 from an opioid-related overdose and who is acting in good faith 16 17 is not, as a result of his or her actions or omissions, subject to criminal prosecution arising from the possession of an opioid 18 antagonist or subject to any civil liability with respect to the 19 administration of or failure to administer the opioid antagonist 20 21 unless the act or failure to act was the result of gross negligence 22 or willful misconduct.
  - (d) 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.
- 29 (e) Any pharmacist or pharmacy intern who dispenses or refuses to dispense an opioid antagonist under the provisions of

- 31 this article who is acting in good faith and subject to the
- 32 requirements of section three-a of this article is not, as a result of
- 33 his or her actions or omissions, subject to civil liability or
- 34 criminal prosecution unless dispensing the opioid antagonist was
- 35 the result of the pharmacist or pharmacy interns gross negligence
- 36 or willful misconduct.

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

- 1 (a) Beginning March 1, 2016, and annually after that the 2 following reports shall be compiled:
- 3 (1) The Office of Emergency Medical Services shall collect
- 4 data regarding each administration of an opioid antagonist by an
- 5 initial responder. The Office of Emergency Medical Services
- 6 shall report this information to the Legislative Oversight
- 7 Commission on Health and Human Resources Accountability,
- 8 Joint Committee on Health and the West Virginia Bureau for
- 9 Behavioral Health and Health Facilities. The data collected and
- 10 reported shall include:
- 11 (A) The number of training programs operating in an Office
- 12 of Emergency Medical Services-designated training center;
- 13 (B) The number of individuals who received training to
- 14 administer an opioid antagonist;
- 15 (C) The number of individuals who received an opioid
- 16 antagonist administered by an initial responder;
- 17 (2) The West Virginia Board of Pharmacy shall query the
- 18 West Virginia Controlled Substances Monitoring Program
- 19 database to compile all data related to the dispensing of opioid
- 20 antagonists and combine that data with any additional data
- 21 maintained by the Board of Pharmacy related to prescriptions for
- 22 and distribution of opioid antagonists. By February 1 and
- 23 annually thereafter, the Board of Pharmacy shall provide a report

- 24 of this information, excluding any personally identifiable
- 25 information, to the Legislative Oversight Commission on Health
- 26 and Human Resources Accountability, Joint Committee on
- 27 Health and the West Virginia Bureau for Behavioral Health and
- 28 Health Facilities.
- 29 (b) To implement the provisions of this article, including
- 30 establishing the standards for certification and approval of opioid
- 31 overdose prevention and treatment training programs and
- 32 protocols regarding a refusal to transport, the Office of
- 33 Emergency Medical Services may promulgate emergency rules
- 34 pursuant to the provisions of section fifteen, article three, chapter
- 35 twenty-nine-a of this code and shall propose rules for legislative
- 36 approval in accordance with the provisions of said article.



# **CHAPTER 206**

(S. B. 416 - By Senators Takubo, Trump, Blair and Kessler)

[Passed March 10, 2016; in effect ninety days from passage.] [Approved by the Governor on March 23, 2016.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §16-51-1, §16-51-2, §16-51-3, §16-51-4, §16-51-5, §16-51-6, §16-51-7 and §16-51-8, all relating to allowing terminally ill patients to have access to investigational products that have not been approved by the federal Food and Drug Administration that other patients have access to when they participate in clinical trials; establishing a short title; setting out legislative findings; defining terms; allowing drug manufacturers to provide investigative products; setting forth insurance requirements; and prohibiting action.

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 \$16-51-1, \$16-51-2, \$16-51-3, \$16-51-4, \$16-51-5, \$16-51-6, \$16-51-7 and \$16-51-8, all to read as follows:

#### ARTICLE 51. RIGHT TO TRY ACT.

#### §16-51-1. Short title.

- 1 This article shall be known and may be cited as the Ben
- 2 Price Right to Try Act.

#### §16-51-2. Legislative findings.

- 1 (a) The Legislature finds and declares that:
  - 2 (1) The process of approval for investigational drugs,
  - 3 biological products and devices in the United States protects
  - 4 future patients from premature, ineffective and unsafe
  - 5 medications and treatments over the long run, but the process
  - 6 often takes many years;
  - 7 (2) Patients who have a terminal illness do not have the
  - 8 luxury of waiting until an investigational drug, biological
- 9 product or device receives final approval from the United States
- 10 Food and Drug Administration;
- 11 (3) Patients who have a terminal illness have a fundamental
- 12 right to attempt to pursue the preservation of their own lives by
- 13 accessing available investigational drugs, biological products
- 14 and devices:
- 15 (4) The use of available investigational drugs, biological
- 16 products and devices is a decision that should be made by the

- 17 patient with a terminal illness in consultation with the patient's
- 18 health care provider and the patient's health care team, if
- 19 applicable; and
- 20 (5) The decision to use an investigational drug, biological
- 21 product or device should be made with full awareness of the
- 22 potential risks, benefits and consequences to the patient and the
- 23 patient's family.
- 24 (b) It is the intent of the Legislature to allow for terminally
- 25 ill patients to use potentially life-saving or pain-relieving
- 26 investigational drugs, biological products and devices.

#### **§16-51-3.** Definitions.

- 1 For the purposes of this article:
- 2 (1) "Eligible patient" means a person who has:
- 3 (A) A terminal illness attested to by the patient's treating
- 4 physician;
- 5 (B) Considered all other treatment options currently
- 6 approved by the United States Food and Drug Administration;
- 7 (C) Been unable to participate in a clinical trial for the
- 8 terminal illness within one hundred miles of the patient's home
- 9 address for the terminal illness, or not been accepted to the
- 10 clinical trial within one week of completion of the clinical trial
- 11 application process;
- 12 (D) Received a recommendation from his or her physician
- 13 for an investigational drug, biological product or device;
- 14 (E) Given written, informed consent for the use of the
- 15 investigational drug, biological product or device or, if the
- 16 patient is a minor or lacks the mental capacity to provide
- 17 informed consent, a parent or legal guardian has given written,
- 18 informed consent on the patient's behalf; and

- 19 (F) Documentation from his or her physician that he or she 20 meets the requirements of this subdivision.
- 21 (2) "Eligible patient" does not include a person being treated 22 as an inpatient in a hospital licensed or certified pursuant to 23 article five-b, chapter sixteen of this code.
- 24 (3) "Investigational drug, biological product or device"
  25 means a drug, biological product or device that has successfully
  26 completed phase one of a clinical trial but has not yet been
  27 approved for general use by the United States Food and Drug
  28 Administration.
- 29 (4) "Terminal illness" means a disease that, without 30 life-sustaining procedures, will soon result in death or a state of permanent unconsciousness from which recovery is unlikely.
- 32 (5) "Written, informed consent" means a written document 33 signed by the patient and attested to by the patient's physician 34 and a witness that, at a minimum:
- 35 (A) Explains the currently approved products and treatments 36 for the disease or condition from which the patient suffers;
- 37 (B) Attests to the fact that the patient concurs with his or her 38 physician in believing that all currently approved and 39 conventionally recognized treatments are unlikely to prolong the 40 patient's life;
- 41 (C) Clearly identifies the specific proposed investigational 42 drug, biological product or device that the patient is seeking to 43 use;
- 44 (D) Describes the potentially best and worst outcomes of 45 using the investigational drug, biological product or device with 46 a realistic description of the most likely outcome, including the 47 possibility that new, unanticipated, different or worse symptoms

- 48 might result and that death could be hastened by the proposed
- 49 treatment based on the physician's knowledge of the proposed
- 50 treatment in conjunction with an awareness of the patient's
- 51 condition:
- 52 (E) Makes clear that the patient's health insurer and provider
- 53 may not be obligated to pay for any care or treatments
- 54 consequent to the use of the investigational drug, biological
- 55 product or device;
- 56 (F) Makes clear that the patient's eligibility for hospice care
- 57 may be withdrawn if the patient begins curative treatment and
- 58 care may be reinstated if the curative treatment ends and the
- 59 patient meets hospice eligibility requirements;
- 60 (G) Makes clear that in-home health care may be denied if
- 61 treatment begins; and
- 62 (H) States that the patient understands that he or she may be
- 63 liable for all expenses consequent to the use of the
- 64 investigational drug, biological product or device, and that this
- 65 liability extends to the patient's estate, unless a contract between
- 66 the patient and the manufacturer of the drug, biological product
- 67 or device states otherwise.

# §16-51-4. Drug manufacturers; availability of investigational drugs, biological products or devices; costs; insurance coverage.

- 1 (a) A manufacturer of an investigational drug, biological
- 2 product or device may make available the manufacturer's
- 3 investigational drug, biological product or device to eligible
- 4 patients pursuant to this article. This article does not require that
- 5 a manufacturer make available an investigational drug,
- 6 biological product or device to an eligible patient.
- 7 (b) A manufacturer may:

- 8 (1) Provide an investigational drug, biological product or 9 device to an eligible patient without receiving compensation; or
- 10 (2) Require an eligible patient to pay the costs of, or the costs associated with, the manufacture of the investigational drug, biological product or device.
- 13 (c) Nothing in this article expands the coverage required by 14 article fifteen, chapter thirty-three of this code.
- (d) A health insurance carrier may, but is not required by this
   article to, provide coverage for the cost of an investigational
   drug, biological product or device.
- 18 (e) An insurer may deny coverage to an eligible patient from 19 the time the eligible patient begins use of the investigational 20 drug, biologic product or device through a period not to exceed six months from the time the investigational drug, biologic 21 22 product or device is no longer used by the eligible patient; except that coverage may not be denied for a preexisting condition and 23 24 for coverage for benefits which commenced prior to the time the eligible patient begins use of such drug, biologic product or 25 device. 26
- 27 (f) If a patient dies while being treated by an investigational 28 drug, biological product or device, the patient's heirs and estate 29 are not liable for any outstanding debt related to the treatment or 30 lack of insurance due to the treatment.

# §16-51-5. Action against health care provider's license or Medicare certification prohibited.

- Notwithstanding any other law, a licensing board may not revoke, fail to renew, suspend or take any action against a health
- 3 care provider's license issued pursuant to chapter thirty of this
- 4 code based solely on the health care provider's recommendations
- 5 to an eligible patient regarding access to or treatment with an

- 6 investigational drug, biological product or device as long as the
- 7 recommendations are consistent with medical standards of care.
- 8 Action against a health care provider's Medicare certification
- 9 based solely on the health care provider's recommendation that
- 10 a patient have access to an investigational drug, biological
- 11 product or device is prohibited.

# §16-51-6. Access to investigational drugs, biological products and devices.

- 1 An official, employee or agent of this state shall not block or
- 2 attempt to block an eligible patient's access to an investigational
- 3 drug, biological product or device. Counseling, advice or a
- 4 recommendation consistent with medical standards of care from
- 5 a licensed health care provider is not a violation of this section.

## §16-51-7. No cause of action created.

- 1 This article does not create a private cause of action against
- 2 a manufacturer of an investigational drug, biological product or
- 3 device, against a health care provider as defined in section two,
- 4 article seven-b, chapter fifty-five of this Code, or against any
- 5 other person or entity involved in the care of an eligible patient
- 6 using the investigational drug, biological product or device, for
- 7 any harm done to the eligible patient resulting from the
- 8 investigational drug, biological product or device, so long as the
- 9 manufacturer, health care provider, or other person or entity is
- 10 complying in good faith with the terms of this article.

## §16-51-8. Effect on health care coverage.

- Nothing in this article affects the mandatory health care
- 2 coverage for participation in clinical trials pursuant to section
- 3 two, article twenty-five-f, chapter thirty-three of this code.

# **CHAPTER 207**

(Com. Sub. for S. B. 338 - By Senators Trump, Kessler, Woelfel, Palumbo, Romano, Stollings, Plymale and Yost)

[Passed March 10, 2016; in effect ninety days from passage.] [Approved by the Governor on March 23, 2016.]

AN ACT to amend and reenact §61-7A-1, §61-7A-2, §61-7A-3 and §61-7A-4 of the Code of West Virginia, 1931, as amended, all relating generally to compiling and maintaining of West Virginia Central State Mental Health Registry; clarifying that only certain mental illness commitments are to be reported to registry; prohibiting reporting children under fourteen years of age to registry; requiring names to be reported to Administrator of the Supreme Court of Appeals; and making technical corrections.

Be it enacted by the Legislature of West Virginia:

That §61-7A-1, §61-7A-2, §61-7A-3 and §61-7A-4 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 7A. STATE MENTAL HEALTH REGISTRY: REPORTING OF PERSONS PROSCRIBED FROM FIREARM POSSESSION DUE TO MENTAL CONDITION TO THE NATIONAL INSTANT CRIMINAL BACKGROUND CHECK **SYSTEM:** LEGISLATIVE FINDINGS; **DEFINITIONS:** REPORTING REQUIREMENTS; REINSTATEMENT OF RIGHTS PROCEDURES.

### §61-7A-1. Legislative intent.

- 1 It is the intention of the Legislature in the enactment of this
- 2 article to clarify the persons whom it intends to proscribe from
- 3 the possession of firearms due to mental illness; establish a
- 4 process in reporting the names of persons proscribed from
- 5 possession of firearms due to mental illness to the central state
- 6 mental health registry; authorize reporting by registry to the
- 7 National Instant Criminal Background Check System; and to
- 8 prescribe a means for reinstating one's ability to lawfully
- 9 possess a firearm.

#### §61-7A-2. Definitions.

- 1 As used in this article and as the terms are deemed to mean
- 2 in 18 U. S. C. § 922(g) and section seven, article seven of this
- 3 chapter as each exists as of January 31, 2008:
- 4 (1) "A person adjudicated as a mental defective" means a
- 5 person who has been determined by a duly authorized court,
- 6 tribunal, board or other entity to be mentally ill to the point
- 7 where he or she has been found to be incompetent to stand trial
- 8 due to mental illness or insanity, has been found not guilty in a
- 9 criminal proceeding by reason of mental illness or insanity or
- 10 has been determined to be unable to handle his or her own affairs
- 11 due to mental illness or insanity. A child under fourteen years
- 12 of age is not considered "a person adjudicated as a mental
- 13 defective" for purposes of this article.
- 14 (2) "Committed to a mental institution" means to have been
- 15 involuntarily committed for treatment pursuant to the provisions
- 16 of chapter twenty-seven of this code. Children under fourteen
- 17 years of age are not considered "committed to a mental
- 18 institution" for purposes of this article. "Committed to a mental
- 19 institution" does not mean voluntary admission for mental health
- 20 treatment.

- 21 (3) "Mental institution" means any facility or part of a
- 22 facility used for the treatment of persons committed for
- 23 treatment of mental illness.

# §61-7A-3. Persons whose names are to be supplied to the central state mental health registry.

- 1 (a) The Superintendent of the West Virginia State Police and
- 2 the Secretary of the Department of Health and Human
- 3 Resources, or their designees, shall cooperate with the circuit
- 4 clerk of each county and Administrator of the West Virginia
- 5 Supreme Court of Appeals in compiling and maintaining a
- 6 database containing the names and identifying information of
- 7 persons who have been adjudicated to be mentally defective or
- 8 who have been committed to a mental institution. The registry
- 9 shall be maintained by the Administrator of the Supreme Court
- 10 of Appeals or the superintendent of the West Virginia State
- 11 Police.
- 12 (b) The name of any person who has been adjudicated to be
- 13 mentally defective or who has been committed to a mental
- 14 institution shall be provided to the Administrator of the Supreme
- 15 Court of Appeals or the Superintendent of the West Virginia
- 16 State Police for inclusion in the central state mental health
- 17 registry. Upon receipt of the information being received by the
- 18 central state mental health registry it may be transmitted to the
- 19 National Instant Criminal Background Check System and to
- 20 county sheriffs;
- 21 (c) The Secretary of Department of Human Resources and
- 22 the circuit clerk of each county shall, as soon as practicable after
- 23 the effective date of this article, supply to the Administrator of
- 24 the Supreme Court of Appeals or the Superintendent of the West
- 25 Virginia State Police for inclusion in the central state mental
- 26 health registry the name and identifying information required by
- 27 the provisions of subsection (d) of this section of all persons

- 28 covered by the provisions of this article and shall on an ongoing
- 29 basis continue to provide such information as it is developed;
- 30 (d) The central state mental health registry shall contain the
- 31 name, address at the time of commitment or adjudication, date
- 32 of birth, date of commitment or adjudication of all persons who
- 33 have been adjudicated to be mentally defective or who have been
- 34 committed to a mental institution.
- 35 (e) The central state mental health registry shall provide only
- 36 such information about a person on the registry to county
- 37 sheriffs and the National Instant Criminal Background Check
- 38 System as is necessary to identify registrants; and
- 39 (f) On or before January 1, 2010, the central state mental
- 40 health registry shall contain the name, address at the time of
- 41 commitment or adjudication, date of birth, date of commitment
- 42 or adjudication and any other identifying characteristics of all
- 43 persons who have been adjudicated to be mentally defective or
- 44 who have been committed to a mental institution. Under no
- 45 circumstances shall the registry contain information relating to
- 46 any diagnosis or treatment provided.
- 47 (g) To the extent the central state mental health registry
- 48 contains the names of any children under fourteen years of age
- 49 on the effective date of this article, the Administrator of the West
- 50 Virginia Supreme Court of Appeals shall take whatever steps are
- 51 necessary to remove those individuals from the central state
- 52 mental health registry.

## §61-7A-4. Confidentiality; limits on use of registry information.

- 1 (a) Notwithstanding any provision of this code to the
- 2 contrary, the Superintendent of the State Police, the Secretary of
- 3 the Department of Health and Human Resources, the circuit
- 4 clerks, and the Administrator of the Supreme Court of Appeals

- 5 may provide notice to the central state mental health registry and
- 6 the National Instant Criminal Background Check System
- 7 established pursuant to Section 103(d) of the Brady Handgun
- 8 Violence Protection Act, 18 U. S. C. §922, that a person: (i) Has
- 9 been involuntarily committed to a mental institution; (ii) has
- 10 been adjudicated as a mental defective; or (iii) has regained the
- 11 ability to possess a firearm by order of a circuit court in a
- 12 proceeding under section five of this article.
- 13 (b) The information contained in the central state mental
- 14 health registry is to be used solely for the purpose of records
- 15 checks related to firearms purchases and for eligibility for a state
- 16 license or permit to possess or carry a concealed firearm.
- 17 (c) Whenever a person's name and other identifying
- 18 information has been added to the central state mental health
- 19 registry, a review of the state concealed handgun registry shall
- 20 be undertaken and if such review reveals that the person
- 21 possesses a current concealed handgun license, the sheriff of the
- 22 county issuing the concealed handgun license shall be informed
- 23 of the person's change in status.



## **CHAPTER 208**

(Com. Sub. for S. B. 265 - By Senators Blair and Snyder)

[Passed March 10, 2016; in effect ninety days from passage.] [Approved by the Governor on March 21, 2016.]

AN ACT to amend and reenact §10-1-22 of the Code of West Virginia, 1931, as amended, relating to confidentiality of certain library records; and providing that certain library records may be disclosed to members of library staff, including paid employees

and unpaid volunteers upon completion of a written confidentiality agreement and the obtaining of written permission from the library director.

Be it enacted by the Legislature of West Virginia:

That §10-1-22 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

#### ARTICLE 1. PUBLIC LIBRARIES.

#### §10-1-22. Confidential nature of certain library records.

- 1 (a) Circulation and similar records of any public library in
- 2 this state which identify the user of library materials are not
- 3 public records but shall be confidential and may not be disclosed
- 4 except:
- 5 (1) To members of the library staff in the ordinary course of
- 6 business, including paid employees and unpaid volunteers upon
- 7 completing a written confidentiality agreement which shall
- 8 prevent disclosure of circulation records, personal information,
- 9 and similar records of any public library except to the extent
- 10 allowed under this subsection and obtaining written permission
- 11 from the library director of the library system wherein he or she
- 12 will be working;
- 13 (2) Upon written consent of the user of the library materials
- 14 or the user's parents or guardian if the user is a minor or ward;
- 15 or
- 16 (3) Upon appropriate court order or subpoena.
- 17 (b) Any disclosure authorized by subsection (a) of this
- 18 section or any unauthorized disclosure of materials made
- 19 confidential by that subsection (a) does not in any way destroy
- 20 the confidential nature of that material, except for the purpose

- 21 for which an authorized disclosure is made. A person disclosing
- 22 material as authorized by subsection (a) of this section is not
- 23 liable therefor.



# **CHAPTER 209**

(Com. Sub. for S. B. 267 - By Senator Blair)

[Passed March 12, 2016; in effect ninety days from passage.] [Approved by the Governor on March 24, 2016.]

AN ACT to amend and reenact §6-6-1 and §6-6-7 of the Code of West Virginia, 1931, as amended, all relating to modifying the procedure for removal of certain county, school district and municipal officers; modifying definitions; and providing political subdivisions be responsible for costs associated with removal proceedings when the outcome is in favor of a challenged officer acting in good faith.

Be it enacted by the Legislature of West Virginia:

That §6-6-1 and §6-6-7 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

#### ARTICLE 6. REMOVAL OF OFFICERS

#### §6-6-1. Definitions.

- 1 (a) The term "official misconduct", as used in this article,
- 2 means conviction of a felony during the officer's present term of
- 3 office or any willful unlawful behavior by a public officer in the
- 4 course of his or her performance of the duties of the public
- 5 office.

- 6 (b) The term "neglect of duty", as used in this article, means
  7 the knowing refusal or willful failure of a public officer to
  8 perform an essential act or duty of the office required by law.
- 9 (c) The term "incompetence", as used in this article, may 10 include the following acts or adjudications committed or arising during the challenged officer's term of office: The waste or 11 misappropriation of public funds by any officer when the officer 12 13 knew, or should have known, that such use of funds was inappropriate or inconsistent with the lawful duties of the office; 14 conviction of a misdemeanor involving dishonesty or gross 15 16 immorality, having been the subject of a determination of 17 incapacity, as defined and governed by section seven, article thirty, chapter sixteen of this code; or other conduct affecting the 18 officer's ability to perform the essential official duties of his or 19 20 her office including but not limited to habitual drunkenness or 21 addiction to the use of narcotic drugs.
- 22 (d) The term "qualified petitioner", as used in this article, 23 means a person who was registered to vote in the election in 24 which the officer was chosen which next preceded the filing of 25 the petition.

# §6-6-7. Procedure for removal of county, school district and municipal officers having fixed terms; appeal; grounds; cost.

1 (a) Any person holding any county, school district or municipal office, including the office of a member of a board of 2 education and the office of magistrate, the term or tenure of 3 4 which office is fixed by law, whether the office be elective or appointive, except judges of the circuit courts, may be removed 5 from such office in the manner provided in this section for 6 official misconduct, neglect of duty, incompetence or for any of 8 the causes or on any of the grounds provided by any other 9 statute.

10 (b) Charges may be proffered:

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- 11 (1) In the case of any county officer, member of a board of 12 education or magistrate:
- 13 (A) By a duly enacted resolution of the county commission 14 which sets forth therein the name and office of the challenged 15 officer, the alleged wrongful acts, the dates the alleged acts 16 occurred and the grounds for removal as provided in this article;
- 17 (B) By the prosecuting attorney of the county; or
- 18 (C) By petition of a number of qualified petitioners, which number shall be:
- 20 (i) In a county with a population in excess of fifty thousand; 21 the lesser of two thousand or ten percent of the number of 22 registered voters who participated in the particular election in 23 which the challenged officer was chosen which next preceded 24 the filing of the petition;
  - (ii) In a county with a population in excess of ten thousand but not in excess of fifty thousand, the lesser of five hundred or ten percent of the number of registered voters who participated in the particular election in which the challenged officer was chosen which next preceded the filing of the petition; and
  - (iii) In a county with a population not in excess of ten thousand, the lesser of one hundred or ten percent of the number of registered voters who participated in the particular election in which the challenged officer was chosen which next preceded the filing of the petition.
- Such petition shall set forth therein the name and office of the challenged officer, the alleged wrongful acts and the grounds for removal.

- 38 (2) In the case of any municipal officer:
- 39 (A) By a duly enacted resolution of the governing body of
- 40 the municipality which sets forth therein the name and office of
- 41 the challenged officer, the alleged wrongful acts, the dates the
- 42 alleged acts occurred and the grounds for removal as provided in
- 43 this article:
- 44 (B) By the prosecuting attorney of the county wherein such
- 45 municipality, or the greater portion thereof, is located; or
- 46 (C) By petition of a number of qualified petitioners, which
- 47 number shall be:
- 48 (i) In a Class I city, the lesser of two thousand or ten percent
- 49 of the number of registered voters who participated in the
- 50 particular election in which the challenged officer was chosen
- 51 which next preceded the filing of the petition;
- 52 (ii) In a Class II city, the lesser of five hundred or ten percent
- 53 of the number of registered voters who participated in the
- 54 particular election in which the challenged officer was chosen
- 55 which next preceded the filing of the petition;
- 56 (iii) In a Class III city, the lesser of one hundred or ten
- 57 percent of the number of registered voters who participated in
- 58 the particular election in which the challenged officer was
- 59 chosen which next preceded the filing of the petition; and
- 60 (iv) In a Class IV town or village, the lesser of fifty or ten
- 61 percent of the number of registered voters who participated in
- 62 the particular election in which the challenged officer was
- 63 chosen which next preceded the filing of the petition.
- Such petition shall set forth therein the name and office of
- 65 the challenged officer, the alleged wrongful acts and the grounds
- 66 for removal.

(3) By the chief inspector and supervisor of public offices of
the state where the person sought to be removed is entrusted by
law with the collection, custody and expenditure of public
moneys because of any intentional or unlawful misapplication,
misappropriation or embezzlement of such moneys.

- (c) When removal is proffered by a duly enacted resolution of a county commission or municipal governing body, a certified copy of the resolution shall be served by the clerk of the commission or municipal governing body upon the circuit court in whose jurisdiction the officer serves within five business days of adoption of the resolution. The proffering county commission or municipal governing body shall be responsible for the prosecution of the removal resolution.
- (d) When removal is proffered by the prosecuting attorney, the charges shall be reduced to writing and the charges shall be served upon the circuit court in whose jurisdiction the officer serves, and the prosecuting attorney shall be responsible for the prosecution of the removal action.
- (e) When removal is proffered by petition, the charges shall be reduced to writing and each page on which signatures are affixed shall include the name and office of the challenged officer, the charges or grounds for removal, which may be achieved by attachment to each signature page, and an informed acknowledgement of an agreement with the charges. At least one of the persons bringing the petition shall serve the original petition upon the circuit court in whose jurisdiction the officer serves, and shall be responsible for the prosecution of the removal action.
- (f) Any resolution or petition submitted pursuant to this section shall be received and entered of record by the court, or the judge thereof in vacation, and a summons shall thereupon be issued by the clerk of such court, together with a copy of the

resolution or petition, requiring the officer or person named therein, or legal counsel therefor, to appear before the court for a preliminary hearing, at the courthouse of the county where such officer resides, for the purpose of a judicial determination as to the validity of the resolution or petition, the clerk having ascertained whether such signatures are the signatures of eligible residents, and to hear any related objections or motions that may be presented. The summons shall be served in the manner by which a summons commencing a civil suit may be served within five business days of the receipt of the resolution or petition by the court.

(g) The court, or judge thereof in vacation, or in the case of any multi-judge circuit, the chief judge thereof, shall have authority to evaluate any resolution or petition for any procedural defect, and to consider all the allegations made in the resolution or petition in light of the applicable case law and the required strict construction of the grounds asserted, and conclude whether or not the allegations asserted would be sufficient, if proven by clear and convincing evidence, to warrant the removal of the officer from office. In the case of a petition, the court may require that the clerk responsible for the maintenance of voting records for the governing body for whom the officer serves provide an affidavit verifying the number of qualified petitioner signatures and the applicable total number of registered voters.

If the court finds, after consideration of any motions or objections, or in the court's discretion provided for herein, that the resolution or petition is defective or the allegations stated therein do not meet the standards for removal set forth herein, the resolution or petition shall be dismissed by the court. If the court finds that the resolution or petition is sufficient under the standards for removal set forth herein to proceed to a hearing before a three-judge court, the court shall forward a copy of the resolution or petition to the Supreme Court of Appeals.

Upon receipt of said resolution or petition, the chief justice of the Supreme Court of Appeals shall, not fewer than twenty days from the date of the receipt of the resolution or petition, designate and appoint three circuit judges within the state, not more than one of whom shall be from the same circuit in which the resolution or petition was filed and, in the order of such appointment, shall require that the three-judge court designate the date, time and place for the hearing of the resolution or petition forthwith.

Such three-judge court shall, without a jury, hear the charges, any motions filed by either party and all evidence offered in support thereof or in opposition thereto, and upon satisfactory proof of the charges by clear and convincing evidence, shall remove any such officer from office and place the records, papers and property of his office in the possession of some other officer or person for safekeeping or in the possession of the person appointed as hereinafter provided to fill the office temporarily. Any final order either removing or refusing to remove any such person from office shall contain such findings of fact and conclusions of law as the three-judge court shall deem sufficient to support its decision of all issues presented to it in the matter.

(h) An appeal from an order of such three-judge court removing or refusing to remove any person from office pursuant to this section may be taken to the Supreme Court of Appeals within thirty days from the date of entry of the order from which the appeal is taken. The Supreme Court of Appeals shall consider and decide the appeal upon the original papers and documents, without requiring the same to be printed and shall enforce its findings by proper writ. From the date of any order of the three-judge court removing an officer under this section until the expiration of thirty days thereafter, and, if an appeal be taken, until the date of suspension of such order, if suspended by the three-judge court and if not suspended, until the final adjudication of the matter by the Supreme Court of Appeals, the

officer, commission or body having power to fill a vacancy in such office may fill the same by a temporary appointment until a final decision of the matter, and when a final decision is made by the Supreme Court of Appeals shall fill the vacancy in the manner provided by law for such office.

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- (i) In any case wherein the charges are proffered by the chief inspector and supervisor of public offices against the county commission or any member thereof or any county, school district or municipal officer, the proceedings under this section shall be conducted and prosecuted in the same manner set forth herein for removal by resolution or petition by the prosecuting attorney of the county in which the officer proceeded against resides, and on any appeal from the order of the three-judge court in any such case, the Attorney General of the state shall represent the people. When any municipal officer is proceeded against the solicitor or municipal attorney for such municipality may assist in the prosecution of the charges.
- (j) If a judicial proceeding under this section is dismissed or otherwise resolved in favor of the challenged officer who has been found to be acting in good faith, the political subdivision for which the officer serves shall be responsible for the court costs and reasonable attorney fees for the officer.



## 011/11 1211210

(Com. Sub. for S. B. 500 - By Senator Hall)

[Passed March 5, 2016; in effect ninety days from passage.] [Approved by the Governor on March 18, 2016.]

AN ACT to amend and reenact §15-2-3 of the Code of West Virginia, 1931, as amended, relating to authorizing the Superintendent of the

State Police to hold training classes for certification to access and use the West Virginia Automated Police Network; authorizing fee to be charged for the training; creating fund in which the fees are to be deposited; and specifying what the funds may be used for.

Be it enacted by the Legislature of West Virginia:

That §15-2-3 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

#### ARTICLE 2. WEST VIRGINIA STATE POLICE.

# §15-2-3. State Police structure; how established; training; special revenue account.

1 (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 4 composed of the number of officers and members the 5 6 superintendent determines are necessary to meet operational needs and are required for the efficient operation of the State The superintendent shall establish the general 8 organizational structure of the State Police by interpretive rule 9 in accordance with the provisions of article three, chapter 10 11 twenty-nine-a of this code. The superintendent shall provide 12 adequate facilities for the training of all members of the State Police and shall prescribe basic training requirements for newly 13 enlisted members. He or she shall also provide advanced or 14 in-service training, from time to time, for all members of the 15 16 State Police. The superintendent shall hold entry-level training classes for other law-enforcement officers in the state without 17 18 cost to those officers, except actual expenses for food, lodging and school supplies. The superintendent may hold advanced 19 20 levels of training classes for other law-enforcement officers in 21 the state for a reasonable daily fee per student not to exceed 22 \$100.

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(b) There is hereby created in the State Treasury a special revenue account, which shall be an interest bearing account, to 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 is 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.

57 Any balance remaining in the special revenue account at the end of any state fiscal year does not revert to the General Revenue 58 Fund but remains in the special revenue account and shall be 59 used solely in a manner consistent with this article. The 60 superintendent is authorized to expend funds from the account 61 62 to offset costs for the 100th anniversary celebration; for 63 purchasing 100th anniversary commemorative merchandise, equipment and vehicles; and to defray necessary expenses 64 65 incidental to those and other activities associated with the 100th anniversary of the West Virginia State Police. This fund expires 66 on December 31, 2019 and remaining funds shall be transferred 67 68 to the Academy Training and Professional Development Fund.

(d) The superintendent may hold training classes for certification to access and use the West Virginia Automated Police Network (WEAPON) for a reasonable daily fee per student not to exceed \$100.

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73 (e) There is hereby created in the State Treasury a special 74 revenue account, which is an interest bearing account, to be 75 known as the West Virginia State Police Criminal Justice 76 Information Services Fund. The special revenue account shall 77 consist of: Fees collected for training and certification for access 78 to the West Virginia Automated Police Network (WEAPON) system; any appropriations that may be made by the Legislature; 79 income from the investment of moneys held in the special 80 revenue account; and all other sums available for deposit to the 81 82 special revenue account from any source, public or private. Any 83 balance remaining in the special revenue account at the end of 84 any state fiscal year does not revert to the General Revenue Fund 85 but remains in the special revenue account and may be used 86 solely in a manner consistent with this article. superintendent is authorized to expend funds from the account 87 for the following purposes: To offset operational and training 88 costs; for building maintenance and repair; for purchases and for 89 90 equipment repair; personal services; software; other associated

- 91 maintenance costs; and to defray necessary expenses incidental
- 92 to those and other activities associated with the communications
- 93 section of the West Virginia State Police.



# (Com. Sub. for S. B. 104 - By Senators Plymale, Woelfel and Stollings)

[Passed March 9, 2016; in effect ninety days from passage.] [Approved by the Governor on March 23, 2016.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §15-2-24c, relating to declaring the Forensic DNA Analysis Laboratory of the Marshall University Forensic Science Center to be engaged in administration of criminal justice as that term is defined in 28 C. F. R. 20.3(b); requiring Marshall University Forensic Science Center and the West Virginia State Police to confer as to available grants and similar possible funding sources and applications therefor; affording West Virginia State Police primacy of decision-making over Marshall University Forensic Science Center as to which entity may apply for certain grants; and directing West Virginia State Police and Marshall University Forensic Science Center to execute an agreement to ensure compliance with the section provisions.

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 §15-2-24c, to read as follows:

#### ARTICLE 2. WEST VIRGINIA STATE POLICE.

# §15-2-24c. Relationship with Marshall University Forensic Science Center.

- 1 (a) The Forensic DNA Analysis Laboratory of the Marshall
- 2 University Forensic Science Center is hereby declared to be
- 3 engaged in the administration of criminal justice as that term is
- 4 defined in 28 C. F. R. 20.3(b).
- 5 (b) The Marshall University Forensic Science Center and the
- 6 West Virginia State Police shall confer with each other as to
- 7 available grants or similar possible funding sources and
- 8 applications therefor.
- 9 (c) To avoid duplicative and wasteful use of limited
- 10 resources and to ensure maximum utilization of available funds,
- 11 the West Virginia State Police shall have primacy of
- 12 decisionmaking over the Marshall University Forensic Science
- 13 Center with regard to applications for particular grants or
- 14 funding in which both entities may have an interest to which the
- 15 Marshall University Forensic Science Center shall accede.
- 16 (d) The West Virginia State Police and the Marshall
- 17 University Forensic Science Center shall execute a written
- 18 agreement to ensure compliance with the provisions of
- 19 subsection (c) of this section.

# **CHAPTER 212**

# (Com. Sub. for H. B. 4323 - By Delegates Cowles and Miley) [By Request of the Executive]

[Passed March 12, 2016; in effect ninety days from passage.] [Approved by the Governor on March 30, 2016.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §15-5C-1 and §15-5C-2, all relating to the reporting of emergency incidents by well operators and pipeline operators; defining terms; establishing reporting requirements; establishing time by which report must be made; setting forth contents of report; establishing obligations of local emergency telephone operators; providing for recording and handling of calls; providing that certain information is available to the public pursuant to the West Virginia Freedom of Information Act; setting forth civil administrative penalty; setting forth situations in which civil administrative penalty shall be waived; permitting pipeline operator or well operator to request reconsideration of civil administrative penalty; and providing right to appeal.

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 §15-5C-1 and §15-5C-2, all to read as follows:

# ARTICLE 5C. REPORTING OF EMERGENCY INCIDENTS BY WELL AND PIPELINE OPERATORS.

## §15-5C-1. Definitions.

1 When used in this article:

- 2 (1) "Director" means the Director of the Division of 3 Homeland Security and Emergency Management.
- 4 (2) "Incident" means:

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- 5 (A) An injury to an individual at a well, well pad or pipeline 6 facility that results in death or serious bodily injury or that has 7 a reasonable potential to cause death;
- 8 (B) An unintended confinement of an individual in an 9 enclosed space at a well, well pad or pipeline facility from which 10 a person will not be released for a period exceeding fifteen 11 minutes;
- 12 (C) The unintended ignition or explosion of oil, natural gas 13 or other substance at a well, well pad or pipeline facility;
- 14 (D) An unintended fire in or about a well, well pad or 15 pipeline facility not extinguished within fifteen minutes of 16 discovery of the unintended fire; and
- 17 (E) Any unintended release of poisonous or combustible substances that have a reasonable potential to cause death.
  - (3) "Pipeline facility" means, without limitation, new and existing pipe, pipe rights-of-way and any equipment, facility, or building used in the transportation of oil or natural gas or the treatment of oil or natural gas during the course of transportation: *Provided*, That the term "pipeline facility" shall not include pipelines of four inches or less, measuring the inside diameter, that service a farm, commercial structure or residence.
  - (4) "Pipeline operator" means any person or persons, firm, partnership, independent contractor, company or corporation that constructs, maintains or operates a pipeline facility.
- 29 (5) "Well" means any shaft or hole sunk, drilled, bored or 30 dug into the earth or into underground strata for the extraction or

- 31 injection or placement of any liquid, oil or natural gas, or any
- 32 shaft or hole sunk or used in conjunction with such extraction or
- 33 injection or placement. The term "well" does not include any
- 34 shaft or hole sunk, drilled, bored or dug into the earth for the sole
- 35 purpose of core drilling or pumping or extracting therefrom
- 36 potable, fresh or usable water for household, domestic,
- 37 industrial, agricultural or public use.
- 38 (6) "Well pad" means any area constructed and maintained
- 39 for use to create a well.
- 40 (7) "Well operator" means any person or persons, firm,
- 41 partnership, independent contractor, company or corporation that
- 42 drills or engages in hydraulic fracturing for any liquid, oil or
- 43 natural gas, or that completes or operates wells to produce any
- 44 liquid, oil or natural gas.

## §15-5C-2. Reporting requirements.

- 1 (a) In addition to any other requirements imposed by law, all
- 2 pipeline operators and well operators shall report incidents to the
- 3 Division of Homeland Security and Emergency Management at
- 4 the Mine and Industrial Accident Call Center at 1-866-987-2338,
- 5 or other such number as may be identified by the Director within
- 6 fifteen minutes of ascertaining the occurrence of an incident at
- 7 a well, well pad or pipeline facility. Pipeline operators and well
- 8 operators may satisfy this requirement by contacting the local
- 9 emergency telephone system and orally reporting the
- 10 information required by this section.

## 11 (b) Contents of report:

- 12 (1) The initial report shall include the following minimum
- 13 information:
- 14 (A) The name, title, and business affiliation of the individual
- 15 making the report;

- 16 (B) The identification and location of the well, well pad or 17 pipeline facility; and
- 18 (C) Notification that an incident has occurred.
- 19 (2) If the caller has ready access to the following 20 information, he or she shall also provide:
- 21 (A) Then-available information concerning the nature and 22 extent of the incident, including any information that concerns 23 the existence or nonexistence of potential threats to the public 24 health:
- 25 (B) In the event of an unplanned fire that cannot be 26 contained within fifteen minutes, explosion or release, 27 preliminary information regarding the type of substance involved 28 and, if a release, the estimated amount released, if known; and
- 29 (C) The name, title, business affiliation, and contact 30 information of the individual designated to serve as a contact 31 person on behalf of the pipeline operator or well operator.
- 32 (c) Any local emergency telephone system receiving an 33 initial notification shall immediately forward all information 34 received to the Division of Homeland Security and Emergency 35 Management at the Mine and Industrial Accident Call Center at 36 1-866-987-2338, or other such number as may be identified by 37 the Director.
- 38 (d) All calls received by the Division of Homeland Security 39 and Emergency Management at the Mine and Industrial Accident 40 Call Center shall be recorded for documentation purposes. Recording of calls shall be automatic, and the recorded call 41 information, including time of call and complete voice 42 43 transcripts, shall be made available to the public upon receipt of a request to the Director in accordance with the West Virginia 44 45 Freedom of Information Act, article one, chapter twenty-nine-b 46 of this code.

- 47 (e) The Director shall impose a civil administrative penalty
  48 of not less than \$2,500 but not to exceed \$50,000 on the pipeline
  49 operator or well operator if it is determined that the pipeline
  50 operator or well operator failed to give timely notice as required
  51 by this section: *Provided*, That the Director shall waive
  52 imposition of the civil administrative penalty if the failure to
  53 give the required notice:
- (1) Occurred as a result of circumstances wholly outside the
   control of the pipeline operator or well operator;
- 56 (2) Occurred because the pipeline operator or well operator 57 was attempting to stabilize the incident;
- 58 (3) Occurred because the pipeline operator or well operator 59 was rendering emergency assistance; or
- 60 (4) Resulted from the incident occurring in a location with 61 no or inadequate wireless communications coverage and notice 62 was provided within fifteen minutes of reestablishing 63 communication.

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(f) Any pipeline operator or well operator aggrieved by the imposition of a civil administrative penalty may request within thirty days of receipt of a written communication imposing a civil administrative penalty that the Director reconsider the imposition or amount of the civil administrative penalty. If reconsideration is denied, the pipeline operator or well operator shall have a right of appeal to the Circuit Court of Kanawha County, West Virginia.



## **CHAPTER 213**

(Com. Sub. for S. B. 601 - By Senator Boso)

[Amended and again passed March 15, 2016; as a result of the objections of the Governor; in effect from passage.]

[Approved by the Governor on April 1, 2016.]

AN ACT to amend and reenact §22-15-10 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §24-2-1m, all relating to exemption from the jurisdiction of the Public Service Commission for materials recovery facilities or mixed waste processing facilities; and providing an exception to allow the Public Service Commission to retain limited jurisdiction over facilities meeting certain requirements which received a certificate of need prior to July 1, 2016.

Be it enacted by the Legislature of West Virginia:

That §22-15-10 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and to amend said code by adding thereto a new section, designated §24-2-1m, to read as follows:

#### CHAPTER 22. ENVIRONMENTAL RESOURCES.

## ARTICLE 15. SOLID WASTE MANAGEMENT ACT.

## §22-15-10. Prohibitions; permits required.

- 1 (a) Open dumps are prohibited and it is unlawful for any
- 2 person to create, contribute to or operate an open dump or for
- 3 any landowner to allow an open dump to exist on the
- 4 landowner's property unless that open dump is under a
- 5 compliance schedule approved by the director. Such compliance

- schedule shall contain an enforceable sequence of actions leading to compliance and shall not exceed two years. Open dumps operated prior to April 1, 1998, by a landowner or tenant for the disposal of solid waste generated by the landowner or tenant at his or her residence or farm are not a violation of this section if such open dump did not constitute a violation of law on January 1, 1998, and unauthorized dumps which were created by unknown persons do not constitute a violation of this section: *Provided*, That no person may contribute additional solid waste to any such dump after April 1, 1998, except that the owners of the land on which unauthorized dumps have been or are being made are not liable for such unauthorized dumping unless such landowners refuse to cooperate with the division in stopping such unauthorized dumping.
  - (b) It is unlawful for any person, unless the person holds a valid permit from the division to install, establish, construct, modify, operate or abandon any solid waste facility. All approved solid waste facilities shall be installed, established, constructed, modified, operated or abandoned in accordance with this article, plans, specifications, orders, instructions and rules in effect.
  - (c) Any permit issued under this article shall be issued in compliance with the requirements of this article, its rules and article eleven of this chapter and the rules promulgated thereunder, so that only a single permit is required of a solid waste facility under these two articles. Each permit issued under this article shall have a fixed term not to exceed five years: *Provided*, That the director may administratively extend a permit beyond its five-year term if the approved solid waste facility is in compliance with this article, its rules and article eleven of this chapter and the rules promulgated thereunder: *Provided*, *however*, That such administrative extension may not be for more than one year. Upon expiration of a permit, renewal

permits may be issued in compliance with rules promulgated bythe director.

- (d) For existing solid waste facilities which formerly held division of health permits which expired by law and for which complete permit applications for new permits pursuant to this article were submitted as required by law, the division may enter an administrative order to govern solid waste activities at such facilities, which may include a compliance schedule, consistent with the requirements of the division's solid waste management rules, to be effective until final action is taken to issue or deny a permit for such facility pursuant to this article, or until further order of the division.
- (e) No person may dispose in the state of any solid waste in a manner which endangers the environment or the public health, safety or welfare as determined by the director: *Provided*, That the carcasses of dead animals may be disposed of in any solid waste facility or in any other manner as provided for in this code. Upon request by the director, the commissioner of the bureau of public health shall provide technical advice concerning the disposal of solid waste or carcasses of dead animals within the state.
- (f) A commercial solid waste facility shall not discriminate in favor of or against the receipt of any waste otherwise eligible for disposal at the facility based on its geographic origin.
- (g) In addition to all the requirements of this article and the rules promulgated hereunder, a permit to construct a new commercial solid waste facility or to expand the spatial area of an existing facility, may not be issued unless the public service commission has granted a certificate of need, as provided in section one-c, article two, chapter twenty-four of this code. If the director approves a permit or permit modification, the certificate of need shall become a part of the permit and all conditions

- contained in the certificate of need shall be conditions of the 71 permit and may be enforced by the division in accordance with 72 the provisions of this article. If the director approves a permit or 73 permit modification, the certificate of need shall become a part 74 of the permit and all conditions contained in the certificate of 75 76 need shall be conditions of the permit and may be enforced by 77 the division in accordance with the provisions of this article: Provided, That the provisions of this subsection do not apply to 78 79 materials recovery facilities or mixed waste processing facilities as defined by chapter twenty-two, article fifteen, section two of 80 this code, except within a thirty-five mile radius of a facility 81 82 sited in a karst geological region and which has been permitted 83 by the West Virginia Department of Environmental Protection as a mixed waste processing facility and has received a 84 85 certificate of need by July 1, 2016.
- (h) The director shall promulgate legislative rules pursuant
  to article three, chapter twenty-nine-a of this code which reflect
  the purposes as set forth in this section.

#### **CHAPTER 24. PUBLIC SERVICE COMMISSION.**

# ARTICLE 2. POWERS AND DUTIES OF PUBLIC SERVICE COMMISSION.

# §24-2-1m. Commission jurisdiction does not extend to materials recovery facilities, mixed waste processing facilities, and oil and natural gas solid waste disposal.

- Notwithstanding any other provision of this code, the jurisdiction of the commission does not extend to materials
- 3 recovery facilities or mixed waste processing facilities as defined
- 4 by chapter twenty-two, article fifteen, section two of this code,
- 5 except within a thirty-five mile radius of a facility sited in a
- 6 county that is, in whole or in part, within a karst region as
- 7 determined by the West Virginia Geologic and Economic Survey
- 8 that has been permitted and classified by the WVDEP as a mixed

- 9 waste processing resource recovery facility and has received a
- 10 certificate of need by July 1, 2016: Provided, That nothing in
- 11 this section shall affect the requirements of section five, article
- 12 two and section three, article three, chapter twenty-four-a of this
- 13 code.



# **CHAPTER 214**

(Com. Sub. for H. B. 4435 - By Delegates R. Smith, Ireland, McCuskey and Marcum)

[Passed on March 11, 2016; in effect ninety days from passage.] [Approved by the Governor on March 24, 2016.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §24-2-11, relating to modernization and improvement of coal-fired boilers at electric power plants; providing procedure for expedited cost recovery of electric utility coal-fired boiler modernization and improvement projects deemed just and reasonable and in the public interest; and providing 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 section, designated §24-2-11, to read as follows:

# ARTICLE 2. POWERS AND DUTIES OF PUBLIC SERVICE COMMISSION.

§24-2-11. Modernization and improvement of coal-fired boilers at electric power plants; findings; expedited process; requirements; rulemaking.

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- 1 (a) The Legislature hereby finds that:
- 2 (1) West Virginia is rich in energy resources, which provide 3 many advantages to the state, its economy and its citizens;
- 4 (2) West Virginia's abundant coal reserves have created, and 5 will continue to create, many benefits to the state and its citizens;
- 6 (3) West Virginia is experiencing a significant downturn in 7 the coal industry as a result of increasing environmental 8 regulation and increased competition from natural gas and oil;
- 9 (4) Stabilization of the coal industry to maintain its 10 accompanying benefits to the state and its citizens requires West 11 Virginia to be proactive and focus on the modernization and 12 improvement of coal-fired boilers used by electric utilities in this 13 state to allow the more efficient use of coal in the generation of 14 electricity with reduced environmental impact;
- 15 (5) A comprehensive program of modernizing, upgrading 16 and improving coal-fired boilers at existing West Virginia power 17 plants owned by electric utilities at reasonable cost to ratepayers, 18 will benefit the customers of the electric utilities, the public in 19 West Virginia and the economy of the state as a whole;
  - (6) A coal-fired boiler modernization and improvement program will create jobs, provide for continued and enhanced safety and reliability of aging electrical generation infrastructure, and provide for more economical generation of electricity from coal all of which will benefit customers located throughout the state; and
    - (7) Efforts to modernize and improve coal-fired boilers owned by electric utilities and used to generate electricity in this state involve the investment of capital and the incurrence of associated incremental costs. Accordingly, in order for the electric utility undertaking those coal-fired boiler modernization

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- 31 and improvement programs to attract the necessary capital, the 32 electric utility should be permitted to recover the incremental 33 rate of return, related income taxes, depreciation and property 34 taxes associated with the coal-fired boiler modernization and 35 improvement programs commencing with the implementation of a coal-fired boiler modernization and improvement program 36 37 approved by the commission without waiting for a full base rate 38 tariff filing, as more fully described in subsection (f) of this 39 section.
- 40 (b) Electric utilities may file with the commission an application for a multiyear comprehensive program for 41 modernizing and improving coal-fired boilers at power plants 42 43 located in this state and owned, in whole or in part, by the 44 electric utility. Subject to commission review and approval, a program may be amended and updated by the electric utility as 45 46 circumstances warrant. The recovery of costs in support of the program shall be allowed in the manner set forth in this section 47 48 if the proposed program and related rates are found to be just, 49 reasonable, and based on prudent investments that are used and 50 useful to the utilities' West Virginia ratepayers.
  - (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 coal-fired boiler modernization and improvement program, in such detail as the commission prescribes, which may include costs associated with or incidental to the reduction of emissions or compliance with environmental requirements, the projected cost, and timing of the installation of equipment and facilities that the applicant proposes to replace, construct, modernize and/or improve;
- 60 (2) The projected net cost, on an annual basis, of the replacement, construction or improvements;

- 62 (3) The projected starting and completion dates for the 63 modernization and improvement program;
- 64 (4) The projected cost of debt for the coal-fired boiler 65 modernization and improvement program funding and the 66 projected capital structure for coal-fired boiler modernization 67 and improvement program funding;
- 68 (5) Testimony, exhibits or other evidence that demonstrates 69 the need for the modernization and improvement of coal-fired 70 boilers in order to provide and maintain adequate, efficient, safe, 71 reliable and reasonably priced electrical generation;
- 72 (6) A proposed cost recovery mechanism consistent with this section; and
  - (7) Other information the applicant considers relevant or the commission requires.
- 76 (d) Upon filing of the application, the applicant shall publish, in the form the commission directs, which form shall 77 include, but not be limited to, the anticipated rates and, if any, 78 rate increase under the proposal, by average percentage and 79 dollar amount for customers within a class of service, as a Class 80 I legal advertisement in compliance with the provisions of article 81 82 three, chapter fifty-nine of this code, the publication area to be each county in which service is provided by the electrical utility. 83 a notice of the filing of the application and that the commission 84 shall hold a hearing on the application within one-hundred eighty 85 days of the notice; unless no opposition to the application is 86 87 received by the Public Service Commission within one week of 88 the proposed hearing date, in which case the hearing can be 89 waived, and issue a final order within two-hundred seventy days 90 of the application filing date.
- 91 (e) Upon notice and hearing, if required by the commission, 92 the commission shall approve the coal-fired boiler

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- 93 modernization and improvement program and allow expedited 94 recovery of costs related to the expenditures as provided in subsection (f) of this section if the commission finds that the 95 96 expenditures and the associated rate requirements are just, 97 reasonable, prudent, not contrary to the West Virginia public 98 interest and will allow for the provision and maintenance of 99 adequate, efficient, safe, reliable and reasonably priced 100 electricity generated from coal.
  - (f) Upon commission approval, electric utilities will be authorized to implement the coal-fired boiler modernization and improvement programs and to recover related incremental capital and operation and maintenance costs, net of contributions to recovery of return and depreciation and property tax expenses directly attributable to the coal-fired boiler modernization and improvement program provided by electric utility's customers, if any, as provided in the following:
- 109 (1) An allowance for return shall be calculated by applying 110 a rate of return to the average planned net incremental increase 111 to rate base attributable to the coal-fired boiler modernization 112 and improvement program for the coming year, considering the 113 projected amount and timing of expenditures under the coal-fired 114 boiler modernization and improvement program plus any expenditures in previous years of the program. The rate of return 115 shall be determined by utilizing the rate of return on equity 116 authorized by the commission in the electric utility's most recent 117 118 rate case proceeding or in the case of a settled rate case, a rate of 119 return on equity as determined by the commission, and the 120 projected cost of the electric utility's debt during the period of 121 the coal-fired boiler modernization and improvement program to 122 determine the weighted cost of capital based upon the electric 123 utility's capital structure.
  - (2) Income taxes at the corporate statutory income rates applicable to the return allowed on the coal-fired boiler

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- modernization and improvement program shall be calculated for inclusion in rates.
  - (3) Incremental depreciation and property tax expenses directly attributable to the coal-fired boiler modernization and improvement program shall be estimated for the upcoming year.
- 131 (4) Following commission approval of its coal-fired boiler modernization and improvement program, an electric utility shall 132 133 place into effect rates that include an increment that recovers the 134 allowance for return, operation and maintenance expense, related 135 income taxes, depreciation and property tax expenses associated 136 the electric utility's estimated coal-fired boiler 137 modernization and improvement program investments for the 138 upcoming year, net of contributions to recovery of those incremental costs provided by the electric utility's customers, if 139 any, ("incremental cost recovery increment"). In each year 140 141 subsequent to the order approving the coal-fired boiler 142 modernization and improvement program and an incremental cost recovery increment, the electric utility shall file a petition 143 144 with the commission setting forth a new proposed incremental cost recovery increment based on investments and expenses to 145 146 be made in the subsequent year, plus any under-recovery or minus any over-recovery of actual incremental costs attributable 147 148 to the coal-fired boiler modernization and improvement program 149 investments, for the preceding year.
  - (g) The electric 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) Electric utilities may defer incremental operation and maintenance expenditures attributable to regulatory and compliance-related requirements introduced after the electric utility's last rate case proceeding and not included in the electric

- 158 utility's current base rates. In a future rate case, the commission
- 159 shall allow recovery of the deferred costs amortized over a
- 160 reasonable period of time to be determined by the commission
- 161 if the commission finds that the costs were reasonable and
- prudently incurred and were not reflected in rates in prior rate
- 163 cases.



# (S. B. 678 - By Senator Walters)

[Passed March 8, 2016; in effect ninety days from passage.] [Approved by the Governor on March 18, 2016.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §24-2E-3, relating to ownership and use of certain conduit that provides service by a telephone public utility; requiring the telephone company to permit a customer to own and use the conduit for other purposes; requiring customers and all occupants of conduit or other underground apparatuses comply with national electrical safety code and other reasonable standards; and providing for Public Service Commission 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 section, designated §24-2E-3, to read as follows:

# ARTICLE 2E. REQUIREMENTS FOR PHONE SERVICE SALES.

§24-2E-3. Telephone conduit; prohibition; rulemaking.

1	(a) A telephone public utility may not prohibit, either by
2	contract or service tariff, a customer who has provided conduit
3	or other underground construction provided at the customer's
4	expense from using the conduit or other underground
5	construction for purposes other than services provided by the
6	telephone company. A customer who provides the conduit or
7	other underground construction is the owner of that apparatus:
8	Provided, That the customer and all occupants of the conduit or
9	other underground apparatus shall comply with the national
10	electrical safety code and all other reasonable standards and
11	practices to be established by the Public Service Commission.

12 (b) The Public Service Commission shall promulgate rules 13 pursuant to article three, chapter twenty-nine-a of this code 14 necessary to effectuate the purpose of this section.



# **CHAPTER 216**

(Com. Sub. for S. B. 592 - By Senator Hall)

[Passed March 8, 2016; in effect ninety days from passage.] [Approved by the Governor on March 16, 2016.]

AN ACT to amend and reenact §24B-5-3 of the Code of West Virginia, 1931, as amended, relating the method of calculating the amount of special license fees paid by pipeline companies to the Public Service Commission.

Be it enacted by the Legislature of West Virginia:

That §24B-5-3 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

### ARTICLE 5. EMPLOYEES OF COMMISSION; FUNDING.

## §24B-5-3. Funding; property and revenue license fees.

- (a) Every pipeline company shall pay a special license fee in 1 addition to those now required by law. The amount of such fees 2 shall be fixed by the Public Service Commission and levied by 3 it annually on each pipeline company at a rate of \$18.60 per mile 4 of three-inch equivalent pipeline included in a company's 5 pipeline facilities. The calculation of a company's number of 6 miles of three-inch equivalent pipeline for the purposes of 7 8 assessing fees shall be determined on the basis of the pipeline company's reports submitted to the commission in such form as 9 10 the commission may prescribe. All fees assessed pursuant to this section shall be paid on or before July 1 in each year. 11
- 12 (b) Such sums collected under subsection (a) of this section shall be paid into the State Treasury and kept as a special fund, 13 designated the Public Service Commission Pipeline Safety Fund, 14 to be appropriated as provided by law for the purpose of paying 15 the salaries, compensation, costs and expenses of its employees 16 to the extent of the employees' direct involvement in the 17 18 enforcement of the provisions of this article. Any balance in said fund at the end of any fiscal year shall not revert to the Treasury, 19 but shall remain in said fund and may be appropriated as 20 provided in this subsection. All funds which heretofore were in 21 the Public Service Commission Gas Pipeline Safety Fund shall 22 23 be transferred to the Public Service Commission Pipeline Safety 24 Fund.



(Com. Sub. for S. B. 259 - By Senators Blair, Karnes and Snyder)

[Passed March 11, 2016; in effect ninety days from passage.] [Approved by the Governor on March 23, 2016.]

AN ACT to repeal §47-11A-10, §47-11A-12 and §47-11A-13 of the Code of West Virginia, 1931, as amended; and to amend and reenact §47-11A-1, §47-11A-2, §47-11A-5, §47-11A-6, §47-11A-8, §47-11A-9 and §47-11A-14 of said code, all relating to unfair trade practices; providing legislative findings; designating article the Unfair Trade Practices Act; making it unlawful for a retailer or wholesaler to sell, offer for sale, or advertise for sale any product or item of merchandise at a price less than cost with the intent to destroy or the effect of destroying competition; providing that a violation of the article constitutes a misdemeanor; defining "retailer" and "wholesaler"; providing for how cost is to be determined; providing for exemptions to cost calculations relating to federal and state motor fuel taxes; exempting certain sales, offers to sell or advertisements to sell from the provisions of the article; providing that an injured person or entity may maintain an action to enjoin continuance of any violation of the article; providing that an injured person or entity may maintain an action for damages; providing that actual damages, if alleged and proven, be assessed; providing for an absolute defense to an action to enjoin or for damages filed under the article; providing jurisdiction to the circuit courts; and providing purposes of the article.

Be it enacted by the Legislature of West Virginia:

That §47-11A-10, §47-11A-12 and §47-11A-13 of the Code of West Virginia, 1931, as amended, be repealed; and that §47-11A-1,

§47-11A-2, §47-11A-5, §47-11A-6, §47-11A-8, §47-11A-9 and §47-11A-14 of said code be amended and reenacted, all to read as follows:

#### ARTICLE 11A. UNFAIR TRADE PRACTICES.

### §47-11A-1. Legislative findings; designation of article.

- 1 (a) The Legislature hereby finds that the sale of goods at
- 2 prices below the cost thereof can result in economic
- 3 maladjustments and tend toward the creation of monopolies,
- 4 thereby destroying fair and healthy competition; therefore, the
- 5 below-cost sale of goods with the intent to destroy or the effect
- 6 of destroying competition is deemed an unlawful unfair trade
- 7 practice.
- 8 (b) This article shall be known as and designated the Unfair
- 9 Trade Practices Act.

### §47-11A-2. When selling below cost prohibited; penalty.

- 1 Except as otherwise provided herein, it shall be unlawful for
- 2 any person, partnership, firm, corporation or other entity
- 3 engaged in business as a retailer or wholesaler within this state
- 4 to sell, offer for sale, or advertise for sale any product or item of
- 5 merchandise at a price less than the cost thereof with the intent
- 6 to destroy or the effect of destroying competition. Each violation
- 7 shall constitute a misdemeanor and, upon conviction thereof, any
- 8 person, partnership, firm, corporation or other entity violating
- 9 this section shall be subject to the penalty set forth in section
- 10 eleven of this article.

# §47-11A-5. "Retailer" and "wholesaler" defined; sales and transfers subject to article.

- 1 (a) The term "retailer" shall mean and include every person,
- 2 partnership, firm, corporation, or other entity engaged in the
- 3 business of making sales at retail within this state: Provided,

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- 4 however, That in the case of a person, partnership, firm,
- 5 corporation, or other entity engaged in the business of making
- 6 sales both at retail and at wholesale, such term shall be applied
- 7 only to the retail portion of such business.
- 8 (b) The term "wholesaler" shall mean and include every person, partnership, firm, corporation, or other entity engaged in the business of making sales at wholesale within this state: *Provided*, That in the case of a person, partnership, firm, corporation, or other entity engaged in the business of making sales both at retail and wholesale, such term shall be applied only to the wholesale portion of such business.
- 15 (c) The provisions of this article shall be applicable to all sales at retail made by a retailer as herein defined, and shall be 16 applicable to any transfer for a valuable consideration made in 17 the ordinary course of trade, or the usual prosecution of the 18 19 retailer's business, of title to tangible personal property to the 20 purchaser for consumption or use other than resale or further proceedings or manufacturing, and shall be applicable also to 21 any transfer of such property where title is retained by the 22 23 retailer as security for the payment of such purchase price.
  - (d) The provisions of this article shall be applicable to all sales at wholesale, and shall be applicable to any transfer for a valuable consideration made in the ordinary course of trade or in the usual prosecution of the wholesaler's business, of title to tangible personal property to the purchaser for purposes of resale or further proceedings or manufacturing, and shall be applicable also to any such transfer of property where title is retained by the seller as security for the payment of the purchase price.

### §47-11A-6. How cost determined.

- 1 (a) The term "cost" when applicable to the business of
- 2 retailer shall mean bona fide cost and shall mean: (i) The invoice
- 3 cost of the product or item of merchandise to the retailer or the

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- 4 replacement cost thereof to the retailer within thirty days prior
- 5 to the date of sale, offer for sale or advertisement for sale, as the
- 6 case may be, in the quantity last purchased, whichever is lower,
- 7 from either of which there shall be deducted all trade discounts,
- 8 except customary discounts for cash; and (ii) to either of which
- 9 there shall be added the following items of expense:
- 10 (1) Freight charges not otherwise included in the cost of the 11 article, product or item of merchandise, but which freight 12 charges shall not be construed as including cartage to retail 13 outlet if done or paid for by the retailer;
  - (2) A markup to cover, in part, the cost of doing business, which markup, in the absence of proof of a lesser cost, shall be seven percent of the aggregate of invoice cost or replacement cost (whichever is used), less trade discounts as aforesaid, and plus said freight charges: *Provided*, That such a markup to cover the cost of doing business as provided for in this subdivision shall be exclusive of any federal and state motor fuel taxes.
  - (b) The term "cost" when applicable to the business of a wholesaler shall mean bona fide cost and shall mean: (i) The invoice cost of the merchandise to the wholesaler to include applicable taxes, or the replacement cost of the merchandise to the wholesaler within thirty days prior to the date of sale, offer for sale or advertisement for sale, as the case may be, in the quantity last purchased, whichever is lower, from either of which there shall be deducted all trade discounts except customary discounts for cash; and (ii) to either of which there shall be added the following items of expense:
  - (1) Freight charges not otherwise included in the cost of the article, product or item of merchandise, but which freight charges shall not be construed as including cartage to the retail outlet if done or paid for by the wholesaler;
- 35 (2) A markup to cover, in part, the cost of doing business, 36 which markup in the absence of proof of a lesser cost, shall be

- 37 four percent of the aggregate of invoice cost or replacement cost
- 38 (whichever is used), less trade discounts as aforesaid, and plus
- 39 said freight charges: *Provided*, That such a markup to cover the
- 40 cost of doing business as provided for in this subdivision shall be
- 41 exclusive of any federal and state motor fuel taxes.

#### §47-11A-8. Sales exempt.

- 1 The provisions of this article shall not apply to any sale,
- 2 offer for sale, or advertisement to sell made:
- 3 (a) In closing out in good faith the owner's stock or any part
- 4 thereof for the purpose of discontinuing trade in any such stock
- 5 or commodity;
- 6 (b) When perishable merchandise must be sold promptly to
- 7 avert loss to the retailer or wholesaler by spoilage or
- 8 depreciation;
- 9 (c) When the goods are damaged or deteriorated in quality
- 10 or when merchandise is sold in bona fide clearance sales and, in
- each case, merchandise is advertised, marked and sold as such;
- 12 (d) By an officer acting under the orders of any court;
- 13 (e) To meet the price of a competitor;
- 14 (f) Involving a discount or rebate earned by purchases
- 15 through the use of a bonus, loyalty or rewards program or
- 16 involving the redemption of credits, discounts or rebates through
- 17 a bonus, loyalty or rewards program;
- 18 (g) For charitable purposes or to relief agencies;
- 19 (h) Where merchandise is sold on contract to departments of
- 20 the government or governmental institutions; and
- 21 (i) During and for fifteen days after a business grand opening
- 22 as determined by the completion date.

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### §47-11A-9. Injunctions; damage suits; and jurisdiction.

- 1 (a) Any person, partnership, firm, corporation, or other entity 2 injured by a violation of the provisions of this article may maintain an action to enjoin a continuance of any such violation 3 4 in the circuit court of the county wherein said violation is alleged to have occurred. If a violation is established in such an action, 5 6 the court shall enjoin, restrain or otherwise prohibit such violation. In such action, if damages are alleged and proven, the 7 plaintiff in the action, in addition to injunctive relief, shall 8 recover from the defendant the actual damages sustained and 9 10 proven to be a result of the violation.
- (b) In the event no injunctive relief is sought or required, any 11 12 person, partnership, firm, corporation, or other entity injured by a violation of the provisions of this article may maintain an 13 action for damages alone in the circuit court of the county 14 15 wherein said violation is alleged to have occurred. If a violation is established in such an action and proven, a plaintiff shall 16 recover from the defendant the actual damages sustained and 17 18 proven to be a result of the violation.
  - (c) In any action under subsection (a) or (b) of this section it shall be an absolute defense that the sale price of any product or item of merchandise alleged to be in violation of this article is equal to or greater than the sales price of the same product or item being sold by a competitor of the defendant.
- (d) A court may dismiss any action under subsection (a) or (b) of this section upon a motion for summary judgment if the court finds pursuant to Rule 56 of the West Virginia Rules of Civil Procedure that the provisions of subsection (c) of this section have been satisfied.
- 29 (e) The circuit courts of this state shall have jurisdiction of actions under this section.

## §47-11A-14. Purposes of article.

- 1 The Legislature declares that the purposes of this article are:
- 2 (1) To safeguard consumers from the creation of monopolies by
- 3 prohibiting predatory pricing; (2) to foster market efficiency; and
- 4 (3) to protect market competition.



# **CHAPTER 218**

(Com. Sub. for H. B. 4487 - By Delegates Folk, Walters, Kurcaba and Marcum)

[Passed March 10, 2016; in effect ninety days from passage.] [Approved by the Governor on March 21, 2016.]

AN ACT to amend and reenact §5-10-2 and §5-10-14 of the Code of West Virginia, 1931, as amended; and to amend and reenact §18-7A-17a of said code, all relating to state retirement systems; defining compensation and employee for the Public Employees Retirement System; requiring payment of reinstatement interest in the Public Employees Retirement System in certain circumstances; authorizing purchase of retroactive service credit under certain circumstances and with certain restrictions; and providing that failure of employee to pay the Teachers Retirement System according to a contract to purchase military service credit is to be treated as an overpayment or excess contribution pursuant to the article.

Be it enacted by the Legislature of West Virginia:

That §5-10-2 and §5-10-14 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that §18-7A-17a 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
- 2 context, the following words and phrases as used in this article
- 3 have the following meanings:
- 4 (1) "Accumulated contributions" means the sum of all
- 5 amounts deducted from the compensations of a member and
- 6 credited to his or her individual account in the members' deposit
- 7 fund, together with regular interest on the contributions;
- 8 (2) "Accumulated net benefit" means the aggregate amount
- 9 of all benefits paid to or on behalf of a retired member;
- 10 (3) "Actuarial equivalent" means a benefit of equal value
- computed upon the basis of a mortality table and regular interest
- 12 adopted by the board of trustees from time to time: *Provided*,
- 13 That when used in the context of compliance with the federal
- 14 maximum benefit requirements of Section 415 of the Internal
- 15 Revenue Code, actuarial equivalent shall be computed using the
- 16 mortality tables and interest rates required to comply with those
- 17 requirements;
- 18 (4) "Annuity" means an annual amount payable by the
- 19 retirement system throughout the life of a person. All annuities
- 20 shall be paid in equal monthly installments, rounding to the
- 21 upper cent for any fraction of a cent;

- 22 (5) "Annuity reserve" means the present value of all 23 payments to be made to a retirant or beneficiary of a retirant on 24 account of any annuity, computed upon the basis of mortality 25 and other tables of experience, and regular interest, adopted by 26 the board of trustees from time to time:
- 27 (6) "Beneficiary" means any person, except a retirant, who 28 is entitled to, or will be entitled to, an annuity or other benefit 29 payable by the retirement system;
- (7) "Board of Trustees" or "board" means the Board of
   Trustees of the West Virginia Consolidated Public Retirement
   System;
- 33 (8) "Compensation" means the remuneration paid a member 34 by a participating public employer for personal services rendered 35 by the member to the participating public employer. In the event a member's remuneration is not all paid in money, his or her 36 37 participating public employer shall fix the value of the portion 38 of the remuneration which is not paid in money: *Provided*, That members hired in a position for the first time on or after July 1, 39 40 2014, who receive nonmonetary remuneration shall not have 41 nonmonetary remuneration included in compensation for 42 retirement purposes and nonmonetary remuneration may not be 43 used in calculating a member's final average salary. Any lump 44 sum or other payments paid to members that do not constitute regular salary or wage payments are not considered 45 46 compensation for the purpose of withholding contributions for 47 the system or for the purpose of calculating a member's final average salary. These payments include, but are not limited to, 48 49 attendance or performance bonuses, one-time flat fee or lump sum payments, payments paid as a result of excess budget, or 50 employee recognition payments. The board shall have final 51 52 power to decide whether the payments shall be considered 53 compensation for purposes of this article;

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- (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;
- 62 (11) "Employee" means any person who serves regularly as an officer or employee, full time, on a salary basis, whose tenure 63 64 is not restricted as to temporary or provisional appointment, in the service of, and whose compensation is payable, in whole or 65 in part, by any political subdivision, or an officer or employee 66 whose compensation is calculated on a daily basis and paid 67 monthly or on completion of assignment, including technicians 68 69 and other personnel employed by the West Virginia National 70 Guard whose compensation, in whole or in part, is paid by the federal government: Provided, That an employee of the 71 Legislature whose term of employment is otherwise classified as 72 temporary and who is employed to perform services required by 73 the Legislature for its regular sessions or during the interim 74 between regular sessions and who has been or is employed 75 during regular sessions or during the interim between regular 76 77 sessions in seven or more consecutive calendar years, as certified by the clerk of the house in which the employee served, is an 78 employee, any provision to the contrary in this article 79 notwithstanding, and is entitled to credited service in accordance 80 with provisions of section fourteen of this article: Provided, 81 however, That members of the legislative body of any political 82 subdivision and judges of the state Court of Claims are 83 employees receiving one year of service credit for each one-year 84 term served and prorated service credit for any partial term 85 served, anything contained in this article to the contrary 86 87 notwithstanding: Provided further, That only a compensated

board member of a participating public employer appointed to a board of a nonlegislative body for the first time on or after July 1, 2014, who normally is required to work twelve months per year and one thousand forty hours of service per year is an employee. 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;

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- (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;
- 104 (13) "Final average salary" means either of the following: 105 Provided, That salaries for determining benefits during any may not exceed the 106 determination maximum period compensation allowed as adjusted for cost of living in 107 108 accordance with section seven, article ten-d of this chapter and Section 401 (a) (17) of the Internal Revenue Code: *Provided*. 109 110 however. That the provisions of section twenty-two-h of this article are not applicable to the amendments made to this 111 112 subdivision during the 2011 regular session of the Legislature;
- 113 (A) The average of the highest annual compensation 114 received by a member, including a member of the Legislature 115 who participates in the retirement system in the year 1971 or 116 thereafter, during any period of three consecutive years of 117 credited service contained within the member's fifteen years of 118 credited service immediately preceding the date his or her 119 employment with a participating public employer last 120 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

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(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

- 156 compensation under subparagraph (ii) of this paragraph, the
- 157 legislative compensation of the former member shall be
- 158 computed on the basis of \$1,500 multiplied by eight, and the
- 159 legislative compensation of the member shall be computed on
- 160 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;
- 164 (14) "Internal Revenue Code" means the Internal Revenue
- 165 Code of 1986, as amended, codified at Title 26 of the United
- 166 States Code;
- 167 (15) "Limited credited service" means service by employees
- 168 of the West Virginia Educational Broadcasting Authority, in the
- 169 employment of West Virginia University, during a period when
- 170 the employee made contributions to another retirement system,
- 171 as required by West Virginia University, and did not make
- 172 contributions to the Public Employees Retirement System:
- 173 *Provided*, That while limited credited service can be used for the
- 174 formula set forth in subsection (e), section twenty-one of this
- 175 article, it may not be used to increase benefits calculated under
- 176 section twenty-two of this article;
- 177 (16) "Member" means any person who has accumulated
- 178 contributions standing to his or her credit in the members'
- 179 deposit fund;
- 180 (17) "Participating public employer" means the State of
- 181 West Virginia, any board, commission, department, institution
- or spending unit and includes any agency created by rule of the
- 183 Supreme Court of Appeals having full-time employees, which
- 184 for the purposes of this article is considered a department of state
- 185 government; and any political subdivision in the state which has
- 186 elected to cover its employees, as defined in this article, under
- 187 the West Virginia Public Employees Retirement System;

- 188 (18) "Plan year" means the same as referenced in section 189 forty-two of this article;
- (19) "Political subdivision" means the State of West 190 191 Virginia, a county, city or town in the state; a school corporation 192 or corporate unit; any separate corporation or instrumentality established by one or more counties, cities or towns, as permitted 193 194 by law; any corporation or instrumentality supported in most part 195 by counties, cities or towns; and any public corporation charged 196 by law with the performance of a governmental function and 197 whose jurisdiction is coextensive with one or more counties, cities or towns: Provided, That any mental health agency 198 199 participating in the Public Employees Retirement System before 200 July 1, 1997, is considered a political subdivision solely for the purpose of permitting those employees who are members of the 201 Public Employees Retirement System to remain members and 202 203 continue to participate in the retirement system at their option after July 1, 1997: Provided, however, That the Regional 204 Community Policing Institute which participated in the Public 205 206 Employees Retirement System before July 1, 2000, is considered 207 a political subdivision solely for the purpose of permitting those 208 employees who are members of the Public Employees 209 Retirement System to remain members and continue to 210 participate in the Public Employees Retirement System after July 211 1, 2000;
- 212 (20) "Prior service" means service rendered prior to July 1, 213 1961, to the extent credited a member as provided in this article;
- 214 (21) "Regular interest" means the rate or rates of interest per 215 annum, compounded annually, as the board of trustees adopts 216 from time to time;
- 217 (22) "Required beginning date" means April 1 of the 218 calendar year following the later of: (A) The calendar year in 219 which the member attains age seventy and one-half years of age;

- 220 or (B) the calendar year in which a member who has attained the
- 221 age seventy and one-half years of age and who ceases providing
- 222 service covered under this system to a participating employer;
- 223 (23) "Retirant" means any member who commences an
- annuity payable by the retirement system;
- 225 (24) "Retirement" means a member's withdrawal from the
- 226 employ of a participating public employer and the
- 227 commencement of an annuity by the retirement system;
- 228 (25) "Retirement system" or "system" means the West
- 229 Virginia Public Employees Retirement System created and
- 230 established by this article;
- 231 (26) "Retroactive service" means: (1) Service between July
- 232 1, 1961, and the date an employer decides to become a
- 233 participating member of the Public Employees Retirement
- 234 System; (2) service prior to July 1, 1961, for which the employee
- 235 is not entitled to prior service at no cost in accordance with 162
- 236 CSR 5.13; and (3) service of any member of a legislative body
- 237 or employees of the State Legislature whose term of employment
- 238 is otherwise classified as temporary for which the employee is
- 239 eligible, but for which the employee did not elect to participate
- 239 engine, but for which the employee did not elect to participate
- 240 at that time:
- 241 (27) "Service" means personal service rendered to a
- 242 participating public employer by an employee of a participating
- 243 public employer; and
- 244 (28) "State" means the State of West Virginia.

### §5-10-14. Service credit; retroactive provisions.

- 1 (a) The board of trustees shall credit each member with the
- 2 prior service and contributing service to which he or she is
- 3 entitled based upon rules adopted by the board of trustees and
- 4 based upon the following:

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- (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 and who have been or are employed during 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:
- 19 (2) Except for hourly employees, and those persons who first 20 become members of the retirement system on or after July 1, 2015, ten or more months of service credit earned in any 21 calendar year shall be credited as a year of service: Provided, 22 That no more than one year of service may be credited to any 23 24 member for all service rendered by him or her in any calendar 25 year and no days may be carried over by a member from one calendar year to another calendar year where the member has 26 27 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.
- 32 (b) The board of trustees shall grant service credit to 33 employees of boards of health, the Clerk of the House of 34 Delegates and the Clerk of the State Senate or to any former and 35 present member of the State Teachers Retirement System who 36 have been contributing members in the Public Employees 37 Retirement System for more than three years, for service

- 38 previously credited by the State Teachers Retirement System and
- 39 shall require the transfer of the member's accumulated
- 40 contributions to the system and shall also require a deposit, with
- 41 reinstatement interest as set forth in the board's Rule, Refund,
- 42 Reinstatement, Retroactive Service, Loan and Correction of
- 43 Error Interest Factors, 162 C. S. R. 7, of any withdrawals of
- 44 contributions any time prior to the member's retirement.
- 45 Repayment of withdrawals shall be as directed by the Board of
- 46 Trustees.
- 47 (c) Court reporters who are acting in an official capacity, 48 although paid by funds other than the county commission or 49 State Auditor, may receive prior service credit for time served in
- 50 that capacity.
- 51 (d) Active members who previously worked in
- 52 Comprehensive Employment and Training Act (CETA) may
- 53 receive service credit for time served in that capacity: *Provided*,
- 54 That in order to receive service credit under the provisions of
- 55 this subsection the following conditions must be met: (1) The
- 56 member must have moved from temporary employment with the
- 57 participating employer to permanent full-time employment with
- 58 the participating employer within one hundred twenty days
- 59 following the termination of the member's CETA employment;
- 60 (2) the board must receive evidence that establishes to a
- 61 reasonable degree of certainty as determined by the board that
- 62 the member previously worked in CETA; and (3) the member
- 63 shall pay to the board an amount equal to the employer and
- 64 employee contribution plus interest at the amount set by the
- 65 board for the amount of service credit sought pursuant to this
- 66 subsection: *Provided*, *however*, That the maximum service credit
- 67 that may be obtained under the provisions of this subsection is
- 68 two years: Provided further, That a member must apply and pay
- 69 for the service credit allowed under this subsection and provide
- 70 all necessary documentation by March 31, 2003: And provided
- 71 further, That the board shall exercise due diligence to notify
- 72 affected employees of the provisions of this subsection.

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(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

108 or full-time employees for the first time after January 1, 2002. 109 Employees of the State Legislature whose terms of employment are otherwise classified as temporary and who are employed to 110 perform services required by the Legislature during the interim 111 112 time between regular sessions shall receive service credit of one 113 month for each ten days served during the interim between 114 regular sessions, which interim days shall be cumulatively 115 calculated so that any ten days, regardless of calendar month or 116 year, shall be calculated toward any award of one month of service credit: Provided further, That no more than one year of 117 service may be credited to any temporary legislative employee 118 119 for all service rendered by that employee in any calendar year and no days may be carried over by a temporary legislative 120 121 employee from one calendar year to another calendar year where 122 the member has received a full year credit for that year. Service 123 credit awarded for legislative employment pursuant to this section shall be used for the purpose of calculating that 124 125 member's retirement annuity, pursuant to section twenty-two of this article, and determining eligibility as it relates to credited 126 127 service, notwithstanding any other provision of this section. Certification of employment for a complete legislative session 128 129 and for interim days shall be determined by the clerk of the 130 house in which the employee served, based upon employment 131 records. Service of fifty-five days of a regular session constitutes 132 an absolute presumption of service for a complete legislative 133 session and service of twenty-seven days of a thirty-day regular 134 session occurring prior to 1971 constitutes an absolute 135 presumption of service for a complete legislative session. Once 136 a legislative employee has been employed during regular sessions for seven consecutive years or has become a full-time 137 138 employee of the Legislature, that employee shall receive the 139 service credit provided in this section for all regular and interim 140 sessions and interim days worked by that employee, as certified 141 by the clerk of the house in which the employee served, 142 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.

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- (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

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credit and the contributions would have been refused by the board: Provided, however, That a current legislative employee purchasing retroactive credit under this section shall do so within twenty-four months of beginning contributions to the retirement system as a legislative employee or no later than December 31, 2016, whichever occurs later: 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*,

- 212 That the employee has not retired prior to the effective date of
- 213 the amendments made to this section in the 2002 regular session
- 214 of the Legislature.
- 215 (2) The requirement of seven consecutive years and the 216 requirement of thirteen consecutive years apply retroactively to 217 all legislative employment prior to the effective date of the 2006 218 amendments to this section.
- 219 (h) The board of trustees shall grant service credit to any 220 former or present member of the State Police Death, Disability 221 and Retirement Fund who has been a contributing member of 222 this system for more than three years for service previously 223 credited by the State Police Death, Disability and Retirement 224 Fund if the member transfers all of his or her contributions to the 225 State Police Death, Disability and Retirement Fund to the system 226 created in this article, including repayment of any amounts 227 withdrawn any time from the State Police Death, Disability and 228 Retirement Fund by the member seeking the transfer allowed in this subsection: Provided, That there shall be added by the 229 230 member to the amounts transferred or repaid under this 231 subsection an amount which shall be sufficient to equal the contributions he or she would have made had the member been 232 233 under the Public Employees Retirement System during the 234 period of his or her membership in the State Police Death, 235 Disability and Retirement Fund, excluding contributions on 236 lump sum payment for annual leave, plus interest at a rate 237 determined by the board.
- 238 (i) The provisions of section twenty-two-h of this article are 239 not applicable to the amendments made to this section during the 240 2006 regular session.

#### CHAPTER 18. EDUCATION.

#### ARTICLE 7A. STATE TEACHERS RETIREMENT SYSTEM.

#### §18-7A-17a. Qualified military service.

1 (a) Except as provided in subsection (b) of this section, for 2 the purpose of this article, the retirement board shall grant prior service credit to members of the retirement system who were 3 4 honorably discharged from active duty service in any of the Armed Forces of the United States in any period of national 5 emergency within which a federal Selective Service Act was in 6 effect. For purposes of this section, "Armed Forces" includes Women's Army Corps, women's appointed volunteers for 8 emergency service, Army Nurse Corps, SPARS, Women's 9 10 Reserve and other similar units officially part of the military 11 service of the United States. The military service is considered 12 equivalent to public school teaching, and the salary equivalent for each year of that service is the actual salary of the member as 13 a teacher for his or her first year of teaching after discharge from 14 15 military service. Prior service credit for military service shall not exceed ten years for any one member, nor shall it exceed 16 twenty-five percent of total service at the time of retirement. 17 Notwithstanding the preceding provisions of this subsection, 18 contributions, benefits and service credit with respect to 19 20 qualified military service shall be provided in accordance with Section 414(u) of the Internal Revenue Code. For purposes of 21 22 this section, "qualified military service" has the same meaning 23 as in Section 414(u) of the Internal Revenue Code. The retirement board is authorized to determine all questions and 24 make all decisions relating to this section and, pursuant to the 25 authority granted to the retirement board in section one, article 26 27 ten-d, chapter five of this code, may promulgate rules relating to contributions, benefits and service credit to comply with Section 28 414(u) of the Internal Revenue Code. No military service credit 29 30 may be used in more than one retirement system administered by 31 the Consolidated Public Retirement Board.

32 (b) Subsection (a) of this section does not apply to any 33 member who first becomes an employee of a participating public

- 34 employer on or after July 1, 2015. This subsection applies to any
- 35 member who first became an employee of a participating public
- 36 employer on or after July 1, 2015, and also applies to any
- 37 member who became an employee of a participating public
- 38 employer before July 1, 2015, and is unable to meet the
- 39 requirements of subsection (a) of this section.
- 40 (1) Any member may purchase up to sixty months of 41 military service credit for time served in active military duty 42 prior to first becoming an employee of a participating public
- 43 employer if all of the following conditions are met:
- 44 (A) The member has completed a complete fiscal year of contributory service;
- 46 (B) The active military duty occurs prior to the date on 47 which the member first becomes an employee of a participating 48 public employer; and
- 49 (C) The employee pays to the retirement system the actuarial 50 reserve purchase amount within forty-eight months after the date on which employer and employee contributions are first received 51 by the retirement system for the member and while he or she 52 continues to be in the employ of a participating public employer 53 54 and contributing to the retirement system, or within forty-eight 55 months of July 1, 2015, whichever is later: Provided, That any 56 employee who ceases employment with a participating public employer before completing the required actuarial reserve 57 purchase amount in full shall not be eligible to purchase the 58 military service. 59
  - (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

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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;

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- (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.

- 131 (5) For purposes of this subsection, the following definitions shall apply:
- 133 (A) "Active military duty" means full-time active duty in the 134 Armed Forces of the United States for a period of thirty or more 135 consecutive calendar days. Active military duty does not include 136 inactive duty of any kind.
- 137 (B) "Actuarial reserve purchase amount" means the purchase 138 annuity rate multiplied by the purchase accrued benefit, 139 calculated as of the calculation month, plus annual interest 140 accruing at seven and one-half percent from the calculation 141 month through the purchase month, compounded monthly.
- 142 (C) "Armed forces of the United States" means the Army, 143 Navy, Air Force, Marine Corps, and Coast Guard, the reserve 144 components thereof, and the National Guard of the United States 145 or the National Guard of a state or territory when members of the 146 same are on full-time active duty pursuant to Title 10 or Title 32 147 of the United States Code.
- 148 (D) "Calculation month" means the month immediately 149 following the month in which the member completes a complete 150 fiscal year of contributory service with a participating public 151 employer required by subdivision (1), (2), (3) or (4) of this 152 subsection, as applicable.
- 153 (E) "Purchase accrued benefit" means two percent times the 154 purchase military service times the purchase average monthly 155 salary.
- 156 (F) "Purchase age" means the age of the employee in years 157 and completed months as of the first day of the calculation 158 month.
- 159 (G) "Purchase annuity rate" means the actuarial lump sum 160 annuity factor calculated as of the calculation month based on

- 161 the following actuarial assumptions: Interest rate of seven and 162 one-half percent; mortality of the 1971 group annuity mortality 163 table, fifty percent blended male and female rates, applied on a unisex basis to all members; if purchase age is under age 164 165 sixty-two, a deferred annuity factor with payments commencing 166 at age sixty-two; and if purchase age is sixty-two or over, an 167 immediate annuity factor with payments starting at the purchase 168 age.
- 169 (H) "Purchase average monthly salary" means the average monthly salary of the member during the number of months of 170 171 the member's contract during the fiscal year of contributory service required by subdivisions (1), (2), (3) and (4) of this 172 173 subsection, as applicable. For any member who first became an 174 employee of a participating public employer before July 1, 2015, the purchase average monthly salary means the average monthly 175 salary of the member during the number of months of the 176 177 member's contract during his or her complete fiscal year of 178 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.

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- (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.
- 189 (6) A member may purchase military service credit for a 190 period of active military duty pursuant to this subsection only if 191 the member received an honorable discharge for the period. 192 Anything other than an honorable discharge, including, but not 193 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.

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- (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 amount of military service credit he or she is eligible for in one-month increments.
- 211 (8) To receive credit, a member must submit a request to 212 purchase military service credit to the board, on such form or in 213 such other manner as shall be required by the board, within the 214 complete fiscal year period required by subdivision (1), (2), (3) 215 or (4) of this subsection, as applicable. The board shall then 216 calculate the actuarial reserve lump sum purchase amount, which 217 amount must be paid by the member within the 48-month period 218 required by said subdivisions, as applicable. A member purchasing military service credit pursuant to this subsection 219 220 must do so in a single, lump sum payment: *Provided*, That the board may accept partial, installment or other similar payments 221 222 if the employee executes a contract with the board specifying the 223 amount of military service to be purchased and the payments 224 required: Provided, however, That any failure to pay the contract 225 amount in accordance with this section shall be treated as an 226 overpayment or excess contribution subject to section fourteen-c 227 of this article and no military service shall be credited.

- 228 (9) The board shall require a member requesting military 229 service credit to provide official documentation establishing that 230 the requirements set forth in this subsection have been met.
- 231 (10) Military service credit purchased pursuant to this 232 subsection shall not be considered contributing service credit or 233 contributory service for purposes of this article.

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- (11) 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 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

259 section one, article ten-d of this chapter, may propose rules to 260 administer this section for legislative approval in accordance 261 with the provisions of article three, chapter twenty-nine-a of this 262 code



(Com. Sub. for S. B. 595 - By Senators Gaunch, Blair, Boso, Carmichael, Kirkendoll, Maynard, Prezioso, Stollings, Walters, Plymale and Williams)

[Passed March 10, 2016; in effect ninety days from passage.] [Approved by the Governor on April 1, 2016.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §5-10-15c; and to amend said code by adding thereto a new section, designated §18-7A-17b, all relating to retirement credit for members of the West Virginia National Guard; and establishing procedure for purchase of military service credit by members of certain retirement systems with current or prior service in the West Virginia National Guard.

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 §5-10-15c; and that said code be amended by adding thereto a new section, designated §18-7A-17b, 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.

# §5-10-15c. Military service credit for members of the West Virginia National Guard.

- 1 (a)(1) The Legislature recognizes the men and women who
- 2 have dedicated themselves to the defense and service of this state
- 3 through their service in the West Virginia National Guard. It is
- 4 the intent of this section to confer military service credit upon
- 5 members of the Public Employees Retirement System for any
- 6 time served in the West Virginia National Guard when they meet
- 7 the requirements of this section.
- 8 (2) In addition to any benefit provided by federal law, any
- 9 member of the retirement system who currently or previously
- 10 has served in the West Virginia National Guard may purchase
- 11 credited service for the time served in the West Virginia
- 12 National Guard, not to exceed sixty months if the following
- 13 conditions are met:
- 14 (A) The employee substantiates by appropriate
- 15 documentation or evidence his or her service in the West
- 16 Virginia National Guard;
- 17 (B) The employee has completed at least twelve consecutive
- 18 months of contributory service to the retirement system on or
- 19 after January 2015; and
- 20 (C) The employee pays to the retirement system the actuarial
- 21 reserve purchase amount within forty-eight months after January
- 22 1, 2015, if he or she was employed with a participating public
- 23 employer during all twelve months of the calendar year 2015 or
- 24 the first date on which employer and employee contributions are
- 25 received by the retirement system for the employee after January
- 26 2015 if he or she was not employed with a participating public

- 27 employer during all twelve months of calendar year 2015 and
- 28 while he or she continues to be in the employ of a participating
- 29 public employer and contributing to the retirement system:
- 30 Provided, That any employee who ceases employment with a
- 31 participating public employer before completing the required
- 32 actuarial reserve purchase amount in full shall not be eligible to
- 33 purchase the military service.

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- (3) Any member of the retirement system who serves, or has served, in the West Virginia National Guard may purchase one month of military service credit for every fifteen points earned toward a reserve component retirement during a qualifying year as computed in subdivision (7) of this subsection. For purposes of this section, points will be verified using the National Guard Current Annual Statement, Point Credit Summary or other equivalent document, along with any documentation of any periods of active service of the State of West Virginia as verified by the Adjutant General's office. All documentation will be submitted to the retirement board by the employee.
- 45 (4) In no event, however, may a member purchase or receive 46 a total of more than sixty months of military service credit under 47 this section; section fifteen, article ten, chapter five of this code; 48 or any other retirement system administered by the board.
- 49 (5) In any case of doubt as to the period of service to be 50 credited a member under the provisions of this section, the board 51 shall have final power to determine the period.
  - (6) To receive credit, an employee 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 or by December 31, 2016, whichever occurs later. The board shall then calculate the actuarial reserve lump sum purchase amount, which amount must be paid by the employee within the

forty-eight-month period required by this subsection, as applicable. An employee 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.

- (7) To calculate the amount of military service credit an employee may purchase, the board shall add the total number of points accrued in a qualifying year, divide the total by fifteen, and round up or down to the nearest integer (fractions of 0.5 and greater shall be rounded up), in order to yield the total number of months of military service credit an employee may purchase, subject to the sixty-month maximum. An employee may purchase in one-month increments all or part of the maximum amount of military service credit for which he or she is eligible.
- (8) 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 the amount.
- (9) Military service credit purchased pursuant to this subsection may not be considered contributing service credit or contributory service for purposes of this article.
- 89 (b)(1) Employees of participating public employers who 90 continue concurrently in active service of the State of West

- 91 Virginia with the West Virginia National Guard after the eligible
- 92 period to purchase military service credit as set forth in
- 93 subsection (a) or employees who join the West Virginia National
- 94 Guard after participation in the retirement system has
- 95 commenced may purchase military service credit earned after the
- 96 service computed under subsection (a) up to the sixty-month
- 97 maximum in every even calendar year following, if the
- 98 following conditions are met:

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- 99 (A) The employee substantiates by appropriate 100 documentation or evidence his or her service in the West 101 Virginia National Guard;
- 102 (B) The employee has completed at least twelve consecutive 103 months of contributory service to the retirement system in the 104 prior odd year; and
  - (C) The employee pays to the retirement system the actuarial reserve purchase amount within three months from the date of the cost letter provided by the board 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 credit.
- 114 (2) Any member of the retirement system who serves or has 115 served in the West Virginia National Guard may purchase one 116 month of military service credit for every fifteen points earned 117 toward a reserve component retirement during a qualifying year 118 as computed in subdivision (6) of this subsection. For purposes 119 of this section, points will be verified using the National Guard 120 Current Annual Statement, Point Credit or other equivalent 121 document, along with any documentation of any periods of 122 active service of the State of West Virginia as verified by the

- Adjutant General's office. All documentation will be submitted to the retirement board by the employee.
- 125 (3) In no event, however, may a member purchase or receive 126 a total of more than sixty months of military service credit under 127 this section; section fifteen, article ten, chapter five of this code, 128 or any other retirement system administered by the board.

- (4) In any case of doubt as to the period of service to be credited a member under the provisions of this section, the board shall have final power to determine the period.
- (5) To receive credit, an employee 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 first five months of each even calendar year following the years computed under subsection (a) of this section. The board shall then calculate the actuarial reserve lump sum purchase amount, which amount must be paid by the employee within three months from the date of the cost letter provided by the board. An employee purchasing military service credit pursuant to this subsection must do so in a single, lump sum payment.
- (6) To calculate the amount of military service credit an employee may purchase, the board shall add the total number of points accrued in a qualifying year, divide the total by fifteen, and round up or down to the nearest integer (fractions of 0.5 and greater shall be rounded up), in order to yield the total number of months of military service credit an employee may purchase, subject to the sixty-month maximum. An employee may purchase in one month increments all or part of the maximum amount of military service credit for which he or she is eligible.
- (7) 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

- 154 provisions of this article, he or she shall also receive a refund of
- 155 the actuarial reserve purchase amount he or she paid to the
- 156 retirement system to purchase military service credit, together
- 157 with regular interest on the amount.
- 158 (8) Military service credit purchased pursuant to this 159 subsection may not be considered contributing service credit or 160 contributory service for purposes of this article.
- (c) For purposes of this section:

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- 162 (1) "Active service of the State of West Virginia" means 163 full-time state active duty in the West Virginia Army National 164 Guard or the West Virginia Air National Guard when such duty 165 is performed upon orders of the Adjutant General of the West 166 Virginia National Guard or the Governor of West Virginia and 167 which is funded entirely by the state.
  - (2) "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 as permitted under subsection (a) of this section, 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.
  - (3) "Calculation month" means the month immediately following the month in which the employee completes the first twelve consecutive months of contributory service with a participating public employer on or after January 2015 for computations under subsection (a) of this section, or the month immediately following the month in which the employee

- 185 completes twelve consecutive months of contributory service
- 186 with a participating public employer in the preceding odd
- 187 calendar year for computations under subsection (b) of this
- 188 section.
- 189 (4) "Purchase accrued benefit" means two percent times the 190 purchase military service times the purchase average monthly 191 salary.
- 192 (5) "Purchase age" means the age of the employee in years 193 and completed months as of the first day of the calculation 194 month.
- 195 (6) "Purchase annuity rate" means the actuarial lump sum 196 annuity factor calculated as of the calculation month based on 197 the following actuarial assumptions:
- (A) Interest rate of seven and one-half percent;
- 199 (B) Mortality of the 1971 group annuity mortality table, fifty 200 percent blended male and female rates, applied on a unisex basis 201 to all members; and
- 202 (C) If purchase age is under age sixty-two, a deferred 203 annuity factor with payments commencing at age sixty-two; or
- 204 (D) If purchase age is sixty-two or over, an immediate 205 annuity factor with payments starting at the purchase age.
- 206 (7) "Purchase average monthly salary" means the average 207 monthly salary of the employee during months two through 208 twelve of the twelve consecutive month period required by the 209 appropriate subsection.
- 210 (8) "Purchase military service" means the amount of military 211 service being purchased by the employee in months up to the 212 sixty-month maximum, calculated in accordance with

- 213 subdivision (7) of subsection (a) and subdivision (6) of 214 subsection (b) of this section.
- 215 (9) "Purchase month" means the month in which the 216 employee deposits the actuarial reserve lump sum purchase 217 amount in full payment of the service credit being purchased or 218 makes the final payment of the actuarial reserve purchase 219 amount into the plan trust fund in full payment of the service 220 credit being purchased.
- 221 (10) "Qualifying year" means any year in which a member 222 earns the minimum number of points required to receive credit 223 for the year toward retired pay pursuant to Section 12732 of Title 224 10. United States Code.
- 225 (11) "Service in the West Virginia National Guard" means 226 full-time active duty for annual training in the National Guard, 227 Inactive Duty Training, Active Duty Operational Support, Active 228 Duty Special Work, funeral honors, State Active Duty as a 229 member of the West Virginia National Guard or any other 230 similar periods of Title 32 service or active service of the State 231 of West Virginia.
- 232 (12) "West Virginia National Guard" means the West 233 Virginia Army National Guard and the West Virginia Air 234 National Guard.
- 235 (d) The board is authorized to determine all questions and 236 make all decisions relating to this section and, pursuant to the 237 authority granted to the board in section one, article ten-d of this 238 chapter, may propose rules for legislative approval in accordance 239 with the provisions of article three, chapter twenty-nine-a of this 240 code, to administer this section.

#### CHAPTER 18, EDUCATION.

#### ARTICLE 7A. STATE TEACHERS RETIREMENT SYSTEM.

## §18-7A-17b. Military service credit for members of the West Virginia National Guard.

- 1 (a)(1) The Legislature recognizes the men and women who
- 2 have dedicated themselves to the defense and service of this state
- 3 through their service in the West Virginia National Guard. It is
- 4 the intent of this section to confer military service credit upon
- 5 members of the Teachers Retirement System for any time served
- 6 in the West Virginia National Guard when they meet the
- 7 requirements of this section.
- 8 (2) In addition to any benefit provided by federal law, any
- 9 active member of the retirement system who currently or
- 10 previously has served in the West Virginia National Guard may
- 11 purchase credited service for the time served in the West
- 12 Virginia National Guard, not to exceed sixty months if the
- 13 following conditions are met:
- 14 (A) The active member substantiates by appropriate
- 15 documentation or evidence his or her service in the West
- 16 Virginia National Guard;
- 17 (B) The active member has completed a complete fiscal year
- 18 of contributory service to the retirement system on or after July
- 19 1, 2015; and
- 20 (C) The employee pays to the retirement system the actuarial
- 21 reserve purchase amount within forty-eight months after July 1,
- 22 2015, if he or she was employed with an employer during a
- 23 complete fiscal year in fiscal year 2016 or the first date on which
- 24 employer and employee contributions are received by the
- 25 retirement system for the member for a complete fiscal year if he
- 26 or she was not employed with an employer for a complete fiscal
- 27 year during fiscal year 2016 and while he or she continues to be
- 28 in the employ of an employer and contributing to the retirement
- 29 system: Provided, That any member who ceases employment

- with an employer before completing the required actuarial reserve purchase amount in full is not eligible to purchase the military service.
- 33 (3) Any member of the retirement system who serves, or has 34 served, in the West Virginia National Guard may purchase one month of military service credit for every fifteen points earned 35 36 toward a reserve component retirement during a qualifying year 37 as computed in subdivision (7) of this subsection. For purposes of this section, points will be verified using the National Guard 38 Current Annual Statement, Point Credit Summary or other 39 equivalent document, along with any documentation of any 40 41 periods of active service with the State of West Virginia as 42 verified by the Adjutant General's office. All documentation will 43 be submitted to the retirement board by the active member.
  - (4) In no event, however, may a member purchase or receive a total of more than sixty months of military service credit under this section, section seventeen-a, article seven-a, chapter eighteen; or any other retirement system administered by the retirement board.

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- (5) In any case of doubt as to the period of service to be credited a member under the provisions of this section, the retirement board shall have the final power to determine the period.
- 53 (6) To receive credit, an active member must submit a 54 request to purchase military service credit to the retirement 55 board, on such form or in such other manner as shall be required 56 by the retirement board, within the complete fiscal year required by this subsection or by October 31, 2016, whichever occurs 57 later. The retirement board shall then calculate the actuarial 58 59 reserve lump sum purchase amount, which amount must be paid 60 by the employee within the forty-eight-month period required by 61 this subsection, as applicable. An active member purchasing

military service credit pursuant to this subsection must do so in a single, lump sum payment: Provided, That the retirement board may accept partial installments 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 fourteen-c of this article and no military service shall be credited. 

- (7) To calculate the amount of military service credit an active member may purchase, the retirement board shall add the total number of points accrued in a qualifying year, divide the total by fifteen, and round up or down to the nearest integer (fractions of 0.5 or greater shall be rounded up), in order to yield the total number of months of military service credit an active member may purchase, subject to the sixty-month maximum. An active member may purchase in one-month increments all or part of the maximum amount of military service credit for which he or she is eligible.
- (8) 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 the amount.
- (9) Military service credit purchased pursuant to this subsection may not be considered contributing service credit or contributory service for purposes of this article.
- 91 (b)(1) Active members of an employer who continue 92 concurrently in active service of the State of West Virginia with 93 the West Virginia National Guard after the eligible period to

- 94 purchase military service credit as set forth in subsection (a) of
- 95 this section, or active members who join the West Virginia
- 96 National Guard after participation in the retirement system has
- 97 commenced may purchase military service credit earned after the
- 98 service computed under subsection (a) of this section up to the
- 99 sixty-month maximum in every even calendar year following if
- 100 the following conditions are met:
- 101 (A) The active member substantiates by appropriate 102 documentation or evidence his or her service in the West
- 103 Virginia National Guard;
- 104 (B) The active member has completed a complete fiscal year 105 of contributory service to the retirement system in the prior odd 106 year; and
- 107 (C) The active member pays to the retirement system the actuarial reserve purchase amount within three months from the 108 109 date of the cost letter provided by the retirement board and while 110 he or she continues to be in the employ of an employer and 111 contributing to the retirement system: Provided, That a member 112 who ceases employment with an employer before completing the required actuarial reserve purchase amount in full is not eligible 113 114 to purchase the military service credit.
- 115 (2) Any member of the retirement system who serves or has 116 served in the West Virginia National Guard may purchase one month of military service credit for every fifteen points earned 117 118 toward a reserve component retirement during a qualifying year 119 as computed in subdivision (6) of this subsection. For purposes 120 of this section, points will be verified using the Army National Guard Current Annual Statement, Point Credit Summary or other 121 equivalent document, along with any documentation of any 122 periods of Active service with the State of West Virginia as 123 124 verified by the Adjutant General's Office. All documentation 125 shall be submitted to the retirement board by the active member.

126 (3) In no event, however, may a member purchase or receive 127 a total of more than sixty months of military service credit under 128 this section, section seventeen-a, article seven-a, chapter 129 eighteen, or any other retirement system administered by the 130 retirement board.

- (4) In any case of doubt as to the period of service to be credited a member under the provisions of this section, the retirement board shall have final power to determine the period.
- (5) To receive credit, an active member must submit a request to purchase military service credit to the retirement board, on such form or in such other manner as shall be required by the retirement board, by October 31 of each even calendar year following the years computed under subsection (a) of this section. The retirement board shall then calculate the actuarial reserve lump sum purchase amount, which amount must be paid by the active member within three months from the date of the cost letter provided by the retirement board. An active member purchasing military service credit pursuant to this subsection must do so in a single, lump sum payment.
- (6) To calculate the amount of military service credit an active member may purchase, the retirement board shall add the total number of points accrued in a qualifying year, divide the total by fifteen. and round up or down to the nearest integer (fractions of 0.5 or greater shall be rounded up), in order to yield the total number of months of military service credit an active member may purchase, subject to the sixty-month maximum. An active member may purchase in one month increments, all or part of the maximum amount of military service credit for which he or she is eligible.
- (7) 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 the amount.
- 162 (8) Military service credit purchased pursuant to this 163 subsection may not be considered contributing service credit or 164 contributory service for purposes of this article.
  - (c) For purposes of this section:

- (1) "Active service of the State of West Virginia" means full-time state active duty in the West Virginia Army National Guard or the West Virginia Air National Guard when the duty is performed upon orders of the Adjutant General of the West Virginia National Guard or the Governor of West Virginia and which is funded entirely by the state.
- (2) "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 as permitted under subsection (a) of this section, 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.
- (3) "Calculation month" means the month immediately following the month in which the employee completes a complete fiscal year of contributory service with an employer on or after July 2015 for computations under subsection (a) of this section, or the month immediately following the month in which the employee completes a complete fiscal year of contributory

- service with an employer in the preceding odd calendar year for computations under subsection (b) of this section.
- 191 (4) "Purchase accrued benefit" means two percent times the 192 purchase military service times the purchase average monthly 193 salary.
- 194 (5) "Purchase age" means the age of the employee in years 195 and completed months as of the first day of the calculation 196 month.
- 197 (6) "Purchase annuity rate" means the actuarial lump sum 198 annuity factor calculated as of the calculation month based on 199 the following actuarial assumptions:
- 200 (A) Interest rate of seven and one-half percent;
- 201 (B) Mortality of the 1971 group annuity mortality table, fifty 202 percent blended male and female rates, applied on a unisex basis 203 to all members; and
- 204 (C) If purchase age is under age sixty-two, a deferred 205 annuity factor with payments commencing at age sixty-two; or
- 206 (D) If purchase age is sixty-two or over, an immediate 207 annuity factor with payments starting at the purchase age.
- 208 (7) "Purchase average monthly salary" means the average 209 monthly salary of the active member during the number of 210 months of the member's contract during the fiscal year of 211 contributory service as required by this section.
- 212 (8) "Purchase military service" means the amount of military 213 service being purchased by the active member in months up to 214 the sixty-month maximum, calculated in accordance with 215 subdivision (7) of subsection (a) and subdivision (6) of 216 Subsection (b) of this section.

- 217 (9) "Purchase month" means the month in which the active 218 member deposits the actuarial reserve lump sum purchase 219 amount in full payment of the service credit being purchased or 220 makes the final payment of the actuarial reserve purchase 221 amount into the plan trust fund in full payment of the service 222 credit being purchased.
- 223 (10) "Qualifying year" means any year in which a member 224 earns the minimum number of points required to receive credit 225 for the year toward retired pay pursuant to Section 12732 of Title 226 10. United States Code.
- 227 (11) "Service in the West Virginia National Guard" means 228 full-time active duty for annual training in the National Guard, 229 Inactive Duty Training, Active Duty Operational Support, Active 230 Duty Special Work, funeral honors, State Active Duty as a 231 member of the West Virginia National Guard or any other 232 similar periods of Title 32 service or active service of the State 233 of West Virginia.
- 234 (12) "West Virginia National Guard" means the West 235 Virginia Army National Guard and the West Virginia Air 236 National Guard.
- 237 (d) The retirement board is authorized to determine all 238 questions and make all decisions relating to this section and, 239 pursuant to the authority granted to the retirement board in 240 section one, article ten-d of chapter five, may propose rules for 241 legislative approval in accordance with the provisions of article 242 three, chapter twenty-nine-a of this code to administer this 243 section.

### **CHAPTER 220**

(Com. Sub. for H. B. 4519 - By Delegates Hamilton, Campbell, Lynch, P. Smith, Pethtel, Marcum, A. Evans, Statler, Wagner, Moffatt and Frich)

[Passed March 11, 2016; in effect ninety days from passage.] [Approved by the Governor on April 1, 2016.]

AN ACT to amend and reenact §8-22A-2, §8-22A-6 and §8-22A-32 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §8-22A-33, all relating to authorizing certain municipalities to elect to participate in the West Virginia Municipal Police Officers and Firefighters Retirement System; providing definitions; authorizing certain municipal police officers and firefighters to become members of the retirement system under certain circumstances and with certain restrictions; and providing limitations and requirements for municipalities or municipal subdivisions to elect to participate in the retirement system.

Be it enacted by the Legislature of West Virginia:

That \$8-22A-2, \$8-22A-6 and \$8-22A-32 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 \$8-22A-33, all to read as follows:

# ARTICLE 22A. WEST VIRGINIA MUNICIPAL POLICE OFFICERS AND FIREFIGHTERS RETIREMENT SYSTEM.

§8-22A-2. Definitions.

1 As used in this article, unless a federal law or regulation or 2 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 415 of the Internal Revenue Code and is subject to the provisions of section ten of this article.
  - (b) "Accumulated contributions" means the sum of all retirement contributions deducted from the compensation of a member, or paid on his or her behalf as a result of covered employment, together with regular interest on the deducted amounts.

- (c) "Active military duty" means full-time duty in the active military service of the United States Army, Navy, Air Force, Coast Guard or Marine Corps. The term does not include regularly required training or other duty performed by a member of a reserve component or National Guard unless the member can substantiate that he or she was called into the full-time active military service of the United States and has received no compensation during the period of that duty from any board or employer other than the Armed Forces.
- (d) "Actuarial equivalent" means a benefit of equal value computed on the basis of the mortality table and interest rates as set and adopted by the board in accordance with the provisions of this article: *Provided*, That when used in the context of compliance with the federal maximum benefit requirements of Section 415 of the Internal Revenue Code, "actuarial equivalent" shall be computed using the mortality tables and interest rates required to comply with those requirements.

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- (e) "Annual compensation" means the wages paid to the member during covered employment within the meaning of Section 3401(a) of the Internal Revenue Code, but determined without regard to any rules that limit the remuneration included in wages based on the nature or location of employment or services performed during the plan year plus amounts excluded under Section 414(h)(2) of the Internal Revenue Code and less reimbursements or other expense allowances, cash or noncash fringe benefits or both, deferred compensation and welfare benefits. Annual compensation for determining benefits during any determination period may not exceed the maximum compensation allowed as adjusted for cost-of-living in accordance with section seven, article ten-d, chapter five of this code and Section 401(a) (17) of the Internal Revenue Code.
- 48 (f) "Annual leave service" means accrued annual leave.
- 49 (g) "Annuity starting date" means the first day of the month for which an annuity is payable after submission of a retirement 50 application or the required beginning date, if earlier. For 51 52 purposes of this subsection, if retirement income payments commence after the normal retirement age, "retirement" means 53 54 the first day of the month following or coincident with the latter of the last day the member worked in covered employment or the 55 member's normal retirement age and after completing proper 56 written application for "retirement" on an application supplied 57 by the board. 58
- 59 (h) "Board" means the Consolidated Public Retirement 60 Board.
- 61 (i) "Covered employment" means either: (1) Employment as 62 a full-time municipal police officer or firefighter and the active 63 performance of the duties required of that employment; or (2) 64 the period of time during which active duties are not performed 65 but disability benefits are received under this article; or (3)

66 concurrent employment by a municipal police officer or 67 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 68 secondary employment requires the police officer or firefighter 69 to be a member of another retirement system which is 70 71 administered by the Consolidated Public Retirement Board 72 pursuant to this code: Provided, That the police officer or firefighter contributes to the fund created in this article the 73 74 amount specified as the member's contribution in section eight 75 of this article.

(j) "Credited service" means the sum of a member's years of service, active military duty and disability service.

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- (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.
- (1) "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.

- 99 (n) "Effective date" means January 1, 2010.
- 100 (o) "Final average salary" means the average of the highest 101 annual compensation received for covered employment by the member during any five consecutive plan years within the 102 103 member's last ten years of service while employed, prior to any disability payment. If the member did not have annual 104 105 compensation for the five full plan years preceding the member's 106 attainment of normal retirement age and during that period the 107 member received disability benefits under this article, then "final average salary" means the average of the monthly compensation 108 109 which the member was receiving in the plan year prior to the 110 initial disability. "Final average salary" does not include any 111 lump sum payment for unused, accrued leave of any kind or 112 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.
- 118 (q) "Fund" means the West Virginia Municipal Police 119 Officers and Firefighters Retirement Fund created by this article.

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(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

- 131 pursuant to West Virginia Division of Labor rules. A member 132 will not be credited with any hours of service for any period of 133 time he or she is receiving benefits under section seventeen or eighteen of this article; and (3) each hour for which back pay is 134 135 either awarded or agreed to be paid by the employing 136 municipality, irrespective of mitigation of damages. The same 137 hours of service shall not be credited both under subdivision (1) 138 or (2) of this subsection and under this subdivision. Hours under 139 this paragraph shall be credited to the member for the plan year 140 or years to which the award or agreement pertains, rather than the plan year in which the award, agreement or payment is made. 141
- 142 (s) "Member" means, except as provided in sections 143 thirty-two or thirty-three of this article, a person hired as a 144 municipal police officer or municipal firefighter, as defined in 145 this section, by a participating municipal employer on or after 146 January 1, 2010. A member shall remain a member until the 147 benefits to which he or she is entitled under this article are paid 148 or forfeited.
- 149 (t) "Monthly salary" means the W-2 reportable 150 compensation received by a member during the month.
- 151 (u) "Municipality" has the meaning ascribed to it in this 152 code.
- 153 (v)(1) "Municipal police officer" means an individual employed as a member of a paid police department by a West 154 155 Virginia municipality or municipal subdivision which has established and maintains a municipal policemen's pension and 156 157 relief fund, and who is not a member of, and not eligible for 158 membership in, a municipal policemen's pension and relief fund 159 as provided in section sixteen, article twenty-two of this chapter: 160 *Provided*, That municipal police officer also means an individual 161 employed as a member of a paid police department by a West Virginia municipality or municipal subdivision which is 162

authorized to elect to participate in the plan pursuant to section thirty-three of this article. 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: *Provided*, That municipal firefighter also means an individual employed as a member of a paid fire department by a West Virginia municipality or municipal subdivision which is authorized to elect to participate in the plan pursuant to section thirty-three of this article. 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.

- 195 (y) "Normal retirement age" means the first to occur of the 196 following: (1) Attainment of age fifty years and the completion 197 of twenty or more years of regular contributory service; (2) 198 while still in covered employment, attainment of at least age 199 fifty years and when the sum of current age plus regular 200 contributory service equals or exceeds seventy years; (3) while 201 still in covered employment, attainment of at least age sixty years and completion of ten years of regular contributory 202 203 service; or (4) Attainment of age sixty-two years and completion of five or more years of regular contributory service. 204
- 205 (z) "Plan" means the West Virginia Municipal Police 206 Officers and Firefighters Retirement System established by this 207 article.
- 208 (aa) "Plan year" means the twelve-month period 209 commencing on January 1 of any designated year and ending the 210 following December 31.
- (bb) "Qualified public safety employee" means any 211 employee of a participating state or political subdivision who 212 213 provides police protection, firefighting services or emergency 214 medical services for any area within the jurisdiction of the state 215 or political subdivision, or such other meaning given to the term 216 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 217 amended from time to time. 218
- 219 (cc) "Regular contributory service" means a member's 220 credited service excluding active military duty, disability service 221 and accrued annual and sick leave service.
- 222 (dd) "Regular interest" means the rate or rates of interest per 223 annum, compounded annually, as the board adopts in accordance 224 with the provisions of this article.

- 225 (ee) "Required beginning date" means April 1 of the 226 calendar year following the later of: (1) The calendar year in 227 which the member attains age seventy and one-half; or (2) the 228 calendar year in which he or she retires or otherwise separates 229 from covered employment.
- 230 (ff) "Retirement income payments" means the monthly 231 retirement income payments payable under the plan.
- (gg) "Spouse" means the person to whom the member is legally married on the annuity starting date.
- 234 (hh) "Surviving spouse" means the person to whom the 235 member was legally married at the time of the member's death 236 and who survived the member.
- 237 (ii) "Totally disabled" means a member's inability to engage 238 in substantial gainful activity by reason of any medically 239 determined physical or mental impairment that can be expected 240 to result in death or that has lasted or can be expected to last for 241 a continuous period of not less than twelve months. For purposes 242 of this subsection: (1) A member is totally disabled only if his or 243 her physical or mental impairment or impairments is so severe that he or she is not only unable to perform his or her previous 244 work as a police officer or firefighter but also cannot, 245 246 considering his or her age, education and work experience, 247 engage in any other kind of substantial gainful employment 248 which exists in the state regardless of whether: (A) The work exists in the immediate area in which the member lives; (B) a 249 250 specific job vacancy exists; or (C) the member would be hired if 251 he or she applied for work. For purposes of this article, 252 substantial gainful employment is the same definition as used by 253 the United States Social Security Administration. (2) "Physical 254 or mental impairment" is an impairment that results from an 255 anatomical, physiological or psychological abnormality that is 256 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
- 259 earnings limitation.
- 260 (jj) "Year of service" means a member shall, except in his or 261 her first and last years of covered employment, be credited with 262 years of service credit based on the hours of service performed 263 as covered employment and credited to the member during the 264 plan year based on the following schedule:
- 265 Hours of Service Year of Service Credited
- 266 Less than 500 0
- 267 500 to 999 1/3
- 268 1.000 to 1.4992/3
- 269 1,500 or more 1
- During a member's first and last years of covered employment, the member shall be credited with one twelfth of
- 272 a year of service for each month during the plan year in which
- 273 the member is credited with an hour of service for which
- 274 contributions were received by the fund. A member is not
- 275 entitled to credit for years of service for any time period during
- 276 which he or she received disability payments under section
- 277 seventeen or eighteen of this article.

#### §8-22A-6. Members.

- 1 (a) A police officer or firefighter hired in covered
- 2 employment after the effective date of this article by a
- 3 municipality or municipal subdivision which has established and
- 4 maintained a policemen's pension and relief fund or a firemen's
- 5 pension and relief fund pursuant to section sixteen, article
- 6 twenty-two of this chapter and which is a participating employer
- 7 or which is a participating public employer as authorized by

- 8 section thirty-three of this article, shall be a member of this
- 9 retirement plan: Provided, That any police officer or firefighter
- 10 who has concurrent employment in an additional job or jobs
- 11 which would require the police officer or firefighter to be a
- 12 member of the West Virginia Deputy Sheriff Retirement System
- 13 or the West Virginia Emergency Medical Services Retirement
- 14 System shall participate in only one retirement system
- 15 administered by the board, and the retirement system applicable
- 16 to the concurrent employment for which the employee has the
- 17 earliest date of hire shall prevail.
- 18 (b) Except as provided in section thirty-two of this article, a 19 police officer or firefighter who is a member of the Municipal
- 20 Police Officers and Firefighters Retirement System may not
- 21 have credit for covered employment in any other retirement
- 22 system applied as service credit in the Municipal Police Officers
- 23 and Firefighters Retirement System.
- 24 (c) Notwithstanding any other provisions of this article, any
- 25 individual who is a leased employee is not eligible to participate
- 26 in the plan. For purposes of this plan, a "leased employee"
- 27 means any individual who performs services as an independent
- 28 contractor or pursuant to an agreement with an employee leasing
- 29 organization or similar organization. If a question arises
- 30 regarding the status of an individual as a leased employee, the
- 31 board has final power to decide the question.

#### §8-22A-32. Membership retroactive in certain circumstances.

- 1 (a) Notwithstanding all other provisions relating to this
- 2 article and article twenty-two of this chapter, any police officer
- 3 or firefighter hired by a participating public employer on or after
- 4 June 1, 2009, and before January 1, 2010, who received notice
- 5 at the time of employment that he or she may be placed in a new
- 6 retirement system created by legislation and who has been
- 7 enrolled in but received no benefits from a municipal

policemen's or firemen's pension and relief fund shall, if permitted by applicable federal law, be enrolled in the Municipal 9 Police Officers and Firefighters Retirement System upon 10 acceptance by the Consolidated Public Retirement Board of the 11 resolution of the municipality required by section twenty-eight 12 13 of this article. Employee and employer contributions made by or 14 on behalf of the employee to the municipal pension and relief fund pursuant to article twenty-two of this chapter shall be 15 transferred within sixty days to the retirement system created in 16 17 this article and the employee subject to the transfer shall receive service credit for time worked while a member of the municipal 18 19 pension and relief fund.

(b) Notwithstanding any other provision of the code to the contrary, any police officer or firefighter hired by a participating public employer on or after July 1, 2015, who chooses pursuant to section thirty-three of this article to be a member of the plan, shall be a member of the plan upon acceptance by the Consolidated Public Retirement Board of the notification by the municipality required by section thirty-three of this article.

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- 27 (1) The Consolidated Public Retirement Board shall transfer 28 assets and service credit earned on or after July 1, 2015, from the 29 Public Employees Retirement System Trust Fund into the West Virginia Municipal Police Officers and Firefighters Retirement 30 Fund for those police officers or firefighters who elect to be a 31 member of the plan and were members in the Public Employees 32 Retirement System no later than sixty days from receipt of 33 34 notification by the municipality or municipal subdivision of the 35 police officer or firefighter's election to become a member. The 36 amount of service credit recognized by the plan for the transferring employees shall be the service credit transferred and 37 38 recognized by the Public Employees Retirement System.
- 39 (2) The amount of assets to be transferred for each police 40 officer or firefighter shall be computed as of the actuarial

- 41 valuation date preceding the notification to the Consolidated
- 42 Public Retirement Board by the municipality or municipal
- 43 subdivision of the police officer or firefighter's election to
- 44 become a member and updated with seven and one-half percent
- 45 annual interest to the date of the actual asset transfer. For
- 46 purposes of this section, the actuarial valuation date is the most
- 47 recent actuarial valuation of the Public Employees Retirement
- 48 System approved by the Consolidated Public Retirement Board.
- 49 The market value of the assets of the transferring employees in
- 50 the Public Employees Retirement System shall be determined as
- 51 of the end of the month preceding the actual transfer. To
- 52 determine the computation of the asset share to be transferred,
- 53 the Consolidated Public Retirement Board shall:
- 54 (A) Compute the market value of the Public Employees
- 55 Retirement System assets using the actuarial valuation date;
- 56 (B) Compute the actuarial accrued liabilities for all Public
- 57 Employees Retirement System retirees, beneficiaries, disabled
- 58 retirees and terminated inactive members using the actuarial
- 59 valuation date:
- 60 (C) Compute the market value of active member assets in the
- 61 Public Retirement System as of the actuarial valuation date by
- 62 reducing the assets value under paragraph (A) of this subdivision
- 63 by the inactive liabilities under paragraph (B) of this
- 64 subdivision:
- (D) Compute the actuarial accrued liability for all active
- 66 Public Employees Retirement System members using the
- 67 actuarial valuation date immediately preceding the computation
- 68 date;
- (E) Compute the funded percentage of the active members'
- 70 actuarial accrued liabilities under the Public Employees
- 71 Retirement System as of the actuarial valuation date by dividing

- 72 the active members' market value of assets under paragraph (C)
- 73 of this subdivision by the active members' actuarial accrued
- 74 liabilities under paragraph (D) of this subsection;

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- (F) Compute the actuarial accrued liabilities under the Public
   Employees Retirement System as of the actuarial valuation date
   for active employees transferring to the plan;
- 78 (G) Determine the assets to be transferred from the Public 79 Employees Retirement System to the plan by multiplying the 80 active members' funded percentage determined under paragraph (E) of this subdivision by the transferring active members' 81 82 actuarial accrued liabilities under the Public Employees 83 Retirement System under paragraph (F) of this subdivision and adjusting the asset transfer amount by interest at seven and 84 five-tenths percent for the period from the calculation date of 85 July 1 through the first day of the month in which the asset 86 87 transfer is to be completed.
  - (3) Any police officer or firefighter who elects to become a member of the plan must also pay to the plan a four percent contribution no later than June 30, 2019. The contribution shall be calculated as four percent of the member's total earnings for which assets are transferred, plus interest of seven and one-half percent accumulated from the date of the police officer's or firefighter's initial participation in the Public Employees Retirement System through the calculation date. Installment payments may be made over no more than a twenty-four month period plus seven and one-half percent interest shall accrue on the outstanding balance due from the calculation date until paid in full.
- 100 (4) Once an employee transfers from the Public Employees 101 Retirement System to the plan, the Public Employees Retirement 102 System shall bar any further liability and said transfer will 103 constitute an agreement whereby the transferring employee

- 104 forever indemnifies and holds harmless the Public Employees
- 105 Retirement System from providing him or her any form of
- 106 retirement benefit whatsoever until that employee obtains other
- 107 employment which would make him or her eligible to reenter the
- 108 Public Employees Retirement System with no credit whatsoever
- 109 for the amounts transferred to the plan.

### §8-22A-33. Special authorization for municipal police or firefighters hired after July 1, 2015.

- 1 (a) Notwithstanding any provision of this code to the
- 2 contrary, any municipality or municipal subdivision that
- 3 employs individuals as members of paid police departments or
- 4 paid fire departments, but did not establish either a municipal
- 5 policemen's pension and relief fund or a municipal firemen's
- 6 pension and relief fund as provided in section sixteen, article
- 7 twenty-two of this chapter and whose current police officers or
- 8 firefighters are participating in the Public Employees Retirement
- 9 System may elect, in the same manner as provided in section
- 10 twenty-eight of this article, to become a participating public
- 11 employer in the plan and thereby include its police officers and
- 12 firefighters in the membership of the plan subject to the
- 13 restrictions provided in this section.
- 14 (b) The municipality or municipal subdivision may elect to
- 15 include only police officers and firefighters who have been hired
- on or after July 1, 2015, to become members of the plan. Police
- 17 officers and firefighters hired before July 1, 2015, will remain
- 18 members of the Public Employees Retirement System.
- 19 (c) The municipality or municipal subdivision must make its 20 election on or prior to July 1, 2017.
- 21 (d) Once a municipality or municipal subdivision makes its
- 22 election to become a participating public employer pursuant to
- 23 this section and section twenty-eight of this article, all police

24 officers and firefighters hired by the municipality or municipal 25 subdivision after the date of election shall be members of the plan: *Provided*, That police officers and firefighters hired by the 26 27 municipality or municipal subdivision on or after July 1, 2015, who are members of the Public Employees Retirement System, 28 29 may choose to become a member of the plan by notifying the 30 municipality or municipal subdivision on a form provided by the Consolidated Public Retirement Board: Provided, however, That 31 32 he or she make this decision within ninety days of the 33 municipality or municipal subdivision's decision to participate 34 in the plan. A municipality or municipal subdivision making an 35 election to become a participating public employer pursuant to 36 section twenty-eight of this article that has hired any police 37 officer or firefighter on or after July 1, 2015, shall notify each 38 police officer or firefighter hired on or after July 1, 2015, of its 39 election to become a participating public employer within thirty days of making the election. This notice shall include 40 instructions as to how a police officer or firefighter may make 41 notification to the municipality or municipal subdivision of his 42 43 or her decision to become a member in the plan. The 44 municipality or municipal subdivision shall notify 45 Consolidated Public Retirement Board in writing of any police officer or firefighter hired after July 1, 2015, who has decided to 46 47 become a member of the plan and terminate his or her 48 membership in the Public Employees Retirement System within 49 thirty days of notification by the police officer or firefighter on 50 forms provided by the Consolidated Public Retirement System.



### (S. B. 563 - By Senators Gaunch, Blair, Leonhardt, Plymale and Walters)

[Passed March 11, 2016; in effect ninety days from passage.] [Approved by the Governor on April 1, 2016.]

AN ACT to amend and reenact §16-5V-2 of the Code of West Virginia, 1931, as amended, relating to definition of "accrued benefit" as it applies to West Virginia Emergency Medical Services Retirement System; and increasing retirement benefit multiplier for members with more than twenty-five years of credited service.

Be it enacted by the Legislature of West Virginia:

That §16-5V-2 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

### ARTICLE 5V. EMERGENCY MEDICAL SERVICES RETIREMENT SYSTEM.

#### §16-5V-2. Definitions.

- 1 As used in this article, unless a federal law or regulation or
- 2 the context clearly requires a different meaning:
- 3 (a) "Accrued benefit" means on behalf of any member two
- 4 and six-tenths percent per year of the member's final average
- 5 salary for the first twenty years of credited service. Additionally,
- 6 two percent per year for twenty-one through twenty-five years
- 7 and one and one-half percent per year for each year over
- 8 twenty-five years will be credited with a maximum benefit of
- 9 sixty-seven percent. A member's accrued benefit may not exceed

the limits of Section 415 of the Internal Revenue Code and is subject to the provisions of section twelve of this article.

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- (1) The board may, upon the recommendation of the board's actuary, increase the employees' contribution rate to ten and five-tenths percent should the funding of the plan not reach seventy percent funded by July 1, 2012. The board shall decrease the contribution rate to eight and one-half percent once the plan funding reaches the seventy percent support objective as of any later actuarial valuation date.
- (2) Upon reaching the seventy-five percent actuarial funded level, as of an actuarial valuation date, the board shall increase the two and six-tenths percent to two and three-quarter percent for the first twenty years of credited service. The maximum benefit will also be increased from sixty-seven percent to ninety percent.
- 25 (b) "Accumulated contributions" means the sum of all retirement contributions deducted from the compensation of a member, or paid on his or her behalf as a result of covered employment, together with regular interest on the deducted amounts.
- 30 (c) "Active military duty" means full-time active duty with 31 any branch of the armed forces of the United States, including 32 service with the National Guard or reserve military forces when 33 the member has been called to active full-time duty and has 34 received no compensation during the period of that duty from 35 any board or employer other than the armed forces.
  - (d) "Actuarial equivalent" means a benefit of equal value computed upon the basis of the mortality table and interest rates as set and adopted by the board in accordance with the provisions of this article.

- (e) "Annual compensation" means the wages paid to the 40 member during covered employment within the meaning of 41 Section 3401(a) of the Internal Revenue Code, but determined 42 without regard to any rules that limit the remuneration included 43 in wages based upon the nature or location of employment or 44 45 services performed during the plan year plus amounts excluded under Section 414(h)(2) of the Internal Revenue Code and less 46 47 reimbursements or other expense allowances, cash or noncash 48 fringe benefits or both, deferred compensation and welfare benefits. Annual compensation for determining benefits during 49 any determination period may not exceed the maximum 50 51 compensation allowed as adjusted for cost of living in 52 accordance with section seven, article ten-d, chapter five of this 53 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 55 for which an annuity is payable after submission of a retirement 56 57 application. For purposes of this subsection, if retirement income payments commence after the normal retirement age, 58 "retirement" means the first day of the month following or 59 coincident with the latter of the last day the member worked in 60 61 covered employment or the member's normal retirement age and 62 after completing proper written application for retirement on an application supplied by the board. 63
- 64 (h) "Board" means the Consolidated Public Retirement 65 Board.
- (i) "Contributing service" or "contributory service" means
   service rendered by a member while employed by a participating
   public employer for which the member made contributions to the
   plan.
- 70 (j) "County commission or political subdivision" has the meaning ascribed to it in this code.

- 72 (k) "Covered employment" means either: (1) Employment as a full-time emergency medical technician, emergency medical 73 technician/paramedic or emergency medical services/registered 74 75 nurse and the active performance of the duties required of 76 emergency medical services officers; or (2) the period of time 77 during which active duties are not performed but disability 78 benefits are received under this article; or (3) concurrent employment by an emergency medical services officer in a job 79 80 or jobs in addition to his or her employment as an emergency medical services officer where the secondary employment 81 82 requires the emergency medical services officer to be a member of another retirement system which is administered by the 83 84 Consolidated Public Retirement Board pursuant to this code: Provided, That the emergency medical services officer 85 contributes to the fund created in this article the amount 86 87 specified as the member's contribution in section eight of this 88 article.
- 89 (1) "Credited service" means the sum of a member's years of 90 service, active military duty, disability service and accrued 91 annual and sick leave service.
- 92 (m) "Dependent child" means either:
- 93 (1) An unmarried person under age eighteen who is:
- 94 (A) A natural child of the member;
- 95 (B) A legally adopted child of the member;
- 96 (C) A child who at the time of the member's death was 97 living with the member while the member was an adopting 98 parent during any period of probation; or
- 99 (D) A stepchild of the member residing in the member's 100 household at the time of the member's death; or

- 101 (2) Any unmarried child under age twenty-three:
- 102 (A) Who is enrolled as a full-time student in an accredited 103 college or university;
- 104 (B) Who was claimed as a dependent by the member for 105 federal income tax purposes at the time of the member's death; 106 and
- 107 (C) Whose relationship with the member is described in 108 paragraph (A), (B) or (C), subdivision (1) of this subsection.
- (n) "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.
- 112 (o) "Disability service" means service received by a 113 member, expressed in whole years, fractions thereof or both, 114 equal to one half of the whole years, fractions thereof, or both, 115 during which time a member receives disability benefits under 116 this article.
- (p) "Early retirement age" means age forty-five or over and completion of twenty years of contributory service.
- (q) "Effective date" means January 1, 2008.
- 120 (r) "Emergency medical services officer" means an 121 individual employed by the state, county or other political subdivision as a medical professional who is qualified to respond 122 123 to medical emergencies, aids the sick and injured and arranges or transports to medical facilities, as defined by the West 124 125 Virginia Office of Emergency Medical Services. This definition 126 is construed to include employed ambulance providers and other 127 services such as law enforcement, rescue or fire department 128 personnel who primarily perform these functions and are not 129 provided any other credited service benefits or retirement plans.

- 130 These persons may hold the rank of emergency medical
- 131 technician/basic, emergency medical technician/paramedic,
- 132 emergency medical services/registered nurse, or others as
- 133 defined by the West Virginia Office of Emergency Medical
- 134 Services and the Consolidated Public Retirement Board.

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- 135 (s) "Employer error" means an omission, misrepresentation 136 or violation of relevant provisions of the West Virginia Code or 137 of the West Virginia Code of State Rules or the relevant 138 provisions of both the West Virginia Code and of the West 139 Virginia Code of State Rules by the participating public 140 employer that has resulted in an underpayment or overpayment 141 of contributions required. A deliberate act contrary to the 142 provisions of this article by a participating public employer does 143 not constitute employer error.
  - (t) "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 salary determined paid to the member during that period as determined under section nineteen of this article multiplied by twelve. Final average salary does not include any lump sum payment for unused, accrued leave of any kind or character.
  - (u) "Full-time employment" means permanent employment of an employee by a participating public employer 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.

- (v) "Fund" means the West Virginia Emergency Medical Services Retirement Fund created by this article.
- (w) "Hour of service" means:

- (1) Each hour for which a member is paid or entitled to payment for covered employment during which time active duties are performed. These hours shall be credited to the member for the plan year in which the duties are performed; and
- (2) Each hour for which a member is paid or entitled to payment for covered employment during a plan year but where no duties are performed due to vacation, holiday, illness, incapacity including disability, layoff, jury duty, military duty, leave of absence or any combination thereof and without regard to whether the employment relationship has terminated. Hours under this 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 nineteen or twenty of this article; and
- (3) Each hour for which back pay is either awarded or agreed to be paid by the employing county commission or political subdivision, 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.
- (x) "Member" means a person first hired as an emergency medical services officer by an employer which is a participating public employer of the Public Employees Retirement System or the Emergency Medical Services Retirement System after the effective date of this article, as defined in subsection (q) of this

- 193 section, or an emergency medical services officer of an employer
- 194 which is a participating public employer of the Public
- 195 Employees Retirement System first hired prior to the effective
- date and who elects to become a member pursuant to this article.
- 197 A member shall remain a member until the benefits to which he
- 198 or she is entitled under this article are paid or forfeited.
- 199 (y) "Monthly salary" means the W-2 reportable 200 compensation received by a member during the month.
- 201 (z) "Normal form" means a monthly annuity which is one 202 twelfth of the amount of the member's accrued benefit which is 203 payable for the member's life. If the member dies before the sum 204 of the payments he or she receives equals his or her accumulated 205 contributions on the annuity starting date, the named beneficiary 206 shall receive in one lump sum the difference between the 207 accumulated contributions at the annuity starting date and the 208 total of the retirement income payments made to the member.
- (aa) "Normal retirement age" means the first to occur of thefollowing:
- 211 (1) Attainment of age fifty years and the completion of 212 twenty or more years of regular contributory service, excluding 213 active military duty, disability service and accrued annual and 214 sick leave service;
- 215 (2) While still in covered employment, attainment
- 215 (2) While still in covered employment, attainment of at least 216 age fifty years and when the sum of current age plus regular
- 217 contributory years of service equals or exceeds seventy years;
- 218 (3) While still in covered employment, attainment of at least
- 219 age sixty years and completion of ten years of regular
- 220 contributory service; or
- 221 (4) Attainment of age sixty-two years and completion of five
- 222 or more years of regular contributory service.

- 223 (bb) "Participating public employer" means any county 224 commission or political subdivision in the state which has 225 elected to cover its emergency medical services officers, as 226 defined in this article, under the West Virginia Emergency
- 227 Medical Services Retirement System.
- 228 (cc) "Political subdivision" means a county, city or town in 229 the state; any separate corporation or instrumentality established 230 by one or more counties, cities or towns, as permitted by law; any corporation or instrumentality supported in most part by 231 counties, cities or towns; and any public corporation charged by 232 233 law with the performance of a governmental function and whose 234 jurisdiction is coextensive with one or more counties, cities or 235 towns: *Provided*, That any public corporation established under 236 section four, article fifteen, chapter seven of this code is 237 considered a political subdivision solely for the purposes of this 238 article.
- (dd) "Plan" means the West Virginia Emergency MedicalServices Retirement System established by this article.
- 241 (ee) "Plan year" means the twelve-month period 242 commencing on January 1 of any designated year and ending the 243 following December 31.
- (ff) "Public Employees Retirement System" means the West
   Virginia Public Employee's Retirement System created by West
   Virginia Code.
- 247 (gg) "Regular interest" means the rate or rates of interest per 248 annum, compounded annually, as the board adopts in accordance 249 with the provisions of this article.
- 250 (hh) "Required beginning date" means April 1 of the 251 calendar year following the later of: (1) The calendar year in 252 which the member attains age seventy and one-half; or (2) the

- 253 calendar year in which he or she retires or otherwise separates
- 254 from covered employment.
- 255 (ii) "Retirant" means any member who commences an 256 annuity payable by the plan.
- (jj) "Retire" or "retirement" means a member's withdrawal from the employ of a participating public employer and the commencement of an annuity by the plan.
- 260 (kk) "Retirement income payments" means the monthly 261 retirement income payments payable under the plan.
- 262 (II) "Spouse" means the person to whom the member is legally married on the annuity starting date.
- (mm) "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.
- 267 (nn) "Totally disabled" means a member's inability to 268 engage in substantial gainful activity by reason of any medically 269 determined physical or mental impairment that can be expected 270 to result in death or that has lasted or can be expected to last for 271 a continuous period of not less than twelve months.
- 272 For purposes of this subsection:
- 273 (1) A member is totally disabled only if his or her physical 274 or mental impairment or impairments is so severe that he or she 275 is not only unable to perform his or her previous work as an 276 emergency medical services officer but also cannot, considering his or her age, education and work experience, engage in any 277 278 other kind of substantial gainful employment which exists in the state regardless of whether: (A) The work exists in the 279 280 immediate area in which the member lives; (B) a specific job 281 vacancy exists; or (C) the member would be hired if he or she

- 282 applied for work. For purposes of this article, substantial gainful 283 employment is the same definition as used by the United States 284 Social Security Administration.
- 285 (2) "Physical or mental impairment" is an impairment that 286 results from an anatomical, physiological or psychological 287 abnormality that is demonstrated by medically accepted clinical 288 and laboratory diagnostic techniques. The board may require 289 submission of a member's annual tax return for purposes of 290 monitoring the earnings limitation.
- 291 (oo) "Year of service" means a member shall, except in his 292 or her first and last years of covered employment, be credited 293 with years of service credit based upon the hours of service 294 performed as covered employment and credited to the member 295 during the plan year based upon the following schedule:
- 296 Hours of Service Year of Service Credited.
- 297 Less than 500 0
- 500 to 999 298 1/3
- 299 1,000 to 1,499 2/3
- 300 1,500 or more 1

During a member's first and last years of covered 302 employment, the member shall be credited with one twelfth of 303 a year of service for each month during the plan year in which 304 the member is credited with an hour of service for which 305 contributions were received by the fund. A member is not 306 entitled to credit for years of service for any time period during 307 which he or she received disability payments under section 308 nineteen or twenty of this article. Except as specifically 309 excluded, years of service include covered employment prior to the effective date. 310

311	Years of service which are credited to a member prior to his
312	or her receipt of accumulated contributions upon termination of
313	employment pursuant to section eighteen of this article or
314	section thirty, article ten, chapter five of this code, shall be
315	disregarded for all purposes under this plan unless the member
316	repays the accumulated contributions with interest pursuant to
317	section eighteen of this article or has prior to the effective date
318	made the repayment pursuant to section eighteen, article ten,
319	chapter five of this code.

## CHAPTER 222

(Com. Sub. for H. B. 2826 - By Delegates Butler, Trecost, J. Nelson, Eldridge, Longstreth, Boggs, Summers, Wagner, R. Smith, Perdue and Zatezalo)

[Passed March 12, 2016; in effect ninety days from passage.] [Approved by the Governor on March 29, 2016.]

AN ACT to amend and reenact §17-4-49 of the Code of West Virginia, 1931, as amended, relating to access from and to commercial, industrial or mercantile establishments; requiring the Commissioner of the Division of Highways and owners of real property under certain circumstances to place "no parking" signs or otherwise notify public that parking is prohibited; and designating law as "Sarah Nott's Law".

Be it enacted by the Legislature of West Virginia:

That §17-4-49 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

#### ARTICLE 4. STATE ROAD SYSTEM.

- §17-4-49. Same Points of commercial, etc.; access to comply; plans, objections and procedures for new points; review of and changes in existing points; commissioner's preliminary determination; requiring notice.
  - 1 (a) No new points of access to and from state highways from
  - 2 and to real property used or to be used for commercial, industrial
  - 3 or mercantile purposes may be opened, constructed or
  - 4 maintained without first complying with this section and sections
  - 5 forty-seven and forty-eight of this article. Access points opened,
  - 6 constructed or maintained without compliance are unauthorized.
  - (b) Plans for any new point of access shall be submitted to
     the Commissioner of Highways directly and the following rules
  - 9 shall apply:
  - 10 (1) Notice of the proposed new point of access shall be filed 11 with the commissioner, along with a plan of the proposed new
  - 12 point of access.
  - 13 (2) The commissioner shall review the plan to ensure 14 compliance with the policies stated in section forty-seven of this 15 article and with any regulations issued by the commissioner
  - 16 under section forty-eight of this article.
  - 17 (3) If the commissioner objects to a plan, he or she shall
  - 18 reduce his or her objections to the proposed new point of access
  - 19 to writing and promptly furnish notice of the objection to the
  - 20 owner or owners of the real property affected and advise the
  - 21 owner or owners of the right to demand a hearing on the
  - 22 proposed plan and the objections. If a plan is not objected to
  - 23 within six weeks from the time it is filed with the commissioner,
  - 24 it is considered approved by the commissioner.
  - 25 (4) In any case where the commissioner objects to the proposed new point of access, the owner or owners of the real

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- property affected shall have reasonable opportunity for a hearingon such objections.
- 29 (c) (1) Existing points of access to and from state highways from and to real property used for commercial, industrial or 30 mercantile purposes may be reviewed by the commissioner to 31 32 determine whether such points of access comply with the policies stated in section forty-seven of this article and with any 33 regulations issued by the commissioner under section forty-eight 34 of this article. The commissioner may direct reasonable changes 35 36 in existing points of access to and from state highways from and 37 to property used for commercial, industrial or mercantile 38 purposes if he or she determines from accident reports or traffic 39 surveys that the public safety is seriously affected by such points 40 of access and that such reasonable changes would substantially 41 reduce the hazard to public safety. When such changes require construction, reconstruction or repair, such work shall be done 42 43 at state expense as any other construction, reconstruction or 44 repair.
- 45 (2) If the commissioner makes a preliminary determination 46 that any changes should be made, the following rules apply:
  - (A) The commissioner shall reduce his or her preliminary determination to writing and promptly furnish notice of such preliminary determination to the owner or owners of the real property affected and of their right to demand a hearing on the preliminary determination. The commissioner's notice shall include a description of suggested changes suitable for reducing the hazard to the public safety.
  - (B) In any case where the commissioner makes a preliminary determination that any changes should be made, the owner or owners of the real property affected shall have reasonable opportunity for a hearing on the preliminary determination.

- 58 (d) For points of access existing on or before July 1, 2016, to and from state highways from and to real property used for 59 commercial, industrial or mercantile purposes if the access is 60 more than fifty feet wide, the access is along a state highway 61 with a speed limit of more than forty-five miles per hour and the 62 63 commissioner deems it appropriate due to heavy traffic or other circumstances, the commissioner shall either place "no parking" 64 signs at each side of the driveway entrance fronting the state 65 66 highway or clearly mark that right-of-way with yellow paint with the words "no parking" or both to provide notice that parking is 67 68 prohibited.
- 69 (e) For points of access approved by the commissioner after July 1, 2016, to and from state highways from and to real 70 property used for commercial, industrial or mercantile purposes 71 if the access is more than fifty feet wide, the access is along a 72 73 state highway with a speed limit of more than forty-five miles per hour and the commissioner deems it appropriate due to 74 heavy traffic or other circumstances, the owner or owners of the 75 real property shall be required to place "no parking" signs at 76 each side of the driveway entrance fronting the state highway or 77 clearly mark that right-of-way with yellow paint with the words 78 "no parking" or both to provide notice that parking is prohibited. 79 This subsection and subsection (d) of this section shall be known 80 as "Sarah Nott's Law".

### **CHAPTER 223**

(Com. Sub. for H. B. 4265 - By Delegates Walters, Frich, Canterbury, McCuskey, Hanshaw, Skinner, Marcum and Perry)

[Passed March 11, 2016; in effect ninety days from passage.] [Approved by the Governor on March 24, 2016.]

AN ACT to amend and reenact §7-3-9 of the Code of West Virginia, 1931, as amended; to amend and reenact §8-16-17 of said code; to amend and reenact §8-27-16 of said code; to amend and reenact §10-2A-16 of said code; and to amend and reenact §17-17-22 and §17-17-34 of said code, all relating to direct payments of principal and interest on certain bonds owned by the United States or any governmental agency or department of the United States.

Be it enacted by the Legislature of West Virginia:

That §7-3-9 of the Code of West Virginia, 1931, as amended be amended and reenacted; that §8-16-17 of said code be amended and reenacted; that §8-27-16 of said code be amended and reenacted; that §10-2A-16 of said code be amended and reenacted; and that §17-17-22 and §17-17-34 of said code be amended and reenacted, all to read as follows:

#### CHAPTER 7. COUNTY COMMISSIONS AND OFFICERS.

#### ARTICLE 3. COUNTY PROPERTY.

### §7-3-9. Form and payment of bonds; use of proceeds of bonds.

- 1 Any county commission issuing revenue bonds under the
- 2 provisions of this article shall thereafter, so long as any such
- 3 bonds remain outstanding, operate and maintain said courthouse,
- 4 hospital, other public buildings, jail or regional correctional

5 center, to provide revenues sufficient to pay all operating costs, 6 provide a sinking fund for, and to retire such bonds and pay the interest thereon as the same may become due. The amounts, as 8 and when so set apart by said county commission, shall be remitted to the West Virginia Municipal Bond Commission at 9 least thirty days previous to the time interest or principal 10 11 payments become due, to be retained and paid out by said 12 commission consistent with the provisions of this article and 13 with the order pursuant to which the bonds have been issued. The West Virginia Municipal Bond Commission is hereby 14 authorized to act as fiscal agent for the administration of such 15 sinking fund under any order passed pursuant to the provisions 16 of this article, and shall invest all sinking funds, as provided by 17 18 general law. Notwithstanding the foregoing, payments of principal and interest on any bonds owned by the United States 19 20 or any governmental agency or department thereof may be made by the county commission directly thereto. Revenue bonds 21 issued under the provisions of this article are hereby declared to 22 be and to have all the qualities of negotiable instruments. Such 23 24 bonds shall bear interest at the rate or rates set by the county 25 commission, not to exceed twelve percent per annum, payable 26 semiannually, and shall mature at any time fixed by the county 27 commission, in not more than thirty years from their date. Such 28 bonds shall be sold at a price not lower than a price which, when 29 computed upon standard tables of bond values, will show a net 30 return of not more than thirteen percent per annum to the 31 purchaser upon the amount paid therefor. Such bonds may be made redeemable at the option of the county commission at such 32 33 price and under terms and conditions as said county commission 34 may fix, by its order, prior to the issuance of such bonds. Revenue bonds issued hereunder shall be payable at the office of 35 36 the State Treasurer, or a designated bank or trust company within or without the State of West Virginia. 37

In case any of the officers whose signatures appear on such bonds or coupons shall cease to be such officers before the

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40 delivery of such bonds, such signatures shall, nevertheless, be 41 valid and sufficient for all purposes the same as if they had remained in office until such delivery. The county commission 42 shall by order entered prior to the issuance of said bonds, fix the 43 denominations, times and places of payment of such bonds, the 44 45 principal and interest of which shall be payable in lawful money 46 of the United States of America. The proceeds of such bonds shall be used solely for the payment of the cost of land, 47 48 buildings, furniture and equipment thereon, and shall be checked 49 out by the county commission under such restrictions as are contained in the order providing for the issuance of said bonds. 50 51 If the proceeds of such bonds issued for any courthouse, hospital, 52 other public buildings, jail or regional correctional center, shall 53 exceed the cost thereof, the surplus shall be paid into the fund 54 herein provided for the payment of principal and interest upon 55 such bonds. Such fund may be used for the purchase or 56 redemption of any of the outstanding bonds payable from such 57 fund at the market price, but at not exceeding the price at which any of such bonds shall in the same year be redeemable, as fixed 58 59 by the commission in its said order, and all bonds redeemed or 60 purchased shall forthwith be canceled, and shall not again be issued. 61

62 Prior to the preparation of definitive bonds, the county 63 commission may, under like restrictions, issue temporary bonds, or interim certificates, with or without coupons, exchangeable 64 for definitive bonds upon the issuance of the latter. Such bonds 65 66 may be issued without any other proceedings or the happening of any other conditions or things than those proceedings, 67 conditions and things which are specified and required by this 68 69 article.

### CHAPTER 8. MUNICIPAL CORPORATIONS.

### ARTICLE 16. MUNICIPAL PUBLIC WORKS; REVENUE BOND FINANCING.

# §8-16-17. Sinking fund; West Virginia Municipal Bond Commission; transfer of funds; purchase of outstanding bonds.

1 Before the issuance of any such bonds, the governing body 2 or bodies shall, by ordinance or ordinances, provide for a sinking fund for the payment of the bonds and the interest thereon, and 3 the payment of the charges of banking institutions or trust 4 companies for making payment of such bonds and interest, out 5 of the net revenues of said works, and shall set aside and pledge 6 a sufficient amount of the net revenues of the works hereby 7 8 defined to mean the revenues of the works remaining after the payment of the reasonable expenses of repair (including 9 10 replacements), maintenance and operation, such amount to be paid by the board into the sinking fund at intervals, to be 11 determined by ordinance or ordinances adopted prior to the 12 13 issuance of the bonds, for: (a) The interest upon such bonds as such interest shall fall due; (b) the necessary fiscal agency 14 charges for paying bonds and interest; (c) the payment of the 15 bonds as they fall due, or if all bonds mature at one time, the 16 17 proper maintenance of a sinking fund sufficient for the payment thereof at such time; and (d) a margin for safety and for the 18 payment of premium upon bonds retired by call or purchase as 19 herein provided, which margin, together with unused surplus of 20 such margin carried forward from the preceding year and the 21 22 amounts set aside as reserves out of the proceeds from the sale 23 of the bonds, or from the revenues of said works, or from both, 24 shall equal ten percent of all other amounts so required to be 25 paid into the sinking fund. Such required payments shall 26 constitute a first charge upon all the net revenues of the works. Prior to the issuance of the bonds, the board may, by ordinance 27 28 or ordinances, be given the right to use or direct the trustee or the 29 West Virginia Municipal Bond Commission to use such sinking fund, or any part thereof, in the purchase of any of the 30 31 outstanding bonds payable therefrom, at the market prices

32 thereof, but not exceeding the price, if any, at which the same shall in the same year be payable or redeemable, and all bonds 33 redeemed or purchased shall forthwith be cancelled, and shall 34 35 not again be issued. After the payments into the sinking fund as herein required and after reserving an amount deemed by the 36 37 board sufficient for repair (including replacements), maintenance 38 and operation for an ensuing period of not less than twelve 39 months and for depreciation, the board may at any time in its 40 discretion transfer all or any part of the balance of the net revenues into the sinking fund or into a fund for improvement, 41 renovation, extension, enlargement, increase or equipment for or 42 43 to the works, or the governing body or bodies may, 44 notwithstanding the provisions of section twenty, article thirteen 45 of this chapter, transfer all or any part of the balance of the net revenues to the general or any special fund of the municipality 46 47 or municipalities and use such revenues for any purpose for 48 which such general or special fund may be expended.

49 All amounts for the sinking fund and interest, as and when 50 set apart for the payment of same, shall be remitted to the West 51 Virginia Municipal Bond Commission at such periods as shall be 52 designated in the ordinance or ordinances, but in any event at 53 least thirty days previous to the time interest or principal 54 payments become due, to be retained and paid out by said 55 commission consistent with the provisions of this article and the 56 ordinance or ordinances pursuant to which such bonds have been 57 issued. The West Virginia Municipal Bond Commission is 58 hereby authorized to act as fiscal agent for the administration of 59 such sinking fund under any ordinance or ordinances passed or 60 adopted pursuant to the provisions of this article and shall invest all sinking funds as provided by general law. Notwithstanding 61 62 the foregoing, payments of principal and interest on any bonds 63 owned by the United States or any governmental agency or 64 department thereof may be made by the governing body directly 65 thereto.

## ARTICLE 27. INTERGOVERNMENTAL RELATIONS – URBAN MASS TRANSPORTATION SYSTEMS.

## §8-27-16. Sinking fund; West Virginia Municipal Bond Commission; purchase of outstanding bonds.

1 Before the issuance of any bonds under the provisions of this article, the authority shall, by resolution, provide for a sinking 2 fund for the payment of the bonds and the interest thereon, and 3 the payment of the charges of banking institutions or trust 4 companies for making payment of such bonds and interest, out 5 of the net revenues of said system, and, in this connection, shall 6 7 set aside and pledge a sufficient amount of the net revenues of 8 the system for such purpose, such net revenues being hereby defined to mean the revenues of the system remaining after the 9 payment of the reasonable expense of administration, 10 maintenance, repair and operation, such amount to be paid by 11 such authority into the sinking fund at intervals, to be determined 12 by resolution adopted prior to the issuance of the bonds, for: (a) 13 The interest upon such bonds as such interest shall fall due; (b) 14 the necessary fiscal agency charges for paying bonds and 15 interest; (c) the payment of the bonds as they fall due, or, if all 16 the bonds mature at one time, the proper maintenance of a 17 sinking fund sufficient for the payment thereof at such time; and 18 (d) a margin for safety and for the payment of premium upon 19 bonds retired by call or purchase as provided in this article. Such 20 21 required payments shall constitute a first charge upon all the net revenues of such authority. Prior to the issuance of any bonds, 22 the authority may, by resolution, be given the right to use or 23 direct the West Virginia Municipal Bond Commission to use 24 such sinking fund, or any part thereof, in the purchase of any of 25 the outstanding bonds payable therefrom, at the market prices 26 thereof, but not exceeding the price, if any, at which the same 27 shall in the same year be payable or redeemable, and all bonds 28 29 redeemed or purchased shall forthwith be cancelled, and shall

- 30 not again be issued. In addition to the payments into the sinking
- 31 fund provided for above, the authority may at any time in its
- 32 discretion transfer all or any part of the balance of the net
- 33 revenues, after reserving an amount deemed by such authority
- 34 sufficient for maintenance, repair and operation for an ensuing
- 35 period of not less than twelve months and for depreciation, into
- 36 the sinking fund.
- The amounts of the balance of the net revenues as and when
- 38 so set apart shall be remitted to the West Virginia Municipal
- 39 Bond Commission at such periods as shall be designated in the
- 40 resolution, but in any event at least thirty days previous to the
- 41 time interest or principal payments become due, to be retained
- 42 and paid out by said commission consistent with the provisions
- 43 of this article and the resolution pursuant to which such bonds
- 44 have been issued. The West Virginia Municipal Bond
- 45 Commission is hereby authorized to act as fiscal agent for the
- 46 administration of such sinking fund under any resolution adopted
- 47 pursuant to the provisions of this article and shall invest all
- 48 sinking funds as provided by general law. Notwithstanding the
- 49 foregoing, payments of principal and interest on any bonds
- 50 owned by the United States or any governmental agency or
- 51 department thereof may be made by the authority directly
- 52 thereto.

CHAPTER 10. PUBLIC LIBRARIES; PUBLIC RECREATION; ATHLETIC ESTABLISHMENTS; MONUMENTS AND MEMORIALS; ROSTER OF SERVICEMEN; EDUCATIONAL BROADCASTING AUTHORITY.

#### ARTICLE 2A. ATHLETIC ESTABLISHMENTS.

### §10-2A-16. Sinking fund.

- 1 At or before the issuance of any such bonds, the board shall,
- 2 by resolution, provide for a sinking fund for the payment of the

3 bonds and the interest thereon, and the payment of the charges of banks or trust companies for making payment of such bonds, 4 5 and interest, out of the net revenues of said athletic establishment, and shall set aside and pledge a sufficient amount of the net revenues of the athletic establishment to be paid by the 7 8 board into such sinking fund at intervals to be determined by 9 resolution adopted prior to the issuance of the bonds, for: (a) The interest upon such bonds as the same becomes due; (b) the 10 11 necessary fiscal agency charges for paying bonds and interest; (c) the payment of the bonds as they fall due, or if all bonds 12 13 mature at one time, the maintenance of a proper sinking fund for 14 the payment thereof at such time; and (d) a margin for safety and 15 for the payment of premium upon bonds retired by call or 16 purchase as herein provided for, which margin, together with unused surplus of such margin carried forward from the 17 18 preceding year, shall equal ten per cent of all other amounts so required to be paid into the sinking fund. Such required 19 payments shall constitute a first charge upon all the net revenues 20 21 of the athletic establishment. Net revenues as used herein shall 22 mean the revenues of the athletic establishment remaining after the payment of reasonable expense of operation, repairs, 23 24 maintenance, insurance and all other reasonable costs of 25 maintaining and operating the same required to be paid from the revenues thereof. After the payment into the sinking fund as 26 herein required, the board may at any time in its discretion 27 28 transfer all or any part of the balance of the net revenues, after 29 reserving an amount deemed by the board sufficient for operation, repairs, maintenance and depreciation for an ensuing 30 period of not less than twelve months, into the sinking fund or 31 into a fund for extensions, improvements and additions to such 32 33 athletic establishment. All amounts for sinking fund and interest, as and when set apart for the payment of same, shall be remitted 34 35 to the West Virginia Municipal Bond Commission at such 36 periods as shall be designated in the resolution, but in any event 37 at least thirty days previous to the time interest or principal

- 38 payments become dne, to be retained and paid out by said
- 39 commission, consistent with provisions of this article and the
- 40 order pursuant to which such bonds have been issued. The West
- 41 Virginia Municipal Bond Commission is hereby authorized to
- 42 act as fiscal agent for the administration of such sinking fund
- 43 under any resolution adopted pursuant to the provisions of this
- 44 article and shall invest all sinking funds as provided by general
- 45 law. Notwithstanding the foregoing, payments of principal and
- 46 interest on any bonds owned by the United States or any
- 47 governmental agency or department thereof may be made by the
- 48 board directly thereto.

### CHAPTER 17. ROADS AND HIGHWAYS.

### ARTICLE 17. TOLL BRIDGES.

# §17-17-22. Tolls to be charged for bond payment; intrastate and interstate bridges included in one issue; purchase of existing bridges; disposition of tolls.

- Tolls shall be fixed, charged and collected for transit over
- 2 such bridges and shall be so fixed and adjusted, in respect of the
- 3 aggregate of tolls from the bridge or bridges for which a single
- 4 issue of bonds is issued, as to provide a fund sufficient to pay the
- 5 principal and interest of such issue of bonds and to provide an
- 6 additional fund to pay the cost of maintaining, repairing and
- 7 operating such bridge or bridges, subject, however, to any
- 8 applicable law or regulation of the United States of America now
- 9 in force or hereafter to be enacted or made. Two or more bridges
- 10 may be included in one issue of bonds, and intrastate and
- 11 interstate bridges may be grouped in the same issue: *Provided*,
- 12 That no existing bridge or bridges shall be acquired by purchase,
- 13 eminent domain, or otherwise, unless the state road
- 14 commissioner shall have determined that the income therefrom,
- 15 based upon the toll receipts for the next preceding fiscal or
- 16 calendar year, will be sufficient to pay all expenses of operating

17 and maintaining such bridge, in addition to the interest and sinking fund requirements of any bonds to be issued to pay the 18 purchase price thereof, or, if such existing bridge or bridges are 19 to be combined with any other bridge or bridges, either then 20 21 existing or thereafter to be constructed or acquired by purchase, eminent domain, or otherwise, as provided in section 22 23 twenty-three-b following, unless the state road commissioner shall have determined that the income from such combined 24 25 bridges, based upon the toll receipts for the next preceding fiscal or calendar year in the case of any existing bridge or bridges and 26 upon estimates of future toll receipts in the case of any bridge or 27 28 bridges to be constructed, will be sufficient to pay all expenses 29 of operating and maintaining such combined bridges, in addition 30 to the interest and sinking fund requirements of any bonds issued 31 to pay the purchase price of such existing bridge or bridges and 32 the interest and sinking fund requirements of any bonds issued to pay the cost of construction, acquiring, modernizing, 33 34 repairing, reconstructing or improving any bridge or bridges and approaches thereto, with which such existing bridge or bridges 35 36 are to be so combined. The tolls from the bridge or bridges for which a single issue of bonds is issued, except such part thereof, 37 38 as may be necessary to pay such cost of maintaining, repairing 39 and operating during any period in which such cost is not otherwise provided for (during which period the tolls may be 40 41 reduced accordingly), shall be transmitted each month to the 42 West Virginia Municipal Bond Commission and by it placed in 43 a special fund which is hereby pledged to and charged with the payment of the principal of such bonds and the interest thereon, 44 and to the redemption or repurchase of such bonds, such special 45 46 fund to be a fund for all such bonds without distinction or 47 priority of one over another. The moneys in such special fund, less a reserve for payment of interest, if not used by the West 48 49 Virginia Municipal Bond Commission within a reasonable time for the purchase of bonds for cancellation at a price not 50 51 exceeding the market price and not exceeding the redemption

52 price, shall be applied to the redemption of bonds by lot at the 53 redemption price then applicable. Notwithstanding the 54 foregoing, payments of principal and interest on any bonds 55 owned by the United States or any governmental agency or 56 department thereof may be made by the governing body directly 57 thereto.

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Any bridge or bridges constructed or acquired by purchase, eminent domain, or otherwise, or reconstructed, repaired or improved, under the provisions of this article and forming a connecting link between two or more state highways, or providing a river crossing for a state highway, are hereby adopted as a part of the state road system, but no such bridge or bridges shall be constructed or acquired by purchase, eminent domain, or otherwise, or reconstructed, repaired or improved, under the provisions of this article without the approval in writing of the state road commissioner and the Governor. If there be in the funds of the West Virginia Municipal Bond Commission an amount insufficient to pay the interest and sinking fund on any bonds issued for the purpose of constructing or acquiring by purchase, eminent domain, or otherwise, or reconstructing, repairing or improving, such bridge or bridges, the state road commissioner is authorized and directed to allocate to said commission, from the state road fund, an amount sufficient to pay the interest on said bonds and/or the principal thereof, as either may become due and payable.

### §17-17-34. Same — Retiring bonds; remittance to sinking fund.

Every municipality or county court issuing bonds, or other evidences of indebtedness, under the provisions of this act, shall thereafter, so long as any such bonds or other evidences of indebtedness remain outstanding, operate and maintain its bridge so as to provide, charge, collect and account for revenues therefrom as will be sufficient to pay all operating costs, provide a depreciation fund, retire the bonds or other evidences of

8 indebtedness, and pay the interest requirements as the same may become due. The ordinance or order pursuant to which any such 9 bonds or other evidences of indebtedness are issued shall pledge 10 the revenues derived from the bridge to the purposes aforesaid, 11 and shall definitely fix and determine the amount of revenues 12 which shall be necessary and set apart in a special fund for the 13 14 bond requirements. The amounts, as and when so set apart into said special fund for the bond requirements, shall be remitted to 15 the West Virginia Municipal Bond Commission at least thirty 16 days previous to the time interest or principal payments become 17 due, to be retained and paid out by said commission consistent 18 19 with the provisions of this act and the ordinance or order 20 pursuant to which such bonds or other evidences of indebtedness 21 have been issued. Notwithstanding the foregoing, payments of 22 principal and interest on any bonds owned by the United States 23 or any governmental agency or department thereof may be made by the governing body directly thereto. 24

### CHAPTER 224

(Com. Sub. for H. B. 2615 - By Lane, Faircloth, Miller, Frich and E. Nelson)

[Passed March 8, 2016; in effect ninety days from passage.] [Approved by the Governor on March 24, 2016.]

AN ACT to amend and reenact §32-3-301 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new article, designated §32-5-501, §32-5-502, §32-5-503, §32-5-504 and §32-5-505, all relating to creation of a new exemption to the securities registration rule with the commissioner for intrastate securities offerings under the West Virginia Small Business Capital Act.

Be it enacted by the Legislature of West Virginia:

That §32-3-301 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 §32-5-501, §32-5-502, §32-5-503, §32-5-504 and §32-5-505, all to read as follows:

### ARTICLE 3. REGISTRATION OF SECURITIES

### §32-3-301. Registration requirement.

- 1 It is unlawful for any person to offer or sell any security in
- 2 this state unless: (1) It is registered under this chapter; or (2) the
- 3 security or transaction is exempted under section four hundred
- 4 two of article four of this chapter or under article five of this
- 5 chapter; or (3) the security is a federal covered security.

### ARTICLE 5. WEST VIRGINIA SMALL BUSINESS CAPITAL ACT

#### §32-5-501. Short title.

- 1 This article shall be known as the West Virginia Small
- 2 Business Capital Act.

### §32-5-502. Offer or sale of Small Business Securities.

- 1 Notwithstanding any other provision of law to the contrary,
- 2 certain offerings are exempt from the securities registration
- 3 requirements of articles two and three of this chapter if the offer,
- 4 sale, issuer and purchaser meet the requirements of this article.

### §32-5-503. Qualifications of issuer and purchaser.

- 1 (a) In order to qualify for exemption under this article, the
- 2 issuer must be a for-profit entity organized under the laws of
- 3 West Virginia with its principal place of business in West
- 4 Virginia.

- 5 (b) In order to qualify for the exemption under this article, 6 the purchaser must be a resident of West Virginia or be an entity 7 organized under the laws of West Virginia with its principal 8 place of business in West Virginia.
- 9 (c) The exemption is not available to any of the following:
- 10 (1) An investment company, as defined in the Federal 11 Investment Company Act of 1940;
- 12 (2) A development stage company that either has no specific 13 business plan or purpose or has indicated that the company's 14 business plan is to engage in a merger or acquisition with an 15 unidentified company or companies, or entity or person or 16 without an allocation of proceeds for sufficiently identifiable 17 properties or objectives; and
- 18 (3) Any person who is subject to a disqualifying event 19 described in subsection (d) of this section.

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- (d) The exemption is not available if the issuer or the executive directors, directors or managers of the issuer or any individual or entity holding more than twenty percent of the outstanding equity of the issuer:
- 24 (1) Within the last five years, has filed a registration 25 statement which is the subject of a currently effective 26 registration stop order or cease and desist order entered by any 27 state securities administrator or the United States Securities and 28 Exchange Commission;
- 29 (2) Within the last five years, has been convicted of any 30 criminal offense in connection with the offer, purchase or sale of 31 any security, or involved fraud or deceit;
- 32 (3) Is currently subject to any state or federal administrative 33 enforcement order or judgment, entered within the last five

- years, finding fraud or deceit in connection with the purchase or
- 35 sale of any security; or
- 36 (4) Is currently subject to any order, judgment, or decree of
- 37 any court of competent jurisdiction, entered within the last five
- 38 years, temporarily, preliminarily, or permanently restraining or
- 39 enjoining such party from engaging in or continuing to engage
- 40 in any conduct or practice involving fraud or deceit in
- 41 connection with the purchase or sale of any security.

### §32-5-504. Qualifications of offers, sales and transactions.

- 1 (a) The transaction must meet the requirements of the federal
- 2 exemption for intrastate offerings in section 3(a)(11) of the
- 3 Securities Act of 1933, 15 U.S.C. section 77c(a)(11) and SEC
- 4 rule 147, 17 CFR 230.147.
- 5 (b) The sum of all cash and other consideration received
- 6 from the issue of securities under this exemption may not exceed
- 7 \$1 million per annum unless the issuer prepares and produces
- 8 audited financial statements on a quarterly basis to the
- 9 commissioner. If audited financial statements are prepared and
- 10 produced to the commissioner, the sum of all cash and other
- 11 consideration received from the issue of securities shall not
- 12 exceed \$2 million per annum.
- 13 (c) The issuer may not issue more than \$10,000 per annum
- 14 to any single purchaser unless the purchaser is an accredited
- 15 investor as defined under rule 501 of SEC Reg D, 17 CFR
- 16 230.501.
- 17 (d) All funds received by the issuer from purchasers under
- 18 this article shall be held in escrow by an attorney licensed to
- 19 practice law in West Virginia who shall deposit the funds in a
- 20 depository institution authorized to do business in West Virginia
- 21 until such time as the offering amount sought is attained or the
- 22 time period for the offering has elapsed: *Provided*, That upon the

- 23 escrowed funds attaining a balance of at least ten percent of the
- 24 offering amount sought, the attorney holding the money in
- escrow shall, upon written request of the issuer, withdraw a 25
- 26 portion of the money in escrow and deliver such portion of
- 27 money to the issuer.
- 28 (e) All funds received by the issuer from purchasers under
- 29 this article shall be used by the issuer in accordance with the
- representations by the issuer to purchasers. 30
- 31 (f) The duration of the offering will not exceed twelve
- 32 months unless the issuer applies to extend the offering for a
- 33 period not to exceed twelve additional months. An issuer may
- apply to extend the offering by submitting an amended filing 34
- with the commissioner in conformance with these provisions and 35
- the rules and orders of the commissioner. 36

### §32-5-505. West Virginia Crowdfunding Portal Requirements.

- 1 (a) The offering must be made exclusively through an
- organized under the laws of West Virginia and authorized to do 3

internet-based crowdfunding portal that is incorporated or

- 4 business in West Virginia and registered with the commissioner.
- 5 (b) The crowdfunding portal must contain a conspicuous
- disclaimer that reflects that access to securities offerings on the 6
- 7 website is limited to West Virginia residents and offers and sales
- of the securities on the website are limited to persons that are
- 9 West Virginia residents.
- 10 (c) There must be an affirmative representation by a visitor
- to the crowdfunding portal that the visitor is a resident of West 11
- Virginia before the visitor can view securities-related offering 12
- 13 materials on the crowdfunding portal website.
- 14 (d) The crowdfunding portal must take reasonable steps to
- verify that all prospective purchasers are West Virginia 15
- 16 residents.

- 17 (e) At least ten days prior to an offering that qualifies for the 18 exemption described in this article of the code, the crowdfunding 19 portal shall give the commissioner access to its website and the 20 following:
- 21 (1) A copy of the disclosure statement required by 22 subsection (f) of this section;
- 23 (2) A summary of the offering including:
- 24 (A) A description of the entity, its form of business, 25 principal office, history, business plan, and the intended use of 26 the offering proceeds, including compensation paid to any 27 owner, executive officer, director or manager;
- 28 (B) The identity of the executive officers, directors and 29 managers, including their titles and their prior experience and 30 identity of all persons owning more than 20 percent of the 31 ownership interests of any class of securities of the company; 32 and
- 33 (C) A description of the securities being offered and any 34 outstanding securities of the company, the amount of the 35 offering, and the percentage ownership of the company 36 represented by the offered securities.
- 37 (f) A disclosure statement must be made readily available 38 and accessible to each prospective purchaser at the time the offer 39 of securities is made to the prospective purchaser on the 40 crowdfunding portal. The disclosure statement must contain at 41 a minimum all of the following:
- (1) A statement that there is no ready market for the sale of the securities acquired from this offering, that it may be difficult or impossible for an investor to sell or otherwise dispose of this investment, and that a purchaser may be required to hold and bear financial risks of this investment indefinitely;

47	(2) A statement that the securities that are the subject of the
48	offer have not been registered under federal or state securities
49	law or regulation, and therefore cannot be resold unless the
50	securities are registered or qualify for an exemption from
51	registration under federal or state law;
52	(3) A statement that in making an investment decisions,
53	purchasers must rely on their own examination of the issuer and
54	the terms of the offering, including the merits and risks involved;
55	(4) A statement that no federal or state securities
56	commission or regulatory authority has confirmed the accuracy
57	or determined the adequacy of the disclosure statement or any
58	other information on the crowdfunding portal; and
59	(5) All information material to the offering, including, where
60	appropriate, a discussion of significant factors that make the
61	offering risky or speculative, including, but not limited to:
62	(A) A description of the issuer's business;
63	(B) The history of the issuer's operations and organization;
64	(C) A list of executive directors, directors or managers of the
65	issuer and any individual or entity holding more than twenty
66	percent of the outstanding equity of the issuer;

69 (E) Financial information about the issuer;

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be used:

- 70 (F) A detailed description of securities offered; and
- 71 (G) A complete list of any legal proceedings or litigation 72 affecting the offering.

(D) A description of how the proceeds from the offering will

- 73 (g) Prior to the offering of securities to residents of West 74 Virginia under this article, the crowdfunding portal shall conduct a reasonable investigation of the background of each issuer 75 76 whose securities are offered on the crowdfunding portal's 77 website, and of each of the issuer's executive officers, directors 78 or managers or any individual or entity holding more than 79 twenty percent of the outstanding equity of the issuer. The crowdfunding portal shall deny an issuer access to its internet 80 81 website if the crowdfunding portal has a reasonable belief that the issuer or its executive officers, directors or managers or any 82 individual or entity holding more than twenty percent of the 83 outstanding equity of the issuer are precluded from the 84 exemption under this article. 85
- 86 (h) The crowdfunding portal shall not:
- 87 (1) Offer investment advice or recommendations;
- 88 (2) Compensate employees, agents or other persons not 89 registered with the commissioner for soliciting offers or sales of 90 securities displayed or referenced on the website;
- 91 (3) Hold, manage, possess or otherwise handle investor 92 funds or securities:
- 93 (4) Be under common control with an issuer whose securities 94 appear on the crowdfunding portal's internet website;
- 95 (5) Sell a financial interest in any issuer offering securities 96 on the crowdfunding portal's internet website; or
- 97 (6) Receive more than a five percent financial interest in an 98 issuer as compensation for services provided to or on behalf of 99 an issuer.



### **CHAPTER 225**

(Com. Sub. for H. B. 4176 - By Delegates Stansbury, Howell, Householder, Ellington, Summers, Rohrbach, Weld, Miller, Hanshaw, Westfall and B. White)

[Passed March 12, 2016; in effect ninety days from passage.] [Approved by the Governor on March 29, 2016.]

AN ACT to amend and reenact §62-15A-1, §62-15A-2 and §62-15A-3 of the Code of West Virginia, 1931, as amended, all relating to the addiction treatment pilot program; defining terms; permitting the Regional Jail and Correctional Facility Authority to participate in the pilot program; establishing criteria for participants authorizing inmates to receive good time credit for successful completion of the program; and including the Director of the Regional Jail and Correctional Facility Authority and the Secretary of the Department of Military Affairs and Public Safety in the list of recipients of the report required to be made by the Department of Health and Human Resources.

Be it enacted by the Legislature of West Virginia:

That §62-15A-1, §62-15A-2 and §62-15A-3 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

### ARTICLE 15A. ADDICTION TREATMENT PILOT PROGRAM.

### §62-15A-1. Definitions.

- 1 As used in this article:
- 2 (1) "Addiction service provider" means a person licensed by
- 3 this state to provide addiction and substance abuse services to
- 4 persons addicted to opioids.

- 5 (2) "Adult drug court judge" means a circuit court judge 6 operating a drug court as defined in subsection (a), section one, 7 article fifteen.
- 8 (3) "Adult Drug Court Program" means an adult treatment 9 court established by the Supreme Court of Appeals of West 10 Virginia pursuant to this article.
- 11 (4) "Authority" means the Regional Jail and Correctional 12 Facility Authority.
- 13 (5) "Circuit court" means those courts set forth in article 14 two, chapter fifty-one of this code.
- 15 (6) "Court" means the Supreme Court of Appeals of West Virginia.
- 17 (7) "Department" means the Department of Health and 18 Human Resources.
- 19 (8) "Division" means the Division of Corrections.
- 20 (9) ALS/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.
- 23 (10) "Medication-assisted treatment" means the use of 24 medications, in combination with counseling and behavioral 25 therapies, to provide a whole-patient approach to the treatment
- 26 of substance use disorders.
- 27 (11) "Prescriber" means an individual currently licensed and 28 authorized by this state to prescribe and administer prescription 29 drugs in the course of their professional practice.

## §62-15A-2. The Department of Health and Human Resources Pilot Program.

1 (a) The secretary of the department shall conduct a pilot 2 program to provide addiction treatment, including

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- 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.
- 13 (c) The department may invite the Court, the Authority and 14 the division to participate in the pilot program.
- 15 (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 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:
- 31 (A) Provide treatment based on an integrated service 32 delivery model that consists of the coordination of care between 33 a prescriber and the addiction services provider;

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- 34 (B) Conduct any necessary additional professional, 35 comprehensive substance abuse and mental health diagnostic 36 assessments of persons under consideration for selection as pilot 37 program participants to determine whether they would benefit
- 38 from substance abuse treatment and monitoring;
- 39 (C) Determine, based on the assessments described in 40 paragraph (B), the treatment needs of the participants served by 41 the treatment provider;
- 42 (D) Develop, for the participants served by the treatment 43 provider, individualized goals and objectives;
- 44 (E) Provide access to the non-narcotic, long-acting 45 antagonist therapy included in the pilot program's 46 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.
- 51 (f) (1) If the Division of Corrections is selected to participate, the division shall select persons, within the custody 52 53 of the Division of Corrections, who are determined to be at high 54 risk using the LS/CMI assessment criteria into the pilot program. 55 Participants must either be eligible for Medicaid, or eligible for 56 a state, federal or private grant or other funding sources that provide for the full payment of the treatment necessary to 57 participate in the pilot program. After being enrolled in the pilot 58 program, a participant shall comply with all requirements of the 59 60 treatment program.
- 61 (2) A participant shall:
- 62 (A) Receive treatment based on an integrated service 63 delivery model that consists of the coordination of care between 64 a prescriber and the addiction services provider;

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- 65 (B) Submit to professional, comprehensive substance abuse 66 and mental health diagnostic assessments of persons under 67 consideration for selection as pilot program participants to 68 determine whether they would benefit from substance abuse 69 treatment and monitoring;
- 70 (C) Receive, based on the assessments described in 71 paragraph (B), the treatment needs of the participants served by 72 the treatment provider;
- 73 (D) Submit to the treatment provider, individualized goals and objectives;
- 75 (E) Receive the nonnarcotic, long-acting antagonist therapy 76 included in the pilot program's medication-assisted treatment; 77 and
- 78 (F) Participate in other types of therapies, including 79 psychosocial therapies, for both substance abuse and any 80 disorders that are considered by the treatment provider to be 81 co-occurring disorders.
  - (g) (1) If the Regional Jail and Correctional Facility Authority is selected to participate, the authority shall select only persons who are serving a sentence for a felony or misdemeanor who are determined to be at high risk using the LS/CMI assessment criteria for the pilot program. Participants must either be eligible for Medicaid, or eligible for a state, federal or private grant or other funding source 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.
- 92 (2) A participant shall:
- 93 (A) Receive treatment based on an integrated service 94 delivery model that consists of the coordination of care between 95 a prescriber and the addiction services provider;

- 96 (B) Submit to professional, comprehensive substance abuse 97 and mental health diagnostic assessments of persons under 98 consideration for selection as pilot program participants to 99 determine whether they would benefit from substance abuse 100 treatment and monitoring;
- 101 (C) Receive, based on the assessments described in 102 paragraph (B), the treatment needs of the participants served by 103 the treatment provider;
- 104 (D) Submit to the treatment provider, individualized goals and objectives;
- 106 (E) Receive the nonnarcotic, long-acting antagonist therapy 107 included in the pilot program's medication-assisted treatment; 108 and
- 109 (F) Participate in other types of therapies, including 110 psychosocial therapies, for both substance abuse and any 111 disorders that are considered by the treatment provider to be 112 co-occurring disorders.
- 113 (3) A participant who is incarcerated pursuant to a 114 misdemeanor conviction or convictions and successfully 115 completes this treatment pilot program may, at the discretion of 116 the Authority, receive up to five days off of his or her sentence.
- 117 (4) If a participant begins participation in the treatment pilot 118 program while in the custody of the Commissioner of 119 Corrections, but is confined in a regional jail, and transferred to 120 a Division of Corrections facility before completing the pilot treatment program the Division of Corrections shall ensure that 121 122 the participant's treatment under the program will continue and 123 that upon successful completion the participant shall receive 124 credit off his or her sentence as would have occurred had he or 125 she remained in the authority facility until successful 126 completion.

### §62-15A-3. Report.

- 1 (a) The department shall prepare a report.
- 2 (b) The report shall include:
- 3 (1) Number of participants;
- 4 (2) Number of participants successfully completing the
- 5 program;
- 6 (3) Offenses committed or offense convicted of;
- 7 (4) Recidivism rate;
- 8 (5) Potential cost saving or expenditures;
- 9 (6) A statistical analysis which determines the effectiveness
- 10 of the program; and
- 11 (7) Any other information the reporting entity finds
- 12 pertinent.
- 13 (c) The Court and the division should provide any
- 14 information necessary to the department to complete the report.
- 15 (d) The department shall submit the report to:
- 16 (1) The Governor;
- 17 (2) The Chief Justice of the Supreme Court of Appeals of
- 18 West Virginia;
- 19 (3) The Joint Committee on Government and Finance;
- 20 (4) The Commissioner of the Division of Corrections;
- 21 (5) The Director of the Regional Jail and Correctional
- 22 Facility Authority; and

- (6) The Secretary of the Department of Military Affairs andPublic Safety.
- 25 (e) The report shall be submitted by July 1, 2017 and shall
- 26 include twelve months of data from the beginning of the
- 27 administration of the program.



# **CHAPTER 226**

(Com. Sub. for H. B. 4377 - By Delegates Storch, Anderson, Trecost, Manchin, Fluharty, Zatezalo, Weld and D. Evans)

[Passed March 8, 2016; in effect ninety days from passage.] [Approved by the Governor on March 16, 2016.]

AN ACT to amend and reenact §7-18-1 and §7-18-3 of the Code of West Virginia, 1931, as amended, all relating to exemptions from the hotel occupancy tax; eliminating exemption from the imposition of the hotel occupancy tax on consumers occupying a hotel room for thirty or more consecutive days; and excluding from the meaning of the term "hotel room" certain sleeping accommodations.

Be it enacted by the Legislature of West Virginia:

That §7-18-1 and §7-18-3 of said code be amended and reenacted, all to read as follows:

#### ARTICLE 18. HOTEL OCCUPANCY TAX.

#### §7-18-1. Hotel occupancy tax.

- 1 (a) Authority to impose. On and after July 1, 1985, any
- 2 county or municipality may impose and collect a privilege tax

- 3 upon the occupancy of hotel rooms located within its taxing
- 4 jurisdiction. The tax shall be imposed and collected as provided
- 5 in this article.
- 6 (b) Municipal tax. A municipal hotel tax shall be imposed
- 7 by ordinance enacted by the governing body of the municipality,
- 8 in accordance with the provisions of article eleven, chapter eight
- 9 of this code. The tax shall be imposed uniformly throughout the
- municipality; and the tax shall apply to all hotels located within
- 11 the corporate limits of the municipality, including hotels owned
- 12 by the state or by any political subdivision of this state.
- 13 (c) County tax. A county hotel tax shall be imposed by
- 14 order of the county commission duly entered of record. The tax
- shall be imposed uniformly throughout the county: *Provided*,
- 16 That no county commission may impose its tax on hotels located
- 17 within the corporate limits of any municipality situated, in whole
- 18 or in part, within the county: *Provided, however*, That the tax
- 19 collected by a hotel owned by a municipality but located outside
- 20 the corporate limits of the municipality pursuant to this article
- 21 shall be remitted to the municipality owning the hotel for
- 22 expenditure pursuant to the provisions of section fourteen of this
- 23 article. The tax shall apply to all hotels located outside the
- 24 corporate limits of a municipality, including hotels owned by the
- 25 state or any political subdivision of this state.
- 26 (d) The tax shall be imposed on the consumer and shall be
- 27 collected by the hotel operator as part of the consideration paid
- 28 for the occupancy of a hotel room.

#### §7-18-3. Definitions.

- 1 For the purposes of this article:
- 2 (a) "Consideration paid" or "consideration" means the
- 3 amount received in money, credits, property or other

- 4 consideration for or in exchange for the right to occupy a hotel 5 room as herein defined.
- 6 (b) "Consumer" means a person who pays the consideration 7 for the use or occupancy of a hotel room. The term "consumer" 8 does not mean the government of the United States of America, 9 its agencies or instrumentalities, or the government of the State 10 of West Virginia or political subdivisions thereof.
- (c) "Hotel" means any facility, building or buildings, 11 12 publicly or privately owned (including a facility located in a state, county or municipal park), in which the public may, for a 13 consideration, obtain sleeping accommodations. The term 14 includes but is not limited to, boarding houses, hotels, motels, 15 inns, courts, condominiums, lodges, cabins and tourist homes. 16 17 The term "hotel" includes state, county and city parks offering accommodations as herein set forth. The term "hotel" does not 18 19 mean a hospital, sanitarium, extended care facility, nursing 20 home or university or college housing unit, or any facility providing fewer than three rooms in private homes, not 21 exceeding a total of ten days in a calendar year, nor any tent, 22 trailer or camper campsites: Provided, That where a university 23 24 or college housing unit provides sleeping accommodations for the general nonstudent public for a consideration, the term 25 does, if otherwise applicable, apply to 26 those 27 accommodations for the purposes of this tax.
  - (d) "Hotel operator" means the person who is proprietor of a hotel, whether in the capacity of owner, lessee, mortgagee in possession, licensee, trustee in possession, trustee in bankruptcy, receiver, executor or in any other capacity. Where the hotel operator performs his or her functions through a managing agent of any type or character other than an employee, the managing agent is a hotel operator for the purposes of this article and has the same duties and liabilities as his or her principal. Compliance with the provisions of this article by either the principal or the

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- 37 managing agent is, however, considered to be compliance by
- 38 both.
- (e) "Hotel room" means any room or suite of rooms or other
- 40 facility affording sleeping accommodations to the general public
- 41 and situated within a hotel. The term "hotel room" does not
- 42 include:
- 43 (1) A banquet room, meeting room or any other room not
- 44 primarily used for, or in conjunction with, sleeping
- 45 accommodations; or
- 46 (2) Sleeping accommodations rented on a month-to-month
- 47 basis or other rental arrangement for thirty days or longer at the
- 48 inception at a boarding house, condominium, cabin, tourist
- 49 home, apartment or home.
- 50 (3) Sleeping accommodations rented by a hotel operator to
- 51 those persons directly employed by the hotel operator for the
- 52 purposes of performing duties in support of the operation of the
- 53 hotel or related operations.
- 54 (f) "Person" means any individual, firm, partnership, joint
- 55 venture, association, syndicate, social club, fraternal
- 56 organization, joint stock company, receiver, corporation,
- 57 guardian, trust, business trust, trustee, committee, estate,
- 58 executor, administrator or any other group or combination acting
- 59 as a unit.
- (g) "State park" means any state-owned facility which is part
- of this state's park and recreation system established pursuant to
- 62 this code. For purposes of this article, any recreational facility
- 63 otherwise qualifying as a "hotel" and situated within a state park
- 64 is considered to be solely within the county in which the building
- 65 or buildings comprising the facility are physically situated,
- 66 notwithstanding the fact that the state park within which the

- facility is located may lie within the jurisdiction of more than one county.
- 69 (h) "Tax," "taxes" or "this tax" means the hotel occupancy 70 tax authorized by this article.
- 71 (i) "Taxing authority" means a municipality or county 72 levying or imposing the tax authorized by this article.
- 73 (j) "Taxpayer" means any person liable for the tax 74 authorized by this article.

# **CHAPTER 227**

(H. B. 4161 - By Mr. Speaker (Mr. Armstead) and Delegate Miley) [By Request of the Executive]

[Passed February 22, 2016; in effect ninety days from passage.] [Approved by the Governor on February 25, 2016.]

AN ACT to amend and reenact §11-8-6a of the Code of West Virginia, 1931, as amended, relating to levies on classifications of property by the Board of Public Works; removing antiquated language requiring Board of Public Works to levy property tax rates to meet the requirements of state road bonds issued prior to November 8, 1932; and removing references to corresponding levy rates.

Be it enacted by the Legislature of West Virginia:

That §11-8-6a of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

#### ARTICLE 8. LEVIES.

#### §11-8-6a. Levies on each classification by Board of Public Works.

- 1 The State Board of Public Works shall levy as provided by
- 2 section eight as follows:
- On Class I property, twenty-five hundredths of  $1\phi$ ; on Class
- 4 II property, five-tenths of 1¢; and on Classes III and IV property,
- 5 1¢.



#### (Com. Sub. for H. B. 2823 - By Delegates Walters, Blair, Upson, Phillips, J. Nelson, Hanshaw, E. Nelson, Boggs and Caputo)

[Passed March 8, 2016; in effect ninety days from passage.] [Approved by the Governor on March 16, 2016.]

AN ACT to amend and reenact \$11-13-2d of the Code of West Virginia, 1931, as amended, relating to eliminating a certain tax on persons engaging or continuing within this state in the service or business of street and interurban and electric railways.

Be it enacted by the Legislature of West Virginia:

That §11-13-2d of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

#### ARTICLE 13. BUSINESS AND OCCUPATION TAX.

#### §11-13-2d. Public service or utility business.

- 1 (a) Upon any person engaging or continuing within this state
- 2 in any public service or utility business, except railroad, railroad

- car, express, pipeline, telephone and telegraph companies, water carriers by steamboat or steamship and motor carriers, the tax imposed by section two of this article shall be equal to the gross income of the business derived from such activity or activities multiplied by the respective rates as follows:
- 8 (1) Street and interurban and electric railways, one and 9 four-tenths percent;
- 10 (2) Water companies, four and four-tenths percent, except as 11 to income received by municipally owned water plants;

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(3) Electric light and power companies, four percent on sales and demand charges for domestic purposes and commercial lighting and four percent on sales and demand charges for all other purposes, and except as to income received by municipally owned plants producing or purchasing electricity and distributing same: Provided, That electric light and power companies which engage in the supplying of public service but which do not generate or produce in this state the electric power they supply shall be taxed on the gross income derived from sales of power which they do not generate in this state at the rate of three percent on sales and demand charges for domestic purposes and commercial lighting and three percent on sales and demand charges for all other purposes, except as to income received by municipally owned plants: *Provided*, *however*, That the sale of electric power under this section shall be taxed at the rate of two percent on that portion of the gross proceeds derived from the sale of electric power to a plant location of a customer engaged in a manufacturing activity, if the contract demand at such plant location exceeds two hundred thousand kilowatts per hour in a year, or if the usage of such plant location exceeds two hundred thousand kilowatts per hour in a year: Provided further, That the sale of electric power under this section shall be exempt from the tax imposed by this section and section two of this article if it is separately metered and consumed in an electrolytic process for

- 36 the manufacture of chlorine in this state, or is separately metered
- 37 and consumed in the manufacture of ferroalloy in this state, and
- 38 the rate reduction herein provided to the taxpayer shall be passed
- 39 on to the manufacturer of the chlorine or ferroalloy. As used in
- 40 this section, the term "ferroalloy" means any of various alloys of
- 41 iron and one or more other elements used as a raw material in the
- 42 production of steel: And provided further, That the term does not
- 43 include the final production of steel;
- 44 (4) Natural gas companies, four and twenty-nine hundredths percent on the gross income: Provided, That the sale of natural 45 46 gas under this section shall be exempt from the tax imposed by 47 this section and section two of this article to the extent that the natural gas is separately metered and is gas from which the 48 purchaser derives hydrogen and carbon monoxide for use in the 49 manufacture of chemicals in this state, and the full economic 50 51 benefit of the exception herein provided to the taxpayer shall be passed on to such purchaser of the natural gas: Provided, 52 however, That there shall be no exemption for the sale of any 53 54 natural gas from which the purchaser derives carbon monoxide 55 or hydrogen for the purpose of resale;
- 56 (5) Toll bridge companies, four and twenty-nine hundredths 57 percent; and
- 58 (6) Upon all other public service or utility business, two and eighty-six hundredths percent.
- 60 (b) The measure of this tax shall not include gross income derived from commerce between this state and other states of the 61 62 United States or between this state and foreign countries. The measure of the tax under this section shall include only gross 63 income received from the supplying of public service. The gross 64 65 income of the taxpayer from any other activity shall be included 66 in the measure of the tax imposed upon such other activity by the appropriate section or sections of this article. 67

- (c) Beginning March 1, 1989, electric light and power companies shall determine their liability for payment of tax under this section and sections two-m and two-n of this article. If for taxable months beginning on or after March 1, 1989, liability for tax under section two-n of this article is equal to or greater than the sum of the power company's liability for payment of tax under subdivision (3), subsection (a) of this section and section two-m of this article, then the company shall pay the tax due under section two-n of this article and not the tax due under subdivision (3), subsection (a) of this section and section two-m of this article. If tax liability under section two-n is less, then tax shall be paid under subdivision (3), subsection (a) of this section and section two-m of this article and the tax due under section two-n shall not be paid. The provisions of subdivision (3), subsection (a) of this section shall expire and become null and void for taxable years beginning on or after January 1, 1998.
- (d) Notwithstanding the provisions of subsection (c) of this section, beginning June 1, 1995, electric light and power companies that actually paid tax based on the provisions of subdivision (3), subsection (a) of this section or section two-m of this article for every taxable month in 1994 shall determine their liability for payment of tax under this article in accordance with subdivision (1) of this subsection. All other electric light and power companies shall determine their liability for payment of tax under this article exclusively under section two-o of this article.
- (1) If for taxable months beginning on or after June 1, 1995, liability for tax under section two-o of this article is equal to or greater than the sum of the power company's liability for payment of tax under subdivision (3), subsection (a) of this section and section two-m of this article, then the company shall pay the tax due under section two-o of this article and not the tax due under subdivision (3) subsection (a) of this section and

- section two-m of this article. If tax liability under section two-o is less, then the tax shall be paid under subdivision (3), subsection (a) of this section and section two-m of this article and the tax due under section two-o shall not be paid.
- 106 (2) The provisions of subdivision (3), subsection (a) of this section shall expire and become null and void for taxable years beginning on or after January 1, 1998.

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(e) Notwithstanding the provisions of subdivision (1), subsection (a) of this section or any other provision of this article to the contrary, on and after January 1, 2017, no person engaging or continuing within this state in the service or business of street and interurban and electric railways is subject to the tax imposed by section two of this article.



# **CHAPTER 229**

(Com. Sub. for S. B. 421 - By Senator Kessler) [By Request of the Executive]

[Passed March 3, 2016; in effect ninety days from passage.] [Approved by the Governor on March 8, 2016.]

AN ACT to amend and reenact §11-13A-3 of the Code of West Virginia, 1931, as amended; and to amend and reenact §11-15-9i of said code, all relating to the termination of behavioral health severance and business privilege tax; specifying effective date of termination; establishing method of payment of outstanding refund claims; generating replacement revenue stream by suspending exemption of certain purchases of durable medical equipment from consumer sales and service tax for certain period; continuing exemption for specified purchases of durable medical equipment;

specifying effective dates; providing method to claim the exemption; and providing definitions and conditions for exemption.

Be it enacted by the Legislature of West Virginia:

That §11-13A-3 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that §11-15-9i of said code be amended and reenacted, all to read as follows:

# ARTICLE 13A. SEVERANCE AND BUSINESS PRIVILEGE TAX.

- §11-13A-3. Imposition of tax on privilege of severing coal, limestone or sandstone, or furnishing certain health care services, effective dates therefor; reduction of severance rate for coal mined by underground methods based on seam thickness.
  - 1 (a) *Imposition of tax.* Upon every person exercising the 2 privilege of engaging or continuing within this state in the 3 business of severing, extracting, reducing to possession and 4 producing for sale, profit or commercial use coal, limestone or 5 sandstone, or in the business of furnishing certain health care 6 services, there is hereby levied and shall be collected from every 7 person exercising such privilege an annual privilege tax.
  - (b) Rate and measure of tax. Subject to the provisions of 8 subsection (g) of this section, the tax imposed in subsection (a) 9 of this section shall be five percent of the gross value of the 10 natural resource produced or the health care service provided, as 11 shown by the gross income derived from the sale or furnishing 12. thereof by the producer or the provider of the health care service, 13 except as otherwise provided in this article. In the case of coal, 14 this five percent rate of tax includes the thirty-five one 15 hundredths of one percent additional severance tax on coal 16 imposed by the state for the benefit of counties and 17 municipalities as provided in section six of this article. 18

- 19 (c) "Certain health care services" defined. For purposes 20 of this section, the term "certain health care services" means, and 21 is limited to, behavioral health services.
- (d) *Tax in addition to other taxes.* The tax imposed by this section shall apply to all persons severing or processing, or both severing and processing, in this state natural resources enumerated in subsection (a) of this section and to all persons providing certain health care services in this state as enumerated in subsection (c) of this section and shall be in addition to all other taxes imposed by law.
- 29 (e) Effective date. This section, as amended in 1993, shall apply to gross proceeds derived after May 31, 1993. The language of this section, as in effect on January 1, 1993, shall apply to gross proceeds derived prior to June 1, 1993 and, with respect to such gross proceeds, shall be fully and completely preserved.

- (f) Reduction of severance tax rate. For tax years beginning after the effective date of this subsection, any person exercising the privilege of engaging within this state in the business of severing coal for the purposes provided in subsection (a) of this section shall be allowed a reduced rate of tax on coal mined by underground methods in accordance with the following:
- (1) For coal mined by underground methods from seams with an average thickness of thirty-seven inches to forty-five inches, the tax imposed in subsection (a) of this section shall be two percent of the gross value of the coal produced. For coal mined by underground methods from seams with an average thickness of less than thirty-seven inches, the tax imposed in subsection (a) of this section shall be one percent of the gross value of the coal produced. Gross value is determined from the sale of the mined coal by the producer. This rate of tax includes

- 51 the thirty-five one hundredths of one percent additional
- 52 severance tax imposed by the state for the benefit of counties and
- 53 municipalities as provided in section six of this article.
- 54 (2) This reduced rate of tax applies to any new underground 55 mine producing coal after the effective date of this subsection, 56 from seams of less than forty-five inches in average thickness or 57 any existing mine that has not produced coal from seams 58 forty-five inches or less in thickness in the one hundred eighty 59 days immediately preceding the effective date of this subsection.
- 60 (3) The seam thickness shall be based on the weighted 61 average isopach mapping of actual coal thickness by mine as 62 certified by a professional engineer.
- 63 (g)(1) Termination and expiration of the behavioral health severance and business privilege tax. — The tax imposed upon 64 65 providers of health care services under the provisions of this 66 article shall expire, terminate and cease to be imposed with 67 respect to privileges exercised on or after July 1, 2016. 68 Expiration of the tax as provided in this subsection shall not 69 relieve any person from payment of any tax imposed with respect to privileges exercised before the expiration date. 70
- 71 (2) Refunds made. — The Tax Commissioner will issue a requisition on the treasury for any amount finally, 72 administratively or judicially determined to be an overpayment 73 74 of the tax terminated under this subsection. The Auditor shall 75 issue a warrant on the Treasurer for any refund requisitioned under this subsection payable to the taxpayer entitled to the 76 77 refund, and the Treasurer shall pay the warrant out of the fund 78 into which the amount refunded was originally paid.

#### ARTICLE 15. CONSUMERS SALE AND SERVICE TAX.

§11-15-9i. Exempt drugs, durable medical equipment, mobility enhancing equipment and prosthetic devices.

- 1 (a) Notwithstanding any provision of this article, article fifteen-a or article fifteen-b of this chapter, the purchase by a 2 3 health care provider of drugs, durable medical equipment, mobility enhancing equipment and prosthetic devices, all as 4 defined in section two, article fifteen-b of this chapter, to be 5 6 dispensed upon prescription and intended for use in the diagnosis, cure, mitigation, treatment or prevention of injury or 7 disease are exempt from the tax imposed by this article: 9 *Provided*, That the exemption provided for the purchase by a health care provider of durable medical equipment is suspended 10 for the period beginning on and after July 1, 2016, and 11 12 continuing until June 30, 2018. On and after July 1, 2018, the 13 exemption is reestablished.
- 14 (b) Notwithstanding any provision of this article, article 15 fifteen-a or article fifteen-b of this chapter, the purchase of durable medical equipment, as defined in section two, article 16 17 fifteen-b of this chapter, to be dispensed upon prescription by a 18 health care provider and intended for use in the diagnosis, cure, mitigation, treatment or prevention of injury or disease is exempt 19 from the tax imposed by this article: Provided, That the durable 20 medical equipment is purchased by an individual for exclusive 21 22 use by the purchaser or another individual and used 23 predominantly by the recipient individual in his or her home 24 environment.
- 25 (1) *Effective dates.*—The provisions of this subsection shall apply to purchases made on and after July 1, 2016.
- 27 (2) *Per se exemption.* The exemption set forth by this subsection shall be given without the necessity of an exemption certificate, direct pay permit or refund or credit request.
- 30 (c) *Definitions*. The following definitions shall apply:
- 31 (1) For purposes of this section, "used predominantly by the 32 recipient individual in his or her home environment", with

reference to durable medical equipment, means that the equipment is sold to an individual for use by the individual purchaser or by another individual at home, regardless of where the individual resides. For purposes of this definition, the term "home" means and includes facilities such as nursing homes, assisted care centers and school dormitories, of which a user or purchaser is a resident. A purchase of such equipment shall not be disqualified from the exemption because the equipment is incidentally used on the streets, in commercial establishments, in public places and in locations other than the home, so long as use in the home is the predominant use. For purposes of this definition, the term "individual" means and is limited to a single, separate human being and specifically excludes any health care provider, or provider of nursing services, personal care services, behavioral care services, residential care or assisted living care, or any entity or organization other than a human being.

(2) When the equipment is sold to a facility such as a hospital, nursing home, medical clinic, dental office, chiropractor or optician office, then this shall not constitute a use of the equipment by the recipient individual in his or her home environment. The fact that a nursing home may use the equipment only for its residents does not make the equipment exempt for home use: *Provided*, That nothing in this section shall be interpreted to void or abrogate lawful assertion and application of the purchases for resale exemption as it may apply to any purchaser of durable medical equipment.

(3) For purposes of this section, "health care provider" means any person licensed to prescribe drugs, durable medical equipment, mobility enhancing equipment and prosthetic devices intended for use in the diagnosis, cure, mitigation, treatment or prevention of injury or disease. For purposes of this section, the term "health care provider" includes any hospital, medical clinic, nursing home or provider of inpatient hospital services and any provider of outpatient hospital services, physician services,

- nursing services, ambulance services, surgical services or veterinary services: *Provided*, That the amendment to this subsection enacted during the 2009 regular legislative session shall be effective on or after July 1, 2009.
- 71 (4) The term "durable medical goods", as used in this article, 72 means "durable medical equipment" as defined in section two, 73 article fifteen-b of this chapter.

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- (5) For purposes of this section, the term "nursing home or facility" means any institution, residence or place, or any part or unit thereof, however named, in this state which is advertised, offered, maintained or operated by the ownership management, whether for a consideration or not, for the express or implied purpose of providing accommodations and care, for a period of more than twenty-four hours, for four or more persons who are ill or otherwise incapacitated and in need of extensive, ongoing nursing care due to physical or mental impairment or which provides services for the rehabilitation of persons who are convalescing from illness or incapacitation: *Provided.* That the care or treatment in a household, whether for compensation or not, of any person related by blood or marriage, within the degree of consanguinity of second cousin to the head of the household, or his or her spouse, may not be deemed to constitute a nursing home within the meaning of this article.
- (6) For purposes of this section, the term "assisted care center" means any living facility, residence or place of accommodation, however named, available for four or more residents, in this state which is advertised, offered, maintained or operated by the ownership or management, whether for a consideration or not, for the express or implied purpose of having personal assistance or supervision, or both, provided to any residents therein who are dependent upon the services of others by reason of physical or mental impairment and who may also require nursing care at a level that is not greater than limited

and intermittent nursing care: *Provided*, That the care or treatment in a household, whether for compensation or not, of any person related by blood or marriage, within the degree of consanguinity of second cousin to the head of the household, or his or her spouse, may not be deemed to constitute an assisted living residence within the meaning of this article.

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(7) For purposes of this section, the term "school dormitory" means housing or a unit of housing provided primarily for students as a temporary or permanent dwelling place or abode and owned, operated or controlled by an institution of higher education, and shall be synonymous with the term "residence hall".

### **CHAPTER 230**

(Com. Sub. for S. B. 582 - By Senators Plymale and Woelfel)

[Passed March 5, 2016; in effect ninety days from passage.] [Approved by the Governor on March 12, 2016.]

AN ACT to amend and reenact §11-14C-9 of the Code of West Virginia, 1931, as amended, relating to providing a refundable exemption from the flat rate component of the state motor fuel excise tax on all gallons of motor fuel sold for use or consumed in railroad diesel locomotives; setting a cap on the exemption per year; requiring a proportionate disbursement if claims exceed the cap; and allowing the Tax Commissioner to propose legislative rules to administer this exemption.

Be it enacted by the Legislature of West Virginia:

That §11-14C-9 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

#### ARTICLE 14C. MOTOR FUEL EXCISE TAX.

#### §11-14C-9. Exemptions from tax; claiming refunds of tax.

1	(a)	Per	se	exemptions	from	flat	rate	component	of	tax.	
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- 2 Sales of motor fuel to the following, or as otherwise stated in this
- 3 subsection, are exempt per se from the flat rate of the tax levied
- 4 by section five of this article and the flat rate may not be paid at
- 5 the rack:
- 6 (1) All motor fuel exported from this state to any other state
- 7 or nation: *Provided*, That the supplier collects and remits to the
- 8 destination state or nation the appropriate amount of tax due on
- 9 the motor fuel transported to that state or nation. This exemption
- does not apply to motor fuel which is transported and delivered
- 11 outside this state in the motor fuel supply tank of a highway
- 12 vehicle;
- 13 (2) Sales of aviation fuel;
- 14 (3) Sales of dyed special fuel; and
- 15 (4) Sales of propane unless sold for use in a motor vehicle.
- 16 (b) Per se exemptions from variable component of tax. —
- 17 Sales of motor fuel to the following are exempt per se from the
- 18 variable component of the tax levied by section five of this
- 19 article and the variable component may not be paid at the rack:
- All motor fuel exported from this state to any other state or
- 21 nation: Provided, That the supplier collects and remits to the
- 22 destination state or nation the appropriate amount of tax due on
- 23 the motor fuel transported to that state or nation. This exemption
- 24 does not apply to motor fuel which is transported and delivered
- 25 outside this state in the motor fuel supply tank of a highway
- 26 vehicle.

- 27 (c) Refundable exemptions from flat rate component of 28 tax. A person having a right or claim to any of the following 29 exemptions from the flat rate component of the tax levied by 30 section five of this article shall first pay the tax levied by this 31 article and then apply to the Tax Commissioner for a refund:
- 32 (1) The United States or agency thereof: *Provided*, That if 33 the United States government, or agency or instrumentality thereof, does not pay the seller the tax imposed by section five 34 35 of this article on a purchase of motor fuel, the person selling tax 36 previously paid motor fuel to the United States government, or 37 its agencies or instrumentalities, may claim a refund of the flat 38 rate component of tax imposed by section five of this article on 39 those sales;
- 40 (2) A county government or unit or agency thereof;
- 41 (3) A municipal government or any agency thereof;
- 42 (4) A county board of education;
- 43 (5) An urban mass transportation authority created pursuant 44 to the provisions of article twenty-seven, chapter eight of this 45 code;
- 46 (6) A municipal, county, state or federal civil defense or 47 emergency service program pursuant to a government contract 48 for use in conjunction therewith or to a person who is required to maintain an inventory of motor fuel for the purpose of the 49 50 program: Provided, That motor fueling facilities used for these 51 purposes are not capable of fueling motor vehicles and the person in charge of the program has in his or her possession a 52 53 letter of authority from the Tax Commissioner certifying his or 54 her right to the exemption. In order for this exemption to apply, 55 motor fuel sold under this subdivision and subdivisions (1) 56 through (5), inclusive, of this subsection shall be used in vehicles

- or equipment owned and operated by the respective government entity or government agency or authority;
- 59 (7) All invoiced gallons of motor fuel purchased by a licensed exporter and subsequently exported from this state to 60 61 any other state or nation: *Provided*, That the exporter has paid the applicable motor fuel tax to the destination state or nation 62 63 prior to claiming this refund or the exporter has reported to the destination state or nation that the motor fuel was sold in a 64 65 transaction not subject to tax in that state or nation. A refund 66 may not be granted on motor fuel which is transported and 67 delivered outside this state in the motor fuel supply tank of a 68 highway vehicle;
- 69 (8) All gallons of motor fuel used and consumed in stationary off-highway turbine engines;
- 71 (9) All gallons of fuel used for heating any public or private 72 dwelling, building or other premises;
- 73 (10) All gallons of fuel used for boilers;
- 74 (11) All gallons of motor fuel used as a dry cleaning solvent 75 or commercial or industrial solvent;
- 76 (12) All gallons of motor fuel used as lubricants, ingredients 77 or components of a manufactured product or compound;
- 78 (13) All gallons of motor fuel sold for use or used as a motor 79 fuel for commercial watercraft;
- 80 (14) All gallons of motor fuel sold for use or consumed in 81 railroad diesel locomotives:
- 82 (15) All gallons of motor fuel purchased in quantities of 83 twenty-five gallons or more for use as a motor fuel for internal 84 combustion engines not operated upon highways of this state;

- (16) All gallons of motor fuel purchased in quantities of twenty-five gallons or more and used to power a power take-off unit on a motor vehicle. When a motor vehicle with auxiliary equipment uses motor fuel and there is no auxiliary motor for the equipment or separate tank for a motor, the person claiming the refund may present to the Tax Commissioner a statement of his or her claim and is allowed a refund for motor fuel used in operating a power take-off unit on a cement mixer truck or garbage truck equal to twenty-five percent of the tax levied by this article paid on all motor fuel used in such a truck;
- (17) Motor fuel used by a person regularly operating a vehicle under a certificate of public convenience and necessity or under a contract carrier permit for transportation of persons when purchased in an amount of twenty-five gallons or more: *Provided*, That the amount refunded is equal to 6 cents per gallon: *Provided*, *however*, That the gallons of motor fuel have been consumed in the operation of urban and suburban bus lines and the majority of passengers use the bus for traveling a distance not exceeding forty miles, measured one way, on the same day between their places of abode and their places of work, shopping areas or schools; and
- (18) All gallons of motor fuel that are not otherwise exempt under subdivisions (1) through (6), inclusive, of this subsection and that are purchased and used by any bona fide volunteer fire department, nonprofit ambulance service or emergency rescue service that has been certified by the municipality or county wherein the bona fide volunteer fire department, nonprofit ambulance service or emergency rescue service is located.
- (d) Refundable exemptions from variable rate component of tax. Any of the following persons may claim an exemption from the variable rate component of the tax levied by section five of this article on the purchase and use of motor fuel by first paying the tax levied by this article and then applying to the Tax Commissioner for a refund.

- 119 (1) The United States or agency thereof: *Provided*, That if the United States government, or agency or instrumentality 120 121 thereof, does not pay the seller the tax imposed by section five 122 of this article on any purchase of motor fuel, the person selling 123 tax previously paid motor fuel to the United States government, 124 or its agencies or instrumentalities, may claim a refund of the 125 variable rate of tax imposed by section five of this article on 126 those sales.
- 127 (2) This state and its institutions;
- 128 (3) A county government or unit or agency thereof;
- (4) A municipal government or agency thereof;
- 130 (5) A county board of education;
- 131 (6) An urban mass transportation authority created pursuant 132 to the provisions of article twenty-seven, chapter eight of this 133 code:
- 134 (7) A municipal, county, state or federal civil defense or 135 emergency service program pursuant to a government contract 136 for use in conjunction therewith, or to a person who is required 137 to maintain an inventory of motor fuel for the purpose of the 138 program: Provided, That fueling facilities used for these 139 purposes are not capable of fueling motor vehicles and the person in charge of the program has in his or her possession a 140 141 letter of authority from the Tax Commissioner certifying his or 142 her right to the exemption;
- 143 (8) A bona fide volunteer fire department, nonprofit 144 ambulance service or emergency rescue service that has been 145 certified by the municipality or county where the bona fide 146 volunteer fire department, nonprofit ambulance service or 147 emergency rescue service is located;

148 (9) All invoiced gallons of motor fuel purchased by a 149 licensed exporter and subsequently exported from this state to 150 any other state or nation: *Provided*, That the exporter has paid 151 the applicable motor fuel tax to the destination state or nation 152 prior to claiming this refund. A refund may not be granted on 153 motor fuel which is transported and delivered outside this state 154 in the motor fuel supply tank of a highway vehicle; or

- (10) Beginning on January 1, 2018, all gallons of motor fuel sold for use or consumed in railroad diesel locomotives: *Provided*, That the refundable exemption contained in this subdivision may not exceed an aggregate amount of \$4,300,000 in any year to all taxpayers claiming the exemption and that if more than an aggregate amount of \$4,300,000 is appropriately claimed in any year, then the refundable exemption shall be distributed proportionately to the taxpayers so that the total aggregate refund is \$4,300,000 in that year. The Tax Commissioner may propose rules for legislative approval in accordance with article three, chapter twenty-nine-a of this code that the Tax Commissioner considers necessary to administer the exemption contained in this subdivision.
- (e) The provision in subdivision (9), subsection (a), section nine, article fifteen of this chapter that exempts as a sale for resale those sales of gasoline and special fuel by a distributor or importer to another distributor does not apply to sales of motor fuel under this article.



(S. B. 505 - By Senator Hall)

[Passed March 11, 2016; in effect ninety days from passage.] [Approved by the Governor on March 23, 2016.]

AN ACT to amend and reenact the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §11-14C-9a, relating to exempting from motor fuel excise tax certain uses of field gas; and defining field gas.

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 §11-14C-9a, to read as follows:

#### ARTICLE 14C. MOTOR FUEL EXCISE TAX.

#### §11-14C-9a. Additional exemptions from tax.

- 1 (a) Additional per se exemptions from flat rate component of
- 2 tax. In addition to the provisions of section nine of this
- 3 article, sales of motor fuel to the following, or as otherwise
- 4 stated in this subsection, are exempt per se from the flat rate of
- 5 the tax levied by section five of this article and the flat rate may
- 6 not be paid at the rack:
- Field gas used as fuel to run drilling equipment, compressor
- 8 engines and other stationary internal combustion engines not
- 9 used on the roads of this state: Provided, That any royalty
- 10 payments shall have previously been paid to the appropriate
- 11 mineral owners pursuant to the terms of any existing lease. For

- purposes of this exemption, "field gas" means "natural gas" or any derivative thereof, extracted from a production well, storage well, gathering system, pipeline, main or transmission line that
- 15 is used as fuel to power field equipment. The term "field gas"
- 16 does not include compressed natural gas, liquefied natural gas,
- 17 liquefied petroleum gas, gasoline, diesel, kerosene or other fuels
- 18 used to power motor vehicles.
- 19 (b) Additional per se exemptions from variable component 20 of tax. — In addition to the provisions of section nine of this 21 article, sales of motor fuel to the following are exempt per se 22 from the variable component of the tax levied by section five of 23 this article and the variable component may not be paid at the 24 rack:
- 25 Field gas used as fuel to run drilling equipment, compressor 26 engines and other stationary internal combustion engines not used on the roads of this state: Provided, That any royalty 27 28 payments shall have previously been paid to the appropriate mineral owners pursuant to the terms of any existing lease. For 29 30 purposes of this exemption, "field gas" means "natural gas" or any derivative thereof, extracted from a production well, storage 31 well, gathering system, pipeline, main or transmission line that 32 is used as fuel to power field equipment. The term "field gas" 33 does not include compressed natural gas, liquefied natural gas, 34 35 liquefied petroleum gas, gasoline, diesel, kerosene or other fuels 36 used to power motor vehicles.



#### (S. B. 54 - By Senator Sypolt)

[Passed March 11, 2016; in effect ninety days from passage.] [Approved by the Governor on March 23, 2016.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated \$11-15-90, relating generally to exempting certain dues, fees and assessments from the consumer sales and service tax; and defining certain terms.

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 §11-15-90, to read as follows:

#### ARTICLE 15. CONSUMERS SALES AND SERVICE TAX.

- §11-15-90. Exemption for dues, fees and assessments paid to a homeowners' association by a member; taxable expenses of homeowners' association; definitions.
  - 1 (a) Membership dues, fees and assessments paid to a
  - 2 homeowners' association by a member thereof are exempt from
  - 3 the tax imposed by this article if the dues, fees and assessments
  - 4 are for the purpose of permitting or funding the homeowners'
  - 5 associations' payment of common expenses when acting in its
  - 6 representative capacity for its members: Provided, That
  - 7 purchases for resale of tangible personal property and services
  - 8 for use by the homeowners' association, when acting in its
  - 9 representative capacity for its members, are subject to the tax
  - 10 under this article unless the purchases are otherwise exempt
  - 11 under another provision of this code.
  - 12 (b) For purposes of this article:

- 13 (1) "Homeowners' association" means a homeowners' association as defined in Section 528 of the Internal Revenue 15 Code of 1986, as amended. The term "homeowners' association" also includes any unit owners' association organized under section one hundred one, article three, chapter thirty-six-b of this code.
- (2) "Member" means a person having membership rights in 19 a homeowners' association, in accordance with the provisions of 20 21 its articles of incorporation, by laws or other instruments creating its form and organization; and having bona fide rights and 22 privileges in the organization ordinarily conferred on members 23 of the homeowners' association, such as the right to vote, the 24 right to elect officers and directors and the right to hold office 25 within the organization. The term "member" also includes a 26 "unit owner" as that term is defined in section one hundred three. 27 article one, chapter thirty-six-b of this code. 28
- 29 (3) "Common expenses" means expenditures made by, or 30 financial liabilities of, the association, together with any 31 allocations to reserves, where the association is acting on behalf 32 of, and for the benefit of its members.

# CHAPTER 233

(Com. Sub. for S. B. 400 - By Senators Cole (Mr. President), and Kessler)
[By Request of the Executive]

[Passed March 8, 2016; in effect ninety days from passage.] [Approved by the Governor on March 15, 2016.]

AN ACT to amend and reenact §11-15-30 of the Code of West Virginia, 1931, as amended, relating to dedication and deposit of

certain tax proceeds; reducing amount of sales tax proceeds annually dedicated to School Major Improvement Fund by \$999,996 for fiscal year 2017; amending monthly deposit requirements; specifying retroactive effect; and reducing amount of sales tax proceeds annually dedicated to School Construction Fund by \$3 million for fiscal year 2017.

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.

#### §11-15-30. Proceeds of tax; appropriation of certain revenues.

- 1 (a) The proceeds of the tax imposed by this article shall be deposited in the General Revenue Fund of the state except as
- 3 otherwise expressly provided in this article.
- 4 (b) School Major Improvement Fund. – After the payment or
- 5 commitment of the proceeds or collections of this tax for the
- purposes set forth in section sixteen of this article, on the first 6
- day of each month, there shall be dedicated monthly from the 7
- collections of this tax, the amount of \$416,667 and the amount
- 9 dedicated shall be deposited on a monthly basis into the School
- Major Improvement Fund created pursuant to section six, article 10
- nine-d, chapter eighteen of this code: Provided, That for fiscal
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- year 2016, the amount so dedicated and deposited annually under this subdivision is reduced by \$2,000,004, and the amount so 13
- dedicated and deposited monthly is reduced to \$250,000 for 14
- 15 fiscal year 2016. This reduction shall cease for fiscal years
- 16 beginning after June 30, 2016: Provided, however, That for fiscal
- year 2017, the amount so dedicated and deposited annually under 17
- 18 this subdivision is reduced by \$999,996 and the amount so
- 19 dedicated and deposited monthly is reduced to \$333,334 for

- 20 fiscal year 2017. This reduction shall cease for fiscal years 21 beginning after June 30, 2017.
- 22 (c) School Construction Fund. After the payment or 23 commitment of the proceeds or collections of this tax for the 24 purposes set forth in section sixteen of this article:
- 25 (1) On the first day of each month, there shall be dedicated 26 monthly from the collections of this tax the amount of \$1,416,667 and the amount dedicated shall be deposited into the 28 School Construction Fund created pursuant to section six, article 29 nine-d, chapter eighteen of this code.
- 30 (2) Except as provided in subdivision (3) of this subsection, effective July 1, 1998, there shall be dedicated from the 31 32 collections of this tax an amount equal to any annual difference 33 that may occur between the debt service payment for the 1997 34 fiscal year for school improvement bonds issued under the Better 35 School Building Amendment under the provisions of article 36 nine-c, chapter eighteen of this code and the amount of funds 37 required for debt service on these school improvement bonds in 38 any current fiscal year thereafter. This annual difference shall be 39 prorated monthly, added to the monthly deposit in subdivision 40 (1) of this subsection and deposited into the School Construction 41 Fund created pursuant to section six, article nine-d, chapter 42 eighteen of this code.
- 43 (3) After June 30, 2015, the provisions of subdivisions (1) 44 and (2) of this subsection shall have no force or effect. After 45 June 30, 2015, there shall be dedicated from the collections of 46 this tax the amount of \$27,216,996 annually. This amount shall 47 be prorated monthly and deposited into the School Construction Fund created pursuant to section six, article nine-d, chapter 48 49 eighteen of this code: *Provided*, That for fiscal year 2016, the 50 amount so dedicated annually under this subdivision is reduced 51 by \$6 million. This reduction shall cease for fiscal years

- 52 beginning after June 30, 2016: *Provided, however*, That for fiscal
- 53 year 2017, the amount so dedicated and deposited annually under
- 54 this subdivision is reduced by \$3 million. This reduction shall
- 55 cease for fiscal years beginning after June 30, 2017.
- 56 Amendments to this subdivision enacted in the 2016 regular
- 57 legislative session are retroactive, in accordance with dates and
- 58 fiscal years specified herein.

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- (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.



#### (S. B. 349 - By Senators Cole (Mr. President), and Kessler) [By Request of the Executive]

[Passed March 9, 2016; in effect from passage.] [Approved by the Governor on March 15, 2016.]

AN ACT to amend and reenact §11-21-9 and §11-21-71a of the Code of West Virginia, 1931, as amended, all relating to the West Virginia Personal Income Tax; updating the meaning of federal taxable income and certain other terms used in West Virginia Personal Income Tax; changing certain due dates; and specifying effective dates.

Be it enacted by the Legislature of West Virginia:

That §11-21-9 and §11-21-71a of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

#### ARTICLE 21. PERSONAL INCOME TAX.

#### §11-21-9. Meaning of terms.

- 1 (a) Any term used in this article has the same meaning as
- when used in a comparable context in the laws of the United
- 3 States relating to income taxes, unless a different meaning is
- 4 clearly required. Any reference in this article to the laws of the
- 5 United States means the provisions of the Internal Revenue Code
- 6 of 1986, as amended, and any other provisions of the laws of the
- 7 United States that relate to the determination of income for
- 8 federal income tax purposes. All amendments made to the laws
- 9 of the United States after December 31, 2014, but prior to

- 10 January 1, 2016, shall be given effect in determining the taxes
- 11 imposed by this article to the same extent those changes are
- 12 allowed for federal income tax purposes, whether the changes
- 13 are retroactive or prospective, but no amendment to the laws of
- 14 the United States made on or after January 1, 2016, may be given
- 15 any effect.

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article.

16 (b) *Medical savings accounts*. — The term "taxable trust"
17 does not include a medical savings account established pursuant
18 to section twenty, article fifteen, chapter thirty-three of this code
19 or section fifteen, article sixteen of that chapter. Employer
20 contributions to a medical savings account established pursuant
21 to those sections are not wages for purposes of withholding

under section seventy-one of this article.

- 23 (c) *Surtax*. The term "surtax" means the twenty percent 24 additional tax imposed on taxable withdrawals from a medical 25 savings account under section twenty, article fifteen, chapter 26 thirty-three of this code and the twenty percent additional tax 27 imposed on taxable withdrawals from a medical savings account 28 under section fifteen, article sixteen of that chapter which are 29 collected by the Tax Commissioner as tax collected under this
- 31 (d) Effective date. The amendments to this section 32 enacted in the year 2016 are retroactive to the extent allowable 33 under federal income tax law. With respect to taxable years that 34 began prior to January 1, 2017, the law in effect for each of those 35 years shall be fully preserved as to that year, except as provided 36 in this section.
- 37 (e) For purposes of the refundable credit allowed to a low 38 income senior citizen for property tax paid on his or her 39 homestead in this state, the term "laws of the United States" as 40 used in subsection (a) of this section means and includes the 41 term "low income" as defined in subsection (b), section

- 42 twenty-one of this article and as reflected in the poverty
- 43 guidelines updated periodically in the federal register by the U.
- 44 S. Department of Health and Human Services under the authority
- 45 of 42 U. S. C. §9902(2).

# §11-21-71a. Withholding tax on West Virginia source income of nonresident partners, nonresident S corporation shareholders, and nonresident beneficiaries of estates and trusts.

- 1 (a) General rule. For the privilege of doing business in
- 2 this state or deriving rents or royalties from real or tangible
- 3 personal property located in this state, including, but not limited
- 4 to, natural resources in place and standing timber, a partnership,
- 5 S corporation, estate or trust, which is treated as a pass-through
- 6 entity for federal income tax purposes and which has taxable
- 7 income for the taxable year derived from or connected with West
- 8 Virginia sources any portion of which is allocable to a
- 9 nonresident partner, nonresident shareholder, or nonresident
- 10 beneficiary, as the case may be, shall pay a withholding tax
- 11 under this section, except as provided in subsections (c) and (k)
- 12 of this section.

#### 13 (b) Amount of withholding tax. —

- 14 (1) *In general.* The amount of withholding tax payable by
- 15 any partnership, S corporation, estate or trust, under subsection
- 16 (a) of this section, shall be equal to four percent of the
- 17 effectively connected taxable income of the partnership, S
- 18 corporation, estate or trust, as the case may be, which may
- 19 lawfully be taxed by this state and which is allocable to a
- 20 nonresident partner, nonresident shareholder, or nonresident
- 21 beneficiary of a trust or estate: *Provided*, That for taxable years
- 22 commencing on or after January 1, 2008, the amount of
- 23 withholding tax payable by any partnership, S corporation, estate
- 24 or trust, under subsection (a) of this section, shall be equal to six

- 25 and one-half percent of the effectively connected taxable income
- 26 of the partnership, S corporation, estate or trust, as the case may
- 27 be, which may lawfully be taxed by this state and which is
- 28 allocable to a nonresident partner, nonresident shareholder, or
- 29 nonresident beneficiary of a trust or estate.

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- 30 (2) Credits against tax. When determining the amount of 31 withholding tax due under this section, the pass-through entity 32 may apply any tax credits allowable under this chapter to the 33 pass-through entity which pass through to the nonresident 34 distributees: *Provided*, That in no event may the application of 35 any credit or credits reduce the tax liability of the distributee 36 under this article to less than zero.
  - (c) When withholding is not required. Withholding shall not be required:
  - (1) On distribution to a person, other than a corporation, who is exempt from the tax imposed by this article. For purposes of this subdivision, a person is exempt from the tax imposed by this article only if such person is, by reason of such person's purpose or activities, exempt from paying federal income taxes on such person's West Virginia source income. The pass-through entity may rely on the written statement of the person claiming to be exempt from the tax imposed by this article provided the pass-through entity discloses the name and federal taxpayer identification number for all such persons in its return for the taxable year filed under this article or article twenty-four of this chapter; or
- 51 (2) On distributions to a corporation which is exempt from 52 the tax imposed by article twenty-four of this chapter. For 53 purposes of this subdivision, a corporation is exempt from the 54 tax imposed by article twenty-four of this chapter only if the 55 corporation, by reason of its purpose or activities is exempt from 56 paying federal income taxes on the corporation's West Virginia

source income. The pass-through entity may rely on the written statement of the person claiming to be exempt from the tax imposed by article twenty-four of this chapter provided the pass-through entity discloses the name and federal taxpayer identification number for all such corporations in its return for the taxable year filed under this article or article twenty-four of this chapter; or

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- (3) On distributions when compliance will cause undue hardship on the pass-through entity: Provided, That no pass-through entity shall be exempt under this subdivision from complying with the withholding requirements of this section unless the Tax Commissioner, in his or her discretion, approves in writing the pass-through entity's written petition for exemption from the withholding requirements of this section based on undue hardship. The Tax Commissioner may prescribe the form and contents of such a petition and specify standards for when a pass-through entity will not be required to comply with the withholding requirements of this section due to undue hardship. Such standards shall take into account (among other relevant factors) the ability of a pass-through entity to comply at reasonable cost with the withholding requirements of this section and the cost to this state of collecting the tax directly from a nonresident distributee who does not voluntarily file a return and pay the amount of tax due under this article with respect to such distributions; or
- (4) On distributions by nonpartnership ventures. An unincorporated organization that has elected, under Section 761 of the Internal Revenue Code, to not be treated as a partnership for federal income tax is not treated as a partnership under this article and is not required to withhold under this section. However, such unincorporated organizations shall make and file with the Tax Commissioner a true and accurate return of information under subsection (c), section fifty-eight of this article, under such regulations and in such form and manner as

- 91 the Tax Commissioner may prescribe, setting forth: (A) The
- 92 amount of fixed or determinable gains, profits and income; and
- 93 (B) the name, address and taxpayer identification number of
- 94 persons receiving fixed or determinable gains, profits or income
- 95 from the nonpartnership venture.

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#### (d) Payment of withheld tax. —

- 97 (1) General rule. Each partnership, S corporation, estate 98 or trust, required to withhold tax under this section, shall pay the 99 amount required to be withheld to the Tax Commissioner no 100 later than:
- 101 (A) *S corporations*. The fifteenth day of the third month 102 following the close of the taxable year of the S corporation along with the annual information return due under article twenty-four 104 of this chapter, unless paragraph (C) of this subdivision applies.
- 105 (B) Partnerships, estates and trusts. — The fifteenth day of 106 the fourth month following the close of the taxable year of the partnership, estate or trust, with the annual return of the 107 partnership, estate or trust due under this article, unless 108 109 paragraph (C) of this subdivision applies: *Provided*, That for tax years beginning after December 31, 2015, partnerships shall pay 110 111 the amount required to be withheld to the Tax Commissioner, 112 along with the annual return of the partnership due under this 113 article, on the fifteenth day of the third month following the 114 close of the taxable year of the partnership, unless paragraph (C) 115 of this subdivision applies.
  - (C) Composite returns. The fifteenth day of the fourth month of the taxable year with the composite return filed under section fifty-one-a of this article: Provided, That for tax years beginning after December 31, 2015, partnerships or partners in a partnership filing composite returns under section fifty-one-a of this article shall pay the amount required to be withheld to the

- 122 Tax Commissioner, along with the annual return due under this
- 123 article, on the fifteenth day of the third month following the
- 124 close of the taxable year.

## 125 (2) Special rules. —

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- 126 (A) Where there is extension of time to file return. — An 127 extension of time for filing the returns referenced in subdivision 128 (1) of this subsection does not extend the time for paying the 129 amount of withholding tax due under this section. In this 130 situation, the pass-through entity shall pay, by the date specified 131 in subdivision (1) of this subsection, at least ninety percent of the 132 withholding tax due for the taxable year, or one hundred percent 133 of the tax paid under this section for the prior taxable year, if 134 such taxable year was a taxable year of twelve months and tax 135 was paid under this section for that taxable year. The remaining 136 portion of the tax due under this section, if any, shall be paid at 137 the time the pass-through entity files the return specified in 138 subdivision (1) of this subsection. If the balance due is paid by the last day of the extension period for filing such return and the 139 140 amount of tax due with such return is ten percent or less of the 141 tax due under this section for the taxable year, no additions to tax 142 shall be imposed under article ten of this chapter with respect to balance so remitted. If the amount of withholding tax due under 143 144 this section for the taxable year is less than the estimated withholding taxes paid for the taxable year by the pass-through 145 146 entity, the excess shall be refunded to the pass-through entity or, 147 at its election, established as a credit against withholding tax due 148 under this section for the then current taxable year.
  - (B) Deposit in trust for Tax Commissioner. The Tax Commissioner may, if the commissioner believes such action is necessary for the protection of trust fund moneys due this state, require any pass-through entity to pay over to the Tax Commissioner the tax deducted and withheld under this section, at any earlier time or times.

- 155 (e) Effectively connected taxable income. — For purposes of this section, the term "effectively connected taxable income" 156 157 means the taxable income or portion thereof of a partnership, S 158 corporation, estate or trust, as the case may be, which is derived 159 from or attributable to West Virginia sources as determined 160 under section thirty-two of this article and such regulations as 161 the Tax Commissioner may prescribe, whether such amount is 162 actually distributed or is deemed to have been distributed for 163 federal income tax purposes.
- 164 (f) Treatment of nonresident partners, S corporation 165 shareholders or beneficiaries of a trust or estate. —
- 166 (1) Allowance of credit. — Each nonresident partner, 167 nonresident shareholder, or nonresident beneficiary shall be allowed a credit for such partner's or shareholder's or 168 169 beneficiary's share of the tax withheld by the partnership, S 170 corporation, estate or trust under this section: Provided, That 171 when the distribution is to a corporation taxable under article 172 twenty-four of this chapter, the credit allowed by this section 173 shall be applied against the distributee corporation's liability for 174 tax under article twenty-four of this chapter.
  - (2) Credit treated as distributed to partner, shareholder or beneficiary. Except as provided in regulations, a nonresident partner's share, a nonresident shareholder's share, or a nonresident beneficiary's share of any withholding tax paid by the partnership, S corporation, estate or trust under this section shall be treated as distributed to such partner by such partnership, or to such shareholder by such S corporation, or to such beneficiary by such estate or trust on the earlier of:

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183 (A) The day on which such tax was paid to the Tax 184 Commissioner by the partnership, S corporation, estate or trust; 185 or

- 186 (B) The last day of the taxable year for which such tax was paid by the partnership, S corporation, estate or trust.
- 188 (g) *Regulations*. The Tax Commissioner shall prescribe such regulations as may be necessary to carry out the purposes of this section.

## 191 (h) Information statement.

- (1) Every person required to deduct and withhold tax under this section shall furnish to each nonresident partner, or nonresident shareholder, or nonresident beneficiary, as the case may be, a written statement, as prescribed by the Tax Commissioner, showing the amount of West Virginia effectively connected taxable income, whether distributed or not distributed for federal income tax purposes by such partnership, S corporation, estate or trust, to such nonresident partner, or nonresident shareholder, or nonresident beneficiary, the amount deducted and withheld as tax under this section; and such other information as the Tax Commissioner may require.
- (2) A copy of the information statements required by this subsection must be filed with the West Virginia return filed under this article (or article twenty-four of this chapter in the case of S corporations) by the pass-through entity for its taxable year to which the distribution relates. This information statement must be furnished to each nonresident distributee on or before the due date of the pass-through entity's return under this article or article twenty-four of this chapter for the taxable year, including extensions of time for filing such return, or such later date as may be allowed by the Tax Commissioner.
- (i) Liability for withheld tax. Every person required to deduct and withhold tax under this section is hereby made liable for the payment of the tax due under this section for taxable years (of such persons) beginning after December 31, 1991,

except as otherwise provided in this section. The amount of tax required to be withheld and paid over to the Tax Commissioner shall be considered the tax of the partnership, estate or trust, as the case may be, for purposes of articles nine and ten of this chapter. Any amount of tax withheld under this section shall be held in trust for the Tax Commissioner. No partner, S corporation shareholder, or beneficiary of a trust or estate, shall have a right of action against the partnership, S corporation, estate or trust, in respect to any moneys withheld from such person's distributive share and paid over to the Tax Commissioner in compliance with or in intended compliance with this section.

(j) Failure to withhold. — If any partnership, S corporation, estate or trust fails to deduct and withhold tax as required by this section and thereafter the tax against which such tax may be credited is paid, the tax so required to be deducted and withheld under this section shall not be collected from the partnership, S corporation, estate or trust, as the case may be, but the partnership, S corporation, estate or trust shall not be relieved from liability for any penalties or interest on additions to tax otherwise applicable in respect of such failure to withhold.

#### (k) Distributee agreements. —

(1) The Tax Commissioner shall permit a nonresident distributee to file with a pass-through entity, on a form prescribed by the Tax Commissioner, the agreement of such nonresident distributee: (A) To timely file returns and make timely payment of all taxes imposed by this article or article twenty-four of this chapter in the case of a C corporation, on the distributee with respect to the effectively connected taxable income of the pass-through entity; and (B) to be subject to personal jurisdiction in this state for purposes of the collection of any unpaid income tax under this article (or article twenty-four of this chapter in the case of a C corporation),

- together with related interest, penalties, additional amounts andadditions to tax, owed by the nonresident distributee.
- 252 (2) A nonresident distributee electing to execute an 253 agreement under this subsection must file a complete and 254 properly executed agreement with each pass-through entity for which this election is made, on or before the last day of the first 255 256 taxable year of the pass-through entity in respect of which the 257 agreement applies. The pass-through entity shall file a copy of 258 that agreement with the Tax Commissioner as provided in 259 subdivision (5) of this subsection.
- 260 (3) After an agreement is filed with the pass-through entity, 261 that agreement may be revoked by a distributee only in 262 accordance with regulations promulgated by the Tax 263 Commissioner.

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- (4) Upon receipt of such an agreement properly executed by the nonresident distributee, the pass-through entity shall not withhold tax under this section for the taxable year of the pass-through entity in which the agreement is received by the pass-through entity and for any taxable year subsequent thereto until either the nonresident distributee notifies the pass-through entity, in writing, to begin withholding tax under this section or the Tax Commissioner directs the pass-through entity, in writing, to begin withholding tax under this section because of the distributee's continuing failure to comply with the terms of such agreement.
- (5) The pass-through entity shall file with the Tax Commissioner a copy of all distributee agreements received by the pass-through entity during any taxable year with this annual information return filed under this article, or article twenty-four of this chapter in the case of S corporations. If the pass-through entity fails to timely file with the Tax Commissioner a copy of an agreement executed by a distributee and furnished to the

- 282 pass-through entity in accordance with this section, then the
- 283 pass-through entity shall remit to the Tax Commissioner an
- amount equal to the amount that should have been withheld
- 285 under this section from the nonresident distributee. The
- 286 pass-through entity may recover payment made pursuant to the
- 287 preceding sentence from the distributee on whose behalf the
- 288 payment was made.
- 289 (1) *Definitions*. For purposes of this section, the following 290 terms mean:
- 291 (1) *Corporation*. The term "corporation" includes 292 associations, joint stock companies and other entities which are 293 taxed as corporations for federal income tax purposes.
- 294 (A) *C corporation*. The term "C corporation" means a 295 corporation which is not an S corporation for federal income tax 296 purposes.
- 297 (B) *S corporation*. The term "S corporation" means a 298 corporation for which a valid election under Section 1362(a) of 299 the Internal Revenue Code is in effect for the taxable period. All 300 other corporations are C corporations.
- 301 (2) *Distributee.* The term "distributee" includes any 302 partner of a partnership, any shareholder of an S corporation and 303 any beneficiary of an estate or trust that is treated as a 304 pass-through entity for federal income tax purposes for the 305 taxable year of the entity, with respect to all or a portion of its 306 income.
- 307 (3) *Internal Revenue Code*. The term "Internal Revenue 308 Code" means the Internal Revenue Code of 1986, as amended, 309 through the date specified in section nine of this article.
- 310 (4) *Nonresident distributee.* The term "nonresident distributee" includes any individual who is treated as a

- 312 nonresident of this state under this article; and any partnership,
- 313 estate, trust or corporation whose commercial domicile is located
- 314 outside this state.
- 315 (5) *Partner*. The term "partner" includes a member of a 316 partnership as that term is defined in this section.
- 317 (6) Partnership. — The term "partnership" includes a 318 syndicate, group, pool, joint venture, or other unincorporated 319 organization through or by means of which any business, 320 financial operation, or venture is carried on and which is not a 321 trust or estate, a corporation or a sole proprietorship. 322 "Partnership" does not include an unincorporated organization 323 which, under Section 761 of the Internal Revenue Code, is not 324 treated as a partnership for the taxable year for federal income 325 tax purposes.
- 326 (7) *Taxable period*. The term "taxable period" means, in 327 the case of an S corporation, any taxable year or portion of a 328 taxable year during which a corporation is an S corporation.
- 329 (8) *Taxable year of the pass-through entity.* The term 330 "taxable year of the pass-through entity" means the taxable year 331 of the pass-through entity for federal income tax purposes. If a 332 pass-through entity does not have a taxable year for federal tax 333 purposes, its tax year for purposes of this article shall be the 334 calendar year.
- 335 (m) *Effective date.* The provisions of this section shall 336 first apply to taxable years of pass-through entities beginning 337 after December 31, 1991.

# **CHAPTER 235**

(H. B. 4705 - By Delegates Anderson, Boggs, Frich, Westfall, P. Smith, Canterbury, Hamilton, Miller and E. Nelson) [By Request of the West Virginia State Tax Division]

[Passed March 8, 2016; in effect from passage.] [Approved by the Governor on March 25, 2016.]

AN ACT to amend and reenact §11-21-32 and §11-21-77 of the Code of West Virginia, 1931, as amended, relating to adding an additional type of West Virginia source income of nonresident individual; and exclusion of lottery winnings as compensation for personal services.

Be it enacted by the Legislature of West Virginia:

That §11-21-32 and §11-21-77 of the Code of West Virginia, 1931, as amended, be amended and reenacted, to read as follows:

#### ARTICLE 21. WEST VIRGINIA PERSONAL INCOME TAX.

### §11-21-32. West Virginia source income of nonresident individual.

- 1 (a) General. The West Virginia source income of a
- 2 nonresident individual shall be the sum of the net amount of
- 3 income, gain, loss and deduction entering into his or her federal
- 4 adjusted gross income, as defined in the laws of the United
- 5 States and section nine of this article, for the taxable year,
- 6 derived from or connected with West Virginia sources,
- 7 including:
- 8 (1) His or her distributive share of partnership income, gain,
- 9 loss and deduction, determined under section thirty-seven; and

- 10 (2) His or her pro rata share of S corporation income, loss 11 and deduction, determined under section thirty-seven of this 12 article, increased by reductions for taxes described in paragraphs 13 (2) and (3), subsection (f), section 1366 of the Internal Revenue 14 Code: and
- 15 (3) His or her share of estate or trust income, gain, loss and deduction, determined under section thirty-nine of this article.
- 17 (b) Income and deductions from West Virginia sources.
- 18 (1) Items of income, gain, loss and deduction derived from 19 or connected with West Virginia sources shall be those items 20 attributable to:
- 21 (A) The ownership of any interest in real or tangible 22 personal property in this state; or
- 23 (B) A business, trade, profession or occupation carried on in 24 this state; or
- 25 (C) In the case of a shareholder of an S corporation, the 26 ownership of shares issued by such corporation, to the extent 27 determined under section thirty-seven; or
- 28 (D) Prizes awarded under article twenty-two, chapter 29 twenty-nine of this code by the West Virginia State Lottery 30 Commission.
- 31 (2) Income from intangible personal property, including 32 annuities, dividends, interest, and gains from the disposition of 33 intangible personal property, shall constitute income derived 34 from West Virginia sources only to the extent that such income 35 is from property employed in a business, trade, profession or 36 occupation carried on in this state.
- 37 (3) Deductions with respect to capital losses and net 38 operating losses shall be based solely on income, gain, loss and

- 39 deduction derived from or connected with West Virginia
- 40 sources, under regulations of the Tax Commissioner, but
- 41 otherwise shall be determined in the same manner as the
- 42 corresponding federal deductions.
- 43 (4) The deduction allowed by section 215 of the Internal
- 44 Revenue Code, relating to alimony, shall not constitute a
- 45 deduction derived from West Virginia sources.
- 46 (c) Income and deductions partly from West Virginia
- 47 sources. If a business, trade, profession or occupation is
- 48 carried on partly within and partly without this state, as
- 49 determined under regulations of the Tax Commissioner, the
- 50 items of income, gain, loss and deduction derived from or
- 51 connected with West Virginia sources shall be determined by
- 52 apportionment and allocation under such regulations.
- 53 (d) Purchase and sale for own account. A nonresident,
- 54 other than a dealer holding property for sale to customers in the
- 55 ordinary course of his or her trade or business, shall not be
- 56 deemed to carry on a business, trade, profession or occupation in
- 57 this state solely by reason of the purchase and sale of property
- 58 for his or her own account.
- 59 (e) *Husband and wife*. If a husband and wife determine
- 60 their federal income tax on a joint return but determine their
- 61 West Virginia income taxes separately, they shall determine
- 62 their West Virginia source incomes separately as if their federal
- 63 adjusted gross incomes had been determined separately.
- 64 (f) Effective date. This section as amended and reenacted
- 65 in the year 1992 shall apply to taxable years beginning after
- 66 December 31, 1991. As to prior taxable years, the provisions of
- 67 this section and of section thirty-one of this article, as then in
- 68 effect, are fully and completely preserved.

#### §11-21-77. Extension of withholding to certain lottery winnings.

- 1 (a) Lottery winnings subject to withholding. Proceeds of
- 2 more than \$5,000 from any lottery prize awarded by the West
- 3 Virginia State Lottery Commission is subject to withholding.
- 4 The commission in making any payment of a lottery prize
- 5 subject to withholding shall deduct and withhold from the
- 6 payment a tax in an amount equal to six and one-half percent of
- 7 the payment.
- 8 (b) Statement by recipient. Every person who is to receive
- 9 payment of winnings which are subject to withholding shall
- 10 furnish the person making the payment a statement made under
- 11 the penalties of perjury, containing the name, address and
- 12 taxpayer identification number of the person receiving the
- 13 payment and each person entitled to any portion of the payment.
- 14 (c) Coordination with other sections. For the purposes of
- 15 determining liability for payment of taxes and filing of returns,
- 16 payments of winnings which are subject to withholding shall be
- 17 treated as if they were wages paid by an employer to an
- 18 employee, but shall not be treated as compensation for personal
- 19 services performed within this State for purposes of sections
- 20 forty and forty-one of this article.
- 21 (d) Backup withholding. Beginning July 1, 2012, every
- 22 person who is required to file Internal Revenue Service form
- 23 W-2G, and who is subject to backup withholding under federal
- 24 law, is subject to West Virginia backup withholding. The payor
- 25 in making any payment of a gambling prize subject to backup
- 26 withholding shall deduct and withhold from the payment a tax in
- 27 an amount equal to six and one-half percent of the payment.

# **CHAPTER 236**

## (H. B. 4148 - By Mr. Speaker (Mr. Armstead) and Delegate Miley) [By Request of the Executive]

[Passed February 19, 2016; in effect from passage.] [Approved by the Governor on February 25, 2016.]

AN ACT to amend and reenact §11-24-3 and §11-24-13 of the Code of West Virginia, 1931, as amended, all relating to the West Virginia Corporation Net Income Tax Act; updating the meaning of federal taxable income and certain other terms used in the West Virginia Corporation Net Income Tax Act; changing the due date for filing a West Virginia Corporation Net Income Tax return; and specifying effective dates.

Be it enacted by the Legislature of West Virginia:

That §11-24-3 and §11-24-13 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

#### ARTICLE 24. CORPORATION NET INCOME TAX.

## §11-24-3. Meaning of terms; general rule.

- 1 (a) Any term used in this article has the same meaning as
- 2 when used in a comparable context in the laws of the United
- 3 States relating to federal income taxes, unless a different
- 4 meaning is clearly required by the context or by definition in this
- 5 article. Any reference in this article to the laws of the United
- 6 States means the provisions of the Internal Revenue Code of
- 7 1986, as amended, and any other provisions of the laws of the
- 8 United States that relate to the determination of income for
- 9 federal income tax purposes. All amendments made to the laws

- 10 of the United States after December 31, 2014, but prior to
- 11 January 1, 2016, shall be given effect in determining the taxes
- 12 imposed by this article to the same extent those changes are
- 13 allowed for federal income tax purposes, whether the changes
- 14 are retroactive or prospective, but no amendment to the laws of
- 15 the United States made on or after January 1, 2016, shall be
- 16 given any effect.
- 17 (b) The term "Internal Revenue Code of 1986" means the
- 18 Internal Revenue Code of the United States enacted by the
- 19 federal Tax Reform Act of 1986 and includes the provisions of
- 20 law formerly known as the Internal Revenue Code of 1954, as
- 21 amended, and in effect when the federal Tax Reform Act of 1986
- 22 was enacted that were not amended or repealed by the federal
- 23 Tax Reform Act of 1986. Except when inappropriate, any
- 24 reference in any law, executive order or other document:
- 25 (1) To the Internal Revenue Code of 1954 includes a reference to the Internal Revenue Code of 1986; and
- 27 (2) To the Internal Revenue Code of 1986 includes a
- 28 reference to the provisions of law formerly known as the Internal
- 29 Revenue Code of 1954.
- 30 (c) Effective date. The amendments to this section
- 31 enacted in the year 2016 are retroactive to the extent allowable
- 32 under federal income tax law. With respect to taxable years that
- 33 began prior to January 1, 2017, the law in effect for each of those
- 34 years shall be fully preserved as to that year, except as provided
- 35 in this section.

## §11-24-13. Returns; time for filing.

- 1 (a) On or before the fifteenth day of the third month
- 2 following the close of a taxable year, an income tax return under
- 3 this article shall be made and filed by or for every corporation
- 4 subject to the tax imposed by this article: *Provided*, That for tax

- 5 years beginning after December 31, 2015, an income tax return
- 6 under this article shall be made and filed by or for every
- 7 corporation subject to the tax imposed by this article on or before
- 8 the fifteenth day of the fourth month following the close of a
- 9 taxable year.

- 10 (b) Special rule for tax exempt corporations with unrelated business taxable income. — Notwithstanding the provisions of 11 12 subsection (a) of this section, when an income tax return is 13 required from a corporation generally exempt from tax under subsection (a), section five of this article, which has unrelated 14 15 business taxable income, the annual return shall be filed on or 16 before the fifteenth day of the fourth month following the close 17 of the taxable year.
- (c) The Tax Commissioner may combine into one form the 18 annual return due under this article and the annual return due 19 20 under article twenty-three of this chapter. When a combined 21 business franchise tax and corporation net income tax annual return is filed by a taxpayer, the amount of tax remitted shall be 22 applied first against any business franchise tax that may be due 23 for the taxable year under said article and then against any 24 25 corporation net income tax that may be due for the taxable year. The Tax Commissioner may also combine the forms for filing 26 declarations of estimated tax and the forms for making 27 28 installment payments of estimated tax.
  - (d) *Effective date.* The amendments to this section made in the year one thousand nine hundred ninety-three shall apply to tax returns that become due after the first day of that year.

# **CHAPTER 237**

## (S. B. 352 - By Senators Cole (Mr. President), and Kessler) [By Request of the Executive]

[Passed March 11, 2016; in effect from passage.] [Approved by the Governor on March 23, 2016.]

AN ACT to amend and reenact §11-24-43a of the Code of West Virginia, 1931, as amended, relating to the elimination of corporation net income tax proceeds to railways; and specifying that dedication of corporation net income tax proceeds to railways expires and is void on and after January 1, 2016.

Be it enacted by the Legislature of West Virginia:

That §11-24-43a of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

#### ARTICLE 24. CORPORATION NET INCOME TAX.

### §11-24-43a. Dedication of tax proceeds to railways.

- 1 (a) Beginning January 1, 2008, there is dedicated an annual
- 2 amount of up to \$4,300,000 from annual collections of the tax
- 3 imposed by this article for the purpose of construction,
- 4 reconstruction, maintenance and repair of railways, the
- 5 construction of railway-related structures and payment of
- 6 principal and interest on state bonds issued for railway purposes,
- 7 as approved by the West Virginia Public Port Authority.
- 8 (b) For purposes of administering the deposits required by
- 9 this subsection, after December 31, 2007, from the taxes
- 10 imposed by this section and paid to the Tax Commissioner in
- 11 each quarter of the year, after deducting the amount of any

- 12 refunds lawfully paid and any administrative costs authorized by
- 13 this code, the Tax Commissioner shall pay into the Special
- 14 Railroad and Intermodal Enhancement Fund provided in section
- 15 seven-a, article sixteen-b, chapter seventeen of this code an
- amount equal to at least \$1,075,000. In any quarter where the
- 17 collections are less than the amount required to be paid into the
- 18 Special Railroad and Intermodal Enhancement Fund, or where
- 19 the total amount paid in any year will be less than \$4,300,000,
- 20 the difference shall be paid from amounts available from
- 21 collections in succeeding quarters until paid in full.
- 22 Notwithstanding any provision of this section to the contrary, the
- 23 total amount to be deposited into the Special Railroad and
- 24 Intermodal Enhancement Fund for 2013 may not exceed
- 25 \$2,150,000: Provided, That no deposits may be made into the
- 26 Special Railroad and Intermodal Enhancement Fund during the
- 27 fiscal year 2014.
- 28 (c) Notwithstanding any provision of this section or this code
- 29 to the contrary, all provisions of this section relating to requiring
- 30 the deposit of moneys into the Special Railroad and Intermodal
- 31 Enhancement Fund expire and are void on and after January 1,
- 32 2016.



# **CHAPTER 238**

(Com. Sub. for H. B. 4209 - By Delegates Ellington, Summers, Householder, Rohrbach, Stansbury, Campbell and Fleischauer)

[Passed March 8, 2016; in effect July 1, 2016.] [Approved by the Governor on March 16, 2016.]

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; changing rate of tax imposed on certain eligible acute care hospitals for the fiscal year 2017; specifying purposes for which funds collected may be expended; providing for distribution of remaining funds at the end of fiscal year; and extending expiration date for tax.

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.

- 1 (a) In addition to the rate of the tax imposed by sections nine
- 2 and fifteen of this article on providers of inpatient and outpatient
- 3 hospital services, there is imposed on certain eligible acute care
- 4 hospitals an additional tax of seventy-four one hundredths of one
- 5 percent on the gross receipts received or receivable by eligible
- 6 acute care hospitals that provide inpatient or outpatient hospital
- 7 services in this state through a Medicaid upper payment limit
- 8 program.
- 9 (b) For purposes of this section, the term "eligible acute care
- 10 hospital" means any inpatient or outpatient hospital conducting
- 11 business in this state that is not:
- 12 (1) A state-owned or -designated facility;
- 13 (2) A nonstate, but government-owned facility such as a
- 14 county or city hospital;
- 15 (3) A critical access hospital, designated as a critical access
- 16 hospital after meeting all federal eligibility criteria;

- 17 (4) A licensed free-standing psychiatric or medical rehabilitation hospital; or
- 19 (5) A licensed long-term acute care hospital.
- 20 (c) The taxes imposed by this section may not be imposed or collected until all of the following have occurred:
- 22 (1) A state plan amendment is developed by the Bureau for
- 23 Medical Services, as authorized by the Secretary of the
- 24 Department of Health and Human Resources;
- (2) The state plan amendment is reviewed by the Medical
   Fund Services Advisory Council;
- 27 (3) A comment period of not less than thirty days for public
- 28 comment on the state plan amendment shall have passed; and
- (4) The state plan amendment is approved by the Centers forMedicare and Medicaid Services.
- 31 (d) The state plan amendment shall include all of the
- 32 following:
- 33 (1) The provisions of the proposed upper payment limit
- 34 program or programs;
- 35 (2) A state maintenance of effort to maintain adequate
- 36 Medicaid funding; and
- 37 (3) A provision that any other state Medicaid program will
- 38 not negatively impact the hospital upper payment limit
- 39 payments. The taxes imposed and collected may be imposed and
- 40 collected beginning on the earliest date permissible under
- 41 applicable federal law under the upper payment limit program,
- 42 as determined by the secretary.

- 43 (e) There is continued a special revenue account in the State 44 Treasury designated the Medicaid State Share Fund. The amount 45 of taxes collected under this section, including any interest, 46 additions to tax and penalties collected under article ten of this 47 chapter, less the amount of allowable refunds, the amount of any interest payable with respect to such refunds and costs of 48 49 administration and collection, shall be deposited into the Special 50 Revenue Fund and may not revert to general revenue. The Tax 51 Commissioner shall establish and maintain a separate account and accounting for the funds collected under this section in an 52 account to be designated as the Eligible Acute Care Provider 53 Enhancement Account. The amounts collected shall be 54 55 deposited, within fifteen days after receipt by the Tax Commissioner, into the 56 Eligible Acute Care Provider Enhancement Account. Disbursements from the Eligible Acute 57 Care Provider Enhancement Account within the Medicaid State 58 59 Share Fund may only be used to support West Virginia Medicaid 60 and the hospital Medicaid upper payment limit program and as otherwise set forth in this section. 61
- 62 (f) The imposition and collection of taxes imposed by this 63 section is suspended immediately upon the occurrence of any of 64 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 theMedicaid program as described in this section; and
- 77 (3) The effective date of an appropriation for any state fiscal 78 year for hospital payments under the state Medicaid program that 79 is less than the amount appropriated for state fiscal year ending 80 June 30, 2011.
- (g) Fifty percent of any funds remaining in the Eligible 81 Acute Care Provider Enhancement Account as of June 30, 2016, 82 83 shall be transferred to the West Virginia Medical Services Fund. 84 This transfer shall occur no later than September 30, 2016. These 85 funds shall be used during state fiscal year 2017 at the discretion of the Bureau for Medical Services. The remaining fifty percent 86 87 of any funds in the Eligible Acute Care Provider Enhancement 88 Account as of June 30, 2016, shall remain in the Eligible Acute Care Provider Enhancement Account and shall be used in state 89 90 fiscal year 2017. If the program expires on June 30, 2017, as set forth in subsection (i) of this section, fifty percent of any funds 91 remaining as of June 30, 2018, shall be transferred on that date 92 93 to the West Virginia Medical Services Fund. This transfer shall occur only after state fiscal year 2017 fourth quarter tax 94 95 collections and program payments. The remaining fifty percent of the funds shall be distributed to the eligible acute care 96 97 providers no later than June 30, 2018. The distribution of funds to the eligible acute care providers shall be made in the same 98 proportion as the taxes paid by the eligible acute care providers 99 into the Eligible Acute Care Provider Enhancement Fund during 100 state fiscal year 2017. 101
  - (h) The changes to the tax rate in this section enacted in the 2016 Regular Session are effective July 1, 2016, upon the approval of the state plan amendment.
- (i) The tax imposed by this section expires on and after June30, 2017, unless otherwise extended by the Legislature.



# **CHAPTER 239**

(S. B. 648 - By Senator Blair)

[Passed March 8, 2016; in effect ninety days from passage.] [Approved by the Governor on March 16, 2016.]

AN ACT to amend and reenact §17C-3-7 of the Code of West Virginia, 1931, as amended, relating to allowing local authorities to permit flashing traffic signals during low traffic times.

Be it enacted by the Legislature of West Virginia:

That §17C-3-7 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

### ARTICLE 3. TRAFFIC SIGNS, SIGNALS AND MARKINGS.

## §17C-3-7. Flashing signals.

- 1 Whenever an illuminated flashing red or yellow signal is
- 2 used in a traffic sign or signal it requires obedience by vehicular
- 3 traffic as follows:
- 4 (1) Flashing red (stop signal). When a red lens is
- 5 illuminated with rapid intermittent flashes, drivers of vehicles
- 6 shall stop before entering the nearest crosswalk at an intersection
- 7 or at a limit line when marked, or, if none, then before entering
- 8 the intersection, and the right to proceed is subject to the rules
- 9 applicable after making a stop at a stop sign.
- 10 (2) Flashing yellow (caution signal). When a yellow lens
- 11 is illuminated with rapid intermittent flashes, drivers of vehicles
- 12 may proceed through the intersection or past the signal only with
- 13 caution.

- 14 (3) Local authorities, in areas that experience low traffic
- 15 times, may permit flashing signals between the hours of eleven
- 16 o'clock p.m. and six o'clock a.m.



(H. B. 4738 - By Delegates Hanshaw, McCuskey, Foster, Weld, Fast, Overington, Folk, Shaffer, Moore, Byrd and Manchin)

[Passed March 12, 2016; in effect ninety days from passage.] [Approved by the Governor on March 25, 2016.]

AN ACT to amend and reenact §17C-5-2 of the Code of West Virginia, 1931, as amended, relating to the offense of driving in an impaired state; establishing the offense of driving a vehicle while he or she is in an impaired state; establishing the offense of driving a vehicle 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; adding influence of inhalant substances in definition of impaired state; and providing for penalties.

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 to read as follows:

#### ARTICLE 5. SERIOUS TRAFFIC OFFENSES.

- §17C-5-2. Driving under influence of alcohol, controlled substances or drugs; penalties.
  - 1 (a) Definitions. —

- 2 (1) "Impaired State" means a person:
- 3 (A) Is under the influence of alcohol;
- 4 (B) Is under the influence of any controlled substance;
- 5 (C) Is under the influence of any other drug or inhalant 6 substance:
- 7 (D) Is under the combined influence of alcohol and any 8 controlled substance or any other drug; or
- 9 (E) Has an alcohol concentration in his or her blood of eight 10 hundredths of one percent or more, by weight.
- 11 (2) "Bodily Injury" means injury that causes substantial 12 physical pain, illness or any impairment of physical condition.
- 13 (3) "Serious Bodily Injury" means bodily injury that creates 14 a substantial risk of death, that causes serious or prolonged 15 disfigurement, prolonged impairment of health or prolonged loss 16 or impairment of the function of any bodily organ.
- 17 (b) Any person who drives a vehicle in this state while he or she is in an impaired state and such impaired state proximately 18 causes the death of any person is guilty of a felony and, upon 19 conviction thereof, shall be imprisoned in a state correctional 20 21 facility for not less than three nor more than fifteen years and 22 shall be fined not less than \$1,000 nor more than \$3,000: Provided, That any death charged under this subsection must 23 24 occur within one year of the offense.
- 25 (c) Any person who drives a vehicle in this state while he or 26 she is in an impaired state and such impaired state proximately 27 causes serious bodily injury to any person other than himself or 28 herself, is guilty of a felony and, upon conviction thereof, shall 29 be imprisoned in a state correctional facility for not less than two

- 30 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: (i) while he or she is in an impaired state or (ii) 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.
- (1) 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.

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- (m) A person violating any provision of subsection (d), (e), 128 (f), (g), (h) or (j) of this section, for the third or any subsequent 129 offense under this section, is guilty of a felony and, upon 130 conviction thereof, shall be imprisoned in a state correctional 131 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
- 133 nor more than \$5,000.
- 134 (n) For purposes of subsections (l) and (m) of this section 135 relating to second, third and subsequent offenses, the following 136 events shall be regarded as offenses under this section:
- 137 (1) Any conviction under the provisions of subsection (b), 138 (c), (d), (e), (f), (g) or (h) of this section or under a prior 139 enactment of this section for an offense which occurred within 140 the ten-year period immediately preceding the date of arrest in 141 the current proceeding;
- 142 (2) Any conviction under a municipal ordinance of this state 143 or any other state or a statute of the United States or of any other 144 state of an offense which has the same elements as an offense 145 described in subsection (b), (c), (d), (e), (f), (g), (h) or (i) of this 146 section, which offense occurred within the ten-year period 147 immediately preceding the date of arrest in the current 148 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

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- 158 the applicable time period for prior offenses, notwithstanding the fact that there has not been a final adjudication of the charges for 159 160 the alleged previous offense. In that case, the warrant or 161 indictment or information must set forth the date, location and particulars of the previous offense or offenses. No person may 162 163 be convicted of a second or subsequent offense under this section 164 unless the conviction for the previous offense has become final, 165 or the person has previously had a period of conditional 166 probation imposed pursuant to section two-b of this article.
  - (p) 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.
  - (q) For purposes of this section, the term "controlled substance" has the meaning ascribed to it in chapter sixty-a of this code.
- 177 (r) The sentences provided in this section upon conviction 178 for a violation of this article are mandatory and are not subject to suspension or probation: *Provided*, That the court may apply 179 180 the provisions of article eleven-a, chapter sixty-two of this code 181 to a person sentenced or committed to a term of one year or less 182 for a first offense under this section: *Provided*, *however*. That the 183 court may impose a term of conditional probation pursuant to 184 section two-b of this article to persons adjudicated thereunder. 185 An order for home detention by the court pursuant to the 186 provisions of article eleven-b of said chapter may be used as an 187 alternative sentence to any period of incarceration required by 188 this section for a first or subsequent offense: *Provided*, *further*, 189 That for any period of home incarceration ordered for a person 190 convicted of second offense under this section, electronic

monitoring shall be required for no fewer than five days of the 191 192 total period of home confinement ordered and the offender may not leave home for those five days notwithstanding the 193 194 provisions of section five, article eleven-b, chapter sixty-two of 195 this code: And provided further, That for any period of home 196 incarceration ordered for a person convicted of a third or subsequent violation of this section, electronic monitoring shall 197 198 be included for no fewer than ten days of the total period of 199 home confinement ordered and the offender may not leave home 200 for those ten days notwithstanding section five, article eleven-b, 201 chapter sixty-two of this code.



# (H. B. 2665 - By Delegates Folk, Skinner, Espinosa, Householder, Faircloth, Overington, Upson, Blair, Perdue, Sobonya and Waxman)

[Passed March 12, 2016; in effect ninety days from passage.] [Approved by the Governor on March 30, 2016.]

AN ACT to amend and reenact §17C-5-2b of the Code of West Virginia, 1931, as amended, relating to deferral of further proceedings for certain first offenses of driving under the influence; making ineligible for the deferral program persons who refused the secondary chemical test; and making technical corrections.

Be it enacted by the Legislature of West Virginia:

That §17C-5-2b of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

#### ARTICLE 5. SERIOUS TRAFFIC OFFENSES.

- §17C-5-2b. Deferral of further proceedings for certain first offenses upon condition of participation in motor vehicle alcohol test and lock program; procedure on charge of violation of conditions.
  - 1 (a) Except as provided in subsection (g) of this section,
  - 2 whenever any person who has not previously been convicted of
  - 3 any offense under this article or under any statute of the United
  - 4 States or of any state relating to driving under the influence
  - 5 alcohol, any controlled substance or any other drug:
  - 6 (1) Notifies the court within thirty days of his or her arrest 7 of his or her intention to participate in a deferral pursuant to this 8 section; and
  - 9 (2) Pleads guilty to or is found guilty of driving under the influence of alcohol under subsection (d), section two of this
  - 11 article, the court, without entering a judgment of guilt and with
  - the consent of the accused, shall defer further proceedings and, notwithstanding any provisions of this code to the contrary,
  - place him or her on probation, which conditions shall include
  - 15 that he or she successfully completes the Motor Vehicle Alcohol
  - 16 Test and Lock Program as provided in section three-a, article
  - 17 five-a of this chapter. Participation therein shall be for a period
  - 18 of at least one hundred and sixty five days after he or she has
  - 19 served the fifteen days of license suspension imposed pursuant
  - 20 to section two, article five-a of this chapter.
  - 21 (b) A defendant's election to participate in deferral under
  - 22 this section shall constitute a waiver of his or her right to an
  - 23 administrative hearing as provided in section two, article five-a
  - 24 of this chapter.
  - 25 (c) (1) If the prosecuting attorney files a motion alleging that
  - 26 the defendant during the period of the Motor Vehicle Alcohol

- 27 Test and Lock program has been removed therefrom by the
- 28 Division of Motor Vehicles, or has failed to successfully
- 29 complete the program before making a motion for dismissal
- 30 pursuant to subsection (d) of this section, the court may issue
- 31 such process as is necessary to bring the defendant before the
- 32 court.

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- 33 (2) A motion alleging such violation filed pursuant to 34 subdivision (1) of this subsection must be filed during the period 35 of the Motor Vehicle Alcohol Test and Lock Program or, if filed 36 thereafter, must be filed within a reasonable time after the 37 alleged violation was committed.
- 38 (3) When the defendant is brought before the court, the court shall afford the defendant an opportunity to be heard. If the court finds that the defendant has been rightfully removed from the Motor Vehicle Alcohol Test and Lock Program by the Division of Motor Vehicles, the court may order, when appropriate, that the deferral be terminated, and thereupon enter an adjudication of guilt and proceed as otherwise provided.
  - (4) Should the defendant fail to complete or be removed from the Motor Vehicle Alcohol Test and Lock Program, the defendant waives the appropriate statute of limitations and the defendant's right to a speedy trial under any applicable federal or state constitutional provisions, statutes or rules of court during the period of enrollment in the program.
- 51 (d) When the defendant shall have completed satisfactorily 52 the Motor Vehicle Alcohol Test and Lock Program and complied 53 with its conditions, the defendant may move the court for an order dismissing the charges. This motion shall be supported by 54 affidavit of the defendant and by certification of the Division of 55 56 Motor Vehicles that the defendant has successfully completed 57 the Motor Vehicle Alcohol Test and Lock Program. A copy of 58 the motion shall be served on the prosecuting attorney who shall

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- within thirty days after service advise the judge of any objections to the motion, serving a copy of such objections on the defendant or the defendant's attorney. If there are no objections filed within the thirty-day period, the court shall thereafter dismiss the charges against the defendant. If there are objections filed with regard to the dismissal of charges, the court shall proceed as set forth in subsection (c) of this section.
  - (e) Except as provided herein, unless a defendant adjudicated pursuant to this subsection be convicted of a subsequent violation of this article, discharge and dismissal under this section shall be without adjudication of guilt and is not a conviction for purposes of disqualifications or disabilities imposed by law upon conviction of a crime except for those provided in article five-a of this chapter. Except as provided in subsection (k), (l) and (m), section two of this article regarding subsequent offenses, the effect of the dismissal and discharge shall be to restore the person in contemplation of law to the status he or she occupied prior to arrest and trial. No person as to whom a dismissal and discharge have been effected shall be thereafter held to be guilty of perjury, false swearing, or otherwise giving a false statement by reason of his or her failure to disclose or acknowledge his or her arrest or trial in response to any inquiry made of him or her for any purpose other than any inquiry made in connection with any subsequent offense as that term is defined in subsection (m), section two of this article.
  - (f) There may be only one discharge and dismissal under this section with respect to any person.
  - (g) No person shall be eligible for dismissal and discharge under this section: (1) In any prosecution in which any violation of any other provision of this article has been charged; (2) if the person holds a commercial driver's license or operates commercial motor vehicle(s); (3) if the person has previously had his or her driver's license revoked under section two-a of

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- this article or under any statute of the United States or of any state relating to driving under the influence alcohol, any controlled substance or any other drug; or (4) if the person refused the secondary chemical test pursuant to section seven of this article.
- 97 (h) (1) After a period of not less than one year which shall 98 begin to run immediately upon the expiration of a term of 99 probation imposed upon any person under this section, the person may apply to the court for an order to expunge from all 100 101 official records all recordations of his or her arrest, trial, and 102 conviction, pursuant to this section except for those maintained 103 by the Division of Motor Vehicles: *Provided*, That any person who has previously been convicted of a felony may not make a 104 105 motion for expungement pursuant to this section.
  - (2) If the prosecuting attorney objects to the expungement, the objections shall be filed with the court within thirty days after service of a motion for expungement and copies of the objections shall be served on the defendant or the defendant's attorney.
- 111 (3) If the objections are filed, the court shall hold a hearing on the objections, affording all parties an opportunity to be 112 113 heard. If the court determines after a hearing that the person 114 during the period of his or her probation and during the period of 115 time prior to his or her application to the court under this 116 subsection has not been guilty of any serious or repeated 117 violation of the conditions of his or her probation, it shall order 118 the expungement.
  - (i) Notwithstanding any provision of this code to the contrary, any person prosecuted for a violation of subsection (e), section two, article five of this chapter whose case is disposed of pursuant to the provisions of this section shall be liable for any court costs assessable against a person convicted of a violation

- 124 of subsection (k), section two, article five of this chapter.
- 125 Payment of such costs may be made a condition of probation.
- 126 The costs assessed pursuant to this subsection, whether as a term
- 127 of probation or not, shall be distributed as other court costs in
- 128 accordance with section two, article three, chapter fifty; section
- 129 four, article two-a, chapter fourteen; section four, article
- 130 twenty-nine, chapter thirty; and sections two, seven and ten,
- 131 article five, chapter sixty-two of this code.



# (S. B. 476 - By Senators Beach, Plymale and Kessler)

[Passed March 11, 2016; in effect ninety days from passage.] [Approved by the Governor on March 21, 2016.]

AN ACT to amend and reenact §17C-6-1 of the Code of West Virginia, 1931, as amended, relating to driving restrictions in school zones; requiring Division of Highways to erect signage indicating place of entry and exit of each school zone; authorizing county boards of education to formally vote and request in writing for expansion of school zone to a road adjacent to school property; requiring Division of Highways to expand school zones accordingly; requiring Division of Highways to erect new signage to indicate expanded school zone's location and speed limit within ninety days of receiving request; providing that school zone may not be expanded more than one hundred twenty-five feet along adjacent road unless Division of Highways determines that additional extension is needed and necessary for safety of school children; establishing new offense for violation of school zone speed limit if required signage not present; reducing fine for

violation of school zone speed limit if required signage not present; and making technical corrections.

Be it enacted by the Legislature of West Virginia:

That §17C-6-1 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

#### ARTICLE 6. SPEED RESTRICTIONS.

#### §17C-6-1. Speed limitations generally; penalty.

- 1 (a) No person may drive a vehicle on a highway at a speed
- 2 greater than is reasonable and prudent under the existing
- 3 conditions and the actual and potential hazards. In every event
- 4 speed shall be controlled as necessary to avoid colliding with
- 5 any person, vehicle or other conveyance on or entering the
- 6 highways in compliance with legal requirements and the duty of
- 7 all persons to use due care.
- 8 (b) Where no special hazard exists that requires lower speed
- 9 for compliance with subsection (a) of this section, the speed of
- 10 any vehicle not in excess of the limits specified in this section or
- 11 established as authorized in this section is lawful, but any speed
- 12 in excess of the limits specified in this subsection or established
- 13 as authorized in this section is unlawful. The following speed
- 14 limits apply:
- 15 (1) Fifteen miles per hour in a school zone during school
- 16 recess or while children are going to or leaving school during
- 17 opening or closing hours. A school zone is all school property,
- 18 including school grounds and any street or highway abutting the
- 19 school grounds and extending one hundred twenty-five feet
- 20 along the street or highway from the school grounds. The West
- 21 Virginia Division of Highways shall erect signage indicating the
- 22 place of entry and exit of each school zone. Upon a formal vote
- and a written request by a county board of education to expand

- 24 a school zone to a road that is adjacent to school property, the
- 25 West Virginia Division of Highways shall expand the school
- 26 zone by erecting new signage indicating the expanded school
- 27 zone's location and speed limit within ninety days of receiving
- 28 the request: *Provided*, That the school zone may not be expanded
- 29 more than one hundred twenty-five feet along an adjacent road
- 30 unless the division determines that the additional extension is
- 31 needed and necessary for the safety of the school children. The
- 32 speed restriction does not apply to vehicles traveling on a
- 33 controlled-access highway which is separated from the school or
- 34 school grounds by a fence or barrier approved by the Division of
- 35 Highways;

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- 36 (2) Twenty-five miles per hour in any business or residence37 district; and
- 38 (3) Fifty-five miles per hour on open country highways, 39 except as otherwise provided by this chapter.
- The speeds set forth in this section may be altered as authorized in sections two and three of this article.
  - (c) The driver of every vehicle shall, consistent with the requirements of subsection (a) of this section, drive at an appropriate reduced speed when approaching and crossing an intersection or railway grade crossing, when approaching and going around a curve, when approaching a hill crest, when traveling upon any narrow or winding roadway and when a special hazard exists with respect to pedestrians or other traffic or by reason of weather or highway conditions.
- 50 (d) The speed limit on controlled access highways and 51 interstate highways, where no special hazard exists that requires 52 a lower speed, shall be not less than fifty-five miles per hour and 53 the speed limits specified in subsection (b) of this section do not 54 apply.

- (e) Unless otherwise provided in this section, any person who violates the provisions of this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than \$100; upon a second conviction within one year thereafter, shall be fined not more than \$200; and, upon a third or subsequent conviction within two years thereafter, shall be fined not more than \$500: Provided, That if the third or subsequent conviction is based upon a violation of the provisions of this section where the offender exceeded the speed limit by fifteen miles per hour or more, then upon conviction, shall be fined not more than \$500 or confined in jail for not more than six months, or both fined and confined.
  - (f) Any person who violates the provisions of subdivision (1), subsection (b) of this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than \$100 nor more than \$500: *Provided*, That if the conviction is based upon a violation of the provisions of subdivision (1), subsection (b) of this section where the offender exceeded the speed limit by fifteen miles per hour or more in the presence of one or more children, then upon conviction, shall be fined not less than \$100 nor more than \$500 or confined in jail for not more than six months, or both fined and confined: *Provided*, *however*, That if the signage required by subdivision (1) is not present in the school zone at the time of the violation, then any person who violates said provision is guilty of a misdemeanor, and upon conviction thereof, shall be fined not more than \$25.
  - (g) If an owner or driver is arrested under the provisions of this section for the offense of driving above the posted speed limit on a controlled access highway or interstate highway and if the evidence shows that the motor vehicle was being operated at ten miles per hour or less above the speed limit, then, upon conviction thereof, that person shall be fined not more than \$5, plus court costs.

- (h) Any person operating a commercial motor vehicle engaged in the transportation of coal on the coal resource transportation road system who violates subsection (a), (b) or (c) of this section shall, upon conviction, be subject to fines in triple the amount otherwise provided in subsection (e) of this section.
- (i) If an owner or driver is convicted under the provisions of this section for the offense of driving above the speed limit on a controlled access highway or interstate highway of this state and if the evidence shows that the motor vehicle was being operated at ten miles per hour or less above the speed limit, then notwithstanding the provisions of section four, article three, chapter seventeen-b of this code, a certified abstract of the judgment on the conviction shall not be transmitted to the Division of Motor Vehicles: *Provided*, That the provisions of this subsection do not apply to conviction of owners or drivers who have been issued a commercial driver's license as defined in chapter seventeen-e of this code, if the offense was committed while operating a commercial vehicle.
- (i) If an owner or driver is convicted in another state for the offense of driving above the maximum speed limit on a controlled access highway or interstate highway and if the maximum speed limit in the other state is less than the maximum speed limit for a comparable controlled access highway or interstate highway in this state, and if the evidence shows that the motor vehicle was being operated at ten miles per hour or less above what would be the maximum speed limit for a comparable controlled access highway or interstate highway in this state, then notwithstanding the provisions of section four, article three, chapter seventeen-b of this code, a certified abstract of the judgment on the conviction shall not be transmitted to the Division of Motor Vehicles or, if transmitted, shall not be recorded by the division, unless within a reasonable time after conviction, the person convicted has failed to pay all fines and costs imposed by the other state: *Provided*, That the provisions

- of this subsection do not apply to conviction of owners or drivers
- 123 who have been issued a commercial driver's license as defined
- in chapter seventeen-e of this code, if the offense was committed
- while operating a commercial vehicle.



(Com Sub. for S. B. 13 - By Senators Carmichael, Boso, Gaunch, Leonhardt, Trump, Walters, Blair, Takubo, Miller and Unger)

[Passed March 12, 2016; in effect ninety days from passage.] [Approved by the Governor on March 24, 2016.]

AN ACT to amend and reenact §17C-12-7 of the Code of West Virginia, 1931, as amended, relating to offense of overtaking and passing school bus stopped for the purpose of receiving and discharging children; creating rebuttable inference for charging purposes that registered owner or lessee was operating vehicle in the event that the driver of the passing vehicle cannot be ascertained at time of alleged offense; limiting penalty for violation to a fine where identity of operator is unknown; increasing certain penalties; clarifying that service of process is pursuant to West Virginia Rule of Criminal Procedure 4 where the vehicle is involved in violation, but identity of operator is not determined at the scene; and clarifying that offenses set forth in this section are separate and distinct from each other.

Be it enacted by the Legislature of West Virginia:

That §17C-12-7 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

### ARTICLE 12. SPECIAL STOPS REQUIRED.

§17C-12-7. Overtaking and passing school bus; penalties; signs and warning lights upon buses; requirements for sale of buses; mounting of cameras; educational information campaign; limitation on idling.

- (a) The driver of a vehicle, upon meeting or overtaking from 1 2 either direction any school bus which has stopped for the purpose of receiving or discharging any school children, shall 3 stop the vehicle before reaching the school bus when there is in 4 5 operation on the school bus flashing warning signal lights, as referred to in section eight of this article, and the driver may not 6 proceed until the school bus resumes motion, or is signaled by 7 the school bus driver to proceed or the visual signals are no 8 longer actuated. This section applies wherever the school bus is 9 receiving or discharging children including, but not limited to, 10 11 any street, highway, parking lot, private road or driveway: 12 *Provided*, That the driver of a vehicle upon a controlled access highway need not stop upon meeting or passing a school bus 13 which is on a different roadway or adjacent to the highway and 14 15 where pedestrians are not permitted to cross the roadway.
- 16 (b) Any driver acting in violation of subsection (a) of this section is guilty of a misdemeanor and, upon conviction for a 17 18 first offense, shall be fined not less than \$250 or more than \$500. or confined in jail not more than six months, or both fined and 19 confined. Upon conviction of a second violation of subsection 20 21 (a), the driver shall be fined not less than \$500 nor more than \$1,000, or confined in jail not more than six months, or both 22 fined and confined. Upon conviction of a third or subsequent 23 24 violation of subsection (a), the driver shall be fined \$1,000, and confined not less than forty-eight hours in jail but not more than 25 26 six months.
- (c) Where the actual identity of the operator of a motor vehicle operated in violation of subsection (a) of this section is

- 29 unknown but the license plate number of the motor vehicle is
- 30 known, it may be inferred that the operator was an owner or
- 31 lessee of the motor vehicle for purposes of the probable cause
- 32 determination. Where there is more than one registered owner or
- 33 lessee, the inference created by this subsection shall apply to the
- 34 first listed owner or lessee as found on the motor vehicle
- 35 registration: *Provided*, That a person charged with a violation of
- 36 subsection (a) of section under the provisions of this subsection
- 37 where the sole evidence against the owner or lessee is the
- 38 presence of the vehicle at the scene at the time of the offense
- 39 shall only be subject to the applicable fine set forth in subsection
- 40 (b) of this section upon conviction: *Provided*, *however*, That, the
- 41 offenses set forth in subsection (f) and (g) of this section are
- 42 separate and distinct from that set forth in subsection (a) of this
- 43 section.
- 44 (d) Service of process of a complaint issued pursuant to
- 45 subsection (c) of this section shall be effected consistent with
- 46 West Virginia Rule of Criminal Procedure 4.
- 47 (e) In addition to the penalties prescribed in subsections (b)
- 48 of this section, the Commissioner of Motor Vehicles shall, upon
- 49 conviction, suspend the driver's license of the person so
- 50 convicted:
- 51 (1) Of a first offense under subsection (b) of this section, for
- 52 a period of thirty days;
- 53 (2) Of a second offense under subsection (b) of this section,
- 54 for a period of ninety days; or
- 55 (3) Of a third or subsequent offense under subsection (b) of
- 56 this section, for a period of one hundred eighty days.
- 57 (f) Any driver of a vehicle who willfully violates the
- 58 provisions of subsection (a) of this section and the violation
- 59 causes serious bodily injury to any person other than the driver,

- is guilty of a felony and, upon conviction, shall be confined in a state correctional facility not less than one year nor more than three years and fined not less than \$500 nor more than \$2,000.
- 63 (g) Any driver of a vehicle who willfully violates the 64 provisions of subsection (a) of this section, and the violation 65 causes death, is guilty of a felony and, upon conviction, shall be 66 confined in a state correctional facility not less than one year nor 67 more than ten years and fined not less than \$1,000 nor more than 68 \$3,000.
  - (h) Every bus used for the transportation of school children shall bear upon the front and rear of the bus a plainly visible sign containing the words "school bus" in letters not less than eight inches in height. When a contract school bus is being operated upon a highway for purposes other than the actual transportation of children either to or from school, all markings on the contract school bus indicating "school bus" shall be covered or concealed. Any school bus sold or transferred to another owner by a county board of education, agency or individual shall have all flashing warning lights disconnected and all lettering removed or permanently obscured, except when sold or transferred for the transportation of school children.
  - (i) Every county board of education is hereby authorized to mount a camera on any school bus for the purpose of enforcing this section or for any other lawful purpose.
  - (j) To the extent that state, federal or other funds are available, the State Police shall conduct an information campaign to educate drivers concerning the provisions of this section and the importance of school bus safety.
  - (k) The State Board of Education shall promulgate a rule in accordance with the provisions of article three-b, chapter twenty-nine-a of this code governing the idling of school buses.

### (H. B. 4674 - By Delegates Howell, R. Smith, Ihle, Hamrick and Pushkin)

[Passed March 7, 2016; in effect ninety days from passage.] [Approved by the Governor on March 10, 2016.]

AN ACT to amend and reenact §17C-15-19 of the Code of West Virginia, 1931, as amended, relating to motor vehicle back-up lamps.

Be it enacted by the Legislature of West Virginia:

That §17C-15-19 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

### ARTICLE 15. EQUIPMENT.

### §17C-15-19. Additional lighting equipment.

- 1 (a) Any motor vehicle may be equipped with not more than
- 2 two side cowl or fender lamps which shall emit an amber or
- 3 white light without glare.
- 4 (b) Any motor vehicle may be equipped with not more than
- 5 one running board courtesy lamp on each side thereof which
- 6 shall emit a white or amber light without glare.
- 7 (c) All motor vehicles shall be equipped with a minimum of
- 8 at least two functioning back-up lamps either separately or in
- 9 combination with other lamps, unless the vehicle was originally
- 10 equipped with one lamp. Any such back-up lamp shall not be
- 11 lighted when the motor vehicle is in forward motion. School
- 12 buses used for the transportation of school children in this state,

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- 13 whether owned and operated by a county board of education or 14 privately owned and operated under contract with a county Board of Education, shall be equipped with at least two back-up 15 lamps, one on each side of the rear door, with white lens or 16 reflectors, capable of lighting the roadway and objects to the rear 17 18 of the bus for safe backing during darkness, and which, at the 19 option of the county board of education, may each provide fifty candlepower in illumination intensity instead of thirty-two 20 21 candlepower.
  - (d) Any vehicle may be equipped with lamps which may be used for the purpose of warning the operators of other vehicles of the presence of a vehicular traffic hazard requiring the exercise of unusual care in approaching, overtaking or passing, and when so equipped may display such warning in addition to any other warning signals required by this article. The lamps used to display such warning to the front shall be mounted at the same level and as widely spaced laterally as practicable and shall display simultaneously flashing white or amber lights, or any shade of color between white and amber. The lamps used to display such warning to the rear shall be mounted at the same level and as widely spaced laterally as practicable, and shall show simultaneously flashing amber or red lights, or any shade of color between amber and red.
  - (e) Vehicles used by "rural mail carriers" in carrying or delivering mail in rural areas may be equipped with amber flashing lights. Such lights shall be on the front and rear of the vehicle and may be activated when the vehicle is stopped or decreasing speed in order to stop in the course of carrying, delivering or picking up mail along the route.
  - (f) Vehicles used as the lead car in a funeral procession are hereby authorized to be equipped with, but are not required to use, purple lamps or purple flashing lights. Such lamps may be used for the purpose of warning the operators of other vehicles

- 46 of the presence of a vehicular traffic hazard requiring the
- 47 exercise of unusual care in approaching, overtaking or passing
- 48 a funeral procession, and when so equipped may display such
- 49 warning in addition to any other warning signals required by this
- 50 article. The lamps or flashing lights used to display such warning
- 51 to the front shall be mounted at the same level and as widely
- 52 spaced laterally as practicable and shall display simultaneously
- 53 either illuminated or flashing purple lights. The lamps used to
- 54 display such warning to the rear shall be mounted at the same
- 55 level and as widely spaced laterally as practicable, and shall
- show simultaneously flashing or illuminated purple lights.



(S. B. 94 - By Senator Walters)

[Passed March 8, 2016; in effect ninety days from passage.] [Approved by the Governor on March 15, 2016.]

AN ACT to amend and reenact §17C-16-4 of the Code of West Virginia, 1931, as amended, relating to designating Superintendent of the West Virginia State Police as current administrator and enforcer of motor vehicle inspection program.

Be it enacted by the Legislature of West Virginia:

That §17C-16-4 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

#### ARTICLE 16. INSPECTION OF VEHICLES.

§17C-16-4. Superintendent of the West Virginia State Police to require periodical inspection; acceptance of

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# certificate of inspection from another state; suspension of registration of unsafe vehicles.

- 1 (a) The Superintendent of the West Virginia State Police 2 shall once each year require that every motor vehicle, trailer, 3 semitrailer and pole trailer registered in this state be inspected 4 and that an official certificate of inspection and approval be 5 obtained for each vehicle.
- The inspections shall be made and the certificates obtained with respect to the mechanism, brakes and equipment of every vehicle designated by the Superintendent.
- 9 The Superintendent may make necessary rules for the administration and enforcement of this section and may 10 designate any period or periods during which owners of any 11 vehicles, subject to this section, shall display upon the vehicles 12 certificates of inspection and approval or shall produce the 13 certificates upon demand of any officer or employee of the State 14 15 Police designated by the Superintendent or any police or peace officer when authorized by the Superintendent. 16
  - (b) The superintendent may authorize the acceptance in this state of a certificate of inspection and approval issued in another state having an inspection law similar to this chapter and may extend the time within which the resident owner of a vehicle which was not in this state during the time an inspection was required must obtain a certificate.
  - (c) At the request of the Superintendent, the Commissioner of the Division of Motor Vehicles may suspend the registration of any vehicle which the Superintendent determines is in such an unsafe condition that it constitutes a menace to safety or which after notice and demand is not equipped as required in this chapter or for which the vehicle's owner has not obtained the required certificate.

- 30 (d) If requested by the owner of the vehicle, the 31 Superintendent shall also cause to be inspected a Class A farm 32 use motor vehicle exempt from annual registration certificate and licensing as provided in section two, article three, chapter 33 seventeen-a of this code. If the Class A farm use motor vehicle 34 35 passes the inspection, the Superintendent shall cause a certificate of inspection to be issued for that vehicle.

### **CHAPTER 246**

(Com. Sub. for H. B. 4662 - By Delegate Walters)

[Passed March 12, 2016; in effect July 1, 2016.] [Approved by the Governor on March 25, 2016.]

AN ACT to amend and reenact §17C-16-5 and §17C-16-6 of the Code of West Virginia, 1931, as amended, all relating to permitting the Superintendent of the State Police to collect \$3 from the sale of motor vehicle inspection stickers to purchase, equip and maintain vehicles; and increasing the allowable fee from \$12 to \$14 for vehicle inspection and any necessary headlight adjustment.

Be it enacted by the Legislature of West Virginia:

That §17C-16-5 and §17C-16-6 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

### ARTICLE 16. INSPECTION OF VEHICLES.

### §17C-16-5. Permit for official inspection stations; fees for and certificate of inspection.

- 1 (a) The Superintendent of the State Police is responsible for
- the inspection as provided in this article and shall prescribe

requirements and qualifications for official inspection stations. He or she shall select and designate the stations and shall issue permits for official inspection stations and furnish instructions and all necessary forms for the inspection of vehicles as required in this article and the issuance of official certificates of inspection and approval. The certificate of inspection shall be a paper sticker or decal to be affixed to the windshield of a motor vehicle, shall be serially numbered and shall properly identify the official inspection station which issued it. A charge of \$3 per sticker shall be charged by the State Police to the inspection station, and the funds received shall be deposited into the State Treasury and credited to the account of the State Police for application in the administration and enforcement of the provisions of this article and for the purchase of vehicles, equipment for vehicles, and maintenance of vehicles. The 

(b) A person shall apply for a permit upon an official form prescribed by the superintendent and the superintendent shall grant permits only when the superintendent is satisfied that the station is properly equipped and has competent personnel to make the inspections and adjustments and that the inspections and adjustments will be properly conducted. The superintendent, before issuing a permit, may require the applicant to file a bond with surety approved by the superintendent, conditioned that such applicant, as a station operator, will make compensation for any damage to a vehicle during an inspection or adjustment due to negligence on the part of the station operator or employees thereof.

superintendent may exchange stickers or make refunds to official inspection stations for stickers on hand when permits are

revoked or when, for any reason, the stickers become obsolete.

(c) The superintendent shall properly supervise and cause inspections to be made of the stations. Upon finding that a station is not properly equipped or conducted, the superintendent

36 may, upon a first violation, suspend the permit for a period of up 37 to one year. Upon a second or subsequent finding that a station is not properly equipped or conducted, the superintendent shall 38 permanently revoke and require the surrender of the permit. The 39 superintendent may reinstate the permit of any person whose 40 permit was permanently revoked prior to the effective date of 41 42 this section upon a first finding that a station was not properly equipped or conducted, upon application, at any time after the 43 44 expiration of six months from the time of revocation and shall 45 reinstate the permit, upon application, after the expiration of one 46 year. He or she shall maintain and post at his or her office and at 47 any other places as he or she may select lists of all stations holding permits and of those whose permits have been 48

# §17C-16-6. Assignment, transfer and posting of official inspection station permit; issuance and record of certificate of inspection; inspection fee.

suspended or revoked.

- 1 (a) No permit for an official inspection station shall be 2 assigned or transferred or used at any location other than 3 designated in the permit and every permit shall be posted in a 4 conspicuous place at the station location designated in the 5 permit.
- 6 (b) The person operating the station shall issue a certificate 7 of inspection and approval, upon an official form, to the owner 8 of a vehicle upon inspecting the vehicle and determining that its 9 equipment required under this article is in good condition and proper adjustment, but otherwise no certificate shall be issued, 10 11 except one issued pursuant to section two of this article. When required by the superintendent, a record and report shall be made 12 13 of every inspection and every certificate issued.
- 14 (c) A fee of not more than \$14 may be charged for an 15 inspection and any necessary headlight adjustment to proper

- 16 focus, not including any replacement parts required, and the
- 17 issuance of the certificate, but the imposition of the charge is not
- 18 mandatory.



# (Com. Sub. for H. B. 4218 - By Delegates Miley and Cowles) [By Request of the Executive]

[Passed March 12, 2016; in effect ninety days from passage.] [Approved by the Governor on March 24, 2016.]

AN ACT to amend and reenact §24C-1-2 of the Code of West Virginia, 1931, as amended, relating to the One-call system; revising the definition of "underground facility."

Be it enacted by the Legislature of West Virginia:

That §24C-1-2 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

#### ARTICLE 1. ONE-CALL SYSTEM.

#### §24C-1-2. Definitions.

- 1 As used in this chapter, unless the context clearly requires a
- 2 different meaning:
- 3 (a) "Damage" means any impact or contact with or
- 4 weakening of the support for an underground facility, its
- 5 appurtenances, protective casing, coating or housing, which,
- 6 according to the operation practices of the operator or state or
- 7 federal regulation, requires repair.

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- 8 (b) "Demolish" or "demolition" means any operation by 9 which a structure or mass of material is wrecked, razed, rendered, moved, or removed by means of any tools, equipment 10 or discharge of explosives which could damage underground 11 facilities: Provided, That "demolish" and "demolition" do not 12 13 include earth-disturbing activities authorized pursuant to the 14 provisions of article three, chapter twenty-two of this code or 15 article two, chapter twenty-two-a of this code.
- 16 (c) "Emergency" means:
- 17 (1) A condition constituting a clear and present danger to 18 life, health or property by reason of escaping toxic, corrosive or 19 explosive product, oil or oil-gas or natural gas hydrocarbon 20 product, exposed wires or other breaks or defects in an 21 underground facility; or
- (2) A condition that requires immediate correction to assure
   continuity of service provided by or through an underground
   facility.
  - (d) "Equipment operator" means any individual in physical control of powered equipment or explosives when being used to perform excavation work or demolition work.
  - (e) "Excavate" or "excavation" means any operation in which earth, rock or other material in the ground is moved, removed or otherwise displaced by means of any tools, equipment or explosives, and includes, without limitation, grading, trenching, digging, ditching, dredging, drilling, auguring, tunneling, moleing, scraping, cable or pipe plowing and driving, wrecking, razing, rendering, moving or removing any structure or mass of material, but does not include underground or surface mining operations or related activities or the tilling of soil for agricultural purposes or for domestic gardening. Further, for purposes of this article, the terms

- 39 "excavate" and "excavation" do not include routine maintenance
- 40 of paved public roads or highways by employees of state, county
- 41 or municipal entities or authorities which:
- 42 (1) Perform all work within the confines of the traveled 43 portion of the paved public way; and
- 44 (2) Do not excavate to a depth greater than twelve inches 45 measured from the top of the paved road surface.
- 46 (f) "Excavator" means any person intending to engage or 47 engaged in excavation or demolition work.
- 48 (g) "Member" means a member of a one-call system as 49 authorized by this article.
- 50 (h) "One-call system" means a communication system that 51 receives notification from excavators of intended excavation 52 work and prepares and transmits such notification to operators 53 of underground facilities in accordance with this article.
- 54 (i) "Operator" means any person who owns or operates an 55 underground facility used in the providing or transmission of any 56 of the goods or services described in subsection (1) of this 57 section.
- (j) "Person" means any individual, firm, joint venture, partnership, corporation, association, state agency, county, municipality, cooperative association or joint stock association, and any trustee, receiver, assignee, agency or personal representative thereof.
- 63 (k) "Powered equipment" means any equipment energized 64 by an engine, motor or hydraulic, pneumatic or electrical device 65 and used in excavation or demolition work.
- 66 (l) "Underground facility" means any underground pipeline 67 facility, owned by a utility and regulated by the Public Service

- Commission, which is used in the transportation or distribution 68 of gas, oil or a hazardous liquid; any underground pipeline 69 facility, owned by a company subject to the jurisdiction of the 70 federal energy regulatory commission, which is used in the 71 72 gathering, transportation or distribution of gas, oil or a hazardous 73 liquid; any underground production or gathering pipeline for gas, 74 oil, or any hazardous substance with a nominal inside diameter 75 in excess of four inches and that is not otherwise subject to 76 one-call reporting requirements under federal or state law; any 77 underground facility used as a water main, storm sewer, sanitary sewer or steam line; any underground facility used for electrical 78 79 power transmission or distribution; any underground cable, conductor, waveguide, glass fiber or facility used to transport 80 81 telecommunications, optical, radio, telemetry, television, or 82 other similar transmissions; and any facility used in connection 83 with any of the foregoing facilities on a bridge, a pole or other 84 span, or on the surface of the ground, any appurtenance, device, 85 cathodic protection system, conduit, protective casing or housing used in connection with any of the foregoing facilities: Provided, 86 That "underground facility" does not include underground or 87 surface coal mine operations. 88
- (m) "Workday" means any day except Saturday, Sunday or a federal or state legal holiday.
- 91 (n) "Work site" means the location of excavation or 92 demolition work as described by an excavator, operator, or 93 person or persons performing the work.



# (S. B. 558 - By Senators Cole (Mr. President) and Kessler) [By Request of the Executive]

[Passed March 1, 2016; in effect from passage.] [Approved by the Governor on March 3, 2016.]

AN ACT to amend and reenact §21A-8-10 and §21A-8-16 of the Code of West Virginia, 1931, as amended, all relating to maintaining the solvency of the Unemployment Compensation Fund; providing a mechanism for the Governor to borrow funds from the Revenue Shortfall Reserve Fund for a limited period and deposit those funds into the Unemployment Compensation Fund if the balance of the Unemployment Compensation Fund drops below \$50 million; providing that borrowed funds may only be used to pay benefits; providing that no amount borrowed may exceed \$50 million; and providing for repayment of borrowed amounts.

Be it enacted by the Legislature of West Virginia:

That §21A-8-10 and §21A-8-16 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

### ARTICLE 8. UNEMPLOYMENT COMPENSATION FUND.

### §21A-8-10. Withdrawals.

- 1 Except as provided in section thirteen of this article, money
- 2 shall be requisitioned from this state's account in the
- 3 Unemployment Trust Fund solely for the payment of benefits
- 4 and repayment of any loans outstanding from the Revenue
- 5 Shortfall Reserve Fund, created in section twenty, article two,
- 6 chapter eleven-b of this code, as provided in section sixteen of

- 7 this article. The commissioner may requisition from the
- 8 Unemployment Trust Fund such amounts, not exceeding the
- 9 amount of the account, as the commissioner determines to be
- 10 necessary for the payment of benefits for a reasonable future
- 11 period or to repay a loan outstanding from the Revenue Shortfall
- 12 Reserve Fund as provided in section sixteen of this article.
- 13 Upon receipt of the money the commissioner shall deposit
- 14 it in the benefit account.

# §21A-8-16. Loans to Unemployment Compensation Fund from Revenue Shortfall Reserve Fund.

- 1 (a) Notwithstanding any provision of this code to the
- 2 contrary and subject to the provisions of this section, the
- 3 Governor may, by executive order, after first notifying the
- 4 presiding officers of both houses of the Legislature in writing,
- 5 borrow funds from the Revenue Shortfall Reserve Fund created
- 6 in section twenty, article two, chapter eleven-b of this code for
- 7 deposit into the Unemployment Compensation Fund, created in
- 8 section one of this article, to be expended in accordance with this
- 9 code. The amount of funds borrowed and outstanding under this
- 10 section may not exceed \$50 million at any one time, or the
- 11 amount the Governor determines is necessary to adequately
- 12 sustain the balance in the Unemployment Compensation Fund at
- 13 a minimum of \$50 million, whichever is less.
- 14 (b) Notwithstanding the provisions of subsection (a) of this
- 15 section, the Governor may not borrow funds from the Revenue
- 16 Shortfall Reserve Fund unless the Executive Director of
- 17 Workforce West Virginia has projected that the balance in the
- 18 state's Unemployment Compensation Fund will be less than \$50
- 19 million at any time during the next thirty days.
- 20 (c) Any funds borrowed pursuant to this section shall be
- 21 used to pay benefits only.

(d) Any funds borrowed pursuant to this subsection shall be repaid from funds on deposit in the Unemployment Trust Fund in excess of \$50 million or from other funds legally available for such purpose, without interest, and redeposited to the credit of the Revenue Shortfall Reserve Fund within one hundred eighty days of their withdrawal.

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28 (e) No amounts may be borrowed pursuant to the provisions 29 of this section after September 1, 2017.



(H. B. 4558 - By Delegates Frich, Shott, Arvon, P. Smith, Rowan, Sobonya, Miller, Border, Upson, Kessinger and Summers)

[Passed March 12, 2016; in effect ninety days from passage.] [Approved by the Governor on March 25, 2016.]

AN ACT to amend and reenact §61-11A-8 of the Code of West Virginia, 1931, as amended, relating to victim notification and designation of additional individuals to receive notice of an offender's release, sentencing, placement or escape; providing an option to victims to designate an additional adult individual to receive notification; and requiring the victim to provide the additional adult individual's contact information in writing to the appropriate notifying entity.

Be it enacted by the Legislature of West Virginia:

That §61-11A-8 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

### ARTICLE 11A. VICTIM PROTECTION ACT OF 1984.

# §61-11A-8. Notification to victim of offender's release, placement, or escape from custody.

- 1 (a) At the time a criminal prosecution is commenced by the
  2 filing of a complaint, if the complaint charges a person with
  3 committing an offense described in subsection (e) of this section,
  4 then the prosecuting attorney is required to provide notice, in
  5 writing or by telephone, to the victim or a family member that he
  6 or she may request that they be notified prior to or at the time of
  7 any release of the accused from custody pending judicial
  8 proceedings.
- 9 (b) If a person is convicted of an offense described in subsection (e) of this section, the prosecuting attorney is required to provide notice, in writing or by telephone, to the victim or a family member that he or she may request that they be notified prior to or at the time of sentencing if the convicted person will be placed on work release, home confinement or probation.
- (c) If a person is convicted of an offense described in subsection (e) of this section and is imprisoned in a state correctional facility or confined in a county or regional jail, the commissioner of corrections, the regional jail supervisor or the sheriff, as the case may be, is required to provide notice, in writing or by telephone, to the victim or a family member that he or she may request that they be notified prior to or at the time of:
- 22 (1) Releasing the convicted person from imprisonment in 23 any correctional facility;
- 24 (2) Releasing the convicted person from confinement in any 25 jail;
- (3) Placing the convicted person in a halfway house or other
   nonsecure facility to complete his or her sentence; or

- 28 (4) Any escape by the convicted person from a state 29 correctional facility or a jail.
- (d) The notice shall include instructions for the victim or thevictim family member on how to request the notification.
- 32 (e) Offenses which are subject to the provisions of this section are as follows:
- 34 (1) Murder;
- 35 (2) Aggravated robbery;
- 36 (3) Sexual assault in the first degree;
- 37 (4) Kidnapping;
- 38 (5) Arson;
- 39 (6) Any sexual offense against a minor; or
- 40 (7) Any violent crime against a person.
- 41 (f) The Commissioner of Corrections, a regional jail 42 supervisor, a sheriff or a prosecuting attorney who receives a 43 written request for notification shall provide notice in writing on
- 43 written request for notification shall provide notice, in writing or
- by telephone, to the last known address or addresses or telephone
   number or numbers provided by the victim or a member of the
- 46 victim's family, or in the case of a minor child, to the custodial
- 47 parent, guardian or custodian of the child, in accordance with the
- 48 provisions of this section. In case of escape, notification shall be
- 49 by telephone, if possible.
- 50 (g) If one or more family members of a victim request
- 51 notification and if the victim is an adult and is alive and
- 52 competent, notification shall be sent to the victim, if possible,
- 53 notwithstanding that he or she did not request the notification. If

- 54 the victim is deceased or an adult who is alive but not competent,
- 55 the notice shall be sent to the first family member requesting
- 56 notice in conformity with this section.
- 57 (h) If notification by telephone to a victim is attempted,
- 58 notification is not complete unless it is given directly to the
- person requesting notification and after that person's identity has 59
- 60 been verified. An attempted notification made to a voice mail or
- another recording device or to another member of the household 61
- is insufficient. 62
- 63 (i) For the purposes of this section, the following words or
- 64 phrases defined in this subsection have the meanings ascribed to
- them. These definitions are applicable unless a different meaning 65
- 66 clearly appears from the context.
- 67 (1) "Filing of a complaint" means the filing of a complaint
- in accordance with the West Virginia Rules of Criminal 68
- 69 Procedure promulgated by the Supreme Court of Appeals or the
- 70 provisions of this code.
- 71 (2) "Victim" means a victim of a crime listed in subsection
- 72 (e) of this section who is alive and competent.
- 73 (3) "Victim's family member" means a member of the
- family of a victim of a crime listed in subsection (e) of this 74
- 75 section who is not alive and competent.
- 76 (j) In addition to those persons required to be notified under
- 77 this section, a victim may designate an additional adult
- individual to receive notice provided for by this section: 78
- Provided, That the obligation to notify the additional individuals 79
- under this section only arises if the additional adult individual's 80
- 81 contact information is provided in writing by the victim to the
- 82 appropriate notifying entity.

(Com. Sub. for H. B. 4174 - By Delegates Kurcaba, Statler, Weld, Fast, Kelly, Azinger, Waxman, Blair, Upson, Frich and Phillips)

[Passed March 12, 2016; in effect ninety days from passage.] [Approved by the Governor on March 30, 2016.]

AN ACT to amend and reenact §20-2-58 of the Code of West Virginia, 1931, as amended; and to amend and reenact §61-6-23 of said code, all relating to shooting ranges generally; exempting activity at indoor shooting ranges from the prohibition of shooting or discharging a firearm within five hundred feet of any church or dwelling house; amending the definition of "shooting range" to include an indoor range otherwise lawfully compliant; exempting activity at indoor shooting ranges from criminal penalties for violations for shooting or discharging a firearm within five hundred feet of any church or dwelling house; modifying and clarifying the limitations on nuisance actions against shooting ranges; and exempting indoor shooting ranges which have necessary licenses and are compliant with applicable laws, rules or ordinance from nuisance law.

Be it enacted by the Legislature of West Virginia:

That §20-2-58 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that §61-6-23 of said code be amended and reenacted, all to read as follows:

#### CHAPTER 20. NATURAL RESOURCES.

### ARTICLE 2. WILDLIFE RESOURCES.

§20-2-58. Shooting across road or near building or crowd; penalty.

- 1 (a) In addition to any other prohibitions which may exist by
- law, it shall be unlawful for any person to shoot or discharge any
- 3 firearms:
- 4 (1) Across or in any public road in this state, at any time;
- 5 (2) Within five hundred feet of any school or church; or
- 6 (3) Within five hundred feet of any dwelling house:
- Provided, That a person who is a resident of a dwelling house,
- 8 and his or her authorized guest, may shoot or discharge a firearm
- in a lawful manner within five hundred feet of the dwelling 9
- house where the person lives, if the firearm is being discharged 10
- 11 with the express or implied knowledge and consent of all
- 12 residents of that dwelling house, and no other dwelling houses
- 13 are located within five hundred feet of where the firearm is
- 14 discharged; or
- 15 (4) In any state, county or municipal park in areas of which
- the discharge of firearms is prohibited. 16
- 17 (b) Any person violating this section is guilty of a
- 18 misdemeanor and, upon conviction thereof, shall be fined not
- 19 less than \$50 nor more than \$500 or confined in jail for not more
- than one hundred days, or both fined and confined. 20
- 21 (c) Notwithstanding the provisions of subsection (a) of this
- section, any person operating a gun repair shop, licensed to do 22
- 23 business in the State of West Virginia and duly licensed under
- 24 applicable federal statutes, may be exempted from the
- 25
- prohibition established by this section and section twelve, article seven, chapter sixty-one of this code for the purpose of test firing 26
- a firearm. The director of the Division of Natural Resources shall 27
- 28 prescribe such rules as may be necessary to carry out the
- 29 purposes of the exemption under this section and section twelve,
- 30 article seven, chapter sixty-one and shall ensure that any person

- 31 residing in any dwelling home within five hundred feet of such
- 32 gun repair shop be given an opportunity to protest the granting
- 33 of such exemption.
- 34 (d) The provisions of this section are not applicable to indoor
- 35 shooting ranges the owner or operator of which holds all
- 36 necessary and required licenses and the shooting range is in
- 37 compliance with all applicable state, county, municipal laws,
- 38 rules or ordinances regulating the design and operation of such
- 39 facilities.

### CHAPTER 61. CRIMES AND THEIR PUNISHMENT.

### ARTICLE 6. CRIMES AGAINST THE PEACE.

### §61-6-23. Shooting range; limitations on nuisance actions.

- 1 (a) As used in this section:
  - 2 (1) "Person" means an individual, proprietorship,
  - 3 partnership, corporation, club or other legal entity;
  - 4 (2) "Shooting range" or "range" means an area, whether
  - 5 indoor or outdoor, designed and operated for the use of rifles,
  - 6 shotguns, pistols, silhouettes, skeet, trap, black powder or any
  - 7 other similar shooting.
  - 8 (b) Except as provided in this section, a person may not
  - 9 maintain a nuisance action for noise against a shooting range
- 10 located in the vicinity of that person's property if the range was
- 11 established as of the date of the person acquiring the property. If
- 12 there is a substantial change in use of the range or there is a
- period of shooting inactivity at a range exceeding one year after
- 14 the person acquires the property, the person may maintain a
- 15 nuisance action if the action is brought within two years from the
- beginning of the substantial change in use of the range, or the
- 17 resumption of shooting activity.

- 18 (c) A person who owned property in the vicinity of a 19 shooting range that was established after the person acquired the 20 property may maintain a nuisance action for noise against that 21 range only if the action is brought within two years after 22 establishment of the range or two years after a substantial change 23 in use of the range or from the time shooting activity is resumed.
- (d) Actions authorized by the provisions of this section are not applicable to indoor shooting ranges the owner or operator of which holds all necessary and required licenses and the shooting range is in compliance with all applicable state, county and municipal laws, rules or ordinances regulating the design and operation of such facilities.

(Com. Sub. for H. B. 4279 - By Delegates Hamilton, A. Evans, Romine, Wagner, Ambler, Eldridge, Pethtel, Sponaugle and Guthrie)

[Passed March 7, 2016; in effect ninety days from passage.] [Approved by the Governor on March 10, 2016.]

AN ACT to amend and reenact §20-7-8 of the Code of West Virginia, 1931, as amended, relating to maintenance and disposition of impounded and seized firearms by the Division of Natural Resources.

Be it enacted by the Legislature of West Virginia:

That §20-7-8 of the Code of West Virginia, 1931, be amended and reenacted to read as follows:

# ARTICLE 7. LAW ENFORCEMENT, MOTORBOATING, LITTER.

# §20-7-8. Seizure and disposition of property used for illegal purpose.

- 1 (a) Any officer, when he or she arrests or otherwise takes a
- 2 person into custody for violating any provision or provisions of
- 3 this chapter, may take and impound any property found in the
- 4 possession of the accused and susceptible of use in committing
- 5 the offense of which the person is accused. The property
- 6 includes firearms, fishing equipment, traps, boats, or any other
- 7 device, appliance or conveyance, but does not include dogs.
- 8 Reasonable care shall be provided in order to protect the
- 9 condition of the item or items impounded.
- 10 (b) If the accused is acquitted the property seized shall be
- 11 returned. If the accused is convicted and pays the fine, costs and
- 12 other penalties, the property shall be returned, but if the accused
- 13 fails to pay the fine and costs, the property shall be sold at public
- 14 auction in a manner the director prescribes. The proceeds of the
- 15 sale shall be applied toward the payment of the fine and costs.
- 16 The remainder, if any, shall be paid to the owner of the seized
- 17 property.
- 18 (c) Whenever a person is convicted of a violation of this
- 19 chapter a second time, the property seized at the time of arrest
- 20 shall in any case be declared forfeited to the state and shall be
- 21 sold in the manner provided by this section.
- 22 (d) Property seized, the use of which is forbidden by this
- 23 chapter, or which is unfit or unsafe for further use, shall be
- 24 declared forfeited to the state and shall be disposed of by the
- 25 director.
- 26 (e) Notwithstanding any provision of this section to the
- 27 contrary, disposition of firearms not returned pursuant to

subsection (b) above shall be solely in accordance with the provisions of article eight-a, chapter thirty-six of this code.

## **CHAPTER 252**

(Com. Sub. for H. B. 4145 - By Delegates Blair, Azinger, Butler, Cadle, Eldridge, Householder, Marcum, Overington, Phillips, Sobonya and Upson)

> [Passed February 24, 2016; in effect ninety days from passage. Vetoed by the Governor. Repassed notwithstanding the objections of the Governor, March 5, 2016.]

AN ACT to repeal §20-2-6a of the Code of West Virginia, 1931, as amended; to amend and reenact §61-7-3, §61-7-4, §61-7-6, §61-7-7 and §61-7-11a of said code; and to amend said code by adding thereto three new sections, designated §61-7-4a, §61-7-15a and §61-7-17, all relating to the carrying of firearms and deadly weapons generally; establishing that criminal penalties for carrying a concealed deadly weapon without state license or other lawful authorization apply only to persons under twenty-one years of age and prohibited persons; requiring an applicant for a concealed weapon permit be a United States citizen or legal resident thereof, a resident of this state and of the county in which application is made; requiring training courses in handling and firing a handgun to include the actual live firing of ammunition; requiring certificates of completion of a training course which are submitted with license applications include the instructor's name, signature and NRA or state instructor identification number; requiring that on or after January 1, 2017, all duplicate license cards issued by county sheriffs be uniform across all fifty-five counties and feature a photograph of the licensee; requiring State Police, in cooperation with the Sheriffs' Bureau of Professional Standards, prepare

uniform applications for licenses and license cards; entitling a person who pays fees for training or application after the effective date to a tax credit equal to the amount actually paid for training not to exceed \$50, unless such training was provided for free or for less than \$50, then such tax credit may be applied to the fees associated with the initial application; establishing a provisional license to carry concealed deadly weapons for persons at least eighteen years of age and less than twenty-one years of age; establishing provisional license application requirements and procedures; providing for exceptions as to prohibitions against carrying handguns concealed for persons at least eighteen years of age and fewer than twenty-one years of age; providing for any United States citizen or legal resident thereof at least twenty-one years of age and not otherwise prohibited from possessing a firearm may carry a concealed deadly weapon without a license; creating felony offenses for any persons prohibited from possessing firearms who carry concealed firearms and providing for criminal penalties; providing that it shall not be unlawful to possess a firearm in or on a private primary or secondary education building, structure or facility when such institution has adopted written policies allowing for possession of firearms; exempting probation officers from prohibition against possessing firearms on premises of educational facilities; requiring a school principal to report certain violations to the State Police; creating felony offense for persons using or presenting a firearm while engaged in the commission of a felony and providing for criminal penalties; and providing for construction of article.

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

That §20-2-6a of the Code of West Virginia, 1931, as amended, be repealed; that §61-7-3, §61-7-4, §61-7-6, §61-7-7 and §61-7-11a of said code be amended and reenacted; and that said code be amended by adding thereto three new sections, designated §61-7-4a, §61-7-15a and §61-7-17, all to read as follows:

### ARTICLE 7. DANGEROUS WEAPONS.

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# §61-7-3. Carrying a deadly weapon without provisional license or other authorization by persons under twenty-one years of age; penalties.

- 1 (a) Any person under twenty-one years of age and not 2 otherwise prohibited from possessing firearms under section seven of this article who carries a concealed deadly weapon, 3 without a state license or other lawful authorization established 4 5 under the provisions of this code, is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than \$100 6 7 nor more than \$1,000 and may be imprisoned in jail for not more 8 than twelve months for the first offense; but upon conviction of 9 a second or subsequent offense, he or she is guilty of a felony and, upon conviction thereof, shall be imprisoned in a state 10 correctional facility not less than one nor more than five years 11
- 13 (b) The prosecuting attorney in all cases shall ascertain whether or not the charge made by the grand jury is a first 14 offense or is a second or subsequent offense and, if it is a second 15 16 or subsequent offense, it shall be so stated in the indictment 17 returned, and the prosecuting attorney shall introduce the record evidence before the trial court of such second or subsequent 18 offense and may not be permitted to use discretion in introducing 19 20 evidence to prove the same on the trial.

and fined not less than \$1,000 nor more than \$5,000.

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

- 1 (a) Except as provided in subsection (h) of this section, any 2 person desiring to obtain a state license to carry a concealed
- deadly weapon shall apply to the sheriff of his or her county for
- 4. The live are and are to the checkfort the time of anti-ortion
- 4 the license, and pay to the sheriff, at the time of application, a
- 5 fee of \$75, of which \$15 of that amount shall be deposited in the
- 6 Courthouse Facilities Improvement Fund created by section six,

- 7 article twenty-six, chapter twenty-nine of this code. Concealed
- 8 weapons license may only be issued for pistols and revolvers.
- 9 Each applicant shall file with the sheriff a complete application,
- 10 as prepared by the Superintendent of the West Virginia State
- 11 Police, in writing, duly verified, which sets forth only the
- 12 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.
- 20 §922(g)(5)(B);
- 21 (2) That, on the date the application is made, the applicant is 22 a bona fide United States citizen or legal resident thereof and 23 resident of this state and of the county in which the application 24 is made and has a valid driver's license or other state-issued 25 photo identification showing the residence;
- 26 (3) That the applicant is twenty-one years of age or older;
- 27 (4) That the applicant is not addicted to alcohol, a controlled 28 substance or a drug and is not an unlawful user thereof as 29 evidenced by either of the following within the three years 30 immediately prior to the application:
- (A) Residential or court-ordered treatment for alcoholism or
   alcohol detoxification or drug treatment; or
- 33 (B) Two or more convictions for driving while under the influence or driving while impaired;
- 35 (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 hasbeen unconditionally pardoned for the offense;
- 39 (6) That the applicant has not been convicted of a 40 misdemeanor crime of violence other than an offense set forth in 41 subdivision (7) of this section in the five years immediately 42 preceding the application;
- 43 (7) That the applicant has not been convicted of a misdemeanor crime of domestic violence as defined in 18 U.S. 44 45 C. §921(a)(33), or a misdemeanor offense of assault or battery either under section twenty-eight, article two of this chapter or 46 subsection (b) or (c), section nine, article two of this chapter in 47 which the victim was a current or former spouse, current or 48 former sexual or intimate partner, person with whom the 49 50 defendant cohabits or has cohabited, a parent or guardian, the defendant's child or ward or a member of the defendant's 51 household at the time of the offense, or a misdemeanor offense 52 53 with similar essential elements in a jurisdiction other than this 54 state;
- 55 (8) That the applicant is not under indictment for a felony 56 offense or is not currently serving a sentence of confinement, 57 parole, probation or other court-ordered supervision imposed by 58 a court of any jurisdiction or is the subject of an emergency or 59 temporary domestic violence protective order or is the subject of 60 a final domestic violence protective order entered by a court of 61 any jurisdiction;

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(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;

- 69 (10) That the applicant is not prohibited under the provisions 70 of section seven of this article or federal law, including 18 U. S. 71 C. §922(g) or (n), from receiving, possessing or transporting a 72 firearm:
- 73 (11) That the applicant has qualified under the minimum 74 requirements set forth in subsection (d) of this section for 75 handling and firing the weapon: *Provided*, That this requirement 76 shall be waived in the case of a renewal applicant who has 77 previously qualified; and
- 78 (12) That the applicant authorizes the sheriff of the county, 79 or his or her designee, to conduct an investigation relative to the 80 information contained in the application.
- 81 (b) For both initial and renewal applications, the sheriff shall 82 conduct an investigation including a nationwide criminal background check consisting of inquiries of the National Instant 83 Criminal Background Check System, the West Virginia criminal 84 85 history record responses and the National Interstate Identification Index and shall review the information received in 86 order to verify that the information required in subsection (a) of 87 this section is true and correct. A license may not be issued 88 89 unless the issuing sheriff has verified through the National 90 Instant Criminal Background Check System that the information 91 available to him or her does not indicate that receipt or 92 possession of a firearm by the applicant would be in violation of 93 the provisions of section seven of this article or federal law, 94 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

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- 101 funds deposited in this concealed weapon license administration
- fund are to be expended by the sheriff to pay the costs associated
- 103 with issuing concealed weapons licenses. Any surplus in the
- 104 fund on hand at the end of each fiscal year may be expended for
- 105 other law-enforcement purposes or operating needs of the
- sheriff's office, as the sheriff considers appropriate.
- 107 (d) All persons applying for a license must complete a 108 training course in handling and firing a handgun, which includes 109 the actual live firing of ammunition by the applicant. The 110 successful completion of any of the following courses fulfills 111 this training requirement: *Provided*, That the completed course
- includes the actual live firing of ammunition by the applicant:
- 113 (1) Any official National Rifle Association handgun safety 114 or training course;
- 115 (2) Any handgun safety or training course or class available 116 to the general public offered by an official law-enforcement 117 organization, community college, junior college, college or 118 private or public institution or organization or handgun training
- 119 school utilizing instructors certified by the institution;
- 120 (3) Any handgun training or safety course or class conducted
- 121 by a handgun instructor certified as such by the state or by the
- 122 National Rifle Association;
- 123 (4) Any handgun training or safety course or class conducted
- 124 by any branch of the United States military, reserve or National
- 125 Guard or proof of other handgun qualification received while
- 126 serving in any branch of the United States military, reserve or
- 127 National Guard.
- 128 A photocopy of a certificate of completion of any of the
- 129 courses or classes or an affidavit from the instructor, school,
- 130 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 and shall include the instructor's
- 135 name, signature and NRA or state instructor identification
- 136 number, if applicable.

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- 137 (e) All concealed weapons license applications must be 138 notarized by a notary public duly licensed under article four, 139 chapter twenty-nine of this code. Falsification of any portion of 140 the application constitutes false swearing and is punishable 141 under 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. All duplicate license cards issued on or after July 1, 2017, shall be uniform across all

- 163 fifty-five counties in size, appearance and information and shall 164 feature a photograph of the licensee.
- 165 (i) The Superintendent of the West Virginia State Police, in 166 cooperation with the West Virginia Sheriffs' Bureau of 167 Professional Standards, shall prepare uniform applications for 168 licenses and license cards showing that the license has been 169 granted and shall do any other act required to be done to protect 170 the state and see to the enforcement of this section.

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- (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 179 counsel, but in no case is the court required to appoint counsel for an applicant. The final order of the court shall include the court's findings of fact and conclusions of law. If the final order upholds the denial, the applicant may file an appeal in accordance with the Rules of Appellate Procedure of the Supreme Court of Appeals. If the findings of fact and conclusions of law of the court fail to uphold the denial, the applicant may be entitled to reasonable costs and attorney's fees, payable by the sheriff's office which issued the denial.
  - (k) If a license is lost or destroyed, the person to whom the license was issued may obtain a duplicate or substitute license for a fee of \$5 by filing a notarized statement with the sheriff indicating that the license has been lost or destroyed.
  - (1) Whenever any person after applying for and receiving a concealed weapon license moves from the address named in the application to another county within the state, the license

195 remains valid for the remainder of the five years unless the 196 sheriff of the new county has determined that the person is no 197 longer eligible for a concealed weapon license under this article, 198 and the sheriff shall issue a new license bearing the person's new 199 address and the original expiration date for a fee not to exceed 200 \$5: Provided, That the licensee, within twenty days thereafter, 201 notifies the sheriff in the new county of residence in writing of 202 the old and new addresses.

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- (m) The sheriff shall, immediately after the license is granted as aforesaid, furnish the Superintendent of the West Virginia State Police a certified copy of the approved application. The sheriff shall furnish to the Superintendent of the West Virginia State Police at any time so requested a certified list of all licenses issued in the county. The Superintendent of the West Virginia State Police shall maintain a registry of all persons who have been issued concealed weapons licenses.
- 211 (n) The sheriff shall deny any application or revoke any 212 existing license upon determination that any of the licensing 213 application requirements established in this section have been 214 violated by the licensee.
- 215 (o) A person who is engaged in the receipt, review or in the 216 issuance or revocation of a concealed weapon license does not 217 incur any civil liability as the result of the lawful performance of 218 his or her duties under this article.
- 219 (p) Notwithstanding subsection (a) of this section, with respect to application by a former law-enforcement officer 220 honorably retired from agencies governed by article fourteen, 221 chapter seven of this code; article fourteen, chapter eight of this 222 223 code; article two, chapter fifteen of this code; and article seven, 224 chapter twenty of this code, an honorably retired officer is 225 exempt from payment of fees and costs as otherwise required by 226 this section. All other application and background check

- requirements set forth in this section are applicable to these applicants.
- (q) Information collected under this section, including 229 230 applications, supporting documents, permits, renewals or any 231 other information that would identify an applicant for or holder 232 of a concealed weapon license, is confidential: Provided, That 233 this information may be disclosed to a law-enforcement agency 234 or officer: (i) To determine the validity of a license; (ii) to assist 235 in a criminal investigation or prosecution; or (iii) for other lawful law-enforcement purposes. A person who violates this 236 237 subsection is guilty of a misdemeanor and, upon conviction 238 thereof, shall be fined not less than \$50 or more than \$200 for 239 each offense.
- 240 (r) A person who pays fees for training or application 241 pursuant to this article after the effective date of this section is 242 entitled to a tax credit equal to the amount actually paid for 243 training not to exceed \$50: *Provided*, That if such training was 244 provided for free or for less than \$50, then such tax credit may 245 be applied to the fees associated with the initial application.
- 246 (s) Except as restricted or prohibited by the provisions of this 247 article or as otherwise prohibited by law, the issuance of a 248 concealed weapon license issued in accordance with the 249 provisions of this section authorizes the holder of the license to 250 carry a concealed pistol or revolver on the lands or waters of this 251 state.

### §61-7-4a. Provisional license to carry deadly weapons; how obtained.

- 1 (a) Any person who is at least eighteen years of age and less
- 2 than twenty-one years of age who desires to obtain a state license
- 3 to carry a concealed deadly weapon shall apply to the sheriff of
- 4 his or her county for a provisional license, and pay to the sheriff,

- 5 at the time of application, a fee of \$25, of which \$5 of that
- 6 amount shall be deposited in the Courthouse Facilities
- 7 Improvement Fund created by section six, article twenty-six,
- 8 chapter twenty-nine of this code. Provisional licenses may only
- 9 be issued for pistols or revolvers. Each applicant shall file with
- 10 the sheriff a complete application, as prepared by the
- 11 Superintendent of the West Virginia State Police, in writing,
- 12 duly verified, which sets forth only the following licensing
- 13 requirements:
- 14 (1) The applicant's full name, date of birth, Social Security
- 15 number, a description of the applicant's physical features, the
- 16 applicant's place of birth, the applicant's country of citizenship
- 17 and, if the applicant is not a United States citizen, any alien or
- 18 admission number issued by the United States Bureau of
- 19 Immigration and Customs Enforcement, and any basis, if
- 20 applicable, for an exception to the prohibitions of 18 U. S. C.
- 21 §922(g)(5)(B);
- 22 (2) That, on the date the application is made, the applicant is
- 23 a bona fide resident of this state and of the county in which the
- 24 application is made and has a valid driver's license or other
- 25 state-issued photo identification showing the residence;
- 26 (3) That the applicant is at least eighteen years of age and
- 27 less than twenty-one years of age;
- 28 (4) That the applicant is not addicted to alcohol, a controlled
- 29 substance or a drug and is not an unlawful user thereof as
- 30 evidenced by either of the following within the three years
- 31 immediately prior to the application:
- 32 (A) Residential or court-ordered treatment for alcoholism or
- 33 alcohol detoxification or drug treatment; or
- 34 (B) Two or more convictions for driving while under the
- 35 influence or driving while impaired;

- 36 (5) That the applicant has not been convicted of a felony 37 unless the conviction has been expunged or set aside, or the 38 applicant's civil rights have been restored or the applicant has 39 been unconditionally pardoned for the offense;
- 40 (6) That the applicant has not been convicted of a 41 misdemeanor crime of violence other than an offense set forth in 42 subdivision (7) of this section within five years immediately 43 preceding the application;
- 44 (7) That the applicant has not been convicted of a misdemeanor crime of domestic violence as defined in 18 U.S. 45 46 C. §921(a)(33), or a misdemeanor offense of assault or battery 47 under either section twenty-eight, article two of this chapter or subsection (b) or (c), section nine, article two of this chapter in 48 49 which the victim was a current or former spouse, current or former sexual or intimate partner, person with whom the 50 51 defendant cohabits or has cohabited, a parent or guardian, the 52 defendant's child or ward or a member of the defendant's household at the time of the offense, or a misdemeanor offense 53 54 with similar essential elements in a jurisdiction other than this 55 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;

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(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;
- 70 (10) That the applicant is not prohibited under section seven 71 of this article or federal law, including 18 U. S. C. §922(g) or 72 (n), from receiving, possessing or transporting a firearm;
- 73 (11) That the applicant has qualified under the minimum 74 requirements set forth in subsection (d) of this section for 75 handling and firing the weapon;
- 76 (12) That the applicant authorizes the sheriff of the county, 77 or his or her designee, to conduct an investigation relative to the 78 information contained in the application.
- 79 (b) For provisional license applications, the sheriff shall conduct an investigation including a nationwide criminal 80 background check consisting of inquiries of the National Instant 81 82 Criminal Background Check System, the West Virginia criminal 83 record responses and the National history Interstate Identification Index, and shall review the information received 84 in order to verify that the information required in subsection (a) 85 of this section is true and correct. A provisional license may not 86 be issued unless the issuing sheriff has verified through the 87 88 National Instant Criminal Background Check System that the information available does not indicate that receipt of or 89 90 possession of a firearm by the applicant would be in violation of the provisions of section seven of this article or federal law, 91 92 including 18 U. S. C. §922(g) or (n).
  - (c) Twenty dollars of the application fee and any fees for replacement of lost or stolen provisional 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

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- 99 funds deposited in said fund are to be expended by the sheriff to 100 pay the costs associated with issuing concealed weapons 101 provisional licenses. Any surplus in the fund on hand at the end 102 of each fiscal year may be expended for other law-enforcement 103 purposes or operating needs of the sheriff's office, as the sheriff 104 considers appropriate.
- (d) All persons applying for a provisional license must complete a training course in handling and firing a handgun, which includes the actual live firing of ammunition by the applicant. The successful completion of any of the following courses fulfills this training requirement: *Provided*, That the completed course included the actual live firing of ammunition by the applicant:
- (1) Any official National Rifle Association handgun safetyor training course;
- 114 (2) Any handgun safety or training course or class available 115 to the general public offered by an official law-enforcement 116 organization, community college, junior college, college, or 117 private or public institution, or organization or handgun training 118 school utilizing instructors certified by the institution;
- 119 (3) Any handgun training or safety course or class conducted 120 by a handgun instructor certified as such by the state or by the 121 National Rifle Association;
- 122 (4) Any proof of current or former service in the United 123 States armed forces, armed forces reserves or National Guard.

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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

- 129 successful completion of the course or class, is evidence of
- 130 qualification under this section. Certificates, affidavits or other
- 131 documents submitted to show completion of a course or class
- 132 shall include instructor information and proof of instructor
- 133 certification, including, if applicable, the instructor's NRA
- 134 instructor certification number.

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- (e) All provisional 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
- 139 section two, article five of this chapter.
- 140 (f) The sheriff shall issue a provisional license unless the 141 sheriff determines that the application is incomplete, that it contains statements that are materially false or incorrect or that 142 143 applicant otherwise does not meet the requirements set forth in 144 this section. The sheriff shall issue, reissue or deny the license 145 within forty-five days after the application is filed once all required background checks authorized by this section are 146 147 completed.
  - (g) Before any approved license is issued or is effective, the applicant shall pay to the sheriff a fee in the amount of \$15 which the sheriff shall forward to the Superintendent of the West Virginia State Police within thirty days of receipt. The provisional license is valid until the licensee turns twenty-one years of age, unless sooner revoked.
  - (h) Each provisional 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 provisional 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. Duplicate license cards issued shall be uniform across all fifty-five counties in size, appearance and information and must feature a photograph of the licensee. The provisional license shall be readily distinguishable from a license issued pursuant to section four of this article and shall state: "NOT NICS EXEMPT. This license confers the same rights and privileges to carry a concealed pistol or revolver on the lands or waters of this state as a license issued pursuant to section four, article seven, chapter sixty-one of this code, except that this license does not satisfy the requirements of 18 U. S. C. §922(t)(3). A NICS check must be performed prior to purchase of a firearm from a federally licensed firearm dealer." 

(i) The Superintendent of the West Virginia State Police, in coordination with the West Virginia Sheriffs' Bureau of Professional Standards, shall prepare uniform applications for provisional licenses and license cards showing that the license has been granted and shall perform any other act required to protect the state and to enforce of 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 provisional 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 provisional license under the criteria set forth in this section. The applicant may be represented by counsel, but in no case is the court required to appoint counsel for an applicant. The final order of the court shall include the court's findings of fact and conclusions of law. If the final order upholds the denial, the applicant may file an appeal in accordance with the Rules of Appellate Procedure of the Supreme Court of Appeals. If the findings of fact and conclusions of law of the court fail to uphold the denial, the

- applicant may be entitled to reasonable costs and attorney's fees,payable by the sheriff's office which issued the denial.
- (k) If a provisional license is lost or destroyed, the person to whom the license was issued may obtain a duplicate or substitute license for a fee of \$5 by filing a notarized statement with the sheriff indicating that the license has been lost or destroyed.

- (1) Whenever any person after applying for and receiving a provisional concealed weapon license moves from the address named in the application to another county within the state, the license remains valid until the licensee turns twenty-one years of age unless the sheriff of the new county has determined that the person is no longer eligible for a provisional concealed weapon license under this article, and the sheriff shall issue a new provisional license bearing the person's new address and the original expiration date for a fee not to exceed \$5: *Provided*, That the licensee within twenty days thereafter notifies the sheriff in the new county of residence in writing of the old and new addresses.
- (m) The sheriff shall, immediately after the provisional license is granted, furnish the Superintendent of the West Virginia State Police a certified copy of the approved application. The sheriff shall furnish to the Superintendent of the West Virginia State Police, at any time so requested, a certified list of all provisional licenses issued in the county. The Superintendent of the West Virginia State Police shall maintain a registry of all persons who have been issued provisional concealed weapon licenses.
  - (n) The sheriff shall deny any application or revoke any existing provisional license upon determination that any of the licensing application requirements established in this section have been violated by the licensee.

- 226 (o) A person who is engaged in the receipt, review or in the 227 issuance or revocation of a concealed weapon provisional license 228 does not incur any civil liability as the result of the lawful 229 performance of his or her duties under this article.
- (p) Information collected under this section, including 230 231 applications, supporting documents, permits, renewals, or any 232 other information that would identify an applicant for or holder 233 of a concealed weapon provisional license, is confidential: 234 Provided, That this information may be disclosed to a law 235 enforcement agency or officer: (i) To determine the validity of 236 a provisional license; (ii) to assist in a criminal investigation or 237 prosecution; or (iii) for other lawful law-enforcement purposes. 238 A person who violates this subsection is guilty of a misdemeanor 239 and, upon conviction thereof, shall be fined not less than \$50 or 240 more than \$200 for each offense.
- (q) Except as restricted or prohibited by the provisions of this article or as otherwise prohibited by law, the issuance of a provisional concealed weapon license issued in accordance with the provisions of this section authorizes the holder of the license to carry a concealed pistol or revolver on the lands or waters of this state.

# §61-7-6. Exceptions as to prohibitions against carrying concealed handguns for persons at least eighteen years of age and fewer than twenty-one years of age; exemptions from licensing fees.

- 1 (a) The provisions in section three of this article do not apply 2 to any person at least eighteen years of age and fewer than
- 3 twenty-one years of age who is:
- 4 (1) Carrying a deadly weapon upon his or her own premises;
- 5 (2) Carrying a firearm, unloaded, from the place of purchase
- 6 to his or her home, residence or place of business or to a place of

- 7 repair and back to his or her home, residence or place of 8 business; or
- 9 (3) Possessing a firearm while hunting in a lawful manner or 10 while traveling from his or her home, residence or place of 11 business to a hunting site and returning to his or her home, 12 residence or place of business;
- 13 (4) A member of a properly organized target-shooting club 14 authorized by law to obtain firearms by purchase or requisition 15 from this state or from the United States for the purpose of target practice from carrying any pistol, as defined in this article, 16 unloaded, from his or her home, residence or place of business 17 to a place of target practice and from any place of target practice 18 back to his or her home, residence or place of business, for using 19 20 any such weapon at a place of target practice in training and
- 22 (5) A law-enforcement officer or law-enforcement official 23 or chief executive as defined in section one, article twenty-nine, 24 chapter thirty of this code;

improving his or her skill in the use of the weapons;

- 25 (6) An employee of the West Virginia Division of Corrections duly appointed pursuant to section eleven-c, article one, chapter twenty-five of this code while the employee is on duty;
- 29 (7) A member of the United States armed forces, reserve or 30 National Guard:
- 31 (8) A resident of another state who holds a valid permit or 32 license to possess or carry a handgun issued by a state or a 33 political subdivision subject to the provisions and limitations set 34 forth in section six-a of this article;
- 35 (9) A federal law-enforcement officer or federal police 36 officer authorized to carry a weapon in the performance of the 37 officer's duty; and

- 38 (10) A parole officer appointed pursuant to section fourteen,
- 39 article twelve, chapter sixty-two of this code in the performance
- 40 of his or her duties.
- 41 (b) The following judicial officers and prosecutors and staff
- 42 are exempt from paying any application fees or licensure fees
- 43 required under this article. However, they shall make application
- 44 and satisfy all licensure and handgun safety and training
- 45 requirements to obtain a license as set forth in section four of
- 46 this article:
- 47 (1) Any justice of the Supreme Court of Appeals of West
- 48 Virginia;
- 49 (2) Any circuit judge;
- 50 (3) Any retired justice or retired circuit judge designated
- 51 senior status by the Supreme Court of Appeals of West Virginia;
- 52 (4) Any family court judge;
- 53 (5) Any magistrate;
- 54 (6) Any prosecuting attorney;
- 55 (7) Any assistant prosecuting attorney; or
- 56 (8) Any duly appointed investigator employed by a
- 57 prosecuting attorney.
- §61-7-7. Persons prohibited from possessing firearms; classifications; right of nonprohibited persons over twenty-one years of age to carry concealed deadly weapons; offenses and penalties; reinstatement of rights to possess; offenses; penalties.
  - 1 (a) Except as provided in this section, no person shall
  - 2 possess a firearm, as such is defined in section two of this article,
  - 3 who:

- 4 (1) Has been convicted in any court of a crime punishable by 5 imprisonment for a term exceeding one year;
- 6 (2) Is habitually addicted to alcohol;
- 7 (3) Is an unlawful user of or habitually addicted to any 8 controlled substance;
- 9 (4) Has been adjudicated to be mentally incompetent or who has been involuntarily committed to a mental institution pursuant 10 11 to the provisions of chapter twenty-seven of this code or in similar law of another jurisdiction: Provided, That once an 12 individual has been adjudicated as a mental defective or 13 involuntarily committed to a mental institution, he or she shall 14 be duly notified that they are to immediately surrender any 15 firearms in their ownership or possession: Provided, however, 16 That the mental hygiene commissioner or circuit judge shall first 17 make a determination of the appropriate public or private 18 individual or entity to act as conservator for the surrendered 19 20 property;
- 21 (5) Is an alien illegally or unlawfully in the United States;
- 22 (6) Has been discharged from the armed forces under 23 dishonorable conditions:
- 24 (7) Is subject to a domestic violence protective order that:
- 25 (A) Was issued after a hearing of which such person 26 received actual notice and at which such person had an 27 opportunity to participate;
- 28 (B) Restrains such person from harassing, stalking or 29 threatening an intimate partner of such person or child of such 30 intimate partner or person, or engaging in other conduct that 31 would place an intimate partner in reasonable fear of bodily 32 injury to the partner or child; and

- 33 (C)(i) Includes a finding that such person represents a 34 credible threat to the physical safety of such intimate partner or 35 child; or
- (ii) By its terms explicitly prohibits the use, attempted use or
   threatened use of physical force against such intimate partner or
   child that would reasonably be expected to cause bodily injury;
   or

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- (8) Has been convicted of 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 of said article or a federal or state statute with the same essential elements in which the victim was a current or former spouse, current or former sexual or intimate partner, person with whom the defendant has a child in common, 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 has been convicted in any court of any jurisdiction of a comparable misdemeanor crime of domestic violence.
- Any person who violates the provisions of this subsection shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than \$100 nor more than \$1,000 or confined in the county jail for not less than ninety days nor more than one year, or both.
  - (b) Notwithstanding the provisions of subsection (a) of this section, any person:
- 59 (1) Who has been convicted in this state or any other 60 jurisdiction of a felony crime of violence against the person of 61 another or of a felony sexual offense; or
- 62 (2) Who has been convicted in this state or any other 63 jurisdiction of a felony controlled substance offense involving a

- 64 Schedule I controlled substance other than marijuana, a Schedule
- 65 II or a Schedule III controlled substance as such are defined in
- 66 sections two hundred four, two hundred five and two hundred
- 67 six, article two, chapter sixty-a of this code and who possesses
- a firearm as such is defined in section two of this article shall be
- 69 guilty of a felony and, upon conviction thereof, shall be confined
- 70 in a state correctional facility for not more than five years or
- 71 fined not more than \$5,000, or both. The provisions of
- 72 subsection (f) of this section shall not apply to persons convicted
- 73 of offenses referred to in this subsection or to persons convicted
- 74 of a violation of this subsection.
- 75 (c) Any person may carry a concealed deadly weapon without a license therefor who is:
- 77 (1) At least twenty-one years of age;
- 78 (2) A United States citizen or legal resident thereof;
- 79 (3) Not prohibited from possessing a firearm under the 80 provisions of this section; and
- 81 (4) Not prohibited from possessing a firearm under the 82 provisions of 18 U. S. C. §922(g) or (n).
- 83 (d) As a separate and additional offense to the offense provided for in subsection (a) of this section, and in addition to 84 any other offenses outlined in this code, and except as provided 85 86 by subsection (e) of this section, any person prohibited by 87 subsection (a) of this section from possessing a firearm who carries a concealed firearm is guilty of a felony and, upon 88 conviction thereof, shall be confined in a state correctional 89 90 facility for not more than three years or fined not more than 91 \$5,000, or both.
- 92 (e) As a separate and additional offense to the offense 93 described in subsection (b) of this section, and in additional to

- 94 any other offenses outlined in this code, any person prohibited
- 95 by subsection (b) of this section from possessing a firearm who
- 96 carries a concealed firearm is guilty of a felony and, upon
- 97 conviction thereof, shall be confined in a state correctional
- 98 facility for not more than ten years or fined not more than
- 99 \$10,000, or both.
- 100 (f) Any person prohibited from possessing a firearm by the provisions of subsection (a) of this section may petition the 101 102 circuit court of the county in which he or she resides to regain the ability to possess a firearm and if the court finds by clear and 103 104 convincing evidence that the person is competent and capable of 105 exercising the responsibility concomitant with the possession of 106 a firearm, the court may enter an order allowing the person to possess a firearm if such possession would not violate any 107 federal law: Provided, That a person prohibited from possessing 108 109 a firearm by the provisions of subdivision (4), subsection (a) of this section may petition to regain the ability to possess a firearm 110 111 in accordance with the provisions of section five, article seven-a 112 of this chapter.
- (g) Any person who has been convicted of an offense which disqualifies him or her from possessing a firearm by virtue of a criminal conviction whose conviction was expunged or set aside or who subsequent thereto receives an unconditional pardon for said offense shall not be prohibited from possessing a firearm by the provisions of the section.
- §61-7-11a. Possessing deadly weapons on premises of educational facilities; reports by school principals; suspension of driver's license; possessing deadly weapons on premises housing courts of law and family law courts.
  - 1 (a) The Legislature finds that the safety and welfare of the citizens of this state are inextricably dependent upon assurances

- 3 of safety for children attending and persons employed by schools
- 4 in this state and for persons employed by the judicial department
- 5 of this state. It is for the purpose of providing assurances of
- 6 safety that subsections (b), (g) and (h) of this section are enacted
- 7 as a reasonable regulation of the manner in which citizens may
- 8 exercise the rights accorded to them pursuant to section
- 9 twenty-two, article three of the Constitution of the State of West
- 10 Virginia.
- (b) (1) It is unlawful for a person to possess a firearm or
- 12 other deadly weapon on a school bus as defined in section one,
- 13 article one, chapter seventeen-a of this code, or in or on a public
- 14 primary or secondary education building, structure, facility or
- 15 grounds including a vocational education building, structure,
- 16 facility or grounds where secondary vocational education
- 17 programs are conducted or at a school-sponsored function, or in
- 18 or on a private primary or secondary education building,
- 19 structure or facility: Provided, That it shall not be unlawful to
- 20 possesses a firearm or other deadly weapon on or in a private
- 21 primary or secondary education building, structure or facility
- 22 when such institution has adopted written policies allowing for
- 23 possession of firearms on or in the institution's buildings,
- 24 structures or facilities.
- 25 (2) This subsection does not apply to:
- 26 (A) A law-enforcement officer employed by a federal, state,
- 27 county or municipal law- enforcement agency;
- 28 (B) Any probation officer appointed pursuant to section five,
- 29 article twelve, chapter sixty-two or chapter forty-nine of this
- 30 code in the performance of his or her duties;
- 31 (C) A retired law-enforcement officer who:
- 32 (i) Is employed by a state, county or municipal
- 33 law-enforcement agency;

- 34 (ii) Is covered for liability purposes by his or her employer;
- 35 (iii) Is authorized by a county board of education and the school principal to serve as security for a school;
- 37 (iv) Meets all the requirements to carry a firearm as a
- 38 qualified retired law-enforcement officer under the
- 39 Law-Enforcement Officer Safety Act of 2004, as amended,
- 40 pursuant to 18 U. S. C. §926C(c); and
- 41 (v) Meets all of the requirements for handling and using a
- 42 firearm established by his or her employer, and has qualified
- 43 with his or her firearm to those requirements;
- 44 (D) A person specifically authorized by the board of
- 45 Education of the county or principal of the school where the
- 46 property is located to conduct programs with valid educational
- 47 purposes;
- 48 (E) A person who, as otherwise permitted by the provisions
- 49 of this article, possesses an unloaded firearm or deadly weapon
- 50 in a motor vehicle or leaves an unloaded firearm or deadly
- 51 weapon in a locked motor vehicle;
- 52 (F) Programs or raffles conducted with the approval of the
- 53 county board of education or school which include the display of
- 54 unloaded firearms;
- 55 (G) The official mascot of West Virginia University,
- 56 commonly known as the Mountaineer, acting in his or her
- 57 official capacity; or
- 58 (H) The official mascot of Parkersburg South High School,
- 59 commonly known as the Patriot, acting in his or her official
- 60 capacity.
- 61 (3) A person violating this subsection is guilty of a felony
- 62 and, upon conviction thereof, shall be imprisoned in a state

- correctional facility for a definite term of years of not less than two years nor more than ten years, or fined not more than \$5,000, or both fined and imprisoned.
- (c) A school principal subject to the authority of the State
   Board of Education who discovers a violation of subsection (b)
   of this section shall report the violation as soon as possible to:

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- (1) The State Superintendent of Schools. The State Board of Education shall keep and maintain these reports and may prescribe rules establishing policy and procedures for making and delivering the reports as required by this subsection; and
- (2) The appropriate local office of the State Police, county sheriff or municipal police agency.
- (d) In addition to the methods of disposition provided by article five, chapter forty-nine of this code, a court which adjudicates a person who is fourteen years of age or older as delinquent for a violation of subsection (b) of this section may order the Division of Motor Vehicles to suspend a driver's license or instruction permit issued to the person for a period of time as the court considers appropriate, not to extend beyond the person's nineteenth birthday. If the person has not been issued a driver's license or instruction permit by this state, a court may order the Division of Motor Vehicles to deny the person's application for a license or permit for a period of time as the court considers appropriate, not to extend beyond the person's nineteenth birthday. A suspension ordered by the court pursuant to this subsection is effective upon the date of entry of the order. Where the court orders the suspension of a driver's license or instruction permit pursuant to this subsection, the court shall confiscate any driver's license or instruction permit in the adjudicated person's possession and forward to the Division of Motor Vehicles.

94 (e)(1) If a person eighteen years of age or older is convicted 95 of violating subsection (b) of this section, and if the person does 96 not act to appeal the conviction within the time periods described 97 in subdivision (2) of this subsection, the person's license or 98 privilege to operate a motor vehicle in this state shall be revoked 99 in accordance with the provisions of this section.

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- (2) The clerk of the court in which the person is convicted as described in subdivision (1) of this subsection shall forward to the commissioner a transcript of the judgment of conviction. If the conviction is the judgment of a magistrate court, the magistrate court clerk shall forward the transcript when the person convicted has not requested an appeal within twenty days of the sentencing for the conviction. If the conviction is the judgment of a circuit court, the circuit clerk shall forward a transcript of the judgment of conviction when the person convicted has not filed a notice of intent to file a petition for appeal or writ of error within thirty days after the judgment was entered.
- (3) If, upon examination of the transcript of the judgment of conviction, the commissioner determines that the person was convicted as described in subdivision (1) of this subsection, the commissioner shall make and enter an order revoking the person's license or privilege to operate a motor vehicle in this state for a period of one year or, in the event the person is a student enrolled in a secondary school, for a period of one year or until the person's twentieth birthday, whichever is the greater period. The order shall contain the reasons for the revocation and the revocation period. The order of suspension shall advise the person that because of the receipt of the court's transcript, a presumption exists that the person named in the order of suspension is the same person named in the transcript. The commissioner may grant an administrative hearing which substantially complies with the requirements of the provisions of section two, article five-a, chapter seventeen-c of this code upon

- a preliminary showing that a possibility exists that the person named in the notice of conviction is not the same person whose license is being suspended. The request for hearing shall be made within ten days after receipt of a copy of the order of suspension. The sole purpose of this hearing is for the person requesting the hearing to present evidence that he or she is not the person named in the notice. If the commissioner grants an
- 135 administrative hearing, the commissioner shall stay the license
- suspension pending the commissioner's order resulting from the
- 137 hearing.
- 138 (4) For the purposes of this subsection, a person is convicted 139 when he or she enters a plea of guilty or is found guilty by a 140 court or jury.
- (f)(1) It is unlawful for a parent, guardian or custodian of a person less than eighteen years of age who knows that the person is in violation of subsection (b) of this section or has reasonable cause to believe that the person's violation of subsection (b) is imminent, to fail to immediately report his or her knowledge or belief to the appropriate school or law-enforcement officials.
- 147 (2) A person violating this subsection is guilty of a 148 misdemeanor and, upon conviction thereof, shall be fined not 149 more than \$1,000, or shall be confined in jail not more than one 150 year, or both fined and confined.
- 151 (g)(1) It is unlawful for a person to possess a firearm or other 152 deadly weapon on the premises of a court of law, including 153 family courts.
- 154 (2) This subsection does not apply to:
- 155 (A) A law-enforcement officer acting in his or her official capacity; and

- 157 (B) A person exempted from the provisions of this 158 subsection by order of record entered by a court with jurisdiction 159 over the premises or offices.
- 160 (3) A person violating this subsection is guilty of a 161 misdemeanor and, upon conviction thereof, shall be fined not 162 more than \$1,000, or shall be confined in jail not more than one 163 year, or both fined and confined.
- (h)(1) It is unlawful for a person to possess a firearm or other deadly weapon on the premises of a court of law, including family courts, with the intent to commit a crime.
- 167 (2) A person violating this subsection is guilty of a felony 168 and, upon conviction thereof, shall be imprisoned in a state 169 correctional facility for a definite term of years of not less than 170 two years nor more than ten years, or fined not more than 171 \$5,000, or both fined and imprisoned.
- (i) Nothing in this section may be construed to be in conflictwith the provisions of federal law.

### §61-7-15a. Use or presentation of a firearm during commission of a felony; penalties.

- 1 As a separate and distinct offense, and in addition to any and
- 2 all other offenses provided for in this code, any person who,
- 3 while engaged in the commission of a felony, uses or presents a
- 4 firearm shall be guilty of a felony and, upon conviction, shall be
- 5 imprisoned in a state correctional facility for not more than ten
- 6 years.

#### §61-7-17. Construction of article.

- Nothing in this article should be construed to abrogate or
- 2 modify statutory provisions and common law decisions related
- 3 to defense of self or others.



#### **CHAPTER 253**

(S. B. 419 - By Senator Kessler)
[By Request of the Executive]

[Passed February 26, 2016; in effect from passage.] [Approved by the Governor on February 29, 2016.]

AN ACT to amend and reenact §4-11A-18 of the Code of West Virginia, 1931, as amended; to amend and reenact §11-13A-3b of said code; to amend and reenact \$11-13V-4 of said code; to amend and reenact \$11-21-96 of said code; to amend and reenact \$23-2C-3 of said code; and to amend and reenact \$29-22A-10d and §29-22A-10e of said code, all relating to termination of transfers of certain personal income tax revenues to the Workers' Compensation Debt Reduction Fund; reestablishing and imposing increased severance tax on severance of timber effective July 1, 2016; termination of additional severance taxes on severance of coal, natural gas and timber on and after July 1, 2016; authorizing earlier termination date; authorizing redirection of additional severance tax revenues to the General Revenue Fund for period prior to termination date; delaying transfers of certain personal income tax revenues to the West Virginia Retiree Health Benefit Trust Fund; eliminating transfers of certain personal income tax revenues to the Post-July 1, 2010, Employee Trust Fund; authorizing redirection of amounts collected from certain surcharges and assessments on workers' compensation insurance policies for periods prior to July 1, 2017; authorizing redirection of amounts collected from certain deposits of revenues derived from net terminal income for periods prior to July 1, 2017.

Be it enacted by the Legislature of West Virginia:

That §4-11A-18 of the Code of West Virginia, 1931, as amended, be amended and reenacted; that §11-13A-3b of said code be amended

and reenacted; that §11-13V-4 of said code be amended and reenacted; that §11-21-96 of said code be amended and reenacted; that §23-2C-3 of said code be amended and reenacted; and that §29-22A-10d and §29-22A-10e of said code be amended and reenacted, all to read as follows:

#### CHAPTER 4. THE LEGISLATURE.

### ARTICLE 11A. LEGISLATIVE APPROPRIATION OF TOBACCO SETTLEMENT FUNDS.

- §4-11A-18. Dedication of personal income tax proceeds as replacement moneys for anticipated tobacco master settlement agreement proceeds to the Old Fund.
  - 1 (a) There is hereby dedicated an annual amount of
  - 2 \$50,400,000 from annual collections of the tax imposed by
  - 3 article twenty-one, chapter eleven of this code as a portion of the
  - 4 revenue source dedicated to satisfy the Old Fund liabilities as
  - 5 they occur to provide a dollar for dollar replacement of the first
  - 6 \$30 million received pursuant to section IX(c)(1) of the master
  - 7 settlement agreement and the anticipated strategic compensation
  - 8 payments to be received pursuant to section IX(c)(2) of the
  - $9 \quad \text{master settlement agreement as previously dedicated to the Old} \\$
  - 10 Fund prior to the sale of state's share to the Tobacco Settlement
  - 11 Finance Authority. No portion of this amount may be pledged
  - 12 for payment of debt service on revenue bonds issued pursuant to
  - 13 article two-d, chapter twenty-three of this code.
  - 14 (b) Notwithstanding any other provision of this code to the
  - 15 contrary, beginning immediately after the sale of the state's
  - share to the Tobacco Settlement Finance Authority, \$50,400,000
  - 17 from collections of the tax imposed by article twenty-one,
  - 18 chapter eleven of this code shall be deposited each calendar year
  - 19 to the credit of the Old Fund created in article two-d, chapter
- 20 twenty-three of this code in accordance with the following

- 21 schedule. Each calendar month, except for July, August and
- 22 September each year, \$5,600,000 shall be transferred, on or
- 23 before the twenty-eighth day of the month, to the Workers'
- 24 Compensation Debt Reduction Fund created in article two-d,
- 25 chapter twenty-three of this code. The transfers pursuant to this
- 26 section are in addition to the transfers pursuant to section
- 27 ninety-six, article twenty-one, chapter eleven of this code.
- 28 (c) Expiration. —
- 29 The transfers required by this section shall cease on and after
- 30 February 1, 2016. No transfer pursuant to this section shall be
- 31 made thereafter.

#### **CHAPTER 11. TAXATION.**

### ARTICLE 13A. SEVERANCE AND BUSINESS PRIVILEGE TAX ACT.

#### §11-13A-3b. Imposition of tax on privilege of severing timber.

- 1 (a) Imposition of tax. For the privilege of engaging or
- 2 continuing within this state in the business of severing timber for
- 3 sale, profit or commercial use, there is hereby levied and shall be
- 4 collected from every person exercising such privilege an annual
- 5 privilege tax.
- 6 (b) Rate and measure of tax. The tax imposed in
- 7 subsection (a) of this section shall be three and twenty-two
- 8 hundredths percent of the gross value of the timber produced, as
- 9 shown by the gross proceeds derived from the sale thereof by the
- 10 producer, except as otherwise provided in this article: *Provided*,
- 11 That as to timber produced after December 31, 2006 the rate of
- 12 the tax imposed in subsection (a) of this section shall be one and
- 13 twenty-two hundredths percent of the gross value of the timber
- 14 produced, as shown by the gross proceeds derived from the sale
- 15 thereof by the producer, except as otherwise provided in this
- 16 article.

- 17 (c) *Tax in addition to other taxes.*—The tax imposed by this section shall apply to all persons severing timber in this state and shall be in addition to all other taxes imposed by law.
- 20 (d) Discontinuation and reestablishment of tax. — 21 Beginning in the tax year 2010 and continuing until June 30, 2016, the tax imposed by this section is discontinued. On and 22 23 after July 1, 2016, the tax imposed by this section is 24 reestablished and is imposed and shall apply to all persons severing timber in this state at the rate of one and fifty 25 hundredths percent of the gross value of the timber produced, as 26 27 shown by the gross proceeds derived from the sale thereof by the 28 producer, except as otherwise provided in this article.
- 29 (e) Termination of taxes imposed by this section. The taxes imposed under this section shall cease, terminate and be of no further force or effect on and after July 1, 2019. Termination of the taxes imposed under this section shall not relieve any person of any liability or duty to pay tax imposed under this article with respect to privileges exercised before the effective date of such termination.

### ARTICLE 13V. WORKERS' COMPENSATION DEBT REDUCTION ACT.

#### §11-13V-4. Imposition of tax.

1 (a) Imposition of additional tax on privilege of severing 2 coal. — Upon every person exercising the privilege of engaging within this state in severing, extracting, reducing to possession 3 or producing coal for sale, profit or commercial use, there is 4 hereby imposed an additional annual severance tax for exercising the privilege after November 30, 2005. The tax shall 6 be 56 cents per ton and the measure of the tax is tons of clean 7 coal severed or produced in this state by the taxpayer after 8 9 November 30, 2005, for sale, profit or commercial use during the

taxable year. When the person mining the coal sells raw coal, the measure of tax shall be ton of clean coal determined in accordance with rules promulgated by the Tax Commissioner as provided in article three, chapter twenty-nine-a of this code. If this rule is filed for public comment before July 1, 2005, the rule may be promulgated as an emergency legislative rule. This tax shall be in addition to all taxes imposed with respect to the severance and production of coal in this state including, but not limited to, the taxes imposed by articles twelve-d and thirteen-a of this chapter and the taxes imposed by sections eleven and thirty-two, article three, chapter twenty-two of this code, if applicable.

(b) Imposition of additional tax on privilege of severing natural gas. — For the privilege of engaging or continuing within this state in the business of severing natural gas for sale, profit or commercial use, there is hereby levied and shall be collected from every person exercising this privilege an additional annual privilege tax. The rate of this additional tax shall be 4.7 cents per mcf of natural gas and the measure of the tax is natural gas produced after November 30, 2005, determined at the point where the production privilege ends for purposes of the tax imposed by section three-a, article thirteen-a of this chapter, and with respect to which the tax imposed by section three-a of said article thirteen-a is paid. The additional tax imposed by this subsection shall be collected with respect to natural gas produced after November 30, 2005.

(c) Imposition of additional tax on privilege of severing timber. — For the privilege of engaging or continuing within this state in the business of severing timber for sale, profit or commercial use, there is hereby levied and shall be collected from every person exercising this privilege an additional annual privilege tax equal to two and seventy-eight hundredths percent of the gross value of the timber produced, determined at the point where the production privilege ends for purposes of the tax

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- 44 imposed by section three-b, article thirteen-a of this chapter and 45 upon which the tax imposed by section three-b of said article thirteen-a is paid. The additional tax imposed by this subsection 46 shall be collected with respect to timber produced after 47 November 30, 2005: Provided, That during the period of 48 49 discontinuance of the tax as provided in subsection (d), section 50 three-b, article thirteen-a of this chapter, the additional tax imposed by this subsection shall be determined as provided in 51 52 this subsection in the same manner as if the tax described under section three-b, article thirteen-a of this chapter is being imposed 53 and collected, subject to the provisions of subsection (g) of this 54 55 section.
  - (d) *No pyramiding of tax burden*. Each ton of coal and each mcf of natural gas severed in this state after the effective date of the taxes imposed by this section shall be included in the measure of a tax imposed by this section only one time.
- 60 (e) Effect on utility rates. — The Public Service Commission shall, upon the application of any public utility that, as of the 61 62 effective date of the taxes imposed by this section, is not 63 currently making periodic adjustments to its approved rates and 64 charges to reflect changes in its fuel costs because the mechanism historically used to make such periodic adjustments 65 is suspended by an order of the commission, allow such utility 66 to defer, for future recovery from its customers, any increase in 67 its costs attributable to the taxes imposed by this section upon: 68 Coal and natural gas severed in this state and utilized in the 69 70 production of electricity generated or produced in this state and 71 sold to customers in this state; coal and natural gas severed in 72 this state and utilized in the production of electricity not 73 generated or produced in this state that is sold to customers in 74 this state; and natural gas severed in this state that is sold to 75 customers in this state.

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- 77 (1) Subject to the provisions of subdivision (2) of this subsection, the net amount of all moneys received by the Tax 78 Commissioner from collection of the taxes imposed by this 79 section, including any interest, additions to tax, or penalties 80 81 collected with respect to these taxes pursuant to article ten, 82 chapter eleven of this code, shall be deposited in the Workers' 83 Compensation Debt Reduction Fund created in article two-d, chapter twenty-three of this code. As used in this section, "net 84 85 amount of all taxes received by the Tax Commissioner" means the gross amount received by the Tax Commissioner less the 86 amount of any refunds paid for overpayment of the taxes 87 88 imposed by this article, including the amount of any interest on the overpayment amount due the taxpayer under the provisions 89 of section fourteen, article ten of this chapter. 90
  - (2) If the budget shortfall, as determined by the state Budget Office as of December 1, 2015, is greater than \$100 million, then the Governor may, by Executive Order, redirect deposits of revenues derived from taxes imposed under this article, for any period commencing after February 29, 2016 and ending before July 1, 2016, to the General Revenue Fund, instead of to the funds otherwise mandated in this article, in article two-d, chapter twenty-three of this code or in any other provision of this code.
- 99 (g) Termination of taxes imposed by this article. – The taxes imposed under this article shall cease, terminate and be of no 100 further force or effect on and after July 1, 2016: Provided, That 101 the Governor may, by Executive Order, cause the tax to 102 103 terminate before July 1, 2016. Termination of the taxes imposed under this article shall not relieve any person of any liability or 104 105 duty to pay tax imposed under this article with respect to 106 privileges exercised before the effective date of such 107 termination.

#### ARTICLE 21. PERSONAL INCOME TAX.

#### §11-21-96. Dedication of personal income tax proceeds.

- 1 (a) There is hereby dedicated an annual amount of \$45
- 2 million from annual collections of the tax imposed by this article
- 3 for payment of the unfunded liability of the current Workers'
- 4 Compensation Fund. No portion of this amount may be pledged
- for payment of debt service on revenue bonds issued pursuant to 5
- 6 article two-d, chapter twenty-three of this code.
- 7 (b) Notwithstanding any other provision of this code to the
- 8 contrary, beginning in January of 2006, \$45 million from
- collections of the tax imposed by this article shall be deposited 9
- 10 each calendar year to the credit of the old fund created in article
- two-c, chapter twenty-three of this code, in accordance with the 11
- following schedule. Each calendar month, except for July, 12
- August and September each year, \$5 million shall be transferred, 13
- on or before the twenty-eighth day of the month, to the Workers' 14
- 15 Compensation Debt Reduction Fund created in article two-d,
- chapter twenty-three of this code. 16
- 17 (c) The transfers required by subsection (b) of this section
- shall cease on and after February 1, 2016. For fiscal years 18
- beginning on and after July 1, 2016, an annual amount of \$30 19
- million from annual collections of the tax imposed by this article 20
- 21 shall be dedicated for payment of the unfunded liability of the
- 22 West Virginia Retiree Health Benefit Trust Fund. The \$30
- million transferred pursuant to this subsection shall be 23
- 24 transferred into the West Virginia Retiree Health Benefit Trust Fund by transferring \$5 million each month for the following
- 26 months of each year: October, November, December, January,
- February and March, until the Governor certifies to the 27
- Legislature that an independent actuarial study has determined 28
- 29 that the unfunded liability of West Virginia Retiree Health
- 30 Benefit Trust Fund, as created in section two, article sixteen-d,
- chapter five of this code, has been provided for in its entirety or 31
- 32 July 1, 2037, whichever date is later: *Provided*, That no transfer

- 33 shall be made under this subdivision in the months of February
- 34 and March of fiscal year 2016. Transfers shall thereafter resume
- 35 and be made in October, November, December, January,
- 36 February and March of fiscal year 2017 and thereafter. No
- 37 transfer into the West Virginia Retiree Health Benefit Trust Fund
- 38 pursuant to this subdivision shall be made after the Governor
- 39 certifies to the Legislature that an independent actuarial study
- 40 has determined that the unfunded liability of West Virginia
- 41 Retiree Health Benefit Trust Fund, as created in section two.
- 42 article sixteen-d, chapter five of this code, has been provided for
- 43 in its entirety or July 1, 2037, whichever date is later.

#### **CHAPTER 23. WORKERS' COMPENSATION.**

### ARTICLE 2C. EMPLOYERS' MUTUAL INSURANCE COMPANY.

## §23-2C-3. Creation of employer mutual as successor organization of the West Virginia Workers' Compensation Commission.

- 1 (a) (1) On or before July 1, 2005, the executive director may
- 2 take such actions as are necessary to establish an employers'
- 3 mutual insurance company as a domestic, private, nonstock,
- 4 corporation to:
- 5 (A) Insure employers against liability for injuries and
- 6 occupational diseases for which their employees may be entitled
- 7 to receive compensation pursuant to this chapter and federal
- 8 Longshore and Harbor Workers' Compensation Act, 33 U.S.C.
- 9 §901, et seq.;
- 10 (B) Provide employer's liability insurance incidental to and
- 11 provided in connection with the insurance specified in paragraph
- 12 (A) of this subdivision, including coal workers' pneumoconiosis
- 13 coverage and employer excess liability coverage as provided in
- 14 this chapter; and

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- 15 (C) Transact other kinds of property and casualty insurance 16 for which the company is otherwise qualified under the 17 provisions of this code.
- 18 (2) The company may not sell, assign or transfer substantial 19 assets or ownership of the company.
- 20 (b) If the executive director establishes a domestic mutual 21 insurance company pursuant to subsection (a) of this section:
- 22 (1) As soon as practical, the company established pursuant 23 to the provisions of this article shall, through a vote of a majority 24 of its provisional board, file its corporate charter and bylaws with the Insurance Commissioner and apply for a license with 25 the Insurance Commissioner to transact insurance in this state. 26 Notwithstanding any other provision of this code, the Insurance 27 28 Commissioner shall act on the documents within fifteen days of 29 the filing by the company.
  - (2) In recognition of the workers' compensation insurance liability insurance crisis in this state at the time of enactment of this article and the critical need to expedite the initial operation of the company, the Legislature authorizes the Insurance Commissioner to review the documentation submitted by the company and to determine the initial capital and surplus requirements of the company, notwithstanding the provisions of section five-b, article three, chapter thirty-three of this code. The company shall furnish the Insurance Commissioner with all information and cooperate in all respects necessary for the Insurance Commissioner to perform the duties set forth in this section and in other provisions of this chapter and chapter thirty-three of this code. The Insurance Commissioner shall monitor the economic viability of the company during its initial operation on not less than a monthly basis, until the commissioner, in his or her discretion, determines that monthly reporting is not necessary. In all other respects the company shall

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- 47 comply with the applicable provisions of chapter thirty-three of 48 this code.
- 49 (3) Subject to the provisions of subdivision (4) of this subsection, the Insurance Commissioner may waive other 50 51 requirements imposed on mutual insurance companies by the provisions of chapter thirty-three of this code the Insurance 52 53 Commissioner determines are necessary to enable the company to begin insuring employers in this state at the earliest possible 54 55 date.
- 56 (4) Within forty months of the date of the issuance of its 57 license to transact insurance, the company shall comply with the capital and surplus requirements set forth in subsection (a), 58 section five-b, article three, chapter thirty-three of this code in 59 60 effect on the effective date of this enactment, unless the deadline 61 is extended by the Insurance Commissioner.
  - (c) For the duration of its existence, the company is not 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.
- 69 (d) The moneys of the company are not part of the General Revenue Fund of the state. The debts, claims, obligations and 70 71 liabilities of the company are not a debt of the state or a pledge 72 of the credit of the state.
- (e) The company is not subject to provisions of article nine-a, chapter six of this code; the provisions of article two, 74 chapter six-c of this code; the provisions of chapter twenty-nine-b of this code; the provisions of article three, chapter five-a of this code; the provisions of article six, chapter

- twenty-nine of this code; or the provisions of chapter twelve of this code.
- (f) If the commission has been terminated, effective upon the termination, private carriers, including the company, are not subject to payment of premium taxes, surcharges and credits contained in article three, chapter thirty-three of this code on premiums received for coverage under this chapter. In lieu thereof, the workers' compensation insurance market is subject to the following:
  - (1) (A) Each fiscal year, the Insurance Commissioner shall calculate a percentage surcharge to be collected by each private carrier from its policyholders. The surcharge percentage shall be calculated by dividing the previous fiscal year's total premiums collected plus deductible payments by all employers into the portion of the Insurance Commissioner's budget amount attributable to regulation of the private carrier market. This resulting percentage shall be applied to each policyholder's premium payment and deductible payments as a surcharge and remitted to the Insurance Commissioner. Said surcharge shall be remitted within ninety days of receipt of premium payments;
  - (B) With respect to fiscal years beginning on and after July 1, 2008, in lieu of the surcharge set forth in the preceding paragraph, each private carrier shall collect a surcharge in the amount of five and five-tenths percent of the premium collected plus the total of all premium discounts based on deductible provisions that were applied: *Provided*, That prior to June 30, 2013, and every five years thereafter, the commissioner shall review the percentage surcharge and determine a new percentage as he or she deems necessary.
- 107 (C) The amounts required to be collected under paragraph 108 (B) of this subdivision shall be remitted to the Insurance 109 Commissioner on or before the twenty-fifth day of the month

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succeeding the end of the quarter in which they are collected, except for the fourth quarter for which the surcharge shall be remitted on or before March 1 of the succeeding year.

- (2) Each fiscal year, the Insurance Commissioner shall calculate a percentage surcharge to be remitted on a quarterly basis by self-insured employers and said percentage shall be calculated by dividing previous year's self-insured payroll in the state into the portion of the Insurance Commissioner's budget amount attributable to regulation of the self-insured employer market. This resulting percentage shall be applied to each self-insured employer's payroll and the resulting amount shall be remitted as a regulatory surcharge by each self-insured employer. The Industrial Council may promulgate a rule for implementation of this section. The company, all other private carriers and all self-insured employers shall furnish the Insurance Commissioner with all required information and cooperate in all respects necessary for the Insurance Commissioner to perform the duties set forth in this section and in other provisions of this chapter and chapter thirty-three of this code. The surcharge shall be calculated so as to only defray the costs associated with the administration of this chapter and the funds raised shall not be used for any other purpose except as set forth in subdivision (4) of this subsection;
- (3) (A) Each private carrier shall collect a premiums surcharge from its policyholders as annually determined, by May 1 of each year, by the Insurance Commissioner to produce \$45 million annually, of each policyholder's periodic premium amount for workers' compensation insurance: *Provided*, That the surcharge rate on policies issued or renewed on or after July 1, 2008, shall be nine percent of the premium collected plus the total of all premium discounts based on deductible provisions that were applied.
- 142 (B) By May 1 each year, the self-insured employer 143 community shall be assessed a cumulative total of \$9 million.

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144 The methodology for the assessment shall be fair and equitable 145 and determined by exempt legislative rule issued by the 146 Industrial Council. The amount collected pursuant to this subdivision shall be remitted to the Insurance Commissioner for 147 deposit in the Workers' Compensation Debt Reduction Fund 148 149 created in section five, article two-d of this chapter: *Provided*, 150 That notwithstanding any provision of this subdivision or any 151 other provision of this code to the contrary, if the budget 152 shortfall, as determined by the state Budget Office as of December 1, 2015, is greater than \$100 million, then the 153 Governor may, by Executive Order, redirect deposits of the 154 155 amount collected pursuant to this subdivision, for any period commencing after February 29, 2016 and ending before July 1, 156 157 2016, to the General Revenue Fund, instead of to the fund 158 otherwise mandated in this subdivision, in article two-d, chapter 159 twenty-three of this code or in any other provision of this code: 160 *Provided, however,* That notwithstanding any provision of this 161 subdivision or any other provision of this code to the contrary, the Governor may, by Executive Order, redirect one-half of the 162 163 deposits of the amount collected pursuant to this subdivision, for any period commencing after June 30, 2016, and ending before 164 165 July 1, 2017, to the General Revenue Fund, instead of to the 166 funds otherwise mandated in this subdivision, in article two-d. 167 chapter twenty-three of this code or in any other provision of this 168 code, until certification of the Governor to the Legislature that 169 an independent actuary has determined that the unfunded 170 liability of the Old Fund, as defined in chapter twenty three of 171 this code, has been paid or provided for in its entirety.

(4) On or before July 1, 2009, the Insurance Commissioner shall make a one-time lump sum transfer of \$40 million generated from the surcharges assessed pursuant to paragraph (B), subdivision (1) of this subsection and subdivision (2) of this subsection to the Bureau of Employment Programs' Commissioner for deposit with the Secretary of the Treasury of

- the United States as a credit of this state in the Unemployment
- 179 Trust Fund Account maintained pursuant to section four, article
- 180 eight, chapter twenty-one-a of this code.
- (g) The new premiums surcharge imposed by paragraphs (A)
- and (B), subdivision (3), subsection (f) of this section sunset and
- 183 are not collectible with respect to workers' compensation
- insurance premiums paid when the policy is renewed on or after
- 185 the first day of the month following the month in which the
- 186 Governor certifies to the Legislature that the revenue bonds
- issued pursuant to article two-d of this chapter have been retired
- and that the unfunded liability of the Old Fund has been paid or
- has been provided for in its entirety, whichever occurs last.

## CHAPTER 29. MISCELLANEOUS BOARDS AND OFFICERS.

#### ARTICLE 22A. RACETRACK VIDEO LOTTERY.

# §29-22A-10d. Changes in distribution of net terminal income; distributions from excess lottery fund.

- 1 (a) Notwithstanding any provision of subsection (b), section
- 2 ten of this article to the contrary, for the fiscal year beginning
- 3 July 1, 2014, and each fiscal year thereafter, the commission
- 4 may transfer up to \$9 million as actual costs and expenses to the
- 5 Licensed Racetrack Modernization Fund.
- 6 (b) Notwithstanding any provision of subsection (c), section
- 7 ten of this article to the contrary, for the fiscal year beginning
- 8 July 1, 2014, and each fiscal year thereafter, each distribution,
- 9 except those distributions to be made pursuant to subdivisions
- 10 (1), (2), (3), (4), (5) and (7), subsection (c), section ten of this
- 11 article, shall be reduced by one hundred percent. Payments shall
- 12 not be made pursuant to section ten of this article, other than
- 13 those excepted by this subsection, and are made in lieu thereof

- in an amount to be determined by appropriation from the State
- 15 Excess Lottery Revenue Fund.
- 16 (c) The total amount of reductions resulting from subsection
- 17 (b) of this section shall be paid into the State Excess Lottery
- 18 Revenue Fund, created by section eighteen-a, article twenty-two
- 19 of this chapter. For the fiscal year beginning July 1, 2014, and
- 20 each fiscal year thereafter, distributions to be made pursuant to
- 21 subdivisions (2) and (5), subsection (c), section ten of this article
- 22 shall be reduced by ten percent, and the amounts resulting from
- 23 the reduction shall be paid into the State Excess Lottery Revenue
- 24 Fund.
- 25 (d) Notwithstanding any other provision of this code to the
- 26 contrary, for the fiscal year beginning July 1, 2014, and each
- 27 fiscal year thereafter, moneys deposited to the State Excess
- 28 Lottery Revenue Fund pursuant to this section shall be expended
- 29 by the Lottery in accordance with appropriations.
- 30 (e) Prior to payment of any appropriation made pursuant to
- 31 this section, debt service payments payable from the State
- 32 Excess Lottery Fund shall first be paid in accordance with the
- 33 provisions of sections eighteen-a, eighteen-d and eighteen-e,
- 34 article twenty-two of this chapter and in the priority as defined
- 35 by subsection (c), section eighteen-f, article twenty-two of this
- 36 chapter.
- 37 (f) Notwithstanding any other provision of this code to the
- 38 contrary, after payment of debt service from the State Excess
- 39 Lottery Revenue Fund, all other distributions required by section
- 40 eighteen-a, article twenty-two of this chapter and the
- 41 distributions appropriated pursuant to this section shall be paid
- 42 on a pro rata basis.
- 43 (g)(1) Except as provided in subdivision (2) of this
- 44 subsection, notwithstanding the provisions of paragraph (B),

subdivision (9), subsection (c), section ten of this article, upon certification of the Governor to the Legislature that an independent actuary has determined that the unfunded liability of the Old Fund, as defined in chapter twenty-three of this code, has been paid or provided for in its entirety, the transfers made to the Workers' Compensation Debt Reduction Fund pursuant to paragraph (A), subdivision (9), subsection (c), section ten of this article shall expire and those funds shall remain in the State Excess Lottery Revenue Fund subject to appropriation.

(2)(A) Notwithstanding any provision of subdivision (1) of this subsection or any provision of paragraph (B), subdivision (9), subsection (c), section ten of this article or any other provision of this code to the contrary, if the budget shortfall, as determined by the state Budget Office as of December 1, 2015, is greater than \$100 million, then the Governor may, by Executive Order, redirect deposits of revenues derived from net terminal income imposed under this article, for any period commencing after February 29, 2016 and ending before July 1, 2016, to the General Revenue Fund, instead of to the funds otherwise mandated in this article, in article two-d, chapter twenty-three of this code or in any other provision of this code.

(B) Notwithstanding any provision of subdivision (1) of this subsection or any provision of paragraph (B), subdivision (9), subsection (c), section ten of this article or any other provision of this code to the contrary, the Governor may, by Executive Order, redirect one-half of the deposits of revenues derived from net terminal income imposed under this article, for any period commencing after June 30, 2016, and ending before July 1, 2017, to the General Revenue Fund, instead of to the funds otherwise mandated in this article, in article two-d, chapter twenty-three of this code or in any other provision of this code, until certification of the Governor to the Legislature that an independent actuary has determined that the unfunded liability

- 78 of the Old Fund, as defined in chapter twenty three of this code,
- 79 has been paid or provided for in its entirety.

# §29-22A-10e. Changes in distribution of excess net terminal income; distributions from excess lottery fund.

- 1 (a) Notwithstanding any provision of subsection (a), section
- 2 ten-b of this article to the contrary, for the fiscal year beginning
- 3 July 1, 2014, and each fiscal year thereafter, each distribution,
- 4 except those distributions to be made pursuant to subdivisions
- 5 (1), (2), (3), (4), (5) and (7), subsection (a), section ten-b of this
- 6 article, shall be reduced by one hundred percent. Payments shall
- 7 not be made pursuant to section ten-b of this article, other than
- 8 those excepted by this subsection, and are made in lieu thereof
- 9 in an amount to be determined by appropriation from the State
- 10 Excess Lottery Revenue Fund.
- 11 (b) The total amount of reductions resulting from subsection
- 12 (a) of this section shall be paid into the State Excess Lottery
- 13 Revenue Fund created in section eighteen-a, article twenty-two
- 14 of this chapter. For the fiscal year beginning July 1, 2014, and
- 15 each fiscal year thereafter, distributions to be made pursuant to
- 16 subdivisions (2) and (5), subsection (a), section ten-b of this
- 17 article shall be reduced by ten percent, and the amounts resulting
- 18 from the reduction shall be paid into the State Excess Lottery
- 19 Revenue Fund.
- 20 (c) Notwithstanding any other provision of this code to the
- 21 contrary, for the fiscal year beginning July 1, 2014, and each
- 22 fiscal year thereafter, moneys deposited to the State Excess
- 23 Lottery Revenue Fund pursuant to this section shall be expended
- 24 by the Lottery in accordance with appropriations.
- 25 (d) Prior to payment of any appropriation made pursuant to
- 26 this section, debt service payments payable from the State
- 27 Excess Lottery Fund shall first be paid in accordance with the

- 28 provisions of sections eighteen-a, eighteen-d, and eighteen-e,
- 29 article twenty-two of this chapter and in the priority as defined
- 30 by subsection (c), section eighteen-f, article twenty-two of this
- 31 chapter.
- 32 (e) Notwithstanding any other provision of this code to the
- 33 contrary, after payment of debt service from the State Excess
- 34 Lottery Revenue Fund, all other distributions required by section
- 35 eighteen-a, article twenty-two of this chapter and the
- 36 distributions appropriated pursuant to this section shall be paid
- 37 on a pro rata basis.
- 38 (f)(1) Except as provided in subdivision (2) of this
- 39 subsection, notwithstanding the provisions of paragraph (B),
- 40 subdivision (9), subsection (a), section ten-b of this article, upon
- 41 certification of the Governor to the Legislature that an
- 42 independent actuary has determined that the unfunded liability
- 43 of the Old Fund, as defined in chapter twenty-three of this code,
- 44 has been paid or provided for in its entirety, the transfers made
- 45 to the Workers' Compensation Debt Reduction Fund pursuant to
- 46 paragraph (A), subdivision (9), subsection (a), section ten-b of
- 47 this article shall expire and those funds shall remain in the State
- 48 Excess Lottery Revenue Fund subject to appropriation.
- 49 (2)(A) Notwithstanding any provision of subdivision (1) of
- 50 this subsection or any provision of paragraph (B), subdivision
- 51 (9), subsection (a), section ten-b of this article or any other
- 52 provision of this code to the contrary, if the budget shortfall, as
- 53 determined by the state Budget Office as of December 1, 2015,
- 54 is greater than \$100 million, then the Governor may, by
- 55 Executive Order, redirect deposits of revenues derived from net
- 56 terminal income imposed under this article, for any period
- 57 commencing after February 29, 2016 and ending before July 1,
- 58 2016, to the General Revenue Fund, instead of to the funds
- 59 otherwise mandated in this article, in article two-d, chapter
- 60 twenty-three of this code or in any other provision of this code.

61 (B) Notwithstanding any provision of subdivision (1) of this 62 subsection or any provision of paragraph (B), subdivision (9), subsection (a), section ten-b of this article or any other provision 63 64 of this code to the contrary, the Governor may, by Executive Order, redirect one-half of the deposits of revenues derived from 65 net terminal income imposed under this article, for any period 66 67 commencing after June 30, 2016, and ending before July 1, 68 2017, to the General Revenue Fund, instead of to the funds otherwise mandated in this article, in article two-d, chapter 69 twenty-three of this code or in any other provision of this code, 70 71 until certification of the Governor to the Legislature that an independent actuary has determined that the unfunded liability 72 73 of the Old Fund, as defined in chapter twenty three of this code, has been paid or provided for in its entirety. 74



## **CHAPTER 254**

(Com. Sub. for S. B. 621 - By Senators Palumbo, Ashley, Gaunch, Karnes, Mullins, Walters and Ferns)

[Passed March 12, 2016; in effect ninety days from passage.] [Approved by the Governor on March 29, 2016.]

AN ACT to amend and reenact §23-2-1 of the Code of West Virginia, 1931, as amended, relating to exempting taxicab companies whose drivers are independent contractors from providing workers' compensation coverage for the drivers.

Be it enacted by the Legislature of West Virginia:

That §23-2-1 of the Code of West Virginia, 1931 as amended, be amended and reenacted to read as follows:

# ARTICLE 2. EMPLOYERS AND EMPLOYEES SUBJECT TO CHAPTER; EXTRATERRITORIAL COVERAGE.

# §23-2-1. Employers subject to chapter; elections not to provide certain coverages; notices; filing of business registration certificates.

- 1 (a) The State of West Virginia and all governmental agencies
- 2 or departments created by it, including county boards of
- 3 education, political subdivisions of the state, any volunteer fire
- 4 department or company and other emergency service
- 5 organizations as defined by article five, chapter fifteen of this
- 6 code, and all persons, firms, associations and corporations
- 7 regularly employing another person or persons for the purpose
- 8 of carrying on any form of industry, service or business in this
- 9 state, are employers within the meaning of this chapter and are
- 10 required to subscribe to and pay premium taxes into the
- 11 Workers' Compensation Fund for the protection of their
- 12 employees and are subject to all requirements of this chapter and
- 13 all rules prescribed by the Workers' Compensation Commission
- 14 with reference to rate, classification and premium payment:
- 15 Provided, That rates will be adjusted by the commission to
- 16 reflect the demand on the compensation fund by the covered
- 17 employer.
- 18 (b) The following employers are not required to subscribe to
- 19 the fund, but may elect to do so:
- 20 (1) Employers of employees in domestic services;
- 21 (2) Employers of five or fewer full-time employees in agricultural service;
- 23 (3) Employers of employees while the employees are
- 24 employed without the state except in cases of temporary
- 25 employment without the state;

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- 26 (4) Casual employers. An employer is a casual employer 27 when the number of his or her employees does not exceed three 28 and the period of employment is temporary, intermittent and 29 sporadic in nature and does not exceed ten calendar days in any 30 calendar quarter;
- 31 (5) Churches;
- 32 (6) Employers engaged in organized professional sports 33 activities, including employers of trainers and jockeys engaged 34 in thoroughbred horse racing;
- 35 (7) Any volunteer rescue squad or volunteer police auxiliary unit organized under the auspices of a county commission, 36 37 municipality or other government entity or political subdivision; 38 volunteer organizations created or sponsored by government entities, political subdivisions; or area or regional emergency 39 40 medical services boards of directors in furtherance of the purposes of the Emergency Medical Services Act of article 41 42 four-c, chapter sixteen of this code: *Provided*, That if any of the 43 employers described in this subdivision have paid employees, to 44 the extent of those paid employees, the employer shall subscribe to and pay premium taxes into the Workers' Compensation Fund 45 46 based upon the gross wages of the paid employees but with 47 regard to the volunteers, the coverage remains optional;
  - (8) Taxicab drivers of taxicab companies operating under article two, chapter twenty-four-a of this code, who provide taxicab service pursuant to a written or electronic agreement that identifies the taxicab driver as an independent contractor consistent with the United States Internal Revenue code requirements for persons acting as independent contractors: *Provided*, That any such taxicab driver identified as an independent contractor shall not be eligible for workers' compensation benefits under this chapter as an employee of the taxicab company.

- 58 (9) Any employer whose employees are eligible to receive 59 benefits under the federal Longshore and Harbor Workers' 60 Compensation Act, 33 U.S.C. §901, *et seq.*, but only for those 61 employees eligible for those benefits.
  - (c) Notwithstanding any other provision of this chapter to the contrary, whenever there are churches in a circuit which employ one individual clergyman and the payments to the clergyman from the churches constitute his or her full salary, such circuit or group of churches may elect to be considered a single employer for the purpose of premium payment into the Workers' Compensation Fund.
  - (d) Employers who are not required to subscribe to the Workers' Compensation Fund may voluntarily choose to subscribe to and pay premiums into the fund for the protection of their employees and in that case are subject to all requirements of this chapter and all rules and regulations prescribed by the commission with reference to rates, classifications and premium payments and shall afford to them the protection of this chapter, including section six of this article, but the failure of the employers to choose to subscribe to and to pay premiums into the fund shall not impose any liability upon them other than any liability that would exist notwithstanding the provisions of this chapter.
    - (e) Any foreign corporation employer whose employment in this state is to be for a definite or limited period which could not be considered "regularly employing" within the meaning of this section may choose to pay into the Workers' Compensation Fund the premiums provided for in this section, and at the time of making application to the Workers' Compensation Commission, the employer shall furnish a statement under oath showing the probable length of time the employment will continue in this state, the character of the work, an estimate of the monthly payroll and any other information which may be

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- 91 required by the commission. At the time of making application 92 the employer shall deposit with the commission to the credit of the Workers' Compensation Fund the amount required by 93 94 section five of this article. That amount shall be returned to the employer if the employer's application is rejected by the 95 commission. Upon notice to the employer of the acceptance of 96 97 his or her application by the commission, he or she is an 98 employer within the meaning of this chapter and subject to all of 99 its provisions.
- 100 (f) Any foreign corporation employer choosing to comply 101 with the provisions of this chapter and to receive the benefits 102 under this chapter shall, at the time of making application to the commission in addition to other requirements of this chapter, 103 104 furnish the commission with a certificate from the Secretary of 105 State, where the certificate is necessary, showing that it has 106 complied with all the requirements necessary to enable it legally 107 to do business in this state and no application of a foreign corporation employer shall be accepted by the commission until 108 the certificate is filed. 109
- 110 (g) The following employers may elect not to provide 111 coverage to certain of their employees under the provisions of 112 this chapter:
  - (1) Any political subdivision of the state including county commissions and municipalities, boards of education, or emergency services organizations organized under the auspices of a county commission may elect not to provide coverage to any elected official. The election not to provide coverage does not apply to individuals in appointed positions or to any other employees of the political subdivision;
  - (2) If an employer is a partnership, sole proprietorship, association or corporation, the employer may elect not to include as an "employee" within this chapter, any member of the

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123 partnership, the owner of the sole proprietorship or any corporate 124 officer or member of the board of directors of the association or 125 corporation. The officers of a corporation or an association shall 126 consist of a president, a vice president, a secretary and a 127 treasurer, each of whom is elected by the board of directors at 128 the time and in the manner prescribed by the bylaws. Other 129 officers and assistant officers that are considered necessary may be elected or appointed by the board of directors or chosen in 130 131 any other manner prescribed by the bylaws and, if elected, appointed or chosen, the employer may elect not to include the 132 133 officer or assistant officer as an "employee" within the meaning 134 of this chapter: *Provided*, That except for those persons who are 135 members of the board of directors or who are the corporation's 136 or association's president, vice president, secretary and treasurer and who may be excluded by reason of their positions from the 137 138 benefits of this chapter even though their duties, responsibilities, activities or actions may have a dual capacity of work which is 139 140 ordinarily performed by an officer and also of work which is 141 ordinarily performed by a worker, an administrator or an 142 employee who is not an officer, no other officer or assistant 143 officer who is elected or appointed shall be excluded by election from coverage or be denied the benefits of this chapter merely 144 145 because he or she is an officer or assistant officer if, as a matter 146 of fact:

(A) He or she is engaged in a dual capacity of having the duties and responsibilities for work ordinarily performed by an officer and also having duties and work ordinarily performed by a worker, administrator or employee who is not an officer;

(B) He or she is engaged ordinarily in performing the duties of a worker, an administrator or an employee who is not an officer and receives pay for performing the duties in the capacity of an employee; or

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- 155 (C) He or she is engaged in an employment palpably 156 separate and distinct from his or her official duties as an officer 157 of the association or corporation;
- 158 (3) If an employer is a limited liability company, the 159 employer may elect not to include as an "employee" within this 160 chapter a total of no more than four persons, each of whom are 161 acting in the capacity of manager, officer or member of the 162 company.
  - (h) In the event of election under subsection (g) of this section, the employer shall serve upon the commission written notice naming the positions not to be covered and shall not include the "employee's" remuneration for premium purposes in all future payroll reports, and the partner, proprietor or corporate or executive officer is not considered an employee within the meaning of this chapter after the notice has been served. Notwithstanding the provisions of subsection (g), section five of this article, if an employer is delinquent or in default or has not subscribed to the Fund even though it is obligated to do so under the provisions of this article, any partner, proprietor or corporate or executive officer shall not be covered and shall not receive the benefits of this chapter.
  - (i) "Regularly employing" or "regular employment" means employment by an employer which is not a casual employer under this section.
- (j) Upon the termination of the commission, the criteria governing which employer shall or may subscribe to the Workers' Compensation Commission shall also govern which employers shall or may purchase Workers' Compensation insurance under article two-c of this chapter.



#### (Com. Sub. for H. B. 4554 - By Delegates Ambler, Gearheart, Trecost, Hamrick, P. Smith, Ireland, Cooper and D. Evans)

[Passed March 12, 2016; in effect ninety days from passage.] [Approved by the Governor on March 29, 2016.]

AN ACT to authorize the Commissioner of the Division of Highways to allow an increase of gross weight limitations and dimensional restrictions on certain roads in Greenbrier County; specifying roadway location; and providing for permit application, restrictions, requirements, fees and limitations.

Be it enacted by the Legislature of West Virginia:

#### WEIGHT LIMITATIONS ON CERTAIN ROADS IN GREENBRIER COUNTY.

- §1. Authority of the Commissioner of the Division of Highways to increase weight limitations on certain highways within **Greenbrier County.** 
  - 1 (a) If the Commissioner of the Division of Highways
  - determines that the design, construction and safety of the
  - highways in Greenbrier County described in subsection (c) of
  - this section are such that gross weight limits and dimensional restrictions may be increased without damage and without
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  - 6 unreasonable danger to the public, the commissioner may set
  - new limitations applicable to the highways or portions thereof. 7
  - (b) The commissioner may not establish any weight 8
  - limitation or dimensional restriction in excess or in conflict with 9
- 10 any weight limitation or dimensional restriction prescribed by or

- pursuant to acts of Congress for any road or highway that is part of the National System of Interstate and Defense Highways.
- 13 (c) Notwithstanding any provisions of the Code of West 14 Virginia, 1931, as amended, to the contrary, if the commissioner 15 determines that those portions of Greenbrier County Route 10/1 16 north and southbound from milepost 6.10 to milepost 11.60 are 17 designed and constructed to allow the gross weight and dimensional limitation to be increased without damage, 18 19 including damage to the road and related infrastructure, and 20 without unreasonable danger to the public, the commissioner 21 may increase the gross weight and vehicle dimensional limitations on the highway section described above: Provided, 22 That any person, organization or corporation or other entity 23 proposing to exceed the gross weight and vehicle dimension 24 25 limitations of current state law while using these routes must first obtain a permit from the commissioner before proceeding: 26 27 Provided, however, That the increased weight limitations and 28 dimensional restrictions are not barred by an act of the United
- 30 (d) The commissioner shall create a permit that must be 31 obtained by any person or entity wishing to use the provisions of 32 subsection (c) of this section. The commissioner is authorized 33 to make the permit subject to any restrictions and requirements 34 the commissioner deems necessary to protect the public, road 35 and other infrastructure.

States Congress.

- 36 (e) The commissioner shall adopt procedures for the 37 issuance of the permit and those procedures shall be consistent 38 with the existing procedures for the issuance of similar permits. 39 The permit issued shall be valid for one year from the date of 40 issuance.
- 41 (f) The information required in the application for the permit 42 includes:

58 other infrastructure.

#### LEGISLATURE OF WEST VIRGINIA

# **ACTS**

FIRST EXTRAORDINARY SESSION, 2016

### CHAPTER 1

(S. B. 1002 - By Senators Cole (Mr. President), and Kessler)
[By Request of the Executive]

[Passed May 27, 2016; in effect from passage.] [Approved by the Governor with deletions on June 2, 2016.]

AN ACT expiring funds to the unappropriated balance in the State Fund, General Revenue, for the fiscal year ending June 30, 2016, in the amount of \$1,000,000 from the Governor's Office, Civil Contingent Fund, fund 0105, fiscal year 2004, organization 0100, appropriation 61400; in the amount of \*

\* \$3,150,000 from the Joint Expenses, Tax

<sup>\*</sup> Note: The Governor deleted the language in the title of the bill, which read "\$1,000,000 from the Governor's Office, Civil Contingent Fund, fund 0105, fiscal year 2004, organization 0100, appropriation 61400; in the amount of \$1,000,000 from the Governor's Office, Civil Contingent Fund - Total - Surplus, fund 0105, fiscal year 2005, organization 0100, appropriation 23800; in the amount of \$1,000,000 from the Governor's Office, Civil Contingent Fund, fund 0105, fiscal year 2006, organization 0100, appropriation 61400;"

Reduction and Federal Funding Increased Compliance (TRAFFIC), fund 0175, fiscal year 2009, organization 2300, appropriation 64200; in the amount of \$3,000,000 from the Treasurer's Office, Personal Income Tax Reserve Fund, fund 1313, fiscal year 2016, organization 1300; in the amount of \$8,500,000 from the Attorney General, Consumer Protection Recovery Fund, fund 1509, fiscal year 2016, organization 1500; in the amount of \$2,500,000 from the Department of Health and Human Resources, West Virginia Health Care Authority – Health Care Costs Review Fund, fund 5375, fiscal year 2016, organization 0507; in the amount of \$32,000,000 from the Department of Revenue, Office of the Secretary – Revenue Shortfall Reserve Fund, fund 7005, fiscal year 2016, organization 0701; in the amount of \$5,000,000 from the Department of Revenue, Insurance Commissioner – Insurance Commission Fund, fund 7152, fiscal year 2016, organization 0704; in the amount of \$4,631,089.49 from the Department of Revenue, Lottery Commission, Operating and Expenses Fund, fund 7200, fiscal year 2016, organization 0705; and in the amount of \$2,000,000 from the Public Service Commission, fund 8623, fiscal year 2016, organization 0926.

- Whereas, The Governor submitted to the Legislature the Executive Budget document, dated January 13, 2016, which included a Statement of the State Fund, General Revenue, setting forth therein the cash balance as of July 1, 2015, and further included the estimate of revenues for the fiscal year 2016, less net appropriation balances forwarded and regular appropriations for the fiscal year 2016; and
- Whereas, Current economic and fiscal trends are anticipated to result in projected year-end revenue deficits, including potential significant shortfalls in Severance Tax, and shortfalls in Personal Income Tax and Consumers Sales and Use Tax; and
- Whereas, Unappropriated balances and projected year-end revenue surpluses in various other General Revenue sources will only offset a small portion of these deficits; and

<i>)</i> 11. 1	I THE ROTAL TIONS
15	Whereas, The total projected year-end revenue deficit for the
16	General Revenue Fund prior to any budget or revenue
17	adjustments was estimated at \$464.5 million; and
18	Whereas, On October 22, 2015, the Governor issued
19	Executive Order 7-15 which directed a spending reduction for
20	General Revenue appropriations for fiscal year 2016 totaling
21	\$93,379,526; and
22	Whereas, The Legislature agreed to take voluntary action to
23	effect a four percent spending reduction of its General Revenue
24	appropriation for fiscal year 2016 totaling \$938,067; and
25	Whereas, The Governor recommended and the Legislature
26	passed SB 342, that reduced General Revenue appropriations to
27	the Department of Health and Human Resources and the Bureau
28	of Senior Services by \$53,900,000; and
29	Whereas, During the 2016 regular session the Legislature
30	passed HB 4155, which expired \$22,989,375 to the Medical
31	Services Trust Fund from various special revenue balances; and
32	Whereas, The Secretary of the Department of Revenue has
33	submitted a monthly General Revenue Fund Collections Report
34	for the first ten months of fiscal year 2016 as prepared by the
35	State Budget Office; and
36	Whereas, This report, which includes approximately \$110
37	million of additional revenue collected due to previous
38	legislative actions in SB 364 and SB 419 during the 2016 regular

experienced a revenue shortfall of approximately \$218.7 million
 for the first ten months of fiscal year 2016, as compared to the
 monthly revenue estimates for the first ten months of the fiscal

39 session, demonstrates that the State of West Virginia has

43 year 2016; and

\* NOTE: The Governor deleted the language on lines 56 through 63, which read "in the Governor's Office, Civil Contingent Fund, fund 0105, fiscal year 2004, organization 0100,

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1313, fiscal year 2016, organization 1300; in the Attorney

year 2006, organization 0100, appropriation 61400;"

fund 0105, fiscal year 2004, organization 0100, appropriation 61400; in the Governor's Office, Civil Contingent Fund - Total - Surplus, fund 0105, fiscal year 2005, organization 0100, appropriation 23800; in the Governor's Office, Civil Contingent Fund, fund 0105, fiscal

- 68 General, Consumer Protection Recovery Fund, fund 1509, fiscal
- 69 year 2016, organization 1500; in the Department of Health and
- 70 Human Resources, West Virginia Health Care Authority -
- 71 Health Care Costs Review Fund, fund 5375, fiscal year 2016,
- 72 organization 0507; in the Department of Revenue, Office of the
- 73 Secretary Revenue Shortfall Reserve Fund, fund 7005, fiscal
- 74 year 2016, organization 0701; in the Department of Revenue,
- 75 Insurance Commissioner Insurance Commission Fund, fund
- 76 7152, fiscal year 2016, organization 0704; in the Department of
- 77 Revenue, Lottery Commission, Operating and Expenses Fund,
- 78 fund 7200, fiscal year 2016, organization 0705; and in the Public
- 79 Service Commission, fund 8623, fiscal year 2016, organization
- 80 0926, exceed that which is necessary for the purposes for which
- 81 the accounts were established; therefore

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

1 That the balance of the funds available for expenditure in the

2 fiscal year ending June 30, 2016, in the \*

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\* Joint Expenses, Tax Reduction and Federal

<sup>\*</sup> Note: The Governor deleted the language on lines 2 through 9, which read "Governor's Office, Civil Contingent Fund, fund 0105, fiscal year 2004, organization 0100, appropriation 61400, be decreased by expiring the amount of \$1,000,000; in the Governor's Office, Civil Contingent Fund – Total – Surplus, fund 0105, fiscal year 2005, organization 0100, appropriation 23800, be decreased by expiring the amount of \$1,000,000; in the Governor's Office, Civil Contingent Fund, fund 0105, fiscal year 2006, organization 0100, appropriation 61400, be decreased by expiring the amount of \$1,000,000;"

June 30, 2016.

10 Funding Increased Compliance (TRAFFIC), fund 0175, fiscal year 2009, organization 2300, appropriation 64200, be decreased 11 12 by expiring the amount of \$3,150,000; in the Treasurer's Office, 13 Personal Income Tax Reserve Fund, fund 1313, fiscal year 2016, 14 organization 1300, be decreased by expiring the amount of 15 \$3,000,000; in the Attorney General, Consumer Protection 16 Recovery Fund, fund 1509, fiscal year 2016, organization 1500, be decreased by expiring the amount of \$8,500,000; in the 17 18 Department of Health and Human Resources, West Virginia 19 Health Care Authority – Health Care Costs Review Fund, fund 20 5375, fiscal year 2016, organization 0507, be decreased by expiring the amount of \$2,500,000; in the Department of 21 22 Revenue, Office of the Secretary - Revenue Shortfall Reserve 23 Fund, fund 7005, fiscal year 2016, organization 0701, be 24 decreased by expiring the amount of \$32,000,000; in the 25 Department of Revenue, Insurance Commissioner – Insurance 26 Commission Fund, fund 7152, fiscal year 2016, organization 27 0704, be decreased by expiring the amount of \$5,000,000; in the 28 Department of Revenue, Lottery Commission, Operating and 29 Expenses Fund, fund 7200, fiscal year 2016, organization 0705, 30 be decreased by expiring the amount of \$4,631,089.49; and in 31 the Public Service Commission, fund 8623, fiscal year 2016, 32 organization 0926, be decreased by expiring the amount of 33 \$2,000,000, all to the unappropriated balance of the State Fund, 34 General Revenue, to be available during the fiscal year ending

## **CHAPTER 2**

## (S. B. 1010 - By Senators Cole (Mr. President), and Kessler) [By Request of the Executive]

[Passed June 14, 2016; in effect from passage.] [Approved by the Governor on June 16, 2016.]

AN ACT making a supplementary appropriation of public moneys out of the Treasury from the balance of moneys remaining as an unappropriated balance in the State Fund, General Revenue, to the Department of Education, State Board of Education – State Department of Education, fund 0313, fiscal year 2016, organization 0402, by supplementing and amending the appropriations for the fiscal year ending June 30, 2016.

Whereas, The Governor submitted to the Legislature the Executive Budget Document, dated January 13, 2016, which included a Statement of the State Fund, General Revenue, setting forth therein the cash balance as of July 1, 2015, and further included the estimate of revenues for the fiscal year 2016, less net appropriation balances forwarded and regular appropriations for the fiscal year 2016; and

Whereas, Current economic and fiscal trends are anticipated to result in projected year-end revenue deficits, including potential significant shortfalls in severance tax and shortfalls in personal income tax and consumers sales and use tax; and

Whereas, Unappropriated balances and projected year-end revenue surpluses in various other General Revenue sources will only offset a small portion of these deficits; and Whereas, The total projected year-end revenue deficit for the General Revenue Fund prior to any budget or revenue adjustments was estimated at \$464.5 million; and

Whereas, On October 22, 2015, the Governor issued Executive Order 7-15 which directed a spending reduction for General Revenue appropriations for fiscal year 2016 totaling \$93,379,526; and

Whereas, The Legislature agreed to take voluntary action to effect a four percent spending reduction of its General Revenue appropriation for fiscal year 2016 totaling \$938,067; and

Whereas, The Governor recommended, and the Legislature passed, SB 342, that reduced General Revenue appropriations to the Department of Health and Human Resources and the Bureau of Senior Services by \$53,900,000; and

Whereas, During the 2016 regular session the Legislature passed HB 4155, which expired \$22,989,375 to the Medical Services Trust Fund from various special revenue balances; and

Whereas, The Secretary of the Department of Revenue has submitted a monthly General Revenue Fund Collections Report for the first ten months of fiscal year 2016 as prepared by the State Budget Office; and

Whereas, This report, which includes approximately \$110 million of additional revenue collected due to previous legislative actions in SB 364, SB 352 and SB 419 during the 2016 regular session, demonstrates that the State of West Virginia has experienced a revenue shortfall of approximately \$218.7 million for the first ten months of fiscal year 2016, as compared to the monthly revenue estimates for the first ten months of fiscal year 2016; and

Whereas, An additional \$63 million is anticipated to be collected in May and June due to legislative action in SB 419; and

Whereas, The Boone County Board of Education has an estimated \$2.2 million deficit as a result of bankruptcy proceedings and unpaid property taxes for fiscal year 2016; and

Whereas, The Boone County Board of Education will be required to reimburse the General Revenue Fund of the state for any property taxes recovered as a result of ongoing proceedings in bankruptcy court pursuant to West Virginia Code §18-9A-12(b)(3); and

Whereas, There still remains an estimated deficit of \$113 million that must be addressed; and

Whereas, During the 2016 first extraordinary session, the Governor recommended, and the Legislature amended and passed, SB 1002, which expired \$63,781,089 million to the State Fund, General Revenue to address the current year deficit; and

Whereas, The Governor intends to issue an additional Executive Order to reduce spending from General Revenue appropriation for the Department of Health and Human Resources for fiscal year 2016 totaling up to \$47.9 million; and

Whereas, It appears from the statement of the State Fund, General Revenue and actions described herein, there now remains an unappropriated balance in the State Treasury which is available for appropriation during the fiscal year ending June 30, 2016; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending June 30, 2016, to fund 0313, fiscal year 2016, organization 0402, be supplemented and amended by adding a new item of appropriation as follows:

1936	APPROPRIATIONS	[Ch. 3	
1	TITLE II – APPROPRIATIONS.		
2	Section 1. Appropriations from General R	evenue.	
3	DEPARTMENT OF EDUCATION		
4 5	47 – State Board of Education – State Department of Education		
6	(WV Code Chapters 18 and 18A)		
7	Fund <u>0313</u> FY <u>2016</u> Org <u>0402</u>		
8		General	
9	Appro-	Revenue	
10	priation	Fund	
11	18a Adjustment for Unpaid Property		
12	Taxes	2.174.591	



### (S. B. 1013 - By Senators Cole (Mr. President) and Kessler) [By Request of the Executive]

[Passed June 14, 2016; in effect from passage.] [Approved by the Governor with reductions on June 17, 2016.]

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

Be it enacted by the Legislature of West Virginia:

#### Title

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

#### TITLE I - GENERAL PROVISIONS.

- §1. General policy.
- §2. Definitions.
- §3. Classification of appropriations.
- §4. Method of expenditure.
- §5. Maximum expenditures.

#### TITLE I — GENERAL PROVISIONS.

- 1 **Section 1. General policy.** The purpose of this bill is to
- 2 appropriate money necessary for the economical and efficient
- 3 discharge of the duties and responsibilities of the state and its
- 4 agencies during the fiscal year 2017.
- 1 **Sec. 2. Definitions.** For the purpose of this bill:
- 2 "Governor" shall mean the Governor of the State of West
- 3 Virginia.
- 4 "Code" shall mean the Code of West Virginia, one thousand
- 5 nine hundred thirty-one, as amended.
- 6 "Spending unit" shall mean the department, bureau, division,
- 7 office, board, commission, agency or institution to which an
- 8 appropriation is made.
- 9 The "fiscal year 2017" shall mean the period from July 1,
- 10 2016, through June 30, 2017.
- "General revenue fund" shall mean the general operating
- 12 fund of the state and includes all moneys received or collected
- 13 by the state except as provided in W.Va. Code §12-2-2 or as
- 14 otherwise provided.

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

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

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

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

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

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

20 "unclassified" appropriation, or its "current expenses"

- 21 appropriation or other appropriate appropriation. Each spending
- 22 unit is hereby authorized and required to make such payments in
- 23 accordance with the provisions of Article 2, Chapter 11B of the
- 24 Code.
- Each spending unit shall be responsible for all contributions,
- 26 payments or other costs related to coverage and claims of its
- 27 employees for unemployment compensation and workers
- 28 compensation. Such expenditures shall be considered an
- 29 employee benefit.
- 30 "BRIM Premiums" shall mean the amount charged as
- 31 consideration for insurance protection and includes the present
- 32 value of projected losses and administrative expenses. Premiums
- 33 are assessed for coverages, as defined in the applicable policies,
- 34 for claims arising from, inter alia, general liability, wrongful
- 35 acts, property, professional liability and automobile exposures.
- 36 Should the appropriation for "BRIM Premium" be
- 37 insufficient to cover such cost, the remainder of such costs shall
- 38 be paid by each spending unit from its "unclassified"
- 39 appropriation, its "current expenses" appropriation or any other
- 40 appropriate appropriation to the Board of Risk and Insurance
- 41 Management. Each spending unit is hereby authorized and
- 42 required to make such payments. If there is no appropriation for
- 43 "BRIM Premium" such costs shall be paid by each spending unit
- 44 from its "current expenses" appropriation, "unclassified"
- 45 appropriation or other appropriate appropriation.
- West Virginia Council for Community and Technical
- 47 College Education and Higher Education Policy Commission
- 48 entities operating with special revenue funds and/or federal
- 49 funds shall pay their proportionate share of the Board of Risk
- 50 and Insurance Management total insurance premium cost for
- 51 their respective institutions.

- "Current expenses" shall mean operating costs other than personal services and shall not include equipment, repairs and alterations, buildings or lands. Each spending unit shall be responsible for and charged monthly for all postage meter service and shall reimburse the appropriate revolving fund monthly for all such amounts. Such expenditures shall be considered a current expense.
- 59 "Equipment" shall mean equipment items which have an 60 appreciable and calculable period of usefulness in excess of one 61 year.
- 62 "Repairs and alterations" shall mean routine maintenance 63 and repairs to structures and minor improvements to property 64 which do not increase the capital assets.
- 65 "Buildings" shall include new construction and major 66 alteration of existing structures and the improvement of lands 67 and shall include shelter, support, storage, protection or the 68 improvement of a natural condition.
- 69 "Lands" shall mean the purchase of real property or interest 70 in real property.
- "Capital outlay" shall mean and include buildings, lands or buildings and lands, with such category or item of appropriation to remain in effect as provided by W.Va. Code §12-3-12.
- From appropriations made to the spending units of state government, upon approval of the Governor there may be transferred to a special account an amount sufficient to match federal funds under any federal act.

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

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

- Secretary of the Department of Transportation is not a use other than the purpose for which such funds were dedicated and is permitted.
- Appropriations otherwise classified shall be expended only where the distribution of expenditures for different purposes cannot well be determined in advance or it is necessary or desirable to permit the spending unit the freedom to spend an appropriation for more than one of the above classifications.
  - Sec. 4. Method of expenditure. Money appropriated by this bill, unless otherwise specifically directed, shall be appropriated and expended according to the provisions of Article 3, Chapter 12 of the Code or according to any law detailing a procedure specifically limiting that article.
  - Sec. 5. Maximum expenditures. No authority or requirement of law shall be interpreted as requiring or permitting an expenditure in excess of the appropriations set out in this bill.

#### TITLE II — APPROPRIATIONS.

#### §1. Appropriations from general revenue..

#### ADMINISTRATION, DEPARTMENT OF Administration, Department of - Office of the Committee for the Purchase of Commodities and Services from the Handicapped – Fund Consolidated Public Retirement Board - Fund Prosecuting Attorneys' Institute, West Virginia -

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	Coal Mine Health and Safety, I		
			1988
	Commerce, Department of – O	2	
			1988
	Commerce, Department of – O		1000
		ortunity – Fund No. 0617	1988
	Development Office, West Virg	ginia – runa 	1094
		. 0612	
		o. 0250	
	Geological and Economic Surv		
	2		1983
		0260	
	Labor, Division of - Occupatio		
			1986
	Miners' Health, Safety and Trai	ning, Division	
	of – Fund No. 0277		1987
	Natural Resources, Division of		
	WorkForce WV – Fund No. 05	72	1988
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	State Board of Education – Div	vision of Educational	
	Performance Audits - Fui	nd No. 0573	1995
	State Board of Education - Voc	cational	
	Division - Fund No. 0390	)	1994
	State Department of Education		
		– Fund No. 0314	
		– Fund No. 0313	1990
	State Department of Education		
	•	3	1989
	State Department of Education		1002
		Doof and	1993
	West Virginia Schools for the I	0	1005
	ule Billid – Fulld No. 032	0	1993
EDU	CATION AND THE ARTS, DE	EPARTMENT OF	
	Culture and History, Division of	of – Fund	
			1997
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Fund No. 0135 Agriculture, Department of	- West Virginia	1972
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Auditor's Office – General A	Administration	1968
Governor's Office - Fund N	o. 0101	
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west virginia Conservation	Agency – Fund No. 0132	
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Consolidated Medical Servi No. 0525	ce Fund – Fund	2004
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		2002
Health, Division of – West	c c	
	0561	
	of – Fund No. 0403 – Fund No. 0416	
HIGHER EDUCATION POLICY	COMMISSION	
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		er Education Policy Commission –	
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		Educational Telecomputing (WVNET) – Fund No. 0551	2032
	Mars	hall University – General Administration Fund – Fund No. 0348	2035
		hall University – School of Medicine – Fund No. 0347	
		herd University – Fund No. 0366.	
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		tant General – Military Fund –	
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	Fire (	Commission – Fund No. 0436.	2018
		eland Security and Emergency Management,	
		Division of – Fund No. 0443	2013
		ce and Community Services, Division of –	
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		nile Services, Division of – Fund No. 0570.	
		ary Affairs and Public Safety, Department of –	
		Office of the Secretary – Fund No. 0430	2011
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		ssional and Occupational Licenses –	2021
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	State Budget Office – Fund No. 0595.	
	Tax Appeals, West Virginia Office of – Fund 0593.	
	Tax Division – Fund No. 0470.	
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	Aeronautics Commission – Fund No. 0582.	2025
	Public Transit, Division of – Fund No. 0510.	2024
	State Rail Authority – Fund No. 0506	
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	Veterans Assistance, Department of – Fund No. 0456	2025
	Veterans Assistance, Department of – Veterans	2025
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	Blue Ridge Community and Technical College	
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	College Education – Fund No. 0596.	2028
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	Fund No. 0587.	2030
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	New River Community and Technical College	2027
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	Southern West Virginia Community and Technical College	2029
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TD 4	A NICHORT ATTION. DEDARTMENT OF	
IKA	ANSPORTATION, DEPARTMENT OF	20.41
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		cific funds and collection accounts.	
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		al appropriations.	
		eral school fund.	

- 1 **Section 1. Appropriations from general revenue.**—From
- 2 the State Fund, General Revenue, there are hereby appropriated
- 3 conditionally upon the fulfillment of the provisions set forth in
- 4 Article 2, Chapter 11- the following amounts, as itemized, for
- 5 expenditure during the fiscal year 2017.

#### **LEGISLATIVE**

#### 1 - Senate

## Fund 0165 FY 2017 Org 2100

		Appro- priation		General Revenue Fund
1	Compensation of Members (R)	00300	\$	0
2	Compensation and Per Diem of			
3	Officers and Employees (R).	00500		0
4	Employee Benefits (R)	01000		0
5	Current Expenses and Contingent			
6	Fund (R)	02100		780,318
7	Repairs and Alterations (R)	. 06400		100
8	Unclassified	09900		0
9	Computer Supplies (R)	10100		100
10	Computer Systems (R)	10200		100
11	Printing Blue Book (R)	10300		100
12	Expenses of Members (R)	39900		100
13	BRIM Premium (R)	91300		0
14	Total		\$	780,818
15	The appropriations for the Sen	ate for the fi	scal y	ear 2016 are
16	to remain in full force and effect a	and are here	by rea	ppropriated
17	to June 30, 2017, with the except	ion of fund	0165	, fiscal year
18	2016, appropriation 39900 (\$238	,088), and	fund	0165, fiscal
19	year 2012, appropriation 00500 (\$2	2,000,000)	which	shall expire
20	on June 30, 2016. Any balances	s so reapp	ropriat	ted may be
21	transferred and credited to the fisc	al year 201	6 acco	ounts.

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

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

36 The Clerk of the Senate, with the approval of the President, 37 or the President of the Senate shall have authority to employ 38 such staff personnel during any session of the Legislature as 39 shall be needed in addition to staff personnel authorized by the Senate resolution adopted during any such session. The Clerk of 40 41 the Senate, with the approval of the President, or the President of the Senate shall have authority to employ such staff personnel 42 43 between sessions of the Legislature as shall be needed, the 44 compensation of all staff personnel during and between sessions of the Legislature, notwithstanding any such Senate resolution, 45 to be fixed by the President of the Senate. The Clerk is hereby 46 47 authorized to draw his or her requisitions upon the Auditor for 48 the payment of all such staff personnel for such services, payable out of the appropriation for Compensation and Per Diem of 49 Officers and Employees or Current Expenses and Contingent 50 51 Fund of the Senate.

For duties imposed by law and by the Senate, the Clerk of the Senate shall be paid a monthly salary as provided by the Senate resolution, unless increased between sessions under the authority of the President, payable out of the appropriation for

- 56 Compensation and Per Diem of Officers and Employees or
- 57 Current Expenses and Contingent Fund of the Senate.
- The distribution of the blue book shall be by the office of the
- 59 Clerk of the Senate and shall include 75 copies for each member
- 60 of the Legislature and two copies for each classified and
- 61 approved high school and junior high or middle school and one
- 62 copy for each elementary school within the state.
- Included in the above appropriation for Senate (fund 0165,
- 64 appropriation 02100), an amount not less than \$5,000 is to be
- 65 used for the West Virginia Academy of Family Physicians Doc
- 66 of the Day Program.

#### 2 - House of Delegates

#### Fund <u>0170</u> FY <u>2017</u> Org <u>2200</u>

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

9 The appropriations for the House of Delegates for the fiscal 10 year 2016 are to remain in full force and effect and are hereby reappropriated to June 30, 2017, with the exception of fund 11 0170, fiscal year 2016, appropriation 00300 (\$175,000), fund 12 13 0170, fiscal year 2016, appropriation 00500 (\$71,161), and fund 14 0170, fiscal year 2016, appropriation 39900 (\$110,000) which shall expire on June 30, 2016. Any balances so reappropriated 15 16 may be transferred and credited to the fiscal year 2016 accounts.

Upon the written request of the Clerk of the House of Delegates, the Auditor shall transfer amounts between items of

19 the total appropriation in order to protect or increase the 20 efficiency of the service.

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

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

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

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

#### 3 - Joint Expenses

## (WV Code Chapter 4)

#### Fund 0175 FY 2017 Org 2300

1	Joint Committee on Government and		
2	Finance (R) 10400	\$	5,758,015
3	Legislative Printing (R) 10500		760,000
4	Legislative Rule-Making Review		
5	Committee (R) 10600		147,250
6	Legislative Computer System (R) 10700		902,500
7	BRIM Premium (R) 91300		27,692
8	Total	\$	7,595,457
9	The appropriations for the Joint Expenses	s for th	ne fiscal year
10	2016 are to remain in full force and effect	ct and	are hereby
11	reappropriated to June 30, 2017, with the	excep	tion of fund
12	0175, fiscal year 2016, appropriation 10400 (\$	343,8	18) and fund
13	0175, fiscal year 2009, appropriation 64200 (	\$9,000	0,000) which
14	shall expire on June 30, 2016. Any balances re	eappro	opriated may
15	be transferred and credited to the fiscal year	2016	accounts.
16	Upon the written request of the Clerk of the	ne Ser	nate, with the

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

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## **JUDICIAL**

## 4 - Supreme Court – General Judicial

## Fund <u>0180</u> FY <u>2017</u> Org <u>2400</u>

1	Personal Services and Employee		
2	Benefits (R)	\$	101,924,358
3	Children's Protection Act (R) 09000		2,900,000
4	Current Expenses (R)		32,498,862
5	Repairs and Alterations (R) 06400		736,450
6	Equipment (R)		1,800,000
7	Judges' Retirement System (R) 11000		900,000
8	Buildings (R)		100,000
9	Other Assets (R) 69000		500,000
10	BRIM Premium (R) 91300		400,000
11	Total	\$	141,759,670
12 13 14 15 16	The appropriations to the Supreme Court fiscal years 2015 and 2016 are to remain in fu and are hereby reappropriated to June 30, 201 reappropriated may be transferred and credite 2016 accounts.	ıll fo 7. Ar	rce and effect ny balances so
17	This fund shall be administered by the	ne A	dministrative
17 18	This fund shall be administered by the Director of the Supreme Court of Appeals		
	· · · · · · · · · · · · · · · · · · ·	, wh	o shall draw
18	Director of the Supreme Court of Appeals requisitions for warrants in payment in the making deductions there from as required by	, wh	o shall draw of payrolls,
18 19	Director of the Supreme Court of Appeals requisitions for warrants in payment in the	, wh	o shall draw of payrolls,
18 19 20	Director of the Supreme Court of Appeals requisitions for warrants in payment in the making deductions there from as required by	, wh forn law	o shall draw of payrolls, for taxes and
18 19 20 21	Director of the Supreme Court of Appeals requisitions for warrants in payment in the making deductions there from as required by other items.	, who form law	o shall draw n of payrolls, for taxes and System (fund

law relating thereto, upon requisition of the Administrative

Director of the Supreme Court of Appeals.

#### **EXECUTIVE**

## 5 - Governor's Office

## (WV Code Chapter 5)

## Fund <u>0101</u> FY <u>2017</u> Org <u>0100</u>

1	Personal Services and Employee		
2	Benefits00100	\$	3,143,970
3	Current Expenses (R) 13000		571,648
4	Repairs and Alterations 06400		2,000
5	National Governors Association 12300		60,700
6	Herbert Henderson Office of		
7	Minority Affairs 13400		156,726
8	Southern Governors' Association 31400		40,000
9	BRIM Premium 91300		151,851
10	Total	\$	4,126,895
11	Any unavasanded belonger remaining in the	ha an	nranriations
	Any unexpended balances remaining in the	_	
12	for Unclassified (fund 0101, appropriation		
13	Expenses (fund 0101, appropriation 13000),	and	JOBS Fund
14	(fund 0101, appropriation 66500) at the close	of th	e fiscal year
15	2016 are hereby reappropriated for expenditure	e dur	ing the fiscal
16	year 2017, with the exception of fund 0101,	fisca	1 year 2016,
17	appropriation 13000 (\$115,266) which shall e	xpire	on June 30,
18	2016.		
19	Included in the above appropriation to Pers	onal	Services and
20	Employee Benefits (fund 0101, appropria		
21	\$150,000 for the Salary of the Governor.	111011	00100), 15
_1	\$150,000 for the Salary of the Governor.		
22	The above appropriation for Herbert Her	nders	on Office of
23	Minority Affairs (fund 0101, appropriation	1340	00) shall be

6 - Governor's Office – Custodial Fund

transferred to the Minority Affairs Fund (fund 1058).

## (WV Code Chapter 5)

## Fund <u>0102</u> FY <u>2017</u> Org <u>0100</u>

1 Personal Services and Employee

2	Benefits00100	\$	353,714
3	Current Expenses (R)		202,708
4	Repairs and Alterations 06400		5,000
5	Total	\$	561,422
6	Any unexpended balance remaining in th	e appro	priation for
7	Current Expenses (fund 0102, appropriation	13000)	at the close
8	of the fiscal year 2016 is hereby reappropriat	ed for	expenditure
9	during the fiscal year 2017.		

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

7 - Governor's Office – Civil Contingent Fund

(WV Code Chapter 5)

## Fund <u>0105</u> FY <u>2017</u> Org <u>0100</u>

1	Any unexpended balances remaining in the appropriations
2	for Business and Economic Development Stimulus - Surplus
3	(fund 0105, appropriation 08400), Civil Contingent Fund – Total
4	(fund 0105, appropriation 11400), 2012 Natural Disasters -
5	Surplus (fund 0105, appropriation 13500), Civil Contingent
6	Fund – Total – Surplus (fund 0105, appropriation 23800), Civil
7	Contingent Fund – Surplus (fund 0105, appropriation 26300).
8	Business and Economic Development Stimulus (fund 0105
9	appropriation 58600), Civil Contingent Fund (fund 0105
10	appropriation 61400), and Natural Disasters - Surplus (fund

- 11 0105, appropriation 76400) at the close of the fiscal year 2016
- 12 are hereby reappropriated for expenditure during the fiscal year.
- 13 From this fund there may be expended, at the discretion of
- 14 the Governor, an amount not to exceed \$1,000 as West
- 15 Virginia's contribution to the interstate oil compact commission.
- The above fund is intended to provide contingency funding
- 17 for accidental, unanticipated, emergency or unplanned events
- 18 which may occur during the fiscal year and is not to be expended
- 19 for the normal day-to-day operations of the Governor's Office.

## 8 - Auditor's Office – General Administration

## (WV Code Chapter 12)

## Fund <u>0116</u> FY <u>2017</u> Org <u>1200</u>

1	Personal Services and Employee		
2	Benefits00100	\$	2,738,819
3	Current Expenses (R)		10,622
4	Volunteer Fire Department Workers'		
5	Compensation Subsidy 83200		2,000,000
6	BRIM Premium 91300		10,451
7	Total	\$	4,759,892
8 9 10 11	Any unexpended balance remaining in the Current Expenses (fund 0116, appropriation of the fiscal year 2016 is hereby reappropriate during the fiscal year 2017.	13000	) at the close
12	Included in the above appropriation to Per	sonal	Services and
13	Employee Benefits (fund 0116, appropriation	00100	), is \$95,000
14	for the Salary of the Auditor. The above	e appr	opriation to
15	Volunteer Fire Department Workers' Comp	ensati	on Subsidy,
16	appropriation 83200, is to be expended by the	e State	e Auditor for

- 17 the purpose of administering a Volunteer Fire Department
- 18 Workers' Compensation Subsidy Program in the same manner
- 19 as the Volunteer Fire Department Workers' Compensation
- 20 Subsidy Program was administered by the State Auditor prior to
- 21 July 1, 2016, as prescribed in West Virginia Code § 12-4-14a.

#### 9 - Treasurer's Office

#### (WV Code Chapter 12)

#### Fund <u>0126</u> FY <u>2017</u> Org <u>1300</u>

Personal Services and Employee

	reisonal Services and Employee		
2	Benefits00100	\$	2,707,357
3	Unclassified		31,103
4	Current Expenses (R)		177,271
5	Abandoned Property Program 11800		158,806
6	Other Assets 69000		5,000
7	BRIM Premium 91300		30,809
8	Total	\$	3,110,346
9	Any unexpended balances remaining in	the ap	propriations
9 10	Any unexpended balances remaining in for Current Expenses (fund 0126, appropri	•	
-		ation	13000) and
10	for Current Expenses (fund 0126, appropri	ation 69200	13000) and 0) at the close
10 11	for Current Expenses (fund 0126, appropriation Trust Fund (fund 0126, appropriation	ation 69200 ted for	13000) and 0) at the close expenditure
10 11 12	for Current Expenses (fund 0126, appropriation Trust Fund (fund 0126, appropriation of the fiscal year 2016 are hereby reappropriation	ation 69200 ted for ion of	13000) and at the close expenditure f fund 0126,
10 11 12 13	for Current Expenses (fund 0126, appropriation Trust Fund (fund 0126, appropriation of the fiscal year 2016 are hereby reappropriated during the fiscal year 2017, with the except	tation 69200 ed for ion of 76) and	13000) and 0) at the close expenditure f fund 0126, d fund 0126,

17 Included in the above appropriation to Personal Services and

18 Employee Benefits (fund 0126, appropriation 00100), is \$95,000

19 for the Salary of the Treasurer.

# 10 - Department of Agriculture

(WV Code Chapter 19)

# Fund <u>0131</u> FY <u>2017</u> Org <u>1400</u>

1	Personal Services and Employee		
2	Benefits	\$	5,249,045
3	Animal Identification Program 03900		124,636
4	State Farm Museum 05500		89,550
5	Current Expenses (R)		154,498
6	Repairs and Alterations 06400		8,133
7	Gypsy Moth Program (R) 11900		942,939
8	Huntington Farmers Market 12800		37,900
9	Black Fly Control		460,031
10	Donated Foods Program 36300		45,000
11	Predator Control (R) 47000		180,000
12	Logan Farmers Market 50100		42,119
13	Bee Research 69100		67,237
14	Charleston Farmers Market 74600		72,887
15	Microbiology Program (R) 78500		99,443
16	Moorefield Agriculture Center (R). 78600		930,931
17	Chesapeake Bay Watershed 83000		104,796
18	Livestock Care Standards Board 84300		9,000
19	BRIM Premium 91300		120,202
20	State FFA-FHA Camp and		
21	Conference Center 94101		600,000
22	Threat Preparedness 94200		70,943
23	WV Food Banks		126,000
24	Senior's Farmers' Market Nutrition		
25	Coupon Program 97000		55,923
26	Total	\$	9,591,213
27	Any unexpended balances remaining in	_	
28	for Unclassified - Surplus (fund 0131, app	-	
29	Gypsy Moth Program (fund 0131, appropriati		
30	Expenses (fund 0131, appropriation 13000)		
31	(fund 0131, appropriation 47000), Capital O		
32	Equipment – Surplus (fund 0131, appropriati		
33	Outlay and Maintenance (fund 0131, appr	_	
34	Microbiology Program (fund 0131, appr	opriat	ion 78500),

- 35 Moorefield Agriculture Center (fund 0131, appropriation 78600),
- 36 and Agricultural Disaster and Mitigation Needs Surplus (fund
- 37 0131, appropriation 85000) at the close of the fiscal year 2016
- 38 are hereby reappropriated for expenditure during the fiscal year
- 39 2017, with the exception of fund 0131, fiscal year 2016,
- 40 appropriation 11900 (\$101,180), fund 0131, fiscal year 2016,
- 41 appropriation 13000 (\$93,162), fund 0131, fiscal year 2016,
- 42 appropriation 78500 (\$4,604), and fund 0131, fiscal year 2016,
- 43 appropriation 78600 (\$43,099) which shall expire on June 30,
- 44 2016.
- 45 Included in the above appropriation to Personal Services and
- 46 Employee Benefits (fund 0131, appropriation 00100), is \$95,000
- 47 for the Salary of the Commissioner.
- The above appropriation for Predator Control (fund 0131,
- 49 appropriation 47000) is to be made available to the United States
- 50 Department of Agriculture, Wildlife Services to administer the
- 51 Predator Control Program.
- A portion of the Current Expenses appropriation may be
- 53 transferred to a special revenue fund for the purpose of matching
- 54 federal funds for marketing and development activities.
- 55 From the above appropriation for WV Food Banks (fund 0131,
- 56 appropriation 96900), \$20,000 is for House of Hope and the
- 57 remainder of the appropriation shall be allocated to the
- 58 Huntington Food Bank and the Mountaineer Food Bank in
- 59 Braxton County.

## 11 - West Virginia Conservation Agency

(WV Code Chapter 19)

## Fund <u>0132</u> FY <u>2017</u> Org <u>1400</u>

1	Personal Services and Employee	;	
2	Benefits	00100	\$ 730,202
3	Unclassified (R)	09900	77 808

1972	APPROPRIATIONS [Ch. 3
4	Current Expenses (R)
5	Repairs and Alterations 06400 56
6	Soil Conservation Projects (R) 12000 6,724,280
7	BRIM Premium
8	Total\$ 7,874,721
9	Any unexpended balances remaining in the appropriations
10	for Unclassified (fund 0132, appropriation 09900), Soil
11	Conservation Projects (fund 0132, appropriation 12000), and
12	Current Expenses (fund 0132, appropriation 13000) at the close
13	of the fiscal year 2016 are hereby reappropriated for expenditure
14	during the fiscal year 2017, with the exception of fund 0132,
15	fiscal year 2016, appropriation 12000 (\$313,452) which shall
16	expire on June 30, 2016.

# 12 - Department of Agriculture – Meat Inspection Fund

(WV Code Chapter 19)

## Fund <u>0135</u> FY <u>2017</u> Org <u>1400</u>

1	Personal Services and Employee	
2	Benefits00100	\$ 624,268
3	Unclassified	7,132
4	Current Expenses	 81,838
5	Total	\$ 713,238

Any part or all of this appropriation may be transferred to a special revenue fund for the purpose of matching federal funds

8 for the above-named program.

# 13 - Department of Agriculture – Agricultural Awards Fund

(WV Code Chapter 19)

## Fund <u>0136</u> FY <u>2017</u> Org <u>1400</u>

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

# 14 - Department of Agriculture – West Virginia Agricultural Land Protection Authority

## (WV Code Chapter 8A)

## Fund <u>0607</u> FY <u>2017</u> Org <u>1400</u>

1	Personal Services and Employee	
2	Benefits00100	\$ 95,582
3	Unclassified	 950
4	Total	\$ 96,532

## 15 - Attorney General

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

# Fund $\underline{0150}$ FY $\underline{2017}$ Org $\underline{1500}$

1	Personal Services and Employee	
2	Benefits (R)	\$ 2,859,112
3	Unclassified (R)	44,478
4	Current Expenses (R)	100,458
5	Repairs and Alterations 06400	5,000
6	Equipment 07000	33,000
7	Criminal Convictions and Habeas	
8	Corpus Appeals (R) 26000	1,058,264
9	Better Government Bureau 74000	273,416
10	BRIM Premium 91300	 105,000
11	Total	\$ 4,478,728

12	Any unexpended balances remaining in the above
13	appropriations for Personal Services and Employee Benefits
14	(fund 0150, appropriation 00100), Unclassified (fund 0150,
15	appropriation 09900), Current Expenses (fund 0150,
16	appropriation 13000), Criminal Convictions and Habeas Corpus
17	Appeals (fund 0150, appropriation 26000), and Agency Client
18	Revolving Liquidity Pool (fund 0150, appropriation 36200) at
19	the close of the fiscal year 2016 are hereby reappropriated for
20	expenditure during the fiscal year 2017, with the exception of
21	fund 0150, fiscal year 2016, appropriation 00100 (\$206,569)

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

which shall expire on June 30, 2016.

22

26 When legal counsel or secretarial help is appointed by the Attorney General for any state spending unit, this account shall 27 28 reimbursed from such spending units specifically 29 appropriated account or from accounts appropriated by general 30 language contained within this bill: *Provided*, That the spending 31 unit shall reimburse at a rate and upon terms agreed to by the 32 state spending unit and the Attorney General: Provided, 33 however, That if the spending unit and the Attorney General are 34 unable to agree on the amount and terms of the reimbursement, 35 the spending unit and the Attorney General shall submit their proposed reimbursement rates and terms to the Governor for 36 37 final determination.

## 16 - Secretary of State

(WV Code Chapters 3, 5 and 59)

## Fund <u>0155</u> FY <u>2017</u> Org <u>1600</u>

1	Personal Services and Empl	oyee	
2	Benefits	00100	\$ 118,148
3	Unclassified (R)	09900	9.731

Ch. 3	B] APPROPRIATIONS		1975	
4	Current Expenses (P) 12000		825,310	
5	Current Expenses (R)		20,000	
6	Total	\$	973,189	
_				
7	Any unexpended balances remaining in the		•	
8 9	for Unclassified (fund 0155, appropriation Expenses (fund 0155, appropriation 13000),			
10	Improvements – Surplus (fund 0155, appropria			
11	close of the fiscal year 2016 are hereby re		-	
12	expenditure during the fiscal year 2017, with			
13	fund 0155, fiscal year 2016, appropriation		_	
14	which shall expire on June 30, 2016.			
15	Included in the above appropriation to Pers	onal Sei	vices and	
16	Employee Benefits (fund 0155, appropriation 0			
17	for the Salary of the Secretary of State.			
	17 - State Election Commission			
	(WV Code Chapter 3)			
	Fund <u>0160</u> FY <u>2017</u> Org <u>1601</u>			
1	Personal Services and Employee			
2	Benefits	\$	2,477	
3	Unclassified		75	
4	Current Expenses		4,956	
5	Total	\$	7,508	
	DEPARTMENT OF ADMINISTRAT	ION		
	18 - Department of Administration – Office of the Secretary			
	(WV Code Chapter 5F)			
	Fund <u>0186</u> FY <u>2017</u> Org <u>0201</u>			
1 2	Personal Services and Employee Benefits	\$	584,397	

1976	APPROPRIATIONS		[Ch. 3
3	Unclassified		9,177
4	Current Expenses		86,354
5	Repairs and Alterations 06400		100
6	Equipment 07000		1,000
7	Financial Advisor (R) 30400		100,546
8	Lease Rental Payments 51600		15,000,000
9	Design-Build Board 54000		4,000
10	Other Assets		100
11	BRIM Premium 91300		4,000
12	Total	\$	15,789,674
13	Any unexpended balance remaining in the	appı	ropriation for
14	Financial Advisor (fund 0186, appropriation 3	0400	)) at the close
15	of the fiscal year 2016 is hereby reappropriate	d fo	r expenditure
16	during the fiscal year 2017, with the excepti	on o	f fund 0186,
17	fiscal year 2016, appropriation 30400 (\$10,	000)	which shall
18	expire on June 30, 2016.		
10			(6 10165
19	The appropriation for Lease Rental Paym		•
20	appropriation 51600) shall be disbursed as pr	ovid	ed by W.Va.
21	Code §31-15-6b.		

## 19 - Consolidated Public Retirement Board

(WV Code Chapter 5)

# Fund $\underline{0195}$ FY $\underline{2017}$ Org $\underline{0205}$

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

## 20 - Division of Finance

## (WV Code Chapter 5A)

# Fund <u>0203</u> FY <u>2017</u> Org <u>0209</u>

1	Personal Services and Employee		
2	Benefits	\$	91,583
3	Unclassified		2,400
4	Current Expenses		68,852
5	Repairs and Alterations 06400		1,500
6	Equipment 07000		1,000
7	GAAP Project (R) 12500		593,062
8	Other Assets		2,000
9	BRIM Premium 91300		4,526
10	Total	\$	764,923
11	Any unexpended balance remaining in the	e appro	priation for
12	GAAP Project (fund 0203, appropriation 125	500) at	the close of
13	the fiscal year 2016 is hereby reappropriate	ed for e	expenditure
14	during the fiscal year 2017.		

## 21 - Division of General Services

# (WV Code Chapter 5A)

# Fund $\underline{0230}$ FY $\underline{2017}$ Org $\underline{0211}$

1	Personal Services and Employee	
2	Benefits	\$ 2,586,763
3	Current Expenses	725,024
4	Repairs and Alterations 06400	500
5	Equipment 07000	5,000
6	Fire Service Fee	14,000
7	Buildings (R)	500
8	Preservation and Maintenance of	
9	Statues and Monuments	
10	on Capitol Grounds 37100	68,000

1978	APPROPRIATIONS	[Ch. 3
11	Capital Outlay, Repairs and	
12	Equipment (R) 58900	4,122,932
13	Other Assets	500
14	Land (R)	500
15	BRIM Premium 91300	112,481
16	Total\$	7,636,200
17	Any unexpended balances remaining in	
18	appropriations for Buildings (fund 0230, appropriat	
19	Capital Outlay, Repairs and Equipment (f	
20	appropriation 58900), Capital Outlay, Repairs and E	
21	Surplus (fund 0230, appropriation 67700), and Land	-
22	appropriation 73000) at the close of the fiscal year	
23 24	hereby reappropriated for expenditure during the 2017, with the exception of fund 0230, fiscal	•
25	appropriation 58900 (\$552,068) which shall expire	•
26	2016.	on June 30,
20	2010.	
27	From the above appropriation for Preser	
28	Maintenance of Statues and Monuments on Capit	
29	(fund 0230, appropriation 37100), the Division shall	
30	Division of Culture and History and Capito	•
31	Commission in all aspects of planning, assessment, n	naintenance
32	and restoration.	
33	The above appropriation for Capital Outlay, I	Repairs and
34	Equipment (fund 0230, appropriation 58900) shall b	e expended
35	for capital improvements, maintenance, repairs and	l equipment
36	for state-owned buildings.	
	22 - Division of Purchasing	
	(WV Code Chapter 5A)	
	Fund <u>0210</u> FY <u>2017</u> Org <u>0213</u>	
1 2	Personal Services and Employee Benefits	1,006,598

Ch. 3	APPROPRIATIONS		1979
3	Unclassified		1 111
<i>3</i>	Current Expenses		1,444 3,250
5	Repairs and Alterations		700
6	Equipment		1,000
7	Other Assets		1,000
8	BRIM Premium		6,167
9	Total	\$	1,020,159
	10441	Ψ	1,020,137
10	The Division of Highways shall reimburse	e Fund	2031 within
11	the Division of Purchasing for all actual	_	
12	pursuant to the provisions of W.Va. Code §1	7-2A-	13.
	23 - Travel Management		
	(WV Code Chapter 5A)		
	Fund <u>0615</u> FY <u>2017</u> Org <u>0215</u>		
1	Personal Services and Employee		
2	Benefits	\$	875,056
3	Unclassified		13,151
4	Current Expenses		421,739
5	Equipment 07000		5,000
6	Buildings (R)		100
7	Other Assets 69000		100
8	Total	\$	1,315,146
9	Any unexpended balance remaining in th	o oppr	opriotion for
10	Buildings (fund 0615, appropriation 25800)		_
11	fiscal year 2016 is hereby reappropriated for a		
12	the fiscal year 2017.	лрепс	intuic during
12	the fiscal year 2017.		
	24 - Commission on Uniform State L	aws	
	(WV Code Chapter 29)		
	Fund <u>0214</u> FY <u>2017</u> Org <u>0217</u>		
1	Current Expenses	\$	45,550

1700	MIROIRATIONS		[CII. 3	
2 3	To pay expenses for members of the commstate laws.	nission	on uniform	
	25 - West Virginia Public Employees Grieva	nce B	oard	
	(WV Code Chapter 6C)			
	Fund <u>0220</u> FY <u>2017</u> Org <u>0219</u>			
1 2 3 4 5 6 7	Personal Services and Employee Benefits	\$	918,852 1,000 143,936 50 7,803 1,071,641	
	26 - Ethics Commission	·	, , .	
	(WV Code Chapter 6B)			
	Fund <u>0223</u> FY <u>2017</u> Org <u>0220</u>			
1 2 3 4 5 6 7 8	Personal Services and Employee Benefits. 00100 Unclassified. 09900 Current Expenses. 13000 Repairs and Alterations. 06400 Other Assets. 69000 BRIM Premium. 91300 Total.	\$	569,502 4,500 109,224 500 100 7,987 691,813	
	27 - Public Defender Services			
	(WV Code Chapter 29)			
	Fund <u>0226</u> FY <u>2017</u> Org <u>0221</u>			
1	Personal Services and Employee	Φ.	1.064.054	

Unclassified . . . . . . . . . . . . . . . . 09900

\$

1,364,314

314,700

Ch. 3	] APPROPRIATIONS	1981	
4	Current Expenses	11,165	
5	Public Defender Corporations 35200	19,199,374	
6	Appointed Counsel Fees (R) 78800	10,723,115	
7	BRIM Premium 91300	8,884	
8	Total	\$ 31,621,552	
9	Any unexpended balance remaining	in the above	
10	appropriation for Appointed Counsel Fee	es (fund 0226,	
11	appropriation 78800) at the close of the fisc	cal year 2016 is	
12	hereby reappropriated for expenditure during	g the fiscal year	
13	2017.		
14	The director shall have the authority to tra	nsfer funds from	
15	the appropriation to Public Defender Corporat	ions (fund 0226,	
16	appropriation 35200) to Appointed Counsel I	Fees (fund 0226,	
17	appropriation 78800).		
	28 - Committee for the Purchase of		

#### 28 - Committee for the Purchase of Commodities and Services from the Handicapped

## (WV Code Chapter 5A)

## Fund <u>0233</u> FY <u>2017</u> Org <u>0224</u>

1	Personal Services and Employee	
2	Benefits00100	\$ 3,187
3	Current Expenses	 868
4	Total	\$ 4,055

## 29 - Public Employees Insurance Agency

(WV Code Chapter 5)

## Fund <u>0200</u> FY <u>2017</u> Org <u>0225</u>

- 1 The Division of Highways, Division of Motor Vehicles, 2 Public Service Commission and other departments, bureaus,
- 3 divisions, or commissions operating from special revenue funds
- 4 and/or federal funds shall pay their proportionate share of the

- 5 public employees health insurance cost for their respective
- 6 divisions.

## 30 - West Virginia Prosecuting Attorneys Institute

#### (WV Code Chapter 7)

## Fund <u>0557</u> FY <u>2017</u> Org <u>0228</u>

1	Forensic Medical Examinations (R).68300	\$	138,272
2	Federal Funds/Grant Match (R) 74900		99,016
3	Total	\$	237,288
4	Any unexpended balances remaining in	the ap	propriations
5	for Forensic Medical Examinations (fund 0	557, a	ppropriation
6	68300) and Federal Funds/Grant Mat	ch (	fund 0557,
7	appropriation 74900) at the close of the fis	cal ye	ear 2016 are
8	hereby reappropriated for expenditure duri	ng the	e fiscal year
9	2017.		

#### 31 - Real Estate Division

## (WV Code Chapter 5A)

# Fund $\underline{0610}$ FY $\underline{2017}$ Org $\underline{0233}$

1	Personal Services and Employee	
2	Benefits00100	\$ 670,168
3	Unclassified	1,000
4	Current Expenses	151,126
5	Repairs and Alterations 06400	100
6	Equipment 07000	2,500
7	BRIM Premium 91300	 4,200
8	Total	\$ 829,094

#### DEPARTMENT OF COMMERCE

32 - Division of Forestry

### (WV Code Chapter 19)

# Fund <u>0250</u> FY <u>2017</u> Org <u>0305</u>

1	Personal Services and Employee		
2	Benefits	\$	1,913,400
3	Unclassified		21,435
4	Current Expenses		334,903
5	Repairs and Alterations 06400		80,000
6	Equipment (R)		73,000
7	BRIM Premium 91300		85,000
8	Total	\$	2,507,738
9	Any unexpended balance remaining in the	e appı	copriation for
-	Any unexpended balance remaining in the Equipment (fund 0250, appropriation 07000)		•
9 10 11		at the	e close of the
10 11	Equipment (fund 0250, appropriation 07000)	at the	e close of the diture during
10 11 12	Equipment (fund 0250, appropriation 07000) fiscal year 2016 is hereby reappropriated for experiments of the control of the con	at the expen d 025	e close of the diture during 0, fiscal year
10	Equipment (fund 0250, appropriation 07000) fiscal year 2016 is hereby reappropriated for each the fiscal year 2017, with the exception of fundamental transfer of the fiscal year 2017.	at the expen d 025	e close of the diture during 0, fiscal year
10 11 12 13	Equipment (fund 0250, appropriation 07000) fiscal year 2016 is hereby reappropriated for each the fiscal year 2017, with the exception of fund 2016, appropriation 07000 (\$27,000) which sl	at the expen d 025 hall ex	e close of the diture during 0, fiscal year xpire on June

# 33 - Geological and Economic Survey

17

purposes.

# (WV Code Chapter 29)

# Fund <u>0253</u> FY <u>2017</u> Org <u>0306</u>

1	Personal Services and Employee	
2	Benefits00100	\$ 1,606,686
3	Unclassified	28,338
4	Current Expenses	15,776
5	Repairs and Alterations 06400	968
6	Mineral Mapping System (R) 20700	1,161,131
7	BRIM Premium 91300	 20,950
8	Total	\$ 2,833,849

- Any unexpended balance remaining in the appropriation for Mineral Mapping System (fund 0253, appropriation 20700) at the close of the fiscal year 2016 is hereby reappropriated for expenditure during the fiscal year 2017, with the exception of fund 0253, fiscal year 2016, appropriation 20700 (\$60,767) which shall expire on June 30, 2016.
- The above Unclassified and Current Expense appropriations include funding to secure federal and other contracts and may be transferred to a special revolving fund (fund 3105) for the purpose of providing advance funding for such contracts.

#### 34 - West Virginia Development Office

#### (WV Code Chapter 5B)

#### Fund 0256 FY 2017 Org 0307

1	Personal Services and Employee		
2	Benefits00100	\$	4,210,888
3	Unclassified		108,687
4	Current Expenses		4,026,822
5	National Youth Science Camp 13200		241,570
6	Local Economic Development		
7	Partnerships (R)		792,000
8	ARC Assessment		152,585
9	Guaranteed Work Force Grant (R). 24200		973,518
10	Mainstreet Program 79400		164,266
11	Hatfield McCoy Recreational Trail. 96000		198,415
12	Total	\$	10,868,751
13	Any unexpended balances remaining in	the a	opropriations
14	for Unclassified – Surplus (fund 0256, app	ropria	ntion 09700),
15	Partnership Grants (fund 0256, appropriat	ion 1.	3100), Local
16	Economic Development Partnerships (fund 0	)256, a	appropriation
17	13300), Guaranteed Work Force Grant (fund of	0256,	appropriation
18	24200), Industrial Park Assistance (fund 0	256, a	appropriation

- 19 48000), Small Business Development (fund 0256, appropriation
- 20 70300), Local Economic Development Assistance (fund 0256,
- 21 appropriation 81900), and 4-H Camp Improvements (fund 0256,
- 22 appropriation 94100) at the close of the fiscal year 2016 are
- 23 hereby reappropriated for expenditure during the fiscal year
- 24 2017.
- 25 The above appropriation to Local Economic Development
- 26 Partnerships (fund 0256, appropriation 13300) shall be used by
- 27 the West Virginia Development Office for the award of funding
- 28 assistance to county and regional economic development
- 29 corporations or authorities participating in the Certified
- 30 Development Community Program developed under the
- 31 provisions of W.Va. Code §5B-2-14. The West Virginia
- 32 Development Office shall award the funding assistance through
- 33 a matching grant program, based upon a formula whereby
- 34 funding assistance may not exceed \$34,000 per county served by
- 35 an economic development or redevelopment corporation or
- 36 authority.

### 35 - Division of Labor

### (WV Code Chapters 21 and 47)

### Fund 0260 FY 2017 Org 0308

1	Personal Services and Employee	
2	Benefits00100	\$ 2,129,007
3	Unclassified	25,552
4	Current Expenses	337,960
5	Repairs and Alterations 06400	30,000
6	Equipment 07000	10,000
7	BRIM Premium 91300	 22,752
8	Total	\$ 2,555,271

36 - Division of Labor – Occupational Safety and Health Fund

#### (WV Code Chapter 21)

# Fund <u>0616</u> FY <u>2017</u> Org <u>0308</u>

1	Personal Services and Employee	
2	Benefits00100	\$ 74,883
3	Current Expenses	76,826
4	Repairs and Alterations 06400	500
5	Equipment 07000	500
6	BRIM Premium 91300	 985
7	Total	\$ 153,694

#### 37 - Division of Natural Resources

### (WV Code Chapter 20)

# Fund <u>0265</u> FY <u>2017</u> Org <u>0310</u>

1	Personal Services and Employee		
2	Benefits00100	\$	15,580,813
3	Unclassified		188,557
4	Current Expenses		166,201
5	Repairs and Alterations 06400		100
6	Equipment 07000		100
7	Buildings (R)		100
8	Litter Control Conservation		
9	Officers		141,071
10	Upper Mud River Flood Control 65400		160,348
11	Other Assets 69000		100
12	Land (R)		100
13	Law Enforcement 80600		2,618,253
14	Total	\$	18,855,743
15	Any unexpended balances remaining in	the at	nronriations

Any unexpended balances remaining in the appropriations

16 for Buildings (fund 0265, appropriation 25800), Land (fund

17 0265, appropriation 73000), and State Park Improvements -

- 18 Surplus (fund 0265, appropriation 76300) at the close of the
- 19 fiscal year 2016 are hereby reappropriated for expenditure
- 20 during the fiscal year 2017, with the exception of fund 0265,
- 21 fiscal year 2016, appropriation 25800 (\$300) and fund 0265,
- 22 fiscal year 2016, appropriation 73000 (\$300) which shall expire
- 23 on June 30, 2016.
- Any revenue derived from mineral extraction at any state
- 25 park shall be deposited in a special revenue account of the
- 26 Division of Natural Resources, first for bond debt payment
- 27 purposes and with any remainder to be for park operation and
- 28 improvement purposes.

#### 38 - Division of Miners' Health, Safety and Training

#### (WV Code Chapter 22)

#### Fund 0277 FY 2017 Org 0314

1	Personal Services and Employee	
2	Benefits00100	\$ 9,890,848
3	Unclassified	120,000
4	Current Expenses	1,622,114
5	Coal Dust and Rock Dust	
6	Sampling	477,988
7	BRIM Premium 91300	 68,134
8	Total	\$ 12,179,084

- 9 Included in the above appropriation for Current Expenses
- 10 (fund 0277, appropriation 13000) is \$500,000 for the Southern
- 11 West Virginia Community and Technical College Mine Rescue
- 12 and Rapid Response Team.

### 39 - Board of Coal Mine Health and Safety

(WV Code Chapter 22)

1988	APPROPRIATIONS	[Ch. 3
	Fund <u>0280</u> FY <u>2017</u> Org <u>0319</u>	
1	Personal Services and Employee	
2	Benefits	\$ 227,655
3	Unclassified	3,562
4	Current Expenses	 125,031
5	Total	\$ 356,248
	40 - WorkForce West Virginia	
	(WV Code Chapter 23)	
	Fund <u>0572</u> FY <u>2017</u> Org <u>0323</u>	
1	Personal Services and Employee	
2	Benefits	\$ 53,059
3	Unclassified	611
4	Current Expenses	 7,463
5	Total	\$ 61,133
	41 - Department of Commerce –	
	Office of the Secretary	
	(WV Code Chapter 19)	
	Fund <u>0606</u> FY <u>2017</u> Org <u>0327</u>	
1	Personal Services and Employee	
2	Benefits	\$ 346,942
3	Unclassified	3,500
4	Current Expenses	 21,960
5	Total	\$ 372,402
	42 - Department of Commerce –	
	Office of the Secretary –	
	Office of Economic Opportunity	
	Fund <u>0617</u> FY <u>2017</u> Org <u>0327</u>	
1	Office of Economic Opportunity 03400	\$ 96,354

#### 43 - Division of Energy

(WV Code Chapter 5H)

# Fund <u>0612</u> FY <u>2017</u> Org <u>0328</u>

Benefits	\$	196,280
Unclassified		15,219
Current Expenses		1,307,144
BRIM Premium 91300		3,297
Total	\$	1,521,940
From the above appropriation for Currer	nt Exper	nses (fund
0612, appropriation 13000) \$558,247 is for	or West	Virginia
University and \$558,247 is for Southern	n West	Virginia
Community and Technical College for the M	Iine Tra	ining and
Energy Technologies Academy.		
	Unclassified. 09900 Current Expenses. 13000 BRIM Premium. 91300 Total. 91300 From the above appropriation for Current 0612, appropriation 13000) \$558,247 is for University and \$558,247 is for Southern Community and Technical College for the Marketing College for the M	Unclassified

#### DEPARTMENT OF EDUCATION

44 - State Board of Education – School Lunch Program

(WV Code Chapters 18 and 18A)

# Fund $\underline{0303}$ FY $\underline{2017}$ Org $\underline{0402}$

1	Personal Services and Employee	
2	Benefits00100	\$ 321,931
3	Current Expenses	 2,118,490
4	Total	\$ 2,440,421

45 - State Board of Education – State Department of Education

(WV Code Chapters 18 and 18A)

# Fund <u>0313</u> FY <u>2017</u> Org <u>0402</u>

1	Personal Services and Employee	
2	Benefits00100	\$ 4,278,989
3	Technology System Specialist 06200	2,000,000
4	Teachers' Retirement Savings	
5	Realized	37,656,000
6	Unclassified (R)	300,000
7	Current Expenses (R)	2,518,992
8	Equipment 07000	5,000
9	Increased Enrollment 14000	3,430,000
10	Safe Schools	4,980,178
11	Teacher Mentor (R) 15800	550,000
12	Buildings (R)	1,000
13	Allowance for County Transfers 26400	282,732
14	Technology Repair and	
15	Modernization	951,003
16	HVAC Technicians	495,507
17	Early Retirement Notification	
18	Incentive	300,000
19	MATH Program	336,532
20	Assessment Programs 39600	1,339,588
21	21st Century Fellows 50700	274,899
22	English as a Second Language 52800	96,000
23	Teacher Reimbursement 57300	297,188
24	Hospitality Training 60000	267,123
25	Hi-Y Youth in Government 61600	100,000
26	High Acuity Special Needs (R) 63400	1,500,000
27	Foreign Student Education 63600	150,000
28	Principals Mentorship 64900	69,250
29	State Board of Education	
30	Administrative Costs 68400	366,152
31	Other Assets	1,000
32	IT Academy (R)	500,000
33	Land (R)	1,000
34	Early Literacy Program 75600	5,700,000

Ch. 3	APPROPRIATIONS	1991
35	School Based Truancy	
36	Prevention (R) 78101	2,000,000
37	Innovation in Education 78102	2,496,144
38	21st Century Learners (R) 88600	1,706,441
39	BRIM Premium 91300	295,036
40	21st Century Assessment and	
41	Professional Development 93100	2,999,007
42	21st Century Technology	
43	Infrastructure Network	
44	Tools and Support 93300	7,636,586
45	Regional Education Service	
46	Agencies 97200	3,543,120
47	Educational Program Allowance 99600	516,250
48	Total	\$ 89,940,717
49	The above appropriations include funding	for the state board
50	of education and their executive office.	, for the state board
50	of education and their executive office.	
51	Any unexpended balances remaining in	the appropriations
52	for Unclassified (fund 0313, appropriation	09900), Current
53	Expenses (fund 0313, appropriation 13000)	, Teacher Mentor
54	(fund 0313, appropriation 15800), National Tea	acher Certification
55	(fund 0313, appropriation 16100), Buildi	ings (fund 0313,
56	appropriation 25800), High Acuity Special N	
57	appropriation 63400), IT Academy (fund 03	
58	72100), Land (fund 0313, appropriation 730	
59	Truancy Prevention (fund 0313, appropriation	
60	Century Learners (fund 0313, appropriation 8	, , , , , , , , , , , , , , , , , , ,
61	of the fiscal year 2016 are hereby reappropriat	
62	during the fiscal year 2017, with the except	
63	fiscal year 2016, appropriation 13000 (\$106	•
64	fiscal year 2016, appropriation 16100 (\$150	
65	fiscal year 2016, appropriation 72100 (\$20	
66	fiscal year 2016, appropriation 78101 (\$1,4	
67	0313, fiscal year 2016, appropriation 88600	) (\$68,675) which
68	shall expire on June 30, 2016.	

59	The above appropriation for Technology System Specialists
70	(fund 0313, appropriation 06200), shall first be used for the
71	continuance of current pilot projects. The remaining balance, if
72	any, may be used to expand the pilot project for additional
73	counties.

- The above appropriation for Teachers' Retirement Savings Realized (fund 0313, appropriation 09500) shall be transferred to the Employee Pension and Health Care Benefit Fund (fund 2044).
- The above appropriation for Hospitality Training (fund 0313, appropriation 60000), shall be allocated only to entities that have a plan approved for funding by the Department of Education, at the funding level determined by the State Superintendent of Schools. Plans shall be submitted to the State Superintendent of Schools to be considered for funding.
- 84 From the above appropriation for Educational Program 85 Allowance (fund 0313, appropriation 99600), \$100,000 shall be expended for Webster County Board of Education for Hacker 86 87 Valley; \$150,000 shall be for the Randolph County Board of Education for Pickens School; \$100,000 shall be for the Preston 88 County Board of Education for the Aurora School; \$100,000 89 90 shall be for the Fayette County Board of Education for Meadow 91 Bridge; and \$66,250 is for Project Based Learning in STEM fields. 92

46 - State Board of Education – Aid for Exceptional Children

(WV Code Chapters 18 and 18A)

### Fund <u>0314</u> FY <u>2017</u> Org <u>0402</u>

1	Special Education – Counties	15900	\$ 7,271,757
2	Special Education – Institutions	16000	3.748.794

3	Education of Juveniles Held in
4	Predispositional
5	Juvenile Detention Centers 30200 591,646
6	Education of Institutionalized Juveniles
7	and Adults (R)
8	Total\$ 29,186,432
9	Any unexpended balance remaining in the appropriation for
-	
10	Education of Institutionalized Juveniles and Adults (fund 0314,
11	appropriation 47200) at the close of the fiscal year 2016 is
12	hereby reappropriated for expenditure during the fiscal year
13	2017, with the exception of fund 0314, fiscal year 2016,
14	appropriation 47200 (\$173,354) which shall expire on June 30,
15	2016.
16	From the above appropriations, the superintendent shall have
17	authority to expend funds for the costs of special education for
18	those children residing in out-of-state placements.

# 47 - State Board of Education – State Aid to Schools

# (WV Code Chapters 18 and 18A)

# Fund $\underline{0317}$ FY $\underline{2017}$ Org $\underline{0402}$

1	Other Current Expenses 02200	\$	152,089,960
2	Advanced Placement05300		543,661
3	Professional Educators 15100		856,017,057
4	Service Personnel		290,711,435
5	Fixed Charges		102,033,345
6	Transportation		74,729,928
7	Professional Student Support		
8	Services		36,952,999
9	Improved Instructional Programs 15600		49,131,108
10	21st Century Strategic Technology		
11	Learning Growth 93600		20,756,981
12	Basic Foundation Allowances	1	,582,966,474

1994	APPROPRIATIONS	[Ch. 3
13	Less Local Share	(467,039,269)
14	Adjustments	(2,527,044)
15	Total Basic State Aid	1,113,400,161
16	Public Employees' Insurance	, -,, -
17	Matching 01200	241,429,043
18	Teachers' Retirement System 01900	67,464,000
19	School Building Authority 45300	23,421,520
20	Retirement Systems –	, ,
21	Unfunded Liability 77500	320,634,000
22	Total	\$1,766,348,724
	48 - State Board of Education – Vocational Division	
	(WV Code Chapters 18 and 18A)	
	Fund <u>0390</u> FY <u>2017</u> Org <u>0402</u>	
1	Personal Services and Employee	
2	Benefits	\$ 1,275,473
3	Unclassified	268,800
4	Current Expenses	882,131
5	Wood Products – Forestry	
6	Vocational Program 14600	67,417
7	Albert Yanni Vocational Program 14700	131,951
8	Vocational Aid 14800	22,215,162
9	Adult Basic Education 14900	4,523,322
10	Program Modernization 30500	884,313
11	High School Equivalency Diploma	
12	Testing (R)	778,815
13	FFA Grant Awards 83900	11,496
14	Pre-Engineering Academy	
15	Program 84000	265,294
16	Total	\$ 31,304,174
17	Any unexpended balances remaining in the	ne appropriations
18	for GED Testing (fund 0390, appropriation 3	
19	School Equivalency Diploma Testing (fund 03	90, appropriation

- 20 72600) at the close of the fiscal year 2016 is hereby
- 21 reappropriated for expenditure during the fiscal year 2017, with
- 22 the exception of fund 0390, fiscal year 2016, appropriation
- 23 72600 (\$240,037) which shall expire on June 30, 2016.

### 49 - State Board of Education – Division of Education Performance Audits

#### (WV Code Chapters 18 and 18A)

#### Fund 0573 FY 2017 Org 0402

1	Personal Services and Employee	
2	Benefits00100	\$ 848,582
3	Unclassified	7,000
4	Current Expenses	294,316
5	Repairs and Alterations 06400	1,000
6	Equipment 07000	1,000
7	Other Assets 69000	 1,000
8	Total	\$ 1,152,898

# 50 - State Board of Education – West Virginia Schools for the Deaf and the Blind

# (WV Code Chapters 18 and 18A)

# Fund <u>0320</u> FY <u>2017</u> Org <u>0403</u>

1	Personal Services and Employee	
2	Benefits00100	\$ 11,606,686
3	Unclassified	107,329
4	Current Expenses	1,761,169
5	Repairs and Alterations 06400	115,000
6	Equipment 07000	35,000
7	Buildings (R)	50,000
8	Capital Outlay and Maintenance (R)75500	62,500
9	BRIM Premium 91300	 102,750
10	Total	\$ 13,840,434

- Any unexpended balances remaining in the appropriations
- 12 for Buildings (fund 0320, appropriation 25800) and Capital
- 13 Outlay and Maintenance (fund 0320, appropriation 75500) at the
- 14 close of the fiscal year 2016 are hereby reappropriated for
- 15 expenditure during the fiscal year 2017.

#### DEPARTMENT OF EDUCATION AND THE ARTS

# 51 - Department of Education and the Arts – Office of the Secretary

(WV Code Chapter 5F)

### Fund 0294 FY 2017 Org 0431

1	Personal Services and Employee		
2	Benefits	\$	786,753
3	Unclassified		35,000
4	Current Expenses		6,562
5	WV Early Childhood Planning		
6	Task Force 14498		107,584
7	WV Humanities Council 16800		250,000
8	Benedum Professional Development		
9	Collaborative (R) 42700		495,532
10	Governor's Honors Academy (R) 47800		977,760
11	Educational Enhancements 69500		196,000
12	S.T.E.M. Education and Grant		
13	Program (R) 71900		490,286
14	Energy Express 86100		382,935
15	BRIM Premium 91300		4,509
16	Special Olympic Games 96600		25,000
17	Center for Professional		
18	Development (R) 11500		1,500,000
19	Total	\$	5,257,921
20	Any unexpended balances remaining in	the a	appropriations
21	for Center for Professional Developme	ent	(fund 0294,

- 22 appropriation 11500), Benedum Professional Development
- 23 Collaborative (fund 0294, appropriation 42700), Governor's
- 24 Honors Academy (fund 0294, appropriation 47800), and
- 25 S.T.E.M. Education and Grant Program (fund 0294,
- 26 appropriation 71900) at the close of the fiscal year 2016 are
- 27 hereby reappropriated for expenditure during the fiscal year
- 28 2017, with the exception of fund 0294, fiscal year 2016,
- 29 appropriation 11500 (\$92,000) and fund 0294, fiscal year 2016,
- 30 appropriation 42700 (\$300,250) which shall expire on June 30,
- 31 2016.
- From the above appropriation for Educational Enhancements
- 33 (fund 0294, appropriation 69500), \$73,500 shall be used for the
- 34 Clay Center and \$122,500 for Reconnecting McDowell Save
- 35 the Children.

#### 52 - Division of Culture and History

#### (WV Code Chapter 29)

### Fund <u>0293</u> FY <u>2017</u> Org <u>0432</u>

1	Personal Services and Employee	
2	Benefits00100	\$ 3,837,234
3	Current Expenses	605,585
4	Repairs and Alterations 06400	1,000
5	Equipment 07000	1
6	Unclassified	28,483
7	Buildings (R)	1
8	Other Assets	1
9	Land (R)	1
10	Culture and History Programming 73200	231,573
11	Capital Outlay and Maintenance (R)75500	19,600
12	Historical Highway Marker	
13	Program 84400	57,548
14	BRIM Premium 91300	 33,677
15	Total	\$ 4,814,704

16

29

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31

16	Any unexpended balances remaining in the appropriations
17	for Unclassified (fund 0293, appropriation 09900), Buildings
18	(fund 0293, appropriation 25800), Capital Outlay, Repairs and
19	Equipment (fund 0293, appropriation 58900), Capital
20	Improvements - Surplus (fund 0293, appropriation 66100),
21	Capital Outlay, Repairs and Equipment - Surplus (fund 0293,
22	appropriation 67700), Land (fund 0293, appropriation 73000),
23	and Capital Outlay and Maintenance (fund 0293, appropriation
24	75500) at the close of the fiscal year 2016 are hereby
25	reappropriated for expenditure during the fiscal year 2017.
26	The Current Expense appropriation includes funding for the
27	arts funds, department programming funds, grants, fairs and
28	festivals and Camp Washington Carver and shall be expended

### 53 - Library Commission

and Chapter 12 of the Code.

only upon authorization of the Division of Culture and History

and in accordance with the provisions of Chapter 5A, Article 3,

(WV Code Chapter 10)

# Fund <u>0296</u> FY <u>2017</u> Org <u>0433</u>

1	Personal Services and Employee	
2	Benefits00100	\$ 1,318,760
3	Current Expenses	137,674
4	Repairs and Alterations 06400	6,500
5	Services to Blind & Handicapped 18100	161,717
6	BRIM Premium 91300	 15,177
7	Total	\$ 1,639,828

# 54 - Educational Broadcasting Authority

(WV Code Chapter 10)

# Fund $\underline{0300}$ FY $\underline{2017}$ Org $\underline{0439}$

1	Personal Services and Employee		
2	Benefits00100	\$	4,275,602
3	Current Expenses		20,146
4	Mountain Stage 24900		300,000
5	Capital Outlay and		
6	Maintenance (R) 75500		10,000
7	BRIM Premium 91300	-	41,929
8	Total	\$	4,647,677
9	Any unexpended balance remaining in the	appro	priation for
10	Capital Outlay and Maintenance (fund 030	0, ap	propriation
11	75500) at the close of the fiscal year	2016	is hereby
12	reappropriated for expenditure during the fisca	l yea	r 2017, with
13	the exception of fund 0300, fiscal year 201	6, ap	propriation
14	75500 (\$40,000) which shall expire on June 30	0, 20	16.

# 55 - State Board of Rehabilitation – Division of Rehabilitation Services

# (WV Code Chapter 18)

# Fund $\underline{0310}$ FY $\underline{2017}$ Org $\underline{0932}$

1	Personal Services and Employee	
2	Benefits00100	\$ 10,664,313
3	Independent Living Services 00900	455,419
4	Current Expenses	545,202
5	Workshop Development 16300	1,927,469
6	Supported Employment Extended	
7	Services	91,084
8	Ron Yost Personal Assistance Fund.40700	354,041
9	Employment Attendant Care	
10	Program 59800	142,150
11	BRIM Premium 91300	 67,033
12	Total	\$ 14,246,711

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

#### DEPARTMENT OF ENVIRONMENTAL PROTECTION

#### 56 - Environmental Quality Board

#### (WV Code Chapter 20)

#### Fund 0270 FY 2017 Org 0311

1	Personal Services and Employee	
2	Benefits00100	\$ 72,495
3	Current Expenses	28,586
4	Repairs and Alterations 06400	100
5	Equipment 07000	717
6	Other Assets	600
7	BRIM Premium 91300	 684
8	Total	\$ 103,182

#### 57 - Division of Environmental Protection

#### (WV Code Chapter 22)

# Fund <u>0273</u> FY <u>2017</u> Org <u>0313</u>

Personal Services and Employee		
Benefits00100	\$	4,014,779
Water Resources Protection and		
Management 06800		580,093
Current Expenses		121,600
	Benefits	Benefits

Ch. 3	APPROPRIATIONS	2001	
6	Repairs and Alterations 06400	5,950	
7	Equipment 07000	6,500	
8	Unclassified09900	28,189	
9	Dam Safety 60700	212,332	
10	West Virginia Stream Partners		
11	Program 63700	77,396	
12	Meth La- Cleanup 65600	205,673	
13	Other Assets	10,183	
14	WV Contributions to River		
15	Commissions	148,485	
16	Office of Water Resources		
17	Non-Enforcement Activity 85500	926,951	
18	Total	\$ 6,338,131	
19	A portion of the appropriations for Curren	•	
20	0273, appropriation 13000) and Dam Safe	ety (fund 0273,	
21	appropriation 60700) may be transferred to the	special revenue	
22	fund Dam Safety Rehabilitation Revolving Fund	d (fund 3025) for	
23	23 the state deficient dams rehabilitation assistance program.		

# 58 - Air Quality Board

# (WV Code Chapter 16)

# Fund $\underline{0550}$ FY $\underline{2017}$ Org $\underline{0325}$

1	Personal Services and Employee	
2	Benefits00100	\$ 61,586
3	Current Expenses	12,183
4	Repairs and Alterations 06400	50
5	Equipment 07000	579
6	Other Assets 69000	200
7	BRIM Premium 91300	 2,013
8	Total	\$ 76,611

#### DEPARTMENT OF HEALTH AND HUMAN RESOURCES

# 59 - Department of Health and Human Resources – Office of the Secretary

(WV Code Chapter 5F)

# Fund <u>0400</u> FY <u>2017</u> Org <u>0501</u>

1	Personal Services and Employee		
2	Benefits00100	\$	376,440
3	Unclassified		8,063
4	Current Expenses		48,784
5	Women's Commission (R) 19100		156,408
6	Commission for the Deaf and		
7	Hard of Hearing 70400		216,635
8	Total	\$	806,330
9	Any unexpended balance remaining in th	e appro	priation for
10	the Women's Commission (fund 0400, appro	priatio	n 19100) at
11	the close of the fiscal year 2016 is hereby	reappro	opriated for
12	expenditure during the fiscal year 2017.		

# 60 - Division of Health – Central Office

(WV Code Chapter 16)

## Fund <u>0407</u> FY <u>2017</u> Org <u>0506</u>

1	Personal Services and Employee	
2	Benefits00100	\$ 12,142,743
3	Chief Medical Examiner 04500	5,485,477
4	Unclassified	691,862
5	Current Expenses	4,640,355
6	State Aid for Local and Basic	
7	Public Health Services 18400	12,649,545
8	Safe Drinking Water Program (R) 18700	2,172,181

Ch. 3	] APPROPRIATIONS	2003
9	Women, Infants and Children 21000	38,621
10	Early Intervention	6,044,884
11	Cancer Registry	197,207
12	CARDIAC Project 37500	427,500
13	State EMS Technical Assistance 37900	1,353,656
14	Statewide EMS Program	
15	Support (R)	957,473
16	Black Lung Clinics 46700	170,885
17	Center for End of Life 54500	420,198
18	Pediatric Dental Services 55000	51,888
19	Vaccine for Children 55100	334,076
20	Tuberculosis Control 55300	366,879
21	Maternal and Child Health	
22	Clinics, Clinicians	
23	Medical Contracts and	
24	Fees (R)	6,280,223
25	Epidemiology Support 62600	1,503,498
26	Primary Care Support 62800	4,670,953
27	Sexual Assault Intervention and	
28	Prevention	125,000
29	Health Right Free Clinics 72700	2,750,000
30	Capital Outlay and	
31	Maintenance (R) 75500	100,000
32	Healthy Lifestyles 77800	147,034
33	Maternal Mortality Review 83400	46,973
34	Osteoporosis and Arthritis	
35	Prevention 84900	158,530
36	Diabetes Education and Prevention. 87300	97,125
37	Tobacco Education Program (R) 90600	3,037,643
38	BRIM Premium 91300	211,214
39	State Trauma and Emergency	
40	Care System 91800	1,993,374
41	Total	\$ 69,266,997
42	Any unexpended balances remaining in	* * *
43	for Safe Drinking Water Program (fund 0	407, appropriation

- 47 appropriation 57500), Capital Outlay and Maintenance (fund
- 48 0407, appropriation 75500), Emergency Response Entities -
- 49 Special Projects (fund 0407, appropriation 82200), Assistance to
- 50 Primary Health Care Centers Community Health Foundation
- 51 (fund 0407, appropriation 84500), and Tobacco Education
- 52 Program (fund 0407, appropriation 90600) at the close of the
- 53 fiscal year 2016 are hereby reappropriated for expenditure
- 54 during the fiscal year 2017.
- From the above appropriation for Current Expenses (fund
- 56 0407, appropriation 13000), an amount not less than \$100,000 is
- 57 for the West Virginia Cancer Coalition; \$50,000 shall be
- 58 expended for the West Virginia Aids Coalition; \$100,000 is for
- 59 Adolescent Immunization Education; \$73,065 is for informal
- 60 dispute resolution relating to nursing home administrative
- 61 appeals; and \$50,000 is for Hospital Hospitality House of
- 62 Huntington.
- From the above appropriation for Maternal and Child Health
- 64 Clinics, Clinicians and Medical Contracts and Fees (fund 0407,
- appropriation 57500) up to \$400,000 shall be transferred to the
- 66 Breast and Cervical Cancer Diagnostic Treatment Fund (fund
- 67 5197) and \$11,000 is for the Marshall County Health
- 68 Department for dental services.

#### 61 - Consolidated Medical Services Fund

(WV Code Chapter 16)

# Fund <u>0525</u> FY <u>2017</u> Org <u>0506</u>

1	Personal Services and Employee	
2	Benefits00100	\$ 1,567,519
3	Current Expenses	12,463

Ch. 3	APPROPRIATIONS	2005
4	Behavioral Health Program (R) 21900	64,723,691
5	Family Support Act	251,226
6	Institutional Facilities	
7	Operations (R) 33500	105,711,029
8	Substance Abuse Continuum of	
9	Care (R) 35400	5,000,000
10	Capital Outlay and	
11	Maintenance (R)	950,000
12	Renaissance Program 80400	165,996
13	BRIM Premium 91300	1,088,070
14	Total	\$ 179,469,994
15	Any unexpended balances remaining in th	e appropriations
16	for Behavioral Health Program (fund 052:	
17	21900), Institutional Facilities Operations	
18	appropriation 33500), Substance Abuse Con	
19	(fund 0525, appropriation 35400), Capital Ou	
20	appropriation 51100), Behavioral Health Pro	•
21	(fund 0525, appropriation 63100), Institut	
22	Operations - Surplus (fund 0525, approp	oriation 63200),
23	Substance Abuse Continuum of Care - Surp	olus (fund 0525,
24	appropriation 72200), and Capital Outlay and M	aintenance (fund
25	0525, appropriation 75500) at the close of the	fiscal year 2016
26	are hereby reappropriated for expenditure during	ng the fiscal year
27	2017, with the exception of fund 0525, fi	•
28	appropriation 21900 (\$20,000,000) and fund (	
29	2016, appropriation 33500 (\$20,000,000) whic	h shall expire on
30	June 30, 2016.	
31	Included in the above appropriation for B	ehavioral Health
32	Program (fund 0525, appropriation 21900) is	
33	Healing Place of Huntington.	
34	From the above appropriation for Institu	itional Facilities
35	Operations (fund 0525, appropriation 33500	
36	available funds from the Division of Health – H	. •

37	Revenue Account (fund 5156, appropriation 33500), on July 1,			
38	2016, the sum of \$160,000 shall be transferred to the Department			
39	of Agriculture – Land Division – Farm Operating Fund (1412)			
40	as advance payment for the purchase of food products; actual			
41	payments for such purchases shall not be required until such			
42	credits have been completely expended.			
43	The above appropriation for Institutional Facilities			
44	Operations (fund 0525, appropriation 33500) contains prior year			
45	salary increases due to the Hartley court order in the amount of			
46	\$2,202,013 for William R. Sharpe Jr. Hospital, and \$2,067,984			
47	for Mildred Mitchel-Bateman Hospital.			
48	From the above appropriation for Substance Abuse			
40	Continuous of Cons (final 0525 annuariation 25400) the			

Continuum of Care (fund 0525, appropriation 35400), the

50 funding will be consistent with the goal areas outlined in the

Comprehensive Substance Abuse Strategic Action Plan. 51

52 Additional funds have been appropriated in fund 5156, fiscal year 2017, organization 0506, for the operation of the 53 institutional facilities. The secretary of the Department of Health 54 and Human Resources is authorized to utilize up to ten percent 55 of the funds from the Institutional Facilities Operations 56 appropriation to facilitate cost effective and cost saving services 57 58 at the community level.

### 62 - Division of Health -West Virginia Drinking Water Treatment

(WV Code Chapter 16)

# Fund 0561 FY 2017 Org 0506

1	West Virginia Drinking Water		
2	Treatment Revolving Fund –		
3	Transfer	68900	\$ 647 500

- The above appropriation for Drinking Water Treatment 4
- Revolving Fund Transfer shall be transferred to the West 5
- 6 Virginia Drinking Water Treatment Revolving Fund or
- appropriate bank depository and the Drinking Water Treatment
- Revolving Administrative Expense Fund as provided by 8
- Chapter 16 of the Code.

### 63 - Human Rights Commission

### (WV Code Chapter 5)

# Fund <u>0416</u> FY <u>2017</u> Org <u>0510</u>

1	Personal Services and Employee	
2	Benefits00100	\$ 914,175
3	Unclassified	4,024
4	Current Expenses	191,766
5	BRIM Premium 91300	9,311
6	Total	\$ 1,119,276

### 64 - Division of Human Services

(WV Code Chapters 9, 48 and 49)

### Fund 0403 FY 2017 Org 0511

1	Personal Services and Employee	
2	Benefits00100	\$ 43,255,270
3	Unclassified	5,688,944
4	Current Expenses	11,298,895
5	Child Care Development 14400	11,228,136
6	Medical Services Contracts and	
7	Office of Managed Care 18300	1,835,469
8	Medical Services 18900	397,097,674
9	Social Services	142,485,812
10	Family Preservation Program 19600	1,565,000
11	Family Resource Networks 27400	1,762,464

2008	APPROPRIATIONS	[Ch. 3
12	Domestic Violence Legal Services	
13	Fund	400,000
14	James "Tiger" Morton Catastrophic	
15	Illness Fund 45500	101,682
16	I/DD Waiver	88,753,483
17	Child Protective Services Case	
18	Workers	22,581,819
19	OSCAR and RAPIDS 51500	6,413,863
20	Title XIX Waiver for Seniors 53300	13,593,620
21	WV Teaching Hospitals Tertiary/	
22	Safety Net 54700	6,356,000
23	Child Welfare System 60300	1,259,065
24	In-Home Family Education 68800	1,000,000
25	WV Works Separate State	
26	Program 69800	3,250,000
27	Child Support Enforcement 70500	6,297,412
28	Medicaid Auditing 70600	607,142
29	Temporary Assistance for Needy	
30	Families/	
31	Maintenance of Effort 70700	22,969,096
32	Child Care - Maintenance of	
33	Effort Match 70800	5,693,743
34	Child and Family Services 73600	2,850,000
35	Grants for Licensed Domestic	
36	Violence Programs and	
37	Statewide Prevention 75000	2,500,000
38	Capital Outlay and	
39	Maintenance (R) 75500	11,875
40	Community Based Services and	
41	Pilot Programs for Youth 75900	1,000,000
42	Medical Services Administrative	25 (20 100
43	Costs	35,630,109
44 45	Traumatic Brain Injury Waiver 83500	800,000
45 46	Indigent Burials (R)	2,050,000 834,187
40	DKIM FICHHUM	034,18/

Fund (fund 5454) as provided by Article 5Q, Chapter 16 of the

76 77

Code.

- The above appropriation for WV Works Separate State Program (fund 0403, appropriation 69800), shall be transferred to the WV Works Separate State College Program Fund (fund 5467), and the WV Works Separate State Two-Parent Program Fund (fund 5468) as determined by the secretary of the
- 83 Department of Health and Human Resources.
- From the above appropriation for Child Support Enforcement (fund 0403, appropriation 70500) an amount not to exceed \$300,000 may be transferred to a local banking depository to be utilized to offset funds determined to be uncollectible.
- 89 From the above appropriation for the Grants for Licensed 90 Domestic Violence Programs and Statewide Prevention (fund 0403, appropriation 75000), 50% of the total shall be divided 91 92 equally and distributed among the fourteen (14) licensed 93 programs and the West Virginia Coalition Against Domestic 94 Violence (WVCADV). The balance remaining in 95 appropriation for Grants for Licensed Domestic Violence 96 Programs and Statewide Prevention (fund 0403, appropriation 97 75000), shall be distributed according to the formula established 98 by the Family Protection Services Board.
- The above appropriation for Children's Trust Fund Transfer (fund 0403, appropriation 95100) shall be transferred to the Children's Fund (fund 5469, org 0511).

### DEPARTMENT OF MILITARY AFFAIRS AND PUBLIC SAFETY

65 - Department of Military Affairs and Public Safety –
Office of the Secretary

(WV Code Chapter 5F)

31

# Fund <u>0430</u> FY <u>2017</u> Org <u>0601</u>

1	Personal Services and Employee	
2	Benefits	į
3	Unclassified (R)	
4	Current Expenses	
5	Repairs and Alterations 06400 7,572	
6	Equipment	)
7	Fusion Center (R)	j
8	Other Assets	)
9	Directed Transfer	)
10	BRIM Premium	Ļ
11	WV Fire and EMS Survivor	
12	Benefit (R)	)
13	Homeland State Security	
14	Administrative Agency (R) 95300 535,850	)
15	Total\$ 2,184,191	
1.6		
16 17	Any unexpended balances remaining in the appropriations	
1 /		
	for Unclassified (fund 0430, appropriation 09900), Fusion	
18	Center (fund 0430, appropriation 46900), Substance Abuse	•
18 19	Center (fund 0430, appropriation 46900), Substance Abuse Program – Surplus (fund 0430, appropriation 69600), Justice	•
18 19 20	Center (fund 0430, appropriation 46900), Substance Abuse Program – Surplus (fund 0430, appropriation 69600), Justice Reinvestment Training – Surplus (fund 0430, appropriation	) )
18 19 20 21	Center (fund 0430, appropriation 46900), Substance Abuse Program – Surplus (fund 0430, appropriation 69600), Justice Reinvestment Training – Surplus (fund 0430, appropriation 69900), WV Fire and EMS Survivor Benefit (fund 0430,	) )
18 19 20 21 22	Center (fund 0430, appropriation 46900), Substance Abuse Program – Surplus (fund 0430, appropriation 69600), Justice Reinvestment Training – Surplus (fund 0430, appropriation 69900), WV Fire and EMS Survivor Benefit (fund 0430, appropriation 93900), and Homeland State Security	e 1
18 19 20 21 22 23	Center (fund 0430, appropriation 46900), Substance Abuse Program – Surplus (fund 0430, appropriation 69600), Justice Reinvestment Training – Surplus (fund 0430, appropriation 69900), WV Fire and EMS Survivor Benefit (fund 0430, appropriation 93900), and Homeland State Security Administrative Agency (fund 0430, appropriation 95300) at the	
18 19 20 21 22 23 24	Center (fund 0430, appropriation 46900), Substance Abuse Program – Surplus (fund 0430, appropriation 69600), Justice Reinvestment Training – Surplus (fund 0430, appropriation 69900), WV Fire and EMS Survivor Benefit (fund 0430, appropriation 93900), and Homeland State Security Administrative Agency (fund 0430, appropriation 95300) at the close of the fiscal year 2016 are hereby reappropriated for	
18 19 20 21 22 23 24 25	Center (fund 0430, appropriation 46900), Substance Abuse Program – Surplus (fund 0430, appropriation 69600), Justice Reinvestment Training – Surplus (fund 0430, appropriation 69900), WV Fire and EMS Survivor Benefit (fund 0430, appropriation 93900), and Homeland State Security Administrative Agency (fund 0430, appropriation 95300) at the close of the fiscal year 2016 are hereby reappropriated for expenditure during the fiscal year 2017, with the exception of	
18 19 20 21 22 23 24 25 26	Center (fund 0430, appropriation 46900), Substance Abuse Program – Surplus (fund 0430, appropriation 69600), Justice Reinvestment Training – Surplus (fund 0430, appropriation 69900), WV Fire and EMS Survivor Benefit (fund 0430, appropriation 93900), and Homeland State Security Administrative Agency (fund 0430, appropriation 95300) at the close of the fiscal year 2016 are hereby reappropriated for expenditure during the fiscal year 2017, with the exception of fund 0430, fiscal year 2016, appropriation 46900 (\$7,122), fund	e e e e e e e e e e e e e e e e e e e
18 19 20 21 22 23 24 25 26 27	Center (fund 0430, appropriation 46900), Substance Abuse Program – Surplus (fund 0430, appropriation 69600), Justice Reinvestment Training – Surplus (fund 0430, appropriation 69900), WV Fire and EMS Survivor Benefit (fund 0430, appropriation 93900), and Homeland State Security Administrative Agency (fund 0430, appropriation 95300) at the close of the fiscal year 2016 are hereby reappropriated for expenditure during the fiscal year 2017, with the exception of fund 0430, fiscal year 2016, appropriation 46900 (\$7,122), fund 0430, fiscal year 2016, appropriation 93900 (\$200,000), and	
18 19 20 21 22 23 24 25 26 27 28	Center (fund 0430, appropriation 46900), Substance Abuse Program – Surplus (fund 0430, appropriation 69600), Justice Reinvestment Training – Surplus (fund 0430, appropriation 69900), WV Fire and EMS Survivor Benefit (fund 0430, appropriation 93900), and Homeland State Security Administrative Agency (fund 0430, appropriation 95300) at the close of the fiscal year 2016 are hereby reappropriated for expenditure during the fiscal year 2017, with the exception of fund 0430, fiscal year 2016, appropriation 46900 (\$7,122), fund 0430, fiscal year 2016, appropriation 93900 (\$200,000), and fund 0430, fiscal year 2016, appropriation 95300 (\$7,123) which	
18 19 20 21 22 23 24 25 26 27	Center (fund 0430, appropriation 46900), Substance Abuse Program – Surplus (fund 0430, appropriation 69600), Justice Reinvestment Training – Surplus (fund 0430, appropriation 69900), WV Fire and EMS Survivor Benefit (fund 0430, appropriation 93900), and Homeland State Security Administrative Agency (fund 0430, appropriation 95300) at the close of the fiscal year 2016 are hereby reappropriated for expenditure during the fiscal year 2017, with the exception of fund 0430, fiscal year 2016, appropriation 46900 (\$7,122), fund 0430, fiscal year 2016, appropriation 93900 (\$200,000), and	

appropriation 70000) shall be transferred to the

- 32 Law-Enforcement, Safety and Emergency Worker Funeral
- 33 Expense Payment Fund (fund 6003).

#### 66 - Adjutant General – State Militia

#### (WV Code Chapter 15)

#### Fund <u>0433</u> FY <u>2017</u> Org <u>0603</u>

0
0,000
0,000
0,000
2,225
2,225
2,22

- 8 Any unexpended balance remaining in the appropriation for
- 9 Unclassified (fund 0433, appropriation 09900) at the close of the
- 10 fiscal year 2016 is hereby reappropriated for expenditure during
- 11 the fiscal year 2017, with the exception of fund 0433, fiscal year
- 12 2016, appropriation 09900 (\$599,750) which shall expire on
- 13 June 30, 2016.
- 14 From the above appropriations an amount approved by the
- 15 Adjutant General and the secretary of Military Affairs and Public
- 16 Safety may be transferred to the State Armory Board for
- 17 operation and maintenance of National Guard Armories.
- The adjutant general shall have the authority to transfer between appropriations.
- From the above appropriation and other state and federal
- 21 funding, the Adjutant General shall provide an amount not less
- 22 than \$4,500,000 to the Mountaineer ChalleNGe Academy to
- 23 meet anticipated program demand.

# 67 - Adjutant General – Military Fund

(WV Code Chapter 15)

### Fund <u>0605</u> FY <u>2017</u> Org <u>0603</u>

1 2 3 4	Personal Services and Employee Benefits	\$ <del>\$</del>	100,000 60,995 160,995
	68 - West Virginia Parole Board		
	(WV Code Chapter 62)		
	Fund <u>0440</u> FY <u>2017</u> Org <u>0605</u>		
1	Personal Services and Employee		
2	Benefits	\$	385,459
3	Current Expenses		194,559
4	Salaries of Members of West Virginia		
5	Parole Board		597,865
6	BRIM Premium 91300		4,712
7	Total	\$	1,182,595
8	The above appropriation for Salaries of I	Meml	pers of West
9	Virginia Parole Board (fund 0440, appropriatio	n 227	'00) includes
10	funding for salary, annual increment (as prov	ided 1	for in W.Va.

# 69 - Division of Homeland Security and Emergency Management

Code §5-5-1), and related employee benefits of board members.

11

(WV Code Chapter 15)

# Fund <u>0443</u> FY <u>2017</u> Org <u>0606</u>

1	Personal Services and Employee	
2	Benefits00100	\$ 548,175

2014	APPROPRIATIONS	[Ch. 3
3	Unclassified	28,157
4	Current Expenses	66,674
5	Repairs and Alterations 06400	1,000
6	Radiological Emergency	
7	Preparedness	17,452
8	Federal Funds/Grant Match (R) 74900	664,247
9	Mine and Industrial Accident Rapid	
10	Response Call Center 78100	462,189
11	Early Warning Flood System (R) 87700	479,006
12	BRIM Premium 91300	18,811
13	WVU Charleston Poison Control	
14	Hotline	727,492
15	Total	\$ 3,013,203
16	Any unexpended balances remaining in	the appropriations
17	for Federal Funds/Grant Match (fund 0	443, appropriation
18	74900), Early Warning Flood System (fund	0443, appropriation
19	87700), and Disaster Mitigation (fund 0	443, appropriation
20	95200) at the close of the fiscal year	2016 are hereby
21	reappropriated for expenditure during the fis	scal year 2017, with
22	the exception of fund 0443, fiscal year 2	016, appropriation
23	87700 (\$36,879) which shall expire on June	30, 2016.
	70 - Division of Corrections – Central Office	

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

# Fund $\underline{0446}$ FY $\underline{2017}$ Org $\underline{0608}$

1	Personal Services and Employee	
2	Benefits	\$ 598,655
3	Unclassified	0
4	Current Expenses	 1,800
5	Total	\$ 600,455

# 71 - Division of Corrections – Correctional Units

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

# Fund <u>0450</u> FY <u>2017</u> Org <u>0608</u>

1	Employee Benefits	\$ 1,258,136
2	Children's Protection Act (R) 09000	938,437
3	Unclassified (R) 09900	1,623,738
4	Current Expenses (R)	23,132,313
5	Facilities Planning and	
6	Administration (R) 38600	1,166,627
7	Charleston Correctional Center 45600	3,126,532
8	Beckley Correctional Center 49000	1,815,364
9	Huntington Work Release Center 49500	1,070,058
10	Anthony Correctional Center 50400	5,040,533
11	Huttonsville Correctional Center 51400	20,998,029
12	Northern Correctional Center 53400	6,938,571
13	Inmate Medical Expenses (R) 53500	21,226,064
14	Pruntytown Correctional Center 54300	7,060,326
15	Corrections Academy 56900	1,441,819
16	Information Technology Services 59901	3,341,064
17	Martinsburg Correctional Center 66300	3,538,534
18	Parole Services	5,131,198
19	Special Services 68700	6,122,439
20	Investigative Services 71600	3,151,604
21	Capital Outlay and	
22	Maintenance (R) 75500	2,000,000
23	Salem Correctional Center 77400	9,943,952
24	McDowell County Correctional	
25	Center	1,949,983
26	Stevens Correctional Center 79100	6,474,500
27	Parkersburg Correctional Center 82800	2,442,670
28	St. Mary's Correctional Center 88100	12,636,324
29	Denmar Correctional Center 88200	4,414,286
30	Ohio County Correctional Center 88300	1,738,335
31	Mt. Olive Correctional Complex 88800	19,684,203
32	Lakin Correctional Center 89600	8,911,795
	Zumm Contestional Contest	3,711,73

2016	APPROPRIATIONS [Ch. 3
33	BRIM Premium
34	Total \$ 189,146,624
35	Any unexpended balances remaining in the appropriations
36	for Children's Protection Act (fund 0450, appropriation 09000),
37	Unclassified - Surplus (fund 0450, appropriation 09700),
38	Current Expenses (fund 0450, appropriation 13000), Facilities
39	Planning and Administration (fund 0450, appropriation 38600),
40	Inmate Medical Expenses (fund 0450, appropriation 53500),
41	Capital Improvements - Surplus (fund 0450, appropriation
42	66100), Capital Outlay, Repairs and Equipment – Surplus (fund
43	0450, appropriation 67700), Capital Outlay and Maintenance
44	(fund 0450, appropriation 75500), Security System
45	$Improvements-Surplus\ (fund\ 0450,\ appropriation\ 75501),\ and$
46	Operating Expenses – Surplus (fund 0450, appropriation 77900)
47	at the close of the fiscal year 2016 are hereby reappropriated for
48	expenditure during the fiscal year 2017, with the exception of
49	fund 0450, fiscal year 2016, appropriation 13000 (\$8,500,000)
50	which shall expire on June 30, 2016.
51	The commissioner of corrections shall have the authority to
52	transfer between appropriations to the individual correctional
53	units above and may transfer funds from the individual
54	correctional units to Current Expenses (fund 0450, appropriation
55	13000) or Inmate Medical Expenses (fund 0450, appropriation
56	53500).
57	From the above appropriation to Unclassified (fund 0450,
58	appropriation 09900), on July 1, 2016, the sum of \$300,000 shall
59	be transferred to the Department of Agriculture – Land Division
60	- Farm Operating Fund (1412) as advance payment for the
61	purchase of food products; actual payments for such purchases
62	shall not be required until such credits have been completely
63	expended.
64	From the above appropriation to Current Expenses (fund
65	0450, appropriation 13000) payment shall be made to house

- 66 Division of Corrections inmates in federal, county, and/or regional jails.
- 67
- Any realized savings from the Energy Savings Contract for 68
- Mt. Olive Correctional Complex, Huttonsville Correction 69
- Center, Pruntytown Correctional Center, or Denmar Correctional 70
- Center may be transferred from the listed individual correctional 71
- units to Facilities Planning and Administration (fund 0450, 72
- appropriation 38600). 73

## 72 - West Virginia State Police

### (WV Code Chapter 15)

### Fund 0453 FY 2017 Org 0612

1	Personal Services and Employee		
2	Benefits	\$	57,760,209
3	Children's Protection Act 09000		954,509
4	Current Expenses		10,358,032
5	Repairs and Alterations 06400		450,523
6	Barracks Lease Payments 55600		246,478
7	Communications and Other		
8	Equipment (R) 55800		70,968
9	Trooper Retirement Fund 60500		4,035,203
10	Handgun Administration Expense. 74700		82,692
11	Capital Outlay and Maintenance (R)75500		250,000
12	Retirement Systems – Unfunded		
13	Liability		16,875,000
14	Automated Fingerprint		
15	Identification System 89800		725,771
16	BRIM Premium 91300		4,946,608
17	Total	\$	96,755,993
18	Any unexpended balances remaining in	the ap	opropriations
19	for Communications and Other Equipm	ent	(fund 0453,
20	appropriation 55800), and Capital Outlay and I	Maint	enance (fund
21	0453, appropriation 75500) at the close of th	e fisc	al year 2016

2018	APPROPRIATIONS		[Ch. 3
22 23 24 25	are hereby reappropriated for expenditure during the fiscal year 2017, with the exception of fund 0453, fiscal year 2016, appropriation 55800 (\$1,162,002) which shall expire on June 30, 2016.		
26 27 28 29 30	From the above appropriation for Personal Services and Employee Benefits (fund 0453, appropriation 00100), an amount not less than \$25,000 shall be expended to offset the costs associated with providing police services for the West Virginia State Fair.		
73 - Fire Commission			
(WV Code Chapter 29)			
Fund <u>0436</u> FY <u>2017</u> Org <u>0619</u>			
1	Current Expenses	\$	65,328
74 - Division of Justice and Community Services			
(WV Code Chapter 15)			
Fund <u>0546</u> FY <u>2017</u> Org <u>0620</u>			
1	Personal Services and Employee		
2	Benefits	\$	534,684
3	Current Expenses		132,696
4	Repairs and Alterations 06400		1,804
5	Child Advocacy Centers (R) 45800		1,702,108
6	Community Corrections (R) 56100		7,079,760
7	Statistical Analysis Program 59700		46,724
8	Sexual Assault Forensic		
9	Examination Commission 71400		76,704
10	Qualitative Analysis and Training for		262.12=
11	Youth Services (R) 76200		362,497
12	Law Enforcement Professional		155 161
13	Standards 83800		155,464

Ch. 3	APPROPRIATIONS 2019
14	BRIM Premium
15	Total\$ 10,093,862
16	Any unexpended balances remaining in the appropriations
17	for Child Advocacy Centers (fund 0546, appropriation 45800),
18	Community Corrections (fund 0546, appropriation 56100), and
19	Qualitative Analysis and Training for Youth Services (fund
20	0546, appropriation 76200) at the close of the fiscal year 2016
21	are hereby reappropriated for expenditure during the fiscal year
22	2017, with the exception of fund 0546, fiscal year 2016,
23	appropriation 45800 (\$72,000), fund 0546, fiscal year 2016,
24	appropriation 56100 (\$178,000), and fund 0546, fiscal year
25	2016, appropriation 76200 (\$200,000) which shall expire on
26	June 30, 2016.
27	From the above appropriation for Child Advocacy Centers
28	(fund 0546, appropriation 45800), the division may retain an
29	amount not to exceed four percent of the appropriation for
30	administrative purposes.
	75 - Division of Juvenile Services

# (WV Code Chapter 49)

# Fund <u>0570</u> FY <u>2017</u> Org <u>0621</u>

1	Statewide Reporting Centers 26200	\$ 6,309,696
2	Robert L. Shell Juvenile Center 26700	1,969,807
3	Resident Medical Expenses 53501	3,604,999
4	Central Office 70100	2,324,562
5	Capital Outlay and	
6	Maintenance (R) 75500	250,000
7	Gene Spadaro Juvenile Center 79300	2,141,284
8	BRIM Premium 91300	96,187
9	Kenneth Honey Rubenstein Juvenile	
10	Center (R) 98000	4,952,035
11	Vicki Douglas Juvenile Center 98100	1,882,647

2020	APPROPRIATIONS		[Ch. 3	
12	Northern Regional Juvenile Center. 98200		2,876,302	
13	Lorrie Yeager Jr. Juvenile Center 98300		1,922,009	
14	Sam Perdue Juvenile Center 98400		2,015,925	
15	Tiger Morton Center 98500		2,127,696	
16	Donald R. Kuhn Juvenile Center 98600		4,084,883	
17	J.M. "Chick" Buckbee Juvenile			
18	Center		2,030,199	
19	Total	\$	38,588,231	
20	Any unexpended balances remaining in	the ap	propriations	
21	for Capital Outlay and Maintenance (fund 0			
22	75500) and Kenneth Honey Rubenstein Juv			
23	0570, appropriation 98000) at the close of the		•	
24	are hereby reappropriated for expenditure du 2017.	ring t	ne fiscal year	
25	2017.			
26	From the above appropriations, on July 1	1, 201	6, the sum of	
27	\$50,000 shall be transferred to the Departme	nt of	Agriculture –	
28	Land Division - Farm Operating Fund (	1412)	as advance	
29	payment for the purchase of food products; a			
30	such purchases shall not be required until suc	h cred	its have been	
31	completely expended.			
32	The director of Juvenile Services shall ha	ave the	e authority to	
33	transfer between appropriations to the individual	ual juv	venile centers	
34	above and may transfer funds from the i	ndivio	lual juvenile	
35	centers to Resident Medical Expenses (fund 0	)570, a	appropriation	
36	53501).			
	76 - Division of Protective Service	es		
	(WV Code Chapter 5F)			
1	Fund <u>0585</u> FY <u>2017</u> Org <u>0622</u>			
1 2	Personal Services and Employee Benefits00100	Φ	2 679 075	
3	Unclassified (R)	\$	2,678,975 21,991	
<i>3</i>	Current Expenses		139,232	
•	Carrent Emperiodo 15000		107,202	

Ch. 3	APPROPRIATIONS		2021
5	Repairs and Alterations		8,500
6	Equipment (R)		64,171
7 8	BRIM Premium	\$	9,969 2,922,838
o	Total	Ψ	2,922,030
9	Any unexpended balances remaining in t	_	
10	for Equipment (fund 0585, appropriation		7000), and
11	Unclassified (fund 0585, appropriation 09900)		
12	fiscal year 2016 are hereby reappropriated	l for	expenditure
13	during the fiscal year 2017.		
	DEPARTMENT OF REVENUE	2	
	77 - Office of the Secretary		
	(WV Code Chapter 11)		
	Fund <u>0465</u> FY <u>2017</u> Org <u>0701</u>		
1	Personal Services and Employee		
2	Benefits	\$	502,741
3	Unclassified		5,991
4	Current Expenses		80,633
5	Repairs and Alterations 06400		1,262
6	Equipment		8,000
7	Other Assets	Φ.	500
8	Total	\$	599,127
9	Any unexpended balance remaining in the	appr	opriation for
10	Unclassified – Total (fund 0465, appropriati		•
11	close of the fiscal year 2016 is hereby re	eappr	opriated for
12	expenditure during the fiscal year 2017.		
	78 - Tax Division		
	(WV Code Chapter 11)		
	Fund <u>0470</u> FY <u>2017</u> Org <u>0702</u>		
1	Personal Services and Employee		
2	Benefits (R)	\$	16,380,222

2022	APPROPRIATIONS		[Ch. 3
3	Unclassified (R) 09900		224,578
4	Current Expenses (R) 13000		5,245,381
5	Repairs and Alterations 06400		10,000
6	Equipment 07000		50,000
7	Tax Technology Upgrade 09400		2,700,000
8	Multi State Tax Commission 65300		77,958
9	Other Assets		10,000
10	BRIM Premium 91300		13,000
11	Total	\$	24,711,139
12 13 14 15 16 17 18 19 20 21	Any unexpended balances remaining in for Personal Services and Employee Berappropriation 00100), Unclassified (fund 0 09900), Current Expenses (fund 0470, appropriate Close of the fiscal year 2016 are hereby expenditure during the fiscal year 2017, wi fund 0470, fiscal year 2016, appropriation 00 fund 0470, fiscal year 2016, appropriation which shall expire on June 30, 2016.	nefits 470, a priation opriation reapp th the 100 (\$	(fund 0470, appropriation in 13000), and fon 56200) at propriated for exception of 4400,000) and
	70 C		

# 79 - State Budget Office (WV Code Chapter 11B)

# Fund <u>0595</u> FY <u>2017</u> Org <u>0703</u>

1	Personal Services and Employee		
2	Benefits00100	\$	648,390
3	Unclassified (R)		129
4	Total	\$	648,519
5	Any unexpended balance remaining in the	e appro	priation for
6	Unclassified (fund 0595, appropriation 09900	) at the	close of the
7	fiscal year 2016 is hereby reappropriated for 6	expend	iture during
8	the fiscal year 2017.		

#### 2023

## 80 - West Virginia Office of Tax Appeals

## (WV Code Chapter 11)

### Fund 0593 FY 2017 Org 0709

1	Personal Services and Employee		
2	Benefits	\$	428,077
3	Current Expenses (R)		92,542
4	Unclassified		5,285
5	BRIM Premium 91300		2,618
6	Total	\$	528,522
7	Any unexpended balance remaining in the	e appro	priation for
8	Current Expenses (fund 0593, appropriation 1	3000)	at the close
9	of the fiscal year 2016 is hereby reappropriate	ed for	expenditure
10	during the fiscal year 2017.		

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

(WV Code Chapter 29)

## Fund <u>0523</u> FY <u>2017</u> Org <u>0933</u>

1	Personal Services and Employee	
2	Benefits	\$ 9,177
3	Current Expenses	 27,634
4	Total	\$ 36,811

#### DEPARTMENT OF TRANSPORTATION

82 - State Rail Authority

(WV Code Chapter 29)

## Fund <u>0506</u> FY <u>2017</u> Org <u>0804</u>

1	Personal Services and Employee	
2	Benefits	\$ 316,636

2024	APPROPRIATIONS		[Ch. 3
3	Current Expenses		287,332
4	Other Assets (R) 69000		1,335,760
5	BRIM Premium 91300		173,966
6	Total	\$	2,113,694
7	Any unexpended balances remaining in the	he app	propriations
8	for Unclassified (fund 0506, appropriation 0	9900)	and Other
9	Assets (fund 0506, appropriation 69000) at the	close	of the fiscal
10	year 2016 are hereby reappropriated for exper-	ıditure	e during the
11	fiscal year 2017, with the exception of fund	0506,	fiscal year
12	2016, appropriation 69000 (\$25,000) which sha	all exp	pire on June
13	30, 2016.		

#### 83 - Division of Public Transit

### (WV Code Chapter 17)

#### Fund 0510 FY 2017 Org 0805

1	Equipment (R) 07000	\$	532,339
2	Current Expenses (R)		1,757,998
3	Buildings (R)		5,281
4	Other Assets (R) 69000		5,000
5	Total	\$	2,300,618
		_	

Any unexpended balances remaining in the appropriations 6 for Equipment (fund 0510, appropriation 07000), Current 7 8 Expenses (fund 0510, appropriation 13000), Buildings (fund 0510, appropriation 25800) and Other Assets (fund 0510, 9 appropriation 69000) at the close of the fiscal year 2016 are 10 hereby reappropriated for expenditure during the fiscal year 11 2017, with the exception of fund 0510, fiscal year 2016, 12 13 appropriation 07000 (\$58,429), fund 0510, fiscal year 2016, 14 appropriation 25800 (\$20,281), and fund 0510, fiscal year 2016, appropriation 69000 (\$50,000) which shall expire on June 30, 15 16 2016.

#### 84 - Aeronautics Commission

## (WV Code Chapter 29)

## Fund <u>0582</u> FY <u>2017</u> Org <u>0807</u>

1	Personal Services and Employee	
2	Benefits	3
3	Current Expenses (R)	1
4	Repairs and Alterations 06400	)
5	Civil Air Patrol	5
6	BRIM Premium	5
7	Total\$ 1,084,022	2
8 9 10 11 12 13 14	Any unexpended balance remaining in the appropriations for Unclassified (fund 0582, appropriation 09900) and Curren Expenses (fund 0582, appropriation 13000) at the close of the fiscal year 2016 are hereby reappropriated for expenditure during the fiscal year 2017, with the exception of fund 0582 fiscal year 2016, appropriation 13000 (\$73,169) which shall expire on June 30, 2016.	t e e
15	From the above appropriation for Current Expenses (fund	l
16	0582, appropriation 13000), the sum of \$120,000 shall be	Э
17	distributed equally to each of the twelve local Civil Air Patro	1
18	Squadrons.	

#### DEPARTMENT OF VETERANS' ASSISTANCE

## 85 - Department of Veterans' Assistance

(WV Code Chapter 9A)

## Fund $\underline{0456}$ FY $\underline{2017}$ Org $\underline{0613}$

1	Personal Services and Empl	oyee	
2	Benefits	00100	\$ 1,820,635
3	Unclassified	09900	20,000

2026	APPROPRIATIONS		[Ch. 3
4	Current Expenses		137,189
5	Repairs and Alterations 06400		5,000
6	Veterans' Field Offices		248,345
7	Veterans' Nursing Home (R) 28600		5,577,251
8	Veterans' Toll Free Assistance		
9	Line		2,015
10	Veterans' Reeducation		
11	Assistance (R)		29,502
12	Veterans' Grant Program (R) 34200		100,000
13	Veterans' Grave Markers 47300		10,254
14	Veterans' Transportation 48500		625,000
15	Veterans Outreach Programs 61700		160,743
16	Memorial Day Patriotic Exercise 69700		20,000
17	Veterans Cemetery 80800		377,537
18	BRIM Premium 91300		23,860
19	Total	\$	9,157,331
20	Any unexpended balances remaining in	the ap	propriations
21	for Veterans' Nursing Home (fund 0456, app	oropria	tion 28600),
22	Veterans' Reeducation Assistance (fund 0-	456, a	ppropriation
23	32900), Veterans' Grant Program (fund 0-	456, a	ppropriation
24	34200), Veterans' Bonus – Surplus (fund 0	456, a	ppropriation
25	34400), Veterans' Bonus (fund 0456, approp	riation	48300), and
26	Educational Opportunities for Children of I	Deceas	sed Veterans
27	(fund 0456, appropriation 85400) at the clos	e of th	e fiscal year
28	2016 are hereby reappropriated for expenditu	ire dur	ing the fiscal
29	year 2017, with the exception of fund 0456	, fisca	1 year 2016,
30	appropriation 28600 (\$342,977) which shall	expire	e on June 30,
31	2016.		

86 - Department of Veterans' Assistance – Veterans' Home

(WV Code Chapter 9A)

#### Fund 0460 FY 2017 Org 0618

1	Personal Services and Employee	
2	Benefits00100	\$ 1,102,223
3	Current Expenses	 44,570
4	Total	\$ 1.146.799

#### BUREAU OF SENIOR SERVICES

87 - Bureau of Senior Services

(WV Code Chapter 29)

#### Fund 0420 FY 2017 Org 0508

- 1 Transfer to Division of Human 2 Services for Health Care and Title XIX Waiver for 3 4 Senior Citizens. . . . . . . . . . . . . 53900 \$ 12,142,184 5 The above appropriation for Transfer to Division of Human 6 Services for Health Care and Title XIX Waiver for Senior Citizens (fund 0420, appropriation 53900) along with the federal moneys generated thereby shall be used for reimbursement for 8 services provided under the program. The above appropriation is in addition to funding provided
  - WEST VIRGINIA COUNCIL FOR COMMUNITY AND TECHNICAL COLLEGE EDUCATION

in fund 5405 for this program.

10

11

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

(WV Code Chapter 18B)

## Fund <u>0596</u> FY <u>2017</u> Org <u>0420</u>

1	West Virginia Council for Community
2	and Technical Education (R) 39200 \$ 756,232
3	Transit Training Partnership 78300 40,217
4	Community College Workforce
5	Development (R)
6	College Transition Program 88700 292,718
7	West Virginia Advance Workforce
8	Development (R)
9	Technical Program
10	Development (R)
11	Total\$ 7,060,393
12	Any unexpended balances remaining in the appropriations
13	for West Virginia Council for Community and Technical
14	Education (fund 0596, appropriation 39200), Capital
15	Improvements - Surplus (fund 0596, appropriation 66100),
16	Community College Workforce Development (fund 0596,
17	appropriation 87800), West Virginia Advance Workforce
18	Development (fund 0596, appropriation 89300), and Technical
19	Program Development (fund 0596, appropriation 89400) at the
20	close of the fiscal year 2016 are hereby reappropriated for
21	expenditure during the fiscal year 2017, with the exception of
22	fund 0596, fiscal year 2016, appropriation 39200 (\$10,030), fund
23	0596, fiscal year 2016, appropriation 89300 (\$164,577), and
24	fund 0596, fiscal year 2016, appropriation 89400 (\$89,384)
25	which shall expire on June 30, 2016.
26	From the above appropriation for the Community College
27	Workforce Development (fund 0596, appropriation 87800),
28	\$200,000 shall be expended on the Mine Training Program in
29	Southern West Virginia.

Included in the above appropriation for West Virginia

Advance Workforce Development (fund 0596, appropriation

30

Ch. 3	APPROPRIATIONS 2029
32 33	89300) is \$200,000 to be used exclusively for advanced manufacturing and energy industry specific training programs.
	89 - Mountwest Community and Technical College
	(WV Code Chapter 18B)
	Fund <u>0599</u> FY <u>2017</u> Org <u>0444</u>
1 2	Mountwest Community and Technical College
	90 - New River Community and Technical College
	(WV Code Chapter 18B)
	Fund <u>0600</u> FY <u>2017</u> Org <u>0445</u>
1 2	New River Community and Technical College
	91 - Pierpont Community and Technical College
	(WV Code Chapter 18B)
	Fund <u>0597</u> FY <u>2017</u> Org <u>0446</u>
1 2	Pierpont Community and Technical College 93000 \$ 7,323,810
	92 - Blue Ridge Community and Technical College
	(WV Code Chapter 18B)
	Fund <u>0601</u> FY <u>2017</u> Org <u>0447</u>
1 2	Blue Ridge Community and Technical College 88500 \$ 4,980,111

## 93 - West Virginia University at Parkersburg

(WV Code Chapter 18B)

## Fund <u>0351</u> FY <u>2017</u> Org <u>0464</u>

Tulid <u>0331</u> FT <u>2017</u> Olg <u>0404</u>		
1 West Virginia University – 2 Parkersburg	\$	9,521,771
94 - Southern West Virginia Community and Tec	chnica	l College
(WV Code Chapter 18B)		
Fund <u>0380</u> FY <u>2017</u> Org <u>0487</u>		
Southern West Virginia Community and Technical College	\$	7,991,778
95 - West Virginia Northern Community and Tec	chnica	l College
(WV Code Chapter 18B)		
Fund <u>0383</u> FY <u>2017</u> Org <u>0489</u>		
1 West Virginia Northern Community and 2 Technical College 44700	\$	6,898,459
96 - Eastern West Virginia Community and Tec	hnical	College
(WV Code Chapter 18B)		
Fund <u>0587</u> FY <u>2017</u> Org <u>0492</u>		
1 Eastern West Virginia Community and 2 Technical College 41200	\$	1,834,647
97 - BridgeValley Community and Technico	al Coll	lege

(WV Code Chapter 18B)

## Fund <u>0618</u> FY <u>2017</u> Org <u>0493</u>

1	Bridge Valley Community and		
2	Technical College	71700	\$ 7,500,925

#### HIGHER EDUCATION POLICY COMMISSION

## 98 - Higher Education Policy Commission – Administration –

#### Control Account

## (WV Code Chapter 18B)

## Fund <u>0589</u> FY <u>2017</u> Org <u>0441</u>

1	Personal Services and		
2	Employee Benefits 00100	\$	2,438,271
3	Current Expenses		165,893
4	Higher Education Grant Program 16400		39,019,864
5	Tuition Contract Program (R) 16500		1,249,555
6	Underwood-Smith Scholarship		
7	Program-Student Awards 16700		328,349
8	Facilities Planning and		
9	Administration (R) 38600		1,821,849
10	PROMISE Scholarship – Transfer 80000		18,500,000
11	HEAPS Grant Program (R) 86700		5,007,764
12	BRIM Premium 91300		15,708
13	Total	\$	68,547,253
14	Any unexpended balances remaining in	the a	ppropriations
15	for Unclassified - Surplus (fund 0589, appr	ropria	ation 09700),
16	Tuition Contract Program (fund 0589, appr	opria	ntion 16500),
17	Facilities Planning and Administration (fund 0	589,	appropriation
18	38600), Capital Improvements - Surpl	lus	(fund 0589,
19	appropriation 66100), Capital Outlay and M	<b>A</b> aint	enance (fund
20	0589, appropriation 75500), and HEAPS Gra	ant Pi	rogram (fund

2032	APPROPRIATIONS	[Ch. 3
------	----------------	--------

- 21 0589, appropriation 86700) at the close of the fiscal year 2016
- 22 are hereby reappropriated for expenditure during the fiscal year
- 23 2017, with the exception of fund 0589, fiscal year 2016,
- 24 appropriation 38600 (\$75,910) which shall expire on June 30,
- 25 2016.
- 26 The above appropriation for Facilities Planning and
- 27 Administration (fund 0589, appropriation 38600) is for
- 28 operational expenses of the West Virginia Education, Research
- 29 and Technology Park between construction and full occupancy.
- The above appropriation for Higher Education Grant
- 31 Program (fund 0589, appropriation 16400) shall be transferred
- 32 to the Higher Education Grant Fund (fund 4933, org 0441)
- 33 established by W.Va. Code §18C-5-3.
- The above appropriation for Underwood-Smith Scholarship
- 35 Program-Student Awards (fund 0589, appropriation 16700) shall
- 36 be transferred to the Underwood-Smith Teacher Scholarship and
- 37 Loan Assistance Fund (fund 4922, org 0441) established by
- 38 W.Va. Code §18C-4-1.
- 39 The above appropriation for PROMISE Scholarship -
- 40 Transfer (fund 0589, appropriation 80000) shall be transferred
- 41 to the PROMISE Scholarship Fund (fund 4296, org 0441)
- 42 established by W.Va. Code §18C-7-7.

## 99 - Higher Education Policy Commission – Administration –

West Virginia Network for Educational Telecomputing (WVNET)

(WV Code Chapter 18B)

## Fund <u>0551</u> FY <u>2017</u> Org <u>0495</u>

#### 2033

## 100 - West Virginia University – School of Medicine Medical School Fund

## (WV Code Chapter 18B)

## Fund <u>0343</u> FY <u>2017</u> Org <u>0463</u>

1	WVU School of Health Science –
2	Eastern Division
3	WVU – School of Health
4	Sciences
5	WVU – School of Health Sciences –
6	Charleston Division 17500 2,312,518
7	Rural Health Outreach
8	Programs (R)
9	West Virginia University School of
10	Medicine
11	BRIM Subsidy 460001,161,281
12	Total \$ 21,408,237
13	Any unexpended balance remaining in the appropriations for
14	Rural Health Outreach Programs (fund 0343, appropriation
15	37700), and Educational Enhancements – Surplus (fund 0343,
16	appropriation 92700) at the close of the fiscal year 2016 are
17	hereby reappropriated for expenditure during the fiscal year
18	2017, with the exception of fund 0343, fiscal year 2016,
19	appropriation 37700 (\$7,029) which shall expire on June 30,
20	2016.
2.1	
21	The above appropriation for Rural Health Outreach
22	Programs (fund 0343, appropriation 37700) includes rural health
23	activities and programs; rural residency development and
24	education; and rural outreach activities.
	·

School of Medicine BRIM Subsidy (fund 0343, appropriation

- 27 46000) shall be paid to the Board of Risk and Insurance
- 28 Management as a general revenue subsidy against the "Total
- 29 Premium Billed" to the institution as part of the full cost of their
- 30 malpractice insurance coverage.

## 101 - West Virginia University – General Administrative Fund

(WV Code Chapter 18B)

## Fund <u>0344</u> FY <u>2017</u> Org <u>0463</u>

\$ 97.819.653

1 West Virginia University...... 45900

-	***CSC ********************************
2	Jackson's Mill (R)
3	West Virginia University Institute of
4	Technology
5	State Priorities – Brownfield
6	Professional Development (R). 53100 337,503
7	West Virginia University –
8	Potomac State
9	Total \$ 110,305,960
10	Any unexpended balances remaining in the appropriations
10 11	Any unexpended balances remaining in the appropriations for Jackson's Mill (fund 0344, appropriation 46100), and State
11	for Jackson's Mill (fund 0344, appropriation 46100), and State
11 12	for Jackson's Mill (fund 0344, appropriation 46100), and State Priorities – Brownfield Professional Development (fund 0344,
11 12 13	for Jackson's Mill (fund 0344, appropriation 46100), and State Priorities – Brownfield Professional Development (fund 0344, appropriation 53100) at the close of the fiscal year 2016 are
11 12 13 14	for Jackson's Mill (fund 0344, appropriation 46100), and State Priorities – Brownfield Professional Development (fund 0344, appropriation 53100) at the close of the fiscal year 2016 are hereby reappropriated for expenditure during the fiscal year
11 12 13 14 15	for Jackson's Mill (fund 0344, appropriation 46100), and State Priorities – Brownfield Professional Development (fund 0344, appropriation 53100) at the close of the fiscal year 2016 are hereby reappropriated for expenditure during the fiscal year 2017, with the exception of fund 0344, fiscal year 2016,

102 - Marshall University – School of Medicine

(WV Code Chapter 18B)

## Fund <u>0347</u> FY <u>2017</u> Org <u>0471</u>

1	Marshall Medical School 17300 \$ 12,179,256
2	Rural Health Outreach
3	Programs (R)
4	Forensic Lab
5	Center for Rural Health
6	Marshall University Medical School
7	BRIM Subsidy
8	Total \$ 13,590,766
9	Any unexpended balance remaining in the appropriation for
10	Rural Health Outreach Program (fund 0347, appropriation
11	37700) at the close of the fiscal year 2016 is hereby
12	reappropriated for expenditure during the fiscal year 2017, with
13	the exception of fund 0347, fiscal year 2016, appropriation
14	37700 (\$6,984) which shall expire on June 30, 2016.
15	The above appropriation for Rural Health Outreach
16	Programs (fund 0347, appropriation 37700) includes rural health
17	activities and programs; rural residency development and
18	education; and rural outreach activities.
19	The above appropriation for Marshall University Medical
20	School BRIM Subsidy (fund 0347, appropriation 44900) shall be
21	paid to the Board of Risk and Insurance Management as a
22	general revenue subsidy against the "Total Premium Billed" to
23	the institution as part of the full cost of their malpractice
24	insurance coverage.

## 103 - Marshall University – General Administration Fund

(WV Code Chapter 18B)

Fund  $\underline{0348}$  FY  $\underline{2017}$  Org  $\underline{0471}$ 

2036	APPROPRIATIONS	[Ch. 3		
2	Luke Lee Listening Language and			
3	Learning Lab 44801	102,076		
4	Vista E-Learning (R)	249,089		
5	State Priorities – Brownfield			
6	Professional Development (R). 53100	334,364		
7	Marshall University Graduate College			
8	Writing Project (R) 80700	20,737		
9	WV Autism Training Center (R) 93200	1,795,300		
10	Total	\$ 48,427,644		
11	Any unexpended balances remaining in	the appropriations		
12	for Vista E-Learning (fund 0348, appropria			
13	Priorities – Brownfield Professional Develo			
14	1			
15	Writing Project (fund 0348, appropriation	80700), and WV		
16	Autism Training Center (fund 0348, appropri	iation 93200) at the		
17	close of fiscal year 2016 are hereby i	reappropriated for		
18	expenditure during the fiscal year 2017, with	th the exception of		
19	fund 0348, fiscal year 2016, appropriation 519	900 (\$10,368), fund		
20	0348, fiscal year 2016, appropriation 5310	00 (\$13,931), fund		
21	0348, fiscal year 2016, appropriation 80700	0 (\$864), and fund		
22	0348, fiscal year 2016, appropriation 9320	0 (\$73,873) which		
23	shall expire on June 30, 2016.			
	104 - West Virginia School of Osteopathio	: Medicine		
	(WV Code Chapter 18B)			

# Fund $\underline{0336}$ FY $\underline{2017}$ Org $\underline{0476}$

1	West Virginia School of	
2	Osteopathic Medicine 17200	\$ 6,798,239
3	Rural Health Outreach	
4	Programs (R)	168,354
5	West Virginia School of	
6	Osteopathic Medicine	
7	BRIM Subsidy 40300	144,721

Ch. 3	APPROPRIATIONS		2037
8	Rural Health Initiative –		
9	Medical Schools Support 58100		404,968
10	Total	\$	7,516,282
11	Any unexpended balance remaining in the	appro	priation for
12	Rural Health Outreach Programs (fund 03:	36, a <u>r</u>	propriation
13	37700) at the close of fiscal year 2016 is here	•	
14	for expenditure during the fiscal year 2017, v		
15	of fund 0336, fiscal year 2016, appropriation	n 377	00 (\$7,015)
16	which shall expire on June 30, 2016.		
17	The above appropriation for Rural	Healtl	n Outreach
18	Programs (fund 0336, appropriation 37700) ind	cludes	rural health
19	activities and programs; rural residency of	develo	pment and
20	education; and rural outreach activities.		
21	The above appropriation for West Vi	rginia	School of
22	Osteopathic Medicine BRIM Subsidy (fund 03	-	
23	40300) shall be paid to the Board of Ris	sk and	Insurance
24	Management as a general revenue subsidy a	gains	t the "Total
25	Premium Billed" to the institution as part of th	e full	cost of their
26	malpractice insurance coverage.		
	105 - Bluefield State College		
	(WV Code Chapter 18B)		
	Fund <u>0354</u> FY <u>2017</u> Org <u>0482</u>		
1	Bluefield State College 40800	\$	5,636,862
	106 - Concord University		
	(WV Code Chapter 18B)		
	Fund <u>0357</u> FY <u>2017</u> Org <u>0483</u>		
1	Concord University 41000	\$	8,674,596

2038	APPROPRIATIONS		[Ch. 3
	107 - Fairmont State University		
	(WV Code Chapter 18B)		
	Fund <u>0360</u> FY <u>2017</u> Org <u>0484</u>		
1	Fairmont State University 41400	\$	15,277,769
	108 - Glenville State College		
	(WV Code Chapter 18B)		
	Fund <u>0363</u> FY <u>2017</u> Org <u>0485</u>		
1	Glenville State College 42800	\$	5,891,397
	109 - Shepherd University		
	(WV Code Chapter 18B)		
	Fund <u>0366</u> FY <u>2017</u> Org <u>0486</u>		
1	Shepherd University	\$	9,551,994
	110 - West Liberty University		
	(WV Code Chapter 18B)		
	Fund <u>0370</u> FY <u>2017</u> Org <u>0488</u>		
1	West Liberty University 43900	\$	7,956,371
	111 - West Virginia State Universit	y	
	(WV Code Chapter 18B)		
	Fund <u>0373</u> FY <u>2017</u> Org <u>0490</u>		
1	West Virginia State University 44100	\$	10,003,071
2	West Virginia State University	*	
3	Land Grant Match 95600		1,584,947

Total.....

4

11,588,018

\$

- 5 Total TITLE II, Section 1 —
- 6 General Revenue
- 7 (Including claims against the state)... \$4,187,373,287
- 1 **Sec. 2. Appropriations from state road fund.** From the
- 2 state road fund there are hereby appropriated conditionally upon
- 3 the fulfillment of the provisions set forth in Article 2, Chapter
- 4 11- of the Code the following amounts, as itemized, for
- 5 expenditure during the fiscal year 2017.

#### DEPARTMENT OF TRANSPORTATION

112 - Division of Motor Vehicles

(WV Code Chapters 17, 17A, 17B, 17C, 17D, 20 and 24A)

#### Fund 9007 FY 2017 Org 0802

	Appro- priation		State Road Fund
1	Personal Services and		
2	Employee Benefits 00100	\$	23,278,949
3	Current Expenses		16,191,004
4	Repairs and Alterations 06400		144,000
5	Equipment 07000		1,080,000
6	Buildings		10,000
7	Other Assets 69000		2,600,000
8	BRIM Premium 91300		74,776
9	Total	\$	43,378,729
	113 - Division of Highways		
	(WV Code Chapters 17 and 17C)	ı	

Fund 9017 FY 2017 Org 0803

\$

24,000,000

20.10	TH TROTAL THOUS	[en. 5
2	Maintenance	369,354,000
3	Maintenance, Contract Paving and	
4	Secondary Road Maintenance. 27200	54,000,000
5	Bridge Repair and Replacement 27300	15,000,000
6	Inventory Revolving 27500	4,000,000
7	Equipment Revolving 27600	15,000,000
8	General Operations 27700	55,995,000
9	Interstate Construction 27800	100,000,000
10	Other Federal Aid Programs 27900	432,000,000
11	Appalachian Programs 28000	120,000,000
12	Nonfederal Aid Construction 28100	15,000,000
13	Highway Litter Control 28200	1,727,000
14	Courtesy Patrol 28201	3,000,000
15	Total	\$1,209,076,000
16 17	The above appropriations are to be experwith the provisions of Chapters 17 and 17C of	
18 19 20 21 22 23	The Commissioner of Highways shall had operate revolving funds within the State F operation and purchase of various types of directly and indirectly in the construction a roads and for the purchase of inventories supplies.	Road Fund for the of equipment used nd maintenance of
24 25 26 27 28	There is hereby appropriated in additappropriations, sufficient money for the paccrued or arising during this budgetary peaccordance with Sections 17 and 18, Article 2 code.	ayment of claims, riod, to be paid in
29 30 31 32 33 34 35	It is the intent of the Legislature to cap federal funds available for expenditure or highway system at the earliest possible time, amounts in excess of those appropriated b purposes of Appalachian programs, funds amount appropriated may be made recommendation of the commissioner and	the Appalachian Therefore, should e required for the in excess of the available upon
		rr

**APPROPRIATIONS** 

[Ch. 3

- 36 Governor. Further, for the purpose of Appalachian programs,
- 37 funds appropriated by appropriation may be transferred to other
- 38 appropriations upon recommendation of the commissioner and
- 39 approval of the Governor.

## 114 - Office of Administrative Hearings

(WV Code Chapter 17C)

## Fund 9027 FY 2017 Org 0808

1	Personal Services and Employee		
2	Benefits00100	\$	1,585,201
3	Current Expenses		338,278
4	Repairs and Alterations 06400		3,000
5	Equipment 07000		15,500
6	BRIM Premium 91300		10,000
7	Total	\$	1,951,979
_			
8	Total TITLE II, Section 2 — State Road Fun	ıd	
9	(Including claims against the state)	\$1,	255,390,193
1	Coo 2 Ammuonuistions from other for	l	Enome Alea
1	Sec. 3. Appropriations from other fu	nas	— From the
2	funds designated there are hereby appropri	ated c	onditionally
3	upon the fulfillment of the provisions set	forth i	n Article 2,
4	Chapter 11- of the Code the following amount	ts, as i	temized, for
5	expenditure during the fiscal year 2017.		

#### **LEGISLATIVE**

#### 115 - Crime Victims Compensation Fund

(WV Code Chapter 14)

## Fund <u>1731</u> FY <u>2017</u> Org <u>2300</u>

	Appro- priation	Other Funds
1	Personal Services and	
2	Employee Benefits 00100	\$ 498,020

2042	APPROPRIATIONS	[Ch. 3
3	Current Expenses	133,903
4	Repairs and Alterations 06400	1,000
5	Economic Loss Claim	
6	Payment Fund	3,460,125
7	Other Assets 69000	 3,700
8	Total	\$ 4,096,748
	JUDICIAL	
	116 - Supreme Court – Family Court Fund	
	(WV Code Chapter 51)	
	Fund <u>1763</u> FY <u>2017</u> Org <u>2400</u>	
1	Current Expenses	\$ 1,600,000
	EXECUTIVE	
	117 - Governor's Office – Minority Affairs Fund	
	(WV Code Chapter 5)	
	Fund <u>1058</u> FY <u>2017</u> Org <u>0100</u>	
1	Personal Services and Employee	
2	Benefits00100	\$ 172,800
3	Current Expenses	503,200
4	Martin Luther King, Jr.	
5	Holiday Celebration 03100	 8,926
6	Total	\$ 684,926
	118 - Auditor's Office –	

118 - Auditor's Office – Land Operating Fund

(WV Code Chapters 11A, 12 and 36)

## Fund <u>1206</u> FY <u>2017</u> Org <u>1200</u>

1	Personal Services and Employee		
2	Benefits	\$	749,297
3	Unclassified		15,139
4	Current Expenses		715,291
5	Repairs and Alterations 06400		2,600
6	Equipment 07000		426,741
7	Cost of Delinquent Land Sales 76800		1,341,168
8	Directed Transfer		350,000
9	Total	\$	3,600,236
10 11	The above appropriation for Directed Tappropriation 70000) shall be transferred to		
12	Health and Human Resources, Division of		_
13	Medical Services Trust Fund (fund 5185).	Traina	i Services
14	There is hereby appropriated from this	fund, in	addition to
15	the above appropriations if needed, the neces		
16	expenditure of funds other than Personal Serv	-	
17	Benefits to enable the division to pay the direct		
18	to land sales as provided in Chapter 11A of	_	~
19	Code.		C
20	The total amount of these appropriations	s shall l	pe paid from
21	the Special Revenue Fund out of fees and coll		_
22	by law.		1
	-		

## 119 - Auditor's Office – Local Government Purchasing Card Expenditure Fund

## (WV Code Chapter 6)

## Fund <u>1224</u> FY <u>2017</u> Org <u>1200</u>

1	Personal Services and Employee		
2	Benefits	00100	\$ 588,283
3	Current Expenses	13000	282,030

2044	APPROPRIATIONS		[Ch. 3
4	Repairs and Alterations 06400		6,000
5	Equipment 07000		10,805
6	Other Assets		50,000
7	Directed Transfer		400,000
8	Statutory Revenue Distribution 74100		1,500,000
9	Total	\$	2,837,118
10 11	The above appropriation for Directed Tra appropriation 70000) shall be transferred to the state of the state		•
12	Health and Human Resources, Division of I	Humar	Services –
13	Medical Services Trust Fund (fund 5185).		
14	There is hereby appropriated from this fu	ınd, in	addition to
15	the above appropriations if needed, the ame	ount n	necessary to
16	meet the transfer of revenue distribution require	remen	ts to provide
17	a proportionate share of rebates back to the ge	neral f	fund of local
18	governments based on utilization of the progra	ram in	accordance
19	with W.Va. Code §6-9-2b.		

## 120 - Auditor's Office – Securities Regulation Fund

(WV Code Chapter 32)

## Fund <u>1225</u> FY <u>2017</u> Org <u>1200</u>

1	Personal Services and Employee		
2	Benefits00100	\$	1,882,510
3	Unclassified		31,866
4	Current Expenses		1,463,830
5	Repairs and Alterations 06400		12,400
6	Equipment 07000		94,700
7	Other Assets 69000		773,326
8	Directed Transfer		750,000
9	Total	\$	5,008,632
10	The above appropriation for Directed Tr	ansfer	(fund 1225,

The above appropriation for Directed Transfer (fund 1225, appropriation 70000) shall be transferred to the Department of

- 12 Health and Human Resources, Division of Human Services -
- 13 Medical Services Trust Fund (fund 5185).

## 121 - Auditor's Office – Technology Support and Acquisition Fund

#### (WV Code Chapter 12)

## Fund 1233 FY 2017 Org 1200

Current Expenses	\$	160,000
Other Assets 69000		100,000
Total	\$	260,000
Fifty percent of the deposits made into	this fu	nd shall be
transferred to the Treasurer's Office - Techno	ology S	Support and
Acquisition Fund (fund 1329, org 1300) for e	xpend	iture for the
	Total  Fifty percent of the deposits made into transferred to the Treasurer's Office – Technology	Other Assets

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

purposes described in W.Va. Code §12-3-10c.

## (WV Code Chapter 12)

## Fund 1234 FY 2017 Org 1200

1	Dansonal Canvious and Employee		
1	Personal Services and Employee		
2	Benefits	\$	2,667,397
3	Current Expenses		2,303,622
4	Repairs and Alterations 06400		5,500
5	Equipment 07000		650,000
6	Other Assets		308,886
7	Statutory Revenue Distribution 74100		4,000,000
8	Total	\$	9,935,405
9	There is hereby appropriated from this f	und, ii	n addition to
10	the above appropriations if needed, the am	ount	necessary to

meet the transfer and revenue distribution requirements to the

12 13	Purchasing Improvement Fund (fund 2264), the Hatfi Regional Recreation Authority, and the State Park	-
14	Fund (fund 3265) per W.Va. Code §12-3-10d.	
	123 - Auditor's Office – Chief Inspector's Fund	
	(WV Code Chapter 6)	
	Fund <u>1235</u> FY <u>2017</u> Org <u>1200</u>	
1 2 3	Personal Services and Employee Benefits	3,405,512 765,915
4	Equipment 07000	50,000
5	Total\$	4,221,427
	124 - Auditor's Office – Volunteer Fire Department Workers' Compensation Premium Subsidy Fund	
	(WV Code Chapters 12 and 33)	
	Fund <u>1239</u> FY <u>2017</u> Org <u>1200</u>	
1	Volunteer Fire Department	
2	Workers' Compensation	
3	Subsidy	2,500,000
	125 - Treasurer's Office — College Prepaid Tuition and Savings Program Administrative Account	
	(WV Code Chapter 18)	
	Fund <u>1301</u> FY <u>2017</u> Org <u>1300</u>	
1	Personal Services and Employee	

774,769

Ch. 3	APPROPRIATIONS		2047
3	Unclassified		14,000
4	Current Expenses		619,862
5	Total	\$	1,408,631
	126 - Treasurer's Office –		
	Technology Support and Acquisition	Fund	
	(WV Code Chapter 12)		
	Fund <u>1329</u> FY <u>2017</u> Org <u>1300</u>		
1	Personal Services and Employee		
2	Benefits00100	\$	185,000
3	Unclassified		4,700
4	Current Expenses		236,949
5	Other Assets 69000		50,000
6	Total	\$	476,649
	127 - Department of Agriculture - Agriculture Fees Fund	_	
	(WV Code Chapter 19)		
	Fund <u>1401</u> FY <u>2017</u> Org <u>1400</u>		
1	Personal Services and Employee		
2	Benefits	\$	2,244,245
3	Unclassified		37,425
4	Current Expenses		1,356,184
5	Repairs and Alterations 06400		58,500
6	Equipment 07000		36,209
7	Other Assets 69000		10,000
8	Directed Transfer70000		1,000,000
9	Total	\$	4,742,563
10	The above appropriation for Directed Tr	ansfer	(fund 1401.
11	appropriation 70000) shall be transferred to		
12	Health and Human Resources, Division of I		-
13	Medical Services Trust Fund (fund 5185).		

## 128 - Department of Agriculture – West Virginia Rural Rehabilitation Program

#### (WV Code Chapter 19)

#### Fund 1408 FY 2017 Org 1400

1	Personal Services and Employee		
2	Benefits	\$	73,807
3	Unclassified		10,476
4	Current Expenses		963,404
5	Directed Transfer 70000		*0
6	Total	\$	1,547,687
7	The above appropriation for Directed Tra	ansfer	(fund 1408,
8	appropriation 70000) shall be transferred to t	the De	epartment of
9	Health and Human Resources, Division of H	Humai	n Services –
10	Medical Services Trust Fund (fund 5185).		

## 129 - Department of Agriculture – General John McCausland Memorial Farm Fund

#### (WV Code Chapter 19)

## Fund 1409 FY 2017 Org 1400

1	Personal Services and Employee	
2	Benefits00100	\$ 67,000
3	Unclassified	2,100
4	Current Expenses	89,500
5	Repairs and Alterations 06400	36,400
6	Equipment 07000	 15,000
7	Total	\$ 210,000

<sup>\*</sup> Note: The Governor reduced Item 128, line 5, by \$500, 000, from \$500, 000 to \$0.

The total does NOT reflect the reductions made by the Governor.

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

# 130 - Department of Agriculture – Farm Operating Fund

(WV Code Chapter 19)

## Fund 1412 FY 2017 Org 1400

1	Personal Services and Employee	
2	Benefits00100	\$ 309,248
3	Unclassified	15,173
4	Current Expenses	1,167,464
5	Repairs and Alterations 06400	238,722
6	Equipment 07000	249,393
7	Other Assets 69000	 20,000
8	Total	\$ 2,000,000

## 131 - Department of Agriculture – Donated Food Fund

(WV Code Chapter 19)

## Fund <u>1446</u> FY <u>2017</u> Org <u>1400</u>

1	Personal Services and Employee	
2	Benefits00100	\$ 958,864
3	Unclassified	45,807
4	Current Expenses	3,410,542
5	Repairs and Alterations 06400	128,500
6	Equipment 07000	10,000
7	Other Assets	 27,000
8	Total	\$ 4,580,713

## 132 - Department of Agriculture – Integrated Predation Management Fund

2050	APPROPRIATIONS		[Ch. 3
	(WV Code Chapter 7)		
	Fund <u>1465</u> FY <u>2017</u> Org <u>1400</u>		
1	Current Expenses	\$	100,000
	133 - Department of Agriculture – West Virginia Spay Neuter Assistance Fi	und	
	(WV Code Chapter 19)		
	Fund <u>1481</u> FY <u>2017</u> Org <u>1400</u>		
1	Current Expenses	\$	100
	134 - Department of Agriculture – Veterans and Warriors to Agriculture Fi	und	
	(WV Code Chapter 19)		
	Fund <u>1483</u> FY <u>2017</u> Org <u>1400</u>		
1	Current Expenses	\$	7,500
	135 - Department of Agriculture – State FFA-FHA Camp and Conference Ce	enter	
	(WV Code Chapters 18 and 18A)		
	Fund <u>1484</u> FY <u>2017</u> Org <u>1400</u>		
1	Personal Services and Employee		
2	Benefits	\$	1,169,194
3	Unclassified		17,000
4	Current Expenses		707,223
5	Repairs and Alterations 06400		57,500
6	Equipment		1,000
7	Buildings		1,000
8	Other Assets		10,000
9	Land	Φ	1,000
10	10tal	\$	1,963,917

## 136 - Attorney General – Antitrust Enforcement Fund

(WV Code Chapter 47)

## Fund 1507 FY 2017 Org 1500

1	Personal Services and Employee		
2	Benefits00100	\$	356,900
3	Current Expenses		148,803
4	Repairs and Alterations 06400		1,000
5	Equipment 07000		1,000
6	Total	\$	507,703
	137 - Attorney General –		
	Preneed Burial Contract Regulation	Fund	
	(WV Code Chapter 47)		
	E 11512 EV 2017 O 1500		

#### Fund <u>1513</u> FY <u>2017</u> Org <u>1500</u>

1	Personal Services and Employee	
2	Benefits00100	\$ 210,226
3	Current Expenses	54,615
4	Repairs and Alterations 06400	1,000
5	Equipment 07000	 1,000
6	Total	\$ 266,841

## 138 - Attorney General – Preneed Funeral Guarantee Fund

(WV Code Chapter 47)

# Fund $\underline{1514}$ FY $\underline{2017}$ Org $\underline{1500}$

> 139 - Secretary of State – Service Fees and Collection Account

(WV Code Chapters 3, 5, and 59)

## Fund <u>1612</u> FY <u>2017</u> Org <u>1600</u>

1	Personal Services and Employee	
2	Benefits00100	\$ 791,051
3	Unclassified	4,524
4	Current Expenses	 8,036
5	Total	\$ 803,611

140 - Secretary of State – General Administrative Fees Account

(WV Code Chapters 3, 5 and 59)

#### Fund 1617 FY 2017 Org 1600

1	Personal Services and Employee	
2	Benefits00100	\$ 2,769,898
3	Unclassified	25,529
4	Current Expenses	796,716
5	Technology Improvements 59900	 750,000
6	Total	\$ 4,342,143

#### DEPARTMENT OF ADMINISTRATION

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

(WV Code Chapter 4)

## Fund <u>2041</u> FY <u>2017</u> Org <u>0201</u>

> 142 - Department of Administration – Office of the Secretary – Employee Pension and Health Care Benefit Fund

> > (WV Code Chapter 18)

## Fund <u>2044</u> FY <u>2017</u> Org <u>0201</u>

1	Current Expenses		
2	The above appropriation for Current Expenses (fund 2044,		
3	appropriation 13000) shall be transferred to the Consolidated		
4	Public Retirement Board - West Virginia Teachers' Retirement		
5	System Employers Accumulation Fund (fund 2601).		

## 143 - Division of Information Services and Communications

(WV Code Chapter 5A)

## Fund 2220 FY 2017 Org 0210

1	Personal Services and Employee		
2	Benefits	\$	23,378,322
3	Unclassified		382,354
4	Current Expenses		11,378,766
5	Repairs and Alterations 06400		1,000
6	Equipment 07000		2,050,000
7	Other Assets 69000		1,045,000
8	Total	\$	38,235,442
9 10 11 12	a Special Revenue Fund out of collections made by the Division of Information Services and Communications as provided by		
13	Each spending unit operating from the	Gene	eral Revenue
14	Fund, from special revenue funds or receiving	reimb	oursement for
15	postage from the federal government shall be	e chai	ged monthly
16	for all postage meter service and shall reimb	urse t	he revolving
17	fund monthly for all such amounts.		

144 - Division of Purchasing – Vendor Fee Fund

(WV Code Chapter 5A)

## Fund <u>2263</u> FY <u>2017</u> Org <u>0213</u>

1	Personal Services and Employee	
2	Benefits00100	\$ 655,208
3	Unclassified	2,382
4	Current Expenses	238,115
5	Repairs and Alterations 06400	5,000
6	Equipment 07000	2,500
7	Other Assets	2,500
8	BRIM Premium 91300	810
9	Total	\$ 906,515

# 145 - Division of Purchasing – Purchasing Improvement Fund

(WV Code Chapter 5A)

#### Fund 2264 FY 2017 Org 0213

1	Personal Services and Employee	
2	Benefits00100	\$ 540,889
3	Unclassified	5,562
4	Current Expenses	393,066
5	Repairs and Alterations 06400	500,500
6	Equipment 07000	500
7	Other Assets 69000	500,500
8	Directed Transfer	500,000
9	BRIM Premium 91300	 850
10	Total	\$ 2,441,867

- The above appropriation for Directed Transfer (fund 2264,
- 12 appropriation 70000) shall be transferred to the Department of
- 13 Health and Human Resources, Division of Human Services -
- 14 Medical Services Trust Fund (fund 5185).

146- Travel Management – Fleet Management Office Fund

# (WV Code Chapter 5A)

# Fund 2301 FY 2017 Org 0215

	Fund <u>2301</u> FY <u>2017</u> Org <u>0215</u>	
1	Personal Services and Employee	
2	Benefits	\$ 722,586
3	Unclassified	4,000
4	Current Expenses	8,130,614
5	Repairs and Alterations 06400	12,000
6	Equipment 07000	800,000
7	Other Assets 69000	 2,000
8	Total	\$ 9,671,200
	147 - Travel Management — Aviation Fund	
	(WV Code Chapter 5A)	
	Fund <u>2302</u> FY <u>2017</u> Org <u>0215</u>	
1	Unclassified	\$ 1,000
2	Current Expenses	149,700
3	Repairs and Alterations 06400	400,237
4	Equipment 07000	1,000
5	Buildings	100
6	Other Assets 69000	100
7	Land	 100
8	Total	\$ 552,237
	148 - Division of Personnel	
	(WV Code Chapter 29)	
	Fund <u>2440</u> FY <u>2017</u> Org <u>0222</u>	
1	Personal Services and Employee	
2	Benefits	\$ 3,942,590
3	Unclassified	51,418
4	Current Expenses	1,062,813
5	Repairs and Alterations 06400	5,000

2056	APPROPRIATIONS		[Ch. 3
			-
6	Equipment		20,000
7	Other Assets		60,000
8	Directed Transfer	Φ.	500,000
9	Total	\$	5,641,821
10	The above appropriation for Directed Tr	ansfer	(fund 2440,
11	appropriation 70000) shall be transferred to	the De	partment of
12	Health and Human Resources, Division of	Humar	Services -
13	Medical Services Trust Fund (fund 5185).		
14 15 16	The total amount of these appropriations a Special Revenue Fund out of fees collected Personnel.		
	149 - West Virginia Prosecuting Attorney.	s Instit	ute
	(WV Code Chapter 7)		
	Fund <u>2521</u> FY <u>2017</u> Org <u>0228</u>		
1	Personal Services and Employee		
2	Benefits	\$	249,242
3	Unclassified		4,023
4	Current Expenses		297,528
5	Repairs and Alterations 06400		600
6	Equipment 07000		500
7	Other Assets		500
8	Total	\$	552,393
	150 - Office of Technology –		
	Chief Technology Officer Administration	n Fund	d
	(WV Code Chapter 5A)		
	Fund <u>2531</u> FY <u>2017</u> Org <u>0231</u>		
1 2	Personal Services and Employee Benefits	\$	399,911

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3	Unclassified		6,949
4	Current Expenses		227,116
5	Repairs and Alterations 06400		1,000
6	Equipment 07000		50,000
7	Other Assets		10,000
8	Total	\$	694,976
9	From the above fund, the provisions	of V	V.Va. Code
10	§11B-2-18 shall not operate to permit expend	litures	in excess of
11	the funds authorized for expenditure herein.		
	DEPARTMENT OF COMMERC	CE	
	151 - Division of Forestry		
	(WV Code Chapter 19)		
	Fund <u>3081</u> FY <u>2017</u> Org <u>0305</u>		
1	Personal Services and Employee		
2	Benefits	\$	1,464,328
3	Current Expenses		282,202
4	Repairs and Alterations 06400		53,000
5	Total	\$	1,799,530
	152 - Division of Forestry –		
	Timbering Operations Enforcement I	Fund	
	(WV Code Chapter 19)		
	Fund <u>3082</u> FY <u>2017</u> Org <u>0305</u>		
1	Personal Services and Employee		
2	Benefits00100	\$	224,433
3	Current Expenses		87,036
4	Repairs and Alterations 06400		11,250
5	Total	\$	322,719

# 153 - Division of Forestry – Severance Tax Operations

(WV Code Chapter 11)

#### Fund 3084 FY 2017 Org 0305

1	Personal Services and Employee	
2	Benefits00100	\$ 859,626
3	Current Expenses	 435,339
4	Total	\$ 1,294,965

# 154 - Geological and Economic Survey – Geological and Analytical Services Fund

(WV Code Chapter 29)

#### Fund 3100 FY 2017 Org 0306

1	Personal Services and Employee	
2	Benefits00100	\$ 37,966
3	Unclassified	2,182
4	Current Expenses	141,631
5	Repairs and Alterations 06400	6,500
6	Equipment 07000	20,000
7	Other Assets	10,000
8	Total	\$ 218,279

9 The above appropriations shall be used in accordance with 10 W.Va. Code §29-2-4.

155 - West Virginia Development Office – Department of Commerce – Marketing and Communications Operating Fund

(WV Code Chapter 5B)

# Fund <u>3002</u> FY <u>2017</u> Org <u>0307</u>

1	Personal Services and Employee	
2	Benefits	\$ 1,528,219
3	Unclassified	30,000
4	Current Expenses	 1,482,760
5	Total	\$ 3,040,979

# 156 - Division of Labor – Contractor Licensing Board Fund

#### (WV Code Chapter 21)

# Fund <u>3187</u> FY <u>2017</u> Org <u>0308</u>

1	Personal Services and Employee		
2	Benefits00100	\$	1,519,374
3	Unclassified		21,589
4	Current Expenses		597,995
5	Repairs and Alterations 06400		15,000
6	Buildings		5,000
7	Directed Transfer		1,200,000
8	Total	\$	3,358,958
9	The above appropriation for Directed Tr	ansfer	(fund 3187,
10	appropriation 70000) shall be transferred to	the De	epartment of
11	Health and Human Resources, Division of	Huma	n Services –
12	Medical Services Trust Fund (fund 5185).		

# 157 - Division of Labor – Elevator Safety Fund

(WV Code Chapter 21)

# Fund 3188 FY 2017 Org 0308

1	Personal Services and Employee		
2	Benefits001	.00	\$ 176,772
3	Unclassified	000	2,261

2060	APPROPRIATIONS		[Ch. 3
4	Current Expenses		44,112
5	Repairs and Alterations 06400		2,000
6	Buildings		1,000
7	Total	\$	226,145
	158 - Division of Labor – Crane Operator Certification Fund	l	
	(WV Code Chapter 21)		
	Fund <u>3191</u> FY <u>2017</u> Org <u>0308</u>		
1	Personal Services and Employee		
2	Benefits00100	\$	84,380
3	Unclassified		1,380
4	Current Expenses		49,765
5	Repairs and Alterations 06400		1,500
6	Buildings		1,000
7	Total	\$	138,025
	159 - Division of Labor –		
	Amusement Rides and Amusement Attraction S	Safety	Fund
	(WV Code Chapter 21)		
	Fund <u>3192</u> FY <u>2017</u> Org <u>0308</u>		
1	Personal Services and Employee		
2	Benefits00100	\$	79,316
3	Unclassified		1,281
4	Current Expenses		44,520
5	Repairs and Alterations 06400		2,000
6	Buildings		1,000
7	Total	\$	128,117

160 - Division of Labor – State Manufactured Housing Administration Fund

(WV Code Chapter 21)

Total.......

\$

13,879,737

6

- 7 The total amount of these appropriations shall be paid from
- 8 a Special Revenue Fund out of fees collected by the Division of
- 9 Natural Resources.
- Any unexpended balance remaining in the appropriation for
- 11 Capital Improvements and Land Purchase (fund 3200,
- 12 appropriation 24800) at the close of the fiscal year 2016 is
- 13 hereby reappropriated for expenditure during the fiscal year
- 14 2017.

#### 163 - Division of Natural Resources – Natural Resources Game Fish and Aquatic Life Fund

(WV Code Chapter 22)

#### Fund 3202 FY 2017 Org 0310

#### 164 - Division of Natural Resources – Nongame Fund

(WV Code Chapter 20)

# Fund <u>3203</u> FY <u>2017</u> Org <u>0310</u>

Personal Services and Employee

1	i cisonai scivices and Employee	
2	Benefits00100	\$ 678,109
3	Current Expenses	201,930
4	Equipment 07000	106,615
5	Total	\$ 986,654

165 - Division of Natural Resources – Planning and Development Division

(WV Code Chapter 20)

# Fund 3205 FY 2017 Org 0310

1	Personal Services and Employee		
2	Benefits00100	\$	189,520
3	Current Expenses		157,864
4	Repairs and Alterations 06400		15,016
5	Equipment 07000		8,300
6	Buildings		8,300
7	Other Assets 69000		1,000,000
8	Directed Transfer70000		*1,000,000
9	Land		31,700
10	Total	\$	2,910,700
11	The above appropriation for Directed Tr	ansfe	(fund 3205,
12	appropriation 70000) shall be transferred to	the D	epartment of
13	Health and Human Resources, Division of I	Huma	n Services –
14	Medical Services Trust Fund (fund 5185).		

# 166 - Division of Natural Resources – Whitewater Study and Improvement Fund

(WV Code Chapter 20)

# Fund <u>3253</u> FY <u>2017</u> Org <u>0310</u>

1	Personal Services and Employee	
2	Benefits00100	\$ 62,704
3	Current Expenses	64,778
4	Equipment 07000	1,297
5	Buildings	 6,969
6	Total	\$ 135,748

<sup>\*</sup> Note: The Governor reduced Item 165, line 8, by \$500, 000, from \$1,500,000 to \$1,000,000.

The total does NOT reflect the reductions made by the Governor.

#### 167 - Division of Natural Resources – Whitewater Advertising and Promotion Fund

(WV Code Chapter 20)

#### Fund 3256 FY 2017 Org 0310

1	Unclassified	\$ 200
2	Current Expenses	 19,800
3	Total	\$ 20,000

#### 168 - Division of Miners' Health, Safety and Training – Special Health, Safety and Training Fund

(WV Code Chapter 22A)

#### Fund 3355 FY 2017 Org 0314

1	Personal Services and Employee	
2	Benefits00100	\$ 471,606
3	WV Mining Extension Service 02600	150,000
4	Unclassified	40,985
5	Current Expenses	1,954,557
6	Buildings	481,358
7	Directed Transfer 70000	2,000,000
8	Land	 1,000,000
9	Total	\$ 6,098,506

- The above appropriation for Directed Transfer (fund 3355,
- 11 appropriation 70000) shall be transferred to the Department of
- 12 Health and Human Resources, Division of Human Services –
- 13 Medical Services Trust Fund (fund 5185).

169 - Department of Commerce – Office of the Secretary –

**Broadband Enhancement Fund** 

Ch. 3	] APPROPRIATIONS		2065
	Fund <u>3013</u> FY <u>2017</u> Org <u>0327</u>		
1	Current Expenses	\$	1,887,000
	170 - Division of Energy – Energy Assistance		
	(WV Code Chapter 5B)		
	Fund <u>3010</u> FY <u>2017</u> Org <u>0328</u>		
1	Energy Assistance – Total 64700	\$	62,000
	171 - Division of Energy – Office of Coal Field Community Develop	oment	
	(WV Code Chapter 5B)		
	Fund <u>3011</u> FY <u>2017</u> Org <u>0328</u>		
1 2 3 4 5 6 7	Personal Services and Employee Benefits. 00100 Unclassified. 09900 Current Expenses. 13000 Repairs and Alterations. 06400 Equipment. 07000 Total.	\$	430,724 8,300 394,191 1,000 4,000 838,215
	DEPARTMENT OF EDUCATION	N	
	172 - State Board of Education – Strategic Staff Development		
	(WV Code Chapter 18)		
	Fund <u>3937</u> FY <u>2017</u> Org <u>0402</u>		
1 2 3	Personal Services and Employee Benefits	\$	134,000 1,000

2066	APPROPRIATIONS		[Ch. 3
4	Current Expenses		265,000
5	Total	\$	400,000
	173 - State Board of Education – School Construction Fund		
	(WV Code Chapters 18 and 18A)		
	Fund <u>3951</u> FY <u>2017</u> Org <u>0402</u>		
1	SBA Construction Grants 24000	\$	27,217,000
	174 - School Building Authority		
	(WV Code Chapter 18)		
	Fund <u>3959</u> FY <u>2017</u> Org <u>0402</u>		
1	Personal Services and Employee		
2	Benefits	\$	1,087,932
3	Current Expenses		249,750
4	Repairs and Alterations 06400		7,500
5	Equipment 07000		26,000
6	Total	\$	1,371,182
7			.•
7	The above appropriations are for the admini		•
8 9	of the School Building Authority and shall I	_	
10	interest earnings on debt service reserve account behalf of said authority.	its II	iaiiitaiiieu oli
10	ochan or said audiority.		

#### DEPARTMENT OF EDUCATION AND THE ARTS

175 - Office of the Secretary – Lottery Education Fund Interest Earnings – Control Account

(WV Code Chapter 29)

#### Fund 3508 FY 2017 Org 0431

- 1 Any unexpended balance remaining in the appropriation for
- 2 Educational Enhancements (fund 3508, appropriation 69500) at
- 3 the close of the fiscal year 2016 is hereby reappropriated for
- 4 expenditure during the fiscal year 2017.

#### 176 - Division of Culture and History – Public Records and Preservation Revenue Account

# (WV Code Chapter 5A)

#### Fund <u>3542</u> FY <u>2017</u> Org <u>0432</u>

1	Personal Services and Employee	
2	Benefits00100	\$ 211,418
3	Current Expenses	862,241
4	Equipment 07000	75,000
5	Buildings	1,000
6	Other Assets	52,328
7	Land	1,000
8	Total	\$ 1,202,987

# 177 - State Board of Rehabilitation — Division of Rehabilitation Services — West Virginia Rehabilitation Center Special Account

(WV Code Chapter 18)

# Fund <u>8664</u> FY <u>2017</u> Org <u>0932</u>

1	Personal Services and Employee	
2	Benefits00100	\$ 119,738
3	Current Expenses	2,180,122
4	Repairs and Alterations 06400	85,500
5	Equipment 07000	220,000
6	Buildings	150,000
7	Other Assets 69000	 150,000
8	Total	\$ 2,905,360

#### DEPARTMENT OF ENVIRONMENTAL PROTECTION

#### 178 - Solid Waste Management Board

#### (WV Code Chapter 22C)

#### Fund 3288 FY 2017 Org 0312

1	Personal Services and Employee		
2	Benefits00100	\$	802,209
3	Current Expenses		2,061,057
4	Repairs and Alterations 06400		1,000
5	Equipment 07000		5,000
6	Other Assets 69000		4,403
7	Directed Transfer		1,000,000
8	Total	\$	3,873,669
9	The above appropriation for Directed Tr	ransfer	(fund 3288,
10	appropriation 70000) shall be transferred to	the De	epartment of
11	Health and Human Resources, Division of	Humai	n Services -
12	Medical Services Trust Fund (fund 5185).		

# 179 - Division of Environmental Protection – Hazardous Waste Management Fund

(WV Code Chapter 22)

# Fund $\underline{3023}$ FY $\underline{2017}$ Org $\underline{0313}$

1	Personal Services and Employee	
2	Benefits00100	\$ 692,784
3	Current Expenses	195,569
4	Repairs and Alterations 06400	500
5	Equipment 07000	1,505
6	Unclassified	3,072
7	Other Assets 69000	 2,000
8	Total	\$ 895,430

# 180 - Division of Environmental Protection – Air Pollution Education and Environment Fund

# (WV Code Chapter 22)

# Fund <u>3024</u> FY <u>2017</u> Org <u>0313</u>

1	Personal Services and Employee		
2	Benefits00100	\$	935,324
3	Current Expenses		1,238,610
4	Repairs and Alterations 06400		13,000
5	Equipment 07000		53,105
6	Unclassified		2,900
7	Other Assets		20,000
8	Directed Transfer		1,000,000
9	Total	\$	3,262,939
10 11 12 13	The above appropriation for Directed Trappropriation 70000) shall be transferred to Health and Human Resources, Division of Medical Services Trust Fund (fund 5185).	the Do	epartment of

# 181 - Division of Environmental Protection – Special Reclamation Fund

# (WV Code Chapter 22)

# Fund <u>3321</u> FY <u>2017</u> Org <u>0313</u>

1	Personal Services and Employee	
2	Benefits00100	\$ 1,350,829
3	Current Expenses	16,402,506
4	Repairs and Alterations 06400	79,950
5	Equipment 07000	130,192
6	Other Assets	 32,000
7	Total	\$ 17,995,477

#### 182 - Division of Environmental Protection – Oil and Gas Reclamation Fund

#### (WV Code Chapter 22)

#### Fund <u>3322</u> FY <u>2017</u> Org <u>0313</u>

1	Personal Services and Employee	
2	Benefits00100	\$ 15,314
3	Current Expenses	 356,094
4	Total	\$ 371,408

# 183 - Division of Environmental Protection – Oil and Gas Operating Permit and Processing Fund

#### (WV Code Chapter 22)

#### Fund 3323 FY 2017 Org 0313

1	Personal Services and Employee		
2	Benefits00100	\$	3,264,961
3	Current Expenses		1,313,961
4	Repairs and Alterations 06400		20,600
5	Equipment 07000		8,000
6	Unclassified		44,700
7	Other Assets		15,000
8	Directed Transfer		*1,500,000
9	Total	\$	6,667,222
10	The above appropriation for Directed Tr	ansfe	r (fund 3323,
11	appropriation 70000) shall be transferred to	the D	epartment of

appropriation 70000) shall be transferred to the Department of

<sup>12</sup> Health and Human Resources, Division of Human Services –

Medical Services Trust Fund (fund 5185).

<sup>\*</sup> Note: The Governor reduced Item 183, line 8, by \$500,000, from \$2,000,000 to \$1,500,000.

The total does NOT reflect the reductions made by the Governor.

# 184 - Division of Environmental Protection — Mining and Reclamation Operations Fund

#### (WV Code Chapter 22)

#### Fund <u>3324</u> FY <u>2017</u> Org <u>0313</u>

1	Personal Services and Employee	
2	Benefits00100	\$ 4,635,449
3	Current Expenses	2,406,092
4	Repairs and Alterations 06400	60,260
5	Equipment 07000	85,134
6	Unclassified	920
7	Other Assets 69000	 57,500
8	Total	\$ 7,245,355

# 185 - Division of Environmental Protection – Underground Storage Tank Administrative Fund

(WV Code Chapter 22)

#### Fund <u>3325</u> FY <u>2017</u> Org <u>0313</u>

1	Personal Services and Employee	
2	Benefits00100	\$ 466,543
3	Current Expenses	318,420
4	Repairs and Alterations 06400	5,350
5	Equipment 07000	3,610
6	Unclassified	7,520
7	Other Assets	 3,500
8	Total	\$ 804,943

186 - Division of Environmental Protection – Hazardous Waste Emergency Response Fund

(WV Code Chapter 22)

# Fund 3331 FY 2017 Org 0313

1	Personal Services and Employee	
2	Benefits00100	\$ 643,319
3	Current Expenses	422,386
4	Repairs and Alterations 06400	7,014
5	Equipment 07000	9,000
6	Unclassified	10,616
7	Other Assets 69000	 11,700
8	Total	\$ 1,104,035

# 187 - Division of Environmental Protection – Solid Waste Reclamation and Environmental Response Fund

(WV Code Chapter 22)

#### Fund 3332 FY 2017 Org 0313

1	Personal Services and Employee	
2	Benefits00100	\$ 793,967
3	Current Expenses	3,605,237
4	Repairs and Alterations 06400	25,000
5	Equipment 07000	31,500
6	Unclassified	22,900
7	Other Assets	 1,000
8	Total	\$ 4,479,604

# 188 - Division of Environmental Protection – Solid Waste Enforcement Fund

(WV Code Chapter 22)

# Fund <u>3333</u> FY <u>2017</u> Org <u>0313</u>

1	Personal Services and Emplo	oyee	
2	Benefits	00100	\$ 3,041,424
3	Current Expenses	13000	1,020,229

Ch. 3	] APPROPRIATIONS		2073
4	Repairs and Alterations 06400		30,930
5	Equipment 07000		23,356
6	Unclassified		37,145
7	Other Assets 69000		25,554
8	Directed Transfer		3,000,000
9	Total	\$	7,178,638
10	The above appropriation for Directed Tr	ansfer	(fund 3333,
11	appropriation 70000) shall be transferred to	the De	epartment of
12	Health and Human Resources, Division of	Humar	n Services –
13	Medical Services Trust Fund (fund 5185).		

# 189 - Division of Environmental Protection – Air Pollution Control Fund

(WV Code Chapter 22)

# Fund <u>3336</u> FY <u>2017</u> Org <u>0313</u>

1	Personal Services and Employee		
2	Benefits	\$	5,667,421
3	Current Expenses		1,518,704
4	Repairs and Alterations 06400		84,045
5	Equipment 07000		115,356
6	Unclassified		5,580
7	Other Assets		52,951
8	Directed Transfer		1,000,000
9	Total	\$	8,444,057
10	The above appropriation for Directed Tr	ansfer	(fund 3336,
11	appropriation 70000) shall be transferred to	the De	epartment of
12	Health and Human Resources, Division of I	Huma	n Services -
13	Medical Services Trust Fund (fund 5185).		

190 - Division of Environmental Protection – Environmental Laboratory Certification Fund

# (WV Code Chapter 22)

# Fund 3340 FY 2017 Org 0313

Fund <u>3340</u> FY <u>2017</u> Org <u>0313</u>				
1	Personal Services and Employee			
2	Benefits00100	\$	296,164	
3	Current Expenses		216,288	
4	Repairs and Alterations 06400		1,000	
5	Equipment 07000		6,500	
6	Unclassified		400	
7	Other Assets		4,000	
8	Total	\$	524,352	
	191 - Division of Environmental Protec Stream Restoration Fund	ction -	_	
	(WV Code Chapter 22)			
	Fund <u>3349</u> FY <u>2017</u> Org <u>0313</u>			
1	Current Expenses	\$	10,298,205	
	192 - Division of Environmental Protec Litter Control Fund	ction -	-	
	(WV Code Chapter 22)			
	Fund <u>3486</u> FY <u>2017</u> Org <u>0313</u>			
1	Current Expenses	\$	60,000	
	193 - Division of Environmental Protec Recycling Assistance Fund	ction -	_	
	(WV Code Chapter 22)			
	Fund <u>3487</u> FY <u>2017</u> Org <u>0313</u>			
1	Personal Services and Employee			
2	Benefits	\$	646,395	
			*	

Ch. 3	] APPROPRIATIONS		2075
3	Current Expenses		2,735,112
4	Repairs and Alterations 06400		800
5	Equipment 07000		500
6	Unclassified		400
7	Other Assets 69000		2,500
8	Total	\$	3,385,707
	194 - Division of Environmental Protec	ction –	-
	Mountaintop Removal Fund		
	(WV Code Chapter 22)		
	Fund <u>3490</u> FY <u>2017</u> Org <u>0313</u>		
1	Personal Services and Employee		
2	Benefits00100	\$	1,228,345
3	Current Expenses		638,729
4	Repairs and Alterations 06400		30,112
5	Equipment 07000		23,725
6	Unclassified		1,180
7	Other Assets		15,500
8	Total	\$	1,937,591
	195 - Oil and Gas Conservation Commi	ssion	_
	Special Oil and Gas Conservation F	und	
	(WV Code Chapter 22C)		
	Fund <u>3371</u> FY <u>2017</u> Org <u>0315</u>		
1	Personal Services and Employee		
2	Benefits00100	\$	157,224
3	Current Expenses		161,225
4	Repairs and Alterations 06400		1,000
	Equipment 07000		9,481
5	Equipment 07000		- , -
5 6	Other Assets		1,500

#### DEPARTMENT OF HEALTH AND HUMAN RESOURCES

196 - Division of Health – The Vital Statistics Account

(WV Code Chapter 16)

#### Fund 5144 FY 2017 Org 0506

1	Personal Services and Employee	
2	Benefits00100	\$ 876,771
3	Unclassified	15,500
4	Current Expenses	 1,257,788
5	Total	\$ 2,150,059

197 - Division of Health – Hospital Services Revenue Account Special Fund Capital Improvement, Renovation and Operations

(WV Code Chapter 16)

#### Fund 5156 FY 2017 Org 0506

1	Institutional Facilities Operations 33500 \$ 56,708,91	1
2	Medical Services Trust Fund –	
3	Transfer	0
4	Total \$ 84,508,91	1
5	The total amount of these appropriations shall be paid from	n
6	the Hospital Services Revenue Account Special Fund created by	y
7	W.Va. Code §16-1-13, and shall be used for operating expense	S
8	and for improvements in connection with existing facilities.	
9	Additional funds have been appropriated in fund 0525, fisca	ıl
10	year 2017, organization 0506, for the operation of the	e
11	institutional facilities. The Secretary of the Department of Healt	h

and Human Resources is authorized to utilize up to ten percent

12

- 13 of the funds from the appropriation for Institutional Facilities
- 14 Operations to facilitate cost effective and cost saving services at
- 15 the community level.
- Necessary funds from the above appropriation may be used
- 17 for medical facilities operations, either in connection with this
- 18 fund or in connection with the appropriation designated
- 19 Institutional Facilities Operations in the Consolidated Medical
- 20 Service Fund (fund 0525, organization 0506).
- 21 From the above appropriation to Institutional Facilities
- 22 Operations, together with available funds from the Consolidated
- 23 Medical Services Fund (fund 0525, appropriation 33500) on July
- 24 1, 2016, the sum of \$160,000 shall be transferred to the
- 25 Department of Agriculture Land Division Farm Operating
- 26 Fund (1412) as advance payment for the purchase of food
- 27 products; actual payments for such purchases shall not be
- 28 required until such credits have been completely expended.

#### 198 - Division of Health – Laboratory Services Fund

#### (WV Code Chapter 16)

# Fund <u>5163</u> FY <u>2017</u> Org <u>0506</u>

1	Personal Services and Employee	
2	Benefits00100	\$ 912,657
3	Unclassified	18,114
4	Current Expenses	 880,716
5	Total	\$ 1.811.487

199 - Division of Health – The Health Facility Licensing Account

(WV Code Chapter 16)

2079	A DDD ODDI ATIONIS		ICh 2
2078	APPROPRIATIONS		[Ch. 3
	Fund <u>5172</u> FY <u>2017</u> Org <u>0506</u>		
1 2 3 4 5	Personal Services and Employee Benefits	\$	605,950 7,113 98,247 711,310
	200 - Division of Health – Hepatitis - Vaccine		
	(WV Code Chapter 16)		
	Fund <u>5183</u> FY <u>2017</u> Org <u>0506</u>		
1	Current Expenses	\$	13,800
	201 - Division of Health – Lead Abatement Account		
	(WV Code Chapter 16)		
	Fund <u>5204</u> FY <u>2017</u> Org <u>0506</u>		
1 2 3 4	Personal Services and Employee Benefits	\$	19,100 373 17,875
5	Total	\$	37,348
	202 - Division of Health – West Virginia Birth-to-Three Fund		
	(WV Code Chapter 16)		
	Fund <u>5214</u> FY <u>2017</u> Org <u>0506</u>		
1	Personal Services and Employee	φ	707.545

\$

707,545

Ch. 3	APPROPRIATIONS		2079
3	Unclassified		223,999
4	Current Expenses	_	24,668,438
5	Total	\$	25,599,982
	203 - Division of Health – Tobacco Control Special Fund		
	(WV Code Chapter 16)		
	Fund <u>5218</u> FY <u>2017</u> Org <u>0506</u>		
1	Current Expenses	\$	7,579
	204 - West Virginia Health Care Autho Health Care Cost Review Fund	rity -	-
	(WV Code Chapter 16)		
	Fund <u>5375</u> FY <u>2017</u> Org <u>0507</u>		
1	Personal Services and Employee		
2	Benefits	\$	3,033,821
3	Hospital Assistance 02500		600,000
4	Unclassified		67,000
5	Current Expenses		2,837,945
6	Repairs and Alterations 06400		25,000
7	Equipment 07000		50,000
8	Buildings		25,000
9	Other Assets		100,000
10	Total	\$	6,738,766
11	The above appropriation is to be expend	ed ir	n accordance
12	with and pursuant to the provisions of W.Va.		
13	from the Special Revolving Fund designated		
14	Review Fund.		
15	The Health Care Authority is authorized	to ti	ransfer up to
16	\$1,500,000 from fund 5375 to the West		•

- 17 Information Network Account (fund 5380) as authorized per
- 18 W.Va. Code §16-29G-4.

#### 205 - West Virginia Health Care Authority – West Virginia Health Information Network Account

#### (WV Code Chapter 16)

#### Fund 5380 FY 2017 Org 0507

1	Personal Services and Employee	
2	Benefits00100	\$ 729,000
3	Unclassified	20,000
4	Current Expenses	1,251,000
5	Technology Infrastructure	
6	Network	 3,500,000
7	Total	\$ 5,500,000

# 206 - Division of Human Services – Health Care Provider Tax – Medicaid State Share Fund

#### (WV Code Chapter 11)

# Fund $\underline{5090}$ FY $\underline{2017}$ Org $\underline{0511}$

1	Medical Services
2	Medical Services Administrative
3	Costs
4	Total\$ 198,800,000
5	The above appropriation for Medical Services
6	Administrative Costs (fund 5090, appropriation 78900) shall be
7	transferred to a Special Revenue account in the treasury for use
8	by the Department of Health and Human Resources for
9	administrative purposes. The remainder of all moneys deposited
10	in the fund shall be transferred to the West Virginia Medical
11	Services Fund (fund 5084).

# 207 - Division of Human Services -Child Support Enforcement Fund

# (WV Code Chapter 48A)

# Fund <u>5094</u> FY <u>2017</u> Org <u>0511</u>

1	Personal Services and Employee		
2	Benefits00100	\$	24,809,509
3	Unclassified (R)		380,000
4	Current Expenses (R)		12,810,491
5	Total	\$	38,000,000
6	Any unexpended balances remaining in	the ap	ppropriations
7	for Unclassified (fund 5094, appropriation 0	9900)	and Current
8	E (C 15004 '.' 12000)		
U	Expenses (fund 5094, appropriation 13000)	at the	close of the
9	fiscal year 2016 are hereby reappropriate		

# 208 - Division of Human Services -Medical Services Trust Fund

#### (WV Code Chapter 9)

# Fund <u>5185</u> FY <u>2017</u> Org <u>0511</u>

Medical Services 18900	\$	160,910,206
Medical Services Administrative		
Costs		548,723
Total	\$	161,458,929
The above appropriation to Medical Servic	es	shall be used
to provide state match of Medicaid expenditure	s a	s defined and
authorized in subsection (c) of W.Va. C	od	e §9-4A-2a.
Expenditures from the fund are limited to	th	e following:
payment of backlogged billings, funding for se	rv	ices to future
federally mandated population groups and p	oay	ment of the
required state match for Medicaid disprop	ort	ionate share
	Medical Services Administrative  Costs	Medical Services Administrative Costs

- 12 payments. The remainder of all moneys deposited in the fund
- 13 shall be transferred to the Division of Human Services accounts.

# 209 - Division of Human Services – James "Tiger" Morton Catastrophic Illness Fund

#### (WV Code Chapter 16)

#### Fund 5454 FY 2017 Org 0511

1	Devenuel Comices and Employee				
1 2	Personal Services and Employee Benefits	\$	89,392		
3	Unclassified	φ	16,031		
4	Current Expenses		1,497,688		
5	Directed Transfer		700,000		
6	Total	\$	2,303,111		
7 8 9	The above appropriation for Directed T appropriation 70000) shall be transferred to Health and Human Resources, Division of	the De	epartment of		
10	Medical Services Trust Fund (fund 5185).				
210 - Division of Human Services – Domestic Violence Legal Services Fund					
	(WV Code Chapter 48)				
	Fund <u>5455</u> FY <u>2017</u> Org <u>0511</u>				
1	Current Expenses	\$	1,077,982		
	211 - Division of Human Service West Virginia Works Separate State College		m Fund		
	(WV Code Chapter 9)				
	Fund <u>5467</u> FY <u>2017</u> Org <u>0511</u>				
1	Current Expenses	\$	1,065,000		

212 - Division of Human Services – West Virginia Works Separate State Two-Parent Program Fund

(WV Code Chapter 9)

Fund <u>5468</u> FY <u>2017</u> Org <u>0511</u>

> 213 - Division of Human Services – Marriage Education Fund

> > (WV Code Chapter 9)

#### Fund <u>5490</u> FY <u>2017</u> Org <u>0511</u>

1	Personal Services and Employee	
2	Benefits	\$ 10,000
3	Current Expenses	 25,000
4	Total	\$ 35,000

#### DEPARTMENT OF MILITARY AFFAIRS AND PUBLIC SAFETY

214 - Department of Military Affairs and Public Safety –
Office of the Secretary –
Law-Enforcement, Safety and Emergency Worker
Funeral Expense Payment Fund

(WV Code Chapter 15)

Fund <u>6003</u> FY <u>2017</u> Org <u>0601</u>

> 215 - State Armory Board – General Armory Fund

(WV Code Chapter 15)

# Fund <u>6057</u> FY <u>2017</u> Org <u>0603</u>

1	Personal Services and Employee		
2	Benefits	\$	1,643,528
3	Current Expenses		750,000
4	Repairs and Alterations 06400		485,652
5	Equipment 07000		300,000
6	Buildings		770,820
7	Land		50,000
8	Total	\$	4,000,000
9	From the above appropriations, the Adjur	tant	General may
10	receive and expend funds to conduct operation	s an	d activities to
11	include functions of the Military Authorit	y. ˈ	The Adjutant
12	General may transfer funds between appropri	atic	ons, except no
13	funds may be transferred to Personal Service	es a	and Employee
14	Benefits (fund 6057, appropriation 00100).		

216 - Division of Homeland Security and Emergency Management – West Virginia Interoperable Radio Project

(WV Code Chapter 24)

# Fund <u>6295</u> FY <u>2017</u> Org <u>0606</u>

1	Current Expenses	2,000,000
2	Any unexpended balance remaining in the appro	priation for
3	Unclassified - Total (fund 6295, appropriation 09	0600) at the
4	close of fiscal year 2016 is hereby reappropriated for	expenditure
5	during the fiscal year 2017.	

217 - West Virginia Division of Corrections – Parolee Supervision Fees

(WV Code Chapter 62)

# Fund <u>6362</u> FY <u>2017</u> Org <u>0608</u>

1	Personal Services and Employee		
2	Benefits00100	\$	1,013,793
3	Unclassified		9,804
4	Current Expenses		758,480
5	Equipment 07000		30,000
6	Other Assets		40,129
7	Directed Transfer		*0
8	Total	\$	2,352,206
9	The above appropriation for Directed Tr	ransfe	r (fund 6362,
10	appropriation 70000) shall be transferred to	the D	epartment of
11	Health and Human Resources, Division of	Huma	n Services -
12	Medical Services Trust Fund (fund 5185).		

# 218 - West Virginia State Police – Motor Vehicle Inspection Fund

(WV Code Chapter 17C)

# Fund <u>6501</u> FY <u>2017</u> Org <u>0612</u>

1	Personal Services and Employee	
2	Benefits00100	\$ 1,786,923
3	Current Expenses	488,211
4	Repairs and Alterations 06400	204,500
5	Equipment 07000	4,770,751
6	Buildings	534,000
7	Other Assets	5,000
8	BRIM Premium 91300	 302,432
9	Total	\$ 8,091,817

<sup>\*</sup> Note: The Governor reduced Item 217, line 7, by \$500,000 from \$500,000 to \$0.

The total does NOT reflect the reductions made by the Governor.

- The total amount of these appropriations shall be paid from
- 11 the Special Revenue Fund out of fees collected for inspection
- 12 stickers as provided by law.

#### 219 - West Virginia State Police – Drunk Driving Prevention Fund

(WV Code Chapter 15)

#### Fund 6513 FY 2017 Org 0612

1	Current Expenses	\$ 1,327,000
2	Equipment 07000	3,491,895
3	BRIM Premium	 154,452
4	Total	\$ 4,973,347

- 5 The total amount of these appropriations shall be paid from
- 6 the Special Revenue Fund out of receipts collected pursuant to
- 7 W.Va. Code §11-15-9a and 16 and paid into a revolving fund
- 8 account in the State Treasury.

# 220 - West Virginia State Police – Surplus Real Property Proceeds Fund

(WV Code Chapter 15)

#### Fund 6516 FY 2017 Org 0612

1	Buildings	\$ 443,980
2	Land	1,000
3	BRIM Premium 91300	 77,222
4	Total	\$ 522,202

221 - West Virginia State Police – Surplus Transfer Account

(WV Code Chapter 15)

Ch. 3	APPROPRIATIONS		2087
Fund <u>6519</u> FY <u>2017</u> Org <u>0612</u>			
1 2 3 4 5 6	Current Expenses.       13000         Repairs and Alterations.       06400         Equipment.       07000         Buildings.       25800         Other Assets.       69000         Total.       222 - West Virginia State Police -	\$	114,063 10,000 157,002 40,000 45,000 366,065
	Central Abuse Registry Fund		
	(WV Code Chapter 15)		
	Fund <u>6527</u> FY <u>2017</u> Org <u>0612</u>		
1 2 3 4 5 6 7	Personal Services and Employee Benefits	\$	236,881 51,443 500 200,500 500 18,524
8	Total	\$	508,348
	223 - West Virginia State Police – Bail Bond Enforcer Account  (WV Code Chapter 15)  Fund 6532 FY 2017 Org 0612		
1	Current Expenses	\$	8,300
	224 - West Virginia State Police – State Police Academy Post Exchang	e	
	(WV Code Chapter 15)		

#### Fund 6544 FY 2017 Org 0612 \$ 160,000 Repairs and Alterations. . . . . . . . . 06400 40,000 3 \$ Total....... 200,000 225 - Regional Jail and Correctional Facility Authority (WV Code Chapter 31) Fund 6675 FY 2017 Org 0615 1 Personal Services and Employee 2 \$ 1,971,039 3 9,000,000 4 495,852 5 Repairs and Alterations. . . . . . . . . . 06400 4,000 6 Equipment. . . . . . . . . . . . . . . . . 07000 1,743 7 11,472,634 Total....... \$ 226 - Fire Commission -Fire Marshal Fees (WV Code Chapter 29) Fund 6152 FY 2017 Org 0619 Personal Services and Employee 1 2 \$ 2,848,036 3 3,800 4 1,249,550 5 Repairs and Alterations. . . . . . . . . 06400 58,500 Equipment. . . . . . . . . . . . . . . . . 07000 6 35,800 7 12,000 500,000 8 BRIM Premium. . . . . . . . . . . . . 91300 9 50,000 10 \$ 4,757,686 Total.....

- The above appropriation for Directed Transfer (fund 6152,
- 12 appropriation 70000) shall be transferred to the Department of
- 13 Health and Human Resources, Division of Human Services –
- 14 Medical Services Trust Fund (fund 5185).

# 227 - Division of Justice and Community Services – WV Community Corrections Fund

(WV Code Chapter 62)

#### Fund 6386 FY 2017 Org 0620

1	Personal Services and Employee	
2	Benefits00100	\$ 152,000
3	Unclassified	750
4	Current Expenses	1,846,250
5	Repairs and Alterations 06400	 1,000
6	Total	\$ 2,000,000

# 228 - Division of Justice and Community Services – Court Security Fund

(WV Code Chapter 51)

# Fund <u>6804</u> FY <u>2017</u> Org <u>0620</u>

1	Personal Services and Employee	
2	Benefits00100	\$ 21,865
3	Current Expenses	 1,478,135
4	Total	\$ 1,500,000

#### DEPARTMENT OF REVENUE

229 - Division of Financial Institutions

(WV Code Chapter 31A)

#### Fund 3041 FY 2017 Org 0303

1	Personal Services and Employee	
2	Benefits00100	\$ 2,421,059
3	Unclassified	32,290
4	Current Expenses	729,227
5	Repairs and Alterations 06400	500
6	Equipment 07000	16,000
7	Other Assets 69000	 30,000
8	Total	\$ 3,229,076

#### 230 - Office of the Secretary – Revenue Shortfall Reserve Fund

(WV Code Chapter 11B)

#### Fund 7005 FY 2017 Org 0701

- The above appropriation for Medical Services Trust Fund –
- 4 Transfer (appropriation 51200) shall be transferred to the
- 5 Medical Services Trust Fund (fund 5185).

# 231 - Office of the Secretary – State Debt Reduction Fund

(WV Code Chapter 29)

#### Fund <u>7007</u> FY <u>2017</u> Org <u>0701</u>

- 2 The above appropriation for Directed Transfer shall be
- 3 transferred to the Consolidated Public Retirement Board West
- 4 Virginia Public Employees Retirement System Employers
- 5 Accumulation Fund (fund 2510).

## 232 - Tax Division – Cemetery Company Account

(WV Code Chapter 35)

	(W V Code Chapter 33)		
	Fund <u>7071</u> FY <u>2017</u> Org <u>0702</u>		
1	Personal Services and Employee		
2	Benefits	\$	23,459
3	Current Expenses		7,717
4	Total	\$	31,176
	233 - Tax Division –		
	Special Audit and Investigative Uni	it	
	(WV Code Chapter 11)		
	Fund <u>7073</u> FY <u>2017</u> Org <u>0702</u>		
1	Personal Services and Employee		
2	Benefits	\$	655,203
3	Unclassified		9,500
4	Current Expenses		273,297
5	Repairs and Alterations 06400		7,000
6	Equipment 07000		5,000
7	Total	\$	950,000
	234 - Tax Division –		
	Wine Tax Administration Fund		
	(WV Code Chapter 60)		
	Fund <u>7087</u> FY <u>2017</u> Org <u>0702</u>		
1	Personal Services and Employee		
2	Benefits	\$	254,162
3	Current Expenses		5,406
4	Total	\$	259,568

#### 235 - Tax Division – Reduced Cigarette Ignition Propensity Standard and Fire Prevention Act Fund

(WV Code Chapter 47)

#### Fund 7092 FY 2017 Org 0702

1	Current Expenses	\$ 35,000
2	Equipment 07000	 15,000
3	Total	\$ 50,000

## 236 - Tax Division – Local Sales Tax and Excise Tax Administration Fund

(WV Code Chapter 11)

#### Fund 7099 FY 2017 Org 0702

1	Personal Services and Employee	
2	Benefits00100	\$ 1,508,968
3	Unclassified	10,000
4	Current Expenses	784,563
5	Repairs and Alterations 06400	1,000
6	Equipment 07000	 5,000
7	Total	\$ 2,309,531

## 237 - State Budget Office – Public Employees Insurance Reserve Fund

(WV Code Chapter 11B)

## Fund <u>7400</u> FY <u>2017</u> Org <u>0703</u>

1	Public Employees Insurance Reserve	
2	Fund – Transfer 90300 \$ 6,800,00	0
3	The above appropriation for Public Employees Insurance	:e
4	Reserve Fund – Transfer shall be transferred to the Medica	
5	Services Trust Fund (fund 5185, org 0511) for expenditure.	

## 238 – State Budget Office – Public Employee Insurance Agency Financial Stability Fund

## (WV Code Chapter 11B)

## Fund 7401 FY 2017 Org 0703

1	Retiree Premium Offset 80101	\$	5,000,000
2	PEIA Reserve 80102		10,000,000
3	Total	\$	15,000,000
4	The charge enuropsistion shall be trooped	Famma	d to omogical
4	The above appropriation shall be transf	lerre	d to special
5	revenue fund to be utilized by the West	Vir	ginia Public
6	Employees Insurance Agency for the purposes	of p	ermitting the
7	PEIA Finance Board to offset \$5 million in	reti	ree premium
8	increases. Additionally, \$10 million will be I	out i	nto a reserve
9	fund to stabilize and preserve the future solven	cy of	PEIA. Such
10	amount shall not be included in the calculation	n of	the plan year
11	aggregate premium cost-sharing percentages be	etwe	en employers
12	and employees.		

## 239 - Insurance Commissioner – Examination Revolving Fund

#### (WV Code Chapter 33)

#### Fund 7150 FY 2017 Org 0704

1	Personal Services and Employee	
2	Benefits00100	\$ 721,117
3	Current Expenses	1,357,201
4	Repairs and Alterations 06400	3,000
5	Equipment 07000	81,374
6	Buildings	8,289
7	Other Assets 69000	 11,426
8	Total	\$ 2,182,407

# 240 - Insurance Commissioner – Consumer Advocate

(WV Code Chapter 33)

#### Fund 7151 FY 2017 Org 0704

1	Personal Services and Employee	
2	Benefits00100	\$ 552,228
3	Current Expenses	202,152
4	Repairs and Alterations 06400	5,000
5	Equipment 07000	34,225
6	Buildings	4,865
7	Other Assets 69000	 19,460
8	Total	\$ 817,930

#### 241 - Insurance Commissioner – Insurance Commission Fund

(WV Code Chapter 33)

## Fund $\underline{7152}$ FY $\underline{2017}$ Org $\underline{0704}$

1	Personal Services and Employee	
2	Benefits00100	\$ 25,039,727
3	Current Expenses	8,797,758
4	Repairs and Alterations 06400	68,614
5	Equipment 07000	1,728,240
6	Buildings	25,000
7	Other Assets	 340,661
8	Total	\$ 36,000,000

242 - Insurance Commissioner – Workers' Compensation Old Fund

(WV Code Chapter 23)

Fund 7162 FY 2017 Org 0704

Ch. 3	] APPROPRIATIONS		2095
1 2 3	Employee Benefits	\$ 	125,000 549,875,000 550,000,000
	243 - Insurance Commissioner – Workers' Compensation Uninsured Employe	ers'	Fund
	(WV Code Chapter 23)		
	Fund <u>7163</u> FY <u>2017</u> Org <u>0704</u>		
1	Current Expenses	\$	27,000,000
	244 - Insurance Commissioner – Self-Insured Employer Guaranty Risk I	P00	l
	(WV Code Chapter 23)		
	Fund <u>7164</u> FY <u>2017</u> Org <u>0704</u>		
1	Current Expenses	\$	5,000,000
	245 - Insurance Commissioner – Self-Insured Employer Security Risk P	ool	
	(WV Code Chapter 23)		
	Fund <u>7165</u> FY <u>2017</u> Org <u>0704</u>		
1	Current Expenses	\$	10,000,000
	246 - Lottery Commission – Revenue Center Construction Fund		
	(WV Code Chapter 29)		
	Fund <u>7209</u> FY <u>2017</u> Org <u>0705</u>		
1	Buildings	\$	500,000

## 247 - Municipal Bond Commission

#### (WV Code Chapter 13)

#### Fund 7253 FY 2017 Org 0706

1	Parsanal Sarviage and Employee		
2	Personal Services and Employee Benefits00100	\$	247,523
3		Ф	144,844
	Current Expenses		· ·
4	Equipment 07000		100
5	Total	\$	392,467
	248 - Racing Commission – Relief Fund		
	(WV Code Chapter 19)		
	Fund <u>7300</u> FY <u>2017</u> Org <u>0707</u>		
1	Medical Expenses – Total 24500	\$	57,000
2 3 4	The total amount of this appropriation sha Special Revenue Fund out of collections of lice as provided by law.	•	
5 6 7	No expenditures shall be made from this hospitalization, medical care and/or funeral excontributing to this fund.		•

## 249 - Racing Commission – Administration and Promotion Account

(WV Code Chapter 19)

# Fund $\underline{7304}$ FY $\underline{2017}$ Org $\underline{0707}$

1	Personal Services and Employee		
2	Benefits 0	0100	\$ 256,665
3	Current Expenses	3000	93,335

2097		3] APPROPRIATIONS	Ch. 3
5,000		Other Assets	4
355,000	\$	Total	5
		250 - Racing Commission – General Administration	
		(WV Code Chapter 19)	
		Fund <u>7305</u> FY <u>2017</u> Org <u>0707</u>	
		Personal Services and Employee	1
2,271,339	\$	Benefits	2
566,248		Current Expenses	3
7,000		Repairs and Alterations 06400	4
50,000		Other Assets	5
2,894,587	\$	Total	6
ovement	ıs	251 - Racing Commission – Administration, Promotion, Education, Capital and Greyhound Adoption Program to include Spaying and Neutering Acc	F
		(WV Code Chapter 19)	
		Fund <u>7307</u> FY <u>2017</u> Org <u>0707</u>	
		Personal Services and Employee	1
864,474	\$	Benefits	2
214,406		Current Expenses	3
200,000		Other Assets	4
	\$	Total	5

252 - Alcohol Beverage Control Administration – Wine License Special Fund

(WV Code Chapter 60)

Fund <u>7351</u> FY <u>2017</u> Org <u>0708</u>

2098	APPROPRIATIONS		[Ch. 3
1	Personal Services and Employee		
2	Benefits	\$	122,339
3	Current Expenses		69,186
4	Repairs and Alterations 06400		7,263
5	Equipment 07000		10,000
6	Buildings		100,000
7	Other Assets 69000		100
8	Total	\$	308,888
9	To the extent permitted by law, four	classi	fied exempt
10	positions shall be provided from Person	nal S	ervices and
11	Employee Benefits appropriation for field at	iditors	S.

## 253 - Alcohol Beverage Control Administration

(WV Code Chapter 60)

## Fund <u>7352</u> FY <u>2017</u> Org <u>0708</u>

1	Personal Services and Employee		
2	Benefits	\$	5,413,237
3	Current Expenses		2,897,577
4	Repairs and Alterations 06400		84,000
5	Equipment 07000		108,000
6	Buildings		100
7	Purchase of Supplies for Resale 41900		72,500,000
8	Transfer Liquor Profits and Taxes 42500		16,000,000
9	Other Assets		100
10	Land		100
11	Total	\$	97,003,114
12	The total amount of these appropriations	shall	be paid from
13	a special revenue fund out of liquor reven	ues a	nd any other
14	revenues available.		
15	The above appropriations include the	ne sa	alary of the
16	commissioner and the salaries, expenses	and e	equipment of
17	administrative offices, warehouses and inspe	ectors	•

Ch. 3	] APPROPRIATIONS 2099
18 19	The above appropriations include funding for the Tobacco/Alcohol Education Program.
20 21 22 23	There is hereby appropriated from liquor revenues, in addition to the above appropriations as needed, the necessary amount for the purchase of liquor as provided by law and the remittance of profits and taxes to the General Revenue Fund.
	254 - State Athletic Commission Fund
	(WV Code Chapter 29)
	Fund <u>7009</u> FY <u>2017</u> Org <u>0933</u>
1	Current Expenses
	DEPARTMENT OF TRANSPORTATION
	255 - Division of Motor Vehicles – Dealer Recovery Fund
	(WV Code Chapter 17)
	Fund <u>8220</u> FY <u>2017</u> Org <u>0802</u>
1	Current Expenses
	256 - Division of Motor Vehicles – Motor Vehicle Fees Fund
	(WV Code Chapter 17B)
	Fund <u>8223</u> FY <u>2017</u> Org <u>0802</u>
1 2 3 4 5 6	Personal Services and Employee         Benefits.       00100       \$ 2,852,799         Current Expenses.       13000       4,882,937         Repairs and Alterations.       06400       16,000         Equipment.       07000       75,000         Other Assets.       69000       10,000

2100	APPROPRIATIONS		[Ch. 3
7	BRIM Premium 91300		74,775
8	Total	\$	
	257 - Division of Highways – A. James Manchin Fund		
	(WV Code Chapter 22)		
	Fund <u>8319</u> FY <u>2017</u> Org <u>0803</u>		
1	Current Expenses	\$	1,650,000
	258 - Public Port Authority – Special Railroad and Intermodal Enhancen	nent	Fund
	(WV Code Chapter 17)		
	Fund <u>8254</u> FY <u>2017</u> Org <u>0806</u>		
1 2 3	Current Expenses	\$ \$	510,000 3,490,000 4,000,000
	DEPARTMENT OF VETERANS' ASSIS	STA	
	259 - Veterans' Facilities Support Fu	ınd	
	(WV Code Chapter 9A)		
	Fund <u>6703</u> FY <u>2017</u> Org <u>0613</u>		
1 2 3 4 5 6 7	Personal Services and Employee Benefits	\$	94,210 2,255,997 10,000 10,000 10,000 2,380,207
,	10ιαι	Ψ	2,300,207

## 260 - Department of Veterans' Assistance – WV Veterans' Home – Special Revenue Operating Fund

(WV Code Chapter 9A)

### Fund <u>6754</u> FY <u>2017</u> Org <u>0618</u>

1	Current Expenses	\$ 700,000
2	Repairs and Alterations 06400	 50,000
3	Total	\$ 750,000

#### **BUREAU OF SENIOR SERVICES**

261 - Bureau of Senior Services – Community Based Service Fund

(WV Code Chapter 22)

#### Fund 5409 FY 2017 Org 0508

Personal Services and Employee

1	1 Cisoliai Scivices and Employee		
2	Benefits00100	\$	151,290
3	Current Expenses		10,348,710
4	Total	\$	10,500,000
5	The total amount of these appropriation	s are	funded from
6	annual table game license fees to enable the	aged	and disabled
7	citizens of West Virginia to stay in their h	omes	through the
8	provision of home and community-based ser	vices	

# WEST VIRGINIA COUNCIL FOR COMMUNITY AND TECHNICAL COLLEGE EDUCATION

262 - West Virginia University at Parkersburg – Land Sale Account

(WV Code Chapter 18B)

#### Fund <u>4322</u> FY <u>2017</u> Org <u>0464</u>

Capital Outlay, Repairs and 2 \$ 532,000 3 The total amount of this appropriation shall be used for the purchase of additional real property or technology, or for capital 4 improvements at the institution.

#### HIGHER EDUCATION POLICY COMMISSION

263 - Higher Education Policy Commission -System -

Tuition Fee Capital Improvement Fund (Capital Improvement and Bond Retirement Fund) Control Account

(WV Code Chapters 18 and 18B)

#### Fund 4903 FY 2017 Org 0442

1	Debt Service	\$	27,720,321
2	General Capital Expenditures 30600	Ψ	5,000,000
3	Facilities Planning and		
4	Administration 38600		421,082
5	Total	\$	33,141,403
6	The total amount of these appropriations	shall	be paid from
7	the Special Capital Improvement Fund create	ed in	W.Va. Code
8	§18B-10-8. Projects are to be paid on a cash	n bas	sis and made
9	available on July 1.		
10	The above appropriations, except for Deb	t Ser	vice, may be
11	transferred to special revenue funds for cap		•
12	projects at the institutions.		•

264 - Tuition Fee Revenue Bond Construction Fund

(WV Code Chapters 18 and 18B)

#### Fund <u>4906</u> FY <u>2017</u> Org <u>0442</u>

- 1 Any unexpended balance remaining in the appropriation for
- 2 Capital Outlay (fund 4906, appropriation 51100) at the close of
- 3 the fiscal year 2016 is hereby reappropriated for expenditure
- 4 during the fiscal year 2017.
- 5 The appropriation shall be paid from available unexpended
- 6 cash balances and interest earnings accruing to the fund. The
- 7 appropriation shall be expended at the discretion of the Higher
- 8 Education Policy Commission and the funds may be allocated to
- 9 any institution within the system.
- The total amount of this appropriation shall be paid from the
- 11 unexpended proceeds of revenue bonds previously issued
- 12 pursuant to W.Va. Code §18-12B-8, which have since been
- 13 refunded.

## 265 - Community and Technical College – Capital Improvement Fund

(WV Code Chapter 18B)

#### Fund 4908 FY 2017 Org 0442

- 1 Any unexpended balance remaining in the appropriation for
- 2 Capital Improvements Total (fund 4908, appropriation 95800)
- 3 at the close of fiscal year 2016 is hereby reappropriated for
- 4 expenditure during the fiscal year 2017.
- 5 The total amount of this appropriation shall be paid from the
- 6 sale of the 2009 Series A Community and Technical College
- 7 Capital Improvement Revenue Bonds and anticipated interest
- 8 earnings.

266 - West Virginia University – West Virginia University Health Sciences Center

#### (WV Code Chapters 18 and 18B)

#### Fund 4179 FY 2017 Org 0463

1	Personal Services and Employee	
2	Benefits00100	\$ 10,274,340
3	Current Expenses	4,524,300
4	Repairs and Alterations 06400	425,000
5	Equipment 07000	512,000
6	Buildings	150,000
7	Other Assets 69000	 50,000
8	Total	\$ 15,935,640

#### MISCELLANEOUS BOARDS AND COMMISSIONS

267- Board of Barbers and Cosmetologists – Barbers and Beauticians Special Fund

(WV Code Chapters 16 and 30)

## Fund <u>5425</u> FY <u>2017</u> Org <u>0505</u>

1	Personal Services and Employee		
1	reisonal services and Employee		
2	Benefits	\$	504,497
3	Current Expenses		239,969
4	Total	\$	744,466
5	The total amount of these appropriations	shall b	e paid from
6	a special revenue fund out of collections made	de by tl	ne Board of
7	Barbers and Cosmetologists as provided by l	aw.	

268- Hospital Finance Authority – Hospital Finance Authority Fund

(WV Code Chapter 16)

## Fund <u>5475</u> FY <u>2017</u> Org <u>0509</u>

1	Personal Services and Employee		
2	Benefits	00100	\$ 85,981

Ch. 3	APPROPRIATIONS		2105
3 4 5	Unclassified	\$	1,450 57,740 145,171
6 7 8	The total amount of these appropriations the special revenue fund out of fees and colle by Article 29A, Chapter 16 of the Code.		_
269	- WV State Board of Examiners for Licensed F Licensed Practical Nurses	Practio	cal Nurses –
	(WV Code Chapter 30)		
	Fund <u>8517</u> FY <u>2017</u> Org <u>0906</u>		
1 2 3 4 270	Personal Services and Employee Benefits	\$  * * * * * * * * * * * * * * * * * *	430,324 53,133 483,457 val Nurses –
	(WV Code Chapter 30)		
	Fund <u>8520</u> FY <u>2017</u> Org <u>0907</u>		
1 2 3 4 5 6 7	Personal Services and Employee Benefits	\$	1,081,694 295,339 3,000 19,500 4,500 500,000
8	Total	\$	1,904,033
9 10	The above appropriation for Directed Tra appropriation 70000) shall be transferred to the		•

- 11 Health and Human Resources, Division of Human Services -
- 12 Medical Services Trust Fund (fund 5185).

#### 271 - Public Service Commission

#### (WV Code Chapter 24)

#### Fund <u>8623</u> FY <u>2017</u> Org <u>0926</u>

1	Personal Services and Employee		
2	Benefits00100	\$	11,807,314
3	Unclassified		147,643
4	Current Expenses		2,594,398
5	Repairs and Alterations 06400		55,000
6	Equipment 07000		160,000
7	Buildings		4,500,000
8	PSC Weight Enforcement 34500		4,405,884
9	Debt Payment/Capital Outlay 52000		350,000
10	BRIM Premium 91300		114,609
11	Total	\$	24,134,848
12	The total amount of these appropriations	chall	he naid from
			-
13	a special revenue fund out of collections for s	_	
14	from public service corporations as provided	by la	ıw.
15	The Public Service Commission is author	ized	to transfer up
16	to \$500,000 from this fund to meet the expec	ted de	eficiencies in
17	the Motor Carrier Division (fund 8625, org	0920	6) due to the
18	amendment and reenactment of W.Va. Co	ode §	§24A-3-1 by

272 - Public Service Commission – Gas Pipeline Division – Public Service Commission Pipeline Safety Fund

Enrolled House Bill Number 2715, Regular Session, 1997.

19

(WV Code Chapter 24B)

## Fund <u>8624</u> FY <u>2017</u> Org <u>0926</u>

284,198
3,851
93,115
4,000
385,164
e paid from
r or by the

9 Public Service Commission pursuant to and in the exercise of 10 regulatory authority over pipeline companies as provided by law.

> 273 - Public Service Commission – Motor Carrier Division

> > (WV Code Chapter 24A)

#### Fund <u>8625</u> FY <u>2017</u> Org <u>0926</u>

1	Personal Services and Employee		
2	Benefits00100	\$	2,243,526
3	Unclassified		29,233
4	Current Expenses		577,557
5	Repairs and Alterations 06400		23,000
6	Equipment 07000		50,000
7	Total	\$	2,923,316
8	The total amount of these appropriations	shall	be paid from
9	a special revenue fund out of receipts colle	cted f	for or by the
10	Public Service Commission pursuant to and	in the	e exercise of
11	regulatory authority over motor carriers as p	rovide	ed by law.

274 - Public Service Commission – Consumer Advocate Fund

(WV Code Chapter 24)

#### Fund <u>8627</u> FY <u>2017</u> Org <u>0926</u>

1	Personal Services and Employee		
2	Benefits	\$	743,372
3	Current Expenses		276,472
4	Equipment 07000		10,000
5	BRIM Premium 91300		4,532
6	Total	\$	1,034,376
7	The total amount of these appropriations	chall l	he supported
,	11 1		* *
8	by cash from a special revenue fund out of co	ollecti	ons made by

#### 275 - Real Estate Commission – Real Estate License Fund

9 the Public Service Commission.

(WV Code Chapter 30)

#### Fund 8635 FY 2017 Org 0927

1	Personal Services and Employee	
2	Benefits	\$ 582,413
3	Current Expenses	285,622
4	Repairs and Alterations 06400	5,000
5	Equipment 07000	 10,000
6	Total	\$ 883,035

The total amount of these appropriations shall be paid out of collections of license fees as provided by law.

## 276 - WV Board of Examiners for Speech-Language Pathology and Audiology – Speech-Language Pathology and Audiology Operating Fund

(WV Code Chapter 30)

#### Fund 8646 FY 2017 Org 0930

1	Personal Services and Employee		
2	Benefits	00100	\$ 73,190

Ch. 3	] APPROPRIATIONS		2109
3	Current Expenses		65,623
4	Total	\$	138,813
	277 - WV Board of Respiratory Care Board of Respiratory Care Fund	_	
	(WV Code Chapter 30)		
	Fund <u>8676</u> FY <u>2017</u> Org <u>0935</u>		
1	Personal Services and Employee	φ	70.502
2 3	Benefits	\$	79,583 51,047
4	Repairs and Alterations		400
5	Total	\$	131,030
	278 - WV Board of Licensed Dietitian Dietitians Licensure Board Fund	s –	
	(WV Code Chapter 30)		
	Fund <u>8680</u> FY <u>2017</u> Org <u>0936</u>		
1	Personal Services and Employee		
2	Benefits	\$	8,648
3	Current Expenses		14,352
4	Total	\$	23,000
	279 - Massage Therapy Licensure Boa Massage Therapist Board Fund	rd –	
	(WV Code Chapter 30)		
	Fund <u>8671</u> FY <u>2017</u> Org <u>0938</u>		
1 2 3 4	Personal Services and Employee Benefits	\$ <del>\$</del>	104,358 22,708 127,066

## 280 - Board of Medicine – Medical Licensing Board Fund

(WV Code Chapter 30)

#### Fund 9070 FY 2017 Org 0945

1	Personal Services and Employee	
2	Benefits00100	\$ 1,047,752
3	Current Expenses	988,789
4	Repairs and Alterations 06400	 20,000
5	Total	\$ 2,056,541

### 281 - West Virginia Enterprise Resource Planning Board – Enterprise Resource Planning System Fund

(WV Code Chapter 12)

#### Fund 9080 FY 2017 Org 0947

1	Personal Services and Employee	
2	Benefits	\$ 6,713,066
3	Unclassified	430,000
4	Current Expenses	42,306,934
5	Repairs and Alterations 06400	100,000
6	Equipment 07000	250,000
7	Buildings	100,000
8	Other Assets	 100,000
9	Total	\$ 50,000,000

## 282 - Board of Treasury Investments – Board of Treasury Investments Fee Fund

(WV Code Chapter 12)

## Fund $\underline{9152}$ FY $\underline{2017}$ Org $\underline{0950}$

1	Personal Services and Employee		
2	Benefits	00 \$	715,279

Ch. 3	APPROPRIATIONS 2111
3	Unclassified
4	Current Expenses
5	BRIM Premium 91300 50,687
6	Fees of Custodians, Fund Advisors and
7	Fund Managers
8	Total\$ 4,766,707
9	There is hereby appropriated from this fund, in addition to
10	the above appropriation if needed, an amount of funds necessary
11	for the Board of Treasury Investments to pay the fees and
12	expenses of custodians, fund advisors and fund managers for the
13	Consolidated fund of the State as provided in Article 6C,
14	Chapter 12 of the Code.
15	The total amount of these appropriations shall be paid from
16	the special revenue fund out of fees and collections as provided
17	by law.
18	Total TITLE II, Section 3 — Other Funds
19	(Including claims against the state) $\underline{\$1,980,026,910}$
1	Sec. 4. Appropriations from lottery net profits. — Net
2	profits of the lottery are to be deposited by the director of the
3	lottery to the following accounts in the amounts indicated. The
4	director of the lottery shall prorate each deposit of net profits in
5	the proportion the appropriation for each account bears to the
6	total of the appropriations for all accounts.
7	After first satisfying the requirements for Fund 2252, Fund
8	3963, and Fund 4908 pursuant to W.Va. Code §29-22-18, the
9	director of the lottery shall make available from the remaining
10	net profits of the lottery any amounts needed to pay debt service
11	for which an appropriation is made for Fund 9065, Fund 4297,
12	Fund 3390, and Fund 3514 and is authorized to transfer any such
13	amounts to Fund 9065, Fund 4297, Fund 3390, and Fund 3514
14	for that purpose. Upon receipt of reimbursement of amounts so
15	transferred, the director of the lottery shall deposit the

- 16 reimbursement amounts to the following accounts as required by
- 17 this section.

# 283 - Education, Arts, Sciences and Tourism – Debt Service Fund

(WV Code Chapter 5)

#### Fund 2252 FY 2017 Org 0211

		Appropriation		Lottery Funds
1	Debt Service – Total	. 31000	\$	10,000,000
	284 - West Virginia Develo Division of Tou		ïce –	
	(WV Code Chapt	er 5B)		
	Fund <u>3067</u> FY <u>2017</u>	Org <u>0304</u>		
1	Tourism – Telemarketing Center	. 46300	\$	82,080
2	WV Film Office			341,153
3	Tourism – Advertising (R)	. 61800		1,822,407
4	Tourism – Operations (R)	. 66200		3,970,510
5	Total		\$	6,216,150
6	Any unexpended balances ren	naining in	the ap	propriations
7	for Tourism – Advertising (fund 30	•	_	
8	Tourism – Operations (fund 3067			* '
9	close of the fiscal year 2016 are			•
10	expenditure during the fiscal year	2017.		

285 - Division of Natural Resources

(WV Code Chapter 20)

## Fund <u>3267</u> FY <u>2017</u> Org <u>0310</u>

1	Personal Services and Employee
2	Benefits
3	Current Expenses
4	Pricketts Fort State Park
5	Non-Game Wildlife (R) 52700 367,248
6	State Parks and Recreation
7	Advertising (R) 61900 494,578
8	Total\$ 3,095,713
9	Any unexpended balances remaining in the appropriations
10	for Unclassified (fund 3267, appropriation 09900), Capital
11	Outlay - Parks (fund 3267, appropriation 28800), Non-Game
12	Wildlife (fund 3267, appropriation 52700), and State Parks and
13	Recreation Advertising (fund 3267, appropriation 61900) at the
14	close of the fiscal year 2016 are hereby reappropriated for
15	expenditure during the fiscal year 2017.

## 286 - State Board of Education

## (WV Code Chapters 18 and 18A)

## Fund $\underline{3951}$ FY $\underline{2017}$ Org $\underline{0402}$

1	FBI Checks	\$	108,860
2	Vocational Education Equipment		
3	Replacement 39300		800,000
4	Assessment Program (R) 39600		2,946,059
5	21st Century Technology Infrastructure		
6	Network Tools and		
7	Support (R) 93300		14,151,287
8	Total	\$	18,006,206
9	Any unexpended balances remaining in t	the ap	ppropriations
10	for Unclassified (fund 3951, appropriation	099	00), Current
11	Expenses (fund 3951, appropriation 130	00),	Assessment

- 12 Program (fund 3951, appropriation 39600), and 21st Century
- 13 Technology Infrastructure Network Tools and Support (fund
- 14 3951, appropriation 93300) at the close of the fiscal year 2016
- 15 are hereby reappropriated for expenditure during the fiscal year
- 16 2017.

#### 287 - State Department of Education – School Building Authority – Debt Service Fund

#### (WV Code Chapter 18)

#### Fund 3963 FY 2017 Org 0402

1	Debt Service – Total	.000 \$	7,507,700
2	Directed Transfer	0000	10,492,300
3	Total	\$	18,000,000

- 4 The School Building Authority shall have the authority to
- 5 transfer between the above appropriations in accordance with
- 6 W.Va. Code §29-22-18.

## 288 - Department of Education and the Arts –

Office of the Secretary – Control Account – Lottery Education Fund

(WV Code Chapter 5F)

#### Fund <u>3508</u> FY <u>2017</u> Org <u>0431</u>

1	Unclassified (R)	\$	11,864
2	Current Expenses	)	108,136
3	Commission for National and		
4	Community Service 19300	)	350,228
5	Arts Programs (R) 50000	)	81,510
6	College Readiness 57900	)	154,906
7	Statewide STEM 21st Century		
8	Academy 89700	)	130,000

9	Literacy Project (R)
10	Total\$ 1,186,644
11	Any unexpended balances remaining in the appropriations
12	for Unclassified (fund 3508, appropriation 09900), Governor's
13	Honors Academy (fund 3508, appropriation 47800), Arts
14	Programs (fund 3508, appropriation 50000), and Literacy Project
15	(fund 3508, appropriation 89900) at the close of fiscal year 2016
16	are hereby reappropriated for expenditure during the fiscal year
17	2017.

## 289 - Division of Culture and History – Lottery Education Fund

## (WV Code Chapter 29)

## Fund <u>3534</u> FY <u>2017</u> Org <u>0432</u>

1	Huntington Symphony 02700	\$ 73,823
2	Preservation West Virginia (R) 09200	587,519
3	Fairs and Festivals (R) 12200	1,668,297
4	Archeological Curation/Capital	
5	Improvements (R) 24600	37,593
6	Historic Preservation Grants (R) 31100	368,428
7	West Virginia Public Theater 31200	150,024
8	Greenbrier Valley Theater 42300	124,429
9	Theater Arts of West Virginia 46400	112,500
10	Marshall Artists Series 51800	45,007
11	Grants for Competitive Arts	
12	Program (R)	726,000
13	West Virginia State Fair 65700	39,052
14	Save the Music	30,000
15	Contemporary American Theater	
16	Festival 81100	71,602
17	Independence Hall	34,097
18	Mountain State Forest Festival 86400	47,734
19	WV Symphony	73,823

2110	ATTROTRIATIONS [Cli. 3
20	Wheeling Symphony 90800 73,823
21	Appalachian Children's Chorus 91600 68,193
22	Total \$ 4,331,944
23	From the above appropriation for Preservation West Virginia
24	(fund 3534, appropriation 09200) funding shall be provided to
25	the African-American Heritage Family Tree Museum (Fayette)
26	\$3,342, Aracoma Story (Logan) \$37,129, Arts Monongahela
27	(Monongalia) \$14,852, Barbour County Arts and Humanities
28	Council \$1,114, Beckley Main Street (Raleigh) \$3,713, Buffalo
29	Creek Memorial (Logan) \$3,713, Carnegie Hall (Greenbrier)
30	\$58,624, Ceredo Historical Society (Wayne) \$1,485, Ceredo
31	Kenova Railroad Museum (Wayne) \$1,485, Ceredo Museum
32	(Wayne) \$900, Children's Theatre of Charleston (Kanawha)
33	\$3,909, Chuck Mathena Center (Mercer) \$78,165, Collis P.
34	Huntington Railroad Historical Society (Cabell) \$7,426, Country
35	Music Hall of Fame and Museum (Marion) \$5,198, First Stage
36	Children's Theater Company \$1,485, Flannigan Murrell House
37	(Summers) \$4,726, Fort Ashby Fort (Mineral) \$1,114, Fort New
38	Salem (Harrison) \$2,748, Fort Randolph (Mason) \$3,713,
39	General Adam Stephen Memorial Foundation (Berkeley)
40	\$13,757, Grafton Mother's Day Shrine Committee (Taylor)
41	\$6,312, Hardy County Tour and Crafts Association \$14,852,
42	Heartwood in the Hills (Calhoun) \$6,300, Heritage Farm
43	Museum & Village (Cabell) \$37,129, Historic Fayette Theater
44	(Fayette) \$4,084, Historic Middleway Conservancy (Jefferson)
45	\$743, Jefferson County Black History Preservation Society
46	\$3,713, Jefferson County Historical Landmark Commission
47	\$5,941, Maddie Carroll House (Cabell) \$5,569, Marshall County
48	Historical Society \$6,312, McCoy Theater (Hardy) \$14,852,
49	Morgantown Theater Company (Monongalia) \$14,852,
50	Mountaineer Boys' State (Lewis) \$7,426, Nicholas Old Main
51	Foundation (Nicholas) \$1,485, Norman Dillon Farm Museum
52	(Berkeley) \$7,426, Old Opera House Theater Company
53	(Jefferson) \$11,138, Parkersburg Arts Center (Wood) \$14,852,
54	Pocahontas Historic Opera House \$4,455, Raleigh County All

**APPROPRIATIONS** 

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- 55 Wars Museum \$7,426, Rhododendron Girl's State (Ohio) \$7,426,
- 56 Roane County 4-H and FFA Youth Livestock Program \$3,713,
- 57 Scottish Heritage Society/N. Central WV (Harrison) \$3,713,
- 58 Society for the Preservation of McGrew House (Preston) \$2,599,
- 59 Southern West Virginia Veterans' Museum \$4,242, Summers
- 60 County Historic Landmark Commission \$3,713, Those Who
- 61 Served War Museum (Mercer) \$2,970, Three Rivers Avian
- 62 Center (Summers) \$6,638, Tug Valley Arts Council (Mingo)
- 63 \$3,713, Tug Valley Chamber of Commerce Coal House (Mingo)
- 64 \$1,485, Tunnelton Historical Society (Preston) \$1,485, Veterans
- 65 Committee for Civic Improvement of Huntington (Wayne)
- 66 \$3,713, West Virginia Museum of Glass (Lewis) \$3,713, West
- 67 Virginia Music Hall of Fame (Kanawha) \$25,990, YMCA Camp
- 68 Horseshoe (Tucker) \$74,257, Youth Museum of Southern West
- 69 Virginia (Raleigh) \$8,911, Z.D. Ramsdell House (Wayne) \$900.
- From the above appropriation for Fairs and Festivals (fund
- 71 3534, appropriation 12200) funding shall be provided to A
- 72 Princeton 4th (Mercer) \$2,250, African-American Cultural
- 73 Heritage Festival (Jefferson) \$3,713, Alderson 4th of July
- 74 Celebration (Greenbrier) \$3,713, Allegheny Echo (Pocahontas)
- 75 \$5,570, Alpine Festival/Leaf Peepers Festival (Tucker) \$8,354,
- 76 American Civil War (Grant) \$3,909, American Legion Post 8
- 77 Veterans Day Parade (McDowell) \$1,563, Angus Beef and
- 78 Cattle Show (Lewis) \$1,114, Annual Birch River Days
- 79 (Nicholas) \$1,620, Annual Don Redman Heritage Concert &
- 80 Awards (Jefferson) \$1,173, Annual Ruddle Park Jamboree
- 81 (Pendleton) \$5,863, Antique Market Fair (Lewis) \$1,485, Apollo
- 82 Theater-Summer Program (Berkeley) \$1,485, Apple Butter
- 83 Festival (Morgan) \$4,455, Arkansaw Homemaker's Heritage
- 84 Weekend (Hardy) \$2,599, Armed Forces Day-South Charleston
- 85 (Kanawha) \$2,228, Arthurdale Heritage New Deal Festival
- 86 (Preston) \$3,713, Athens Town Fair (Mercer) \$1,485, Augusta
- 87 Fair (Randolph) \$3,713, Autumn Harvest Fest (Monroe) \$3,060,
- 88 Barbour County Fair \$18,564, Barboursville Octoberfest
- 89 (Cabell) \$3,713, Bass Festival (Pleasants) \$1,374, Battelle

90 District Fair (Monongalia) \$3,713, Battle of Dry Creek 91 (Greenbrier) \$1,114, Battle of Point Pleasant Memorial 92 Committee (Mason) \$3,713, Belle Town Fair (Kanawha) \$3,342, 93 Belleville Homecoming (Wood) \$14,852, Bergoo Down Home 94 Days (Webster) \$1,857, Berkeley County Youth Fair \$13,738, 95 Black Bear 4K Mountain Bike Race (Kanawha) \$855, Black 96 Heritage Festival (Harrison) \$4,455, Black Walnut Festival 97 (Roane) \$7,426, Blast from the Past (Upshur) \$1,800, Blue-Gray 98 Reunion (Barbour) \$2.599. Boone County Fair \$7.426. Boone 99 County Labor Day Celebration \$2,970, Bradshaw Fall Festival 100 (McDowell) \$1,485, Brandonville Heritage Day (Preston) 101 \$1,310, Braxton County Fair \$8,540, Braxton County Monster 102 Fest / West Virginia Autumn Festival \$1,857, Brooke County 103 Fair \$2,599, Bruceton Mills Good Neighbor Days (Preston) 104 \$1,485, Buckwheat Festival (Preston) \$6,313, Buffalo 4th of July 105 Celebration (Putnam) \$500, Buffalo October Fest (Putnam) 106 \$4,050, Burlington Apple Harvest Festival (Mineral) \$22,277, 107 Burlington Pumpkin Harvest Festival (Raleigh) \$3,713, 108 Burnsville Harvest Festival (Braxton) \$1,759, Cabell County 109 Fair \$7,426, Calhoun County Wood Festival \$1,485, Campbell's 110 Creek Community Fair (Kanawha) \$1,857, Cape Coalwood 111 Festival Association (McDowell) \$1,857, Capon Bridge 112 Founders Day Festival (Hampshire) \$1,485, Capon Springs Ruritan 4th of July (Hampshire) \$855, Cass Homecoming 113 114 (Pocahontas) \$1,485, Cedarville Town Festival (Gilmer) \$855, 115 Celebration in the Park (Wood) \$2,970, Celebration of America 116 (Monongalia) \$4,455, Ceredo Freedom Festival (Wayne) \$876, 117 Butter Festival Chapmanville Apple (Logan) \$855, 118 Chapmanville Fire Department 4th of July (Logan) \$2,228, 119 Charles Town Christmas Festival (Jefferson) \$3,713, Charles 120 Town Heritage Festival (Jefferson) \$3,713, Cherry River Festival (Nicholas) \$4,827, Chester Fireworks (Hancock) 121 122 \$1,114, Chester 4th of July Festivities (Hancock) \$3,713, Chief 123 Logan State Park-Civil War Celebration (Logan) \$5,941, 124 Chilifest West Virginia State Chili Championship (Cabell)

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125 \$1,954, Christmas In Our Town (Marion) \$3,909, Christmas in 126 Shepherdstown (Jefferson) \$2,970, Christmas in the Park 127 (Brooke) \$3,713, Christmas in the Park (Logan) \$18,564, City of 128 Dunbar Critter Dinner (Kanawha) \$7,426, City of Logan Polar 129 Express (Logan) \$5,570, City of New Martinsville Festival of 130 Memories (Wetzel) \$8,168, Clay County Golden Delicious 131 Apple Festival \$5,198, Clay District Fair (Monongalia) \$1,350, 132 Coal Field Jamboree (Logan) \$25,990, Coalton Days Fair 133 (Randolph) \$5.198, Country Roads Festival (Favette) \$1.485. 134 Cowen Railroad Festival (Webster) \$2,599, Craigsville Fall 135 Festival (Nicholas) \$2,599, Cruise into Princeton (Mercer) \$2,700, Culturefest World Music & Arts Festival (Mercer) 136 137 \$5,863, Delbarton Homecoming (Mingo) \$2,599, Doddridge 138 County Fair \$5,198, Dorcas Ice Cream Social (Grant) \$4,455, 139 Durbin Days (Pocahontas) \$3,713, Elbert/Filbert Reunion 140 Festival (McDowell) \$1,114, Elkins Randolph County 4th of July Car Show (Randolph) \$1,485, Fairview 4th of July 141 142 Celebration (Marion) \$855, Farm Safety Day (Preston) \$1,485, 143 Farmer's Day Festival (Monroe) \$2,913, Farmers' Day Parade 144 (Wyoming) \$900, Fenwick Mountain Old Time Community 145 Festival (Nicholas) \$3,600, FestivALL Charleston (Kanawha) 146 \$14,852, Flatwoods Days (Braxton) \$876, Flemington Day Fair 147 and Festival (Taylor) \$2,599, Follansbee Community Days 148 (Brooke) \$6,126, Fort Gay Mountain Heritage Days (Wayne) 149 \$3,713, Fort Henry Days (Ohio) \$3,936, Fort Henry Living 150 History (Ohio) \$1,954, Fort New Salem Spirit of Christmas 151 Festival (Harrison) \$3,040, Frankford Autumnfest (Greenbrier) 152 \$3,713, Franklin Fishing Derby (Pendleton) \$5,570, Freshwater Folk Festival (Greenbrier) \$3,713, Friends Auxiliary of W.R. 153 154 Sharpe Hospital (Lewis) \$3,713, Frontier Days (Harrison) 155 \$2,228, Frontier Fest/Canaan Valley (Taylor) \$3,713, Fund for 156 the Arts-Wine & All that Jazz Festival (Kanawha) \$1,857, 157 Gassaway Days Celebration (Braxton) \$3,713, 158 Elementary Fall Blast (Mingo) \$2,735, Gilbert Kiwanis Harvest

Festival (Mingo) \$2,970, Gilbert Spring Fling (Mingo) \$4,494,

160 Gilmer County Farm Show \$2,970, Grant County Arts Council 161 \$1,485, Grape Stomping Wine Festival (Nicholas) \$1,485, Great 162 Greenbrier River Race (Pocahontas) \$7,426, Greater Quinwood Days (Greenbrier) \$977, Guyandotte Civil War Days (Cabell) 163 164 \$7,426, Hamlin 4th of July Celebration (Lincoln) \$3,713, 165 Hampshire Civil War Celebration Days (Hampshire) \$855, 166 Hampshire County 4th of July Celebration \$14,852, Hampshire 167 County Fair \$6,253, Hampshire Heritage Days (Hampshire) 168 \$2.970. Hancock County Oldtime Fair \$3.713. Hardy County 169 Commission - 4th of July \$7,426, Hatfield McCoy Matewan 170 Reunion Festival (Mingo) \$15,413, Hatfield McCoy Trail 171 National ATV and Dirt Bike Weekend (Wyoming) \$3,713, Heat'n the Hills Chilifest (Lincoln) \$3,127, Heritage Craft 172 173 Festival (Monroe) \$1,305, Heritage Days Festival (Roane) \$1,114, Hilltop Festival (Cabell) \$855, Hilltop Festival of Lights 174 175 (McDowell) \$1,485, Hinton Railroad Days (Summers) \$5,434, 176 Holly River Festival (Webster) \$1,114, Hometown Mountain 177 Heritage Festival (Fayette) \$3,040, Hundred 4th of July (Wetzel) 178 \$5,384, Hundred American Legion Earl Kiger Post Bluegrass 179 Festival (Wetzel) \$1,485, Hurricane 4th of July Celebration 180 (Putnam) \$3,713, Iaeger Town Fair (McDowell) \$1,114, Irish 181 Heritage Festival of West Virginia (Raleigh) \$3,713, Irish Spring 182 Festival (Lewis) \$855, Italian Heritage Festival-Clarksburg 183 (Harrison) \$22,277, Jackson County Fair \$3,713, Jamboree 184 (Pocahontas) \$3,713, Jane Lew Arts and Crafts Fair (Lewis) 185 \$855, Jefferson County Fair Association \$18.564. Jersey 186 Mountain Ruritan Pioneer Days (Hampshire) \$855, John Henry 187 Days Festival (Monroe) \$5,873, Johnnie Johnson Blues and Jazz Festival (Marion) \$3,713, Johnstown Community Fair (Harrison) 188 189 \$1,857, Junior Heifer Preview Show (Lewis) \$1,485, Kanawha 190 Coal Riverfest-St. Albans 4th of July Festival (Kanawha) 191 \$3,713, Keeper of the Mountains-Kayford (Kanawha) \$1,857, 192 Kenova Autumn Festival (Wayne) \$5,472, Kermit Fall Festival 193 (Mingo) \$2,228, Keystone Reunion Gala (McDowell) \$1,954, 194 King Coal Festival (Mingo) \$3,713, Kingwood Downtown Street

195 Fair and Heritage Days (Preston) \$1,485, L.Z. Rainelle West 196 Virginia Veterans Reunion (Greenbrier) \$3,713, Lady of 197 Agriculture (Preston) \$855, Larry Joe Harless Center Octoberfest 198 Hatfield McCoy Trail (Mingo) \$7,426, Larry Joe Harless 199 Community Center Spring Middle School Event (Mingo) \$3,713, Last Blast of Summer (McDowell) \$3,713, Lewis 200 201 Fair Association \$2,599, Lewisburg Shanghai County 202 (Greenbrier) \$1,485, Lincoln County Fall Festival \$5,941, Lincoln County Winterfest \$3,713, Lindside Veterans' Day 203 204 Parade \$900, Little Levels Heritage Festival (Pocahontas) 205 \$1,485, Lost Creek Community Festival (Harrison) \$5,198, Main 206 Street Arts Festival (Upshur) \$3,909, Main Street Martinsburg 207 Chocolate Fest and Book Fair (Berkeley) \$3,517, Mannington 208 District Fair (Marion) \$4,455, Maple Syrup Festival (Randolph) \$855, Marion County FFA Farm Fest \$1,857, Marmet Labor 209 210 Day Celebration (Kanawha) \$3,848, Marshall County Antique 211 Power Show \$1,857, Marshall County Fair \$5,570, Mason 212 County Fair \$3,713, Mason Dixon Festival (Monongalia) \$5,198, 213 Massacre Reenactment (Mingo) Matewan 214 Matewan-Magnolia Fair (Mingo) \$19,915, McARTS-McDowell County \$14,852, McDowell County Fair \$1,857, McGrew House 215 216 History Day (Preston) \$1,485, McNeill's Rangers (Mineral) 217 \$5,941, Meadow Bridge Hometown Festival (Fayette) \$929, 218 Meadow River Days Festival (Greenbrier) \$2,228, Mercer 219 Bluestone Valley Fair (Mercer) \$1,485, Mercer County Fair 220 \$1,485, Mercer County Heritage Festival \$4,343, Mid Ohio 221 Valley Antique Engine Festival (Wood) \$2,228, Milton 222 Christmas in the Park (Cabell) \$1,857, Milton 4th of July Celebration (Cabell) \$1,857, Mineral County Fair \$1,300, 223 224 Mineral County Veterans Day Parade \$1,114, Molasses Festival 225 (Calhoun) \$1,485, Monongahfest (Marion) \$4,690, Moon Over 226 Mountwood Fishing Festival (Wood) \$2,228, Morgan County 227 Fair-History Wagon \$1,114, Moundsville Bass Festival 228 (Marshall) \$2,970, Moundsville July 4th Celebration (Marshall) 229 \$3,713, Mount Liberty Fall Festival (Barbour) \$1,857, Mountain 230 Fest (Monongalia) \$14,852, Mountain Festival (Mercer) \$3,434, 231 Mountain Heritage Arts and Crafts Festival (Jefferson) \$3,713, 232 Mountain Music Festival (McDowell) \$1,857, Mountain State 233 Apple Harvest Festival (Berkeley) \$5,570, Mountain State Arts 234 & Crafts Fair Cedar Lakes (Jackson) \$33,415, Mountaineer Hot 235 Air Balloon Festival (Monongalia) \$2,970, Mullens Dogwood 236 Festival (Wyoming) \$5,198, Multi-Cultural Festival of West 237 Virginia (Kanawha) \$14,852, Music and Barbecue - Banks 238 District VFD (Upshur) \$1.598, New Cumberland Christmas 239 \$2,228, New Cumberland 4th of July Parade (Hancock) 240 (Hancock) \$3,713, New River Bridge Day Festival (Fayette) \$29,703, Newburg Volunteer Fireman's Field Day (Preston) 241 242 \$855, Nicholas County Fair \$3,713, Nicholas County Potato 243 Festival \$2,599, Oak Leaf Festival (Fayette) \$7,817, Oceana 244 Heritage Festival (Wyoming) \$4,455, Oglebay City Park -245 Festival of Lights (Ohio) \$59,405, Oglebay Festival (Ohio) 246 \$7,426, Ohio County Country Fair \$6,683, Ohio River Fest 247 \$5,400, Ohio Valley Beef Association (Wood) 248 \$1,857, Ohio Valley Black Heritage Festival (Ohio) \$4,084, Old 249 Central City Fair (Cabell) \$3,713, Old Century City Fair 250 (Barbour) \$1,563, Old Tyme Christmas (Jefferson) \$1,782, 251 Paden City Labor Day Festival (Wetzel) \$4,827, Parkersburg 252 Homecoming (Wood) \$10,943, Patty Fest (Monongalia) \$1,485, 253 Paw Paw District Fair (Marion) \$2,599, Pax Reunion Committee 254 (Fayette) \$3,713, Pendleton County 4-H Weekend \$1,485, 255 Pendleton County Committee for Arts \$11,138, Pendleton 256 County Fair \$7,817, Pennsboro Country Road Festival (Ritchie) 257 \$1,485, Petersburg 4th of July Celebration (Grant) \$14,852, 258 Petersburg HS Celebration (Grant) \$7,426, Piedmont-Annual 259 Back Street Festival (Mineral) \$2,970, Pinch Reunion 260 (Kanawha) \$1,114, Pine Bluff Fall Festival (Harrison) \$2,970, 261 Pine Grove 4th of July Festival (Wetzel) \$5,198, Pineville 262 Festival (Wyoming) \$4,455, Pleasants County Agriculture Youth 263 Fair \$3,713, Poca Heritage Days (Putnam) \$2,228, Pocahontas

County Pioneer Days \$5,198, Point Pleasant Stern Wheel

264

265 Regatta (Mason) \$3,713, Pratt Fall Festival (Kanawha) \$1,857, 266 Princeton Autumnfest (Mercer) \$1,954, Princeton Street Fair 267 (Mercer) \$3,713, Putnam County Fair \$3,713, Quartets on Parade (Hardy) \$2,970, Rainelle Fall Festival (Greenbrier) 268 269 \$3,909, Rand Community Center Festival (Kanawha) \$1,857, 270 Randolph County Community Arts Council \$2,228, Randolph 271 County Fair \$5,198, Randolph County Ramp and Rails \$1,485, 272 Ranson Christmas Festival (Jefferson) \$3,713, Ranson Festival 273 (Jefferson) \$3.713. Renick Liberty Festival (Greenbrier) \$855. 274 Ripley 4th of July (Jackson) \$11,138, Ritchie County Fair and 275 Exposition \$3,713, Ritchie County Pioneer Days \$855, River 276 City Festival (Preston) \$855, Roane County Agriculture Field Day \$2,228, Rock the Park (Kanawha) \$4,050, Rocket Boys 277 278 Festival (Raleigh) \$2,138, Romney Heritage Days (Hampshire) 279 \$2,345, Ronceverte River Festival (Greenbrier) \$3,713, 280 Rowlesburg Labor Day Festival (Preston) \$855, Rupert Country Fling (Greenbrier) \$2,228, Saint Spyridon Greek Festival 281 282 (Harrison) \$1,857, Salem Apple Butter Festival (Harrison) 283 \$2,970, Sistersville 4th of July (Tyler) \$4,084, Skirmish on the 284 River (Mingo) \$1,563, Smoke on the Water (Wetzel) \$2,228, 285 South Charleston Summerfest (Kanawha) \$7,426, Southern 286 Wayne County Fall Festival \$855, Spirit of Grafton Celebration 287 (Taylor) \$7,426, Springfield Peach Festival (Hampshire) \$923, 288 St. Albans City of Lights - December (Kanawha) \$3,713, 289 Sternwheel Festival (Wood) \$2,228, Stoco Reunion (Raleigh) 290 \$1,857, Stonewall Jackson Heritage Arts & Crafts Jubilee 291 (Lewis) \$8,168, Stonewall Jackson's Roundhouse Raid 292 \$9,000, Storytelling Festival (Lewis) \$500, (Berkeley) Strawberry Festival (Upshur) \$22,277, Sylvester Big Coal River 293 294 Festival \$2,430, Tacy Fair (Barbour) \$855, Taste of Parkersburg 295 (Wood) \$3,713, Taylor County Fair \$4,084, Terra Alta VFD 4th 296 of July Celebration (Preston) \$855, The Gathering at Sweet 297 Creek (Wood) \$2,228, Three Rivers Coal Festival (Marion) 298 \$5,755, Thunder on the Tygart - Mothers' Day Celebration 299 (Taylor) \$11,138, Town of Delbarton 4th of July Celebration

300 (Mingo) \$2,228, Town of Fayetteville Heritage Festival 301 (Fayette) \$5,570, Town of Matoaka Hog Roast (Mercer) \$855, 302 Town of Rivesville 4th of July Festival (Marion) \$3,909, Town 303 of Winfield - Putnam County Homecoming \$4,050, St. Albans 304 Train Fest (Kanawha) \$7,650, Treasure Mountain Festival 305 (Pendleton) \$18,564, Tri-County Fair (Grant) \$28,186, Tucker 306 County Arts Festival and Celebration \$13,366, Tucker County 307 Fair \$3,527, Tucker County Health Fair \$1,485, Tunnelton 308 Depot Days (Preston) \$855. Tunnelton Volunteer Fire 309 Department Festival (Preston) \$855, Turkey Festival (Hardy) 310 \$2,228, Tyler County Fair \$3,861, Tyler County 4th of July 311 \$500, Tyler County OctoberFest \$900, Union Community Irish 312 Festival (Barbour) \$810, Uniquely West Virginia Festival 313 \$1,485, Upper Kanawha Valley Oktoberfest 314 (Kanawha) \$1,857, Upper Ohio Valley Italian Festival (Ohio) \$8,911, Upshur County Youth Livestock Show \$1,800, Valley 315 316 District Fair (Preston) \$2,599, Veterans Welcome Home 317 Celebration (Cabell) \$1,173, Vietnam Veterans of America # 318 949 Christmas Party (Cabell) \$855, Volcano Days at 319 Mountwood Park (Wood) \$3,713, War Homecoming Fall 320 Festival (McDowell) \$1,114, Wardensville Fall Festival (Hardy) 321 \$3,713, Wayne County Fair \$3,713, Wayne County Fall Festival 322 \$3,713, Webster County Fair \$4,500, Webster County Wood 323 Chopping Festival \$11,138, Webster Wild Water Weekend 324 \$1,485, Weirton July 4th Celebration (Hancock) \$14,852, 325 Welcome Home Family Day (Wayne) \$2,376, Wellsburg 4th of 326 July Celebration (Brooke) \$5,570, Wellsburg Apple Festival of 327 Brooke County \$3,713, West Virginia Blackberry Festival 328 (Harrison) \$3,713, West Virginia Chestnut Festival (Preston) 329 \$855, West Virginia Coal Festival (Boone) \$7,426, West 330 Virginia Coal Show (Mercer) \$1,954, West Virginia Dairy Cattle 331 Show (Lewis) \$7,426, West Virginia Dandelion Festival 332 (Greenbrier) \$3,713, West Virginia Day at the Railroad Museum 333 (Mercer) \$2,250, West Virginia Fair and Exposition (Wood) 334 \$6,016, West Virginia Fireman's Rodeo (Fayette) \$1,857, West 335 Virginia Oil and Gas Festival (Tyler) \$8,168, West Virginia 336 Peach Festival (Hampshire) \$4,050, West Virginia Polled 337 Hereford Association (Braxton) \$1,114, West Virginia Poultry 338 Festival (Hardy) \$3,713, West Virginia Pumpkin Festival 339 (Cabell) \$7,426, West Virginia State Folk Festival (Gilmer) 340 \$3,713, West Virginia Water Festival - City of Hinton 341 (Summers) \$11,431, Weston VFD 4th of July Firemen Festival 342 (Lewis) \$1,485, Wetzel County Autumnfest \$4,084, Wetzel 343 County Town and Country Days \$12,623, Wheeling Celtic 344 Festival (Ohio) \$1,485, Wheeling City of Lights (Ohio) \$5,941, 345 Wheeling Sternwheel Regatta (Ohio) \$7,426, Wheeling Vintage 346 Raceboat Regatta (Ohio) \$14,852, Whipple Community Action (Favette) \$1,857, Wileyville Homecoming (Wetzel) \$2,970, 347 348 Wine Festival and Mountain Music Event (Harrison) \$3,713, 349 Winter Festival of the Waters (Berkeley) \$3,713, Wirt County 350 Fair \$1,857, Wirt County Pioneer Days \$1,485, Wyoming

353 Any unexpended balances remaining in the appropriations 354 for Preservation West Virginia (fund 3534, appropriation 355 09200), Fairs and Festivals (fund 3534, appropriation 12200), 356 Archeological Curation/Capital Improvements (fund 3534, 357 appropriation 24600), Historic Preservation Grants (fund 3534, 358 appropriation 31100), Grants for Competitive Arts Program 359 (fund 3534, appropriation 62400), and Project ACCESS (fund 360 3534, appropriation 86500) at the close of the fiscal year 2016 361 are hereby reappropriated for expenditure during the fiscal year 362 2017.

County Civil War Days \$1,620, Youth Stockman Beef Expo

351

352

(Lewis) \$1,485.

Any Fairs & Festivals awards shall be funded in addition to, and not in lieu of, individual grant allocations derived from the Arts Council and the Cultural Grant Program allocations.

> 290 - Library Commission – Lottery Education Fund

## (WV Code Chapter 10)

## Fund <u>3559</u> FY <u>2017</u> Org <u>0433</u>

1	Books and Films 17900	\$	360,784
2	Services to Libraries 18000		550,000
3	Grants to Public Libraries 18200		9,439,571
4	Digital Resources 30900		219,992
5	Infomine Network 88400		858,315
6	Total	\$	11,428,662
7	Any unexpended balance remaining in th	e appı	opriation for
8	Libraries – Special Projects (fund 3559, appro	opriati	ion 62500) at
9	the close of fiscal year 2016 is hereby	reappi	opriated for
10	expenditure during the fiscal year 2017.		

## 291 - Bureau of Senior Services – Lottery Senior Citizens Fund

## (WV Code Chapter 29)

## Fund $\underline{5405}$ FY $\underline{2017}$ Org $\underline{0508}$

1	Personal Services and Employee	
2	Benefits	\$ 195,001
3	Current Expenses	332,095
4	Repairs and Alterations 06400	1,000
5	Local Programs Service Delivery	
6	Costs	2,435,250
7	Silver Haired Legislature 20200	18,500
8	Transfer to Division of Human	
9	Services for Health Care	
10	and Title XIX Waiver for	
11	Senior Citizens 53900	22,424,274
12	Roger Tompkins Alzheimer's	
13	Respite Care 64300	2,297,036
14	WV Alzheimer's Hotline 72400	45,000

Ch. 3	] APPROPRIATIONS	2127		
15	Regional Aged and Disabled			
16	Resource Center 76700	425,000		
17	Senior Services Medicaid Transfer. 87100	8,670,000		
18	Legislative Initiatives for the			
19	Elderly 90400	9,671,239		
20	Long Term Care Ombudsman 90500	297,226		
21	BRIM Premium 91300	6,500		
22	In-Home Services and Nutrition for			
23	Senior Citizens 91700	4,320,941		
24	Total	\$ 51,139,062		
25	Any unexpended balance remaining in th	a appropriation for		
26	Senior Citizen Centers and Programs (fund 5			
27	46200) at the close of the fiscal year			
28	reappropriated for expenditure during the fis	•		
20	reappropriated for expenditure during the fis	cai year 2017.		
29	Included in the above appropriation for	Current Expenses		
30	(fund 5405, appropriation 13000), is fund	ing to support an		
31	in-home direct care workforce registry.			
32	The above appropriation for Transfer to I	Division of Human		
33	Services for Health Care and Title XIX V			
34	Citizens (appropriation 53900) along with the			
35	generated thereby shall be used for reimburs			
36	provided under the program.			
	292 - Higher Education Policy Commis	ssion –		
	Lottery Education –			
	Higher Education Policy Commission –			

Control Account

(WV Code Chapters 18- and 18C)

# Fund <u>4925</u> FY <u>2017</u> Org <u>0441</u>

1	RHI Program and Site		
2	Support (R)	03600	\$ 1,912,491

2128	APPROPRIATIONS	[Ch. 3
3	RHI Program and Site Support –	
4	RHEP Program	
5	Administration (R) 03700	146,653
6	RHI Program and Site Support –	
7	Grad Med	
8	Ed and Fiscal Oversight (R) 03800	87,110
9	Minority Doctoral Fellowship (R) 16600	129,604
10	Health Sciences Scholarship (R) 17600	220,690
11	Vice Chancellor for Health Sciences –	
12	Rural Health Residency	
13	Program (R) 60100	62,725
14	WV Engineering, Science, and	
15	Technology Scholarship	
16	Program	452,831
17	Total\$	3,012,104
18	Any unexpended balances remaining in the app	propriations
19	for RHI Program and Site Support (fund 4925, ap	propriation
20	03600), RHI Program and Site Support - RHE	P Program
21	Administration (fund 4925, appropriation 03700), R	_
22	and Site Support - Grad Med Ed and Fiscal Over	•
23	4925, appropriation 03800), Minority Doctoral Fello	-
24	4925, appropriation 16600), Health Sciences Schola	•
25	4925, appropriation 17600), and Vice Chancellor	
26	Sciences – Rural Health Residency Program (	
27	appropriation 60100) at the close of fiscal year 2010	
28	reappropriated for expenditure during the fiscal year	ır 2017.
29	The above appropriation for WV Engineering, S	Science, and
30	Technology Scholarship Program (appropriation 868	800) shall be
31	transferred to the West Virginia Engineering, S	
32	Technology Scholarship Fund (fund 4928, org 0441)	established
33	by W.Va. Code §18C-6-1.	

293 - Community and Technical College – Capital Improvement Fund

## (WV Code Chapter 18B)

## Fund <u>4908</u> FY <u>2017</u> Org <u>0442</u>

1	Debt Service – Total
2	Any unexpended balance remaining in the appropriation for
3	Capital Outlay and Improvements - Total (fund 4908,
4	appropriation 84700) at the close of fiscal year 2016 is hereby
5	reappropriated for expenditure during the fiscal year 2017.

# 294 - Higher Education Policy Commission – Lottery Education – West Virginia University – School of Medicine

(WV Code Chapter 18B)

## Fund 4185 FY 2017 Org 0463

1	WVU Health Sciences –	
2	RHI Program and Site	
3	Support (R)	7
4	MA Public Health Program and	
5	Health Science Technology (R). 62300 54,79	8
6	Health Sciences Career	
7	Opportunities Program (R) 86900 334,29	6
8	HSTA Program (R) 87000 1,705,19	8
9	Center for Excellence in	
10	Disabilities (R)	9
11	Total\$ 3,558,74	8
12	Any unexpended balances remaining in the appropriation	ıS
13	for WVU Health Sciences – RHI Program and Site Support	
14	(fund 4185, appropriation 03500), MA Public Health Program	n
15	and Health Science Technology (fund 4185, appropriatio	n
16	62300), Health Sciences Career Opportunities Program (fun	d
17	4185, appropriation 86900), HSTA Program (fund 4185	5,
18	appropriation 87000), and Center for Excellence in Disabilities	s

- 19 (fund 4185, appropriation 96700) at the close of fiscal year 2016
- 20 are hereby reappropriated for expenditure during the fiscal year

21 2017.

# 295 - Higher Education Policy Commission – Lottery Education – Marshall University – School of Medicine

# (WV Code Chapter 18B)

# Fund <u>4896</u> FY <u>2017</u> Org <u>0471</u>

1	Marshall Medical School –
2	RHI Program and Site
3	Support (R)
4	Vice Chancellor for Health Sciences –
5	Rural Health Residency
6	Program (R)
7	Total\$ 585,886
8	Any unexpended balances remaining in the appropriations
9	for Marshall Medical School – RHI Program and Site Support
10	(fund 4896, appropriation 03300) and Vice Chancellor for
11	Health Sciences – Rural Health Residency Program (fund 4896,
12	appropriation 60100) at the close of fiscal year 2016 are hereby
13	reappropriated for expenditure during the fiscal year 2017.
14	Total TITLE II, Section 4 —
15	
13	Lottery Revenue. <u>\$ 135,561,119</u>
1	Sec. 5. Appropriations from state excess lottery revenue
2	fund. — In accordance with W.Va. Code §29-22-18a,
3	§29-22A-10d, §29-22A-10e, §29-22C-27a and §29-25-22b, the
4	following appropriations shall be deposited and disbursed by the
5	Director of the Lottery to the following accounts in this section
6	in the amounts indicated.
0	in the uniounts indicated.

- 7 After first funding the appropriations required by W.Va.
- 8 Code §29-22-18a, §29-22A-10d, §29-22A-10e, §29-22C-27a and
- 9 §29-25-22b, the Director of the Lottery shall provide funding
- 10 from the State Excess Lottery Revenue Fund for the remaining
- 11 appropriations in this section to the extent that funds are
- 12 available. In the event that revenues to the State Excess Lottery
- 13 Revenue Fund are sufficient to meet all the appropriations
- 14 required made pursuant to this section, then the Director of the
- 15 Lottery shall then provide the funds available for fund 5365,
- 16 appropriation 18900.

## 296 - Lottery Commission – Refundable Credit

#### Fund <u>7207</u> FY <u>2017</u> Org <u>0705</u>

Excess

	Appro- Lottery priation Funds
1	Directed Transfer 70000 \$ 10,000,000
2	The above appropriation shall be transferred to the General
3	Revenue Fund to provide reimbursement for the refundable
4	credit allowable under W.Va. Code §11-21-21. The amount of
5	the required transfer shall be determined solely by the state tax
6	commissioner and shall be completed by the director of the
7	lottery upon the commissioner's request.

# 297 - Lottery Commission – General Purpose Account

## Fund <u>7206</u> FY <u>2017</u> Org <u>0705</u>

- 1 General Revenue Fund Transfer. . 70011 \$ 65,000,000
- 2 The above appropriation shall be transferred to the General
- 3 Revenue Fund as determined by the director of the lottery in
- 4 accordance with W.Va. Code §29-22-18a.

## 298 - Higher Education Policy Commission – Education Improvement Fund

#### Fund <u>4295</u> FY <u>2017</u> Org <u>0441</u>

1	PROMISE Scholarship	- Transfer	80000	\$	29,000,000
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- 2 The above appropriation shall be transferred to the
- 3 PROMISE Scholarship Fund (fund 4296, org 0441) established
- 4 by W.Va. Code §18C-7-7.
- 5 The Legislature has explicitly set a finite amount of
- 6 available appropriations and directed the administrators of the
- 7 Program to provide for the award of scholarships within the
- 8 limits of available appropriations.

## 299 - Economic Development Authority – Economic Development Project Fund

## Fund 9065 FY 2017 Org 0944

- 2 Pursuant to W.Va. Code §29-22-18a, subsection (f), excess
- 3 lottery revenues are authorized to be transferred to the lottery
- 4 fund as reimbursement of amounts transferred to the economic
- 5 development project fund pursuant to section four of this title
- 6 and W.Va. Code §29-22-18, subsection (f).

# 300 - Department of Education – School Building Authority

## Fund <u>3514</u> FY <u>2017</u> Org <u>0402</u>

301 - West Virginia Infrastructure Council – West Virginia Infrastructure Transfer Fund

#### Fund 3390 FY 2017 Org 0316

1	Directed Transfer	70000	\$	26,000,000
	Directed Hansiel	/ 0000	Ψ	20,000,0

- 2 The above appropriation shall be allocated pursuant to
- 3 W.Va. Code §29-22-18d and §31-15-9.

# 302 - Higher Education Policy Commission – Higher Education Improvement Fund

#### Fund 4297 FY 2017 Org 0441

- The above appropriation shall be transferred to fund 4903,
- 3 org 0442 as authorized by Senate Concurrent Resolution No. 41.

## 303 - Division of Natural Resources State Park Improvement Fund

#### Fund <u>3277</u> FY <u>2017</u> Org <u>0310</u>

1	Current Expenses (R) 13000	\$ 2,438,300
2	Repairs and Alterations (R) 06400	2,161,200
3	Equipment (R)	200,000
4	Buildings (R)	100,000
5	Other Assets (R) 69000	 100,500
6	Total	\$ 5,000,000

- 7 Any unexpended balances remaining in the above
- 8 appropriations for Repairs and Alterations (fund 3277,
- 9 appropriation 06400), Equipment (fund 3277, appropriation
- 10 07000), Unclassified Total (fund 3277, appropriation 09600),
- 11 Unclassified (fund 3277, appropriation 09900), Current
- 12 Expenses (fund 3277, appropriation 13000), Buildings (fund
- 13 3277, appropriation 25800), and Other Assets (fund 3277,
- 14 appropriation 69000) at the close of the fiscal year 2016 are
- 15 hereby reappropriated for expenditure during the fiscal year
- 16 2017.

# 304 - Racing Commission -

# Fund $\underline{7308}$ FY $\underline{2017}$ Org $\underline{0707}$

1 2 3	Special Breeders Compensation (WVC §29-22-18a, subsection (I))	\$	2,000,000
	305 - Lottery Commission – Distributions to Statutory Funds and Pu	ırpose	S
	Fund <u>7213</u> FY <u>2017</u> Org <u>0705</u>		
1 2	Parking Garage Fund – Transfer 70001 2004 Capitol Complex Parking	\$	500,000
3	Garage Fund – Transfer 70002 Capitol Dome and Improvements		254,147
5 6	Fund – Transfer 70003 Capitol Renovation and		2,155,201
7	Improvement Fund – Transfer 70004		2,795,627
9	Development Office Promotion Fund – Transfer		1,524,887
10 11	Research Challenge Fund – Transfer		2,033,184
12 13	Tourism Promotion Fund – Transfer70007		5,659,115
14 15	Cultural Facilities and Capitol Resources Matching Grant		
16 17	Program Fund – Transfer 70008 Workers' Compensation Debt		1,433,371
18 19	Reduction Fund – Transfer 70009 State Debt Reduction Fund –		11,000,000
20 21	Transfer		20,000,000 1,513,472
22	West Virginia Racing Commission Racetrack		1,313,472
23 24	Video Lottery Account 70012		4,066,363

Ch. 3]	APPROPRIATIONS		2135
25	Historic Resort Hotel Fund 70013		34,200
26	Licensed Racetrack Regular		
27	Purse Fund 70014		*
28	Licensed Racetrack * Regular		
29	Purse Fund		10,111,678
30	Total	\$	63,081,245
31 32	The above appropriation for Workers' Co Reduction Fund – Transfer (fund 7213, appr	•	
33	may be redirected by Executive Order to the	Gene	eral Revenue
34	Fund in accordance with §29-22A-10d and §2	9-22	A-10e.

#### 306 - Governor's Office

#### (WV Code Chapter 5)

## Fund <u>1046</u> FY <u>2017</u> Org <u>0100</u>

- 1 Any unexpended balance remaining in the appropriation for
- 2 Publication of Papers and Transition Expenses Lottery Surplus
- 3 (fund 1046, appropriation 06600) at the close of the fiscal year
- 4 2016 is hereby reappropriated for expenditure during the fiscal
- 5 year 2017.

## 307 - West Virginia Development Office

(WV Code Chapter 5B)

## Fund <u>3170</u> FY <u>2017</u> Org <u>0307</u>

- 1 Any unexpended balances remaining in the appropriations
- 2 for Unclassified Total (fund 3170, appropriation 09600),
- 3 Recreational Grants or Economic Development Loans (fund
- 4 3170, appropriation 25300), and Connectivity Research and
- 5 Development Lottery Surplus (fund 3170, appropriation

<sup>\*</sup> Note: The Governor struck out the "0" in Item 305, line 27, and struck out the word "Thoroughbred" in line 28.

6 92300) at the close of the fiscal year 2016 are hereby 7 reappropriated for expenditure during the fiscal year 2017.

308 - Higher Education Policy Commission – Administration – Control Account

(WV Code Chapter 18B)

#### Fund 4932 FY 2017 Org 0441

- 1 Any unexpended balance remaining in the appropriation for
- 2 Advanced Technology Centers (fund 4932, appropriation 02800)
- 3 at the close of the fiscal year 2016 is hereby reappropriated for
- 4 expenditure during the fiscal year 2017.

309 - Division of Health – Central Office

(WV Code Chapter 16)

## Fund 5219 FY 2017 Org 0506

- 1 Any unexpended balance remaining in the appropriation for
- 2 Capital Outlay and Maintenance (fund 5219, appropriation
- 3 75500) at the close of the fiscal year 2016 is hereby
- 4 reappropriated for expenditure during the fiscal year 2017.

310 - Division of Human Services

(WV Code Chapters 9, 48 and 49)

Fund <u>5365</u> FY <u>2017</u> Org <u>0511</u>

311 - Division of Corrections – Correctional Units

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

# Fund <u>6283</u> FY <u>2017</u> Org <u>0608</u>

1	Any unexpended balance remaining in the appropriation for
2	Capital Outlay and Maintenance (fund 6283, appropriation
3	75500) at the close of the fiscal year 2016 is hereby
4	reappropriated for expenditure during the fiscal year 2017.
5	Total TITLE II, Section 5 —
6	Excess Lottery Funds
1	Sec. 6. Appropriations of federal funds. — In accordance
2	with Article 11, Chapter 4 of the Code from federal funds there
3	are hereby appropriated conditionally upon the fulfillment of the
4	provisions set forth in Article 2, Chapter 11- of the Code the
5	following amounts, as itemized, for expenditure during the fiscal

#### **LEGISLATIVE**

6 year 2017.

# 312 - Crime Victims Compensation Fund

(WV Code Chapter 14)

# Fund $\underline{8738}$ FY $\underline{2017}$ Org $\underline{2300}$

	Appı priati		Federal Funds
1	Economic Loss Claim		
2	Payment Fund	00 \$	3,000,000
	JUDICIAL		
	313 - Supreme Court		
	Fund <u>8867</u> FY <u>2017</u> Org <u>24</u>	00	
1	Personal Services and Employee		
2	Benefits	00 \$	2,008,000

2138	APPROPRIATIONS		[Ch. 3
3	Current Expenses		2,542,000
4	Total	\$	4,550,000
•	100000	Ψ	.,000,000
	EXECUTIVE		
	314 - Governor's Office		
	(WV Code Chapter 5)		
	Fund <u>8742</u> FY <u>2017</u> Org <u>0100</u>		
1	Personal Services and Employee		
2	Benefits	\$	86,677
3	Current Expenses		138,323
4	Total	\$	225,000
	315 - Department of Agriculture (WV Code Chapter 19)		
	Fund <u>8736</u> FY <u>2017</u> Org <u>1400</u>		
1	Personal Services and Employee		
2	Benefits	\$	1,563,760
3	Unclassified		50,534
4	Current Expenses		3,828,661
5	Repairs and Alterations 06400		650,000
6	Equipment 07000		910,500
7	Other Assets		50,000
8	Total	\$	7,053,455
	316 - Department of Agriculture –		
	Meat Inspection Fund		

Meat Inspection Fund

(WV Code Chapter 19)

# Fund <u>8737</u> FY <u>2017</u> Org <u>1400</u>

1	Personal Services and Employee	
2	Benefits00100	\$ 610,830
3	Unclassified	8,755
4	Current Expenses	136,012
5	Repairs and Alterations 06400	5,500
6	Equipment 07000	114,478
7	Total	\$ 875,575
	317 - Department of Agriculture –	
	State Conservation Committee	
	(WV Code Chapter 19)	
	Fund <u>8783</u> FY <u>2017</u> Org <u>1400</u>	
1	Personal Services and Employee	
2	Benefits	\$ 97,250
3	Current Expenses	14,099,974
4	Total	\$ 14,197,224
	318 - Department of Agriculture –	
	Land Protection Authority	
	Fund <u>8896</u> FY <u>2017</u> Org <u>1400</u>	
1	Personal Services and Employee	
2	Benefits	\$ 46,526
3	Unclassified	5,004

319 - Secretary of State – State Election Fund 448,920

500,450

\$

Total.....

4

5

(WV Code Chapter 3)

# Fund <u>8854</u> FY <u>2017</u> Org <u>1600</u>

1	Personal Services and Employee	
2	Benefits00100	\$ 210,240
3	Unclassified	7,484
4	Current Expenses	415,727
5	Repairs and Alterations 06400	15,000
6	Other Assets 69000	 100,000
7	Total	\$ 748,451

#### DEPARTMENT OF COMMERCE

320 - Division of Forestry

(WV Code Chapter 19)

## Fund <u>8703</u> FY <u>2017</u> Org <u>0305</u>

Personal Services and Employee		
Benefits00100	\$	1,578,347
Unclassified		51,050
Current Expenses		5,632,560
Repairs and Alterations 06400		155,795
Equipment 07000		100,000
Other Assets		1,808,300
Total	\$	9,326,052
	Benefits.       00100         Unclassified.       09900         Current Expenses.       13000         Repairs and Alterations.       06400         Equipment.       07000         Other Assets.       69000	Benefits.       00100       \$         Unclassified.       09900         Current Expenses.       13000         Repairs and Alterations.       06400         Equipment.       07000         Other Assets.       69000

# 321 - Geological and Economic Survey

(WV Code Chapter 29)

# Fund $\underline{8704}$ FY $\underline{2017}$ Org $\underline{0306}$

1	Personal Services and Employee	
2	Benefits	\$ 54,432
3	Unclassified	2,803
4	Current Expenses	195,639

Ch. 3	APPROPRIATIONS		2141
5	Repairs and Alterations 06400		5,000
6	Equipment 07000		7,500
7	Other Assets		15,000
8	Total	\$	280,374
	322 - West Virginia Development Off	ice	
	(WV Code Chapter 5B)		
	Fund <u>8705</u> FY <u>2017</u> Org <u>0307</u>		
1	Personal Services and Employee		
2	Benefits	\$	745,981
3	Unclassified		50,000
4	Current Expenses		4,504,019
5	Total	\$	5,300,000
	323 - Division of Labor		
	(WV Code Chapters 21 and 47)		
	Fund <u>8706</u> FY <u>2017</u> Org <u>0308</u>		
1	Personal Services and Employee		
2	Benefits	\$	384,072
3	Unclassified		5,572
4	Current Expenses		167,098
5	Repairs and Alterations 06400		500
6	Total	\$	557,242
	324 - Division of Natural Resource	S	
	(WV Code Chapter 20)		
	Fund <u>8707</u> FY <u>2017</u> Org <u>0310</u>		
1	Personal Services and Employee		
2	Benefits	\$	7,912,218

2142	APPROPRIATIONS		[Ch. 3
3	Unclassified		107,693
4	Current Expenses		5,556,594
5	Repairs and Alterations 06400		289,400
6	Equipment 07000		1,815,712
7	Buildings		951,000
8	Other Assets		1,951,000
9	Land		1,000
10	Total	\$	18,584,617
	325 - Division of Miners' Health, Safety and Training		
	(WV Code Chapter 22)		
	Fund <u>8709</u> FY <u>2017</u> Org <u>0314</u>		
1	Personal Services and Employee		
2	Benefits	\$	613,177
3	Current Expenses	·	150,000
4	Total	\$	763,177
	326 - WorkForce West Virginia		
	(WV Code Chapter 23)		
	Fund <u>8835</u> FY <u>2017</u> Org <u>0323</u>		
1	Unclassified	\$	5,127
2	Current Expenses		507,530
3	Reed Act 2002 – Unemployment		
4	Compensation 62200		2,850,000
5	Reed Act 2002 – Employment		
6	Services 63000		1,650,000
7	Total	\$	5,012,657
8	Pursuant to the requirements of 42 U.S.C.	1103	, Section 903
9	of the Social Security Act, as amended, and		

- 10 W.Va. Code §21A-9-9, the above appropriation to Unclassified
- 11 and Current Expenses shall be used by WorkForce West Virginia
- 12 for the specific purpose of administration of the state's
- 13 unemployment insurance program or jo- service activities,
- 14 subject to each and every restriction, limitation or obligation
- 15 imposed on the use of the funds by those federal and state
- 16 statutes.

5

# 327 - Office of the Secretary – Office of Economic Opportunity

(WV Code Chapter 5)

#### Fund 8780 FY 2017 Org 0327

1	Personal Services and Employee	
2	Benefits	\$ 497,289
3	Unclassified	106,795
4	Current Expenses	10,068,916
5	Repairs and Alterations 06400	500
6	Equipment 07000	 6,000
7	Total	\$ 10,679,500
	328 - Division of Energy (WV Code Chapter 5B) Fund 8892 FY 2017 Org 0328	
1	Personal Services and Employee	
2	Benefits00100	\$ 411,574
3	Unclassified	7,350
4	Current Expenses	 2,816,076

#### DEPARTMENT OF EDUCATION

3,235,000

\$

329 - State Board of Education – State Department of Education

# (WV Code Chapters 18 and 18A)

# Fund 8712 FY 2017 Org 0402

	Fund <u>8/12</u> FY <u>2017</u> Org <u>0402</u>	
1	Personal Services and Employee	
2	Benefits	\$ 7,078,855
3	Unclassified	2,000,000
4	Current Expenses	210,917,820
5	Repairs and Alterations 06400	10,000
6	Equipment 07000	10,000
7	Other Assets	 10,000
8	Total	\$ 220,026,675
	330 - State Board of Education –	
	School Lunch Program	
	(WV Code Chapters 18 and 18A)	
	Fund <u>8713</u> FY <u>2017</u> Org <u>0402</u>	
1	Personal Services and Employee	
2	Benefits	\$ 1,992,648
3	Unclassified	1,150,500
4	Current Expenses	128,101,265
5	Repairs and Alterations 06400	20,000
6	Equipment 07000	100,000
7	Other Assets	 25,000
8	Total	\$ 131,389,413
	331 - State Board of Education –	
	Vocational Division	
	(WV Code Chapters 18 and 18A)	
	Fund <u>8714</u> FY <u>2017</u> Org <u>0402</u>	

Personal Services and Employee

1

2

Ch. 3	] APPROPRIATIONS		2145
3 4 5	Unclassified.09900Current Expenses.13000Repairs and Alterations.06400		155,000 14,320,081 10,000
6	Equipment 07000		10,000
7 8	Other Assets	\$	10,000 16,025,053
	332 - State Board of Education – Aid for Exceptional Children		
	(WV Code Chapters 18 and 18A)		
	Fund <u>8715</u> FY <u>2017</u> Org <u>0402</u>		
1 2 3 4 5 6 7 8	Personal Services and Employee Benefits. 00100 Unclassified. 09900 Current Expenses. 13000 Repairs and Alterations. 06400 Equipment. 07000 Other Assets. 69000 Total.	\$	4,044,940 1,000,000 107,646,390 10,000 10,000 10,000 112,721,330
	DEPARTMENT OF EDUCATION AND T		
	333 - Department of Education and the A Office of the Secretary	Arts	· —
	(WV Code Chapter 5F)		
	Fund <u>8841</u> FY <u>2017</u> Org <u>0431</u>		
1 2 3 4 5	Personal Services and Employee Benefits	\$ 	414,424 5,589,576 1,000 6,005,000

# 334 - Division of Culture and History

# (WV Code Chapter 29)

# Fund <u>8718</u> FY <u>2017</u> Org <u>0432</u>

743,046
947,372
1,000
1,000
1,000
1,000
360
694,778
333,648
076,162
543,406
953,216
750,000
(

337 - State Board of Rehabilitation — Division of Rehabilitation Services

## (WV Code Chapter 18)

# Fund <u>8734</u> FY <u>2017</u> Org <u>0932</u>

1	Personal Services and Employee	
2	Benefits00100	\$ 11,248,930
3	Current Expenses	54,485,940
4	Repairs and Alterations 06400	350,400
5	Equipment 07000	 1,275,870
6	Total	\$ 67,361,140

338 - State Board of Rehabilitation — Division of Rehabilitation Services — Disability Determination Services

(WV Code Chapter 18)

## Fund 8890 FY 2017 Org 0932

1	Personal Services and Employee	
2	Benefits00100	\$ 13,730,634
3	Current Expenses	11,383,206
4	Repairs and Alterations 06400	1,100
5	Equipment 07000	 83,350
6	Total	\$ 25,198,290

#### DEPARTMENT OF ENVIRONMENTAL PROTECTION

339 - Division of Environmental Protection

(WV Code Chapter 22)

## Fund 8708 FY 2017 Org 0313

1	Personal Services and Employee		
2	Benefits00	0100 \$	28,402,177
3	Current Expenses	3000	164,785,225
4	Repairs and Alterations00	6400	230,783

2148	APPROPRIATIONS		[Ch. 3
5	Equipment 07000		725,238
6	Unclassified		1,900,000
7	Other Assets		154,416
8	Land		100,000
9	Total	\$	196,297,839
DE	PARTMENT OF HEALTH AND HUMAN	RES	SOURCES
	340 - Consolidated Medical Service F	und	
	(WV Code Chapter 16)		
	Fund <u>8723</u> FY <u>2017</u> Org <u>0506</u>		
1	Personal Services and Employee		
2	Benefits	\$	750,876
3	Unclassified		73,307
4	Current Expenses		6,630,103
5	Total	\$	7,454,286
	341 - Division of Health – Central Office		
	(WV Code Chapter 16)		
	Fund <u>8802</u> FY <u>2017</u> Org <u>0506</u>		
1	Personal Services and Employee		
2	Benefits	\$	13,744,404
3	Unclassified		947,948
4	Current Expenses		79,110,551
5	Equipment 07000		456,972
6	Buildings		155,000
7	Other Assets		380,000
8	Total	\$	94,794,875

342 - Division of Health – West Virginia Safe Drinking Water Treatment

Ch. 3	] APPROPRIATIONS		2149
	(WV Code Chapter 16)		
	Fund <u>8824</u> FY <u>2017</u> Org <u>0506</u>		
1 2	West Virginia Drinking Water Treatment Revolving Fund – Transfer 68900	\$	16,000,000
	343 - West Virginia Health Care Autho	rity	
	(WV Code Chapter 16)		
	Fund <u>8851</u> FY <u>2017</u> Org <u>0507</u>		
1 2 3	Unclassified	\$ <del>\$</del>	9,966 986,649 996,615
	344 - Human Rights Commission		
	(WV Code Chapter 5)		
	Fund <u>8725</u> FY <u>2017</u> Org <u>0510</u>		
1 2 3 4 5	Personal Services and Employee Benefits	\$	625,349 5,482 140,389 771,220
	345 - Division of Human Services		
	(WV Code Chapters 9, 48 and 49)		
	Fund <u>8722</u> FY <u>2017</u> Org <u>0511</u>		
1 2	Personal Services and Employee Benefits	\$	68,841,330

22,855,833

2150	APPROPRIATIONS		[Ch. 3
4	Current Expenses		72,056,205
5	Medical Services 18900	2	,884,265,405
6	Medical Services Administrative		,,,
7	Costs		132,045,119
8	CHIP Administrative Costs 85601		3,333,752
9	CHIP Services		47,422,974
10	Federal Economic Stimulus 89100		45,693,209
11	Total	\$3	,276,513,827
	DEPARTMENT OF MILITARY AFI AND PUBLIC SAFETY  346 - Office of the Secretary	FAIR	<b>RS</b>
	(WV Code Chapter 5F)		
	Fund <u>8876</u> FY <u>2017</u> Org <u>0601</u>		
1	Personal Services and Employee		
2	Benefits	\$	439,636
3	Unclassified		250,000
4	Current Expenses		24,307,690
5	Repairs and Alterations 06400		3,000
6	Other Assets 69000		5,000
7	Total	\$	25,005,326
	347 - Adjutant General – State Militia		
	(WV Code Chapter 15)		
	Fund <u>8726</u> FY <u>2017</u> Org <u>0603</u>		
1 2	Unclassified	\$	982,705
3	Academy		3,375,000
4	Martinsburg Starbase		410,000
7	That all boding buildings		110,000

Ch. 3	APPROPRIATIONS		2151
5 6 7	Charleston Starbase.74300Military Authority.74800Total	\$	400,000 93,102,900 98,270,605
8 9	The adjutant general shall have the aut between appropriations.	horit	y to transfer
ı	348 - Adjutant General – West Virginia National Guard Counterdrug Fo	rfeiti	ıre Fund
	(WV Code Chapter 15)		
	Fund <u>8785</u> FY <u>2017</u> Org <u>0603</u>		
1 2 3 4 5	Personal Services and Employee Benefits. 00100 Current Expenses. 13000 Equipment. 07000 Total	\$	1,350,000 300,000 350,000 2,000,000
	349 - Division of Homeland Security Emergency Management	and	
	(WV Code Chapter 15)		
	Fund <u>8727</u> FY <u>2017</u> Org <u>0606</u>		
1 2 3 4 5 6	Personal Services and Employee Benefits	\$ \$	721,650 20,429,281 5,000 100,000 21,255,931

350 - Division of Corrections

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

2152	APPROPRIATIONS		[Ch. 3
	Fund <u>8836</u> FY <u>2017</u> Org <u>0608</u>		
1 2 3	Unclassified.         09900           Current Expenses.         13000           Total.	\$ \$	1,100 108,900 110,000
	351 - West Virginia State Police		
	(WV Code Chapter 15)		
	Fund <u>8741</u> FY <u>2017</u> Org <u>0612</u>		
1 2 3 4 5 6 7 8 9	Personal Services and Employee       00100         Benefits.       00100         Current Expenses.       13000         Repairs and Alterations.       06400         Equipment.       07000         Buildings.       25800         Other Assets.       69000         Land.       73000         Total.       352 - Fire Commission         (WV Code Chapter 29)         Fund 8819 FY 2017 Org 0619	\$	2,325,349 2,125,971 42,000 2,502,285 750,500 144,500 500 7,891,105
1	Current Expenses	\$	80,000
	353 - Division of Justice and Community S	Servic	res
	(WV Code Chapter 15)		
	Fund <u>8803</u> FY <u>2017</u> Org <u>0620</u>		
1 2	Personal Services and Employee Benefits00100	\$	1,056,170

Ch. 3	APPROPRIATIONS		2153
3 4 5 6	Unclassified.09900Current Expenses.13000Repairs and Alterations.06400Total	\$	25,185 18,774,373 1,750 19,857,478
	DEPARTMENT OF REVENUE		
	354 - Insurance Commissioner		
	(WV Code Chapter 33)		
	Fund <u>8883</u> FY <u>2017</u> Org <u>0704</u>		
1	Current Expenses	\$	3,000,000
	DEPARTMENT OF TRANSPORTAT	rior	N
	355 - Division of Motor Vehicles		
	(WV Code Chapter 17B)		
	Fund <u>8787</u> FY <u>2017</u> Org <u>0802</u>		
1 2 3 4 5	Personal Services and Employee Benefits	\$	501,394 15,671,640 500 16,173,534
	356 - Division of Public Transit		
	(WV Code Chapter 17)		
	Fund <u>8745</u> FY <u>2017</u> Org <u>0805</u>		
1 2 3	Personal Services and Employee Benefits	\$	702,637 9,161,605

2154	APPROPRIATIONS		[Ch. 3
4	Repairs and Alterations 06400		2,500
5	Equipment 07000		5,486,432
6	Buildings		205,526
7	Other Assets		35,000
8	Total	\$	15,593,700
	357 - Public Port Authority		
	(WV Code Chapter 17)		
	Fund <u>8830</u> FY <u>2017</u> Org <u>0806</u>		
1	Current Expenses	\$	626,250
	DEPARTMENT OF VETERANS' ASSI	STAN	NCE
	358 - Department of Veterans' Assist	ance	
	(WV Code Chapter 9A)		
	Fund <u>8858</u> FY <u>2017</u> Org <u>0613</u>		
1	Personal Services and Employee		
2	Benefits00100	\$	2,751,100
3	Current Expenses		3,925,900
4	Repairs and Alterations 06400		50,000
5	Equipment 07000		200,000
6	Buildings		600,000
7	Other Assets		100,000
8	Land		100,000
9	Total	\$	7,727,000
	350 Danartment of Veterans' Assista	ın ca	

359 - Department of Veterans' Assistance – Veterans' Home

(WV Code Chapter 9A)

# Fund <u>8728</u> FY <u>2017</u> Org <u>0618</u>

1	Personal Services and Employee	
2	Benefits00100	\$ 877,915
3	Current Expenses	844,092
4	Repairs and Alterations 06400	220,000
5	Equipment 07000	198,000
6	Buildings	296,000
7	Other Assets	20,000
8	Land	 10,000
9	Total	\$ 2,466,007

#### **BUREAU OF SENIOR SERVICES**

360 - Bureau of Senior Services

(WV Code Chapter 29)

## Fund 8724 FY 2017 Org 0508

1	Personal Services and Employee	
2	Benefits	\$ 721,393
3	Current Expenses	13,811,853
4	Repairs and Alterations 06400	 3,000
5	Total	\$ 14,536,246

#### MISCELLANEOUS BOARDS AND COMMISSIONS

361 - Public Service Commission – Motor Carrier Division

(WV Code Chapter 24A)

# Fund <u>8743</u> FY <u>2017</u> Org <u>0926</u>

1	Personal Services and Employee		
2	Benefits001	.00	\$ 1,286,913
3	Current Expenses	000	843,953

2156	APPROPRIATIONS		[Ch. 3		
4	Repairs and Alterations		40,000		
5	Equipment		1,862,000		
6	Total	\$	4,032,866		
Ü	10000	Ψ	.,002,000		
	362 - Public Service Commission -	-			
	Gas Pipeline Division				
	(WV Code Chapter 24B)				
	Fund <u>8744</u> FY <u>2017</u> Org <u>0926</u>				
1	Personal Services and Employee				
2	Benefits	\$	596,600		
3	Current Expenses		124,628		
4	Equipment 07000		3,000		
5	Unclassified		4,072		
6	Total	\$	728,300		
	363 - National Coal Heritage Area Auth	hority	,		
	(WV Code Chapter 29)				
	Fund <u>8869</u> FY <u>2017</u> Org <u>0941</u>				
1	Personal Services and Employee				
2	Benefits	\$	159,235		
3	Current Expenses		631,365		
4	Repairs and Alterations 06400		5,000		
5	Equipment 07000		3,000		
6	Other Assets		2,000		
7	Total	\$	800,600		
8	Total TITLE II, Section 6 –				
9	Federal Funds	<u>\$4,</u>	501,997,279		
1	Sec. 7. Appropriations from federal blo	ck g	rants. – The		
2	following items are hereby appropriated from				
3	grants to be available for expenditure during the				

## 2157

# 364 - West Virginia Development Office – Community Development

# Fund <u>8746</u> FY <u>2017</u> Org <u>0307</u>

	<u> </u>	
1	Personal Services and Employee	
2	Benefits	\$ 648,117
3	Unclassified	375,000
4	Current Expenses	36,476,883
5	Total	\$ 37,500,000
	365 - WorkForce West Virginia –	
	Workforce Investment Act	
	Fund <u>8749</u> FY <u>2017</u> Org <u>0323</u>	
1	Personal Services and Employee	
2	Benefits	\$ 2,862,606
3	Unclassified	23,023
4	Current Expenses	28,513,511
5	Repairs and Alterations 06400	1,600
6	Equipment 07000	500
7	Buildings	 1,100
8	Total	\$ 31,402,340
	366 - Department of Commerce	
	Office of the Secretary –	
	Office of Economic Opportunity –	
	Community Services	
	Fund <u>8781</u> FY <u>2017</u> Org <u>0327</u>	
	<del></del>	
1	Personal Services and Employee	
2	Benefits	\$ 362,389
3	Unclassified	84,000
4	Current Expenses	12,043,111
5	Repairs and Alterations 06400	1,500

2158	APPROPRIATIONS		[Ch. 3
6	Equipment		9,000
7	Total	\$	12,500,000
·		_	,_ ,_ ,, , , , ,
	367 - Division of Health –		
	Maternal and Child Health		
	Fund <u>8750</u> FY <u>2017</u> Org <u>0506</u>		
1	Personal Services and Employee		
2	Benefits	\$	2,124,294
3	Unclassified		110,017
4	Current Expenses		8,767,420
5	Total	\$	11,001,731
	368 - Division of Health – Preventive Health		
	Fund <u>8753</u> FY <u>2017</u> Org <u>0506</u>		
1	Personal Services and Employee		
2	Benefits	\$	162,320
3	Unclassified		22,457
4	Current Expenses		1,895,366
5	Equipment 07000		165,642
6	Total	\$	2,245,785
	369 - Division of Health –		
	Substance Abuse Prevention and Treat	ment	
	Fund <u>8793</u> FY <u>2017</u> Org <u>0506</u>		
1	Personal Services and Employee		
2	Benefits	\$	822,766
3	Unclassified		115,924
4	Current Expenses		10,653,740
5	Total	\$	11,592,430

# 370 - Division of Health – Community Mental Health Services

# Fund <u>8794</u> FY <u>2017</u> Org <u>0506</u>

1	Personal Services and Employee		
2	Benefits	\$	936,557
3	Unclassified		33,533
4	Current Expenses 13000		2,383,307
5	Total	\$	3,353,397
	371 - Division of Human Services	_	
	Energy Assistance		
	Fund <u>8755</u> FY <u>2017</u> Org <u>0511</u>		
1	Personal Services and Employee		
2	Benefits	\$	1,514,312
3	Unclassified		350,000
4	Current Expenses		33,181,300
5	Total	\$	35,045,612
	372 - Division of Human Services	_	
	Social Services		
	Social Services		
	Fund <u>8757</u> FY <u>2017</u> Org <u>0511</u>		
1	Personal Services and Employee		
2	Benefits	\$	14,231,684
3	Unclassified		171,982
4	Current Expenses		2,870,508

373 - Division of Human Services – Temporary Assistance for Needy Families

Total.....

\$

17,274,174

5

Fund <u>8816</u> FY <u>2017</u> Org <u>0511</u>

2160	APPROPRIATIONS		[Ch. 3
1 2 3 4 5	Personal Services and Employee Benefits	\$	18,297,327 1,250,000 105,847,136 125,394,463
	374 - Division of Human Services – Child Care and Development		
	Fund <u>8817</u> FY <u>2017</u> Org <u>0511</u>		
1 2 3 4 5	Personal Services and Employee Benefits	\$	4,676,841 350,000 31,999,456 37,026,297
	375 - Division of Justice and Community Se Juvenile Accountability Incentive Fund 8829 FY 2017 Org 0620	rvio	ces –
1 2 3 4 5	Personal Services and Employee Benefits	\$	14,246 85,729 25 100,000
6 7	Total TITLE II, Section 7 — Federal Block Grants	<u>\$</u>	324,436,229
1 2 3 4 5 6	2 hereby appropriated for fiscal year 2017, from the fund a designated, in the amounts as specified, general revenue fund in the amount of \$447,066, special revenue funds in the amount of \$89,910, and state road funds in the amount of \$983,485 for		

1	Sec. 9. Appropriations from general revenue surplus
2	<b>accrued.</b> — The following item is hereby appropriated from the
3	state fund, general revenue, and is to be available for expenditure
4	during the fiscal year 2017 out of surplus funds only, accrued
5	from the fiscal year ending June 30, 2016, subject to the terms
6	and conditions set forth in this section.
7	It is the intent and mandate of the Legislature that the
8	following appropriation be payable only from surplus accrued as
9	of July 31, 2016 from the fiscal year ending June 30, 2016, only
10	after first meeting requirements of W.Va. Code §11B-2-20(b).
1	In the event that surplus revenues available on July 31, 2016,
12	are not sufficient to meet the appropriation made pursuant to this
13	section, then the appropriation shall be made to the extent that
14	surplus funds are available as of the date mandated and shall be
15	allocated first to provide the necessary funds to meet the
16	appropriation of this section.
	376 - Division of Human Services
	(WV Code Chapters 9, 48 and 49)
	Fund <u>0403</u> FY <u>2017</u> Org <u>0511</u>
1	Medical Services Surplus 63300 \$ 5,500,000

3	Surplus Accrued
1	Sec. 10. Appropriations from lottery net profits surplus
2	accrued. — The following item is hereby appropriated from the
3	lottery net profits, and is to be available for expenditure during
4	the fiscal year 2017 out of surplus funds only, as determined by
5	the director of lottery, accrued from the fiscal year ending June
6	30, 2016, subject to the terms and conditions set forth in this
7	section.

Total TITLE II, Section 9 –

- 8 It is the intent and mandate of the Legislature that the 9 following appropriation be payable only from surplus accrued 10 from the fiscal year ending June 30, 2016.
- In the event that surplus revenues available from the fiscal year ending June 30, 2016, are not sufficient to meet the appropriation made pursuant to this section, then the appropriation shall be made to the extent that surplus funds are available.

## 377 - Bureau of Senior Services – Lottery Senior Citizens Fund

## (WV Code Chapter 29)

#### Fund <u>5405</u> FY <u>2017</u> Org <u>0508</u>

1	Senior Services Medicaid Transfer – Lottery Surplus 68199	\$	8,000,000
3	Total TITLE II, Section 10 –		
4	Surplus Accrued	\$	8,000,000
1	Sec. 11. Appropriations from state exce	ss lott	ery revenue
2	surplus accrued. — The following item is he	ereby a	appropriated
3	from the state excess lottery revenue fund, an	d is to	be available
4	for expenditure during the fiscal year 2017 o	ut of s	urplus funds
5	only, as determined by the director of lottery	, accrı	aed from the
6	fiscal year ending June 30, 2016, subject	to the	e terms and
7	conditions set forth in this section.		
8	It is the intent and mandate of the Le	gislat	ure that the
9	following appropriation be payable only fro	_	

In the event that surplus revenues available from the fiscal year ending June 30, 2016, are not sufficient to meet the appropriation made pursuant to this section, then the

from the fiscal year ending June 30, 2016.

10

16 17

18

- 14 appropriation shall be made to the extent that surplus funds are
- available. 15

#### 378 - Division of Human Services

(WV Code Chapters 9, 48 and 49)

#### Fund 5365 FY 2017 Org 0511

1 Medical Services – 2 Lottery Surplus 68100 \$ 30.	0,000,000		
3 Total TITLE II, Section 11 –			
4 Surplus Accrued	,000,000		
1 Sec. 12. Special revenue appropriations. — T	There are		
2 hereby appropriated for expenditure during the fiscal year	ear 2017		
3 appropriations made by general law from special revenue	es which		
4 are not paid into the state fund as general revenue u	inder the		
5 provisions of W.Va. Code §12-2-2: Provided, That not	ne of the		
6 money so appropriated by this section shall be avail	lable for		
expenditure except in compliance with the provisions of W.Va.			
8 Code §12-2 and 3, and W.Va. Code §11B-2, unless the s	spending		
9 unit has filed with the director of the budget and the le	unit has filed with the director of the budget and the legislative		
10 auditor prior to the beginning of each fiscal year:			
11 (a) An estimate of the amount and sources of all 1	ravanuas		
	revenues		
12 accruing to such fund; and			
13 (b) A detailed expenditure schedule showing f	for what		
14 purposes the fund is to be expended During Fiscal Ye			
the following funds are hereby available and are to be tra			

379 - Treasurer's Office -Flood Insurance Tax Fund

from available balances per the following:

to the Department of Health and Human Resources, Division of

Human Services - Medical Services Trust Fund (fund 5185)

2164	APPROPRIATIONS		[Ch. 3	
	(WV Code Chapter 33)			
	Fund <u>1343</u> FY <u>2017</u> Org <u>1300</u>			
1	Directed Transfer	\$	474,000	
	380 - Treasurer's Office – Treasurer's Financial Electronic Commer	ce Fund	d	
	(WV Code Chapter 12)			
	Fund <u>1345</u> FY <u>2017</u> Org <u>1300</u>			
1	Directed Transfer	\$	500,000	
381 - Secretary of State — Marriage Celebrants Registration Fee Administration Fund				
	(WV Code Chapter 48)			
	Fund <u>1613</u> FY <u>2017</u> Org <u>1600</u>			
1	Directed Transfer	\$	100,000	
382 - State Election Commission – Supreme Court Public Campaign Financing				
	(WV Code Chapter 3)			
	Fund <u>1690</u> FY <u>2017</u> Org <u>1601</u>			
1	Directed Transfer	\$	500,000	
	383 - Surplus Property Division – Sale of Surplus Property Fund			

(WV Code Chapter 5A)

CII. <i>3</i>	J I I KOI KITTOTO		2103
	Fund <u>2281</u> FY <u>2017</u> Org <u>0214</u>		
1	Directed Transfer	\$	500,000
	384 - Division of Environmental Protecti Dam Safety Rehabilitation Revolving F		
	(WV Code Chapter 22)		
	Fund <u>3025</u> FY <u>2017</u> Org <u>0313</u>		
1	Directed Transfer	\$	1,000,000
	385 - Division of Forestry - Outdoor Heritage Conservation Fund	d	
	(WV Code Chapter 5B)		
	Fund <u>3091</u> FY <u>2017</u> Org <u>0305</u>		
1	Directed Transfer 70000	\$	1,000,000
	386 - West Virginia Development Offic Development Office Promotion Fund		
	(WV Code Chapter 5B)		
	Fund <u>3171</u> FY <u>2017</u> Org <u>0307</u>		
1	Directed Transfer	\$	*500,000
	387 - Division of Environmental Protecti Underground Tank Insurance Fund	ion –	

**APPROPRIATIONS** 

2165

Ch. 3]

<sup>\*</sup> **Note:** The Governor reduced Item 386, line 1, by \$500, 000, from \$1,000, 000 to \$500, 000.

The total does NOT reflect the reductions made by the Governor.

(WV Code Chapter 22)

#### Fund 3218 FY 2017 Org 0313

388 - Department of Environmental Protection - Water Quality Management Fund

(WV Code Chapter 22)

#### Fund 3327 FY 2017 Org 0313

> 389 - Department of Environmental Protection – Closure Cost Assistance Fund

> > (WV Code Chapter 22)

#### Fund 3328 FY 2017 Org 0313

390 - Division of Culture and History – Veterans' Memorial

(WV Code Chapter 29)

#### Fund 3532 FY 2017 Org 0432

> 391 - Division of Human Services -Medicaid Fraud Control Fund

> > (WV Code Chapter 9)

Fund 5141 FY 2017 Org 0511

Ch. 3	APPROPRIATIONS		2167
1	Directed Transfer	\$	500,000
	392 - Division of Health - Central Office Lottery Fund		
	(WV Code Chapter 16)		
	Fund <u>5219</u> FY <u>2017</u> Org <u>0506</u>		
1	Directed Transfer	\$	450,000
	393 - Division of Health - DHHR Safety and Treatment Fund		
	(WV Code Chapter 17)		
	Fund <u>5228</u> FY <u>2017</u> Org <u>0506</u>		
1	Directed Transfer	\$	500,000
	394 - Division of Corrections - Prison Industries Fund		
	Fund <u>6303</u> FY <u>2017</u> Org <u>0608</u>		
1	Directed Transfer	\$	500,000
	395 - Insurance Commissioner – Unfair Claims Settlement Practice Trust	Fund	
	(WV Code Chapter 33)		
	Fund <u>7168</u> FY <u>2017</u> Org <u>0704</u>		
1	Directed Transfer	\$	1,000,000
	396 - Board of Pharmacy - Pharmacy Operating Fund		
	(WV Code Chapter 30)		

#### Fund 8537 FY 2017 Org 0913

## 397 - West Virginia Economic Development Authority – WVEDA Credit Insurance Fund

(WV Code Chapter 31)

#### Fund 9063 FY 2017 Org 0944

#### Sec. 13. State improvement fund appropriations. —

- 2 Bequests or donations of nonpublic funds, received by the
- 3 Governor on behalf of the state during the fiscal year 2017, for
- 4 the purpose of making studies and recommendations relative to
- 5 improvements of the administration and management of
- 6 spending units in the executive branch of state government, shall
- 7 be deposited in the state treasury in a separate account therein
- 8 designated state improvement fund.
- 9 There are hereby appropriated all moneys so deposited
- 10 during the fiscal year 2017 to be expended as authorized by the
- 11 Governor, for such studies and recommendations which may
- 12 encompass any problems of organization, procedures, systems,
- 13 functions, powers or duties of a state spending unit in the
- 14 executive branch, or the betterment of the economic, social,
- 15 educational, health and general welfare of the state or its
- 16 citizens.

1

\* **Note:** The Governor reduced Item 396, line 1, by \$500, 000, from \$500, 000 to \$0.

The total does NOT reflect the reductions made by the Governor.

- 1 Sec. 14. Specific funds and collection accounts. A fund
- 2 or collection account which by law is dedicated to a specific use
- 3 is hereby appropriated in sufficient amount to meet all lawful
- 4 demands upon the fund or collection account and shall be
- 5 expended according to the provisions of Article 3, Chapter 12 of
- 6 the Code.
- 1 Sec. 15. Appropriations for refunding erroneous
- 2 **payment.** Money that has been erroneously paid into the state
- 3 treasury is hereby appropriated out of the fund into which it was
- 4 paid, for refund to the proper person.
- 5 When the officer authorized by law to collect money for the
- 6 state finds that a sum has been erroneously paid, he or she shall
- 7 issue his or her requisition upon the Auditor for the refunding of
- 8 the proper amount. The Auditor shall issue his or her warrant to
- 9 the Treasurer and the Treasurer shall pay the warrant out of the
- 10 fund into which the amount was originally paid.
  - 1 **Sec. 16. Sinking fund deficiencies.** There is hereby
  - 2 appropriated to the Governor a sufficient amount to meet any
  - 3 deficiencies that may arise in the mortgage finance bond
  - 4 insurance fund of the West Virginia housing development fund
  - 5 which is under the supervision and control of the municipal bond
  - 6 commission as provided by W.Va. Code §31-18-20b, or in the
  - 7 funds of the municipal bond commission because of the failure
  - 8 of any state agency for either general obligation or revenue
  - 9 bonds or any local taxing district for general obligation bonds to
- 10 remit funds necessary for the payment of interest and sinking
- 11 fund requirements. The Governor is authorized to transfer from
- 12 time to time such amounts to the municipal bond commission as
- may be necessary for these purposes.
- 14 The municipal bond commission shall reimburse the state of
- 15 West Virginia through the Governor from the first remittance
- 16 collected from the West Virginia housing development fund or

- 17 from any state agency or local taxing district for which the
- 18 Governor advanced funds, with interest at the rate carried by the
- 19 bonds for security or payment of which the advance was made.
  - 1 **Sec. 17. Appropriations for local governments.** There
- 2 are hereby appropriated for payment to counties, districts and
- 3 municipal corporations such amounts as will be necessary to pay
- 4 taxes due counties, districts and municipal corporations and
- 5 which have been paid into the treasury:
- 6 (a) For redemption of lands;
- 7 (b) By public service corporations;
- 8 (c) For tax forfeitures.
- 1 **Sec. 18. Total appropriations.** Where only a total sum
- 2 is appropriated to a spending unit, the total sum shall include
- 3 personal services and employee benefits, annual increment,
- 4 current expenses, repairs and alterations, buildings, equipment,
- 5 other assets, land, and capital outlay, where not otherwise
- 6 specifically provided and except as otherwise provided in TITLE
- 7 I GENERAL PROVISIONS, Sec. 3.
- 1 Sec. 19. General school fund. The balance of the
- 2 proceeds of the general school fund remaining after the payment
- 3 of the appropriations made by this act is appropriated for
- 4 expenditure in accordance with W.Va. Code §18-9A-16.

#### TITLE III - ADMINISTRATION

- §1. Appropriations conditional
- §2. Constitutionality

#### TITLE III – ADMINISTRATION.

- 1 **Sec. 1. Appropriations conditional.** The expenditure of
- 2 the appropriations made by this act, except those appropriations
- 3 made to the legislative and judicial branches of the state

- 4 government, are conditioned upon the compliance by the
- 5 spending unit with the requirements of Article 2, Chapter 11- of
- 6 the Code.
- Where spending units or parts of spending units have been
- 8 absorbed by or combined with other spending units, it is the
- 9 intent of this act that appropriations and reappropriations shall be
- 10 to the succeeding or later spending unit created, unless otherwise
- 11 indicated.
  - 1 Sec. 2. Constitutionality. If any part of this act is
  - 2 declared unconstitutional by a court of competent jurisdiction, its
  - 3 decision shall not affect any portion of this act which remains,
- 4 but the remaining portion shall be in full force and effect as if
- 5 the portion declared unconstitutional had never been a part of the
- 6 act.



#### **CHAPTER 4**

(S. B. 1011 - By Senators Cole (Mr. President) and Kessler) [By Request of the Executive]

[Passed June 13, 2016; in effect from passage.] [Approved by the Governor on June 17, 2016.]

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; and reducing the distributions to the West Virginia Infrastructure Fund to \$20 million for fiscal year 2017.

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 3 above is for the fiscal year beginning July 1, 2010, only. For the fiscal year beginning July 1, 2011, and each fiscal year 5 thereafter, in lieu of the deposits required under subdivision (5), 6 subsection (d), section eighteen-a of this article, the commission 7 shall, first, deposit \$6 million into the West Virginia 8 9 Infrastructure Lottery Revenue Debt Service Fund created in subsection (h), section nine, article fifteen-a, chapter thirty-one 10 of this code, to be spent in accordance with the provisions of that 11 subsection and, second, deposit \$40 million into the West 12 Virginia Infrastructure Fund created in subsection (a), section 13 nine, article fifteen-a, chapter thirty-one of this code, to be spent 14 15 in accordance with the provisions of that article: Provided, That for the fiscal year beginning July 1, 2014, the deposit to the West 16 Virginia Infrastructure Fund shall be \$20 million: Provided, 17 however, That notwithstanding the provisions of subsection (a), 18 section ten, article fifteen-a, chapter thirty-one of this code, for 19 the fiscal year beginning July 1, 2014, any moneys disbursed 20 from the West Virginia Infrastructure Fund in the form of grants 21 22 may not exceed fifty percent of the total funds available for the funding of projects: Provided further, That for the fiscal year 23 beginning July 1, 2015, the deposit to the West Virginia 24 Infrastructure Fund shall be \$30 million: And provided further, 25 That notwithstanding the provisions of subsection (a), section 26 ten, article fifteen-a, chapter thirty-one of this code, for the fiscal 27 year beginning July 1, 2015, any moneys disbursed from the 28

- 29 West Virginia Infrastructure Fund in the form of grants may not
- 30 exceed fifty percent of the total funds available for the funding
- 31 of projects: And provided further, That for the fiscal year
- 32 beginning July 1, 2016, the deposit to the West Virginia
- 33 Infrastructure Fund shall be \$20 million: And provided further,
- 34 That notwithstanding the provisions of subsection (a), section
- 35 ten, article fifteen-a, chapter thirty-one of this code, for the fiscal
- 36 year beginning July 1, 2016, any moneys disbursed from the
- West Virginia Infrastructure Fund in the form of grants may not
- west vinginia infrastructure rund in the form of grants may not
- 38 exceed fifty percent of the total funds available for the funding
- 39 of projects.



#### **CHAPTER 5**

(Com. Sub. for H.B. 117 - By Mr. Speaker (Mr. Armstead) and Delegate Miley) [By Request of the Executive]

[Passed June 2, 2016; in effect from passage.] [Approved by the Governor on June 8, 2016.]

AN ACT to amend and reenact article three, chapter sixty-four of the Code of West Virginia, 1931, as amended, relating generally to administrative rules of the Department of Environmental Protection; legislatively mandating or authorizing 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; repealing certain legislative, procedural or interpretive rules promulgated by certain agencies,

boards and commissions which are no longer authorized or are obsolete; repealing certain legislative, procedural and interpretive rules promulgated by certain agencies and boards under the Department of Environmental Protection; repealing Department of Environmental Protection legislative rule relating to requiring the submission of emission statements for volatile organic compound emissions and oxides; repealing the Department of Environmental Protection legislative rule relating to bona fide future use; repealing the Department of Environmental Protection legislative rule relating to abandoned wells; repealing the Department of Environmental Protection legislative rule relating to the Environmental Excellence Program; repealing the Department of Environmental Protection legislative rule relating to oil and gas operations – solid waste; repealing the Department of Environmental Protection legislative rule relating to the Recycling Assistance Fund Grant Program; repealing the Department of Environmental Protection legislative rule relating to commercial hazardous waste management facility siting fees; repealing the Department of Environmental Protection legislative rule relating to groundwater protection standards; repealing the Department of Environmental Protection legislative rule relating to Underground Storage Tank Insurance Trust Fund; repealing the Department of Environmental Protection legislative rule relating to hazardous waste management; repealing the Department of Environmental Protection legislative rule relating to solid waste management; repealing the Department of Environmental Protection legislative rule relating to waste tire management; repealing the Department of Environmental Protection legislative rule relating to sewage sludge management; repealing the Department of Environmental Protection legislative rule relating to Hazardous Waste Emergency Response Fund regulations; repealing the Department of Environmental Protection interpretive rule relating to initial inspection, certification and spill prevention response plan requirements; repealing the Department of Environmental Protection legislative rule relating to the Office of the Environmental Advocate; repealing the Department of Environmental Protection legislative rule relating to coal refuse; repealing the Department of Environmental Protection procedural rule relating to administrative procedures and civil administrative penalty assessment – Water Resources Protection Act; repealing the Department of Environmental Protection procedural rule relating to procedures and practice before the Department of Energy; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to the control of annual nitrogen oxide emissions; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to the control of air pollution from combustion of solid waste; 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 emission standards for hazardous air pollutants; authorizing the Department Environmental Protection to promulgate a legislative rule relating to control of ozone season nitrogen oxides emissions; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to control of annual sulfur dioxide emissions; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to surface mining reclamation; authorizing the Department of Environmental Protection to promulgate a legislative rule relating administrative proceedings and civil penalty assessment; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to above ground storage tank fee assessments; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to above ground storage tank administrative proceedings and civil penalty assessment; 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 above ground storage tanks, authorizing the Department of Environmental Protection to promulgate a legislative rule relating to horizontal well development; repealing the Commercial Hazardous Waste Management Facility Siting Board legislative rule relating to certification requirements; repealing the Environmental Quality Board legislative rule relating requirements governing water quality standards; repealing the Environmental Quality Board procedural rule relating to requests for information; repealing the Environmental Quality Board procedural rule relating to rules governing the notice of open meetings under the Open Governmental Proceedings Act; repealing the Miner Training, Education and Certification Board legislative rule relating to certification of blasters for surface coal mines and surface areas of underground mines; repealing the Miner Training, Education and Certification Board legislative rule relating to standards for certification of blasters for surface coal mines and surface areas of underground mines; repealing the Miner Training, Education and Certification Board procedural rule relating to temporary suspension of certificates issued to persons pending full hearing before the board of appeals; repealing the Water Resources Board legislative rule relating to the State National Pollutant Discharge Elimination System Program; repealing the WaterlResources Board legislative rule relating to requirements governing the State National Pollutant Discharge Elimination System; repealing the Air Quality Board procedural rule relating to requests for information; and repealing the Oil and Gas Inspectors Examining Board procedural rule relating to matters pertaining to the rules and regulations dealing with the Oil and Gas Inspectors Examining Board.

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 AND REPEAL OF UNAUTHORIZED AND OBSOLETE LEGISLATIVE RULES OF THE DEPARTMENT OF ENVIRONMENTAL PROTECTION.

#### §64-3-1. Department of Environmental Protection.

- 1 (a) The legislative rule effective on July 7, 1993, authorized
- 2 under the authority of section five, article twenty, chapter sixteen
- 3 of this code, relating to the Department of Environmental
- 4 Protection (requiring the submission of emission statements for
- 5 volatile organic compound emissions and oxides, 45 CSR 29), is
- 6 repealed.
- 7 (b) The legislative rule effective on July 1, 1993, authorized
- 8 under the authority of section one, article one, chapter
- 9 twenty-two-b of this code, relating to the Department of
- 10 Environmental Protection (bona fide future use, 38 CSR 21), is
- 11 repealed.
- 12 (c) The legislative rule effective on July 1, 1993, authorized
- 13 under the authority of section thirteen, article one, chapter
- 14 twenty-two of this code, relating to the Department of
- 15 Environmental Protection (abandoned wells, 38 CSR 22), is
- 16 repealed.
- 17 (d) The legislative rule effective on July 1, 2008, authorized
- 18 under the authority of section four, article twenty-five, chapter
- 19 twenty-two of this code, relating to the Department of
- 20 Environmental Protection (Environmental Excellence Program,
- 21 60 CSR 8), is repealed.
- 22 (e) The legislative rule effective on June 12, 1987,
- 23 authorized under the authority of section three, article one,

- 24 chapter twenty-two of this code, relating to the Department of
- 25 Environmental Protection (oil and gas operations solid waste,
- 26 35 CSR 2), is repealed.
- 27 (f) The legislative rule effective on May 1, 2000, authorized
- 28 under the authority of section five-a, article eleven, chapter
- 29 twenty of this code, relating to the Department of Environmental
- 30 Protection (Recycling Assistance Fund Grant Program, 58 CSR
- 31 5), is repealed.
- 32 (g) The legislative rule effective on June 1, 1994, authorized
- 33 under the authority of section six, article five, chapter
- 34 twenty-two-c of this code, relating to the Department of
- 35 Environmental Protection (commercial hazardous waste
- 36 management facility siting fees, 33 CSR 21), is repealed.
- 37 (h) The legislative rule effective on April 25, 1984,
- 38 authorized under the authority of article eighteen, chapter
- 39 twenty-two of this code, relating to the Department of
- 40 Environmental Protection (groundwater protection standards, 33
- 41 CSR 23), is repealed.
- 42 (i) The legislative rule effective on July 1, 1999, authorized
- 43 under the authority of section six, article seventeen, chapter
- 44 twenty-two of this code, relating to the Department of
- 45 Environmental Protection (Underground Storage Tank Insurance
- 46 Trust Fund, 33 CSR 32), is repealed.
- 47 (i) The legislative rule effective on June 1, 1996, authorized
- 48 under the authority of section one, article eighteen, chapter
- 49 twenty-two of this code, relating to the Department of
- 50 Environmental Protection (hazardous waste management, 47
- 51 CSR 35), is repealed.
- 52 (k) The legislative rule effective on June 2, 1996, authorized
- 53 under the authority of section five, article fifteen, chapter

- 54 twenty-two of this code, relating to the Department of
- 55 Environmental Protection (solid waste management, 47 CSR
- 56 38), is repealed.
- 57 (1) The legislative rule effective on June 2, 1996, authorized
- 58 under the authority of section three, article one, chapter
- 59 twenty-two of this code, relating to the Department of
- 60 Environmental Protection (waste tire management, 47 CSR
- 61 38G), is repealed.
- 62 (m) The legislative rule effective on May 1, 1996, authorized
- 63 under the authority of section twenty, article fifteen, chapter
- 64 twenty-two of this code, relating to the Department of
- 65 Environmental Protection (sewage sludge management, 47 CSR
- 66 38D), is repealed.
- 67 (n) The legislative rule effective on April 14, 1997,
- 68 authorized under the authority of section five, article five-g,
- 69 chapter twenty of this code, relating to the Department of
- 70 Environmental Protection (Hazardous Waste Emergency
- 71 Response Fund regulations, 47 CSR 40B), is repealed.
- 72 (o) The interpretive rule effective on November 20, 2014,
- 73 authorized under the authority of section twenty-three, article
- 74 thirty, chapter twenty-two of this code, relating to the
- 75 Department of Environmental Protection (initial inspection,
- 76 certification and spill prevention response plan requirements, 47
- 77 CSR 62), is repealed.
- 78 (p) The legislative rule effective on July 1, 1997, authorized
- 79 under the authority of section three, article one, chapter
- 80 twenty-two of this code, relating to the Department of
- 81 Environmental Protection (Office of the Environmental
- 82 Advocate, 60 CSR 1), is repealed.
- 83 (q) The legislative rule effective on June 13, 1985,
- 84 authorized under the authority of article six, chapter twenty of

- 85 this code, relating to the Department of Environmental 86 Protection (coal refuse, 38 CSR 2B), is repealed.
- 87 (r) The procedural rule effective on May 16, 2005, 88 authorized under the authority of section six, article one, chapter 89 twenty-two of this code, relating to the Department of 90 Environmental Protection (administrative procedures and civil
- 91 administrative penalty assessment Water Resources Protection
- 92 Act, 60 CSR 6), is repealed.
- 93 (s) The procedural rule effective on January 30, 1983, 94 authorized under the authority of section one, article three, 95 chapter twenty-two-a of this code, relating to the Department of 96 Environmental Protection (procedures and practice before the 97 Department of Energy, 38 CSR 1), is repealed.
- 98 (t) The legislative rule filed in the State Register on July 24, 99 2015, authorized under the authority of section four, article five, 100 chapter twenty-two, of this code, relating to the Department of 101 Environmental Protection, Air Quality (control of annual 102 nitrogen oxide emissions, 45 CSR 39), is authorized.
- 103 (u) The legislative rule filed in the State Register on July 24, 2015, authorized under the authority of section four, article five, chapter twenty-two, of this code, relating to the Department of Environmental Protection, Air Quality (control of air pollution from combustion of solid waste, 45 CSR 18), is authorized.
- 108 (v) The legislative rule filed in the State Register on July 24, 2015, authorized under the authority of section four, article five, chapter twenty-two, of this code, relating to the Department of Environmental Protection, Air Quality (control of air pollution from hazardous waste treatment, storage and disposal facilities, 45 CSR 25), is authorized.
- 114 (w) The legislative rule filed in the State Register on July 24, 2015, authorized under the authority of section four, article five,

- chapter twenty-two, of this code, relating to the Department of
- 117 Environmental Protection, Air Quality (emission standards for
- hazardous air pollutants, 45 CSR 34), is authorized.
- (x) The legislative rule filed in the State Register on July 24,
- 120 2015, authorized under the authority of section four, article five,
- 121 chapter twenty-two, of this code, relating to the Department of
- 122 Environmental Protection, Air Quality (control of ozone season
- nitrogen oxides emissions, 45 CSR 40), is authorized.
- (y) The legislative rule filed in the State Register on July 24,
- 125 2015, authorized under the authority of section four, article five,
- 126 chapter twenty-two, of this code, relating to the Department of
- 127 Environmental Protection, Air Quality (control of annual sulfur
- dioxide emissions, 45 CSR 41), is authorized.
- (z) The legislative rule filed in the State Register on July 27,
- 130 2015, authorized under the authority of section thirteen, article
- 131 three, chapter twenty-two, of this code, relating to the
- 132 Department of Environmental Protection, Division of Mining
- and Reclamation (surface mining reclamation, 38 CSR 2), is
- 134 authorized with the following amendments set forth below:
- On page 48, subdivision 3.27, after the word "ongoing" by
- 136 inserting the following: "Once an operation has received a
- 137 waiver of the renewal requirement, it is exempt from the
- 138 restriction contained in paragraph 11.4.a.2 of this rule regarding
- changing from full permit bonding to incremental bonding, and
- 135 changing from run permit conding to meremental conding, and
- 140 the operation may submit a bonding revision to the Secretary for
- 141 approval."
- 142 And,
- On page 135, paragraph 11.4.a.2.after the words "terms of
- 144 the permit" by adding the following proviso: "Provided, That
- 145 operations that have received a waiver of the renewal
- 146 requirement are exempt, and the operation may submit a bonding
- 147 revision to the Secretary for approval."

- 148 (aa) The legislative rule filed in the State Register on July
- 149 27, 2015, authorized under the authority of section twenty-two,
- 150 article eleven, chapter twenty-two, of this code, relating to the
- 151 Department of Environmental Protection, Water and Waste
- 152 Management (administrative proceedings and civil penalty
- 153 assessment, 47 CSR 30B), is authorized.
- 154 (bb) The legislative rule filed in the State Register on July
- 155 31, 2015, authorized under the authority of section five, article
- 156 thirty, chapter twenty-two, of this code, relating to the
- 157 Department of Environmental Protection, Water and Waste
- 158 Management (above ground storage tank fee assessments, 47
- 159 CSR 64), is authorized.
- 160 (cc) The legislative rule filed in the State Register on July
- 31, 2015, authorized under the authority of section five, article 161
- 162 thirty, chapter twenty-two, of this code, relating to the
- 163 Department of Environmental Protection, Department of
- 164 Environmental Protection, Water and Waste Management (above
- 165 ground storage tank administrative proceedings and civil penalty
- 166 assessment, 47 CSR 65), is authorized.
- 167 (dd) The legislative rule filed in the State Register on July
- 168 31, 2015, authorized under the authority of section four, article
- 169 eleven, chapter twenty-two, of this code, modified by the
- 170 Department of Environmental Protection, Water and Waste
- 171 Management to meet the objections of the Legislative
- 172 Rule-making Review Committee and refiled in the State Register
- on November 24, 2015, relating to the Department of 173
- 174 Environmental Protection, Water and Waste Management
- 175 (requirements governing water quality standards, 47 CSR 2), is
- 176 authorized with the following amendments set forth below:
- 177 On page 46, in the column labeled "parameter", immediately
- 178 following "8.27.1 Selenium (ug/g)" by inserting the following:
- 179 "g (based on instantaneous measurement)

- 180 8.0 ug/g Fish Whole-body Concentration or
- 181 11.3 ug/g Fish muscle (skinless, boneless filet)";
- On page 46, in the column labeled "parameter", immediately
- 183 following "8.27.2 Selenium (ug/g) Fish Egg/Ovary
- 184 Concentrationh" by inserting the following: "(based on
- 185 instantaneous measurement)"
- On page 47, in the columns labeled "Chron2" by inserting
- the following in each of the two vacant spaces: "X";
- On page 51, note g., after the words "concentration when"
- 189 by striking the words "both fish tissue and";
- On page 51, note g, immediately following the words "water
- 191 concentrations" by inserting the following: "and either whole
- body or fish muscle (skinless, boneless filet)";
- On page 51, note h, immediately following the word "any"
- 194 by inserting the following: "fish";
- 195 And,
- On page 51, note h, immediately following the word
- 197 "whole-body" by inserting the following: "fish muscle (skinless,
- 198 boneless filet)";
- (ee) The legislative rule filed in the State Register on July
- 200 31, 2015, authorized under the authority of section five, article
- 201 thirty, chapter twenty-two, of this code, modified by the
- 202 Department of Environmental Protection, Water and Waste
- 203 Management to meet the objections of the Legislative
- 204 Rule-making Review Committee and refiled in the State Register
- 205 on November 24, 2015, relating to the Department of
- 206 Environmental Protection, Water and Waste Management (above
- 207 ground storage tanks, 47 CSR 63), is authorized with the
- 208 following amendments set forth below:

- 209 On page one, paragraph 1.5.a.2., after the word "equipment;"
- by striking out the word "and"; 210
- 211 On page one, paragraph 1.5.a.3., after the word "motors", by
- 212 changing the period to a semicolon;
- 213 On page one, after paragraph 1.5.a.3., by adding the
- following new paragraphs: 214
- 215 "1.5.a.4. Tanks containing blasting agents or explosives as
- 216 defined in 199 CSR 1; and
- 217 1.5.a.5. Aboveground storage tanks that contain water
- 218 treatment chemicals used for maintaining compliance with
- 219 NPDES permit effluent limits in treatment systems that are
- 220 located at facilities subject to either the Groundwater Protection
- 221 Rules for Coal Mining Operations (38 CSR 2F) or a Coal Mining
- NPDES permit issued pursuant to 47 CSR 30 are not Level 1 222
- 223 tanks for the purpose of this rule unless the tank is located within
- a zone of critical concern." 224
- 225 And,
- 226 On page forty-one, after paragraph 8.2.e.4., by adding the
- 227 following new subdivision:
- 228 "8.2.f. For any new regulated AST to be constructed in karst
- terrain, which are areas generally underlain by limestone or 229
- 230 dolomite, in which the topography is formed chiefly by the
- 231 dissolving of rock and which may be characterized by sinkholes,
- 232
- sinking streams, closed depressions, subterranean drainage and
- 233 caves, as such areas are identified, mapped and published by the
- 234 West Virginia Geological and Economic Survey, the tank owner
- 235 must submit to the Secretary documentation of the new
- 236 construction design criteria and engineering specifications to
- 237 indicate that surface or subsurface conditions will not result in
- 238 excessive settling or unstable support of the proposed regulated

- AST, as approved by a professional engineering or an individual
- 240 certified by API or STI to perform installations or a person
- 241 holding certification under another program."
- 242 (ff) The legislative rule filed in the State Register on July 31,
- 243 2015, authorized under the authority of section six, article six-a,
- 244 chapter twenty-two, of this code, modified by the Department of
- 245 Environmental Protection, Oil and Gas to meet the objections of
- 246 the Legislative Rule-making Review Committee and refiled in
- 247 the State Register on November 23, 2015 relating to the
- 248 Department of Environmental Protection, Oil and Gas
- 249 (horizontal well development, 35 CSR 8), is authorized.

## §64-3-2. Commercial Hazardous Waste Management Facility Siting Board.

- 1 The legislative rule effective on May 19, 1994, authorized
- 2 under the authority of section three, article ten, chapter twenty of
- 3 this code, relating to the Commercial Hazardous Waste
- 4 Management Facility Siting Board (certification requirements,
- 5 57 CSR 1), is repealed.

#### §64-3-3. Environmental Quality Board.

- 1 (a) The legislative rule effective on June 30, 2005,
- 2 authorized under the authority of section four, article three,
- 3 chapter twenty-two-b of this code, relating to the Environmental
- 4 Quality Board (requirements governing water quality standards,
- 5 46 CSR 1), is repealed.
- 6 (b) The procedural rule effective on February 19, 1996,
- 7 authorized under the authority of section three, article three,
- 8 chapter twenty-nine-a of this code, relating to the Environmental
- 9 Quality Board (requests for information, 46 CSR 8), is repealed.
- 10 (c) The procedural rule effective on July 27, 1984,
- 11 authorized under the authority of section three, article one,

- 12 chapter twenty-two-b of this code, relating to the Environmental
- 13 Quality Board (rules governing the notice of open meetings
- 14 under the Open Governments Proceedings Act, 46 CSR 5), is
- 15 repealed.

#### §64-3-4. Miner Training, Education and Certification Board.

- 1 (a) The legislative rule effective on June 1, 1992, authorized
- 2 under the authority of section six, article nine, chapter
- 3 twenty-two of this code, relating to the Miner Training,
- 4 Education and Certification Board (certification of blasters for
- 5 surface coal mines and surface areas of underground mines, 48
- 6 CSR 5), is repealed.
- 7 (b) The legislative rule effective on July 1, 1993, authorized
- 8 under the authority of section six, article nine, chapter
- 9 twenty-nine of this code, relating to the Miner Training,
- 10 Education and Certification Board (standards for certification of
- 11 blasters for surface coal mines and surface areas of underground
- mines, 56 CSR 5), is repealed.
- 13 (c) The procedural rule effective on September 11, 1983,
- 14 authorized under the authority of section eight, article three,
- 15 chapter twenty-nine-a of this code, relating to the Miner
- 16 Training, Education and Certification Board (temporary
- 17 suspension of certificates issued to persons pending full hearing
- 18 before the board of appeals, 48 CSR 16), is repealed.

#### §64-3-5 Water Resources Board.

- 1 (a) The legislative rule effective on August 25, 1993,
- 2 authorized under the authority of article five-a, chapter twenty of
- 3 this code, relating to the Water Resources Board (State National
- 4 Pollutant Discharge Elimination System Program, 46 CSR 2), is
- 5 repealed.

- 6 (b) The legislative rule effective on July 1, 1987, authorized
- 7 under the authority of article five-a, chapter twenty of this code,
- relating to the Water Resources Board (requirements governing
- the State National Pollutant Discharge Elimination System, 46
- 10 CSR 3), is repealed.

#### §64-3-6. Air Quality Board.

- The procedural rule effective on February 2, 1996, 1
- authorized under the authority of section three, article three,
- chapter twenty-nine-a of this code, relating to the Air Quality
- Board (requests for information, 52 CSR 2), is repealed.

#### §64-3-7. Oil and Gas Inspectors Examining Board.

- 1 The procedural rule effective on January 18, 2009,
- 2 authorized under the authority of section three, article seven,
- chapter twenty-two-c of this code, relating to the Oil and Gas
- Inspectors Examining Board (matters pertaining to the rules and
- regulations dealing with the Oil and Gas Inspectors Examining
- 6 Board, 40 CSR 1), is repealed.



(H. B. 118 - By Delegates Fast, Summers, Overington, Folk, Shott, McCuskey, Ireland, **Kessinger, Sobonya, Deem and Foster**)

> [Passed June 2, 2016; in effect from passage.] [Approved by the Governor on June 8, 2016.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §64-3-1a, relating to

authorizing the Department of Environmental Protection, Air Quality to promulgate a legislative rule relating to standards of performance for new stationary sources.

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 §64-3-1a to read as follows:

# ARTICLE 3. AUTHORIZATION FOR DEPARTMENT OF ENVIRONMENTAL PROTECTION TO PROMULGATE LEGISLATIVE RULES.

#### §64-3-1a. Department of Environmental Protection, Air Quality.

- 1 The legislative rule filed in the State Register on July 24,
- 2 2015, authorized under the authority of section four, article five,
- 3 chapter twenty-two, of this code, relating to the Department of
- 4 Environmental Protection, Air Quality (standards of performance
- 5 for new stationary sources, 45 CSR 16), is authorized with the
- 6 following amendment set forth below:
- 7 On page 2, following subdivision 4.1,b., by adding the
- 8 following new subdivision:
- 9 "4.1.c. The following subparts of 40 CFR Part 60 relating to
- 10 wood-burning heaters and appliances are expressly excluded and
- 11 are not adopted or incorporated by reference in this rule:
- 4.1.c.1. The 2015 amendments to subpart AAA; and
- 13 4.1.c.2. Subpart QQQQ."



#### (S. B. 1017 - By Senators Cole (Mr. President) and Kessler) [By Request of the Executive]

[Passed June 14, 2016; in effect from passage.] [Approved by the Governor on June 17, 2016.]

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 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 agencies and commissions to repeal certain legislative, procedural interpretative rules that are no longer authorized or are obsolete; directing various agencies to amend and promulgate certain legislative rules; authorizing the Board of Examiners in Counseling to promulgate a legislative rule relating to licensing; authorizing the Board of Examiners in Counseling to promulgate a legislative rule relating to licensed professional counselor license renewal and continuing professional education requirements; authorizing the Board of Examiners in Counseling to promulgate a legislative rule relating to marriage and family therapists licensing; authorizing the Board of Examiners in Counseling to promulgate a legislative rule relating to marriage and family and continuing professional education license renewal requirements; authorizing the Board of Accountancy to promulgate a legislative rule relating to board rules and rules of professional conduct; authorizing the Department of Agriculture to promulgate

a legislative rule relating to the inspection of nontraditional domesticated animals; authorizing the Department of Agriculture to promulgate a legislative rule relating to poultry litter and manure movement into primary poultry breeder rearing areas; authorizing the Department of Agriculture to promulgate a legislative rule relating to captive cervid farming; repealing the Department of Agriculture legislative rule relating to tobacco; repealing the Department of Agriculture legislative rule relating to the conduct of beef industry self-improvement assessment program referendums; repealing the Department of Agriculture legislative rule relating to the conduct of beef self-improvement assessment program referendums; repealing the Department of Agriculture legislative rule relating to West Virginia seal of quality; repealing the Department of Agriculture legislative rule relating to aquaculture farm rules; repealing the Department of Agriculture procedural rule relating to the conduct of tree fruit industries self-improvement assessment program referendums; authorizing the Livestock Care Standards Board to promulgate a legislative rule relating to livestock care standards; authorizing the State Conservation Committee to promulgate a legislative rule relating to the West Virginia Conservation Agency Financial Assistance Program; authorizing the Board of Dentistry to promulgate a legislative rule relating to continuing education requirements; authorizing the Board of Dentistry to promulgate a legislative rule relating to expanded duties of dental hygienists and dental assistants; authorizing the State Election Commission to promulgate a legislative rule relating to the regulation of campaign finance; authorizing the State Election Commission to promulgate a legislative rule relating to the West Virginia Supreme Court of Appeals Public Campaign Financing Program; authorizing the State Board of Registration for Professional Engineers to promulgate a legislative rule relating to the examination, licensure and practice of professional engineers; authorizing the Governor's Committee on Crime, Delinquency and Correction to promulgate a legislative rule relating to law-enforcement training and certification standards; authorizing the Medical Imaging and

Radiation Therapy Technology Board of Examiners to promulgate a legislative rule relating to the rules of the West Virginia Medical Imaging and Radiation Therapy Technology Boards of Examiners; authorizing the Board of Medicine to promulgate a legislative rule relating to the establishment and regulation of limited license to practice medicine and surgery at certain state veterans' nursing home facilities; directing the Board of Medicine to promulgate a legislative rule relating to licensing and disciplinary procedures: Podiatrists; authorizing the Nursing Home Physicians: Administrators Licensing Board to promulgate a legislative rule relating to nursing home administrators; authorizing the Board of Pharmacy to promulgate a legislative rule relating to the licensure and practice of pharmacy; authorizing the Board of Pharmacy to promulgate a legislative rule relating to the Uniform Controlled Substances Act; authorizing the Board of Pharmacy to promulgate a legislative rule relating to recordkeeping and automated data processing systems; authorizing the Board of Pharmacy to promulgate a legislative rule relating to the licensure of wholesale distributors, third-party logistics providers manufacturers; authorizing the Property Valuation and Procedures Commission to promulgate a legislative rule relating to tax map sales; authorizing the Board of Social Work to promulgate a legislative rule relating to qualifications for the profession of social work; authorizing the Secretary of State to promulgate a legislative rule relating to registration forms and receipts; authorizing the Secretary of State to promulgate a legislative rule relating to the elimination of precinct registration books; authorizing the Secretary of State to promulgate a legislative rule relating to absentee voting by military voters who are members of reserve units called to active duty; authorizing the Secretary of State to promulgate a legislative rule relating to the Freedom of Information Act database; repealing the Secretary of State legislative rule relating to matters relating to corporations and other business entity filing; repealing the Secretary of State legislative rule relating to matters relating to official election forms and vendor authorization; authorizing the Board of Examiners for

Speech-Language Pathology and Audiology to promulgate a legislative rule relating to the licensure of speech pathology and authorizing the Board of Examiners audiology: Speech-Language Pathology and Audiology to promulgate a legislative rule relating to speech-language pathology and audiology assistants; repealing the Cable TV Advisory Board legislative rule relating to franchising procedures; repealing the Cable TV Advisory Board legislative rule relating to implementing regulations; repealing the Cable TV Advisory Board legislative rule relating to calculation and collection of late fee; repealing the Cable TV Advisory Board procedural rule relating administrative procedures for consumer complaint resolution under the West Virginia Cable TV Systems Act; repealing the Cable TV Advisory Board procedural rule relating to rate regulation procedures; repealing the Cable TV Advisory Board procedural rule relating to form and service of notice under section eight, article eighteen-a, chapter five of this code; repealing the Contractor Licensing Board legislative rule relating to consumer complaints; repealing the Respiratory Care Board legislative rule relating to the procedure for licensure applications; repealing the Attorney General procedural rule relating to freedom of information; repealing the Municipal Bond Commission procedural rule relating to rules of procedure covering board and executive committee meetings of the Municipal Commission; repealing the Housing Development Fund legislative rule relating to refiling of administrative rules pertaining to administration of single-family mortgage loans; repealing the Public Service Commission legislative-exempt rule relating to rules and regulations for carrier access to the lines and facilities of other carriers; repealing the Public Service Commission legislative-exempt rule relating to rules and regulations for shipper access to the lines and facilities of rail carriers; repealing the Infrastructure and Jobs Development Council procedural rule relating to establishing procedures to provide public notice of date, time, place, agenda and purpose of meetings of the West Virginia Infrastructure and Jobs Development Council and manner in which meetings are to be conducted; repealing the Water Development Authority procedural rule relating to new procedures in relation to providing public notice of date, time, place and purpose of meetings of the West Virginia Water Development Authority and manner in which meetings are to be conducted; and directing the Board of Osteopathic Medicine to promulgate a legislative rule relating to licensing procedures for osteopathic physicians.

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
A G E N C I E S A N D B O A R D S T O
PROMULGATE LEGISLATIVE RULES
AND REPEALING UNAUTHORIZED AND
OBSOLETE RULES OF MISCELLANEOUS
AGENCIES AND BOARDS.

#### §64-9-1. Board of Examiners in Counseling.

- 1 (a) The legislative rule filed in the State Register on July 28,
- 2 2015, authorized under the authority of section five, article
- 3 thirty-one, chapter thirty of this code, modified by the Board of
- 4 Examiners in Counseling to meet the objections of the
- 5 Legislative Rule-Making Review Committee and refiled in the
- 6 State Register on October 20, 2015, relating to the Board of
- 7 Examiners in Counseling (licensing, 27 CSR 1), is authorized
- 8 with the following amendment:
- 9 On page three, subdivision 5.2.a after the words "applicant
- 10 for endorsement" by striking out the words "in section 5.2 of this
- 11 rule".
- 12 (b) The legislative rule filed in the State Register on July 28,
- 13 2015, authorized under the authority of section five, article
- 14 thirty-one, chapter thirty of this code, modified by the Board of

- 15 Examiners in Counseling to meet the objections of the
- 16 Legislative Rule-Making Review Committee and refiled in the
- 17 State Register on September 29, 2015, relating to the Board of
- 18 Examiners in Counseling (licensed professional counselor
- 19 license renewal and continuing professional education
- 20 requirements, 27 CSR 3), is authorized.
- 21 (c) The legislative rule filed in the State Register on July 28,
- 22 2015, authorized under the authority of section five, article
- 23 thirty-one, chapter thirty of this code, modified by the Board of
- 24 Examiners in Counseling to meet the objections of the
- 25 Legislative Rule-Making Review Committee and refiled in the
- 26 State Register on October 20, 2015, relating to the Board of
- 27 Examiners in Counseling (marriage and family therapists
- 28 licensing, 27 CSR 8), is authorized with the following
- 29 amendments:
- 30 On page three, subdivision 5.1 immediately following the
- 31 words "shall be" by striking out the words "greater than or
- 32 equal" and inserting in lieu thereof the words "substantially
- 33 equivalent";
- On page three, subsection 5.2, after the words "license to
- 35 practice", by striking out the words "mental health counselor"
- 36 and inserting in lieu thereof the words "marriage and family
- 37 therapy";
- On page three, subdivision 5.2.a after the words "applicant
- 39 for endorsement" by striking out the words "in section 5.2 of this
- 40 rule":
- 41 On page four, subdivision 5.2.a.4, after the words "licensed
- 42 as" by inserting the words "marriage and family therapists";
- On page four, subsection 5.3 after the words "actively
- 44 practiced" by striking out the words "mental health counseling

- 45 as licensed professional counselor" and inserting in lieu thereof
- 46 the words "marriage and family therapy as a licensed marriage
- 47 and family therapist";
- On page four, paragraph 5.3.a.1, after the words "passed the"
- 49 by striking out the words "national counselor examination (NCE)
- 50 or the national clinical mental health counseling examination
- 51 (NCMHCE) or other certification examination in counseling
- 52 approved by the board" and inserting in lieu thereof the words
- 53 "Examination in Marital and Family Therapy or other
- 54 certification examination in marriage and family therapy
- 55 approved by the board"; and
- On page four, paragraph 5.3.a.2 after the words "license to
- 57 practice" by striking out the words "mental health counselor"
- 58 and inserting in lieu thereof the following: "marriage and family
- 59 therapy".
- 60 (d) The legislative rule filed in the State Register on July 28,
- 61 2015, authorized under the authority of section five, article
- 62 thirty-one, chapter thirty of this code, modified by the Board of
- 63 Examiners in Counseling to meet the objections of the
- 64 Legislative Rule-Making Review Committee and refiled in the
- 65 State Register on September 29, 2015, relating to the Board of
- 66 Examiners in Counseling (marriage and family license renewal
- 67 and continuing professional education requirements, 27 CSR
- 68 10), is authorized.

#### §64-9-2. Board of Accountancy.

- 1 The legislative rule filed in the State Register on Friday, July
- 2 24, 2015, authorized under the authority of section five, article
- 3 nine, chapter thirty of this code, modified by the Board of
- 4 Accountancy to meet the objections of the Legislative
- 5 Rule-Making Review Committee and refiled in the State
- 6 Register on Thursday, November 5, 2015, relating to the Board

- 7 of Accountancy (board rules and rules of professional conduct,
- 8 1 CSR 1), is authorized.

#### §64-9-3. Department of Agriculture.

- 1 (a) The legislative rule filed in the State Register on July 30,
- 2 2015, authorized under the authority of section four, article
- 3 twenty-nine, chapter nineteen of this code, modified by the
- 4 Department of Agriculture to meet the objections of the
- 5 Legislative Rule-Making Review Committee and refiled in the
- 6 State Register on November 3, 2015, relating to the Department
- 7 of Agriculture (inspection of nontraditional domesticated
- 8 animals, 61 CSR 23D), is authorized.
- 9 (b) The legislative rule filed in the State Register on July 31,
- 10 2015, authorized under the authority of section two, article nine,
- 11 chapter nineteen of this code, modified by the Department of
- 12 Agriculture to meet the objections of the Legislative
- 13 Rule-Making Review Committee and refiled in the State
- 14 Register on November 5, 2015, relating to the Department of
- 15 Agriculture (poultry litter and manure movement into primary
- 16 poultry breeder rearing areas, 61 CSR 28), is authorized.
- 17 (c) The legislative rule filed in the State Register on July 28,
- 18 2015, authorized under the authority of section twelve, article
- 19 two-h, chapter nineteen of this code, modified by the Department
- 20 of Agriculture to meet the objections of the Legislative
- 21 Rule-Making Review Committee and refiled in the State
- 22 Register on November 5, 2015, relating to the Department of
- 23 Agriculture (captive cervid farming, 61 CSR 34), is authorized
- 24 with the following amendment:
- On page nine, subdivision 13.1.a., by striking the words "two
- 26 hundred (200) acres" and inserting in lieu thereof the words "one
- 27 hundred fifty (150) acres".

- 28 (d) The legislative rule effective on November 14, 1967,
- 29 authorized under the authority of article two, chapter nineteen of
- 30 this code, relating to the Department of Agriculture (tobacco, 61
- 31 CSR 11A), is repealed.
- 32 (e) The legislative rule effective on May 31, 1985,
- 33 authorized under the authority of section four, article one,
- 34 chapter nineteen of this code, relating to the Department of
- 35 Agriculture (conduct of beef industry self-improvement
- 36 assessment program referendums, 61 CSR 11C), is repealed.
- 37 (f) The legislative rule effective on May 31, 1985, authorized
- 38 under the authority of section four-j, article one, chapter nineteen
- 39 of this code, relating to the Department of Agriculture (conduct
- 40 of beef self-improvement assessment program referendums, 61
- 41 CSR 11G), is repealed.
- 42 (g) The legislative rule effective on August 21, 1959,
- 43 authorized under the authority of article two, chapter nineteen of
- 44 this code, relating to the Department of Agriculture (West
- 45 Virginia seal of quality, 61 CSR 15), is repealed.
- 46 (h) The legislative rule effective on May 1, 1995, authorized
- 47 under the authority of section one, article twenty-nine, chapter
- 48 nineteen of this code, relating to the Department of Agriculture
- 49 (aquaculture farm rules, 61 CSR 23), is repealed.
- 50 (i) The procedural rule effective on September 23, 1989,
- authorized under the authority of section one, article twenty-six,
- 52 chapter nineteen of this code, relating to the Department of
- 53 Agriculture (conduct of tree fruit industries self-improvement
- 54 assessment program referendums, 61 CSR 20), is repealed.

#### §64-9-4. Livestock Care Standards Board.

- 1 The legislative rule filed in the State Register on February
- 2 11, 2016, authorized under the authority of section four, article

- one-c, chapter nineteen of this code, relating to the Livestock
- 4 Care Standards Board (livestock care standards, 73 CSR 1), is
- 5 authorized.

#### §64-9-5. State Conservation Committee.

- 1 The legislative rule filed in the State Register on June 3,
- 2 2015, authorized under the authority of section four-a, article
- 3 twenty-one-a, chapter nineteen of this code, modified by the
- 4 State Conservation Committee to meet the objections of the
- 5 Legislative Rule-Making Review Committee and refiled in the
- 6 State Register on September 16, 2015, relating to the State
- 7 Conservation Committee (West Virginia Conservation Agency
- 8 Financial Assistance Program, 63 CSR 2), is authorized.

#### §64-9-6. Board of Dentistry.

- 1 (a) The legislative rule filed in the State Register on July 23,
- 2 2015, authorized under the authority of section six, article four,
- 3 chapter thirty of this code, modified by the Board of Dentistry to
- 4 meet the objections of the Legislative Rule-Making Review
- 5 Committee and refiled in the State Register on September 23,
- 6 2015, relating to the Board of Dentistry (continuing education
- 7 requirements, 5 CSR 11), is authorized.
- 8 (b) The legislative rule filed in the State Register on July 23,
- 9 2015, authorized under the authority of section six, article four,
- 10 chapter thirty of this code, modified by the Board of Dentistry to
- 11 meet the objections of the Legislative Rule-Making Review
- 12 Committee and refiled in the State Register on September 23,
- 13 2015, relating to the Board of Dentistry (expanded duties of
- 14 dental hygienists and dental assistants, 5 CSR 13), is authorized.

#### §64-9-7. State Election Commission.

- 1 (a) The legislative rule filed in the State Register on July 31,
- 2 2015, authorized under the authority of section five, article

- 3 one-a, chapter three of this code, modified by the State Election
- 4 Commission to meet the objections of the Legislative
- 5 Rule-Making Review Committee and refiled in the State
- 6 Register on December 22, 2015, relating to the State Election
- 7 Commission (regulation of campaign finance, 146 CSR 3), is
- 8 authorized with the amendments set forth below:
- 9 On page 11, by striking all of subdivision 6.3.e;
- On page 11, subsection 6.7, after the word "ballot", by
- 11 striking the remainder of subsection 6.7;
- On page 12, subdivision 7.2.b, by striking the words "by
- 13 making a contribution to one or more political party committees
- 14 or candidates";
- On page 18, by striking all of subdivision 10.7.a;
- 16 And,
- On page 18 by striking all of subdivision 10.7.b.
- (b) The legislative rule filed in the State Register on July 31,
- 19 2015, authorized under the authority of section fourteen, article
- 20 twelve, chapter three of this code, modified by the State Election
- 21 Commission to meet the objections of the Legislative
- 22 Rule-Making Review Committee and refiled in the State
- 23 Register on December 22, 2015, relating to the State Election
- 24 Commission (West Virginia Supreme Court of Appeals Public
- 25 Campaign Financing Program, 146 CSR 5), is authorized.

## §64-9-8. State Board of Registration for Professional Engineers.

- 1 The legislative rule filed in the State Register on May 11,
- 2 2015, authorized under the authority of section nine, article
- 3 thirteen, chapter thirty of this code, modified by the State Board
- 4 of Registration for Professional Engineers to meet the objections

- 5 of the Legislative Rule-Making Review Committee and refiled
- 6 in the State Register on September 22, 2015, relating to the State
- 7 Board of Registration for Professional Engineers (examination,
- 8 licensure and practice of professional engineers, 7 CSR 1), is
- 9 authorized.

# §64-9-9. Governor's Committee on Crime, Delinquency and Correction.

- 1 The legislative rule filed in the State Register on July 27,
- 2 2015, authorized under the authority of section three, article
- 3 twenty-nine, chapter thirty of this code, modified by the
- 4 Governor's Committee on Crime, Delinquency and Correction
- 5 to meet the objections of the Legislative Rule-Making Review
- 6 Committee and refiled in the State Register on November 5,
- 7 2015, relating to the Governor's Committee on Crime,
- 8 Delinquency and Correction (law-enforcement training and
- 9 certification standards, 149 CSR 2), is authorized.

# §64-9-10. Medical Imaging and Radiation Therapy Technology Board of Examiners.

- 1 The legislative rule filed in the State Register on June 8,
- 2 2015, authorized under the authority of section six, article
- 3 twenty-three, chapter thirty of this code, relating to the Medical
- 4 Imaging and Radiation Therapy Technology Board of Examiners
- 5 (rules of the Medical Imaging and Radiation Therapy
- 6 Technology Board of Examiners, 18 CSR 1), is authorized.

#### §64-9-11. Board of Medicine.

- 1 (a) The legislative rule filed in the State Register on July 27,
- 2 2015, authorized under the authority of section eleven-b, article
- 3 three, chapter thirty of this code, modified by the Board of
- 4 Medicine to meet the objections of the Legislative Rule-Making
- 5 Review Committee and refiled in the State Register on October

- 6 23, 2015, relating to the Board of Medicine (establishment and
- 7 regulation of limited license to practice medicine and surgery at
- 8 certain state veterans' nursing home facilities, 11 CSR 11), is
- 9 authorized.
- 10 (b) The Legislature directs the West Virginia Board of
- 11 Medicine to promulgate the legislative rule filed in the State
- 12 Register on April 6, 2007, authorized under the authority of
- 13 section seven, article three, chapter thirty of this code relating to
- 14 the Board of Medicine (licensing and disciplinary procedures:
- 15 Physicians; Podiatrists, 11 CSR 1A), is authorized with the
- 16 following amendment:
- 17 'On Subsection 12.1, subdivision ee, paragraph A, after the
- 18 word, "narcolepsy" and inserting the words, "binge eating
- 19 disorder".

## §64-9-12. Nursing Home Administrators Licensing Board.

- 1 The legislative rule filed in the State Register on July 17,
- 2 2015, authorized under the authority of section six, article
- 3 twenty-five, chapter thirty of this code, modified by the Nursing
- 4 Home Administrators Licensing Board to meet the objections of
- 5 the Legislative Rule-Making Review Committee and refiled in
- 6 the State Register on November 2, 2015, relating to the Nursing
- 7 Home Administrators Licensing Board (nursing home
- 8 administrators, 21 CSR 1), is authorized.

## §64-9-13. Board of Pharmacy.

- 1 (a) The legislative rule filed in the State Register on July 16,
- 2 2015, authorized under the authority of section seven, article
- 3 five, chapter thirty of this code, modified by the Board of
- 4 Pharmacy to meet the objections of the Legislative Rule-Making
- 5 Review Committee and refiled in the State Register on
- 6 December 17, 2015, relating to the Board of Pharmacy (licensure
- 7 and practice of pharmacy, 15 CSR 1), is authorized.

- 8 (b) The legislative rule filed in the State Register on July 16,
- 9 2015, authorized under the authority of section three hundred
- 10 one, article three, chapter sixty-a of this code, modified by the
- 11 Board of Pharmacy to meet the objections of the Legislative
- 12 Rule-Making Review Committee and refiled in the State
- 13 Register on December 17, 2015, relating to the Board of
- 14 Pharmacy (Uniform Controlled Substances Act, 15 CSR 2), is
- 15 authorized.
- 16 (c) The legislative rule filed in the State Register on July 16,
- 17 2015, authorized under the authority of section seven, article
- 18 five, chapter thirty of this code, modified by the Board of
- 19 Pharmacy to meet the objections of the Legislative Rule-Making
- 20 Review Committee and refiled in the State Register on
- 21 December 17, 2015, relating to the Board of Pharmacy
- 22 (recordkeeping and automated data processing systems, 15 CSR
- 23 4), is authorized.
- 24 (d) The legislative rule filed in the State Register on July 16,
- 25 2015, authorized under the authority of section seven, article
- 26 five, chapter thirty of this code, modified by the Board of
- 27 Pharmacy to meet the objections of the Legislative Rule-Making
- 28 Review Committee and refiled in the State Register on
- 29 December 17, 2015, relating to the Board of Pharmacy (licensure
- 30 of wholesale drug distributors, third-party logistics providers and
- 31 manufacturers, 15 CSR 5), is authorized.

# §64-9-14. Property Valuation and Procedures Commission.

- 1 The legislative rule filed in the State Register on July 29,
- 2 2015, authorized under the authority of section five, article ten,
- 3 chapter eleven of this code, and section four, article one-c,
- 4 chapter eleven of this code, modified by the Property Valuation
- 5 and Procedures Commission to meet the objections of the
- 6 Legislative Rule-Making Review Committee and refiled in the
- 7 State Register on October 27, 2015, relating to the Property

- 8 Valuation and Procedures Commission (tax map sales, 189 CSR
- 9 5), is authorized.

#### §64-9-15. Board of Social Work.

- 1 The legislative rule filed in the State Register on July 21,
- 2 2015, authorized under the authority of section six, article thirty,
- 3 chapter thirty of this code, modified by the Board of Social
- 4 Work to meet the objections of the Legislative Rule-Making
- 5 Review Committee and refiled in the State Register on
- 6 December 4, 2015, relating to the Board of Social Work
- 7 (qualifications for the profession of social work, 25 CSR 1), is
- 8 authorized.

#### §64-9-16. Secretary of State.

- 1 (a) The legislative rule filed in the State Register on June 30,
- 2 2015, authorized under the authority of section six, article one-a,
- 3 chapter three of this code, relating to the Secretary of State
- 4 (registration forms and receipts, 153 CSR 3), is authorized.
- 5 (b) The legislative rule filed in the State Register on July 1,
- 6 2015, authorized under the authority of section twenty-one,
- 7 article two, chapter three of this code, relating to the Secretary
- 8 of State (elimination of precinct registration books, 153 CSR 9),
- 9 is authorized.
- 10 (c) The legislative rule filed in the State Register on June 30,
- 11 2015, authorized under the authority of section six, article one-a,
- 12 chapter three of this code, relating to the Secretary of State
- 13 (absentee voting by military voters who are members of reserve
- 14 units called to active duty, 153 CSR 23), is authorized.
- 15 (d) The legislative rule filed in the State Register on June 30,
- 16 2015, authorized under the authority of section three-a, article
- 17 one, chapter twenty-nine-b of this code, modified by the
- 18 Secretary of State to meet the objections of the Legislative

- 19 Rule-Making Review Committee and refiled in the State
- 20 Register on December 22, 2015, relating to the Secretary of State
- 21 (Freedom of Information Act database, 153 CSR 52), is
- 22 authorized.
- 23 (e) The legislative rule effective on April 3, 1998, authorized
- 24 under the authority of section sixty-seven, article one, chapter
- 25 thirty-one of this code, relating to the Secretary of State (matters
- 26 relating to corporations and other business entity filing, 153 CSR
- 27 5), is repealed.
- 28 (f) The legislative rule effective on June 7, 1996, authorized
- 29 under the authority of section six, article one-a, chapter three of
- 30 this code, relating to the Secretary of State (matters relating to
- 31 official election forms and vendor authorization, 153 CSR 26),
- 32 is repealed.

# §64-9-17. Board of Examiners for Speech-Language Pathology and Audiology.

- 1 (a) The legislative rule filed in the State Register on June 8,
- 2 2015, authorized under the authority of section seven, article
- 3 thirty-two, chapter thirty of this code, modified by the Board of
- 4 Examiners for Speech-Language Pathology and Audiology to
- 5 meet the objections of the Legislative Rule-Making Review
- 6 Committee and refiled in the State Register on December 4,
- 7 2015, relating to the Board of Examiners for Speech-Language
- 8 Pathology and Audiology (licensure of speech pathology and
- 9 audiology, 29 CSR 1), is authorized.
- 10 (b) The legislative rule filed in the State Register on June 8,
- 11 2015, authorized under the authority of section seven, article
- 12 thirty-two, chapter thirty of this code, modified by the Board of
- 13 Examiners for Speech-Language Pathology and Audiology to
- 14 meet the objections of the Legislative Rule-Making Review
- 15 Committee and refiled in the State Register on December 4,

- 16 2015, relating to the Board of Examiners for Speech-Language
- 17 Pathology and Audiology (speech-language pathology and
- 18 audiology assistants, 29 CSR 2), is authorized with the following
- 19 amendments:
- 20 On page 4, Subdivision 4.1.(y), following the word "than",
- 21 by striking the word "two" and inserting in lieu thereof the word
- 22 "three";
- On page 4, section 5, paragraph (8), after the word
- 24 "pathologists," by striking out the words "or audiologists," and
- 25 in paragraph (11), after the word "pathology," by striking out the
- 26 words "or Audiology.";
- 27 And
- On page 5, section (6), subsection (c), after the word
- 29 "pathologist" by striking out the words "or audiologist," and in
- 30 subsection (j), after the word "pathologist," by striking out the
- 31 words "or audiology," and in subsection (m), after the word
- 32 "pathologist," by striking out the words "or audiologist."

## §64-9-18. Cable TV Advisory Board.

- 1 (a) The legislative rule effective on April 15, 1991,
- 2 authorized under the authority of section six, article eighteen,
- 3 chapter five of this code, relating to the Cable TV Advisory
- 4 Board (franchising procedures, 187 CSR 1), is repealed.
- 5 (b) The legislative rule effective on June 1, 1997, authorized
- 6 under the authority of section twenty-six, article eighteen,
- 7 chapter five of this code, relating to the Cable TV Advisory
- 8 Board (implementing regulations, 187 CSR 2), is repealed.
- 9 (c) The legislative rule effective on June 30, 1997,
- 10 authorized under the authority of section twenty-six, article
- 11 eighteen, chapter five of this code, relating to the Cable TV

- 12 Advisory Board (calculation and collection of late fee, 187 CSR
- 13 6), is repealed.
- 14 (d) The procedural rule effective on October 7, 1991,
- 15 authorized under the authority of section twenty-six, article
- 16 eighteen, chapter five of this code, relating to the Cable TV
- 17 Advisory Board (administrative procedures for consumer
- 18 complaint resolution under the West Virginia Cable TV Systems
- 19 Act, 187 CSR 3), is repealed.
- 20 (e) The procedural rule effective on August 28, 1993,
- 21 authorized under the authority of section sixteen, article
- 22 eighteen, chapter five of this code, relating to the Cable TV
- 23 Advisory Board (rate regulation procedures, 187 CSR 4), is
- 24 repealed.
- 25 (f) The procedural rule effective on March 5, 1994,
- 26 authorized under the authority of section twenty-six, article
- 27 eighteen, chapter five of this code, relating to the Cable TV
- 28 Advisory Board (form and service of notice under section eight,
- 29 article eighteen-a, chapter five of this code, 187 CSR 5), is
- 30 repealed.

## §64-9-19. Contractor Licensing Board.

- 1 The legislative rule effective on November 1, 2002,
- 2 authorized under the authority of section fourteen, article eleven,
- 3 chapter twenty-one of this code, relating to the Contractor
- 4 Licensing Board (consumer complaints, 28 CSR 3), is repealed.

## §64-9-20. Respiratory Care Board.

- 1 The legislative rule effective on June 24, 1997, authorized
- 2 under the authority of section six, article thirty-four, chapter
- 3 thirty of this code, relating to the Respiratory Care Board
- 4 (procedure for licensure applications, 30 CSR 1), is repealed.

#### §64-9-21. Attorney General.

- 1 The procedural rule effective on December 21, 1988,
- 2 authorized under the authority of section three, article one,
- 3 chapter twenty-nine-b of this code, relating to the Attorney
- 4 General (freedom of information, 142 CSR 2), is repealed.

### §64-9-22. Municipal Bond Commission.

- 1 The procedural rule effective on March 12, 1984, authorized
- 2 under the authority of section six, article three, chapter thirteen
- of this code, relating to the Municipal Bond Commission (rules
- 4 of procedure covering board and executive committee meetings
- 5 of the Municipal Bond Commission, 109 CSR 1), is repealed.

#### §64-9-23. Housing Development Fund.

- 1 The legislative rule effective on August 15, 1982, authorized
- 2 under the authority of section one, article eighteen-b, chapter
- 3 thirty-one of this code, relating to the Housing Development
- 4 Fund (refiling of administrative rules pertaining to
- 5 administration of single-family mortgage loans, 88 CSR 1), is
- 6 repealed.

#### §64-9-24. Public Service Commission.

- 1 (a) The legislative-exempt rule effective on December 12,
- 2 1987, authorized under the authority of section one, article one,
- 3 chapter twenty-four of this code, relating to the Public Service
- 4 Commission (rules and regulations for carrier access to the lines
- 5 and facilities of other carriers, 150 CSR 18), is repealed.
- 6 (b) The legislative-exempt rule effective on December 12,
- 7 1987, authorized under the authority of section one, article one,
- 8 chapter twenty-four of this code, relating to the Public Service
- 9 Commission (rules and regulations for shipper access to the lines
- 10 and facilities of rail carriers, 150 CSR 19), is repealed.

## §64-9-25. Infrastructure and Jobs Development Council.

- 1 The procedural rule effective on November 12, 1999,
- 2 authorized under the authority of section three, article nine-a,
- 3 chapter six of this code, relating to the Infrastructure and Jobs
- 4 Development Council (establishing procedures to provide public
- 5 notice of date, time, place, agenda and purpose of meetings of
- 6 the West Virginia Infrastructure and Jobs Development Council
- 7 and manner in which meetings are to be conducted, 167 CSR 2),
- 8 is repealed.

#### §64-9-26. Water Development Authority.

- 1 The procedural rule effective on November 4, 1999,
- 2 authorized under the authority of section three, article nine-a,
- 3 chapter six of this code, relating to the Water Development
- 4 Authority (new procedures in relation to providing public notice
- 5 of date, time, place and purpose of meetings of the West Virginia
- 6 Water Development Authority and manner in which meetings
- 7 are to be conducted, 44 CSR 3), is repealed.

## §64-9-27. Board of Osteopathic Medicine.

- 1 The Legislature directs the West Virginia Board of
- 2 Osteopathic Medicine to promulgate the legislative rule filed in
- 3 the State Register on May 8, 2013, authorized under the
- 4 authority of section four, article one, chapter thirty of this code
- 5 and section six-b, article one, chapter thirty of this code, relating
- 6 to the Board of Osteopathic Medicine (licensing procedures for
- 7 osteopathic physicians, 24 CSR 1), is authorized with the
- 8 following amendment:
- 9 On Subsection 18.1, subdivision dd, paragraph 1, after the
- 10 word, "narcolepsy" and inserting the words, "binge eating
- 11 disorder".

# **CHAPTER 8**

## (H. B. 123 - By Mr. Speaker (Mr. Armstead) and Delegate Miley) [By Request of the Executive]

[Passed June 14, 2016; in effect from passage.] [Approved by the Governor on June 17, 2016.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §11B-2-32, relating to establishing a special revenue fund called the Public Employees Insurance Agency Financial Stability Fund and granting authority to the Secretary of Revenue to redirect certain special revenue funds to the Public Employees Insurance Agency Financial Stability Fund to be used to lower retiree premiums, to help reduce benefit cuts, to help reduce premium increases or any combination thereof.

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 §11B-2-32, to read as follows:

#### ARTICLE 2. STATE BUDGET OFFICE.

- §11B-2-32. Establish a special revenue fund designated the Public Employees Insurance Agency Financial Stability Fund; authority of the Secretary of Revenue to redirect certain special revenue funds to the Public Employees Insurance Agency Financial Stability Fund.
  - 1 (a) There is hereby created a special revenue account in the
  - 2 State Treasury, designated the Public Employees Insurance

- 3 Agency Financial Stability Fund, to be administered by the
- 4 Secretary of Revenue.
- 5 (b) The Public Employees Insurance Agency Financial
- 6 Stability Fund shall consist of moneys appropriated by the
- 7 Legislature and moneys transferred annually pursuant to the
- 8 provisions of subsection (c) of this section. These moneys shall
- 9 be appropriated by the Legislature only for the purposes of
- 10 lowering retiree premiums, to help reduce benefit cuts, to help
- 11 reduce premium increases or any combination thereof.
- 12 (c) Notwithstanding any other provisions of this code to the
- 13 contrary, beginning July 1, 2016, and ending June 30, 2020, the
- 14 Secretary of Revenue shall redirect nonaligned state special
- 15 revenue funds, in the total aggregate amount of \$15 million per
- 16 fiscal year, to be deposited in the Public Employees Insurance
- 17 Agency Financial Stability Fund. Not more than three million
- 18 seven hundred fifty thousand dollars may be transferred to the
- 19 Public Employees Insurance Agency Financial Stability Fund in
- 20 any quarter of a fiscal year. Not later than thirty days before
- 21 redirecting the nonaligned state special revenue funds, the
- 22 secretary shall provide written notice of the amount that will be
- 23 redirected in each affected account to the Speaker of the House
- 24 of Delegates, to the President of the Senate and to the agency
- 25 head who oversees any account that will have funds redirected
- 26 into the Public Employee Insurance Agency Financial Stability
- 27 Fund.
- 28 (d) For purposes of this section:
- 29 (1) "Nonaligned state special revenue funds" means state
- 30 revenue funds that are:
- 31 (A) Not derived from any federal fund, from any federal
- 32 grant program or from any other federal revenue source
- 33 established under the laws of the federal government of the
- 34 United States of America;

- 35 (B) Not derived from any state special revenue fund 36 dedicated, directed or designated to be used for operations of the
- 37 Legislative Branch of government;
- 38 (C) Not derived from any state special revenue fund 39 dedicated, directed or designated to be used for operations of the
- 40 Judicial Branch of government;
- 41 (D) Not expressly dedicated, directed or designated by the
- 42 Constitution of this state to be used for an express and specified
- 43 purpose; and
- 44 (E) Not moneys held as retirement funds administered by the
- 45 Consolidated Public Retirement Board, or not held as funds for
- 46 benefits administered by the Public Employees Insurance
- 47 Agency.
- 48 (2) "State special revenue funds" means specific revenue
- 49 sources which, by legislative enactments, are not required to be
- 50 accounted for as general revenue.
- 51 (e) It is the intent of the Legislature that this section shall be
- 52 interpreted to authorize the redirection, diminishment or
- 53 modification of special revenue funding for constitutional
- 54 officers, except that not more than twenty-five percent of the
- officers, except that not more than evening five percent of the
- 55 balance of moneys existing at the time of a transfer in any
- 56 nonaligned state special revenue fund administered by a
- 57 constitutional officer may be transferred to the Public Employees
- 58 Insurance Agency Financial Stability Fund: *Provided*, That not
- 59 more than three million seven hundred fifty thousand dollars
- 60 may be transferred from any nonaligned state special revenue
- 61 fund administered by a constitutional officer to the Public
- 62 Employees Insurance Agency Financial Stability Fund in any
- 63 fiscal year without an express appropriation of the Legislature.



# (Com. Sub. for H. B. 116 - By Mr. Speaker (Mr. Armstead)) [By Request of the Executive]

[Passed June 14, 2016; in effect from passage.] [Approved by the Governor on June 17, 2016.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §5-1-30, relating generally to granting Governor plenary power and authority to direct scheduled payment of the principal and interest due on bonds or notes of the state or its agencies, boards and commissions if no budget bill has been enacted on June 30 of any year for the ensuing fiscal year; making legislative findings; authorizing the Governor to direct said payments by executive order; directing State Auditor and State Treasurer to take such actions as are necessary to ensure payments as directed by the executive order; and clarifying that an executive order remains effective until the effective date of a budget bill enacted for the fiscal year beginning July 1.

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 §5-1-30, to read as follows:

#### ARTICLE 1. THE GOVERNOR.

#### §5-1-30. Authority to direct payment of certain debt in emergency.

- 1 (a) The Legislature makes the following findings:
- 2 (1) Subdivision (12), subsection (d), section fifty-one, article
- 3 VI of the Constitution of West Virginia authorizes the

- Legislature to enact laws as are necessary and proper to carry out
- 5 the purposes of section fifty-one, article VI of the Constitution
- 6 of West Virginia.
- 7 (2) One of the purposes of section fifty-one, article VI of the
- 8 Constitution of West Virginia is to ensure the solvency and fiscal
- 9 well-being of the State of West Virginia.
- 10 (3) Ensuring payment of the debt service on the notes and
- bonded indebtedness of the state and its agencies, boards and 11
- 12 commissions is necessary and proper to ensure the solvency and
- 13 fiscal well-being of the State of West Virginia.
- 14 (b) If, on June 30 of any year, no budget bill has been
- 15 enacted and made effective for the next ensuing fiscal year, the
- Governor shall have plenary power and authority by executive 16
- 17 order to direct the scheduled payment of the principal and
- 18 interest due on bonds or notes of the state or its agencies, boards
- 19 and commissions.
- 20 (c) Upon issuance by the Governor of an executive order
- 21 pursuant to subsection (b) of this section, the State Auditor and
- 22 State Treasurer shall take such actions as are necessary to ensure
- 23 payment of the principal and interest due on the bonds or notes
- of the state, its agencies, boards and commissions as directed by 24
- 25 the Governor.
- 26 (d) Any executive order issued pursuant to subsection (b) of
- 27 this section shall continue in full force and effect until the
- 28 effective date of the budget bill enacted for the fiscal year
- 29 beginning July 1.

# CHAPTER 10

# (S. B. 1012 - By Senators Cole (Mr. President) and Kessler) [By Request of the Executive]

[Passed June 13, 2016; in effect from passage.] [Approved by the Governor on June 17, 2016.]

AN ACT to amend and reenact \$11-17-3 and \$11-17-4 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated \$11-17-4b, all relating to increasing the tax rate on cigarettes and other tobacco products; requiring a physical inventory of tax stamps and tobacco products upon the effective date of tax imposition and upon any tax rate increase; applying tax rate changes to inventories; requiring a report of such inventory be filed within sixty days after the effective date of the tax imposition or tax rate change; levying the excise tax on e-cigarette liquid; defining terms; providing for administration of the tax on e-cigarette liquid; providing for examination of records and stocks and examination of witnesses; declaring a presumption in absence of evidence of payment; specifying penalty for failure to file required reports; specifying criminal sanctions; and specifying effective date.

Be it enacted by the Legislature of West Virginia:

That \$11-17-3 and \$11-17-4 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 \$11-17-4b, all to read as follows:

#### ARTICLE 17. TOBACCO PRODUCTS EXCISE TAX ACT.

§11-17-3. Levy of tax; ratio; dedication of proceeds.

- 1 (a) Tax on cigarettes and tobacco products other than 2 cigarettes. For the purpose of providing revenue for the 3 General Revenue Fund of the state, an excise tax is hereby levied 4 and imposed on sales of cigarettes and tobacco products other 5 than cigarettes.
- 6 (b) Tax rate on cigarettes. — Effective May 1, 2003, the 7 excise tax rate levied and imposed on the sale of cigarettes is 55 cents on each twenty cigarettes or in like ratio on any part 8 thereof: Provided, That on and after July 1, 2016, the excise tax 9 rate levied and imposed on the sale of cigarettes is \$1.20 on each 10 twenty cigarettes or in like ratio on any part thereof. Only one 11 12 sale of the same article shall be used in computing the amount of 13 tax due under this subsection.
- 14 (c) Tax on tobacco products other than cigarettes. — Effective January 1, 2002, the excise tax levied and imposed on 15 16 the sales or use of tobacco products other than cigarettes at the rate equal to seven percent of the wholesale price of each article 17 or item of tobacco products other than cigarettes sold by the 18 19 wholesaler or subjobber dealer, whether or not sold at wholesale, 20 or if not sold, then at the same rate upon the use by the 21 wholesaler or dealer: Provided, That on and after July 1, 2016, 22 the excise tax rate levied and imposed on the sales or use of 23 tobacco products other than cigarettes is at the rate equal to twelve percent of the wholesale price of each article or item of 24 tobacco products other than cigarettes sold by the wholesaler or 25 26 subjobber dealer, whether or not sold at wholesale, or if not sold, 27 then at the same rate upon the use by the wholesaler or dealer. Only one sale of the same article shall be used in computing the 28 29 amount of tax due under this subsection.
  - (d) Effective date of amendments. Amendments to this section enacted in the year 2003 apply in determining tax imposed under this article from May 1, 2003, through June 30, 2016. Amendments to this section enacted in the year 2016 apply

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in determining tax imposed under this article effective on and after July 1, 2016.

# §11-17-4. Effect of rate changes; tobacco products on hand or in inventory; report; discount.

- (a) Any cigarette tax stamps on hand or in inventory on the effective date of a rate change, whether affixed to the cigarette package, on hand but not affixed to the cigarette package or stamps purchased to be affixed by a meter, are considered to have been purchased or received on the effective date of the change in rate. Any tobacco products, on hand or in inventory other than cigarettes, on the effective date of any rate change are hereby considered to have been purchased or received on the effective date of the change in rate.
- 10 (b) Every wholesaler, subjobber, subjobber dealer, retail 11 dealer and vending machine operator who, on the effective date of any rate change, has, on hand or in inventory, any tobacco 12 products or cigarette tax stamps, whether affixed to the cigarette 13 14 package, on hand but not affixed to the cigarette package, or stamps purchased to be affixed by a meter, and upon which the 15 16 tax has not been paid or upon which the tax or any portion of the tax has been previously paid, shall take a physical inventory and 17 shall file a report of the inventory with the Tax Commissioner, 18 19 in the format required by the Tax Commissioner, and shall file the inventory within sixty days after the effective date of the rate 20 change and shall pay to the Tax Commissioner any additional tax 21 22 due under an increased rate within sixty days after the effective 23 date of the rate change.
  - A discount of four percent shall be allowed on all tax due for persons who pay additional tax under this section.

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(c) Imposition of the tax on tobacco products other than cigarettes shall be treated as a change in rate on the effective date of the tax.

(d) The changes set forth to this section and enacted in 2016shall be effective on and after July 1, 2016.

# §11-17-4b. Levy of tax on e-cigarette liquid; definitions; rate; invoice; report; payment; authority of the Tax Commissioner to inspect and examine witnesses; presumption; bond.

- 1 (a) *Definitions*. When used in this section, words, terms
  2 and phrases defined in this subsection, and any variations thereof
  3 required by the context, have the meaning ascribed to them in
  4 this subsection, except where the context indicates a different
  5 meaning is intended.
- 6 (1) "E-cigarette" means an electrical or electronic device that provides a smoke, vapor, fog, mist, gas or aerosol suspension of 7 8 nicotine or another substance that, when used or inhaled, simulates the activity of smoking. The term e-cigarette includes, 9 but is not limited to, a device that is composed of a heating 10 element, battery or electrical or electronic circuit, or a 11 combination of heating element, battery and electrical or 12 electronic circuit, which works in combination with e-liquid to 13 produce an inhalable product. The term e-cigarette includes, but 14 is not limited to, any so designed, or similarly designed, product 15 that is manufactured, distributed, marketed or sold as an 16 e-cigarette, e-cigar, e-pipe or under any other name or descriptor. 17 The term "simulates the activity of smoking", in the context of 18 this definition, means replicating, mimicking or reproducing an 19 experience similar to inhaling, or otherwise drawing into the 20 21 mouth or nose, or exhaling the smoke or combustion product of burning tobacco or any other product or material that can be used 22 23 in a similar fashion.
  - (2) "E-cigarette liquid" means any of the liquids or liquid mixtures used in e-cigarettes and is also known as e-juice, e-fluid, e-liquid or e-liquid product. E-cigarette liquid includes

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- 27 e-cigarette liquid mixing kits and e-cigarette liquid mixing kit
- 28 components. When used in, or with, an e-cigarette, e-cigarette
- 29 liquid is vaporized or otherwise converted into an inhalable
- 30 product. E-cigarette liquid may or may not include, without
- 31 limitation, propylene glycol, vegetable glycerin, nicotine from
- 32 any source or flavorings.
- 33 (b) *Levy of tax; rate.* —
- 34 (1) On and after July 1, 2016, an excise tax is levied and
- 35 imposed on sales of e-cigarette liquid at the rate of 7.5 cents per
- 36 milliliter or fraction thereof, or if not sold, then at the same rate
- 37 upon the use by the wholesaler or dealer. For purposes of this
- 38 article, any distributor, dealer, subjobber, subjobber dealer,
- 39 retailer or any other person that imports or transports e-cigarette
- 40 liquids into this state, or that causes e-cigarette liquids to be
- 41 imported or transported into this state, is hereby deemed to be a
- 42 wholesaler for purposes of this section and is liable for the tax
- 43 imposed under this article. No wholesaler or other person may
- 44 purchase e-cigarette liquids from any seller not approved by the
- 45 Tax Commissioner. E-cigarette liquid mixing kits and e-cigarette
- 46 liquid mixing kit components shall be taxed in accordance with
- 47 the amount of e-cigarette liquid, in milliliters, that can be
- 48 produced by or from the kit or components thereof, as
- 49 determined by the Tax Commissioner.
- 50 (2) Only one sale of e-cigarette liquid shall be used in
- 51 computing the amount of tax due under this section.
- 52 (c) How tax paid; invoice required; reports required; due
- 53 date; records to be kept. —
- 54 (1) The tax imposed in this section on e-cigarette liquid shall
- 55 be paid using an invoice method prescribed by the Tax
- 56 Commissioner.

- 57 (2) The tax will be paid on any and all e-cigarette liquid 58 coming into the state for the purpose of sale or use in this state 59 on and after July 1, 2016.
- 60 (3) Contents of delivery ticket or invoice. Unless 61 otherwise permitted in writing by the Tax Commissioner, each 62 delivery ticket or invoice for each purchase or sale of e-cigarette 63 liquid must be recorded upon a serially numbered invoice 64 showing:
- 65 (A) The name and address of the seller and the purchaser;
- 66 (B) The point of delivery;
- 67 (C) The date;
- 68 (D) (i) The number of e-cigarette cartridges, apparatus, 69 containers or other devices; (ii) the quantity in milliliters of each cartridge, apparatus, container or other device; (iii) the wholesale 70 price of each e-cigarette cartridge, apparatus, container or other 71 72 device delivered in this state; or (iv) if sold outside of a cartridge or other device or container, the total quantity in milliliters of 73 74 e-cigarette liquid not in cartridges, apparatus or other device or 75 container delivered in this state and the wholesale price of the 76 e-cigarette liquid;
- 77 (E) The invoice must either set out the amount of tax 78 imposed by this article separately on the invoice or the invoice 79 may instead indicate that the tax imposed under this article is 80 included in the total price; and
- 81 (F) Any other information required by the Tax 82 Commissioner.
- 83 (4) Reports and payments due date. On or before the 84 fifteenth day of each month, manufacturers, importers, every 85 place of business as defined in this article, retail dealers,

86 subjobbers, vending machine operators and wholesale dealers and their agents, shall file a report covering the business 87 transacted in the previous month providing any information the 88 89 Tax Commissioner determines necessary for the ascertainment 90 or assessment of the taxes imposed by this article. Reports shall 91 be signed under penalty of perjury and be in a form as prescribed 92 by the Tax Commissioner. The amount of tax shown to be due on the monthly report, if any, shall be remitted on or before the 93 94 due date of the monthly report. The first report due for e-liquid sales is August 15, 2016, for the sales completed in July 2016. 95

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- (5) Reports required. The reports prescribed in this article are required, although a tax may not be due or no business transacted, for the period covered by the report. In the case of any failure to file a report on the date prescribed for filing when no tax is due, unless it is shown that the failure was due to reasonable cause, there is hereby imposed a penalty of \$25 for each month or fraction of a month that such report is delinquent, until the report is filed, in addition to any penalties imposed under section nineteen-a of this article.
- (6) Records. Each person required to file a report shall make and keep the records necessary to substantiate the accuracy of the reports required by this section including, but not limited to, records of inventories, receipts, disbursements and sales. Records shall be retained for a period of time not less than three years from the time the report is due or the time when the report is filed, whichever is later.
- 112 (d) Inspection of records and stocks; examination of 113 witnesses; registration of e-cigarette sellers; presumption of 114 nontax paid. —
- 115 (1) The Tax Commissioner has the authority to inspect or 116 examine the records, books and papers, and any equipment or 117 e-cigarette apparatus, and any stock of e-cigarette liquid kept in

or upon the premises of persons who sell, possess or store e-cigarette liquid, for the purpose of determining the quantity and value of e-cigarette liquid acquired, on hand or disbursed, to verify the truth and accuracy of any statement, return, form or report and to ascertain whether the tax imposed by this article has been properly paid.

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- (2) In addition to the Tax Commissioner's powers set forth in article ten of this chapter, the Tax Commissioner or the Tax Commissioner's agent may examine witnesses under oath in order to ascertain the amount of taxes and reports due under this article. If a witness or person fails or refuses to testify or grant access to records, books, papers, equipment or e-cigarette apparatus, or any stock of e-cigarette liquid, necessary or useful to ascertain the amount of taxes and reports due under this article, the Tax Commissioner shall certify the facts and names to the circuit court of the county having jurisdiction of the party and the court shall issue a summons to the party to appear before the Tax Commissioner at a place designated within the jurisdiction of the court, on a day fixed, to be continued as the occasion may require for good cause shown, to testify and give evidence and to produce for inspection any books, records and papers that may be required and to grant access to records, books, papers, equipment or e-cigarette apparatus, or any stock of e-cigarette liquid, for the purpose of ascertaining the amount of tax and reports due, if any.
- (3) Each wholesale dealer of e-cigarette liquid must register with the Tax Commissioner and maintain a business registration certificate, showing the wholesale dealer of e-cigarette liquid to be registered as a seller of tobacco products or seller of both cigarettes and tobacco products prior to the sale or delivery of e-cigarette liquid to any retail dealer or subjobber in this state. A wholesale dealer may sell tax-paid e-cigarette liquid only to another wholesaler or a retail dealer or subjobber in this state.

- No person may purchase nontaxed e-cigarette liquid from any
- seller not approved by the Tax Commissioner.
- 153 (4) Whenever e-cigarette liquid is found in the place of 154 business of any retail dealer, without evidence that the tax 155 imposed by this section has been paid, it shall be presumed that 156 the e-cigarette liquid is kept on the premises in violation of this
- 157 article.

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- 158 (e) *Bond.* The Tax Commissioner may require wholesalers, subjobbers or retail dealers to file a continuous surety bond in an amount to be fixed by the Tax Commissioner but no less than \$1,000. The bond shall be conditioned upon faithfully complying with the provisions of this article including the filing of the returns and payment of all taxes prescribed by this article.
  - (f) Administration and enforcement. The provisions of this article and articles nine and ten of this chapter apply to administration and enforcement of the excise tax on e-cigarette liquid in the same manner and to the same extent as they apply to administration and enforcement of the excise tax on tobacco products, as imposed under this article.
  - (g) Criminal sanctions. The criminal sanctions imposed in section nineteen-a of this article are hereby imposed with equal force and application with relation to actions, transactions and responsibilities prescribed under this section and under this article. For the purpose of applying and interpreting the provisions of section nineteen-a of this article, the words "container of tobacco products" shall be interpreted to mean and include the words "container of tobacco products or e-cigarette liquid".

# CHAPTER 11

## (S. B. 1015 - By Senators Cole (Mr. President) and Kessler) [By Request of the Executive]

[Passed June 14, 2016; in effect from passage.] [Approved by the Governor on June 17, 2016.]

AN ACT to amend and reenact §17C-5-2b of the Code of West Virginia, 1931, as amended, relating to participation in Motor Vehicle Alcohol Test and Lock Program; and clarifying offenses for which individuals are eligible to participate in the program.

Be it enacted by the Legislature of West Virginia:

That §17C-5-2b of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

#### ARTICLE 5. SERIOUS TRAFFIC OFFENSES.

- §17C-5-2b. Deferral of further proceedings for certain first offenses upon condition of participation in Motor Vehicle Alcohol Test and Lock Program; procedure on charge of violation of conditions.
  - 1 (a) Except as provided in subsection (g) of this section,
  - 2 whenever any person who has not previously been convicted of
  - 3 any offense under this article or under any statute of the United
  - 4 States or of any state relating to driving under the influence of
  - 5 alcohol, any controlled substance or any other drug:
  - 6 (1) Notifies the court within thirty days of his or her arrest
  - 7 of his or her intention to participate in a deferral pursuant to this
  - 8 section: and

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- 9 (2) Pleads guilty to or is found guilty of driving under the 10 influence of alcohol under subsection (e), section two of this article, the court, without entering a judgment of guilt and with 11 the consent of the accused, shall defer further proceedings and, 12 notwithstanding any provisions of this code to the contrary, 13 14 place him or her on probation, which conditions shall include 15 that he or she successfully completes the Motor Vehicle Alcohol Test and Lock Program as provided in section three-a, article 16 17 five-a of this chapter. Participation therein shall be for a period of at least one hundred sixty-five days after he or she has served 18 the fifteen days of license suspension imposed pursuant to 19 20 section two, article five-a of this chapter.
  - (b) A defendant's election to participate in deferral under this section shall constitute a waiver of his or her right to an administrative hearing as provided in section two, article five-a of this chapter.
- 25 (c) (1) If the prosecuting attorney files a motion alleging that the defendant during the period of the Motor Vehicle Alcohol 26 27 Test and Lock Program has been removed therefrom by the Division of Motor Vehicles, or has failed to successfully 28 29 complete the program before making a motion for dismissal pursuant to subsection (d) of this section, the court may issue 30 such process as is necessary to bring the defendant before the 31 32 court.
  - (2) A motion alleging such violation filed pursuant to subdivision (1) of this subsection must be filed during the period of the Motor Vehicle Alcohol Test and Lock Program or, if filed thereafter, must be filed within a reasonable time after the alleged violation was committed.
- 38 (3) When the defendant is brought before the court, the court shall afford the defendant an opportunity to be heard. If the court finds that the defendant has been rightfully removed from the

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- 41 Motor Vehicle Alcohol Test and Lock Program by the Division
- 42 of Motor Vehicles, the court may order, when appropriate, that
- 43 the deferral be terminated, and thereupon enter an adjudication
- 44 of guilt and proceed as otherwise provided.
- 45 (4) Should the defendant fail to complete or be removed 46 from the Motor Vehicle Alcohol Test and Lock Program, the 47 defendant waives the appropriate statute of limitations and the 48 defendant's right to a speedy trial under any applicable federal 49 or state constitutional provisions, statutes or rules of court during 50 the period of enrollment in the program.
- 51 (d) When the defendant shall have completed satisfactorily 52 the Motor Vehicle Alcohol Test and Lock Program and complied 53 with its conditions, the defendant may move the court for an order dismissing the charges. This motion shall be supported by 54 affidavit of the defendant and by certification of the Division of 55 56 Motor Vehicles that the defendant has successfully completed 57 the Motor Vehicle Alcohol Test and Lock Program. A copy of 58 the motion shall be served on the prosecuting attorney who shall 59 within thirty days after service advise the judge of any objections 60 to the motion, serving a copy of such objections on the defendant or the defendant's attorney. If there are no objections filed within 61 the thirty-day period, the court shall thereafter dismiss the 62 charges against the defendant. If there are objections filed with 63 64 regard to the dismissal of charges, the court shall proceed as set forth in subsection (c) of this section. 65
  - (e) Except as provided herein, unless a defendant adjudicated pursuant to this subsection be convicted of a subsequent violation of this article, discharge and dismissal under this section shall be without adjudication of guilt and is not a conviction for purposes of disqualifications or disabilities imposed by law upon conviction of a crime except for those provided in article five-a of this chapter. Except as provided in subsections (l), (m) and (n), section two of this article regarding

subsequent offenses, the effect of the dismissal and discharge shall be to restore the person in contemplation of law to the status he or she occupied prior to arrest and trial. No person as to whom a dismissal and discharge have been effected shall be thereafter held to be guilty of perjury, false swearing or otherwise giving a false statement by reason of his or her failure to disclose or acknowledge his or her arrest or trial in response to any inquiry made of him or her for any purpose other than any inquiry made in connection with any subsequent offense as that term is defined in subsection (n), section two of this article.

- (f) There may be only one discharge and dismissal under this section with respect to any person.
- (g) No person shall be eligible for dismissal and discharge under this section: (1) In any prosecution in which any violation of any other provision of this article has been charged; (2) if the person holds a commercial driver's license or operates commercial motor vehicle(s); (3) if the person has previously had his or her driver's license revoked under section two-a of this article or under any statute of the United States or of any state relating to driving under the influence of alcohol, any controlled substance or any other drug; or (4) if the person refused the secondary chemical test pursuant to section seven of this article.
- (h) (1) After a period of not less than one year which shall begin to run immediately upon the expiration of a term of probation imposed upon any person under this section, the person may apply to the court for an order to expunge from all official records all recordations of his or her arrest, trial and conviction, pursuant to this section except for those maintained by the Division of Motor Vehicles: *Provided*, That any person who has previously been convicted of a felony may not make a motion for expungement pursuant to this section.
- 105 (2) If the prosecuting attorney objects to the expungement, 106 the objections shall be filed with the court within thirty days

- after service of a motion for expungement and copies of the objections shall be served on the defendant or the defendant's attorney.
- 110 (3) If the objections are filed, the court shall hold a hearing 111 on the objections, affording all parties an opportunity to be heard. If the court determines after a hearing that the person 112 113 during the period of his or her probation and during the period of 114 time prior to his or her application to the court under this subsection has not been guilty of any serious or repeated 115 116 violation of the conditions of his or her probation, it shall order 117 the expungement.
- (i) Notwithstanding any provision of this code to the 118 119 contrary, any person prosecuted for a violation of subsection (e), section two, article five of this chapter whose case is disposed of 120 121 pursuant to the provisions of this section shall be liable for any 122 court costs assessable against a person convicted of a violation 123 of subsection (j), section two, article five of this chapter. 124 Payment of such costs may be made a condition of probation. 125 The costs assessed pursuant to this subsection, whether as a term 126 of probation or not, shall be distributed as other court costs in 127 accordance with section two, article three, chapter fifty; section 128 four, article two-a, chapter fourteen; section four, article 129 twenty-nine, chapter thirty; and sections two, seven and ten, 130 article five, chapter sixty-two of this code.

# **CHAPTER 12**

(H. B. 128 - By Mr. Speaker (Mr. Armstead) and Delegate Miley) [By Request of the Executive]

[Passed June 14, 2016; in effect from passage.] [Approved by the Governor on June 17, 2016.]

AN ACT to amend and reenact §33-3-33a of the Code of West Virginia, 1931, as amended, relating to the Volunteer Fire Department Workers' Compensation Premium Subsidy Fund; providing for the deposit of monies into the Volunteer Fire Department Workers' Compensation Premium Subsidy Fund until June 30, 2017; providing for the expiration and closure of the Volunteer Fire Department Workers' Compensation Premium Subsidy Fund on June 30, 2017; and providing for the transfer of any remaining monies in the Volunteer Fire Department Workers' Compensation Premium Subsidy Fund upon closure of such fund.

Be it enacted by the Legislature of West Virginia:

That §33-3-33a 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.

§33-3-33a. Excess moneys of Fire Protection Fund deposited into Volunteer Fire Department Workers' Compensation Premium Subsidy Fund; other funding; special report from State Fire Marshal by December 15, 2015; termination of program June 30, 2017.

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- 1 (a) There is hereby established a special fund in the State Treasury known as the "Volunteer Fire Department Workers' Compensation Premium Subsidy Fund." The fund shall be 3 4 administered by the State Auditor and shall consist of moneys 5 deposited in the fund pursuant to this section, any other funds appropriated by the Legislature for volunteer fire departments 6 7 for the purposes of section fourteen-a, article four, chapter twelve of this code, and the interest or other earnings on the 8 9 moneys in the fund. The State Auditor shall administer the distribution of moneys of the fund to volunteer fire departments 10 to help defray workers' compensation insurance premium 11 12 increases pursuant to section fourteen-a, article four, chapter 13 twelve of this code. Balances in the fund at the end of any fiscal 14 year shall not expire, but shall be expended for those purposes in 15 ensuing fiscal years pursuant to appropriation of the Legislature.
- 16 (b) Beginning July 1, 2013, and in each fiscal year thereafter 17 until June 30, 2017, the excess of the aggregate of amounts 18 collected by the commissioner that are otherwise required under 19 any provision of this code to be deposited into the Fire 20 Protection Fund over the aggregate of those amounts deposited into the Fire Protection Fund during the fiscal year ending June 21 22 30, 2013, shall be deposited into the Volunteer Fire Department 23 Workers' Compensation Premium Subsidy Fund and expended 24 solely for the purposes established in section fourteen-a, article 25 four, chapter twelve of this code.
  - (c) On or before August 1, 2013, the commissioner shall transfer \$4 million from the Fire Marshal Fees Fund created under section twelve-b, article three, chapter twenty-nine of this code to the Volunteer Fire Department Workers' Compensation Premium Subsidy Fund to be expended solely for the purposes established in section fourteen-a, article four, chapter twelve of this code until June 30, 2017.

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- 33 (d) The State Fire Marshal, in consultation with the 34 Insurance Commissioner, the State Auditor, the Secretary of Revenue and the Legislative Auditor, shall conduct a review of 35 36 the needs of each volunteer or part volunteer fire company or volunteer fire department serving in the various counties of the 37 38 state. On or before December 31, 2015, the State Fire Marshal 39 shall submit to the Joint Committee on Government and Finance 40 a comprehensive report of the review and the State Fire 41 Marshal's recommendations, substantiated by the findings of the 42 review, of steps that may be taken to meet the needs of and sustain the volunteer and part volunteer fire companies and 43 44 volunteer fire departments of this state, including, but not limited 45 to, the following:
  - (1) An assessment of all current funding received by the volunteer fire companies and departments, and a further assessment of the funding necessary to provide the community protections required for the areas served by the volunteer fire companies and departments, the extent to which those needs are being met, the extent to which they are not being met, and recommendations of sources of funds to meet additional needs and the amounts needed, if any;
  - (2) An assessment of the cost of workers' compensation coverage for the volunteer fire companies and departments and recommendations for any actions that may be undertaken by the volunteer fire companies and departments and others to reduce those costs;
- (3) An assessment of the causes of any decline in recruitment and retention of volunteer firefighters and recommendations for improvements in this area, including any recommendations for incentives that have a demonstrated record of significant increases in recruitment and retention as well as recommendations of sources of funds to provide those 64 incentives, if funds are necessary;

- (4) An assessment of the level of financial accountability that should be required of volunteer fire companies and departments in order to provide the Legislature the information necessary to target future funding for their activities based upon the safety and fire protection needs of the various areas of the state:
  - (5) An assessment of the comparative levels of funding for volunteer fire companies and departments provided by counties, municipalities and other political subdivisions and the means by which that funding is provided, including identification of those which contribute little or no funding to the volunteer fire companies and departments within their jurisdictions, together with recommendations for increasing those levels of contributions;
  - (6) An assessment of the comparative levels of funding for volunteer fire companies and departments provided by their own efforts, and the means by which that funding is provided, including identification of those which provide little or no funding through their own efforts, together with recommendations for increasing these sources of funding;
  - (7) An assessment of the comparative economic and other benefits provided by the various volunteer fire companies and departments to their particular counties, municipalities and other political subdivisions, as well as to citizens of the local communities they serve;
    - (8) An assessment of the sustainability of the current model of providing fire and other protections to the citizens of rural communities through volunteer fire companies and departments and an assessment of alternative models for providing those protections; and

- 96 (9) Other assessments and recommendations which the State
   97 Fire Marshal deems appropriate in the circumstances.
- 98 (e) Upon the conclusion of the fiscal year ending June 30, 2017, the provisions of this section and section fourteen-a, article 99 four, chapter twelve of this code shall expire and be of no further 100 101 force and effect and the Volunteer Fire Department Workers' 102 Compensation Premium Subsidy Fund shall be closed. Upon 103 closure of the fund, from any balances therein remaining, the 104 State Auditor shall first, to the extent available, transfer to the 105 Fire Protection Fund an amount equal to the aggregate of funds 106 deposited into the Volunteer Fire Department Workers' 107 Compensation Premium Subsidy Fund during the fiscal years 108 ending June 30, 2014, 2015, 2016 and 2017 pursuant to 109 subsection (b) of this section that would otherwise have been 110 required to be deposited into the Fire Protection Fund, and any 111 balances thereafter remaining in the Volunteer Fire Department 112 Workers' Compensation Premium Subsidy Fund shall expire to

the General Revenue Fund of the state.

# LEGISLATURE OF WEST VIRGINIA

# **ACTS**

#### SECOND EXTRAORDINARY SESSION, 2016

# **CHAPTER 1**

(H. B. 201 - By Mr. Speaker (Mr. Armstead) and Delegate Miley) [By Request of the Executive]

[Passed September 19, 2016; in effect from passage.] [Approved by the Governor on September 20, 2016.]

AN ACT expiring funds to the unappropriated surplus balance in the State Fund, General Revenue, for the fiscal year ending June 30, 2017, in the amount of \$13,700,000 from the balance of moneys remaining as an unappropriated balance in Lottery Net Profits, in the amount of \$7,300,000 from the balance of moneys remaining as an unappropriated balance in the State Excess Lottery Revenue Fund, and in the amount of \$55,000,000 from the Department of Revenue, Office of the Secretary – Revenue Shortfall Reserve Fund, fund 7005, fiscal year 2017, organization 0701, and making a supplementary appropriation of public moneys out of the Treasury from the balance of moneys remaining as unappropriated surplus balance in the State Fund, General Revenue, to the Governor's Office - Civil Contingent Fund, fund 0105, fiscal year 2017, organization 0100, by supplementing and amending the appropriation for the fiscal year ending June 30, 2017.

Whereas, The Governor submitted to the Legislature a Statement of the Lottery Fund, dated September 18, 2016, setting

forth therein the unappropriated cash balance as of July 1, 2016, and further included the estimate of revenues for the fiscal year 2017, less regular appropriations for fiscal year 2017; and

Whereas, It appears from the Governor's Statement of the Lottery Fund there now remains an unappropriated balance in the State Treasury, which is available for expiration during the fiscal year ending June 30, 2017; and

Whereas, The Governor submitted to the Legislature a Statement of the State Excess Lottery Revenue Fund, dated September 18, 2016, setting forth therein the cash balance as of July 1, 2016, and further included the estimate of revenue for the fiscal year 2017, less regular appropriations for the fiscal year 2017; and

Whereas, It appears from the Governor's Statement of the State Excess Lottery Revenue Fund there now remains an unappropriated balance in the State Treasury which is available for expiration during the fiscal year ending June 30, 2017; and

Whereas, The Revenue Shortfall Reserve Fund may be drawn on for natural disasters, including the ongoing State of Emergency and federally-declared flood disaster that commenced on June 23, 2016; and

Whereas, The Governor submitted to the Legislature a statement of the State Fund, General Revenue, dated September 18, 2016, setting forth therein the cash balance as of July 1, 2016, and further included the estimate of revenues for the fiscal year 2017, less net appropriation balances forwarded and regular and surplus appropriations for the fiscal year 2017, and further included recommended expirations to the surplus balance of the State Fund General Revenue; and

Whereas, It appears from the Governor's Statement of the State Fund, General Revenue, and this legislation, there now remains an unappropriated surplus balance in the Treasury which is available for appropriation during the fiscal year ending June 30, 2017; therefore

Be it enacted by the Legislature of West Virginia:

1	That the balance of the moneys remaining as an
2	unappropriated balance for the fiscal year ending June 30, 2017,
3	in Lottery Net Profits be decreased by expiring the amount of
4	\$13,700,000, that the balance of the moneys remaining as an
5	unappropriated balance for the fiscal year ending June 30, 2017
6	in the State Excess Lottery Revenue Fund be decreased by
7	expiring the amount of \$7,300,000, and that the balance of the
8	moneys available in the fiscal year ending June 30, 2017, in the
9	Department of Revenue, Office of the Secretary - Revenue
10	Shortfall Reserve Fund, fund 7005, fiscal year 2017,
11	organization 0701 be decreased by expiring the amount of
12	\$55,000,000, all to the unappropriated surplus balance of the
13	State Fund, General Revenue to be available for appropriation
14	during the fiscal year ending June 30, 2017.
15	And, that the total appropriation for the fiscal year ending
16	June 30, 2017, to fund 0105, fiscal year 2017, organization 0100,
17	be supplemented and amended by adding a new item of
18	appropriation as follows:
10	appropriation as ronows.
1	TITLE II – APPROPRIATIONS.
2	
2	Section 1. Appropriations from general revenue.
3	EXECUTIVE
4	7 – Governor's Office –
5	Civil Contingent Fund

2236	APPROPRIATIONS	[Ch. 1
6	(WV Code Chapter 5)	
7	Fund <u>0105</u> FY <u>2017</u> Org <u>0100</u>	
8 9	Appro-	General Revenue
10	priation	Fund
11	1 Civil Contingent Fund -	
12	Surplus	85,000,000
13	Any federal reimbursements received to	o reimburse
14	disbursements from this appropriation or funds tran	nsferred from
15	this appropriation shall be credited back to this ap	propriation.

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January 13, 2016 – March 15, 2016

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