ACTS

OF THE

LEGISLATURE

OF

WEST VIRGINIA

Regular Session, 2021
Constitutional Amendments, 2021
First Extraordinary Session, 2021
Second Extraordinary Session, 2021

Volume I
Chapters 1 - 121

WEST VIRGINIA HOUSE OF DELEGATES

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SPEAKER OF THE HOUSE

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UNDER THE DIRECTION
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FOREWORD

These volumes contain the Acts of the First Regular Session of the 85th Legislature, 2021, and the First and Second Extraordinary Sessions of the 85th Legislature, 2021.

First Regular Session, 2021

The 85th Legislature convened on January 13, 2021, and following the election of officers of the two houses, the opening of the returns of the election of state officers at the general election held on the 3rd day of November, 2020, as prescribed by Section 18, Article VI of the Constitution of the State, the adoption of rules to govern the proceedings of the two houses and concurrently and separately acting on certain other matters incident to organization, took an adjournment until February 10, 2021, as provided by the aforesaid section of the Constitution. Reconvening, pursuant to the adjournment, the constitutional sixty-day limit on the duration of the session was midnight, April 10, 2021. The Governor issued a proclamation on April 7, 2021, extending the session for a period not to exceed one day for the purpose of considering the Budget Bill, and the Legislature adjourned *sine die* on April 11, 2021.

Bills totaling 2,039 were introduced in the two houses during the session (1,317 House and 722 Senate). The Legislature passed 282 bills, 160 House and 122 Senate.

Two bills became law without the Governor's signature (**H. B. 3310**, Relating to the jurisdiction of the Public Service Commission, and **Com. Sub. for S. B. 11**, Declaring work stoppage or strike by public employees to be unlawful).

The Governor vetoed 1 bill (**S. B. 89**, Exempting certain kindergarten and preschool programs offered by private schools from registration requirements). The Legislature amended and again passed **S. B. 89**, leaving a net total of 282 bills, 160 House and 122 Senate, which became law.

There were 195 Concurrent Resolutions introduced during the session, 114 House and 81 Senate, of which 28 House and 11 Senate were adopted. Thirty House Joint Resolutions and 11 Senate Joint Resolutions were introduced, proposing amendments to the State Constitution, of which 2 House Joint Resolutions and 1 Senate Joint Resolution were adopted (**H. J. R. 2**, Providing that courts have no authority or jurisdiction to intercede or intervene in, or interfere with, any impeachment proceedings of the House of Delegates or the Senate, **Com. Sub. for H. J. R. 3**, Property Tax Modernization Amendment, and **S. J. R. 4**, Incorporation of Churches or Religious Denominations Amendment). The House introduced 27 House Resolutions and the Senate introduced 50 Senate Resolutions, of which 16 House and 50 Senate were adopted.

First Extraordinary Session, 2021

The Proclamation calling the Legislature into Extraordinary Session on June 7, 2021, contained 7 items for consideration. A subsequent amendment to the proclamation replaced an item and increased the total to 8 items for consideration.

The Legislature introduced 9 bills during the Extraordinary Session (2 House and 7 Senate). The Legislature passed 7 bills, 2 House and 5 Senate, each of which was approved by the Governor and became law.

The Senate introduced and adopted 5 Senate Resolutions.

The Legislature adjourned *sine die* the same day.

Second Extraordinary Session, 2021

The Proclamation calling the Legislature into Extraordinary Session on June 24, 2021, contained 21 items for consideration. Subsequent amendments to the Proclamation included the addition, deletion, and replacement of items and left a net total of 27 items for consideration.

The Legislature introduced 48 bills during the Extraordinary Session (24 House and 24 Senate). The Legislature passed 21 Senate Bills, each of which was approved by the Governor and became law.

There were 3 Concurrent Resolutions, 1 House and 2 Senate, introduced and adopted (**H. C. R. 201**, Requesting the President of the United States to designate a single state funeral to be held upon the death of the last living Medal of Honor recipient from World War II; **S. C. R. 201**, Requesting US President designate single state funeral on death of last Medal of Honor recipient of WW II; and **S. C. R. 202**, Urging federal government to allocate $8 billion for coal mine reclamation funding to WV). The Senate introduced and adopted 4 Senate Resolutions.

The Legislature adjourned *sine die* the same day.

STEPHEN J. HARRISON

Clerk of the House and
Keeper of the Rolls.

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MEMBERS OF THE HOUSE OF DELEGATES

REGULAR SESSION, 2021

OFFICERS

Speaker: Roger Hanshaw - Wallback
Clerk: Stephen J. Harrison – Cedar Grove
Sergeant-at-Arms: Marshall Clay - Fayetteville
Doorkeeper: Robert W. Stewart- Cross Lanes

Name	District	City	Occupation	Term
Anderson, Bill (R)	8th	Williamstown	Educator	71st - 85th
Barach, Jim (D)	36th	Charleston	Retired TV Meteorologist	85th
Barnhart, Trenton (R)	7th	St. Marys	Community Banker	Appt. 9/17/2019, 84th; 85th
Barrett, Jason (D)	61st	Martinsburg	Restaurant owner	81st; 83rd - 85th
[1] Bates, Mick (R)	30th	Beckley	Physical therapist Small Business Owner	82nd - 85th
Boggs, Brent (D)	34th	Gassaway	Railroad Engineer	73rd - 85th
[2] Booth, Josh (R)	19th	Ceredo	Officer Highway Safety Inc.	Appt. 1/27/2021, 85th
Bridges Jordan (R)	24th	Logan	Coal Miner	85th
Brown, Nathan (D)	20th	Williamson	Attorney	84th – 85th
Bruce, Barry L. (R)	42nd	Lewisburg		85th
Burkhammer, Adam (R)	46th	Horner	Business Owner	85th
Capito, Moore (R)	35th	Charleston	Attorney	83rd - 85th
Clark, Wayne (R)	65th	Charles Town	Business Owner	85th
Conley, Roger (R)	10th	Vienna	Business Owner	85th
Cooper, Roy (R)	28th	Wayside	Retired U. S. Navy	81st - 85th
Criss, Vernon (R)	10th	Parkersburg	Executive	69th; 83rd - 85th
Dean, Mark (R)	21st	Verner	Principal	83rd - 85th
Diserio, Phillip W. (D)	2nd	Follansbee	Retired Electrician	81st; 83rd - 85th
Doyle, John (D)	67th	Shepherdstown		66th; 71st - 80th; 84th - 85th
Ellington, Joe (R)	27th	Princeton	Physician	80th - 85th
Espinosa, Paul (R)	66th	Charles Town	Public Affairs Manager	81st - 85th
Evans, Ed (D)	26th	Welch	Retired Science Teacher	83rd - 85th
Fast, Tom (R)	32nd	Fayetteville	Attorney	82nd - 85th
Ferrell, Dana (R)	39th	Sissonville	Business Owner	85th
Fleischauer, Barbara Evans (D)	51st	Morgantown	Attorney Small Business Owner	72nd - 76th; 78th - 85th
Fluharty, Shawn (D)	3rd	Wheeling	Attorney	82nd - 85th
Forsht, Don (R)	60th	Gerrardstown	Construction and Property Management	85th
Foster, Geoff (R)	15th	Winfield	Construction Supply	82nd - 85th
Garcia, Joey (D)	50th	Fairmont	Attorney	85th
Gearheart, Marty (R)	27th	Bluefield	Businessman	80th – 83rd; 85th
Graves, Dianna (R)	38th	Cross Lanes	Auditor	Appt. 9/19/2017, 83rd; 84th - 85th
Griffith, Ric (D)	19th	Kenova	Pharmacist	85th
Hamrick, Danny (R)	48th	Lost Creek	Business Owner	81st - 85th
Hanna, Caleb (R)	44th	Richwood	Full-time Student	84th - 85th
Hansen, Evan (D)	51st	Morgantown	President, Downstream Strategies	84th - 85th
Hanshaw, Roger (R)	33rd	Wallback	Attorney	82nd - 85th
Hardy, John (R)	63rd	Shepherdstown	Businessman	84th - 85th
Haynes, Austin (R)	32nd	Oak Hill	Insurance Agent	85th
Higginbotham, Joshua (R)	13th	Poca	Business Owner	83rd - 85th
Holstein, Josh (R)	23rd	Ashford		85th
Hornbuckle, Sean (D)	16th	Huntington	Financial Advisor	82nd - 85th
Horst, Charles K. "Chuck" (R)	62nd	Falling Waters	Business Owner	85th
Hott II, John Paul (R)	54th	Petersburg	Insurance Disposal Service	84th - 85th
Householder, Eric L. (R)	64th	Martinsburg	Business Owner	80th - 85th
Howell, Gary G. (R)	56th	Keyser	Business Owner	80th - 85th

Jeffries, Dean (R)	40th	Elkview	Insurance Agent	Appt. 9/5/2018, 83rd; 84th - 85th
Jeffries, Joe (R)	22nd	Culloden	Maintenance Manager	84th - 85th
Jennings, D. "Buck" Rolland (R)	53rd	Thornton	Self-Employed	Appt. 10/10/2017, 83rd; 84th - 85th
Keaton, N. Riley (R)	11th	Spencer	Youth Camping Ministry	85th
Kelly, David (R)	6th	Sistersville	Pastor	84th - 85th
Kelly, John R. (R)	10th	Parkersburg	Retired, Chemical Industry	82nd - 85th
Kessinger, Kayla (R)	32nd	Mount Hope	Director of Human Resources	82nd - 85th
Kimble, Laura (R)	48th	Bridgeport	Homemaker	85th
Kimes, D. "Shannon" (R)	9th	Rockport	Business Owner	85th
Linville, Daniel (R)	16th	Milton	Information Technology Officer	Appt. 8/1/2018, 83rd; 84th - 85th
Longanacre, Todd (R)	42nd	Caldwell	Retired Army	85th
Lovejoy, Chad (D)	17th	Huntington	Attorney	83rd - 85th
Mallow, Phil (R)	50th	Fairmont	Retired UPS Management	85th
Mandt, John Jr. (R)	16th	Huntington	Businessman	84th, Resigned 10/7/2020; 85th
Martin, Carl "Robbie" (R)	45th	Buckhannon	Business Owner	84th - 85th
Maynard, Zack (R)	22nd	Harts	Self Employed	83rd - 85th
Mazzocchi, Margitta (R)	24th	Chapmanville	Business Owner	85th
McGeehan, Pat (R)	1st	Chester	Business Management/Author	79th; 82nd - 85th
Miller, George A. (R)	58th	Berkeley Springs	Retired Maintenance Supervisor	85th
Nestor, William "Ty" (R)	43rd	Elkins	Lawyer	85th
Pack, Jeffrey (R)	28th	Cool Ridge	Human Resources	Appt. 1/10/2018, 83rd; 84th - 85th
Pack, Larry (R)	35th	Charleston		85th
Paynter, Tony (R)	25th	Hanover	Truck Driver	83rd - 85th
Pethtel, Dave (D)	5th	Hundred	Educator	69th - 71st; 74th - 85th
Phillips, Chris (R)	47th	Buckhannon	President, CGP Foods, Inc	84th - 85th
Pinson, Jonathan Adam (R)	13th	Point Pleasant	Pastor	85th
Pritt, Chris (R)	36th	Charleston	Lawyer	85th
Pushkin, Mike (D)	37th	Charleston	Taxi Driver/Musician	82nd - 85th
Queen, Ben (R)	48th	Bridgeport	Media Entrepreneur Photography	83rd - 85th
Reed, Ken (R)	59th	Hedgesville	Pharmacist	85th
Reynolds, Charlie (R)	4th	Moundsville	Railroad Terminal Manager	85th
Riley, Clay (R)	48th	Shinnston	Professional Engineer	85th
Rohrbach, Matthew (R)	17th	Huntington	Physician	82nd - 85th
Rowan, Ruth (R)	57th	Points	Retired Educator	77th - 85th
Rowe, Larry L. (D)	36th	Charleston	Attorney	73rd - 74th (House) 75th - 76th (Senate) 82nd - 85th (House)
Skaff, Doug (D)	35th	South Charleston	Business Owner	79th - 81st; 84th - 85th
Smith, Doug (R)	27th	Princeton	Retired Army	85th
Statler, Joe (R)	51st	Core	Retired	82nd – 83rd; 85th
Steele, Brandon (R)	29th	Beckley	Attorney	84th - 85th
Storch, Erikka (R)	3rd	Wheeling	Financial Officer	80th - 85th
Summers, Amy (R)	49th	Flemington	Registered Nurse	82nd - 85th
Sypolt, Terri Funk (R)	52nd	Kingwood	Assessor	83rd - 85th
Thompson, Cody (D)	43rd	Elkins	Educator	84th - 85th
Toney, Christopher Wayne (R)	31st	Beckley	School Bus Operator	84th - 85th
Tully, Heather (R)	41st	Summersville	Family Nurse Practitioner	Appt. 6/17/2020, 84th; 85th
Walker, Danielle (D)	51st	Morgantown	Direct Care Worker	84th - 85th
Wamsley, Johnnie II (R)	14th	Point Pleasant	Entrepreneur	85th
Ward, Bryan C. (R)	56th	Fisher	Retired Sheriff	85th
Ward, Guy (R)	50th	White Hall	Material Analyst	83rd; 85th
Westfall, Steve (R)	12th	Ripley	Insurance Agents	81st - 85th
Williams, John (D)	51st	Morgantown	Insurance Sales	83rd - 85th
Worrell, Evan (R)	18th	Barboursville	Healthcare Data Analytics	84th - 85th
Young, Kayla (D)	36th	South Charleston	Entrepreneur	85th
Zatezalo, Mark (R)	1st	Weirton	Hydrogeologist	82nd - 83rd; 85th
Zukoff, Lisa (D)	4th	Moundsville	Business Owner	84th - 85th

[1]Mick Bates switched from Democrat to Republican on May 12, 2021.
[2]Joshua Booth appointed January 27, 2021 to fill the vacancy created by the January 9, 2021 resignation of Derrick Evans.

MEMBERS OF THE SENATE

REGULAR SESSION, 2021

OFFICERS

President: Craig P. Blair - Martinsburg
Clerk: Bruce Lee Cassis, Jr. - Charleston
Sergeant-at-Arms: Joseph Allen Freedman - Charleston
Doorkeeper: Jeffrey L. Branham - Cross Lanes

Name	District	City	Occupation	Term
Azinger, Michael T. (R)	3rd	Vienna	Manager	82nd (House); 83rd - 85th
Baldwin, Stephen (D)	10th	Ronceverte	Minister	83rd (House); Appt. Oct. 16, 2017, 83rd; 84th- 85th
Beach, Robert D. (D)	13th	Morgantown		Appt. April 24, 1998, 73rd (House); 75th - 79th (House); 80th- 85th
Blair, Craig (R)	15th	Martinsburg	Businessman	76th - 79th (House); 81st - 85th
Boley, Donna J. (R)	3rd	St. Marys	Retired	Appt. May 14, 1985, 67th; 68th - 85th
Caputo, Mike (D)	13th	Rivesville	UMWA District 31Vice President	73rd -84th (House); 85th
Clements, Charles H. (R)	2nd	New Martinsville	Retired	77th (House); Appt. Jan. 28, 2017, 83rd; 84th- 85th
Grady, Amy N. (R)	4th	Leon	Teacher	85th
Hamilton, Bill (R)	11th	Buckhannon	Retired	76th-83rd (House); 84th – 85th
Ihlenfeld, William (D)	1st	Wheeling	U.S. Attorney	84th- 85th
Jeffries, Glenn D. (D)	8th	Red House	Businessman	83rd - 85th
Karnes, Robert L. (R)	11th	Helvetia		82nd – 83rd; 85th
Lindsay, Richard D. (D)	8th	Charleston	Attorney	84th – 85th
Maroney, Michael J. (R)	2nd	Glen Dale	Physician	83rd - 85th
Martin, Patrick (R)	12th	Weston	Business Owner	83rd – 84th (House); 85th
Maynard, Mark R. (R)	6th	Genoa	Automobile Dealer	82nd - 85th
Nelson, Eric (R)	17th	Charleston	Financial Consultant	80th – 84th (House); 85th
Phillips, Rupert W., Jr.	7th	Lorado	Sales Manager	80th – 83rd (House); 85th
Plymale, Robert H. (D)	5th	Huntington	Businessman	71st - 85th
Roberts, Rollan (R)	9th	Raleigh	Minister	84th – 85th
Romano, Michael J. (D)	12th	Clarksburg	Attorney / CPA	82nd - 85th
Rucker, Patricia Puertas (R)	16th	Harpers Ferry	Home Schooling Mother	83rd - 85th
Smith, Randy E. (R)	14th	Davis	Coal Miner	81st - 82nd (House); 83rd - 85th
Stollings, Ron D. (D)	7th	Madison	Physician	78th - 85th
Stover, David (R)	9th	Mullens	Circuit Clerk	85th
Swope, Chandler (R)	6th	Mercer	Retired	83rd-85th
Sypolt, Dave (R)	14th	Kingwood	Professional Land Surveyor	78th - 85th
Takubo, Tom (R)	17th	Charleston	Physician	82nd - 85th
Tarr, Eric J. (R)	4th	Putnam		84th – 85th
Trump IV, Charles S. (R)	15th	Berkeley Springs	Attorney	71st - 77th (House); 82nd - 85th
Unger II, John R. (D)	16th	Martinsburg	Businessman/Economic Development	74th - 85th
Weld, Ryan W. (R)	1st	Wellsburg	Attorney	82nd (House); 83rd - 85th
Woelfel, Michael A. (D)	5th	Huntington	Lawyer	82nd – 85th
Woodrum, Jack David (R)	10th	Hinton	Funeral Director	85th

COMMITTEES OF THE HOUSE OF DELEGATES
(As of March 22, 2021)

STANDING

AGRICULTURE AND NATURAL RESOURCES

Dean (Chair, *Natural Resources*), Phillips (Chair, *Agriculture*), Hamrick (Vice Chair, *Agriculture*), Paynter (Vice Chair, *Natural Resources*), Griffith (Minority Chair, *Agriculture*), Hansen (Minority Chair, *Natural Resources*), Evans (Minority Vice Chair, *Agriculture*), Young (Minority Vice Chair, *Natural Resources*), Anderson, Bridges, Brown, Burkhammer, Cooper, Doyle, Horst, Hott, J. Jeffries, D. Kelly, Longanacre, J. Pack, Pinson, Sypolt, B. Ward, Westfall, Worrell

BANKING AND INSURANCE

Westfall (Chair), Hott (Vice Chair), Bates (Minority Chair), Williams (Minority Vice Chair), Barnhart, Barrett, Brown, Capito, Criss, Espinosa, Garcia, Graves, Haynes, Householder, D. Jeffries, Keaton, Kimes, Lovejoy, McGeehan, Miller, L. Pack, Pritt, Reed, Rowe, Worrell

EDUCATION

Ellington (Chair), Higginbotham (Vice Chair), Hornbuckle (Minority Chair), Thompson (Minority Vice Chair), Bridges, Clark, Doyle, Evans, Griffith, Hamrick, Hanna, Horst, Jennings, J. Kelly, Kessinger, Kimble, Longanacre, Martin, Mazzocchi, Smith, Statler, Toney, Tully, Walker, Wamsley

ENERGY AND MANUFACTURING

Anderson (Chair), Kelly (Vice Chair), Evans (Minority Chair), Pethtel (Minority Vice Chair), Boggs, Bridges, Burkhammer, Cooper, Diserio, Ferrell, Graves, Hansen, Higginbotham, Hott, J. Jeffries, Mallow, Mandt, Maynard, Paynter, Phillips, Reynolds, Wamsley, Westfall, Young, Zatezalo

ENROLLED BILLS

D. Jeffries (Chair), Westfall (Vice Chair), Barach, L. Pack, Pushkin

FINANCE

Householder (Chair), Criss (Vice Chair), Boggs (Minority Chair), Rowe (Minority Vice Chair), Anderson, Barrett, Ellington, Espinosa, Gearheart, Graves, Hardy, Hornbuckle, Hott, Howell, Linville, Maynard, J. Pack, Pethtel, Riley, Rohrbach, Rowan, Statler, Storch, Toney, Williams

FIRE DEPARTMENTS AND EMERGENCY MEDICAL SERVICES

Statler (Chair), J. Jeffries (Vice Chair), Pethtel (Minority Chair), Boggs (Minority Vice Chair), Bruce, Jennings, Lovejoy, J. Pack, Paynter, B. Ward, G. Ward

GOVERNMENT ORGANIZATION

Steele (Chair), Foster (Vice Chair), Diserio (Minority Chair), Barach (Minority Vice Chair), Barnhart, Booth, Conley, Cooper, Dean, Fleischauer, Forsht, Hamrick, Hansen, Holstein, D. Jeffries, J. Jeffries, Kimes, Martin, Mazzocchi, Reynolds, Skaff, Smith, Sypolt, Worrell, Young

HEALTH AND HUMAN RESOURCES

J. Pack (Chair), Rohrbach (Vice Chair), Pushkin (Minority Chair), Walker (Minority Vice Chair), Barach, Barnhart, Bates, Criss, Dean, Ferrell, Fleischauer, Forsht, Griffith, D. Jeffries, Jennings, Longanacre, Mallow, Miller, L. Pack, Reed, Rowan, Summers, Tully, G. Ward, Worrell

INTERSTATE COOPERATION

Storch (Chair), Howell (Vice Chair), Bates, Bruce, Capito, Fleischauer, Nestor

JUDICIARY

Capito (Chair), Fast (Vice Chair), Lovejoy (Minority Chair), Brown (Minority Vice Chair), Bruce, Burkhammer, Fluharty, Garcia, Haynes, Keaton, D. Kelly, Kessinger, Kimble, McGeehan, Nestor, L. Pack, Phillips, Pinson, Pritt, Pushkin, Queen, B. Ward, Westfall, Zatezalo, Zukoff

PENSIONS AND RETIREMENT

Storch (Chair), Gearheart (Vice Chair), Pethtel (Minority Chair), Evans (Minority Vice Chair), Anderson, Graves, J. Pack

POLITICAL SUBDIVISIONS

Martin (Chair), Hardy (Vice Chair), Williams (Minority Chair), Doyle (Minority Vice Chair), Anderson, Barrett, Bruce, Fast, Fluharty, Forsht, Foster, Gearheart, Griffith, Hamrick, Hansen, J. Kelly, Kimes, Mazzocchi, Phillips, Riley, Storch, Thompson, Tully, B. Ward, G. Ward

PREVENTION AND TREATMENT OF SUBSTANCE ABUSE

D. Kelly (Chair), Hanna (Vice Chair), Walker (Minority Chair), Pushkin (Minority Vice Chair), Ellington, Holstein, Kessinger, Mandt, Reed, Rohrbach

RULES

Hanshaw (Chair), Summers (Vice Chair), Anderson, Capito, Criss, Ellington, Espinosa, Fluharty, Foster, Householder, Howell, J. Kelly, Kessinger, Lovejoy, J. Pack, Rowe, Skaff, Steele, Storch, Zukoff

SENIOR, CHILDREN, AND FAMILY ISSUES

Rowan (Chair), Sypolt (Vice Chair), Zukoff (Minority Chair), Boggs (Minority Vice Chair), Booth, Dean, Forsht, Graves, Hanna, Haynes, J. Kelly, Kessinger, Linville, Lovejoy, Mandt, Martin, Paynter, Pethtel, Pinson, Queen, Rohrbach, Smith, Toney, Walker, Young

SMALL BUSINESS, ENTREPRENEURSHIP AND ECONOMIC DEVELOPMENT

Queen (Chair), Mandt (Vice Chair), Young (Minority Chair), Hornbuckle (Minority Vice Chair), Barach, Barnhart, Clark, Ferrell, Garcia, Griffith, Hardy, Higginbotham, Holstein, Horst, Keaton, Linville, Mallow, Martin, Miller, L. Pack, Phillips, Steele, Toney, Wamsley, Zukoff

TECHNOLOGY AND INFRASTRUCTURE

Linville (Chair), Maynard (Vice Chair), Thompson (Minority Chair), Garcia (Minority Vice Chair), Boggs, Booth. Capito, Criss, Espinosa, Fast, Gearheart, Hamrick, Hansen, Hardy, Howell, Keaton, Pritt, Reed, Riley, Rohrbach, Rowe, Statler, Storch, Tully

VETERANS' AFFAIRS AND HOMELAND SECURITY

Cooper (Chair, *Veterans' Affairs*), Jennings (Chair, *Homeland Security*), Toney (Vice Chair, *Veterans' Affairs*), Worrell (Vice Chair, *Homeland Security*), Fleischauer (Minority Chair, *Veterans' Affairs*), Pushkin (Minority Chair, *Homeland Security*), Griffith (Minority Vice Chair, *Veterans' Affairs*), Zukoff (Minority Vice Chair, *Homeland Security*), Boggs, Booth, Clark, Conley, Fluharty, Higginbotham, D. Jeffries, D. Kelly, J. Kelly, Kimble, Longanacre, Mazzocchi, Nestor, Reynolds, Rowan, Smith, Sypolt, Wamsley

WORKFORCE DEVELOPMENT

Zatezalo (Chair), Barnhart (Vice Chair), Fluharty (Minority Chair), Garcia (Minority Vice Chair), Barach, Bridges, Burkhammer, Conley, Dean, Diserio, Fast, Ferrell, Foster, Horst, Householder, D. Jeffries, Jennings, Kimble, Kimes, Mallow, Pushkin, Reynolds, Thompson, Wamsley, G. Ward

COMMITTEES OF THE SENATE
(As of March 10, 2021)

STANDING

AGRICULTURE AND RURAL DEVELOPMENT

Sypolt (Chair), Woodrum (Vice Chair), Baldwin, Beach, Grady, Martin, Maynard, Roberts, Rucker, Smith, Unger

BANKING AND INSURANCE

Azinger (Chair), Clements (Vice Chair), Beach, Boley, Hamilton, Ihlenfeld, Nelson, Romano, Rucker, Swope, Sypolt, Weld, Woelfel

CONFIRMATIONS

Boley (Chair), Takubo (Vice Chair), Azinger, Baldwin, Plymale, Rucker, Stollings, Tarr, Weld

ECONOMIC DEVELOPMENT

Swope (Chair), Martin (Vice Chair), Azinger, Hamilton, Ihlenfeld, Jeffries, Nelson, Roberts, Romano, Stollings, Stover, Tarr, Woelfel, Woodrum

EDUCATION

Rucker (Chair), Roberts (Vice Chair), Azinger, Beach, Boley, Clements, Grady, Plymale, Romano, Stollings, Tarr, Trump, Unger, Weld

ENERGY, INDUSTRY AND MINING

Smith (Chair), Phillips (Vice Chair), Boley, Caputo, Clements, Hamilton, Ihlenfeld, Jeffries, Martin, Nelson, Romano, Swope, Sypolt

ENROLLED BILLS

Maynard (Chair), Roberts (Vice Chair), Lindsay, Tarr, Woelfel

FINANCE

Tarr (Chair), Sypolt (Vice Chair), Baldwin, Boley, Clements, Hamilton, Ihlenfeld, Jeffries, Maroney, Martin, Nelson, Plymale, Roberts, Stollings, Swope, Takubo, Unger

GOVERNMENT ORGANIZATION

Maynard (Chair), Swope (Vice Chair), Caputo, Ihlenfeld, Jeffries, Lindsay, Maroney, Martin, Nelson, Smith, Stover, Sypolt, Woelfel, Woodrum

HEALTH AND HUMAN RESOURCES

Maroney (Chair), Grady (Vice Chair), Azinger, Lindsay, Plymale, Roberts, Rucker, Stollings, Stover, Takubo, Unger, Weld, Woodrum

INTERSTATE COOPERATION

Woodrum (Chair), Stover (Vice Chair), Ihlenfeld, Martin, Maynard, Romano, Trump

JUDICIARY

Trump (Chair), Weld (Vice Chair), Azinger, Beach, Blair, Caputo, Grady, Lindsay, Maynard, Phillips, Romano, Rucker, Smith, Stover, Takubo, Woelfel, Woodrum

MILITARY

Weld (Chair), Phillips (Vice Chair), Caputo, Grady, Hamilton, Lindsay, Maroney, Romano, Smith

NATURAL RESOURCES

Hamilton (Chair), Stover (Vice Chair), Beach, Grady, Jeffries, Phillips, Roberts, Rucker, Smith, Stollings, Sypolt, Woelfel, Woodrum

PENSIONS

Nelson (Chair), Clements (Vice Chair), Azinger, Lindsay, Plymale, Swope, Trump

RULES

Blair (Chair), Takubo (Vice Chair), Azinger, Baldwin, Boley, Maroney, Plymale, Stollings, Tarr, Trump, Weld

TRANSPORTATION AND INFRASTRUCTURE

Clements (Chair), Swope (Vice Chair), Beach, Boley, Jeffries, Maynard, Plymale, Roberts, Woodrum

WORKFORCE

Roberts (Chair), Nelson (Vice Chair), Caputo, Jeffries, Maroney, Martin, Phillips, Smith, Tarr, Unger, Weld

LEGISLATURE OF WEST VIRGINIA

ACTS

FIRST REGULAR SESSION, 2021

CHAPTER 1

(Com. Sub. for S. B. 277 - By Senators Blair (Mr. President) and Baldwin)

[By Request of the Executive]

[Passed March 11, 2021; in effect from passage]
[Approved by the Governor on March 19, 2021.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §55-19-1, §55-19-2, §55-19-3, §55-19-4, §55-19-5, §55-19-6, §55-19-7, §55-19-8, and §55-19-9, all relating generally to creating the COVID-19 Jobs Protection Act; designating a short title; making legislative findings; setting forth legislative purposes; defining terms; prohibiting certain claims against persons or entities arising from COVID-19, COVID-19 care, or impacted care; extinguishing liability for death or personal injury related to the design, manufacture, or labeling of supplies or personal protective equipment either sold or donated; creating an exception to the extinguishment of claims for persons having actual knowledge of a product defect acting with conscious, reckless, and outrageous indifference to a substantial and unnecessary risk or with actual malice; providing that, when a claim for workers' compensation benefits is awarded to an employee pursuant to §23-1-1 *et seq.* of this code for a work-related injury, disease, or death caused by or arising from COVID-19 in the course of and resulting from covered employment, such claim for workers' compensation benefits shall be the sole and exclusive remedy for such injury, disease,

or death; providing that, except for §55-19-5 and §55-19-6 of this code, limitations on liability shall not apply to any person, employee, or agent who engaged in intentional conduct with actual malice; providing for severability of provisions; adding retro-activity of act to January 1, 2020; clarifying that no new cause of action is created nor defense limited by the act; and clarifying that the article does not affect duties or rights arising from contract.

Be it enacted by the Legislature of West Virginia:

ARTICLE 19. COVID-19 JOBS PROTECTION ACT.

§55-19-1. Short title.

This article shall be known and may be cited as the COVID-19 Jobs Protection Act.

§55-19-2. Findings and purpose.

(a) The West Virginia Legislature finds that:

(1) The novel coronavirus, also known as COVID-19, has been deemed a pandemic and the President of the United States has declared a national emergency.

(2) The Governor issued a State of Preparedness on March 4, 2020, to allow agencies to coordinate and create necessary measures to prepare for COVID-19.

(3) The Governor proclaimed a State of Emergency on March 16, 2020, finding that the COVID-19 pandemic constitutes a disaster under §15-5-2 of this code.

(4) To protect public health, safety, and welfare, all nonessential businesses were directed to cease all activities except for minimum basic operations in the state.

(5) To protect public health, safety, and welfare, and to ensure the health care system is capable of serving all citizens in need, especially those at high risk and vulnerable to COVID-19, all West

Virginia residents were directed to stay at home unless performing an essential activity.

(6) Health care providers have operated with shortages of medical personnel, equipment, and supplies while responding to COVID-19 and were prohibited by Executive Order No. 16-20 from engaging in elective medical procedures.

(7) There is a critical need for personal protective equipment, such as masks, respirators, ventilators, and other medical equipment and products designed to guard against or treat COVID-19.

(8) Manufacturers have substantially increased production of essential products and have made products outside their ordinary course of business to aid in response to COVID-19.

(9) West Virginia is reopening its businesses, including restaurants, retail stores, office buildings, fitness centers, hotels, hair and nail salons, and barber shops, as well as religious institutions.

(10) Lawsuits are being filed across the country against health care providers and health care facilities associated with care provided during the COVID-19 pandemic and illness of health care workers due to exposure to COVID-19 while providing essential medical care, and against businesses seeking damages associated with a person's exposure to COVID-19.

(11) The threat of liability poses an obstacle to efforts to reopen and rebuild the West Virginia economy and to continue to provide medical care to impacted West Virginians.

(12) The diagnosis and treatment of COVID-19 has rapidly evolved from largely unchartered, experimental, and anecdotal observations and interventions, without the opportunity for the medical community to develop definitive evidence-based medical guidelines, making it difficult, if not impossible, to identify and establish applicable standards of care by which the acts or omissions of health care providers can fairly and objectively be measured.

(b) It is the purpose of this article to:

(1) Eliminate the liability of the citizens of West Virginia and all persons including individuals, health care providers, health care facilities, institutions of higher education, businesses, manufacturers, and all persons whomsoever, and to preclude all suits and claims against any persons for loss, damages, personal injuries, or death arising from COVID-19.

(2) Provide assurances to businesses that reopening will not expose them to liability for a person's exposure to COVID-19.

§55-19-3. Definitions.

For the purposes of this article:

(1) "Arising from COVID-19" means any act from which loss, damage, physical injury, or death is caused by a natural, direct, and uninterrupted consequence of the actual, alleged, or possible exposure to, or contraction of, COVID-19, including services, treatment, or other actions in response to COVID-19, and without which such loss, damage, physical injury, or death would not have occurred, including, but not limited to:

(A) Implementing policies and procedures designed to prevent or minimize the spread of COVID-19;

(B) Testing;

(C) Monitoring, collecting, reporting, tracking, tracing, disclosing, or investigating COVID-19 exposure or other COVID-19-related information;

(D) Using, designing, manufacturing, providing, donating, or servicing precautionary, diagnostic, collection, or other health equipment or supplies, such as personal protective equipment;

(E) Closing or partially closing to prevent or minimize the spread of COVID-19;

(F) Delaying or modifying the schedule or performance of any medical procedure;

(G) Providing services or products in response to government appeal or repurposing operations to address an urgent need for personal protective equipment, sanitation products, or other products necessary to protect the public;

(H) Providing services or products as an essential business, health care facility, health care provider, first responder, or institution of higher education; or

(I) Actions taken in response to federal, state, or local orders, recommendations, or guidelines lawfully set forth in response to COVID-19.

(2) "COVID-19" and "coronavirus" means the novel coronavirus identified as SARS-CoV-2, the disease caused by the novel coronavirus SARS-CoV-2 or a virus mutating therefrom, and conditions associated with the disease.

(3) "COVID-19 Care" means services provided by a health care facility or health care provider, regardless of location and whether or not those services were provided in-person or through telehealth or telemedicine, that relate to the testing for, diagnosis, prevention, or treatment of COVID-19, or the assessment, treatment, or care of an individual with a confirmed or suspected case of COVID-19.

(4) "COVID-19 emergency" means the State of Emergency declared by the Governor of the State of West Virginia by proclamation on March 16, 2020, and any subsequent orders or amendments thereto.

(5) "Essential business" means a person or entity that is:

(A) An essential business or operation as specified by Executive Order No. 9-20 on March 23, 2020, and any subsequent orders or amendments thereto; or

(B) Within an essential critical infrastructure sector as defined by the United States Department of Homeland Security.

(6) "First responder" means a person who performs one or more "emergency services" as that term is defined in §15-5-2 of this code. "First responder" also includes any other person authorized by executive order who will be deployed in response to the COVID-19 pandemic.

(7) "Health care" means any act, service, or treatment as defined by §55-7B-2 of this code.

(8) "Health care facility" means a facility as defined by §55-7B-2 of this code and any other facility authorized to provide health care or vaccinations in response to the COVID-19 emergency, including, but not limited to, a personal attendant agency.

(9) "Health care provider" means a person, partnership, corporation, professional limited liability company, health care facility, entity, or institution as defined by §55-7B-2 of this code, whether paid or unpaid, including persons engaged in telemedicine or telehealth; and any person authorized to provide health care in response to the COVID-19 emergency, including, but not limited to personal attendants and the employer, employees or agents of a health care provider who provide, arrange for, and assist with the delivery of health care, including those whose licensing requirements were modified through executive order.

(10) "Impacted care" means care offered, delayed, postponed, or otherwise adversely affected at a health care facility or from a health care provider that impacted the health care facility or health care provider's response to, or as a result of, COVID-19 or the COVID-19 emergency: *Provided*, That this provision does not prohibit claims that may otherwise be brought pursuant to §55-7B-1 *et seq.* of this code so long as such claims for loss, damage, physical injury, or death are unrelated to COVID-19 or the COVID-19 emergency and the care provided. If the issue of impacted care is raised by a defendant under §55-19-4 of this code, the circuit court shall, upon motion by the defendant, stay the proceedings, including any discovery proceedings, and, as soon as practicable, hold a hearing to determine whether the care offered, delayed, postponed, or otherwise adversely affected at a health care facility or from a health care provider was related to COVID-19 or

the COVID-19 emergency. If the circuit court determines that the care offered, delayed, postponed, or otherwise adversely affected at a health care facility or from a health care provider was related to COVID-19 or the COVID-19 emergency and the care provided, then the cause of action shall be dismissed under §55-19-4 of this code.

(11) "Person" means an individual, partnership, corporation, association, state, county, or local governmental entity, or other entity, including, but not limited to, a school, a college or university, an institution of higher education, religious organization, or nonprofit charitable organization. "Person" includes an employee, agent, or independent contractor of the person, regardless of whether the individual is a paid or an unpaid volunteer.

(12) "Personal protective equipment" means coveralls, face shields, gloves, gowns, masks, respirators, or other equipment designed to protect the wearer or other persons from the spread of infection or illness.

(13) "Physical injury" means actual bodily harm, sickness, or disease.

(14) "Public health guidance" means written guidance related to COVID-19 issued by the Centers for Disease Control and Prevention, Occupational Safety & Health Administration of the United States Department of Labor, Office of the Governor, West Virginia Department of Health and Human Resources, or any other state, federal, county, or local government agency.

(15) "Qualified product" means personal protective equipment used to protect the wearer from COVID-19 or prevent the spread of COVID-19; medical devices, equipment, and supplies used to treat COVID-19 including products that are used or modified for an unapproved use to treat COVID-19 or prevent the spread of COVID-19; medical devices, equipment, or supplies utilized outside of the product's normal use to treat COVID-19 or to prevent the spread of COVID-19; medications used to treat COVID-19 including medications prescribed or dispensed for off-

label use to attempt to combat COVID-19; tests to diagnose or determine immunity to COVID-19; and components of qualified products.

(16) "Volunteer" means any person or entity that makes a facility, product, or service available to support a state, county, or local response to COVID-19.

§55-19-4. Claims arising from the COVID-19 pandemic.

Notwithstanding any law to the contrary, except as provided by this article, there is no claim against any person, essential business, business, entity, health care facility, health care provider, first responder, or volunteer for loss, damage, physical injury, or death arising from COVID-19, from COVID-19 care, or from impacted care.

§55-19-5. Products made, sold, and donated in response to COVID-19.

(a) Any person that designs, manufactures, labels, sells, distributes, or donates a qualified product in response to COVID-19 that is utilized by any person, essential business, government entity, business entity, health care facility, health care provider, first responder, or volunteer shall not be liable in a civil action alleging personal injury, death, or property damage caused by or resulting from the product's manufacturing or design, or a failure to provide proper instructions or sufficient warnings.

(b) Any person that designs, manufactures, labels, sells, distributes, or donates household disinfecting or cleaning supplies or personal protective equipment in response to COVID-19 that does not make such products in the ordinary course of the person's business shall not be liable in a civil action alleging personal injury, death, or property damage caused by or resulting from the product's manufacturing or design, or a failure to provide proper instructions or sufficient warnings.

(c) The limitations on liability provided in this section shall not apply to any person, or any employee or agent thereof, that:

(1) Had actual knowledge of a defect in the product when put to the use for which the product was manufactured, sold, distributed, or donated; and acted with conscious, reckless, and outrageous indifference to a substantial and unnecessary risk that the product would cause serious injury to others; or

(2) Acted with actual malice.

(d) Any action under subsection (c) of this section must be brought not later than one year after the date of personal injury, death, or property damage.

§55-19-6. Workers' compensation.

Notwithstanding the provisions of this article and the further provisions of §23-4-2 of this code which permits the filing of a civil cause of action against an employer for damages in excess of benefits received or receivable in a workers' compensation claim, if it is determined that the employer acted with deliberate intention, when a claim for workers' compensation benefits is awarded to an employee pursuant to §23-1-1 *et seq.* of this code for a work-related injury, disease, or death caused by or arising from COVID-19 in the course of and resulting from covered employment, such claim for workers' compensation benefits shall be the sole and exclusive remedy for such injury, disease, or death and the immunity from suit provided under §23-2-6 and §23-2-6a of this code shall be and remain in full force and effect.

§55-19-7. Exception.

Excluding the provisions of §55-19-5 and §55-19-6 of this code, the limitations on liability provided in this article shall not apply to any person, or employee or agent thereof, who engaged in intentional conduct with actual malice.

§55-19-8. Severability.

If any provision of this act or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of this act, and to this end the provisions of this act are declared to be severable.

§55-19-9. Application.

(a) This article shall be effective retroactively from January 1, 2020, and applies to any cause of action accruing on or after that date.

(b) Nothing in this article shall be construed to create a new cause of action or expand any liability otherwise imposed, limit any defense, or affect the applicability of any law that affords greater protections to defendants that are provided in this article.

(c) Nothing in this article shall be construed to affect any duties, rights, benefits, or any other term or condition arising from a contractual relationship.

CHAPTER 2

(Com. Sub. for S. B. 439 - By Senators Swope, Roberts, and Rucker)

[Passed April 7, 2021; in effect 90 days from passage (July 6, 2021)]
[Approved by the Governor on April 19, 2021.]

AN ACT to amend and reenact §17C-15-49 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §17C-15-49a, all relating generally to operation of vehicles with safety belts; changing the definition of "passenger vehicle" for purposes of safety belt requirement; providing definitions; prohibiting admissibility of nonuse of a safety belt as evidence of negligence of a driver in a civil action, except for claims against the manufacturer or seller of the vehicle and/or any component or system incorporated into the vehicle; prohibiting admissibility of nonuse of a safety belt as evidence of negligence of an adult passenger in a civil action, except for claims against the manufacturer or seller of the vehicle and/or any component or system incorporated into the vehicle; allowing evidence that a child passenger was not wearing a safety belt at the time of collision as evidence of negligence against a driver in a civil action; allowing admissibility of nonuse of a safety belt as evidence of exacerbation or contribution to the damages of a driver in a civil action if supported by expert testimony, unless a driver at fault was driving under the influence; allowing admissibility of nonuse of a safety belt as evidence of exacerbation or contribution to the damages of an adult passenger in a civil action if supported by expert testimony, unless a driver at fault was driving under the influence; prohibiting admissibility of evidence that a child passenger was not wearing a safety belt at the time of collision as evidence of exacerbation or contribution to the damages of a child passenger; providing that evidence of nonuse of a safety belt

constitutes an affirmative defense; requiring a court to instruct the jury as to purposes for which evidence of use or nonuse of a safety belt may be considered; providing that a court may, in its discretion and upon motion of a party, bifurcate questions of liability and damages to prevent prejudice or avoid confusion of a jury; providing that these amendments are not intended to abrogate or modify any immunity recognized by law; providing for an effective date; and providing that these amendments do not alter the requirements of mandatory use of child passenger safety devices.

Be it enacted by the Legislature of West Virginia:

ARTICLE 15. EQUIPMENT.

§17C-15-49. Operation of vehicles with safety belts; exception; penalty; educational program by West Virginia State Police.

(a) A person may not operate a passenger vehicle on a public street or highway of this state unless the person, any passenger in the back seat under 18 years of age, and any passenger in the front seat of the passenger vehicle is restrained by a safety belt meeting applicable federal motor vehicle safety standards. For the purposes of this section, the term "passenger vehicle" means a motor vehicle which is designed for transporting 15 passengers or less, including the driver, except that the term does not include a motorcycle, a trailer, or any motor vehicle which is not required on the date of the enactment of this section under a federal motor vehicle safety standard to be equipped with a belt system. The provisions of this section apply to all passenger vehicles manufactured after January 1, 1967, and being 1968 models and newer.

(b) The required use of safety belts as provided in this section does not apply to a duly appointed or contracted rural mail carrier of the United States Postal Service who is actually making mail deliveries or to a passenger or operator with a physically disabling condition whose physical disability would prevent appropriate restraint in the safety belt if the condition is duly certified by a physician who states the nature of the disability as well as the

reason the restraint is inappropriate. The Division of Motor Vehicles shall adopt rules, in accordance with §29A-3-1 *et seq.* of this code, to establish a method to certify the physical disability and to require use of an alternative restraint system where feasible or to waive the requirement for the use of any restraint system.

(c) Any person who violates the provisions of this section shall be fined $25. No court costs or other fees may be assessed for a violation of this section.

(d) Notwithstanding any other provision of this code to the contrary, no points may be entered on any driver's record maintained by the Division of Motor Vehicles as a result of a violation of this section.

(e) The Governor's Highway Safety Program, in cooperation with the West Virginia State Police and any other state departments or agencies and with county and municipal law-enforcement agencies, shall initiate and conduct an educational program designed to encourage compliance with safety belt usage laws. This program shall be focused on the effectiveness of safety belts, the monetary savings, and the other benefits to the public from usage of safety belts and the requirements and penalties specified in this law.

(f) This section does not abrogate or alter the provisions of §17C-15-46 of this code relating to the mandatory use of child passenger safety devices.

§17C-15-49a. Admissibility of use or nonuse of safety belts in civil actions.

The admissibility of evidence of the failure of an occupant of a passenger vehicle to use a safety belt in any civil action is governed by the following rules:

(a) *Definitions*. — For the purposes of this section:

(1) "Adult" means a person who is 18 years of age or older;

(2) "Child" means a person who is under 18 years of age;

(3) "Claimant" means any person asserting a claim;

(4) "Driver" means a person, whether an adult or child, who is operating the passenger vehicle on a public street or highway of this state;

(5) "Passenger" means a person in the passenger vehicle other than the driver of the passenger vehicle while it is being operated on a public street or highway of this state; and

(6) "Passenger vehicle" means a passenger vehicle as defined in §17C-15-49(a) of this code.

(b) *Admissibility as evidence of negligence*. —

(1) *Claimant as driver*. —

(A) When a person making a claim for damages in a civil action was the driver of a passenger vehicle involved in the collision from which the damages suffered by the claimant driver are alleged to have arisen, evidence that the claimant driver of the passenger vehicle was not wearing a safety belt at the time of the collision is not admissible to show his or her negligence.

(B) The prohibition on the admissibility of evidence provided by this paragraph does not apply in an action against the manufacturer or seller of the passenger vehicle being driven by the claimant driver and/or a manufacturer or seller of any component or system incorporated into the passenger vehicle.

(2) *Claimant as adult passenger*. —

(A) When a person making a claim for damages in a civil action was an adult passenger in a passenger vehicle involved in the collision from which the damages suffered by that claimant adult passenger are alleged to have arisen, evidence that the claimant adult passenger was not wearing a safety belt at the time of the collision is not admissible to show his or her negligence.

(B) The prohibition on the admissibility of evidence provided by this paragraph does not apply in an action against the

manufacturer or seller of the passenger vehicle in which the claimant adult passenger was a passenger and/or a manufacturer or seller of any component or system incorporated into the passenger vehicle.

(3) *Claimant as child passenger*. —

When a person making a claim for damages in a civil action was a child passenger, or when the person making a claim for damages in a civil action is making the claim on behalf of a child who was a passenger, in a passenger vehicle involved in the collision from which the damages suffered by that claimant child passenger are alleged to have arisen, evidence that said claimant child passenger was not wearing a safety belt at the time of the collision is not admissible to show any negligence of the claimant child passenger: *Provided,* That the evidence may be admissible, subject to the West Virginia Rules of Evidence, to show negligence of the driver of the passenger vehicle in which the claimant child was a passenger.

(c) *Admissibility as evidence of exacerbation of or contribution to a claimant's damages*. —

(1) *Claimant as driver*. — When a person making a claim for damages in a civil action was the driver of a passenger vehicle involved in the collision from which the damages suffered by the claimant driver are alleged to have arisen, evidence that the claimant driver of the passenger vehicle was not wearing a safety belt at the time of the collision may be admissible to show that his or her failure to wear a safety belt exacerbated or contributed to the claimant driver's damages: *Provided*, That the defendant's burden of proof as set forth in subdivision (d) of this subsection must be supported by expert testimony, subject to a finding by the court that the expert testimony satisfies the threshold requirements of Rule 702 of the West Virginia Rules of Evidence.

(2) *Claimant as adult passenger*. — When a person making a claim for damages in a civil action was an adult passenger in a passenger vehicle involved in the collision from which the damages suffered by that claimant adult passenger are alleged to

have arisen, evidence that the claimant adult passenger was not wearing a safety belt at the time of the collision may be admissible to show that his or her failure to wear a safety belt exacerbated or contributed to that claimant adult passenger's damages: *Provided*, That the defendant's burden of proof as set forth in subdivision (d) of this subsection must be supported by expert testimony, subject to a finding by the court that the expert testimony satisfies the threshold requirements of Rule 702 of the West Virginia Rules of Evidence.

(3) *Claimant as child passenger*. — When a person making a claim for damages in a civil action was child passenger at the time of the accident, or when the person making a claim for damages in a civil action is making the claim on behalf of a child who was a passenger, in a passenger vehicle involved in the collision from which the damages suffered by that claimant child passenger are alleged to have arisen, evidence that the claimant child passenger was not wearing a safety belt at the time of the collision is not admissible to show that the claimant child passenger's failure to wear a safety belt exacerbated or contributed to the claimant child passenger's damages.

(4) The admissibility of evidence provided by paragraphs (1) and (2) of this subdivision does not apply if any driver with fault was driving in an "impaired state" as defined by §17C-5-2 of this code, or if the driver is found to have concurrently violated §61-5-17(h), §61-5-17(i), or §61-5-17(j) of this code.

(d) Subject to subdivision (e) of this subsection, a claimant's failure to wear a safety belt shall constitute an affirmative defense.

(e) *Court to instruct jury*. — In a civil action for damages in which the court has determined that evidence that a person was not wearing a safety belt at the time of the collision is to be admitted, the court shall instruct the jury as to the purposes for which the jury may consider, and may not consider, the evidence.

(f) *Court's discretion as to bifurcation*. — In the discretion of the court, if the court determines that it is necessary to prevent prejudice or avoid confusion of the jury, the court may, upon

request of a party, bifurcate the trial so that the questions of liability are tried first and the question of damages is presented separately thereafter. If the court, in its discretion, grants bifurcation, the court should consider whether it is possible to bifurcate these issues within a single trial, so that all of the issues to be tried in the case are tried together in a single trial with the same jury, but with the presentation of the evidence on the separate issues and the deliberations of the same jury ordered in such a way so as to achieve separation of the issues within a single trial.

(g) *Immunities not abrogated*. — It is the intent of the Legislature that the amendments made during the regular session of the Legislature, 2021, to this section and §17C-15-49 of this code do not abrogate or modify any immunities recognized by the law.

(h) *Effective date*. — This section and the amendments made during the regular session of the Legislature, 2021, to §17C-15-49 of this code applies to collisions occurring on or after the effective date of those amendments and this section.

(i) This section does not abrogate or alter the provisions of §17C-15-46 of this code relating to the mandatory use of child passenger safety devices.

CHAPTER 3

(Com. Sub. for S. B. 673 - By Senator Swope)

[Passed April 6, 2021; in effect July 1, 2021]
[Approved by the Governor on April 26, 2021.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §56-1-1b, relating to venue for bringing a civil action or conducting proceedings under a construction contract; providing definitions; requiring that construction contracts entered into on or after July 1, 2021, provide that any civil action or arbitration called for or permitted by the contract take place in West Virginia; and providing that any provision in construction contracts mandating that civil actions or arbitrations take place outside West Virginia is unenforceable.

Be it enacted by the Legislature of West Virginia:

ARTICLE 1. VENUE.

§56-1-1b. Venue for bringing civil action under a construction contract.

(a) As used in this chapter, "construction contract" means a contract, subcontract, or agreement entered into or made by an owner, architect, engineer, contractor, construction manager, subcontractor, supplier, or material or equipment lessor for the design, construction, alteration, demolition, renovation, remodeling, or repair of, or for the furnishing of material or equipment for a building, structure, appurtenance, or other improvement to or on public or private real property, including moving, demolition, and excavation connected with the real property. The term "construction contract" includes an agreement to which an architect, engineer, or contractor and an owner's lender

are parties regarding an assignment of the construction contract or other modifications.

(b) Where a party whose principal place of business is in the state of West Virginia enters into a construction contract on or after July 1, 2021, to design, manage construction of, construct, alter, repair, maintain, move, demolish, or excavate, or supply goods, equipment, or materials for the construction, alteration, repair, maintenance, movement, demolition, or excavation of a building, structure, appurtenance, road, bridge, or tunnel which is physically located in the state of West Virginia, such construction contract must provide that any civil action or arbitration called for or permitted by the contract must be commenced and heard in the state of West Virginia, in the jurisdiction where the construction project is located, or such other jurisdiction where the venue is proper under the provisions of §56-1-1 *et seq.* of this code. Any provision in a construction contract entered into on or after July 1, 2021, mandating that such action be brought in a location outside the state of West Virginia is unenforceable.

CHAPTER 4

(Com. Sub. for H. B. 2495 - By Delegates Westfall, Kessinger, L. Pack and Keaton)

[Passed March 31, 2021; in effect ninety days from passage.]
[Approved by the Governor on April 15, 2021.]

AN ACT to amend and reenact §55-7G-4 of the Code of West Virginia, 1931, as amended, relating to the filing of asbestos and silica claims; providing that plaintiffs shall include a sworn information form with any asbestos or silica action filed after the effective date of the amendments to the Code; specifying the information to be included in a sworn information form; providing for the dismissal without prejudice of asbestos or silica actions filed against defendants whose product or premises have not been identified; and providing for the dismissal without prejudice of asbestos or silica actions for failure to comply with sworn information filing requirements.

Be it enacted by the Legislature of West Virginia:

ARTICLE 7G. ASBESTOS AND SILICA CLAIMS PRIORITIES ACT.

§55-7G-4. Filing claims; establishment of a prima facie case; additional required information for claims; individual actions to be filed.

(a) A plaintiff in an asbestos or silica action alleging a nonmalignant condition shall file within ninety days of filing the complaint or other initial pleading a detailed narrative medical report and diagnosis, signed by a qualified physician and accompanied by supporting test results, constituting prima facie evidence that the exposed person meets the requirements of this

article. The report shall not be prepared by a lawyer or person working for or on behalf of a lawyer or law firm.

(b) A defendant in an asbestos or silica action shall be afforded a reasonable opportunity before trial to challenge the adequacy of the prima facie evidence that the exposed person meets the requirements of this article. An asbestos or silica action shall be dismissed without prejudice upon a finding that the exposed person has failed to make the prima facie showing required by this article.

(c) A plaintiff in an asbestos or silica action filed prior to the effective date of the amendments to this article enacted during the 2021 regular session of the Legislature shall also include an information form with the complaint for nonmalignant conditions containing all of the following:

(1) The name, address, date of birth, social security number, marital status, occupation and employer of the exposed person and any person through which the exposed person alleges exposure;

(2) The plaintiff's relationship to the exposed person or the person through which the exposure is alleged;

(3) To the best of the plaintiff's ability, the location and manner of each alleged exposure, including the specific location and manner of exposure for any person through which the exposed person alleges exposure, the beginning and ending dates of each alleged exposure and the identity of the manufacturer of the specific asbestos or silica product for each exposure when this information is reasonably available;

(4) The identity of the defendant or defendants against whom the plaintiff asserts a claim;

(5) The specific asbestos-related or silica-related disease claimed to exist; and

(6) Any supporting documentation relating to subdivisions (3), (4) and (5) of this subsection.

(d) For any asbestos or silica action filed on or after the amendments to this article enacted during the 2021 regular session of the Legislature, a plaintiff shall file within 60 days of filing any complaint a sworn information form that specifies the evidence that provides the basis for each claim against each defendant. The sworn information form shall include all of the following with specificity:

(1) The name, address, date of birth, marital status, occupation, smoking history, current and past worksites, and current and past employers of the exposed person, and any person through which the exposed person alleges exposure;

(2) Each person through whom the exposed person was exposed to asbestos or silica and the exposed person's relationship to each such person;

(3) Each asbestos-containing or silica-containing product to which the person was exposed and each physical location at which the person was exposed to asbestos or silica, or the other person was exposed if exposure was through another person;

(4) The identity of the manufacturer or seller of the specific asbestos or silica product for each exposure;

(5) The specific location and manner of each exposure, including for any person through whom the exposed person was exposed;

(6) The beginning and ending dates of each exposure and the frequency of the exposure, including for any person through whom the exposed person was exposed;

(7) The specific asbestos-related or silica-related disease claimed to exist; and

(8) Any supporting documentation relating to the information required under this section.

(e) Plaintiffs have a continuing duty to supplement the information that is required to be disclosed in this section.

(f) The court, on motion by a defendant, shall dismiss a plaintiff's asbestos or silica action without prejudice as to any defendant whose product or premises is not identified in the required disclosures set forth in subsection (d) of this section.

(g) The court, on motion by a defendant, shall dismiss a plaintiff's asbestos or silica action without prejudice as to all defendants if plaintiff fails to comply with the requirements of subsection (d) this section.

(h) Asbestos and silica actions must be individually filed. No asbestos or silica action filed on or after the effective date of this article shall be permitted on behalf of a group or class of plaintiffs.

CHAPTER 5

(Com. Sub. for H. B. 2671 - By Delegates Rowan, Sypolt, Martin, Mandt, Queen, Hanna, Zukoff, Pinson, Rohrbach, Smith and J. Kelly)

[Passed April 10, 2021; in effect ninety days from passage.]
[Approved by the Governor on April 28, 2021.]

AN ACT to amend and reenact §55-7J-1, §55-7J-4, §55-7J-5, and §55-7J-6 of the Code of West Virginia, 1931, as amended; and to amend and reenact §61-2-29b of said code, all relating to financial exploitation of elderly persons, protected persons or incapacitated adults; updating terms; clarifying actions by civil complaint, petition for financial exploitation protective order, or both; providing that financial exploitation protective orders are temporary; requiring notice be given to the person alleged to be engaging in financial exploitation as soon as practicable; requiring a full adversarial hearing on the merits before a court before final relief may be granted; including criminal penalties for violation or contempt of protective orders for victims of financial exploitation; and requiring notice of potential criminal penalties in all injunctive or protective orders.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 7J. FINANCIAL EXPLOITATION OF AN ELDERLY PERSON, PROTECTED PERSON, OR INCAPACITATED ADULT.

§55-7J-1. Action for financial exploitation of an elderly person, protected person, or incapacitated adult; definitions.

(a) Any elderly person, protected person, or incapacitated adult against whom an act of financial exploitation has been committed

may bring an action under this article against any person who has committed an act of financial exploitation against him or her by filing a civil complaint for financial exploitation, a petition for a financial exploitation protective order, or both.

(b) For the purposes of this article:

(1) "Incapacitated adult" has the same meaning as prescribed under §61-2-29 of this code;

(2) "Elderly person" means a person who is 65 years or older;

(3) "Financial exploitation" or "financially exploit" means the intentional misappropriation or misuse of funds or assets or the diminishment of assets due to undue influence of an elderly person, protected person, or incapacitated adult, but may not apply to a transaction or disposition of funds or assets where the defendant made a good-faith effort to assist the elderly person, protected person, or incapacitated adult with the management of his or her money or other things of value; and

(4) "Protected person" means any person who is defined as a "protected person" in §44A-1-4 of this code and who is subject to the protections of §44A-1-1 *et seq.* or §44C-1-1 *et seq.* of this code.

(c) Any person who believes that an elderly person, protected person, or incapacitated adult is suffering financial exploitation due to the intentional misappropriation or misuse of funds or undue influence may bring an action for a protective order pursuant to this section in the magistrate court or circuit court in the county in West Virginia in which the elderly person, protected person, or incapacitated adult resides or the financial exploitation occurred: *Provided*, That an order granting a financial exploitation protective order to stay further diminution of the assets of an elderly person, protected person, or incapacitated adult shall be temporary in nature.

(d) An action for a financial exploitation protective order brought under this section is commenced by the filing of a verified petition. Temporary relief may be granted without notice to the person alleged to be engaging in financial exploitation and without

that person being present: *Provided,* That notice shall be provided to the person alleged to be engaging in financial exploitation as soon as practicable, and that no final relief may be granted on the petition without a full, adversarial evidentiary hearing on the merits before the court.

(e) If a magistrate court grants the petition for a financial exploitation protective order and issues a temporary financial exploitation protective order, the magistrate court shall immediately transfer the matter to the circuit court of the county in which the petition was filed. Upon receipt of the notice of transfer from the magistrate court, the circuit court shall set the matter for a review hearing within 20 days. Any review hearing shall be a full, adversarial evidentiary hearing on the merits before the court. After a hearing, the circuit court may issue a permanent protective order containing any relief the circuit court determines necessary to protect the alleged victim if the court finds by a preponderance of the evidence that:

(1) The respondent has committed an act against the victim that constitutes financial exploitation; and

(2) There is reasonable cause to believe continued financial exploitation will occur unless relief is granted; or

(3) The respondent consents to entry of the permanent protective order.

(f) An order entered under this section shall state that a violation of the order may result in criminal prosecution under §61-2-29b of this code and state the penalties therefor.

§55-7J-4. Attorneys' fees; court costs and burden of proof; statute of limitations.

(a) The court may award reasonable attorneys' fees and costs to a person that brings an action under this article and prevails.

(b) The standard of proof in proving that a person committed financial exploitation in an action pursuant to this article is a preponderance of the evidence.

(c) An action under this article shall be brought within two years from the date of the violation or from the date of discovery, whichever is later in time.

§55-7J-5. Action to freeze assets; burden of proof; options the court may exercise.

(a) An elderly person, protected person, or incapacitated adult may bring an action to enjoin the alleged commission of financial exploitation and may petition the court to freeze the assets of the person allegedly committing the financial exploitation in an amount equal to, but not greater than, the alleged value of lost property or assets for purposes of restoring to the victim the value of the lost property or assets. The burden of proof required to freeze the assets of a person allegedly committing financial exploitation shall be a preponderance of the evidence. Upon a finding that the elderly person, protected person, or incapacitated adult has been formally exploited, the court may:

(1) Grant injunctive relief;

(2) Order the violator to place in escrow an amount of money equivalent to the value of the misappropriated assets for distribution to the aggrieved elderly person, protected person, or incapacitated adult;

(3) Order the violator to return to the elderly person, protected person, or incapacitated person any real or personal property which was misappropriated;

(4) Provide for the appointment of a receiver; or

(5) Order any combination or all of the above.

(b) In any action under §55-7J-1 *et seq.* of this code, the court may void or limit the application of contracts or clauses resulting from the financial exploitation.

(c) In any civil action brought under this article, upon the filing of the complaint or on the appearance of any defendant, claimant, or other party, or at any later time, the court may require the

plaintiff, defendant, claimant, or other party or parties to post security, or additional security, in a sum the court directs to pay all costs, expenses, and disbursements that are awarded against that party or that the party may be directed to pay by any interlocutory order, by the final judgment or after appeal.

(d) An order entered under this section shall state that a violation of the order may result in criminal prosecution under §61-2-29b of this code and state the penalties therefor.

§55-7J-6. Penalty for violation of injunction; retention of jurisdiction.

Any person who violates the terms of an order issued under this article shall be subject to proceeding for contempt of court. The court issuing the injunction may retain jurisdiction if, in its discretion, it determines that to do so is in the best interest of the elderly person, protected person, or incapacitated adult. If the court determines that an injunction issued under §55-7J-5 of this code has been violated, the court may award reasonable costs to the party asserting that a violation has occurred.

CHAPTER 61. CRIMES AND THEIR PUNISHMENT.

ARTICLE 2. CRIMES AGAINST THE PERSON.

§61-2-29b. Financial exploitation of an elderly person, protected person, or incapacitated adult; penalties; definitions.

(a) Any person who financially exploits an elderly person, protected person, or an incapacitated adult in the amount of less than $1,000 is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than $1,000 or confined in jail for not more than one year, or both fined and confined.

(b) Any person who financially exploits an elderly person, protected person, or an incapacitated adult in the amount of $1,000 or more is guilty of a felony and, upon conviction thereof, shall be fined not more than $10,000 and imprisoned in a state correctional facility not less than two nor more than 20 years.

(c) Any person convicted of a violation of this section shall, in addition to any other penalties at law, be subject to an order of restitution.

(d) In determining the value of the money, goods, property, or services referred to in subsection (a) of this section, it shall be permissible to cumulate amounts or values where the money, goods, property, or services were fraudulently obtained as part of a common scheme or plan.

(e) Financial institutions and their employees, as defined by §31A-2A-1 of this code and as permitted by §31A-2A-4 of this code, others engaged in financially related activities, as defined by §31A-8C-1 of this code, caregivers, relatives, and other concerned persons are permitted to report suspected cases of financial exploitation to state or federal law-enforcement authorities, the county prosecuting attorney, and to the Department of Health and Human Resources, Adult Protective Services Division, or Medicaid Fraud Division, as appropriate. Public officers and employees are required to report suspected cases of financial exploitation to the appropriate entities as stated above. The requisite agencies shall investigate or cause the investigation of the allegations.

(f) When financial exploitation is suspected and to the extent permitted by federal law, financial institutions and their employees or other business entities required by federal law or regulation to file suspicious activity reports and currency transaction reports shall also be permitted to disclose suspicious activity reports or currency transaction reports to the prosecuting attorney of any county in which the transactions underlying the suspicious activity reports or currency transaction reports occurred.

(g) Any person or entity that in good faith reports a suspected case of financial exploitation pursuant to this section is immune from civil liability founded upon making that report.

(h) For the purposes of this section:

(1) "Incapacitated adult" means a person as defined by §61-2-29 of this code;

(2) "Elderly person" means a person who is 65 years or older;

(3) "Financial exploitation" or "financially exploit" means the intentional misappropriation or misuse of funds or assets of an elderly person, protected person, or incapacitated adult, but shall not apply to a transaction or disposition of funds or assets where the accused made a good-faith effort to assist the elderly person, protected person, or incapacitated adult with the management of his or her money or other things of value; and

(4) "Protected person" means any person who is defined as a "protected person" in §44A-1-4 of this code and who is subject to the protections of §44A-1-1 *et seq.* or § 44C-1-1 *et seq.* of this code.

(i) Notwithstanding any provision of this code to the contrary, acting as guardian, conservator, trustee, or attorney for, or holding power of attorney for, an elderly person, protected person, or incapacitated adult shall not, standing alone, constitute a defense to a violation of subsection (a) of this section.

(j) Any person who willfully violates a material term of an order entered pursuant to §55-7J-1 *et seq.* of this code is guilty of a misdemeanor and, upon conviction, shall:

(1) For the first offense, be fined not more than $1,000 or confined in jail not more than 90 days, or both fined and confined; and

(2) For a second or subsequent offense, be fined not more than $2,500 or confined in jail not more than one year, or both fined and confined.

CHAPTER 6

(Com. Sub. for S. B. 518 - By Senator Rucker)

[Passed April 5, 2021; in effect 90 days from passage (July 4, 2021)]
[Approved by the Governor on April 15, 2021.]

AN ACT to amend and reenact §31B-8-809 of the Code of West Virginia, 1931, as amended; to amend and reenact §31D-14-1420 of said code; to amend and reenact §31E-13-1320 of said code; and to amend and reenact §47-9-10a of said code, all relating to grounds for administrative dissolution of a limited liability company, corporation, nonprofit corporation, and limited partnership; providing an application process for reinstatement; and providing for an appeal process for these entities.

Be it enacted by the Legislature of West Virginia:

CHAPTER 31B. UNIFORM LIMITED LIABILITY COMPANY ACT.

ARTICLE 8. WINDING UP COMPANY'S BUSINESS.

§31B-8-809. Grounds for administrative dissolution.

(a) The Secretary of State may commence a proceeding to administratively dissolve a limited liability company if:

(1) The company fails to pay any fees, taxes, or penalties imposed by this chapter or other law within 60 days after they are due;

(2) The company fails to deliver its annual report to the Secretary of State within 60 days after it is due;

(3) The professional license of one or more of the license holders is revoked by a professional licensing board and the license is, or all the licenses are, required for the continued operation of the company;

(4) The company is in default with the Bureau of Employment Programs as provided in §21A-2-6 of this code; or

(5) A misrepresentation has been made of any material matter in any application, report, affidavit, or other record submitted by the company pursuant to this chapter.

(b) A limited liability company administratively dissolved may apply to the Secretary of State for reinstatement within two years after the effective date of dissolution pursuant to the procedure in §31B-8-811 of this code or appeal the Secretary of State's denial of reinstatement pursuant to the procedure in §31B-8-812 of this code.

CHAPTER 31D. WEST VIRGINIA BUSINESS CORPORATION ACT.

ARTICLE 14. DISSOLUTION.

§31D-14-1420. Grounds for administrative dissolution.

(a) The Secretary of State may commence a proceeding under §31D-14-1421 of this code to administratively dissolve a corporation if:

(1) The corporation does not pay within 60 days after they are due any fees, franchise taxes, or penalties imposed by this chapter or other law;

(2) The corporation does not notify the Secretary of State within 60 days that its registered agent or registered office has been changed, that its registered agent has resigned, or that its registered office has been discontinued;

(3) The corporation's period of duration stated in its articles of incorporation expires;

(4) The professional license of one or more of the license holders is revoked by a professional licensing board and the license is, or all the licenses are, required for the continued operation of the corporation;

(5) The corporation is in default with the Bureau of Employment Programs as provided in §21A-2-6 of this code; or

(6) A misrepresentation has been made of any material matter in any application, report, affidavit, or other record submitted by the corporation pursuant to this chapter.

(b) A corporation administratively dissolved may apply to the Secretary of State for reinstatement within two years after the effective date of dissolution pursuant to the procedure in §31D-14-1422 of this code or appeal the Secretary of State's denial of reinstatement pursuant to the procedure in §31D-14-1423 of this code.

CHAPTER 31E. WEST VIRGINIA NONPROFIT CORPORATION ACT.

ARTICLE 13. DISSOLUTION.

§31E-13-1320. Grounds for administrative dissolution.

(a) The Secretary of State may commence a proceeding under §31E-13-1321 of this code to administratively dissolve a nonprofit corporation if:

(1) The nonprofit corporation does not pay within 60 days after they are due any fees, franchise taxes, or penalties imposed by this chapter or other law;

(2) The nonprofit corporation does not notify the Secretary of State within 60 days that its registered agent or registered office has been changed, that its registered agent has resigned, or that its registered office has been discontinued;

(3) The nonprofit corporation's period of duration stated in its articles of incorporation expires;

(4) The professional license of one or more of the license holders is revoked by a professional licensing board and the license is, or all the licenses are, required for the continued operation of the nonprofit entity;

(5) The nonprofit corporation is in default with the Bureau of Employment Programs as provided in §21A-2-6 of this code; or

(6) A misrepresentation has been made of any material matter in any application, report, affidavit, or other record submitted by the nonprofit corporation pursuant to this chapter.

(b) A nonprofit corporation administratively dissolved may apply to the Secretary of State for reinstatement within two years after the effective date of dissolution pursuant to the procedure in §31E-13-1322 of this code or appeal the Secretary of State's denial of reinstatement pursuant to the procedure in §31E-13-1323 of this code.

CHAPTER 47. REGULATION OF TRADE.

ARTICLE 9. UNIFORM LIMITED PARTNERSHIP ACT.

§47-9-10a. Administrative dissolution of a limited partnership; reinstatement; appeals.

(a) The Secretary of State may commence a proceeding to administratively dissolve a limited partnership if the limited partnership does not:

(1) Pay all applicable fees, franchise taxes, or penalties imposed by this chapter or other law within 60 days after the due date;

(2) Deliver its annual report to the Secretary of State within 60 days after the due date;

(3) The professional license of one or more of the license holders is revoked by a professional licensing board and the license is required for the continued operation of the limited partnership;

(4) The limited partnership is in default with the Bureau of Employment Programs as provided in §21A-2-6 of this code; or

(5) A misrepresentation has been made of any material matter in any application, report, affidavit, or other record submitted by the limited partnership pursuant to this chapter.

(b) If the Secretary of State determines that adequate grounds exist to administratively dissolve a limited partnership, the Secretary of State shall make and file a record of the determination and serve the limited partnership with a notice of the determination along with a copy of the record by certified mail.

(1)(A) The limited partnership must correct each issue described in the dissolution record or take reasonable steps toward correcting each issue within 60 days of service of the record on the limited partnership.

(B) If the limited partnership fails to take adequate steps toward correcting the issue or issues described in the record, the Secretary of State may administratively dissolve the limited partnership by signing the certification of dissolution.

(C) The Secretary of State shall file the original certificate of dissolution and serve a copy of the certificate of dissolution to the limited partnership by certified mail.

(2) A limited partnership that has been administratively dissolved may continue its existence only to the extent necessary to wind up and liquidate its business and affairs.

(3) The administrative dissolution of a limited partnership does not terminate the authority of its agent for service of process.

(c) A limited partnership that has been administratively dissolved may apply to the Secretary of State for reinstatement within two years after the effective date of dissolution. The application for reinstatement shall:

(1) Recite the name of the limited partnership and the effective date of its administrative dissolution;

(2) Demonstrate that the grounds for dissolution either did not exist or have been eliminated;

(3) Demonstrate that the limited partnership's name satisfies the requirements of §47-9-2 of this code; and

(4) Contain a certificate from the Tax Commissioner reciting that all taxes owed by the limited partnership have been paid.

(d)(1) If the Secretary of State determines that the application for reinstatement contains the information required by subsection (c) of this section and that the information is accurate, the Secretary of State shall cancel the certificate of dissolution and prepare a certificate of reinstatement that recites this determination and the effective date of reinstatement.

(2) The Secretary of State shall file the certificate of reinstatement and serve the limited partnership with a copy of the certificate.

(e) When the Secretary of State grants a reinstatement, the reinstatement relates back to and takes effect as of the effective date of the administrative dissolution and the limited partnership resumes its business as if the administrative dissolution had never occurred.

(f) If the Secretary of State denies a limited partnership's application for reinstatement following administrative dissolution, the Secretary of State shall serve the limited partnership with a notice that explains the reason or reasons for denial.

(g) A limited partnership may appeal a denial of reinstatement by filing a petition to set aside the dissolution in the circuit court of Kanawha County within 30 days after the date upon which the limited partnership received notice of the denial of reinstatement. The petition shall include a copy of the Secretary of State's certificate of dissolution, the limited partnership's application for reinstatement and, the Secretary of State's notice of denial. A copy of the petition shall be served on the Secretary of State by certified mail.

(h) If a reinstatement is granted by the court, the reinstatement relates back to and takes effect as of the effective date of the administrative dissolution and the limited partnership resumes its business as if the administrative dissolution had never occurred.

CHAPTER 7

(Com. Sub. for H. B. 2633 - By Delegates J. Pack, Cooper, Summers, Steele, Hanna, Graves, Phillips, Barnhart, Rohrbach, G. Ward and Tully)

[Passed April 6, 2021; in effect ninety days from passage.]
[Approved by the Governor on April 28, 2021.]

AN ACT to amend and reenact §19-1-2, §19-1-3a, and §19-1-7 of the Code of West Virginia, 1931, as amended; to amend and reenact §19-1C-2, §19-1C-3, §19-1C-4, and §19-1C-6 of said code; to amend said code by adding thereto a new section, designated §19-1C-7; to amend and reenact §19-9A-2 of said code; to amend and reenact §19-12A-5 of said code; to amend and reenact §19-14-1, §19-14-2, §19-14-3, §19-14-5, §19-14-6, §19-14-7, §19-14-8, §19-14-9, §19-14-10, §19-14-11, §19-14-12, and §19-14-14 of said code; to amend said code by adding thereto a new section, designated §19-14-16; to amend and reenact §19-21A-1, §19-21A-3, §19-21A-4, and §19-21A-8 of said code; to amend and reenact §19-25-1, §19-25-2, and §19-25-5 of said code; to amend and reenact §19-31-1 of said code; to amend and reenact §19-35-1, §19-35-2, §19-35-3, §19-35-4, §19-35-5, and §19-35-6 of said code; to amend said code by adding thereto two new sections, designated §19-35-3a and §19-35-3b; to amend and reenact §19-37-2 of said code; and to amend said code by adding thereto a new article, designated §19-38-1, §19-38-2, §19-38-3, §19-38-4, and §19-38-5, all relating to the 2021 Farm Bill; eliminating certain qualifications for Commissioner of Agriculture; eliminating certain references to Marketing and Development Division of Department of Agriculture; authorizing Department of Agriculture to undertake certain marketing, promotional, and economic development activities; authorizing coordination between Department of Economic Development and Department of Agriculture; providing an exemption from

disclosure under Freedom of Information Act for certain materials in connection with Department of Agriculture's marketing, promotional, and economic development duties; clarifying that raw milk can be sold for purposes other than human consumption; defining terms related to care of livestock; removing outdated information relating to appointment and composition of Livestock Care Standards Board; establishing length of term for appointments; authorizing reappointment of members for additional terms; providing for gubernatorial appointment of members of Livestock Care Standards Board, by and with consent of Senate; modifying membership of Livestock Care Standards Board; eliminating certain qualifications for members of Livestock Care Standards Board; authorizing Commissioner of Agriculture to promulgate certain legislative rules in consultation with Livestock Care Standards Board; providing an exemption from disclosure under Freedom of Information Act for certain materials in connection with complaints regarding inhumane treatment of livestock; directing board to review proposed rules on livestock care standards and provide recommendation to Legislative Rule-Making Review Committee; authorizing Commissioner of Agriculture to call additional meetings of Livestock Care Standards Board; authorizing Commissioner of Agriculture to file annual reports with Joint Committee on Government and Finance prior to a date certain; providing for administration and enforcement authority of Commissioner of Agriculture with respect to livestock care standards; directing law-enforcement officers to notify Commissioner of Agriculture of certain complaints and investigations; authorizing law-enforcement officers to seek advice of Commissioner of Agriculture concerning application of livestock care standards; requiring Commissioner of Agriculture to notify law-enforcement officers of changes made during 2021 Regular Legislative session respecting livestock care standards; eliminating fee for permit to feed untreated garbage to swine; removing certain procedural requirements for certain contracts, leases, sales, exchanges, and other dispositions; authorizing cancellation of certain leases and providing for written notice to lessee; amending name of

West Virginia Commercial Feed Law; defining, amending, and removing terms related to commercial feed; modifying powers and duties of commissioner; removing certain references to registrant in West Virginia Commercial Feed Law; eliminating requirement to publish annual composite report; changing deadline to apply for permit or registration under West Virginia Commercial Feed Law; eliminating specific fee amounts in statute and authorizing rulemaking related thereto; updating requirements for Commercial Feed Manufacturing Permit and Commercial Feed Distributor Permit; setting forth requirements for individuals to possess Commercial Feed Guarantor Permit; eliminating certain registration requirements for commercial feed products; modifying registration requirements for pet food and specialty pet food; requiring new application for registration in certain circumstances; authorizing Commissioner of Agriculture to refuse to grant, suspend, or revoke permits or registrations in certain circumstances; modifying procedures for certain persons to amend application and appeal adverse determinations; requiring appeals to be in accordance with Administrative Procedures Act; modifying labeling requirements for certain commercial feed products; modifying requirements for tonnage reports and inspection fees; authorizing commissioner to inspect certain tonnage records; modifying meaning of commercial feed or feed ingredients; modifying meaning of misbranding of commercial feed; make technical modifications; modifying certain prohibited acts; defining additional prohibited acts; authorizing establishment of analytical variation rules; authorizing penalties for excessive deviations; providing for penalties to be returned to purchasers where possible; authorizing late payment penalties; modifying authority of West Virginia Conservation Agency and State Conservation Committee to address certain water quality issues; modifying legislative determinations; defining terms related to conservation districts; eliminating outdated language; modifying authority for conservation districts to address certain water quality issues; limiting liability of landowner who invites or permits persons to enter for agricultural purposes; defining terms related to landowner

liability; clarifying ownership of Guthrie Center; modifying legislative findings and purpose; defining terms related to farmers markets and certain foods; eliminating certain definitions; modifying requirements for farmers market registration; requiring that registration be conspicuously displayed; clarifying that certain farmers markets are not required to obtain food establishment permit; providing for department to establish sampling regulations; authorizing rulemaking to establish penalties; modifying requirements for farmers market vendor permits; providing that farmers market vendor permit is valid in all counties; establishing requirements for farmers market vendor permits; clarifying that farmers market vendors are not required to obtain food establishment permit; exempting certain vendors from farmers market vendor permit requirement; directing department to establish conditions and procedures for issuance of vendor permits; authorizing inspections and additional license or certifications as condition of issuing vendor permits; requiring vendor permits be displayed in a conspicuous manner; authorizing rulemaking to establish penalties; clarifying role of local health departments in farmers markets; prohibiting local health department from requiring food establishment permits for farmers markets or vendors except for consignment farmers markets; clarifying that restaurants and prepared food vendors remain subject to food establishment permitting requirements; authorizing food sampling and inspection of a farmers market vendor by local health departments in certain conditions; authorizing local health department to invoke cessation of production in certain conditions; requiring vendor food sampling and inspection and invocation of cessation of production by local health departments at farmers markets to be in consultation with department of agriculture; directing department to promulgate rules; eliminating certain requirements for promulgation of legislative rules; establishing requirements for regulation of potentially hazardous foods and nonpotentially hazardous foods sold at farmers markets; requiring vendors of potentially hazardous foods to obtain vendor permit; directing department to establish requirements for obtaining vendor

permits; eliminating certain labeling requirements for potentially hazardous and nonpotentially hazardous; establishing requirements for sale of potentially hazardous and nonpotentially hazardous foods; expanding permissible kitchens for potentially hazardous foods and nonpotentially hazardous foods; modifying West Virginia Fresh Food Act to include additional categories of foods grown, produced, or processed by in-state producers; modifying requirements for state-funded institutions to obtain food from in-state producers; directing commissioner to establish criteria for food or food products to satisfy in-state requirement; directing commissioner to establish criteria for granting exceptions or exemptions; requiring state-funded institutions to ensure that all contracts related to purchase of food include provisions to ensure compliance with Fresh Food Act; establishing Agriculture Investment Program; setting forth legislative findings and purpose; defining terms; establishing special revenue account in State Treasury to be known as Agriculture Investment Fund; defining source of funds and permissible expenditures from fund; authorizing West Virginia Agriculture Investment Program; providing for program administration; authorizing either grants or loans from fund; establishing certain criteria for awarding grants or loans; authorizing commissioner to establish committee to assist in program administration; and authorizing rulemaking related to Agriculture Investment Program and Agriculture Investment Fund.

Be it enacted by the Legislature of West Virginia:

ARTICLE 1. DEPARTMENT OF AGRICULTURE.

§19-1-2. Commissioner of Agriculture.

The commissioner of agriculture shall be elected by the qualified voters of the state at the same time and in the same manner as other state officers are elected, and shall hold office for a term of four years and until his or her successor is elected and qualified.

§19-1-3a. Marketing and economic development duties.

(a) The department shall establish marketing, promotional, and economic development programs to advance West Virginia agriculture in the domestic and international markets; provide grading, inspection, and market news services to the various elements of the West Virginia agricultural industry; and regulate and license individuals involved in the marketing of agricultural products. Upon request of the commissioner, the Department of Economic Development may coordinate with the Department of Agriculture in the development of such programs.

(b) Any documentary material, data, or other writing made or received by the department in furtherance of its economic development duties and for the purpose of furnishing assistance to a new or existing business shall be exempt from the provisions of §29B-1-1 *et seq.* of this code.

§19-1-7. Shared animal ownership agreement to consume raw milk.

(a) Notwithstanding any other provision of the law to the contrary, a responsible party may enter into a written shared animal ownership agreement to consume raw milk in which he or she:

(1) Acquires a percentage ownership interest in a milk-producing animal;

(2) Agrees to pay another for the percentage ownership interest for the care and boarding of the milk-producing animal at the dairy farm;

(3) Is entitled to receive a fair share of the animal's raw milk production as a condition of the contractual agreement;

(4) Agrees to sign a written document acknowledging the inherent dangers of consuming raw milk that may contain bacteria, such as Brucella, Campylobacter, Listeria, Salmonella, and E. Coli, that has not been pasteurized to remove bacteria and that is particularly dangerous to children, pregnant women, and those with compromised immunity. The responsible party then agrees to

release the herd seller of liability for the inherent dangers of consuming raw milk but not for those dangers that are caused by negligent acts or omissions of the herd seller; and

(5) Agrees not to distribute raw milk. The sale or resale of raw milk obtained from a herd share is strictly prohibited.

(b) The signed and executed shared animal ownership agreement shall be filed by the herd seller with the Commissioner of Agriculture and shall contain the names, addresses, and phone numbers of the herd seller and the responsible party so that either party may be contacted in the event of an illness.

(c) The herd seller shall meet the animal health requirements for milk-producing animals established by the state veterinarian in accordance with state and national standards including the following:

(1) Raw milk from milk-producing animals intended for consumption shall be from a herd that tested negative within the previous 12 months for brucellosis, tuberculosis, and other diseases as required by the state veterinarian. Additions to the herd shall test negative for the diseases within the previous 30 days before introduction into the herd; and

(2) Milk-producing animals producing bloody, stringy, or abnormal milk, but with only slight inflammation of the udder, shall be excluded from the milking herd until reexamination shows that the milk has become normal. Milk-producing animals showing chronic mastitis, whether producing abnormal milk or not, shall be permanently excluded from the milking herd.

(d) Parties to a shared animal ownership agreement and physicians who become aware of an illness directly related to consuming raw milk shall report the illness to the local health department and the Commissioner of Agriculture. Upon receipt of such a report, the Commissioner of Agriculture or his or her designee shall contact and warn other parties consuming raw milk from the same herd seller.

(e) The Commissioner of Agriculture may impose an administrative penalty not to exceed $100 for a person who violates the provisions of this section. Any penalty imposed under this subsection may be contested by the person against whom it is imposed pursuant to §29A-5-1 *et seq.* of this code.

(f) The Commissioner of Agriculture, in consultation with the Department of Health and Human Resources, may propose rules for promulgation in accordance with the provisions of §29A-3-1 *et seq.* of this code in compliance with raw milk dairy industry standards.

(g) Notwithstanding any provision of code to the contrary, raw milk may be sold without the parties entering into a written shared animal ownership agreement if the raw milk is to be used:

(1) As an ingredient in the preparation or making of a nonedible product, such as a soap or lotion; or

(2) As feed for another animal: *Provided*, That the sale of raw milk to be used as animal feed is subject to the provisions of §19-14-1 *et seq.* of this code.

ARTICLE 1C. CARE OF LIVESTOCK.

§19-1C-2. Definitions.

For the purposes of this article:

(1) "Board" means the Livestock Care Standards Board.

(2) "Commissioner" means the Commissioner of Agriculture.

(3) "Department" means the West Virginia Department of Agriculture.

(4) "Livestock" has the same definition as set out in §19-10B-2(d) of this code.

§19-1C-3. Livestock Care Standards Board.

(a) On July 1, 2010, there is hereby created the Livestock Care Standards Board.

(b) Commencing July 1, 2021, the board consists of the following 13 members, to be appointed by the Governor, by and with the consent of the Senate:

(1) The Commissioner of the Department of Agriculture or his or her designee, ex officio non-voting, who is the chairperson of the board;

(2) The State Veterinarian, ex officio non-voting;

(3) One member who is a veterinarian licensed in this state engaging in large animal practice;

(4) The dean of the agriculture department of a college or university located in this state;

(5) One member representing a county humane society that is organized under state law;

(6) One member who is knowledgeable about food safety in this state;

(7) Two members who are law-enforcement officers: *Provided*, That one member shall be appointed for an initial term of two years, and the other shall be appointed for an initial term of five years;

(8) One member selected from a list of three individuals submitted from the largest statewide poultry organization;

(9) One member selected from a list of three individuals submitted by the largest statewide livestock organization; and

(10) Three members, at least two of whom are family farmers, selected from a list of 10 individuals submitted by the largest organization in the state representing farmers.

(c) After the initial appointment terms, the appointment term is five years. Appointed members may be reappointed for additional terms.

(d) All members must be residents of this state during their terms.

(e) All appointed members serve until their successor has been appointed and qualified. Vacancies shall be filled in the same manner as the original appointment for the remainder of the unexpired term.

§19-1C-4. Powers and duties of the board.

(a) The board has the following powers and duties to:

(1) Establish standards governing the care and well-being of livestock;

(2) Maintain food safety;

(3) Encourage locally grown and raised food; and

(4) Protect West Virginia farms and families.

(b) The commissioner, in consultation with the board, is authorized to establish standards by legislative rule, pursuant to the provisions of §29A-3-1 *et seq.* of this code, governing the care and well-being of livestock in this state, including:

(1) The agricultural best management practices for the care and well-being of livestock and poultry in this state;

(2) Procedures for addressing complaints regarding the inhumane treatment of livestock and coordinating efforts with county humane officers: *Provided*, That documents and communication regarding any investigation thereof, are considered confidential and are exempt from disclosure pursuant to §29B-1-1 *et seq.* of this code;

(3) Biosecurity, disease prevention, animal morbidity, and mortality data;

(4) Food safety practices; and

(5) The protection of local, affordable food supplies for consumers.

(c) The board shall review any rule proposed by the commissioner for legislative approval pursuant to this section. After reviewing the proposed legislative rule, the board may provide a recommendation to the Legislative Rule-Making Review Committee that the Legislature:

(1) Authorize the promulgation of the legislative rule;

(2) Authorize the promulgation of part of the legislative rule;

(3) Authorize the promulgation of the legislative rule with certain amendments;

(4) Recommend that the proposed rule be withdrawn; or

(5) Reject the proposed rule.

§19-1C-6. Meetings of the board.

(a) The board shall meet at least annually, and the commissioner may call additional meetings of the board upon the written request of three members.

(b) The commissioner, on behalf of the board, may file an annual report with the Joint Committee on Government and Finance that contains information about the activities of the board and department for the prior year concerning livestock care standards; *Provided;* That after December 31, 2025, no reports filed on behalf the board may be filed with the Joint Committee on Government and Finance.

§19-1C-7. Enforcement of livestock care standards.

(a) The commissioner shall administer and enforce the standards established pursuant to this article. This authority may include, but is not limited to:

(1) Coordinating with and providing assistance to law-enforcement officers;

(2) Assisting law-enforcement officers with investigations and other actions taken in response to complaints regarding the care of livestock;

(3) Working with county, municipal, and state authorities to address situations in which a livestock care complaint needs to be reassigned due to a conflict of interest;

(4) Providing training for law-enforcement officers on the livestock care standards and proper animal handling techniques; and

(5) Providing opinions to law-enforcement officers, when such opinions are requested, regarding the application of livestock care standards promulgated pursuant to this article.

(b) State, county, and local law-enforcement officers shall notify the commissioner of all complaints and investigations concerning care of livestock, and may seek the advice and opinion of the commissioner regarding application of the livestock care standards in those cases.

(c) No later than September 1, 2021, the commissioner shall notify state, county, and local law-enforcement officers of the changes made to this article of code during the 2021 Regular Legislative Session.

ARTICLE 9A. FEEDING OF UNTREATED GARBAGE TO SWINE.

§19-9A-2. Permit required for feeding garbage to swine; renewal; exception.

(a) No person shall feed garbage to swine without first securing a permit to do so from the commissioner. Such permits shall be renewed annually.

(b) This article shall not apply to any person who feeds only his own household garbage to swine which are raised for such person's own use.

ARTICLE 12A. LAND DIVISION.

§19-12A-5. Powers, duties, and responsibilities of commissioner.

(a) The commissioner shall manage all institutional farms, equipment, and other property to most efficiently produce food products for state institutions, support the department and its activities, advance the agricultural interests of the state, as identified by the commissioner, and otherwise implement the intent of the Legislature as set forth by this article. From the total amount of food, milk, and other commodities produced on institutional farms, the commissioner shall sell, at prevailing wholesale prices, and each of the institutions under the control of the Department of Health and Human Resources and Division of Corrections and Rehabilitation shall purchase, these products based on the dietary needs of each institution: *Provided*, That if the commissioner cannot sell sufficient food products to each institution to meet the demand created, each institution may purchase such food products from vendors who can supply those food products at the greatest savings to the taxpayers of the state.

(b) If requested by the Commissioner of the Division of Corrections and Rehabilitation, the commissioner may authorize the Division of Corrections and Rehabilitation to operate a farm or other enterprise using inmates as labor on those lands. The Commissioner of the Division of Corrections and Rehabilitation is responsible for the selection, direction, and supervision of the inmates and shall, in consultation with the Commissioner of Agriculture, assign the work to be performed by inmates. The Commissioner of Agriculture may also request inmate labor to perform work on the institutional farms, and if requested, the Commissioner of the Division of Corrections and Rehabilitation shall provide inmate labor, if available.

(c) The commissioner is hereby authorized and empowered to:

(1) Lease to public or private parties, for purposes including agricultural production or experimentation, public necessity, or other purposes, any land, easements, equipment, or other property, except that property may not be leased for any use in any manner

that would render the land toxic for agricultural use, nor may toxic or hazardous materials as identified by the Commissioner of Agriculture be used or stored upon such property unless all applicable state and federal permits necessary are obtained.;

(2) Transfer to the public land corporation land designated in its management plan as land to be disposed of, which land shall be sold, exchanged, or otherwise transferred pursuant to §5A-11-4 and §5A-11-5 of this code;

(3) Develop lands to which it has title for the public use including forestation, recreation, wildlife, stock grazing, agricultural production, rehabilitation, and/or other conservation activities and may contract or lease for the proper development of timber, oil, gas, or mineral resources, including coal by underground mining or by surface mining where reclamation as required by specifications of the Department of Environmental Protection will increase the beneficial use of such property;

(4) Upon 30 days written notice to the lessee, cancel a lease to which the department is a party and which is for annual consideration of less than $5 per acre: *Provided,* That such lease must contain a provision authorizing cancellation or impairment by the Legislature; and

(5) Exercise all other powers and duties necessary to effectuate the purposes of this article.

(d) Notwithstanding the provisions of subsection (c) of this section, no timberland may be leased, sold, exchanged, or otherwise disposed of unless there is no commercially salable timber on the timberland, an inventory is provided, and an appraisal of the timber is provided.

(e) The commissioner may promulgate, pursuant to §29-1-1 *et seq.* of this code, rules and regulations relating to the powers and duties of the commissioner as enumerated in this section.

ARTICLE 14. WEST VIRGINIA COMMERCIAL FEED LAW.

§19-14-1. Title.

This article shall be known as the "West Virginia Commercial Feed Law."

§19-14-2. Definitions.

(a) "Brand name" means any word, name, symbol or device, or any combination thereof, identifying the commercial feed of a distributor, guarantor, or manufacturer and distinguishing it from all others.

(b) "Bulk" refers to commercial feed or feed ingredients distributed in nonpackaged form where a label cannot be attached and accompanied by an invoice or delivery slip.

(c) "Commercial feed" means all materials or combinations of materials which are distributed, or intended for distribution, for use as feed or for mixing in feed for animals, other than humans, except: (1) Unmixed or unprocessed whole seeds when such whole or unprocessed seeds are not chemically changed or adulterated; (2) unprocessed hay, straw, stover, silage, cobs, husks, hulls, and raw meat when not mixed with other materials and when not adulterated; (3) individual chemical compounds when not mixed with other materials. The term commercial feed shall include the categories of feed ingredients, customer-formula feeds, pet foods and specialty pet foods.

(d) "Commissioner" refers to the commissioner of agriculture of the State of West Virginia or a duly authorized employee of the commissioner.

(e) "Contract feeder" means a person who, as an independent contractor, feeds commercial feed to animals pursuant to a contract and the commercial feed is supplied, furnished, or provided to the independent contractor and such contractor's remuneration is determined all or in part by feed consumption, mortality, profits, or the amount or quality of the product.

(f) "Customer-formula feed" means a commercial feed that consists of a mixture of commercial feed and/or feed ingredients, each batch of which is manufactured according to the specific instructions of the final purchaser.

(g) "Distribute" means to offer for sale, sell, exchange, or barter commercial feed; or to supply, furnish, or provide commercial feed to a contract feeder.

(h) "Distributor" means any person who distributes a commercial feed.

(i) "Drug" means any substance intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in animals, other than humans; and any substance intended to affect the structure or any function of the animal body.

(j) "Feed" means any material consumed, or intended to be consumed, by animals other than humans, or any element of that material that contributes nutrition, taste, or aroma, or otherwise has a technical effect on the consumed material. The term "feed" includes raw materials, ingredients, and finished product.

(k) "Feed ingredient" means each constituent material making up feed, including individual chemical compounds labeled for use as a feed ingredient.

(l) "Guarantor" means any person whose name appears on a label and who is therefore responsible for the product and its labeling.

(m) "Label" means a display of written, printed, or graphic matter printed upon or otherwise affixed to the container in which commercial feed is distributed; or printed upon or otherwise affixed to the invoice, delivery slip, or other shipping document which accompanies bulk shipments of commercial feed or customer-formula feed. All such labels shall be legible and in English.

(n) "Labeling" means and includes all labels as well as all other written, printed, or graphic matter found: (1) upon a commercial

feed or any of its containers or wrappers, or (2) accompanying such commercial feed.

(o) "Manufacture" means to grind, mix, blend, package, pack, repackage, repack, or otherwise process a commercial feed for distribution.

(p) "Medicated feed" means any feed which contains one or more drugs. Antibiotics included in a feed growth promotion and/or efficiency level are drug additives and feeds containing such antibiotics are included in the definition of "medicated feed".

(q) "Mineral feed" means a commercial feed designed or intended to supply primarily mineral elements or inorganic nutrients.

(r) "Official sample" means any sample of feed taken by the commissioner in accordance with the provisions of this article and rules promulgated hereunder.

(s) "Percent" or "percentage" means percentage by weights.

(t) "Person" means an individual, partnership, association, fiduciary, firm, company, corporation, or any organized group of persons whether incorporated or not.

(u) "Pet" means dog (Canis familiaris) or cat (Felis catus).

(v) "Pet food" means any commercial feed manufactured and distributed for consumption by pets.

(w) "Process" means a method used to prepare, treat, convert, or transform materials into feed or feed ingredients. The word "processed" can be used to further describe an ingredient name, so long as the ingredient is not nutritionally altered from the original form of the ingredient.

(x) "Product name" means the name of the commercial feed which identifies it as to kind, class, or specific use and distinguishes it from all other products bearing the same brand name.

(y) "Quantity statement" means the net weight (mass), liquid measure, or count.

(z) "Repack" or "repackaging" means to pack and label a previously manufactured feed.

(aa) "Specialty pet" means any animal normally maintained in a household, such as rodents, ornamental birds, fish, , reptiles, amphibians, ferrets, hedgehogs, marsupials, and rabbits not raised for food or fur.

(bb) "Specialty pet food" means any commercial feed prepared and distributed for consumption by specialty pets.

(cc) "Ton" means a net weight of two thousand pounds avoirdupois.

§19-14-3. Powers and duties of the commissioner.

The commissioner has the power and authority to:

(1) Enter and inspect, during reasonable hours, any location where commercial feed is manufactured, distributed, transported, or used, and where records relating to the manufacture, distribution, shipment, labeling, or sale of commercial feed are kept. Such inspection may include, but is not limited to, examining, photographing, verifying, copying, and auditing records as necessary to determine compliance with this article; and reviewing labels, consumer complaints, and papers relating to the manufacturing, distribution, sampling, testing, and sale of commercial feeds.

(2) Open, examine, sample, and test commercial feed, unmixed or unprocessed whole seeds, equipment, containers, transport containers, and packages used or intended to be used in the manufacture and distribution of commercial feeds.

(3) Issue permits and registrations pursuant to this article.

(4) Refuse, suspend, or revoke permits and registrations as provided in this article.

(5) Issue embargoes as provided in this article.

(6) Condemn and confiscate any product that is not brought into compliance with this article.

(7) Collect fees and penalties, and expend moneys under the terms of this article.

(8) Conduct sampling in accordance with the official methods published in the current edition of the Official Methods of Analysis of the Association of Official Analytical Chemists and supplements thereto, or other methods approved by the commissioner by rules.

(9) Conduct hearings as provided by this article.

(10) Assess civil penalties and refer violations to a court of competent jurisdiction.

(11) Obtain court orders directing any person refusing to submit to inspection, sampling, and auditing to submit.

(12) Establish and maintain feed testing facilities; establish reasonable fees for such tests; incur expenses; and conduct tests in accordance with the official methods published in the current edition of the Official Methods of Analysis of the Association of Official Analytical Chemists and supplements thereto, or other methods approved by the commissioner by rules.

(13) Be guided by the analytical results of the official sample when determining whether the commercial feed is deficient in any component.

(14) Report the analytical results on all official samples to the guarantor and, in the case of deficient samples, also to the dealer and the purchaser, if known.

(15) Upon request made within 30 days from the date the official sample results are reported, furnish a portion of the official sample to the guarantor.

(16) Cooperate with and enter into agreements with governmental agencies of this state and other states, agencies of the federal government and foreign governments, and private associations to carry out the purpose and provisions of this article.

(17) Promulgate rules, in accordance with §29A-3-1 *et seq.* of this code, dealing with commercial feeds and enforcement of this article.

§19-14-5. Permits; registration.

(a) Permits and registrations shall not be transferrable with respect to persons or locations.

(b) A person must apply for a permit or registration at least 30 days prior to the expiration of the current permit or registration; or at least 30 days prior to the date that the person intends to engage in the business of selling or marketing commercial feed products in this state. All applications shall be accompanied by the required fee. A penalty shall be added to the fee for all permits or registrations that are not applied for or renewed within the time limit.

(c) Persons manufacturing commercial feed or customer-formula feed in this state must obtain a Commercial Feed Manufacturing Permit from the commissioner, except for persons manufacturing feed for only his/her animals on his/her premises, or those producing pet food. Application forms shall be provided by the commissioner and include such information as established by rules. A separate permit shall be obtained for each manufacturing facility or location in this state. Each Commercial Feed Manufacturing Permit application shall be accompanied by the required application fee. Each permit issued shall expire on December 31, next following the date of issue.

(d) Each person distributing commercial feed in West Virginia must obtain a Commercial Feed Distributor Permit from the commissioner, except: (1) Persons distributing pet food exclusively, (2) persons holding a valid Commercial Feed Manufacturing Permit issued by the commissioner, and (3) persons

holding a Commercial Feed Guarantor Permit issued by the commissioner. Application forms shall be provided by the commissioner and include such information as established by rules. Each Commercial Feed Distributor Permit application shall be accompanied by the required application fee. Each permit issued shall expire on December 31, next following the date of issue.

(e) Each person whose name appears on the label of a commercial feed or customer-formula feed as guarantor must obtain a Commercial Feed Guarantor Permit from the commissioner for each manufacturing facility or location that distributes feed in or into the state, except those facilities or locations for which a Commercial Feed Manufacturing Permit has already been issued by the commissioner. Application forms shall be provided by the commissioner and include such information as established by rules. Each Commercial Feed Guarantor Permit application shall be accompanied by the required application fee. Each permit issued shall expire on December 31, next following the date of issue.

(f) Pet food in packages over 10 pounds or bulk shall be registered annually. Each application for registration shall be accompanied by the required registration fee. Each registration shall expire on August 31 next following the date of issue: *Provided*, That until June 30, 2027, an additional registration fee of $50 per product shall accompany each application for registration and the additional registration fee shall be deposited into the West Virginia Spay Neuter Assistance Fund for spay and neutering services performed within this state by licensed veterinarians.

(g) Pet food packaged in packages of 10 pounds and under shall be registered annually. Each application for registration shall be accompanied by the required registration fee. Each registration shall expire on December 31, next following the date of issue: *Provided*, That until June 1, 2027, an additional registration fee of $35 per product shall accompany each application for registration and the additional registration fee shall be deposited into the West Virginia Spay Neuter Assistance Fund for spay and neutering services performed within this state by licensed veterinarians.

(h) Specialty pet food shall be registered annually. Each application for registration shall be accompanied by the required registration fee. Each registration shall expire on December 31, next following the date of issue.

(i) A person is not required to register any brand name or product name of commercial feed which is already registered by another person.

(j) Alteration of a pet food or specialty pet food that changes the label requires a new application for registration be made and approved before distribution.

§19-14-6. Refusal of applications; suspension and revocation of registrations and permits.

The commissioner may refuse to grant, or may suspend or revoke any Commercial Feed Manufacturing Permit; any Commercial Feed Guarantor Permit; any Commercial Feed Distributor Permit; or the registration of any Pet Food or Specialty Pet Food when it is determined that: (1) The applicant, permittee, or guarantor has violated the provisions of this article or any official rule promulgated hereunder; or (2) this article or the rules promulgated hereunder cannot be or will not be complied with: *Provided*, That the permittee or guarantor shall have the opportunity to be heard prior to the suspension or revocation of the registration or permit.

§19-14-7. Hearings and appeals.

(a) No application shall be refused until the applicant has the opportunity to amend his/her application to comply with the requirements of this article.

(b) No registration or permit shall be refused, suspended, or revoked until the guarantor or permittee shall have the opportunity to have a hearing before the commissioner.

(c) Any person adversely affected by an act, order, or ruling made pursuant to the provisions of this article, may bring an action for judicial review in the circuit court of the county in which the

violation occurred in accordance with §29A-5-1 *et seq.* of this code.

§19-14-8. Labeling.

(a) When commercial feed, except customer-formula feed, is distributed in this state in bags or other containers, the label shall be affixed to the container; when commercial feed is distributed in bulk, the label shall accompany delivery.

(b) All commercial feed labels, except customer-formula feeds, shall include the following:

(1) The quantity statement.

(2) The product name, including brand name, if any, under which the commercial feed is distributed.

(3) The guaranteed analysis, expressed on an "as is" basis, stating what the commissioner determines by rules is required to advise the user of the composition of the commercial feed and other necessary information to support claims made on the label. The substances or elements guaranteed must be determinable by laboratory methods published by the association of official analytical chemists or other methods approved by the commissioner.

(4) An ingredient statement, except that an ingredient statement is not required for single standardized ingredient feeds. An ingredient statement shall include:

(A) The common or usual name of each ingredient as officially defined in the annual Official Publication of the Association of American Feed Control Officials;

(B) Feed terms as defined in the annual Official Publication of the Association of American Feed Control Officials;

(C) The common or usual name of substances generally recognized as safe (GRAS) as authorized by 21 Code of Federal

Regulations 570.30 (revised April 1, 2019) of the Federal Drug and Cosmetic Act as amended August, 1985;

(D) The common or usual name of substances which are so common to not need a definition, have a substantially safe history, and no safety hazard is known to exist after consumption by a significant number of animals, including, but not limited to, salt and sugar; or

(E) Other ingredients or additives that the commissioner, by rules, deems necessary.

(5) The name and principal mailing address of the manufacturer or the distributor.

(6) For all commercial feeds containing drugs and for all other such commercial feeds as the commissioner may require by legislative rules, adequate directions as necessary for their safe and effective use and precautionary statements for safe and effective use.

(7) If a drug or drug containing product is used, then the following shall be stated:

(A) The established name of each active drug ingredient;

(B) The level of each drug used in the final mixture;

(C) The purpose of the medication (claim statement);

(D) Appropriate cautions and warnings on the use of the medicated commercial feed;

(E) Withdrawal statements, if applicable; and

(F) The word "medicated" shall appear directly following and below the product name in type size, no smaller than one-half the type size of the product name.

(c) Pet food and specialty pet food labels shall have such additional information as required by the commissioner through rules.

(d) All customer-formula feeds shall be labeled at all times and shall be supplied to the purchaser at the time of delivery. The label shall bear the following information:

(1) Name and address of the manufacturer.

(2) Name and address of the purchaser.

(3) Date of manufacture and/or delivery.

(4) The product name and quantity statement of each commercial feed and each other ingredient used in the mixture.

(5) For all customer-formula feeds containing drugs and for all other such customer-formula feeds as the commissioner may require by legislative rules, adequate directions as necessary for their safe and effective use and precautionary statements for safe and effective use.

(6) If a drug or drug containing product is used, then the following shall be stated:

(A) The established name of each active drug ingredient;

(B) The level of each drug used in the final mixture;

(C) The purpose of the medication (claim statement);

(D) Appropriate cautions and warnings on the use of the commercial feed;

(E) Withdrawal statements, if applicable; and

(F) The word "medicated" shall appear directly following and below the product name in type size no smaller than one-half the type size of the product name.

§19-14-9. Tonnage reports; inspection fees.

(a) Each person holding a Commercial Feed Manufacturing Permit or a Commercial Feed Guarantor Permit, except those persons exclusively manufacturing pet food or specialty pet food,

shall report the number of tons of commercial feed distributed and pay an inspection fee on all feed distributed, except no inspection fee shall be due on:

(1) Commercial feed, if the payment was previously made by a distributor, manufacturer, or guarantor.

(2) Customer-formula feeds or commercial feeds manufactured in this state, if the inspection fee was paid on the commercial feed or all the feed ingredients used as ingredients therein. For the purpose of this exemption, the sale of the feed ingredients used in customer-formula feeds are considered to have taken place before the processing of these items.

(3) Commercial feeds which are subsequently used as ingredients in the continuing manufacture of commercial feeds in which the end product is registered.

(4) Commercial feed supplied to a poultry contract feeder.

(5) Pet food or specialty pet food.

(b) An annual fee for commercial feed which does not meet the minimum inspection fee shall be paid in lieu of the inspection fee as established by legislative rule.

(c) Each person holding a Commercial Feed Manufacturing Permit or a Commercial Feed Guarantor Permit, except those persons exclusively distributing or manufacturing pet food or specialty pet food, shall file a semiannual statement under oath before January 31 and July 31 of each year. The statement shall include the number of net tons of commercial feeds and feed ingredients manufactured or distributed in this state during the preceding six-month period.

(d) Each report shall be accompanied by an inspection fee at the rate established by legislative rule, including a minimum inspection fee, on commercial feed and feed ingredients.

Inspection fees which are due and payable and not remitted to the commissioner within 15 days following the due date shall be

assessed a penalty of 10 percent of the amount due, except that semiannual reports with no fees due received 15 days after the due date shall be assessed a penalty in an amount established by legislative rule. The assessment of this penalty fee shall not prevent the commissioner from taking other actions as provided in this chapter.

(e) All persons must keep accurate records, as may be necessary or required by the commissioner, to indicate the tonnage of commercial feed distributed in this state. The commissioner shall have the right to examine such records.

§19-14-10. Adulteration.

Commercial feed or feed ingredients is adulterated:

(1) If it bears or contains any poisonous or deleterious substance, which may render it injurious to health; unless the substance is not an added substance, in which case such commercial feed shall not be considered adulterated under this subsection if the quantity of such substance in such commercial feed does not ordinarily render it injurious to health;

(2) If it bears or contains any added poisonous, added deleterious, or added nonnutritive substance which is unsafe within the meaning of Section 406 of the Federal Food, Drug, and Cosmetic Act (other than one which is: (A) A pesticide chemical in or on a raw commodity; or (B) a food additive;

(3) If it is, or it bears or contains any food additive which is unsafe within the meaning of Section 409 of the Federal Food, Drug, and Cosmetic Act;

(4) If it is a raw agricultural commodity and it bears or contains a pesticide chemical which is unsafe within the meaning of Section 408(a) of the Federal Food, Drug, and Cosmetic Act: *Provided*, That where a pesticide chemical has been used in or on a raw agricultural commodity in conformity with an exemption granted or a tolerance prescribed under Section 408 of the Federal Food, Drug, and Cosmetic Act and such raw agricultural commodity has been subjected to processing such as canning, cooking, freezing,

dehydrating, or milling, the residue of such pesticide chemical remaining in or such processed feed shall not be deemed unsafe if such residue in or on the raw agricultural commodity has been removed to the extent possible in good manufacturing practice and the concentration of such residue in the processed feed is not greater than the tolerance prescribed for the raw agricultural commodity unless the feeding of such processed feed will result or is likely to result in a pesticide residue in the edible product of the animal, which is unsafe within the meaning of Section 408(a) of the Federal Food, Drug, and Cosmetic Act;

(5) If it bears or contains any color additive which is unsafe within the meaning of Section 721 of the Federal Food, Drug, and Cosmetic Act;

(6) If it is, or it bears or contains, any new animal drug which is unsafe within the meaning of Section 512 of the Federal Food, Drug, and Cosmetic Act;

(7) If it consists, in whole or part, of any filth or decomposed substance, or if it is otherwise unfit for feed;

(8) If it has been prepared, packed, or held under unsanitary conditions whereby it may have become contaminated with filth, or whereby it may have been rendered injurious to health;

(9) If it is, in whole or in part, the product of a diseased animal, or of an animal that has died other than by slaughter that is unsafe within the meaning of Section 401(a)(1) or (a)(2) of the Federal Food, Drug, and Cosmetic Act;

(10) If the container is composed, in whole or in part, of any poisonous or deleterious substance which may render the contents injurious to health;

(11) If it has been intentionally subjected to radiation, unless the use of the radiation was in conformity with the regulation or exemption in effect pursuant to Section 409 of the Federal Food, Drug, and Cosmetic Act;

(12) If any valuable constituent has been, in whole or in part, omitted or abstracted therefrom or any less valuable substance substituted therefor;

(13) If its composition falls below or differs from that which it is purported or represented to possess by its labeling; or

(14) If it contains a drug, and the methods used in the facilities or controls used for its manufacture, processing, or packaging do not conform to current good manufacturing practice regulations promulgated by the commissioner to assure that the drug meets the requirements of this law as to safety and has the identity and strength and meets the quality and purity characteristics which it purports or is represented to possess.

§19-14-11. Misbranding.

Commercial feed shall be deemed to be misbranded:

(1) If its label or labeling is false or misleading;

(2) If it is not labeled as required by this article;

(3) If any word, statement, or other information required by this article to appear on the label is not prominently and conspicuously placed so that it can be read and understood by the ordinary individual under customary conditions of purchase and use;

(4) If it purports to be or is represented as a commercial feed, or if it purports to contain or is represented as containing a commercial feed ingredient that does not conform to the definition of identity prescribed by the commissioner by rules;

(5) If any damage or inferiority has been concealed; or

(6) If it is distributed under the name of another commercial feed.

§19-14-12. Embargoes; condemnation and confiscation; injunctions.

(a) Embargo orders.

(1) When the commissioner has reasonable cause to believe any lot of commercial feed is being manufactured, distributed, offered for sale, exposed for sale, or used in this state in violation of the provisions of this article or any rule promulgated hereunder, then he or she may issue and enforce a written embargo order, warning the custodian of the commercial feed not to manufacture, distribute, use, remove, or dispose of the commercial feed lot in any manner until the embargo is released by the commissioner or by court order.

(2) When the embargo is issued, the commissioner shall affix a tag or other marking to the commercial feed and/or to the manufacturing device warning that such product or process is under embargo and notify the custodian that he or she has a right to request an immediate hearing.

(3) The commissioner shall release the commercial feed lot so embargoed when said commercial feed has been brought into compliance with this article and its rules.

(4) The commissioner shall have the authority to issue an embargo against a perishable product, even if the result is the involuntary disposal of the product.

(5) The commissioner may take action to seize and condemn any product if not brought into compliance with this article and the rules issued hereunder, within 90 days of the notice to the custodian.

(b) Condemnation and confiscation.

(1) Any commercial feed not in compliance with the provisions of this article or the rules promulgated hereunder shall be subject to condemnation and confiscation on complaint of the commissioner to the circuit court of the county in which the commercial feed in question is located. Jurisdiction is hereby conferred upon the circuit courts to hear and determine such matter.

(2) If the court finds that the commercial feed is in violation of the provisions of this article or its rules and should be confiscated, then the court shall order the condemnation and confiscation of

such commercial feed and its disposition in a manner consistent with the quality of such commercial feed which is not in violation of any other laws of this state: *Provided*, That the owner thereof must first be given an opportunity to process or relabel such commercial feed or dispose of the same in full compliance with the provisions of this article and its rules.

(c) Injunctions. Upon application by the commissioner, the circuit court of the county in which the violation is occurring, has occurred, or is about to occur, may grant a temporary or permanent injunction restraining any person from violating or continuing to violate any of the provisions of this article or any rule promulgated hereunder. An injunction shall be issued without bond.

§19-14-14. Prohibited acts.

It shall be unlawful:

(a) To manufacture or distribute any commercial feed that is adulterated or misbranded.

(b) To adulterate or misbrand any commercial feed.

(c) To distribute, use, remove, or dispose of commercial feed in violation of an embargo order, or condemnation and confiscation order provided for under this article.

(d) To manufacture, distribute, or use any commercial feed containing a drug or drugs that cause or may cause residue of the drug or drugs in the edible tissues, milk, or eggs of the animals fed such feed in excess of the acceptable residue levels set by the commissioner by rules.

(e) To fail or refuse to register pet foods or specialty pet foods.

(f) To fail or refuse to obtain permits required under this article.

(g) To fail to make an accurate statement of tonnage.

(h) To fail to pay inspection fees as required under this article.

(i) To distribute or knowingly use any commercial feed that has not had an accurate statement of tonnage reported to the commissioner in the previous reporting period.

(j) To use or imply the name West Virginia Department of Agriculture, or reference any inspection or sample findings made by the West Virginia Department of Agriculture on labels or labeling of commercial feed.

(k) To interfere with the commissioner's official duties.

(l) To distribute raw milk for use as commercial feed for any species, unless:

(1) It has been decharacterized using a sufficient quantity of food coloring as designated by the commissioner;

(2) It has been decharacterized using food coloring approved by the U.S. Food and Drug Administration, or in the case of raw milk labeled as organic, approved by the U.S. Department of Agriculture;

(3) It has been decharacterized and the nutritive value of the milk has not been adversely affected by the decharacterization;

(4) The packaging of the raw milk does not resemble that used for the packaging of milk for human consumption;

(5) It is not stored at retail with, or in the vicinity of, milk or milk products intended for human consumption; and

(6) It does not otherwise violate this section.

§19-14-16. Deviations and Penalties.

(a) The commissioner is authorized to adopt regulations establishing permitted analytical variation and providing for reasonable deviation from the guaranteed analysis.

(b) If the analysis of a sample shows a deviation from permitted analytical variation established by the commissioner, the

guarantor or other responsible person shall be penalized as established by legislative rule.

(c) Penalties for multiple deviations within a sample shall be cumulative: *Provided*, That in no case shall the penalty exceed the retail value of the product.

(d) Penalties paid pursuant to this section shall, where possible, be used to reimburse the purchaser of the lot of commercial feed representing the sample analyzed. If the purchaser or purchasers cannot be found, the amount of the penalty assessed shall be paid to the commissioner and deposited in the department's fees account to be used for feed related program maintenance and educational training of the industry and consumers.

(e) If any penalty has not been paid within 90 days of notice of such penalty, a late payment penalty established by legislative rule will be added to the original penalty.

(f) If a product is found to be adulterated, the guarantor or other responsible party shall be penalized as established by legislative rules.

ARTICLE 21A. CONSERVATION DISTRICTS.

§19-21A-1. Legislative determinations and declaration of policy.

It is hereby declared, as a matter of legislative determination:

(a) That the farm and grazing lands of the State of West Virginia are among the basic assets of the state and that the preservation of these lands is necessary to protect and promote the health, safety and general welfare of its people; that improper land-use practices have caused and have contributed to, and are now causing and contributing to, a progressively more serious erosion of the farm and grazing lands of this state by water; that the breaking of natural grass, plant, and forest cover has interfered with the natural factors of soil stabilization, causing loosening of soil and exhaustion of humus and developing a soil condition that favors erosion; that the topsoil is being washed out of fields and

pastures; that there has been an accelerated washing of sloping fields; that these processes of erosion by water and flooding is increased with removal of absorptive topsoil, causing exposure of less absorptive and less protective but more erosive subsoil; that failure by any landowner to conserve the soil and control erosion upon his lands causes a washing of soil and water from his or her lands onto other lands and makes the conservation of soil and control of erosion of such other lands difficult or impossible and increases the potential damages from flooding.

(b) That the consequences of such soil erosion in the form of soil washing are the silting and sedimentation of stream channels, reservoirs, dams, ditches, and harbors; the piling up of soil on lower slopes and its deposit over alluvial plains; the reduction in productivity or outright ruin of rich bottom lands by over-wash of -poor subsoil material, sand and gravel swept out of the hills; deterioration of soil and its fertility, deterioration of crops grown thereon and declining acre yields despite development of scientific processes for increasing such yields; loss of soil and water which causes destruction of food and cover for wildlife; the washing of soil into streams which silts over spawning beds and destroys water plants, diminishing the food supply of fish; a diminishing of the underground water reserve which causes water shortages, intensifies periods of drought and causes crop failures; an increase in the speed and volume of rainfall runoff, causing more severe and more numerous floods which bring suffering, disease, and death; impoverishment of families attempting to farm eroding and eroded lands; damage to roads, highways, railways, farm buildings, and other property from floods; and losses in navigation, hydroelectric power, municipal water supply, irrigation developments, farming, grazing and reduction of suitable land available for homes and businesses.

(c) That to conserve soil resources and control and prevent soil erosion and prevent floodwater and sediment damage and further the conservation, development, utilization, water quality, and disposal of water, it is necessary that land-use practices contributing to soil wastage and soil erosion be discouraged and discontinued and appropriate soil-conserving land-use practices and works of improvement for flood prevention or the

conservation, development, utilization, water quality, and disposal of water be adopted and carried out; that among the procedures necessary for widespread adoption are engineering operations such as the construction of terraces, terrace outlets, dams, desilting basins, floodwater retarding structures, channel improvements, floodways, dikes, ponds, ditches, and the like; the utilization of strip cropping, lister furrowing, contour cultivating and contour furrowing; land drainage; land irrigation; seeding and planting of waste, sloping, abandoned or eroded lands with water-conserving and erosion-preventing plants, trees and grasses; forestation and reforestation; rotation of crops; soil stabilization with trees, grasses, legumes, and other thick-growing, soil-holding crops; retardation of runoff by increasing absorption of rainfall; and retirement from cultivation of steep, highly erosive areas and areas now badly gullied or otherwise eroded.

(d) It is hereby declared to be the policy of the Legislature to provide for the conservation of the soil and soil resources of this state, for the control and prevention of soil erosion, for the prevention of floodwater and sediment damage and for furthering the conservation, development, utilization, water quality, and disposal of water, and thereby to preserve natural resources, control floods, prevent impairment of dams and reservoirs, assist in maintaining the navigability of rivers and harbors, preserve wildlife, protect the tax base, protect public lands, and protect and promote the health, safety, and general welfare of the people of this state.

(e) This article contemplates that the incidental cost of organizing conservation districts will be borne by the state, while the expense of operating the districts so organized will be provided by donations, gifts, contributions, grants, and appropriations, in money, services, materials, or otherwise, from the United States or any of its agencies, from the State of West Virginia or from other sources, with the understanding that the owners or occupiers will contribute funds, labor, materials, and equipment to aid in carrying out erosion control measures on their lands.

§19-21A-3. Definitions.

Wherever used or referred to in this article, unless a different meaning clearly appears from the context:

(1) "Agency of this state" means the government of this state and any subdivision, agency, or instrumentality, corporate or otherwise, of the government of this state.

(2) "Committee" or "State Conservation Committee" means the agency created in §19-21A-4 of this code.

(3) "Conservation" means the reduction of soil erosion, enhancement of water supplies, control, and abatement of nonpoint sources of water pollution, improvement of water quality, increased aquatic and wildlife habitat, and the reduction of damages caused by floodwater and sediment damages and other natural disasters.

(4) "District" or "conservation district" means a subdivision of this state, organized in accordance with the provisions of this article, for the purposes, with the powers and subject to the restrictions hereinafter set forth.

(5) "Grant" means the providing of grants for conservation purposes pursuant to legislative rule.

(6) "Governing body" means the supervisors of any conservation district, town, or city, council, city commission, county court, or body acting in lieu of a county court, in this state, and the term "governmental division" means any conservation district, town, city, or county in this state.

(7) "Land occupier" or "occupier of land" means any person, firm, or corporation who shall hold title to, or shall be in possession of, any lands lying within a district organized under the provisions of this article, whether as owner, lessee, renter, or tenant.

(8) "Landowners" or "owners of land" means any person or persons, firm, or corporation who holds title to any lands lying within a district organized under the provisions of this article.

(9) "Notice" means notice published as a Class II legal advertisement in compliance with the provisions of §59-3-1 *et seq.* of this code and the publication area for the publication is the county in which is located the appropriate area. At any hearing held

pursuant to such notice at the time and place designated in the notice, adjournment may be made, from time to time, without the necessity of renewing the notice for the adjournment dates.

(10) "Petition" means a petition filed under the provisions of §19-21A-5(a) of this code for the creation of a district.

(11) "Soil conservation", "erosion control", or "erosion prevention projects" means those projects that have been established by federal agencies in cooperation with state agencies for the purpose of demonstrating soil erosion control and water conservation practices.

(12) "State" means the State of West Virginia.

(13) "Supervisor" means one of the members of the governing body of a district, elected or appointed in accordance with the provisions of this article.

(14) "United States" or "agencies of the United States" means the United States of America, Natural Resources Conservation Service of the United States Department of Agriculture, and any other agency or instrumentality, corporate or otherwise, of the United States of America.

(15) "Works of improvement" means such structures as may be necessary or convenient for flood prevention or the conservation, development, utilization, or disposal of water.

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

(a) The State Conservation Committee is continued. It serves as an agency of the state and is to perform the functions conferred upon it in this article. The committee consists of the following 10 members:

(1) Four citizen members;

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

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

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

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

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

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

(F) The President of the West Virginia Association of Conservation Districts.

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

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

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

(e) The State Conservation Committee may employ an administrative officer, technical experts, and other agents and employees, permanent and temporary, as it requires. The administrative officer and support staff shall be known as the West Virginia Conservation Agency. The committee shall determine their qualifications, duties, and compensation. The committee may call upon the Attorney General of the state for legal services it requires. It may delegate to its chairperson, to one or more of its members, or to one or more agents or employees powers and duties it considers proper. The committee may secure necessary and suitable office accommodations and the necessary supplies and

equipment. Upon request of the committee, for the purpose of carrying out any of its functions, the supervising officer of any state agency or of any state institution of learning shall, insofar as may be possible, under available appropriations and having due regard to the needs of the agency to which the request is directed, assign or detail to the committee members of the staff or personnel of the agency or institution of learning and make special reports, surveys or studies required by the committee.

(f) A member of the committee holds office so long as he or she retains the office by virtue of which he or she is serving on the committee. A majority of the committee is a quorum and the concurrence of a majority in any matter within their duties is required for its determination. The chairperson and members of the committee may receive no compensation for their services on the committee, but are entitled to reimbursement of expenses, including traveling expenses necessarily incurred in the discharge of their duties on the committee. The committee shall:

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

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

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

(4) Cooperate with the State Resiliency Office to the fullest extent practicable to assist that office in fulfilling its duties.

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

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

(2) Assist and advise conservation districts and others in implementing conservation improvements, and projects to control

and abate nonpoint sources of water pollution and prevent damage from floodwater and sediment;

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

(4) Coordinate the programs of the several conservation districts so far as this may be done by advice and consultation;

(5) Contract for services directly related to natural disaster recovery and stream restoration related to flooding, on an as needed basis;

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

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

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

(9) Administer a conservation grant program that provides financial assistance to conservation districts and others to promote approved conservation, water quality, and soil conservation projects;

(10) Accept and receive donations, gifts, contributions, grants, and appropriations in money, services, materials, or otherwise from the United States or any of its agencies, from the State of West Virginia, or from other sources and use or expend the money,

services, materials, or other contributions in carrying out the policy and provisions of this article, including the right to allocate the money, services, or materials in part to the various conservation districts created by this article in order to assist them in carrying on their operations;

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

(12) Promulgate emergency and legislative rules to effectuate the provisions of this article; and

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

§19-21A-8. Powers of districts; additional powers of supervisors.

A conservation district organized under the provisions of this article and the supervisors thereof shall have the following powers, in addition to others granted in other sections of this article:

(1) To conduct surveys, investigations, and research relating to the character of soil erosion, floodwater and sediment damage, and nonpoint source water pollution, and to the conservation, development, utilization, water quality, and disposal of water and the preventive and control measures needed to publish the results of such surveys, investigations, or research and to disseminate information concerning such preventive and control measures and works of improvement: *Provided*, That in order to avoid duplication of research activities, no district shall initiate any research program or publish the results except with the approval of the state committee and in cooperation with the government of this state or any of its agencies, or with the United States or any of its agencies;

(2) To conduct demonstrational projects within the district on lands owned or controlled by this state or any of its agencies, with the consent and cooperation of the agency administering and having jurisdiction thereof, and on any other lands within the district upon obtaining the consent of the owner and occupier of the lands or the necessary rights or interests in the lands in order to demonstrate by example the means, methods, and measures by which soil and soil resources may be conserved and soil erosion in the form of soil washing may be prevented and controlled, water quality may be improved, and works of improvement may be carried out;

(3) To carry out preventive and control measures and works of improvement within the district, including, but not limited to, engineering operations, methods of cultivation, the growing of vegetation, changes in use of land; drainage, irrigation, and other agricultural water management operations and measures for the prevention of floodwater and sediment damages, or for the control and abatement of nonpoint sources of water pollution; and the measures listed in §19-21A-2(c) of this code on lands owned or controlled by this state or any of its agencies with the consent and cooperation of the agency administering and having jurisdiction thereof and on any other lands within the district upon obtaining the consent of the owner and occupier of such lands or the necessary rights or interests in such lands;

(4) To cooperate, or enter into agreements with, and within the limits of appropriations duly made available to it by law, to furnish financial or other aid to any agency, governmental or otherwise, or any occupier of lands within the district in the carrying on of erosion-control and prevention operations, operations for the control and abatement of nonpoint sources of water pollution, and works of improvement within the district, subject to such conditions as the supervisors may deem necessary to advance the purposes of this article;

(5) To obtain options upon and to acquire, by purchase, exchange, lease, gift, grant, bequest, devise, or otherwise, any property, real or personal, or rights or interests therein; to institute condemnation proceedings to acquire any property, real or personal, or rights or interests therein, whether or not located in the district, required for works of improvement; to maintain, administer and improve any properties acquired, to receive income from such properties and to expend such income in carrying out the purposes and provisions of this article; and to sell, lease or otherwise dispose of any of its property or interests therein in furtherance of the purposes and the provisions of this article;

(6) To make available, on such terms as it shall prescribe, to land occupiers within the district agricultural and engineering machinery and equipment, fertilizer, seeds and seedlings, and such other material or equipment as will assist such land occupiers to carry on operations upon their lands for the conservation of soil resources and for the prevention and control of soil erosion and for flood prevention or the conservation, development, utilization, water quality, and disposal of water;

(7) To construct, improve, operate, and maintain such structures as may be necessary or convenient for the performance of any of the operations authorized in this article;

(8) To develop with the approval of the state committee comprehensive plans for the conservation of soil resources and for the control and prevention of soil erosion and for flood prevention and water quality improvement, or the conservation, development, utilization, and disposal of water within the district. The plans shall

specify, in as much detail as may be possible, the acts, procedures, performances and avoidances which are necessary or desirable for the effectuation of such plans, including the specification of engineering operations, methods of cultivation, the growing of vegetation, cropping programs, tillage practices and changes in use of land; and to publish such plans and information and bring them to the attention of occupiers of lands within the district;

(9) To take over, by purchase, lease or otherwise, and to administer any soil-conservation, flood-prevention, drainage, irrigation, water-management, erosion-control or erosion-prevention project, or combinations thereof, located within its boundaries, undertaken by the United States or any of its agencies, or by this state or any of its agencies; to manage, as agent of the United States or any of its agencies, or of this state or any of its agencies, any soil-conservation, flood-prevention, drainage, irrigation, water-management, erosion-control or erosion-prevention project, or combinations thereof, within its boundaries; to act as agent for the United States or any of its agencies, or for this state or any of its agencies, in connection with the acquisition, construction, operation, or administration of any soil-conservation, flood-prevention, drainage, irrigation, water-management, erosion-control or erosion-prevention project, or combinations thereof, within its boundaries; to accept donations, gifts, contributions and grants in money, services, materials, or otherwise, from the United States or any of its agencies, or from this state or any of its agencies, or from any other source and to use or expend such money, services, materials or other contributions in carrying on its operations;

(10) To sue and be sued in the name of the district; to have a seal, which shall be judicially noticed; to have perpetual succession unless terminated as hereinafter provided; to make and execute contracts and other instruments, necessary or convenient to the exercise of its powers; to make and, from time to time, amend and repeal rules and regulations not inconsistent with this article to carry into effect its purposes and powers;

(11) As a condition to this extending of any benefits under this article to, or the performance of work upon, any lands, the

supervisors may require contributions in money, services, materials or otherwise to any operations conferring such benefits and may require land occupiers to enter into and perform such agreements or covenants as to the permanent use of such lands as will tend to prevent or control erosion and prevent floodwater and sediment damage thereon;

(12) No provisions with respect to the acquisition, operation, or disposition of property by other public bodies shall be applicable to a district organized hereunder in its acquisition, operation and disposition of property unless the Legislature shall specifically so state;

(13) To enter into contracts and other arrangements with agencies of the United States, with persons, firms, or corporations, including public corporations, with the state government of this state or other states, or any department or agency thereof, with governmental divisions, with soil conservation, drainage, flood control, soil erosion, or other improvement districts in this state or other states, for cooperation or assistance in constructing, improving, operating, or maintaining works of improvement within the district, or in preventing floods, or in conserving, developing, utilizing and disposing of water in the district, or for making surveys, investigations, or reports thereof; and to obtain options upon and acquire property, real or personal, or rights or interests therein, in other districts or states required for flood prevention and water quality improvement, or the conservation, development, utilization, and disposal of water within the district and to construct, improve, operate or maintain thereon or therewith works of improvement.

ARTICLE 25. LIMITING LIABILITY OF LANDOWNERS.

§19-25-1. Purpose.

The purpose of this article is to encourage owners of land to make available to the public land and water areas for military, law-enforcement, homeland-defense training, or recreational, agricultural, or wildlife propagation purposes by limiting their liability for injury to persons entering thereon and for injury to the

property of persons entering thereon and limiting their liability to persons who may be injured or otherwise damaged by the acts or omissions of persons entering thereon.

§19-25-2. Limiting duty of landowner generally.

(a) Subject to the provisions of §19-25-4 of this code, an owner of land owes no duty of care to keep the premises safe for entry or use by others for recreational or wildlife propagation purposes, or to give any warning of a dangerous or hazardous condition, use, structure, or activity on such premises to persons entering for such purposes.

(b) Subject to the provisions of §19-25-4 of this code, an owner of land who either directly or indirectly invites or permits without charge as that term is defined in §19-25-5 of this code, any person to use such property for recreational or wildlife propagation purposes does not thereby:

(1) Extend any assurance that the premises are safe for any purpose;

(2) Confer upon such persons the legal status of an invitee or licensee to whom a duty of care is owed; or

(3) Assume responsibility for or incur liability for any injury to person or property caused by an act or omission of such persons.

(c) Subject to the provisions of §19-25-4 of this code, an owner of land owes who invites or permits without charge, as that term is defined in §19-25-5 of this code, any person to enter onto the owner's land for the purpose of utilizing the owner's land for any agricultural purpose does not thereby:

(1) Extend any assurance that the premises are safe for any purpose;

(2) Confer upon such persons the legal status of an invitee or licensee to whom a duty of care is owed; or

(3) Assume responsibility for or incur liability for any injury to person or property caused by an act or omission of such persons.

§19-25-5. Definitions.

Unless the context used clearly requires a different meaning, as used in this article:

"Agricultural purposes" means the raising, cultivation, drying, harvesting, marketing, production, or storage of agricultural products, including both crops and livestock, for sale or use in agriculture or agricultural production, or the storage of machinery or equipment used in support of agricultural production;

"Charge" means:

(A) For purposes of limiting liability for recreational or wildlife propagation purposes set forth in §19-25-2 of this code, the amount of money asked in return for an invitation to enter or go upon the land, including a one-time fee for a particular event, amusement, occurrence, adventure, incident, experience, or occasion which may not exceed $50 a year per recreational participant: *Provided*, That the monetary cap on charges imposed pursuant to this article does not apply to the provisions of §20-14-1 *et seq.* of this code pertaining to the Hatfield-McCoy regional recreational authority or activities sponsored on the Hatfield-McCoy recreation area;

(B) For purposes of limiting liability for military, law-enforcement, or homeland-defense training set forth in §19-25-6 of this code, the amount of money asked in return for an invitation to enter or go upon the land;

"Land" includes, but is not limited to, roads, water, watercourses, private ways, and buildings, structures, and machinery or equipment when attached to the realty;

"Noncommercial recreational activity" does not include any activity for which there is any charge which exceeds $50 per year per participant;

"Owner" includes, but is not limited to, tenant, lessee, occupant, or person in control of the premises;

"Recreational purposes" includes, but is not limited to, any one or any combination of the following noncommercial recreational activities: hunting, fishing, swimming, boating, camping, picnicking, hiking, pleasure driving, motorcycle or all-terrain vehicle riding, bicycling, horseback riding, spelunking, nature study, water skiing, winter sports, and visiting, viewing, or enjoying historical, archaeological, scenic or scientific sites, aircraft or ultralight operations on private airstrips or farms or otherwise using land for purposes of the user;

"Wildlife propagation purposes" applies to and includes all ponds, sediment control structures, permanent water impoundments, or any other similar structure created in connection with surface mining activities as governed by §22-3-1 *et seq.* of this code or from the use of surface in the conduct of underground coal mining as governed by that article and any rules promulgated because of the article, which ponds, structures, or impoundments are designated and certified in writing by the Director of the Division of Environmental Protection and the owner to be necessary and vital to the growth and propagation of wildlife, animals, birds, and fish or other forms of aquatic life and finds and determines that the premises have the potential of being actually used by the wildlife for those purposes and that the premises are no longer used or necessary for mining reclamation purposes. The certification shall be in form satisfactory to the director and shall provide that the designated ponds, structures, or impoundments may not be removed without the joint consent of the director and the owner; and

"Military, law-enforcement, or homeland-defense training" includes, but is not limited to, training, encampments, instruction, overflight by military aircraft, parachute drops of personnel or equipment, or other use of land by a member of the Army National Guard or Air National Guard, a member of a reserve unit of the armed forces of the United States, a person on active duty in the armed forces of the United States, a state or federal law-enforcement officer, a federal agency or service employee, a West

Virginia military authority employee or a civilian contractor supporting the military, and/or government employees acting in that capacity.

ARTICLE 31. GUS R. DOUGLASS AGRICULTURAL CENTER AT GUTHRIE.

§19-31-1. Establishing the name.

The Guthrie center, currently owned by the Department of Agriculture, shall hereinafter be known as the Gus R. Douglass Agricultural Center at Guthrie.

ARTICLE 35. FARMERS MARKETS.

§19-35-1. Legislative findings and purpose.

(a) The Legislature hereby makes the following findings:

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

(2) The number of farmers markets and the variety of products sold at farmers markets has increased significantly in the past 10 years, adding millions of dollars to the state's economy;

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

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

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

(b) It is the purpose of this article:

(1) To reduce barriers on participants producing, preparing, and selling certain foods at farmers markets and elsewhere within West Virginia;

(2) To place regulation of farmers markets, vendors, and local food producers primarily within the Department of Agriculture; and

(3) To encourage the growth of the local food industry in West Virginia.

§19-35-2. Definitions.

For purposes of this article:

"Acidified food" means a low-acid food item to which acid or acid foods are added with a water activity of greater than 0.85 and a finished equilibrium of pH 4.6 or below. Acidified foods are considered potentially hazardous foods.

"Delivered" means transferred to the consumer, either immediately upon sale or at a time thereafter.

"Department" means the Department of Agriculture.

"Farm and food product" means any agriculture, horticulture, agroforestry, animal husbandry, dairy, livestock, beekeeping, or other similar product, and includes potentially hazardous foods and nonpotentially hazardous food produced or manufactured therefrom.

"Farmers market" means:

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

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

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

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

(5) A mobile farmers market;

(6) An area within a fair or festival at which farm and food products are sold; or

(7) Any other form of farmers market approved by the commissioner.

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

"Nonpotentially hazardous" means a food item that does not require time/temperature control for safety to limit pathogenic microorganism growth or toxin formation.

"Potentially hazardous" means a food item that requires time/temperature control or other protocols for safety to limit pathogenic microorganism growth or toxin formation.

To "produce" means to prepare a food item by cooking, baking, drying, mixing, cutting, fermenting, preserving, dehydrating, growing, raising, or other process.

"Producer" means the person who produces a nonpotentially hazardous food item.

"Retailer" means and includes every person engaging in the business of selling, leasing, or renting tangible personal property.

"Seller" means the person who sells a nonpotentially hazardous food item to a consumer. The seller of the nonpotentially hazardous food item may be the producer of the item, an agent of the producer, or a third-party vendor, such as a retail shop or grocery store.

§19-35-3. Farmers markets.

(a) All farmers markets operating within the state shall register with the department. Farmers markets shall register on a form prepared by the department and provide information to the department regarding:

(1) The type of farmers market;

(2) The location, dates, and hours of operation;

(3) The farmers markets' vendors; and

(4) Any other information required by the department.

(b) Upon submission of all required items, each farmers market shall be issued a Farmers Market Registration. Each farmers market shall display its registration in a conspicuous manner.

(c) Except for consignment farmers markets, which are required to apply for and obtain a food establishment permit from a local health department, no other type of farmers market is required to apply for and obtain a food establishment permit from a local health department.

(d) The department may establish regulations permitting the sampling of certain farm and food products at farmers markets by vendors.

(e) The department may establish penalties for violation of this section by legislative rule, pursuant to the provisions of §29A-3-1 *et seq.* of this code.

§19-35-3a. Farmers Market Vendor Permits.

(a) Except as provided in subsection (d) of this section, all vendors at a farmers market selling farm and food products shall apply for a farmers market vendor permit from the department.

(b) The farmers market vendor permit, once issued, is valid in all counties in this state.

(c) Notwithstanding any other provisions of code or rule to the contrary, a vendor is not required to obtain a food establishment permit to sell at a farmers market.

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

(1) Vendors selling fresh, uncut produce;

(2) Vendors selling nonpotentially hazardous foods; and

(3) Vendors selling other farm and food products that are identified by the department.

(e) The department shall establish the conditions and procedures for issuance of farmers market vendor permits. As a condition of obtaining a farmers market vendor permit, a vendor may be required to satisfy additional requirements, including but not limited to, submitting to inspections, and obtaining and maintaining certain additional licenses or certifications.

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

(g) The department may establish penalties for violation of this section by legislative rule, pursuant to the provisions of §29A-3-1 *et seq.* of this code.

§19-35-3b. Role of local health departments in farmers markets.

(a) No local health department may require a farmers market or a farmers market vendor to obtain a food establishment permit, except a consignment farmers market is required to obtain a food establishment permit: *Provided,* That nothing in this article shall be construed to exempt restaurants or other prepared food vendors from the requirement to obtain a food establishment permit.

(b) A vendor is subject to food sampling and inspection by the local health department in the jurisdiction in which the farmers market is located if the local health department determines that the vendor's food product is misbranded or adulterated, or if a consumer complaint has been received: *Provided*, That all sampling and inspection shall be performed in consultation with the Department of Agriculture.

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

§19-35-4. Legislative rules.

The department shall propose emergency or legislative rules for approval in accordance with the provisions of §29A-3-1 *et seq.* of this code for the purposes of implementing this article, including the setting of any fees.

§19-35-5. Potentially hazardous foods.

(a) Notwithstanding any provision of §16-1-1 *et seq.* of this code or any rules or regulations to the contrary, the department shall regulate potentially hazardous foods sold at farmers markets.

(b) A vendor of potentially hazardous foods shall apply for and obtain a farmers market vendor permit as required by §19-35-3a of this code.

(c) A home, farm, community, or commercial kitchen may be used by a potentially hazardous foods vendor, as determined by the department.

(d) The department shall establish by legislative rule the requirements for obtaining a vendor permit for potentially

hazardous foods, including acidified foods, and other categories identified and defined by the department.

(e) All potentially hazardous foods sold at farmers markets shall be labeled in compliance with the department's labeling standards and provide information about its content and sources.

§19-35-6. Nonpotentially hazardous foods.

(a) The production and sale of nonpotentially hazardous foods, when done in conformity with this section and the accompanying legislative rules, are exempt from licensing, permitting, inspection, packaging, and labeling laws of this state.

(b) The following conditions apply to the sale and delivery of nonpotentially hazardous foods:

(1) The nonpotentially hazardous food item must be sold by the producer to the consumer, whether in person or remotely, or by an agent of the producer or a third-party vendor; and

(2) The nonpotentially hazardous food items must be delivered to the consumer by the producer, an agent of the producer, a third-party vendor, or a third-party carrier.

(c) All nonpotentially hazardous foods shall be labeled in compliance with the department's labeling standards and provide information about their content and sources.

(d) A home, farm, community, or commercial kitchen may be used by a nonpotentially hazardous foods vendor, as determined by the department.

(e) This section shall not be construed to:

(1) Impede the authority of a local health department or the department to investigate or cease the production or sale of food items reported to have caused a foodborne illness;

(2) Preclude the department from providing assistance, consultation, or inspection at the request of the producer of a nonpotentially hazardous food item;

(3) Preclude the production or sale of food items otherwise allowed by law;

(4) Exempt a producer, seller, third-party vendor, or third-party agent from any applicable tax law;

(5) Exempt producers or sellers of nonpotentially hazardous food items from any law that requires the producer, seller, third-party vendor, or third-party agent to register its business name, address, and other identification information with the state;

(6) Exempt producers or sellers of nonpotentially hazardous food items from any applicable law of the federal government, including any federal law prohibiting the sale of certain food items in interstate commerce; or

(7) Exempt producers or sellers of nonpotentially hazardous food items from any applicable law of another state.

(f) This section preempts county, municipal, and other political jurisdictions from prohibiting and regulating the production and sale of nonpotentially hazardous food items: *Provided,* That such preemption shall not include space rentals at government-owned or operated facilities, government-sanctioned or operated events, or product placement agreements with government-owned facilities, as well as temporary events 14 days or less in duration.

ARTICLE 37. WEST VIRGINIA FRESH FOOD ACT.

§19-37-2. State-funded institutions to purchase food from in-state sources; exception.

(a) Beginning July 1, 2019, each state-funded institution, including, but not limited to, schools, colleges, correctional facilities, governmental agencies, and state parks, shall obtain a minimum of five percent of its food from in-state producers.

(b) To satisfy this requirement, state-funded institutions may purchase, either directly or indirectly fresh produce, meat and poultry products, milk and other dairy products, and other foods grown, produced, or processed by in-state producers.

(c) The commissioner shall establish by legislative rules the criteria for a food or food product to satisfy the requirements of this section, and may further identify food and food products that are eligible to be considered for in-state food credit.

(d) The commissioner shall further establish the criteria for determining when exceptions or exemptions should be granted to state institutions, including, but not limited to, situations in which the desired food, such as produce, meat and poultry products, milk and other dairy products, cannot be grown or is not available from in-state producers.

(e) The state-funded institution shall ensure that all contracts for the purchase of food, or that include the purchase of food as a component of the contract, contain provisions to ensure that the institution complies with the provisions of this article and any legislative rule promulgated pursuant thereto.

ARTICLE 38. AGRICULTURE INVESTMENT PROGRAM.

§19-38-1. Legislative findings and purpose.

(a) The Legislature finds that:

(1) It is an important public policy to attract new and expand existing agricultural businesses and value-added facilities producing or further developing the availability of locally grown food and locally produced products.

(2) Agriculture-based businesses are necessary for diversifying the state's economy.

(3) Because of the unique nature of these businesses, agriculture-based businesses struggle to obtain appropriate capital for development or expansion and require unique tools and guidance to navigate the hurdles associated with establishment and growth.

(b) Therefore, the Legislature hereby creates the West Virginia Agriculture Investment Program to accomplish these important public policy goals.

§19-38-2. Definitions.

(a) "Commissioner" means the Commissioner of Agriculture, or his or her designee.

(b) "Department" means the West Virginia Department of Agriculture.

(c) "Fund" means the Agriculture Investment Fund created by this article.

(d) "Program" means the West Virginia Agriculture Investment Program created by this article.

§19-38-3. Agriculture Investment Fund created.

(a) There is hereby created in the State Treasury a special revenue account to be known as the West Virginia Agriculture Investment Fund. The fund shall be administered by the Department of Agriculture. The fund shall consist of all moneys that may be appropriated and designated for the fund by the Legislature, and all interest or other return earned from investment of the fund. The fund may receive any appropriations, gifts, grants, contributions, or other money from any source that is designated for deposit into the fund.

(b) Expenditures from the fund shall be for the purposes set forth in this article and are not authorized from collections but are to be made only in accordance with appropriation by the Legislature and in accordance with the provisions of §12-3-1 *et seq.* of this code and upon fulfillment of the provisions of §11B-2-1 *et seq.* of this code. Any balance, including accrued interest and other returns, remaining in the fund at the end of each fiscal year shall not revert to the General Revenue Fund, but shall remain in the fund and be expended as provided by this section.

§19-38-4. West Virginia Agriculture Investment Program.

(a) The West Virginia Agriculture Investment Program is hereby authorized. The purpose of this program is to attract and support new and expanding agriculture businesses and facilities

producing or further developing products made, grown, or processed in West Virginia.

(b) The program shall be administered by the commissioner or his or her designee.

(c) Moneys may be awarded by the commissioner from the fund as either grants or loans.

(d) The criteria for awarding such grants or loans shall include, but are not limited to:

(1) The number of direct and indirect jobs expected to be created;

(2) The anticipated amount of private capital investment;

(3) The anticipated additional state tax revenue expected to accrue to the state and affected localities as a result of the capital investment and jobs created;

(4) The anticipated amount of West Virginia-grown, processed, or produced agricultural products utilized or promoted by the project; and

(5) The projected impact on agricultural producers.

(e) The commissioner may establish a committee to assist in the administration of the program. Members of the committee shall receive no compensation for their service on the committee but shall be entitled to receive reimbursement for expenses in accordance with the Department of Agriculture travel regulations.

§19-38-5. Legislative rules.

The commissioner shall propose rules for legislative approval in accordance with §29A-3-1 *et seq.* of this code. Those rules shall, at a minimum:

(1) Identify the types of individuals and entities that are eligible for grants or loans from the program;

(2) Provide for the selection of members of any committee established by the commissioner to assist in administration of the program;

(3) Establish criteria for making grants or loans: *Provided*, That the commissioner shall consult with the Department of Commerce before proposing such criteria;

(4) Establish procedures and requirements for grant or loan applications; and

(5) Establish the administration, record-keeping, and reporting requirements for entities that receive grants or loans from the program.

CHAPTER 8

(Com. Sub. for H. B. 2823 - By Delegates Cooper and Pinson)

[Passed April 6, 2021; in effect ninety days from passage.]
[Approved by the Governor on April 21, 2021.]

AN ACT to amend and reenact §15A-11-3 and §15A-11-5 of the Code of West Virginia, 1931, as amended, relating to exempting buildings or structures utilized primarily for agricultural purposes from the provisions of the State Building Code and State Fire Code; exempting buildings or structures used exclusively for agricultural purposes from any county or municipal building code or ordinance that is adopted or may be adopted; defining the term "agricultural purposes"; requiring any county or municipality that adopts a property maintenance code or ordinance to exempt all property used primarily for agricultural purposes.

Be it enacted by the Legislature of West Virginia:

ARTICLE 11. FIRE COMMISSION.

§15A-11-3. Promulgation of rules and State Fire Code.

(a) Pursuant to the provisions of § 29A-3- 1 *et seq.* of this code, the State Fire Commission shall propose and promulgate comprehensive rules for the safeguarding of life and property from the hazards of fire and explosion to be known as the State Fire Code. Rules embodied in the State Fire Code shall be in accordance with standard safe practice as embodied in widely recognized standards of good practice for fire prevention and fire protection and have the force and effect of law in the several counties, municipalities, and political subdivisions of the state: *Provided,* That buildings or structures utilized primarily for agricultural purposes shall be exempt from the provisions of the State Building

Code, the State Fire Code, and any county or municipal building code or ordinance that is or may be adopted, such as the ICC International Property Maintenance Code. The rule shall include, but not be limited to, standard safe practices for the design, construction, location, installation, maintenance, and operation of liquefied petroleum gas systems, and training standards and qualifications for persons who install or maintain liquefied petroleum gas systems.

(b) The State Fire Commission may establish work groups and seek input in the rulemaking process from groups or individuals with an interest in any aspect of the fire code.

(c) For purposes of this section, the term "agricultural purposes" means the raising, cultivation, drying, harvesting, marketing, production, or storage of agricultural products, including both crops and livestock, for sale or use in agriculture or agricultural production, or the storage of machinery or equipment used in support of agricultural production.

§15A-11-5. Promulgation of rules and statewide building code.

(a) The State Fire Commission shall propose rules for legislative approval in accordance with the provisions of §29A-3-1 *et seq.* of this code to safeguard life and property and to ensure the quality of construction of all structures erected or renovated throughout this state through the adoption of a State Building Code. The rule may include provisions regarding building construction, renovation, and all other aspects as related to the construction and mechanical operations of a structure. The rule shall include building energy codes. The rules shall be in accordance with standard safe practices so embodied in widely recognized standards of good practice for building construction and all aspects related thereto and have force and effect in those counties and municipalities adopting the State Building Code: *Provided,* That each county or municipality may adopt the code to the extent that it is only prospective and not retroactive in its application; *Provided, however,* That buildings or structures utilized primarily for agricultural purposes shall be exempt from the provisions of the State Building Code, the State Fire Code, and any county or

municipal building code or ordinance that is or may be adopted, such as the ICC International Property Maintenance Code.

(b) The State Fire Commission may establish advisory boards as it considers appropriate to encourage representative participation in subsequent rulemaking from groups or individuals with an interest in any aspect of the State Building Code or related construction or renovation practices.

(c) For the purpose of this section, the term "building code" is intended to include all aspects of safe building construction and mechanical operations and all safety aspects related thereto. Whenever any other state law, county, or municipal ordinance, or regulation of any agency thereof is more stringent or imposes a higher standard than is required by the State Building Code, the provisions of the state law, county or municipal ordinance, or regulation of any agency thereof governs if they are not inconsistent with the laws of West Virginia and are not contrary to recognized standards and good engineering practices. In any question, the decision of the State Fire Commission determines the relative priority of any such state law, county or municipal ordinance, or regulation of any agency thereof, and determines compliance with State Building Code by officials of the state, counties, municipalities, and political subdivisions of the state.

(d) Enforcement of the provisions of the State Building Code is the responsibility of the respective local jurisdiction. Also, any county or municipality may enter into an agreement with any other county or municipality to provide inspection and enforcement services: *Provided*, That any county or municipality may adopt the State Building Code with or without adopting the BOCA National Property Maintenance Code. If a county adopts a property maintenance code or ordinance including, but not limited to, the ICC International Property Maintenance Code, such code or ordinance shall exempt all property used for agricultural purposes or otherwise cause such property to be exempted from any such code or ordinance from enforcement. Any such code that may be or is adopted by any county shall be and is unenforceable as to agricultural property.

(e) After the State Fire Commission has promulgated rules as provided in this section, each county or municipality intending to adopt the State Building Code shall notify the State Fire Marshal of its adoption.

(f) The State Fire Commission may conduct public meetings in each county or municipality adopting the State Building Code to explain the provisions of the rules.

(g) The provisions of the State Building Code relating to the construction, repair, alteration, restoration, and movement of structures are not mandatory for existing buildings and structures identified and classified by the State Register of Historic Places under the provisions of §29-1-8 of this code or the National Register of Historic Places, pursuant to 16 U.S.C. §470a. Prior to renovations regarding the application of the State Building Code, in relation to historical preservation of structures identified as such, the authority having jurisdiction shall consult with the Division of Culture and History, State Historic Preservation Office. The final decision is vested in the State Fire Marshal. Additions constructed on a historic building are not excluded from complying with the State Building Code.

(h) For purposes of this section, the term "agricultural purposes" has the same meaning as is set forth in §15A-11-3 of this code.

CHAPTER 9

(Com. Sub. for H. B. 2025 - By Delegates Hanshaw (Mr. Speaker) and Skaff)

[By Request of the Executive]

[Passed April 10, 2021; in effect May 10, 2021.]
[Approved by the Governor on April 28, 2021.]

AN ACT to amend and reenact §7-1-3ss of the Code of West Virginia, 1931, as amended; to amend and reenact §11-16-9 and §11-16-18 of said code; to amend said code by adding thereto four new sections, designated §11-16-6d, §11-16-6e, §11-16-6f and §11-16-11c; to amend said code by adding thereto two new sections, designated §19-2-12 and §19-2-13; to amend and reenact §60-1-5a of said code; to amend said code by adding thereto a new section, designated §60-3A-3b; to amend and reenact §60-3A-25 of said code; to amend and reenact §60-4-3a and §60-4-3b of said code; to amend said code by adding thereto a new section, designated §60-4-3c; to amend and reenact §60-6-8 of said code; to amend and reenact §60-7-2, §60-7-6, and §60-7-12 of said code; to amend said code by adding thereto five new sections, designated §60-7-8b, §60-7-8c, §60-7-8d, §60-7-8e, and §60-7-8f; to amend and reenact §60-8-2, §60-8-3, §60-8-4, §60-8-18, §60-8-20, §60-8-29 and §60-8-34 of said code; to amend said code by adding thereto five new sections, designated §60-8-6c, §60-8-6d, §60-8-6e, §60-8-6f and §60-8-32a; to amend said code by adding thereto a new article, designated §60-8A-1, §60-8A-2, §60-8A-3, §60-8A-4, §60-8A-5, and §60-8A-6; and to amend and reenact §61-8-27 of said code, all relating to nonintoxicating beer, nonintoxicating craft beer, liquor, wine, and hard cider sales in this state; providing for changing the time for nonintoxicating beer, nonintoxicating craft beer, liquor, and wine sales to begin at 6:00 a.m. on all days of the week for on

and off premises licensees; authorizing Class A and Class B licensed retailers and third parties to obtain a license to deliver nonintoxicating beer and nonintoxicating craft beer; allowing the sale, ordering, and delivery of nonintoxicating beer and nonintoxicating craft beer by a telephone, mobile ordering application or web-based software program; setting forth sale, delivery and telephone, mobile ordering application or web-based software program requirements; providing for enforcement; exempting Class A and Class B licensees from an additional licensing fee, and establishing a license fee for third parties, and requiring a nonintoxicating beer retail transportation permit for delivery vehicles; establishing a nonintoxicating beer and nonintoxicating craft beer direct shippers license to allow shipping in state and out of state; providing license requirements, shipping requirements, limitations, and fees; requiring the payment of fees and taxes, the maintenance of records and the preparation of reports; providing for penalties, criminal penalties, and jurisdiction for direct shipping licensees; authorizing Class A and Class B licensees to sell and deliver sealed nonintoxicating beer and nonintoxicating craft beer for consumption off the premises if certain conditions are met; providing certain licensees with the authority to sell, serve, and furnish nonintoxicating beer and nonintoxicating craft beer in approved outdoor dining areas, and outdoor street dining areas if certain requirements are met; defining terms; authorizing in-person or in-vehicle pick up of purchased food or meals and nonintoxicating beer or nonintoxicating craft beer orders-to-go; creating an unlicensed brewer or home brewer temporary special license for providing samples at licensed fairs and festivals, specifying requirements, setting a license fee and requiring a nonintoxicating beer or nonintoxicating craft beer transportation permit; reducing the fee for a nonintoxicating beer or nonintoxicating craft beer floorplan extension; permitting licensees to employ persons 16 years of age in sale and service of liquor, beer, and wine when supervised by an employee who is 21 years of age or older; establishing the Agriculture Development Fund to fund the hard cider development program created to foster the development and growth of the hard cider industry in this state;

creating a private liquor delivery license for retail liquor outlets and third parties with sale and delivery requirements; establishing a private liquor bottle delivery permit; authorizing retail liquor outlets to sell sealed bottles of liquor through a window in a drive-up or drive-through; creating a private manufacturer club license for distilleries, mini-distilleries, micro-distilleries, wineries, and farm wineries, setting forth requirements, and providing for a license fee; authorizing distilleries, mini-distilleries, and micro-distilleries to also operate wineries, farm wineries, brewers, or resident brewers; authorizing wineries and farm wineries to operate and be licensed as distilleries, mini-distilleries, micro-distilleries, to operate and be licensed as wineries, farm wineries, brewery, or as resident brewers; removing prohibition against a single person having more than one winery or farm winery license or both a winery and farm winery license; declaring that agricultural use designation is unchanged for building code and property tax classification upon opening any type of distillery or winery; establishing a private direct shippers license to allow distilleries, mini-distilleries and micro-distilleries to ship liquor in state and out of state; providing license requirements, shipping requirements, limitations, and fees; requiring direct shipping licensees shipping liquor in this state pay all taxes and fees and maintain certain records; authorizing the ability to pre-mix alcoholic liquors, establishing certain requirements, and creating a permit; creating a private direct shipper license, setting forth requirements and providing for a license fee; creating private caterer license, a private club bar license, a private club restaurant license, a private manufacturer club license, a private farmers market license, a private multi-sport complex license, a private tennis club license, a private professional sports stadium license, a private wedding venue or barn license, a one-day charitable rare, antique, or vintage liquor auction license for charitable purposes, and a private multi-vendor fair and festival license and setting forth requirements and providing for license fees; reducing license fees for two years due to COVID-19 pandemic; creating temporary private outdoor dining and temporary private outdoor street dining areas as legally demarcated areas that are

not a public place where a private club licensee may sell and furnish alcoholic liquors; authorizing and creating craft cocktail growlers and setting forth requirements and limitations, and exempting certain licenses from a license fee; creating a private cocktail delivery license for licensed private club restaurants, private manufacturer clubs and third parties, setting forth requirements, including specific requirements for craft cocktail growlers, specifying limitations, and requiring a private craft cocktail delivery permit for delivery vehicles; authorizing in-person or in-vehicle pick up of purchased food or a meal and craft cocktail growler orders-to-go; providing for wine definitions to clarify various aspects of wine, including the alcohol by volume percentage for table wine, wine, and fortified wine; removing restriction on number of one-day licenses which may be issued in a single year to a nonprofit to sell and serve wine for charitable purposes; requiring at least 80 percent of the net proceeds from a one day charitable auction be donated to the nonprofit; clarifying penalties for failure to meet wine licensure requirements; replacing wine bond requirements that secure the payment of taxes by distributors, suppliers, certain wineries, and certain farm wineries, who are acting as either suppliers or distributors in a limited capacity, with an affidavit of compliance; providing penalties for failure to pay taxes and maintain good standing with the state; authorizing wineries and farm wineries to sell wine growlers and provide samples and establishing requirements and limitations; authorizing certain Class A and Class B licensees to sell sealed wine and wine growlers, and setting forth requirements and limitations; authorizing legislative rules; creating a private wine delivery license for Class A and Class B wine licensees and third parties, setting forth requirements and limitations, providing fees for certain licensees; creating a private wine retail transportation permit, setting forth requirements, and requiring no additional fee; creating private wine outdoor dining and private wine outdoor street dining areas as legally demarcated areas that are not a public place where wine may be sold and furnished; authorizing in-person or in-vehicle pick up of purchased food or a meal and wine orders-to-go; defining the term "hard

cider"; providing that there is no separate license required to manufacture and sell hard cider under certain conditions; providing for a hard cider distributor's license and its fee and permitting other current and valid licensees to distribute hard cider without an additional license fee; providing for hard cider exemptions to the wine liter tax; establishing a hard cider gallon tax; providing for the application of West Virginia Tax Procedures and Administration Act and West Virginia Tax Crimes and Penalties Act to the hard cider gallon tax; providing for an internal effective date; providing for a tax credit against the hard cider tax; providing for applicability of other laws; requiring the filing of regular reports to the Tax Commissioner; providing for applications to import products necessary to manufacture hard cider under certain conditions; providing for hard cider sales for consumption on the licensed premises; providing for complimentary samples to be offered; establishing requirements for complimentary samples; permitting the sale of wine growlers; setting forth wine growler requirements, and providing a license fee; and providing additional exceptions to the criminal penalty for the unlawful admission of children to dance house for certain private clubs with approved age verifications systems.

Be it enacted by the Legislature of West Virginia:

CHAPTER 7. COUNTY COMMISSIONS AND OFFICERS.

ARTICLE 1. COUNTY COMMISSIONS GENERALLY.

§7-1-3ss. County option election on forbidding nonintoxicating beer, wine, or alcoholic liquors to be sold, given, or dispensed after 6:00 a.m. on Sundays.

The county commission of any county may conduct a county option election on the question of whether the sale or dispensing of nonintoxicating beer, wine, or alcoholic liquors in or on a licensed premises shall be allowed in the county beginning 1:00 p.m. on any Sunday, as provided in §11-16-18, §60-7-12, and §60-8-34 of this code, upon approval as provided in this section. The option election on this question may be placed on the ballot in each county at any

primary or general election. The county commission of the county shall give notice to the public of the election by publication of the notice as a Class II-0 legal advertisement in compliance with the provisions of §59-3-1 *et seq.* of this code, and the publication area for publication shall be the county in which the election is to be held. The date of the last publication of the notice shall fall on a date within the period of the 14 consecutive days next preceding the election. On the local option election ballot shall be printed the following: "Shall the beginning hour at which nonintoxicating beer, wine, and alcoholic liquor be sold or dispensed for licensed on-premises in _____ County on Sundays be changed from 6:00 a.m. to 1:00 p.m."

If approved by the voters this would forbid private clubs and restaurants licensed to sell and dispense nonintoxicating beer, wine, and alcoholic liquor; licensed private wine restaurants, private wine spas, and private wine bed and breakfasts to sell and dispense wine; and licensed Class A retail dealers to sell and dispense nonintoxicating beer for on-premises consumption until 1:00 p.m.

[ ] Yes [ ] No

(Place a cross mark in the square opposite your choice.)

The ballots shall be counted, returns made and canvassed as in general elections, and the results certified by the commissioners of election to the county commission. The county commission shall, without delay, certify the result of the election. Upon receipt of the results of the election, in the event a majority of the votes are marked "Yes", all applicable licensees shall be forbidden to sell and dispense beer, wine, or alcoholic liquors until 1:00 p.m. on Sundays. In the event a majority of the votes are marked "No", all applicable licensees will continue to be required to comply with existing law.

CHAPTER 11. TAXATION.

ARTICLE 16. NONINTOXICATING BEER.

§11-16-6d. Nonintoxicating beer or nonintoxicating craft beer delivery license for a licensed Class A retail dealer or a

third party; requirements; limitations; third party license fee; retail transportation permit; and requirements.

(a) A Class A retail dealer who is licensed to sell nonintoxicating beer or nonintoxicating craft beer may apply for a nonintoxicating beer or nonintoxicating craft beer delivery license permitting the order, sale, and delivery of nonintoxicating beer or nonintoxicating craft beer in a sealed original container of bottles or cans, and sealed growlers, when separately licensed for growler sales. The order, sale, and delivery of nonintoxicating beer or nonintoxicating craft beer is permitted for off-premises consumption when completed by the licensee or the licensee's employees to a person purchasing the nonintoxicating beer or nonintoxicating craft beer by telephone, a mobile ordering application, or a web-based software program, as authorized by the licensee's license. There is no additional fee for licensed Class A retail dealers to obtain a nonintoxicating beer or nonintoxicating craft beer delivery license. The order, sale, and delivery process shall meet the requirements of this section. The order, sale, and delivery process is subject to the penalties of this article.

(b) A third party, not licensed for nonintoxicating beer or nonintoxicating craft beer sales or distribution, may apply for a nonintoxicating beer or nonintoxicating craft beer delivery license for the privilege and convenience to offer ordering and delivery services of nonintoxicating beer or nonintoxicating craft beer in the sealed original container of bottles or cans, and sealed growlers, from a licensee with a growler license. The order, sale, and delivery of nonintoxicating beer or nonintoxicating craft beer is permitted for off-premises consumption when the Class A retail dealer sells to a person purchasing the nonintoxicating beer or nonintoxicating craft beer through telephone orders, a mobile ordering application, or a web-based software program. The annual nonintoxicating beer or nonintoxicating craft beer delivery license fee is $200 per third party entity, with no limit on the number of drivers and vehicles. The delivery license fee under this subsection may not be prorated nor refunded.

(c) The nonintoxicating beer or nonintoxicating craft beer delivery license application shall comply with licensure

requirements in §11-16-8 of this code, and shall require any information set forth in this article and as reasonably required by the commissioner.

(d) *Sale Requirements*. -

(1) The nonintoxicating beer or nonintoxicating craft beer purchase shall accompany the purchase of prepared food or a meal and the completion of the sale may be accomplished by the delivery of the prepared food or meal and nonintoxicating beer or nonintoxicating craft beer by the Class A retail dealer or third party licensee;

(2) Any person purchasing nonintoxicating beer or nonintoxicating craft beer shall be 21 years of age or older, shall not be visibly or noticeably intoxicated at the time of delivery, and shall meet the requirements set forth in this article for the sale of nonintoxicating beer or nonintoxicating craft beer;

(3) "Prepared food or a meal" shall, for purposes of this article, mean food that has been cooked, grilled, fried, deep-fried, air-fried, smoked, boiled, broiled, twice baked, blanched, sautéed, or in any other manner freshly made and prepared, and does not include pre-packaged food from the manufacturer;

(4) An order, sale, or delivery consisting of multiple meals shall not amount to any combination of bottles, cans, or sealed growlers in excess of 384 fluid ounces of nonintoxicating beer or nonintoxicating craft beer; and

(5) A third party delivery licensee may not have a pecuniary interest in a Class A retail dealer, as set forth in this article, therefore a third party delivery licensee may only charge a convenience fee for the delivery of any nonintoxicating beer or nonintoxicating craft beer. The third party licensee may not collect a percentage of the delivery order for the delivery of alcohol, but may continue to collect a percentage of the delivery order directly related to the prepared food or a meal. The convenience fee charged by the third party delivery licensee to the person purchasing may not be greater than five dollars per delivery order where

nonintoxicating beer or nonintoxicating craft beer are ordered by the purchasing person. For any third party licensee also licensed for wine growler delivery as set forth in §60-8-6c of the code, or craft cocktail growler delivery as set forth in §60-7-8f of the code, the total convenience fee of any order, sale, and delivery of a sealed growler, wine growler, or craft cocktail growler shall not exceed five dollars.

(e) *Delivery Requirements*. -

(1) Delivery persons employed for the delivery of nonintoxicating beer or nonintoxicating craft beer shall be 21 years of age or older. The licensed Class A retail dealer and the third party delivery licensee shall file each delivery person's name, driver's license, and vehicle information with the commissioner;

(2) A Class A retail dealer or third party delivery licensee shall train delivery persons on verifying legal identification and in identifying the signs of intoxication and shall submit certification of the training to the commissioner;

(3) The Class A retail dealer or third party delivery licensee shall hold a retail transportation permit for each delivery vehicle delivering sealed nonintoxicating beer or nonintoxicating craft beer pursuant to §11-16-6d(g) of this code: *Provided,* That a delivery driver may retain an electronic copy of his or her permit;

(4) A Class A retail dealer or third party delivery licensee may only deliver prepared food or a meal, and sealed nonintoxicating beer or nonintoxicating craft beer orders in the county or contiguous counties where the Class A retail dealer is located;

(5) A Class A retail dealer or third party delivery licensee may only deliver prepared food or a meal, and sealed nonintoxicating beer or nonintoxicating craft beer to addresses located in West Virginia. A Class A retail dealer or third party delivery licensee shall pay and account for all sales and municipal taxes;

(6) A Class A retail dealer or third party delivery licensee may not deliver prepared food or a meal, and nonintoxicating beer or nonintoxicating craft beer to any other Class A licensee;

(7) A Class A retail dealer or third party delivery licensee may only deliver prepared food or a meal, and sealed nonintoxicating beer or nonintoxicating craft beer for personal use, and not for resale; and

(8) A Class A retail dealer or third party delivery licensee shall not deliver and leave prepared food or a meal, and sealed nonintoxicating beer or nonintoxicating craft beer at any address without verifying a person's age and identification as required by this section.

(f) *Telephone, mobile ordering application, or web-based software requirements*. -

(1) The delivery person may only permit the person who placed the order through a telephone, mobile ordering application, or web-based software to accept the prepared food or a meal, and nonintoxicating beer or nonintoxicating craft beer delivery which is subject to age verification upon delivery with the delivery person's visual review and age verification and, as applicable, a stored scanned image of the purchasing person's legal identification;

(2) Any mobile ordering application or web-based software used shall create a stored record and image of the purchasing person's legal identification and details of the sale, accessible by the delivery person for verification, and shall include the delivery driver's name and vehicle information;

(3) Any telephone ordering system shall maintain a log or record of the purchasing person's legal identification and details of the sale, accessible by the delivery person for verification, and shall include the delivery driver's name and vehicle information;

(4) All records are subject to inspection by the commissioner. A Class A retail dealer or third party delivery licensee shall retain all records for three years, and may not unreasonably withhold the records from the commissioner's inspection; and

(5) Each vehicle delivering nonintoxicating beer or nonintoxicating craft beer must be issued a retail transportation permit per §11-16-6d(g) of this code.

(g) *Retail Transportation Permit*. -

(1) A Class A retail dealer or third party delivery licensee shall obtain and maintain a retail transportation permit for the delivery of prepared food and nonintoxicating beer or nonintoxicating craft beer.

(2) A Class A retail dealer or a third party licensee shall apply for a permit and provide vehicle and driver information, as required by the commissioner. Upon any change in vehicles or drivers, the Class A retail dealer or third party delivery licensee shall update the vehicle and driver information with the commissioner within 10 days of the change.

(h) *Enforcement*. -

(1) A Class A retail dealer or third party delivery licensee are responsible for any violations committed by their employees or independent contractors under this article, and more than one violation may be issued for a single violation involving multiple Class A retail dealers or licensees, employees, or independent contractors.

(2) A license or permit granted by this section is subject to the penalties of probation, monetary fines, suspension, and revocation, as set forth in this article, for violations committed by the Class A retail dealer or third party delivery licensee, its employees, or independent contractors.

(3) It is a violation for any licensee, its employees, or independent contractors to break the seal of a growler subject to the maximum penalties available in this article.

(4) For purposes of criminal enforcement of the provisions of this article, persons ordering, purchasing, or accepting delivery of orders are considered to be purchasers.

§11-16-6e. License required for sale and shipment of nonintoxicating beer or nonintoxicating craft beer by a brewer or resident brewer; shipment of limited quantities of nonintoxicating beer or nonintoxicating craft beer; requirements; license fee; and penalties.

(a) *Authorization*. - Notwithstanding the provisions of this article or any other law to the contrary, any person that is currently licensed and in good standing in its domicile state as a brewer, resident brewer, other nonintoxicating beer or nonintoxicating craft beer manufacturer, and who also obtains a nonintoxicating beer or nonintoxicating craft beer direct shipper's license from the commissioner, as provided in this article, may sell and ship nonintoxicating beer or nonintoxicating craft beer brewed by the brewer, resident brewer, other nonintoxicating beer or nonintoxicating craft beer manufacturer by mail to a purchasing person who is 21 years of age or older, for personal use, and not for resale. A nonintoxicating beer or nonintoxicating craft beer direct shipper may ship nonintoxicating beer or nonintoxicating craft beer by mail to a purchasing person who is 21 years of age or older who purchases nonintoxicating beer or nonintoxicating craft beer, subject to the requirements of this article, in and throughout West Virginia. A nonintoxicating beer or nonintoxicating craft beer direct shipper may sell and ship nonintoxicating beer or nonintoxicating craft beer out of this state by mail to a purchasing person who is 21 years of age or older subject to the recipient state's or country's requirements, laws, and international laws.

(b) *License requirements*. – Before sending any shipment of nonintoxicating beer or nonintoxicating craft beer to a purchasing person who is 21 years of age or older, the nonintoxicating beer or nonintoxicating craft beer direct shipper must first:

(1) File a license application with the commissioner with the appropriate background check information, using forms required by the commissioner. Criminal background checks will not be required of applicants licensed in their state of domicile who can provide a certificate of good standing from their state of domicile;

(2) Pay to the commissioner the $250 non-prorated and nonrefundable annual license fee to ship and sell only nonintoxicating beer or nonintoxicating craft beer;

(3) Obtain a business registration number from the Tax Commissioner;

(4) Register with the office of the Secretary of State;

(5) Provide the commissioner a true copy of its current active license issued in the state of domicile, proving that the nonintoxicating beer or nonintoxicating craft beer direct shipper is licensed in its state of domicile as a brewer, resident brewer, or other nonintoxicating beer or nonintoxicating craft beer manufacturer;

(6) Obtain from the commissioner a nonintoxicating beer or nonintoxicating craft beer direct shipper's license;

(7) Submit to the commissioner a list of all brands and labels of nonintoxicating beer or nonintoxicating craft beer to be shipped to West Virginia and attest that all nonintoxicating beer or nonintoxicating craft beer brands and labels are manufactured by the brewer, resident brewer or other nonintoxicating beer or nonintoxicating craft beer manufacturer seeking licensure and are not counterfeit or adulterated nonintoxicating beer or nonintoxicating craft beer;

(8) Attest that the brewer, resident, brewer or other nonintoxicating beer or nonintoxicating craft beer manufacturer brews less than 25,000 barrels of beer per calendar year and provide documentary evidence along with the attestation.

(9) Meet all other licensing requirements of this chapter and provide any other information that the commissioner may reasonably require.

(c) *Shipping Requirements*. - All nonintoxicating beer or nonintoxicating craft beer direct shipper licensees shall:

(1) Not ship more than a maximum of two, 24 bottle or can, cases of nonintoxicating beer or nonintoxicating craft beer based on a 12-fluid ounce bottle or can, however no combination of bottles or cans may exceed a total for the two cases of 576 fluid ounces of nonintoxicating beer residing in West Virginia, for such person's personal use and consumption, and not for resale.

(2) Not ship to any licensed brewers, resident brewers, retailers, retail liquor outlets, any type of private club, private caterers, private wine restaurants, private wine spas, private wine bed and breakfasts, wine retailers, wine specialty shops, taverns, or other licensees licensed under this article or chapter 60 of this code;

(3) Ensure that all containers of nonintoxicating beer or nonintoxicating craft beer shipped directly to a purchasing person who is 21 years of age or older are clearly and conspicuously labeled with the words "CONTAINS ALCOHOL: SIGNATURE OF PERSON 21 OR OLDER REQUIRED FOR DELIVERY";

(4) Not ship nonintoxicating beer or nonintoxicating craft beer that has not been registered with the commissioner, register and pay any registration fees, and prove by documentation that the direct shipper has the rights from the manufacturer to ship the nonintoxicating beer or nonintoxicating craft beer;

(6) Not ship or deliver to:

(A) Any person under the age of 21;

(B) To an intoxicated person; or

(C) To a person physically incapacitated due to the consumption of nonintoxicating beer or nonintoxicating craft beer, wine, or liquor, or the use of drugs;

(7) Obtain a written or electronic signature upon delivery to a person who the nonintoxicating beer or nonintoxicating craft beer direct shipper's carrier verifies in-person is at least 21 years of age or older, and if the carrier is not able to verify the age of the person and obtain that person's signature, then the carrier may not

complete the delivery of the nonintoxicating beer or nonintoxicating craft beer shipment;

(8) Utilize a licensed and bonded shipping carrier who has obtained a transportation permit as specified in §60-6-12 of the code;

(9) First deliver any nonintoxicating beer or nonintoxicating craft beer shipment being shipped in and throughout West Virginia to the nonintoxicating beer or nonintoxicating craft beer brand's nearest appointed distributor who has the nonintoxicating beer or nonintoxicating craft beer brand's franchise territory located in the purchasing person's county of residence in West Virginia: *Provided*, That, if no distributor has been appointed for the nonintoxicating beer or nonintoxicating craft beer brand, then the brewer of the brand shall appoint a franchise distributor in the franchise territory where the purchasing person of the nonintoxicating beer or nonintoxicating craft beer resides;

(10) Have the appointed distributor complete any nonintoxicating beer or nonintoxicating craft beer shipment order with an in-person pickup, at the location of appointed distributor's distributorship, to the purchasing person subject to age and identity verification by the appointed distributor; *Provided,* That, the appointed distributor is not a retailer, and therefore cannot charge an additional fee for the in-person pickup for the nonintoxicating beer or nonintoxicating craft beer shipment as this would be considered a part of the service provided under the appointed distributor's franchise agreement.

(d) *Payment of Fees and Taxes.*

(1) Any nonintoxicating beer or nonintoxicating craft beer direct shipper licensee must meet the markup requirements for retail sales set forth in §47-11A-6 of the code.

(2) Further, the nonintoxicating beer or nonintoxicating craft beer direct shipper licensee shall collect and remit all beer barrel tax, state sales tax, and local sales tax on the sale of nonintoxicating beer or nonintoxicating craft beer to the Tax Commissioner at the

close of each month and file a monthly return, on a form provided by the Tax Commissioner, reflecting the taxes paid for all sales and shipments to persons residing in West Virginia. No nonintoxicating beer or nonintoxicating craft beer direct shipper shall pay any beer barrel or sales tax more than once.

(3) File monthly returns to the commissioner showing the total of nonintoxicating beer or nonintoxicating craft beer, by type, brand, sold, and shipped into West Virginia for the preceding month;

(4) Permit the Tax Commissioner or commissioner or their designees to perform an audit of the nonintoxicating beer or nonintoxicating craft beer direct shipper's records upon request;

(5) The payment of fees to the commissioner and taxes to the Tax Commissioner may be in addition to fees and taxes levied by the nonintoxicating beer or nonintoxicating craft beer direct shipper's domicile state.

(6) No nonintoxicating beer or nonintoxicating craft beer direct shipper will be required to pay any fees to the commissioner or taxes to the Tax Commissioner more than once.

(e) *Jurisdiction*. - By obtaining a nonintoxicating beer or nonintoxicating craft beer direct shipper licensee the licensee shall be considered to have agreed and consented to the jurisdiction of the commissioner, which is Charleston, West Virginia and the Kanawha County circuit court, concerning enforcement of this chapter and any other related laws or rules.

(f) *Records and reports.* –

(1) Licensed nonintoxicating beer or nonintoxicating craft beer direct shippers must maintain accurate records of all shipments sent to West Virginia.

(2) Provide proof or records to the commissioner, upon request, that all direct shipments of liquor were purchased and delivered to a purchasing person who is 21 years of age or older.

(g) The nonintoxicating beer or nonintoxicating craft beer direct shipper may annually renew its license with the commissioner by application, paying the nonintoxicating beer or nonintoxicating craft beer direct shipper license fee and providing the commissioner with a true copy of a current brewer, resident brewer, or other nonintoxicating beer or nonintoxicating craft beer manufacturer's license from the nonintoxicating beer or nonintoxicating craft beer direct shipper's domicile state.

(h) The commissioner may promulgate rules to effectuate the purposes of this law.

(i) *Penalties.* –

(1) The commissioner may enforce the requirements of this chapter by administrative proceedings as set forth in §11-16-23 and §11-16-24 of this code to suspend or revoke a nonintoxicating beer or nonintoxicating craft beer direct shipper's license, and the commissioner may accept payment of a penalties as set forth in §11-16-23 and §11-16-24 of this code or an offer in compromise in lieu of suspension, at the commissioner's discretion. Hearings and appeals on such notices may be had in the same manner as in the case of revocations of licenses set forth in §11-16-23 and §11-16-24a of this code.

(2) If any licensee violates the provisions of this article, the commissioner may determine to suspend the privileges of the brewer, resident brewer, or other nonintoxicating beer or nonintoxicating craft beer manufacturer to sell, ship, or deliver nonintoxicating beer or nonintoxicating craft beer to a purchasing person who is 21 years of age or older or to the commissioner, or otherwise engage in the liquor business in this state for a period of one year from the date a notice is mailed to such person by the commissioner of the fact that such person has violated the provisions of this article. During such one-year period, it shall be unlawful for any person within this state to knowingly buy or receive nonintoxicating beer or nonintoxicating craft beer from such licensee or to have any dealings with such licensee with respect thereto.

(k) *Criminal Penalties*. – A shipment of nonintoxicating beer or nonintoxicating craft beer directly to citizens in West Virginia from persons who do not possess a valid nonintoxicating beer or nonintoxicating craft beer direct shipper's license is prohibited. Any person who knowingly makes, participates in, transports, imports, or receives such an unlicensed and unauthorized direct shipment of nonintoxicating beer or nonintoxicating craft beer is guilty of a felony and, shall, upon conviction thereof, be fined in an amount not to exceed $10,000 per violation. Without limitation on any punishment or remedy, criminal or civil, any person who knowingly makes, participates in, transports, imports, or receives such a direct shipment constitutes an act that is an unfair trade practice.

§11-16-6f. Nonintoxicating beer or nonintoxicating craft beer delivery license for a licensed Class B retail dealer or a third party; requirements; limitations; third party license fee; retail transportation permit; and requirements.

(a) A Class B retail dealer who is licensed to sell nonintoxicating beer or nonintoxicating craft beer may apply for a nonintoxicating beer or nonintoxicating craft beer delivery license permitting the order, sale, and delivery of nonintoxicating beer or nonintoxicating craft beer in a sealed original container of bottles or cans, and sealed growlers, when separately licensed for growler sales. The order, sale, and delivery of nonintoxicating beer or nonintoxicating craft beer is permitted for off-premises consumption when completed by the licensee or the licensee's employees to a person purchasing the nonintoxicating beer or nonintoxicating craft beer by a telephone, a mobile ordering application, or web-based software program, as authorized by the licensee's license. There is no additional fee for licensed Class B retail dealers to obtain a nonintoxicating beer or nonintoxicating craft beer delivery license. The order, sale, and delivery process shall meet the requirements of this section. The order, sale, and delivery process is subject to the penalties of this article.

(b) A third party, not licensed for nonintoxicating beer or nonintoxicating craft beer sales or distribution, may apply for a nonintoxicating beer or nonintoxicating craft beer delivery license

for the privilege and convenience to offer ordering and delivery services of nonintoxicating beer or nonintoxicating craft beer in the sealed original container of bottles or cans, and sealed growlers, from a licensee with a growler license. The order, sale, and delivery of nonintoxicating beer or nonintoxicating craft beer is permitted for off-premises consumption when the Class B retail dealer sells to a person purchasing the nonintoxicating beer or nonintoxicating craft beer through a telephone order, a mobile ordering application, or web-based software program. The nonintoxicating beer or nonintoxicating craft beer delivery annual license fee is $200 per third party licensee, with no limit on the number of drivers and vehicles. The delivery license fee under this subsection may not be prorated nor refunded.

(c) The nonintoxicating beer or nonintoxicating craft beer delivery license application shall comply with licensure requirements in §11-16-8 of this code and shall require any information set forth in this article and as reasonably required by the commissioner.

(d) *Sale Requirements*. -

(1) The nonintoxicating beer or nonintoxicating craft beer purchase shall accompany the purchase of food and the completion of the sale may be accomplished by the delivery of food and nonintoxicating beer or nonintoxicating craft beer by the licensee or third party licensee;

(2) Any person purchasing nonintoxicating beer or nonintoxicating craft beer shall be 21 years of age or older, shall not be visibly or noticeably intoxicated at the time of delivery, and meet the requirements set forth in this article for the sale of nonintoxicating beer or nonintoxicating craft beer;

(3) Food, for purposes of this section, means food that has been cooked, microwaved, or that is pre-packaged food from the manufacturer;

(4) An order, sale, or delivery consisting of food and any combination of sealed nonintoxicating beer or nonintoxicating

craft beer bottles, cans, or growlers shall not be in excess of 384 fluid ounces of nonintoxicating beer or nonintoxicating craft beer; and

(5) A third party delivery licensee shall not have a pecuniary interest in a Class B retail dealer, as set forth in this article. A third party delivery licensee may only charge a convenience fee for the delivery of any nonintoxicating beer or nonintoxicating craft beer. The third party licensee may not collect a percentage of the delivery order for the delivery of nonintoxicating beer or nonintoxicating craft beer, but may continue to collect a percentage of the delivery order directly related to food. The convenience fee charged by the third party delivery licensee to the purchasing person may not be greater than five dollars per delivery order. For any third party licensee also licensed for wine delivery as set forth in §60-8-6f of this code the total convenience fee for any order, sale, and delivery of sealed wine may not exceed five dollars.

(e) *Delivery Requirements.* -

(1) Delivery persons employed for the delivery of nonintoxicating beer or nonintoxicating craft beer shall be 21 years of age or older. A Class B retail dealer and a third party licensee shall file each delivery person's name, driver's license, and vehicle information with the commissioner;

(2) A Class B retail dealer and a third party licensee shall train delivery persons on verifying legal identification and in identifying the signs of intoxication and submit the certification of the training to the commissioner;

(3) The Class B retail dealer or third party delivery licensee shall hold a retail transportation permit for each delivery vehicle delivering sealed nonintoxicating beer or nonintoxicating craft beer pursuant to §11-16-6f(g) of this code: *Provided*, That a delivery driver may retain an electronic copy of his or her permit as proof of the licensure;

(4) A Class B retail dealer and a third party licensee may deliver food and sealed nonintoxicating beer or nonintoxicating

craft beer orders in the county where the Class B retail dealer is located;

(5) A Class B retail dealer and a third party licensee may only deliver food and sealed nonintoxicating beer or nonintoxicating craft beer to addresses located in West Virginia. A Class B retail dealer and a third party licensee shall pay and account for all sales and municipal taxes;

(6) A Class B retail dealer and a third party licensee may not deliver food and nonintoxicating beer or nonintoxicating craft beer to any other Class B licensee;

(7) Deliveries of food and sealed nonintoxicating beer or nonintoxicating craft beer are only for personal use, and not for resale; and

(8) A Class B retail dealer and a third party licensee shall not deliver and leave food and sealed nonintoxicating beer or nonintoxicating craft beer at any address without verifying a person's age and identification as required by this section.

(f) *Telephone, mobile ordering application, or web-based software requirements*. -

(1) The delivery person may only permit the person who placed the order through a telephone, mobile ordering application, or web-based software to accept the food and nonintoxicating beer or nonintoxicating craft beer delivery. The delivery is subject to age verification upon delivery with the delivery person's visual review and age verification and, as applicable, requires a stored scanned image of the purchasing person's legal identification;

(2) Any mobile ordering application or web-based software used must create a stored record and image of the purchasing person's legal identification and details of the sale, accessible by the delivery person for verification, and shall include the delivery driver's name and vehicle information;

(3) Any telephone ordering system shall maintain a log or record of the purchasing person's legal identification and details of

the sale, accessible by the delivery person for verification, and shall include the delivery driver's name and vehicle information;

(4) All records are subject to inspection by the commissioner. A Class B retail dealer and a third party licensee shall retain all records for three years, and may not unreasonably withhold the records from the commissioner's inspection; and

(5) Each vehicle delivering nonintoxicating beer or nonintoxicating craft beer shall be issued a retail transportation permit in accordance with §11-16-6f(g) of this code.

(g) *Retail Transportation Permit*. -

(1) A Class B retail dealer and a third party licensee shall obtain and maintain a retail transportation permit for the delivery of food and nonintoxicating beer or nonintoxicating craft beer.

(2) A Class B retail dealer or a third party licensee shall apply for a permit and provide vehicle and driver information, required by the commissioner. Upon any change in vehicles or drivers, Class B retail dealer and a third party licensee shall update the vehicle and driver information with the commissioner within 10 days of the change.

(h) *Enforcement*. -

(1) The Class B retail dealer and a third party licensee are responsible for any violations committed by their employees or independent contractors under this article, and more than one violation may be issued for a single violation involving multiple Class B retail dealers or third party licensees, employees, or independent contractors.

(2) A license or permit granted by this section is subject to the penalties of probation, monetary fines, suspension, and revocation, as set forth in this article, for violations committed by the Class B retail dealer or third party licensee, their employees, or independent contractors.

(3) It is a violation for any Class B retail dealer or third party licensee, their employees, or independent contractors to break the seal of a growler subject to the maximum penalties available in this article.

(4) For purposes of criminal enforcement of the provisions of this article, persons ordering, purchasing, or accepting delivery of orders are considered to be purchasers.

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

(a) All retail dealers, distributors, brewpubs, brewers, and resident brewers of nonintoxicating beer and of nonintoxicating craft beer shall pay an annual fee to maintain an active license as required by this article. The license period begins on July 1 of each year and ends on June 30 of the following year. If the license is granted for a shorter period, then the license fee shall be computed semiannually in proportion to the remainder of the fiscal year: *Provided*, That if a licensee fails to complete a renewal application and make payment of its annual license fee in renewing its license on or before June 30 of any subsequent year, then an additional $150 reactivation fee shall be charged and paid by the licensee; the fee may not be prorated or refunded, prior to the processing of any renewal application and applicable full year annual license fee; and furthermore a licensee who continues to operate after the expiration of its license is subject to all fines, penalties, and sanctions available in §11-16-23 of this code, all as determined by the commissioner.

(b) The annual license fees are as follows:

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

(A) For a Class A retail dealer, the license fee is $150 for each place of business; the license fee for social, fraternal, or private clubs not operating for profit, and which have been in continuous operation for two years or more immediately preceding the date of

application, is $150: *Provided*, That railroads operating in this state may dispense nonintoxicating beer upon payment of an annual license tax of $10 for each dining, club, or buffet car in which the beer is dispensed.

Class A licenses issued for railroad dining, club, or buffet cars authorize the licensee to sell nonintoxicating beer at retail for consumption only on the licensed premises where sold. All other Class A licensees may sell nonintoxicating beer or nonintoxicating craft beer at retail, as licensed, for consumption on the licensed premises or off the licensed premises. Class A licensees may sell nonintoxicating beer or nonintoxicating craft beer for consumption off the licensed premises when it is in a sealed original container and sold for personal use, and not for resale. Class A licensees shall provide prepared food or meals along with sealed nonintoxicating beer or nonintoxicating craft beer in the original container or in a sealed growler as set forth for sales and service in §11-16-6d of this code, to a purchasing person who is in-person or in-vehicle picking up prepared food or a meal, and sealed nonintoxicating beer or nonintoxicating craft beer orders-to-go, subject to verification that the purchasing person is 21 years of age or older, and not visibly or noticeably intoxicated, and as otherwise specified in this article.

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

The Commissioner may only issue a Class B license to the proprietor or owner of a grocery store. For the purpose of this article, the term "grocery store" means any retail establishment commonly known as a grocery store or delicatessen, and caterer or party supply store, where food or food products are sold for consumption off the premises, and includes a separate and segregated portion of any other retail store which is dedicated

solely to the sale of food, food products, and supplies for the table for consumption off the premises. Caterers or party supply stores shall purchase the appropriate licenses from the Alcohol Beverage Control Administration.

(C) A Class A retail dealer may contract, purchase, or develop a mobile ordering application or web-based software program to permit the ordering and purchase of nonintoxicating beer or nonintoxicating craft beer, as authorized by the licensee's license. The nonintoxicating beer or nonintoxicating craft beer shall be in a sealed original container or a sealed growler and meet the requirements of §11-16-6d of this code.

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

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

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

(B) Twelve thousand five hundred one barrels and up to 25,000 barrels of nonintoxicating beer or nonintoxicating craft beer, the license fee is $1,000 for each place of manufacture;

(C) More than 25,001 barrels of nonintoxicating beer or nonintoxicating craft beer, the license fee is $1,500 for each place of manufacture.

(4) For a brewer whose principal place of business or manufacture is not located in this state, the license fee is $1,500. The brewer is exempt from the requirements set out in subsections (c), (d), and (e) of this section: *Provided*, That a brewer whose principal place of business or manufacture is not located in this state that produces less than 25,000 barrels of nonintoxicating beer or nonintoxicating craft beer may choose to apply, in writing, to the commissioner to be subject to the variable license fees of subdivision (3), subsection (b) of this section and the requirements set out in subsections (c), (d), and (e) of this section subject to

investigation and approval by the commissioner as to brewer requirements.

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

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

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

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

(f) Any brewer or resident brewer failing to file the reports required in subsections (c) and (d) of this section, and who is not exempt from the reporting requirements, shall, at the discretion of the commissioner, be subject to the penalties set forth in §11-16-23 of this code.

(g) Notwithstanding subsections (a) and (b) of this section, the license fee per event for a nonintoxicating beer floor plan extension is $50, and the fee may not be prorated or refunded. A licensee shall submit an application, certification that the event meets certain requirements in this code and rules, and any other information required by the commissioner, at least 15 days prior to the event, all as determined by the commissioner.

(h) Notwithstanding subsections (a) and (b) of this section, a Class A retail dealer, in good standing with the commissioner, may apply, on a form provided by the commissioner, to sell, serve, and furnish nonintoxicating beer or nonintoxicating craft beer for on-premises consumption in an outdoor dining area or outdoor street dining area, as authorized by any municipal government or county commission in the which the licensee operates. The Class A retail dealer shall submit to the municipal government or county commission, for approval, a revised floorplan and a request to sell and serve nonintoxicating beer or nonintoxicating craft beer, subject to the commissioner's requirements, in an approved outdoor area. For private outdoor street dining, or private outdoor dining, the approved and bounded outdoor area need not be adjacent to the licensee's licensed premises, but in close proximity and under the licensee's control with right of ingress and egress. For purposes of this section, "close proximity" means an available area within 150 feet of the Class A retail dealer's licensed premises. A Class A retail dealer may operate a nonintoxicating beer or nonintoxicating craft beer outdoor dining or outdoor street dining in conjunction with a temporary private outdoor dining or temporary private outdoor street dining area set forth in §60-7-8d of this code and temporary private wine outdoor dining or temporary private wine outdoor street dining set forth in §60-8-32a of this code.

(i) For purposes of this article, "nonintoxicating beer or nonintoxicating craft beer outdoor dining and nonintoxicating beer or nonintoxicating craft beer outdoor street dining" includes dining areas that are:

(1) Outside and not served by an HVAC system for air handling services and use outside air;

(2) Open to the air; and

(3) Not enclosed by fixed or temporary walls; however, the commissioner may seasonally approve a partial enclosure with up to three temporary or fixed walls.

Any area where seating is incorporated inside a permanent building with ambient air through HVAC is not considered outdoor dining pursuant to this subsection.

§11-16-11c. Unlicensed brewer or unlicensed home brewer temporary license; fees; requirements.

(a) An unlicensed brewer or home brewer may obtain a temporary special license, upon meeting the requirements set forth in this section, to offer its nonintoxicating beer or nonintoxicating craft beer for sampling and sales at a fair and festival licensed under §11-16-11 and §11-16-11b of this code, when granted approval by the fair and festival licensee. The unlicensed brewer or home brewer is exempt from the requirements of registering the brand and using a distributor and a franchise agreement due to the limited nature of this temporary license.

(b) An unlicensed brewer or home brewer is subject to the limits, taxes, fees, requirements, restrictions, and penalties set forth in this article: *Provided*, That the commissioner may, by rule or order, provide for certain waivers or exceptions with respect to the provisions, laws, rules, or orders as required by the circumstances of each festival or fair. The commissioner may revoke or suspend any license issued pursuant to this section prior to any notice or hearing, notwithstanding the provisions §11-16-23 and §11-16-24 of this code: *Provided, however*, That under no circumstances shall the provisions of §11-16-8(a)(1), §11-16-8(a)(2), and §11-16-8(a)(3) of this code, be waived nor shall any exception be granted with respect to those provisions.

(c) A brewer or home brewer, regardless or of its designation in its domicile state, that is duly licensed and in good standing in its domicile state, but unlicensed in this state, or an unlicensed brewer or home brewer that is a resident of West Virginia, shall

pay a $150 nonrefundable and non-prorated fee and submit an application for a temporary license on a one-day basis. The temporary special license allows the unlicensed brewer or home brewer to sell nonintoxicating beer or nonintoxicating craft beer to a licensed fair or festival for the sampling and sale of the nonintoxicating beer or nonintoxicating craft beer for on-premises consumption at the licensed fair or festival. The brewer or home brewer shall pay all taxes due and the appropriate markup on the nonintoxicating beer or nonintoxicating craft beer.

(2) The unlicensed brewer or home brewer temporary license application shall include, but is not limited to, the person or entity's name, address, taxpayer identification number, and location; if the unlicensed brewer or home brewer is from out of state, a copy of its licensure in its domicile state; a signed and notarized verification that it produces 25,000 barrels or less of nonintoxicating beer or nonintoxicating craft beer per year; a signed and notarized verification that it is in good standing with its domicile state; copies of its federal certificate of label approvals and a certified lab alcohol analysis for the nonintoxicating beer or nonintoxicating craft beer it plans to sell to a fair or festival licensed under §11-16-11 and §11-16-11b of this code; and any other information required by the commissioner.

(3) The applicant shall include in its application a list of all nonintoxicating beers or nonintoxicating craft beers it proposes to provide, in sealed containers, to a licensed fair or festival for sampling or sale so that the commissioner may review them in the interest of public health and safety. Once approved, the submitted nonintoxicating beer or nonintoxicating craft beer list creates a temporary nonintoxicating beer or nonintoxicating craft beer brand registration for up to two days at any event licensed under §11-16-11 and §11-16-11b of this code, for no additional fee.

(4) An applicant that receives this temporary license for any event licensed under §11-16-11 and §11-16-11b of this code shall provide a signed and notarized agreement acknowledging that it is the applicant's duty to pay all municipal, local, and sales taxes applicable to the sale of nonintoxicating beer or nonintoxicating craft beer in West Virginia.

(5) The unlicensed brewer or home brewer shall submit an application for each temporary special license sought for an event licensed under §11-16-11 and §11-16-11b of this code, at which the applicant proposes to provide nonintoxicating beer or nonintoxicating craft beer for sampling or sale. The license fee covers up to two separate one-day licenses for the event before an additional fee is required. Any applicant desiring to attend more than four events per year or otherwise operate in West Virginia shall seek appropriate licensure as a brewery or resident brewery in this state.

(6) Notwithstanding the provisions of this article and requirements for licensure, brand registration, franchise requirements, payment of beer barrel tax, and the appointment of a distributor franchise network, this temporary special license for an event licensed under §11-16-11 and §11-16-11b of this code, once granted, permits the licensee to operate in this limited capacity only at the approved specific, events licensed under §11-16-11 and §11-16-11b of this code, subject to the limitations noted in this section.

(7) The applicant shall also apply for and receive a nonintoxicating beer or nonintoxicating craft beer transportation permit in order to legally transport nonintoxicating beer or nonintoxicating craft beer in the state as required by §11-16-10(f) of this code: *Provided*, That the commissioner may not charge or collect an additional fee for a nonintoxicating beer or nonintoxicating craft beer transportation permit to an applicant seeking a temporary special license under this section.

(8) The licensee is subject to all applicable violations and/or penalties under this article and related legislative rules that are not otherwise excepted by this section: *Provided,* That the commissioner may by rule or order provide for certain waivers or exceptions with respect to the provisions of this code, rules, or orders required by the circumstances of each festival or fair. The commissioner may revoke or suspend any license issued pursuant to this section prior to any notice or hearing notwithstanding the provisions of §11-16-23 and §11-16-24 of this code: *Provided, however*, That under no circumstances shall the provisions of §11-16-8(a)(1), §11-16-8(a)(2), and §11-16-8(a)(3) of this code, be

waived nor shall any exception be granted with respect to those provisions.

§11-16-18. Unlawful acts of licensees; criminal penalties.

(a) It is unlawful:

(1) Except as provided for in §7-1-3ss and this chapter of this code, any licensee, his, her, its, or their servants, agents, or employees to sell, give, or dispense, or any individual to drink or consume, in or on any licensed premises or in any rooms directly connected thereto, nonintoxicating beer between the hours of 2:00 a.m. and 6:00 a.m., or a Class A retail dealer to sell nonintoxicating beer for on-premises consumption only between the hours of 2:00 a.m. and 6:00 a.m;

(2) For any licensee, his, her, its, or their servants, agents, or employees to sell, furnish, or give any nonintoxicating beer, as defined in this article, to any person visibly or noticeably intoxicated or to any person known to be insane or known to be a habitual drunkard;

(3) For any licensee, his, her, its, or their servants, agents, or employees to sell, furnish, or give any nonintoxicating beer as defined in this article to any person who is less than 21 years of age;

(4) For any distributor to sell or offer to sell, or any retailer to purchase or receive, any nonintoxicating beer as defined in this article, except for cash and a right of action shall not exist to collect any claims for credit extended contrary to the provisions of this subdivision. Nothing contained in this section prohibits a licensee from crediting to a purchasing person the actual price charged for packages or containers returned by the original purchasing person as a credit on any sale, or from refunding to any purchasing person the amount paid or deposited for the containers when title is retained by the vendor: *Provided*, That a distributor may accept an electronic transfer of funds if the transfer of funds is initiated by an irrevocable payment order on the invoiced amount for the nonintoxicating beer. The cost of the electronic fund transfer shall

be borne by the retailer and the distributor shall initiate the transfer no later than noon of one business day after the delivery;

(5) For any brewer or distributor to give, furnish, rent, or sell any equipment, fixtures, signs, supplies, or services directly or indirectly or through a subsidiary or affiliate to any licensee engaged in selling products of the brewing industry at retail or to offer any prize, premium, gift, or other similar inducement, except advertising matter, including indoor electronic or mechanical signs, of nominal value up to $25.00 per stock keeping unit, to either trade or consumer buyers: *Provided*, That a distributor may offer, for sale or rent, tanks of carbonic gas: *Provided, however*, That, in the interest of public health and safety, a distributor may, independently or through a subsidiary or affiliate, furnish, sell, install, or maintain draught line equipment, supplies, and cleaning services to a licensed retailer so long as the furnishing or sale of draught line services may be negotiated at no less than actual cost: *Provided further*, That a distributor may furnish, rent, or sell equipment, fixtures, signs, services, or supplies directly or indirectly or through a subsidiary or affiliate to any licensee engaged in selling products of the brewing industry at retail under the conditions and within the limitations as prescribed in this section. Nothing contained in this section prohibits a brewer from sponsoring any professional or amateur athletic event or from providing prizes or awards for participants and winners in any events.

(6) For any brewer or distributor to sponsor any professional or amateur athletic event or provide prizes or awards for participants and winners when a majority of the athletes participating in the event are minors, unless the event is specifically authorized by the commissioner;

(7) For any retail licensee to sell or dispense nonintoxicating beer through draught lines where the draught lines have not been cleaned at least every two weeks in accordance with rules promulgated by the commissioner, and where written records of all cleanings are not maintained and available for inspection;

(8) For any licensee to permit in his or her premises any lewd, immoral, or improper entertainment, conduct, or practice;

(9) For any licensee, except the holder of a license to operate a private club issued under the provisions of §60-7-1 *et seq.* of this code or a holder of a license or a private wine restaurant issued under the provisions of §60-8-1 *et seq.* of this code to possess a federal license, tax receipt, or other permit entitling, authorizing, or allowing the licensee to sell liquor or alcoholic drinks other than nonintoxicating beer;

(10) For any licensee to obstruct the view of the interior of his or her premises by enclosure, lattice, drapes, or any means which would prevent plain view of the patrons occupying the premises. The interior of all licensed premises shall be adequately lighted at all times: *Provided*, That provisions of this subdivision do not apply to the premises of a Class B retailer, the premises of a private club licensed under the provisions of §60-7-1 *et seq.* of this code, or the premises of a private wine restaurant licensed under the provisions of §60-8-1 *et seq.* of this code;

(11) For any licensee to manufacture, import, sell, trade, barter, possess, or acquiesce in the sale, possession, or consumption of any alcoholic liquors on the premises covered by a license or on premises directly or indirectly used in connection with it: *Provided*, That the prohibition contained in this subdivision with respect to the selling or possessing or to the acquiescence in the sale, possession, or consumption of alcoholic liquors is not applicable with respect to the holder of a license to operate a private club issued under the provisions of §60-7-1 *et seq.* of this code, nor shall the prohibition be applicable to a private wine restaurant licensed under the provisions of §60-8-1 *et seq.* of this code insofar as the private wine restaurant is authorized to serve wine;

(12) For any retail licensee to sell or dispense nonintoxicating beer, as defined in this article, purchased or acquired from any source other than a distributor, brewer, or manufacturer licensed under the laws of this state;

(13) For any licensee to permit loud, boisterous, or disorderly conduct of any kind upon his or her premises or to permit the use of loud musical instruments if either or any of the same may disturb the peace and quietude of the community where the business is located: *Provided*, That a licensee may have speaker systems for outside broadcasting as long as the noise levels do not create a public nuisance or violate local noise ordinances;

(14) For any person whose license has been revoked, as provided in this article, to obtain employment with any retailer within the period of one year from the date of the revocation, or for any retailer to knowingly employ that person within the specified time;

(15) For any distributor to sell, possess for sale, transport, or distribute nonintoxicating beer except in the original container;

(16) For any licensee to knowingly permit any act to be done upon the licensed premises, the commission of which constitutes a crime under the laws of this state;

(17) For any Class B retailer to permit the consumption of nonintoxicating beer upon his or her licensed premises;

(18) For any Class A licensee, his, her, its, or their servants, agents, or employees, or for any licensee by or through any servants, agents, or employees, to allow, suffer, or permit any person less than 18 years of age to loiter in or upon any licensed premises; except, however, that the provisions of this subdivision do not apply where a person under the age of 18 years is in or upon the premises in the immediate company of a parent or legal guardian, or where and while a person under the age of 18 years is in or upon the premises for the purpose of and actually making a lawful purchase of any items or commodities sold, or for the purchase of and actually receiving any lawful service rendered in the licensed premises, including the consumption of any item of food, drink, or soft drink lawfully prepared and served or sold for consumption on the premises;

(19) For any distributor to sell, offer for sale, distribute, or deliver any nonintoxicating beer outside the territory assigned to any distributor by the brewer or manufacturer of nonintoxicating beer or to sell, offer for sale, distribute, or deliver nonintoxicating beer to any retailer whose principal place of business or licensed premises is within the assigned territory of another distributor of the nonintoxicating beer: *Provided,* That nothing in this section is considered to prohibit sales of convenience between distributors licensed in this state where one distributor sells, transfers, or delivers to another distributor a particular brand or brands for sale at wholesale; and

(20) For any licensee or any agent, servant, or employee of any licensee to knowingly violate any rule lawfully promulgated by the commissioner in accordance with the provisions of chapter 29A of this code.

(b) Any person who violates any provision of this article, including, but not limited to, any provision of this section, or any rule, or order lawfully promulgated by the commissioner, or who makes any false statement concerning any material fact in submitting an application for a license or for a renewal of a license or in any hearing concerning the revocation of a license, or who commits any of the acts in this section declared to be unlawful is guilty of a misdemeanor and, upon conviction thereof, shall be punished for each offense by a fine of not less than $25, nor more than $500, or confined in the county or regional jail for not less than 30 days nor more than six months, or by both fine and confinement. Magistrates have concurrent jurisdiction with the circuit court and any other courts having criminal jurisdiction in their county for the trial of all misdemeanors arising under this article.

(c) (1) A Class B licensee that:

(A) Has installed a transaction scan device on its licensed premises; and

(B) Can demonstrate that it requires each employee, servant, or agent to verify the age of any individual to whom nonintoxicating

beer or nonintoxicating craft beer is sold, furnished, or given away by the use of the transaction device is not subject to: (i) Any criminal penalties whatsoever, including those set forth in subsection (b) of this section; (ii) any administrative penalties from the commissioner; or (iii) any civil liability whatsoever for the improper sale, furnishing, or giving away of nonintoxicating beer or nonintoxicating craft beer to an individual who is less than 21 years of age by one of his or her employees, servants, or agents. Any agent, servant, or employee who has improperly sold, furnished, or given away nonintoxicating beer to an individual less than 21 years of age is subject to the criminal penalties of subsection (b) of this section. Any agent, servant, or employee who has improperly sold, furnished, or given away nonintoxicating beer to an individual less than 21 years of age is subject to termination from employment, and the employer shall have no civil liability for the termination.

(2) For purposes of this section, a Class B licensee can demonstrate that it requires each employee, servant, or agent to verify the age of any individual to whom nonintoxicating beer is sold by providing evidence: (A) That it has developed a written policy which requires each employee, servant, or agent to verify the age of each individual to whom nonintoxicating beer will be sold, furnished, or given away; (B) that it has communicated this policy to each employee, servant, or agent; and (C) that it monitors the actions of its employees, servants, or agents regarding the sale, furnishing, or giving away of nonintoxicating beer and that it has taken corrective action for any discovered noncompliance with this policy.

(3) "Transaction scan" means the process by which a person checks, by means of a transaction scan device, the age and identity of the cardholder, and "transaction scan device" means any commercial device or combination of devices used at a point of sale that is capable of deciphering in an electronically readable format the information enclosed on the magnetic strip or bar code of a driver's license or other governmental identity card.

(d) Nothing in this article nor any rule of the commissioner shall prevent or be considered to prohibit any licensee from

employing any person who is at least 18 years of age to serve in the licensee's lawful employ, including the sale or distribution of nonintoxicating beer as defined in this article. With the prior approval of the commissioner, a licensee whose principal business is the sale of food or consumer goods, or the providing of recreational activities, including, but not limited to, nationally franchised fast food outlets, family oriented restaurants, bowling alleys, drug stores, discount stores, grocery stores, and convenience stores, may employ persons who are less than 18 years of age, but at least 16 years of age: *Provided*, That the person's duties may include the sale of nonintoxicating beer or alcoholic liquors only when directly supervised by a person 21 years of age or older: *Provided, however,* That the authorization to employ persons under the age of 18 years shall be clearly indicated on the licensee's license.

CHAPTER 19. AGRICULTURE.

ARTICLE 2. MARKETING AGRICULTURAL PRODUCTS.

§19-2-12. Agriculture Development Fund; administration; purpose; funding.

(a) There is hereby created in the State Treasury a special revenue account to be known as the Agriculture Development Fund. The fund shall be administered by the Department of Agriculture. The fund shall consist of all moneys deposited into the fund pursuant to §60-8A-3 of this code; any moneys that may be designated for deposit in this fund by an act of the Legislature; any moneys appropriated and designated for the fund by the Legislature; any moneys able to be transferred into the fund by authority of the commissioner from other funds; and gifts, donations, and interest or other returns earned from investment of the fund.

(b) Expenditures from the fund shall be for the purpose of fostering and supporting the development of agricultural sectors, such as hard cider, within the state, and are not authorized from collections, but are to be made only in accordance with appropriation by the Legislature and in accordance with the

provisions of §12-3-1 *et seq.* of this code and upon the fulfillment of the provisions set forth in §11B-2-1 *et seq.* of this code. Any balance, including accrued interest and other returns, remaining in the fund at the end of each fiscal year shall not revert to the General Revenue Fund, but shall remain in the fund and be expended as provided by this section.

§19-2-13. Hard cider development program; purpose; funding.

The commissioner shall establish a program to foster the development and growth of the hard cider industry in the state. The purpose of the program shall be to assist in the development of fruit inputs necessary for the production of hard cider in the state. The program shall be funded using moneys deposited within the Agriculture Development Fund created pursuant to §19-2-12 of this code.

CHAPTER 60. STATE CONTROL OF ALCOHOLIC LIQUORS.

ARTICLE 1. GENERAL PROVISIONS.

§60-1-5a. Farm wineries defined.

(a) For the purpose of this chapter "Farm winery" means an establishment where in any year 50,000 gallons or less of wine, which includes hard cider, and nonfortified dessert wine are manufactured exclusively by natural fermentation from grapes, apples, pears, peaches, other fruits or honey, or other agricultural products containing sugar and where port, sherry, and Madeira wine may also be manufactured, with 25 percent of such raw products being produced by the owner of the farm winery on the premises of that establishment and no more than 25 percent of such produce originating from any source outside this state. Any port, sherry, or Madeira wine manufactured by a winery or a farm winery shall not exceed an alcoholic content of 22 percent alcohol by volume and shall be matured in wooden barrels or casks.

(b) Notwithstanding the provisions of subsection (a) of this section, a farm winery may include one off-farm location. The owner of a farm winery may provide to the commissioner evidence,

accompanied by written findings by the West Virginia Agriculture Commissioner in support thereof, that the owner has planted on the premises of the farm winery young nonbearing fruit plants. The commissioner may grant permission for one off-farm location when the location produces in an amount equal to that reasonably expected to be produced when the nonbearing fruit plants planted on the farm winery come into full production. The length of time of the permission to use an off-farm location shall be determined by the commissioner after consultation with the Agriculture Commissioner.

ARTICLE 3A. SALES BY RETAIL LIQUOR LICENSEES.

§60-3A-3b. Private liquor delivery license for a retail liquor outlet or a third party; requirements; limitations; third party license fee; private liquor bottle delivery permit; requirements, and curbside in-person and in-vehicle delivery by a retail liquor outlet.

(a) A retail liquor outlet that is licensed to sell liquor for off-premises consumption may apply for a private liquor delivery license permitting the order, sale, and delivery of sealed liquor bottles or cans in the original container. The order, sale, and delivery of sealed liquor bottles or cans in the original container is permitted for off-premises consumption when completed by the licensee to a person purchasing the sealed liquor bottles or cans through a telephone, a mobile ordering application, or a web-based software program, authorized by the licensee's license. There is no additional fee for a licensed retail liquor outlet to obtain a private liquor delivery license. The order, sale, and delivery process shall meet the requirements of this section. The order, sale, and delivery process is subject to the penalties of this article.

(b) A third party, not licensed for liquor sales or distribution, may apply for a private liquor delivery license for the privilege of ordering and delivery of sealed liquor bottles or cans, from a licensed retail liquor outlet. The order and delivery of sealed liquor bottles or cans permitted for off-premises consumption by a third party licensee when a retail liquor outlet sells to a person purchasing the sealed liquor bottles or cans through telephone

orders, a mobile ordering application, or a web-based software program. The private liquor delivery license non-prorated, nonrefundable annual fee is $200 per third party entity, with no limit on the number of drivers and vehicles.

(c) The private liquor delivery license application shall comply with licensure requirements in this article and shall provide any information required by the commissioner.

(d) *Sale Requirements*. -

(1) The purchase of sealed liquor bottles or cans in the original container may accompany the purchase of food and the completion of the sale may be accomplished by the delivery of food and sealed liquor bottles or cans in the original container by the licensee or third party licensee;

(2) Any purchasing person shall be 21 years of age or older, shall not be visibly or noticeably intoxicated at the time of delivery, and shall meet the requirements set forth in this chapter for the sale of alcoholic liquors and in §11-16-1 *et seq.* of the code, for nonintoxicating beer or nonintoxicating craft beer.

(3) "Food", for purposes of this section, means food that has been cooked, microwaved, or that is pre-packaged food from the manufacturer.

(4) An order, sale, and delivery may consist of up to five 750 milliliter sealed liquor bottles for each order: *Provided,* That the entire delivery order may not contain any combination of sealed liquor bottles or cans in the original container, where the combination is more than 128 fluid ounces of liquor total; and

(5) A third party delivery licensee shall not have a pecuniary interest in a retail liquor outlet, as set forth in this article. A third party private liquor delivery licensee may only charge a convenience fee for the delivery of any alcohol. The third party private liquor delivery licensee may not collect a percentage of the liquor delivery order, but may continue to collect a percentage of the delivery order directly related to food. The convenience fee charged by the third-party private liquor delivery licensee to the

purchasing person shall be no greater than five dollars per delivery order where a sealed liquor bottle or can in the original container is ordered by the purchasing person. For any third party licensee also licensed for other nonintoxicating beer or nonintoxicating craft beer delivery pursuant to §11-16-1 *et seq.* of this code, wine delivery pursuant to §60-8-1 *et seq.* of this code, or a sealed craft cocktail growler delivery pursuant to §60-7-1 *et seq.* of this code, the total convenience fee of any order, sale, and delivery of sealed alcoholic liquor or nonintoxicating beer, or nonintoxicating craft beer shall not exceed five dollars.

(e) *Private Liquor Delivery Requirements.* -

(1) Delivery persons employed for the delivery of a sealed liquor bottles or cans in the original container shall be 21 years of age or older and a retail liquor outlet and a third-party private liquor delivery licensee shall file each delivery person's name, driver's license, and vehicle information with the commissioner;

(2) A retail liquor outlet and a third-party private liquor delivery licensee shall train delivery persons on verifying legal identification and in identifying the signs of intoxication. A retail liquor outlet and a third-party private liquor delivery licensee shall submit certification of the training to the commissioner;

(3) The retail liquor outlet or third party private liquor delivery licensee shall hold a private liquor bottle delivery permit for each vehicle delivering a sealed liquor bottle or can in the original container pursuant to subsection (g) of this section: *Provided*, That a delivery driver may retain an electronic copy of his or her permit as proof of licensure;

(4) A retail liquor outlet or third party private liquor delivery licensee shall deliver food and a sealed liquor bottle or can order in the original container in the market zone or contiguous market zone where the licensed retail liquor outlet is located;

(5) A retail liquor outlet or third party private liquor delivery licensee may only deliver food and a sealed liquor bottle or can in the original container to addresses located in West Virginia, The

retail liquor outlet or third party private liquor delivery licensee shall pay and account for all sales and municipal taxes;

(6) A retail liquor outlet or third party private liquor delivery licensee may not deliver food and a sealed liquor bottle or can in the original container to any licensee licensed under §11-16-1 *et seq.* of this code, and under this chapter;

(7) Deliveries of food and a sealed liquor bottle or can in the original container are only for personal use, and not for resale; and

(8) A retail liquor outlet or third party private liquor delivery licensee shall not deliver and leave food and a sealed liquor bottle or can in the original container at any address without verifying a person's age and identification as required by this section.

(f) *Telephone, mobile ordering application, or web-based software requirements*. -

(1) The delivery person shall only permit the person who placed the order through a telephone order, a mobile ordering applicant, or web-based software to accept the food and a sealed liquor bottle or can in the original container for delivery which is subject to verification upon delivery with the delivery person's visual review and verification and, as applicable, a stored scanned image of the purchasing person's legal identification;

(2) Any mobile ordering application or web-based software used shall create a stored record and image of the purchasing person's legal identification and details of the sale, accessible by the delivery driver for verification, and shall include the delivery driver's name and vehicle information;

(3) Any telephone ordering system shall maintain a log or record of the purchasing person's legal identification and details of the sale, accessible by the delivery driver for verification, and shall include the delivery driver's name and vehicle information;

(4) All records are subject to inspection by the commissioner. A retail liquor outlet or third party private liquor delivery licensee

shall retain records for three years, and shall not unreasonably withhold the records from the commissioner's inspection; and

(5) The retail liquor outlet or third party delivery licensee shall hold a valid private liquor bottle delivery permit required by subsection (g) of this section for each vehicle that may offer delivery.

(g) *Private Liquor Bottle Delivery Permit.* -

(1) A retail liquor outlet or third party delivery licensee shall obtain and maintain a retail transportation permit for the delivery of and a sealed liquor bottle or can in the original container.

(2) A retail liquor outlet or third party private delivery licensee shall provide vehicle and driver information, requested by the commissioner. Upon any change in vehicles or drivers, the licensee shall update the driver and vehicle information with the commissioner within 10 days of the change.

(3) Subject to the requirement of §60-6-12 of this code, a private liquor bottle delivery permit shall meet the requirements of a transportation permit authorizing the permit holder to transport liquor subject to the requirements of this chapter.

(h) *Enforcement.* -

(1) The retail liquor outlet or the licensed third party are responsible for any violations committed by their employees or independent contractors under this article, and more than one violation may be issued for a single violation involving multiple licensees, employees, or independent contractors.

(2) Any license or permit granted by this section is subject to the penalties of probation, monetary fines, suspension, and revocation, as set forth in this article, for violations committed by the licensee, its employees, or independent contractors.

(3) It is a violation for any licensee, its employees, or independent contractors to break the seal of a sealed liquor bottle.

A person who violates the provisions of this subdivision is subject to the maximum penalties available in this chapter.

(4) For purposes of criminal enforcement of the provisions of this article, persons ordering, purchasing, and accepting delivery of orders are considered to be purchasers.

(i) Retail liquor outlets licensed for off-premises sales of sealed liquor bottles and cans in the original container may provide for the sale and curbside in-person or in-vehicle pick-up of sealed liquor bottles or cans in the original container, subject to verification that the purchasing person is 21 years of age or older, and not visibly, or noticeably intoxicated, and as otherwise specified in this article.

(j) Retail liquor outlets licensed for off-premises sales of sealed liquor bottles and cans in the original container may provide for the sale and delivery through a drive up or drive through structure, approved by the commissioner, of sealed liquor bottles or cans in the original container, subject to verification that the purchasing person is 21 years of age or older, and not visibly, or noticeably intoxicated, and as otherwise specified in this article.

§60-3A-25. Certain acts of retail licensees prohibited; criminal penalties.

(a) It is unlawful for any retail licensee, or agent or employee thereof, on the retail licensee's premises to:

(1) Sell or offer for sale any liquor other than from the original package or container;

(2) Sell, give away, or permit the sale of, gift of, or the procurement of, any liquor, for or to any person under 21 years of age;

(3) Sell, give away, or permit the sale of, gift of, or the procurement of, any liquor, for or to any person visibly intoxicated;

(4) Sell or offer for sale any liquor other than during the hours permitted for the sale of liquor by retail licensees as provided under this article;

(5) Permit the consumption by any person of any liquor;

(6) With the intent to defraud, alter, change, or misrepresent the quality, quantity, or brand name of any liquor;

(7) Permit any person under 18 years of age to sell, furnish, or give liquor to any other person, except as provided in subsection (c) of this section;

(8) Purchase or otherwise obtain liquor in any manner or from any source other than that specifically authorized in this article; or

(9) Permit any person to break the seal on any package, can or bottle of liquor.

(b) Any person who violates any provision of this article, except section 24 of this article, including, but not limited to, any provision of this section, or any rule promulgated by the board or the commissioner, or who makes any false statement concerning any material fact, or who omits any material fact with intent to deceive, in submitting an application for a retail license or for a renewal of a retail license or in any hearing concerning the suspension or revocation thereof, or who commits any of the acts declared in this article to be unlawful, is guilty of a misdemeanor and, shall, upon conviction thereof, for each offense be fined not less than $100 or more than $5,000, or imprisoned in the county jail for not less than 30 days nor more than one year, or both fined and imprisoned. Magistrates have concurrent jurisdiction with the circuit courts for offenses under this article.

(c) Nothing in this article, or any rule of the board or commissioner, prevents or prohibits any retail licensee from employing any person who is at least 18 years of age to serve in any retail licensee's lawful employment at any retail outlet operated by the retail licensee, or from having the person sell liquor or transport liquor on behalf of a manufacturer under the provisions of this article. With the prior approval of the commissioner, a retail licensee may employ persons at any retail outlet operated by a retail licensee who are less than 18 years of age but at least 16 years of age, the persons' duties may include the sale of liquor only when

directly supervised by a person 21 years of age or older: *Provided*, That the authorization to employ the persons under the age of 18 years shall be clearly indicated on the retail licensee's license: *Provided, however,* That nothing in this article, nor any rule or regulation of the commissioner, shall prevent or be considered to prohibit any licensee from employing any person who is at least 21 years of age for the ordering and delivery of liquor when licensed for liquor ordering and delivery under the provisions of this chapter.

ARTICLE 4. LICENSES.

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

(a) *Sales of liquor*. — An operator of a distillery, mini-distillery, or micro-distillery may offer liquor for retail sale to customers from the distillery, mini-distillery, or micro-distillery for consumption off premises only. Except for complimentary samples offered pursuant to §60-6-1 of this code, customers may not consume any liquor on the premises of the distillery, mini-distillery, or micro-distillery and except for a distillery, mini-distillery, or micro-distillery that obtains a private manufacturer club license set forth in §60-7-1 *et seq*. of this code, and a Class A retail dealer license set forth in §11-16-1 *et seq.* of the code: *Provided*, That a licensed distillery, mini-distillery, or micro-distillery may offer complimentary samples of alcoholic liquors as authorized this subsection when alcoholic liquors are manufactured by that licensed distillery, mini-distillery, or micro-distillery for consumption on the licensed premises. Notwithstanding any other provision of law to the contrary, a licensed distillery, mini-distillery, or micro-distillery may sell, furnish, and serve alcoholic liquors when licensed accordingly beginning at 6:00 a.m. unless otherwise determined by the residents of the county pursuant to §7-1-3ss of this code.

(b) *Retail off-premises consumption sales.* — Every licensed distillery, mini-distillery, or micro-distillery shall comply with the provisions of §60-3A-9, §60-3A-11, §60-3A-13, §60-3A-16, §60-3A-17, §60-3A-18, §60-3A-19, §60-3A-22, §60-3A-23, §60-3A-

24, §60-3A-25, and §60-3A-26 of this code, and the provisions of §60-3-1 *et seq.* and §60-4-1 *et seq.*, of this code, applicable to liquor retailers and distillers.

(c) *Payment of taxes and fees.* — The distillery, mini-distillery, or micro-distillery shall pay all taxes and fees required of licensed retailers and meet applicable licensing provisions as required by this chapter and by rule of the commissioner, except for payments of the wholesale markup percentage and the handling fee provided by rule of the commissioner: *Provided*, That all liquor for sale to customers from the distillery, mini-distillery, or micro-distillery for off-premises consumption is subject of a five percent wholesale markup fee and an 80 cents per case bailment fee to be paid to the commissioner: *Provided, however,* That liquor sold by the distillery, mini-distillery, or micro-distillery shall not be priced less than the price set by the commissioner pursuant §60-3A-17 of this code.

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

(e) *Limitations on licensees*. —A distillery, mini-distillery, or micro-distillery may not sell more than 3,000 gallons of product at the distillery, mini-distillery, or micro-distillery location during the initial 24 month period of licensure. The distillery, mini-distillery, or micro-distillery may increase sales at the distillery, mini-distillery, micro-distillery location by 2,000 gallons following the initial 24 month period of licensure and may increase sales at the distillery, mini-distillery, or micro-distillery location each subsequent 24 month period by 2,000 gallons, not to exceed 10,000 gallons a year of total sales at the distillery, mini-distillery, or

micro-distillery location. No licensed mini-distillery may produce more than 50,000 gallons per calendar year at the mini-distillery location. A licensed micro-distillery may not produce more than 10,000 gallons per calendar year at the micro-distillery location. The commissioner may issue more than one distillery or mini-distillery license to a single person or entity and a person may hold both a distillery and a mini-distillery license. The owners of a licensed distillery, mini-distillery, or micro-distillery may operate a winery, farm winery, brewery, or as a resident brewer as otherwise specified in the code.

(f) *Building code and tax classification*- Notwithstanding any provision of this code to the contrary, the mere addition of a distillery, mini-distillery, or micro-distillery licensed under this article on a property does not change the nature or use of the property which otherwise qualifies as agricultural use for building code and property tax classification purposes.

§60-4-3b. Winery and farm winery license to manufacture and sell.

(a) An operator of a winery or farm winery may offer wine produced by the winery, farm winery, or a farm entity authorized by §60-1-5c of this code, for retail sale to customers from the winery or farm winery for consumption off the premises only. Customers may consume wine on the premises when an operator of a winery or farm winery offers complimentary samples pursuant to §60-6-1 of this code, the winery or farm winery is licensed as a private wine restaurant, or the winery or farm winery is licensed as a private manufacturer club. Customers may not consume any wine on the licensed premises of the winery, farm winery, or a farm entity authorized by §60-1-5c of this code, unless the winery, farm winery, or farm entity has obtained a multi-capacity winery or farm winery license: *Provided*, That under this subsection, a licensed winery or farm winery may offer complimentary samples of wine manufactured by that licensed winery or farm winery for consumption on the premises only on Sundays beginning at 6:00 a.m. in any county in which the same has been approved as provided in §7-1-3ss of this code. Notwithstanding any other provision of law to the contrary, a licensed winery or farm winery

may sell, serve, and furnish wine, for on-premises consumption when licensed accordingly, beginning at 6:00 a.m., and for off-premises consumption beginning at 6:00 a.m. on any day of the week, unless otherwise determined by the residents of the county pursuant to §7-1-3ss of this code.

(b) Complimentary samples allowed by the provisions of this section may not exceed two fluid ounces and no more than three samples may be given to a patron in any one day.

(c) Complimentary samples may be provided only for on-premises consumption.

(d) A winery, farm winery, or farm entity pursuant to §60-1-5c of this code may offer for retail sale from their licensed premises sealed original container bottles of wine for off-premises consumption only.

(e) A winery, farm winery, or farm entity licensed pursuant to §60-1-5c of this code, holding a multicapacity license and a private wine restaurant license may offer wine by the drink or glass in a private wine restaurant located on the property of the winery, farm winery, or farm entity licensed pursuant to §60-1-5c of this code.

(f) Every licensed winery or farm winery shall comply with the provisions of §60-3-1 *et seq.*, §60-4-1 *et seq.*, and §60-8-1 *et seq.* of this code as applicable to wine retailers, wineries, and suppliers when properly licensed in such capacities.

(g) (1) The winery or farm winery shall pay all taxes and fees required of licensed wine retailers and meet applicable licensing provisions as required by this chapter and by rules promulgated by the commissioner.

(2) Each winery or farm winery acting as its own supplier shall submit to the Tax Commissioner the liter tax for all sales at the winery or farm winery each month, as provided in §60-8-1 *et seq.* of this code.

(3) The five percent wine excise tax, levied pursuant to §60-3-9d of this code, or pursuant to §8-13-7 of this code, may not be

imposed or collected on purchases of wine in the original sealed package for the purpose of resale in the original sealed package, if the final purchase of the wine is subject to the excise tax or if the purchase is delivered outside this state.

(4) No liter tax shall be collected on wine sold in the original sealed package for the purpose of resale in the original sealed package if a subsequent sale of the wine is subject to the liter tax.

(5) This section shall not be interpreted to authorize a purchase for resale exemption in contravention of §11-15-9a of this code.

(h) A winery or farm winery may advertise a particular brand or brands of wine produced by it. The price of the wine is subject to federal requirements or restrictions.

(i) A winery or farm winery shall maintain separate winery or farm winery supplier, retailer, and direct shipper licenses when acting in one or more of those capacities and shall pay all associated license fees, unless the winery or farm winery holds a license issued pursuant to the provisions of §60-8-3(b)(12) of this code. A winery or farm winery, if holding the appropriate licenses or a multi-capacity winery or farm winery license, may act as its own supplier; retailer for off-premises consumption of its wine as specified in §60-6-2 of this code; private wine restaurant; and direct shipper for wine produced by the winery or farm winery. A winery or farm winery that has applied, paid all fees, and met all requirements may obtain a private manufacturer club license subject to the requirements of §60-7-1 *et seq.* of this code, and a Class A retail dealer license subject to the requirements of §11-16-1 *et seq.* of the code. All wineries must use a distributor to distribute and sell their wine in the state, except for farm wineries. Wineries or farm wineries may enter into alternating wine proprietorship agreements pursuant to §60-1-5c of this code.

(j) The owners of a licensed winery or farm winery may operate a distillery, mini-distillery, or micro-distillery, brewery, or as a resident brewer, as otherwise specified in the code.

(k) For purposes of this section, terms have the same meaning as provided in §8-13-7 of this code.

(l) Building code and tax classification- Notwithstanding any provision of this code to the contrary, the mere addition of a winery or farm winery licensed under this article on a property does not change the nature or use of the property which otherwise qualifies as agricultural use for building code and property tax classification purposes.

§60-4-3c. License required for sale and shipment of liquor by a distillery, mini-distillery or micro-distillery; shipment of limited quantities of liquor permitted by a private direct shipper; requirements; license fee, and penalties.

(a) *Authorization*. - Except for the commissioner, no person may offer for sale liquor, sell liquor, or offer liquor for shipment in this state, except for a licensed private direct shipper. A distillery, mini-distillery, or micro-distillery, whose licensed premises is located in this state or whose licensed premises is located and licensed out of this state, who desires to engage in the sale and shipment of liquor produced by the distillery, mini-distillery, or micro-distillery on its licensed premises, shall ship directly from the licensee's primary place of distilling by mail, using a mail shipping carrier to a purchasing person who is 21 years of age or older, for personal use, and not for resale under this article. The distillery, mini-distillery, or micro distillery shall obtain a private direct shipper license. Shipments to a purchasing person shall only be to a retail liquor outlet in the market zone in which the purchasing person resides. A private direct shipper may ship liquor subject to the requirements in this chapter in and throughout West Virginia, except for those local option areas designated as "dry" areas under §60-5-1 *et seq.* of this code. A private direct shipper may also sell, and ship liquor out of this state directly from its primary place of distilling by mail, using a mail shipping carrier to a purchasing person who is 21 years of age or older subject to the recipient state's or country's requirements, laws, and international laws.

(b) *License requirements.* – Before sending any shipment of liquor to a purchasing person who is 21 years of age or older, the private direct shipper must first:

(1) File a license application with the commissioner with the appropriate background check information, using forms required by the commissioner. Criminal background checks will not be required of applicants licensed in their state of domicile who can provide a certificate of good standing from their state of domicile;

(2) Pay to the commissioner the $250 non-prorated and nonrefundable annual license fee to ship and sell only liquor;

(3) Obtain a business registration number from the Tax Commissioner;

(4) Register with the office of the Secretary of State;

(5) Provide the commissioner a true copy of its current active license issued in the state of domicile, proving that the private direct shipper is licensed in its state of domicile as a distillery, is authorized by such state to ship liquor;

(6) Obtain from the commissioner a private direct shipper's license;

(7) Submit to the commissioner a list of all brands of liquor to be shipped to West Virginia and attest that all liquor brands are manufactured by the distillery on its licensed premises seeking licensure and are not counterfeit or adulterated liquor;

(8) Attest that the distillery, mini-distillery, or micro-distillery distills less than 50,000 gallons of liquor each calendar year and provide documentary evidence along with the attestation; and

(9) Meet all other licensing requirements of this chapter and provide any other information that the commissioner may reasonably require.

(c) *Shipping Requirements*. - All private direct shipper licensees shall:

(1) Not ship more than two bottles of liquor per month to a retail liquor outlet for pickup by a purchasing person who is 21 years of age or older for his or her personal use and consumption, and not for resale. The combined fluid volume of both bottles shall not exceed three liters;

(2) Not ship to any address in an area identified by the commissioner as a "dry" or local option area where it is unlawful to sell liquor under §60-5-1 *et seq.* of this code;

(3) Not ship to any licensed suppliers, brokers, distributors, retailers, private clubs, or other licensees licensed under this chapter or §11-16-1 *et seq.* of this code;

(4) Not ship liquor from overseas or internationally;

(5) Ensure that all containers of liquor shipped to a retail liquor outlet for pickup by a purchasing person who is 21 years of age or older, are clearly and conspicuously labeled with the words "CONTAINS ALCOHOL: SIGNATURE OF PERSON 21 OR OLDER REQUIRED FOR DELIVERY";

(6) Require a retail liquor outlet to obtain a written or electronic signature upon delivery to a purchasing person who is 21 years of age or older when picking up a sealed liquor delivery order; and

(7) Utilize a licensed and bonded shipping carrier who has obtained a transportation permit as specified in §60-6-12 of the code.

(d) *Payment of Fees and Taxes*.

(1) Any private direct shipper licensee on all sales of liquor must collect and remit the entire wholesale markup percentage and any handling fees, in full, as set forth in §60-3A-17 of the code and by rule of the commissioner to the commissioner at the close of each month and file a monthly report, on a form provided by the commissioner.

(2) Further, the private direct shipper licensee on all sales of liquor shall collect and remit all state sales tax, municipal tax, and

local sales tax to the Tax Commissioner at the close of each month and file a monthly return, on a form provided by the Tax Commissioner, reflecting the taxes paid for all sales and shipments.

(3) The payment of fees to the commissioner and taxes to the Tax Commissioner may be in addition to fees and taxes levied by the private direct shipper's domicile state.

(4) No private direct shipper will be required to pay any fees to the commissioner or taxes to the Tax Commissioner more than once.

(5) A retail liquor outlet which has entered a written agreement with a private direct shipper to accept a liquor shipment under this section may charge an additional fee not less than ten percent fee based on the total price of the liquor shipment, excluding the shipping charges, to a lawful purchaser.

(e) *Jurisdiction.* - By obtaining a private direct shipper licensee be deemed to have agreed and consented to the jurisdiction of the commissioner, which is Charleston, West Virginia and the Kanawha County circuit court, concerning enforcement of this chapter and any other related laws or rules.

(f) *Records and reports*. –

(1) Licensed private direct shippers and retail liquor outlets must maintain accurate records of all shipments sent to West Virginia.

(2) Provide proof or records to the commissioner, upon request, that all direct shipments of liquor were purchased and delivered to a purchasing person who is 21 years of age or older.

(g) The private direct shipper may annually renew its license with the commissioner by application, paying the private direct shipper license fee and providing the commissioner with a true copy of a current distillery license from the private direct shipper's domicile state.

(h) The commissioner may promulgate legislative rules to effectuate the purposes of this law.

(i) *Penalties.* –

(1) The commissioner may enforce the requirements of this chapter by administrative proceedings as set forth in §60-7-13 and §60-7-13a of this code to suspend or revoke a private direct shipper's license or retail liquor outlet's license, and the commissioner may accept payment of a penalties as set forth in §60-7-13 and §60-7-13a of this code or an offer in compromise in lieu of suspension, at the commissioner's discretion. Hearings and appeals on such notices may be had in the same manner as in the case of revocations of licenses set forth in §60-7-13 and §60-7-13a of this code.

(2) If any such distillery violates the provisions of this chapter, the commissioner may determine to suspend the privileges of the distillery to sell, ship, or deliver liquor to a purchasing person who is 21 years of age or older or to the commissioner, or otherwise engage in the liquor business in this state for a period of one year from the date a notice is mailed to such person by the commissioner of the fact that such person has violated the provisions of this article. During such one-year period, it shall be unlawful for any person within this state to buy or receive liquor from such person or to have any dealings with such person with respect thereto.

(k) *Criminal Penalties.* – A shipment of liquor directly to citizens in West Virginia from persons who do not possess a valid private direct shipper's license is prohibited. Any person who knowingly makes, participates in, transports, imports, or receives such an unlicensed and unauthorized direct shipment is guilty of a felony and, shall, upon conviction thereof, be fined in an amount not to exceed $10,000 per violation. Without limitation on any punishment or remedy, criminal or civil, any person who knowingly makes, participates in, transports, imports, or receives such a direct shipment constitutes an act that is an unfair trade practice.

ARTICLE 6. MISCELLANEOUS PROVISIONS.

§60-6-8. Unlawful sale or possession by licensee.

A licensed person shall not:

(1) Sell, furnish, tender, or serve alcoholic liquors of a kind other than that which the license or this chapter authorizes him or her to sell;

(2) Sell, furnish, tender, or serve beer to which wine, spirits, or alcohol has been added;

(3) Sell, furnish, tender, or serve wine to which other alcoholic spirits have been added, otherwise than as required in the manufacture of the wine under rules of the commission;

(4) Sell, furnish, tender, or serve alcoholic liquors to a person specified in §60-3-22 of this code;

(5) Sell, furnish, tender, or serve alcoholic liquors except as authorized by its license;

(6) Sell, furnish, tender, or serve alcoholic liquors other than by the drink, poured from the alcoholic liquors' original container: *Provided*, That under certain requirements exceptions to liquor by the drink are as follows:

(A) A private club licensed under §60-7-1 *et seq.* of this code, that is in good standing with the commissioner and has paid a $1000 on-premises only bottle service fee to the commissioner, may sell or serve liquor by the bottle to two or more persons for consumption on the licensed premises only, and any liquor bottle sold by the private club shall be sold at retail for personal use, and not for resale, to a person for not less than 300 percent of the private club's cost, and the liquor bottle shall be removed from the licensed premises by any person or the licensee; and

(B) A Class A licensee licensed under §60-8-1 *et seq.* of this code may sell or serve wine by the bottle to two or more persons

for consumption on the licensed premises only, unless the licensee has obtained a license or privilege authorizing other activity;

(7) Sell, furnish, tender, or serve pre-mixed alcoholic liquor that is not in the original container: *Provided*, That a licensee may sell, furnish, tender, and serve up to 15 recipes of pre-mixed beverages consisting of alcoholic liquors and nonalcoholic mixer, in a manner approved by the commissioner and in accord with public health and safety standards:

(A) The licensee shall use approved dispensing and storage equipment which shall be cleaned at the end of the day. Failure to clean the dispensing and storage equipment shall result in the immediate suspension or revocation of the permit;

(B) The licensee shall sanitize and clean the pre-mixing beverage storage equipment after each use or after each batch of the pre-mixed beverage is made; and

(C) The licensee shall maintain a written record reflecting the cleaning and sanitizing of the storage and dispensing equipment for inspection by the commissioner and health inspectors;

(D) A violation or violations this subdivision may result in the suspension or revocation of the permit and may result in additional sanctions under this chapter or §11-16-1 *et seq.* of this code;

(8) Sell, furnish, tender, or serve any alcoholic liquor when forbidden by the provisions of this chapter;

(9) Sell, possess, possess for sale, tender, serve, furnish, or provide any powdered alcohol;

(10) Keep on the premises covered by his or her license alcoholic liquor other than that which he or she is authorized to sell, furnish, tender, or serve by such license or by this chapter.

A person who violates any provision of this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than $50 nor more than $500 or confined in jail not less than 30 days nor more than one year, or both fined and confined for the

first offense. Upon conviction of a second or subsequent offense, the court may impose a penalty of imprisonment in a state correctional facility for a period not to exceed three years. A person who violates any provision of this section for the second or any subsequent offense under this section is guilty of a felony and, upon conviction thereof, shall be imprisoned in a state correctional facility for a period not to exceed three years.

ARTICLE 7. LICENSES TO PRIVATE CLUBS.

§60-7-2. Definitions; authorizations; requirements for certain licenses.

Unless the context in which used clearly requires a different meaning, as used in this article:

(a) "Applicant" means a private club applying for a license under the provisions of this article.

(b) "Code" means the official Code of West Virginia, 1931, as amended.

(c) "Commissioner" means the West Virginia Alcohol Beverage Control Commissioner.

(d) "Licensee" means the holder of a license to operate a private club granted under this article, which remains unexpired, unsuspended, and unrevoked.

(e) "Private club" means any corporation or unincorporated association which either: (1) Belongs to or is affiliated with a nationally recognized fraternal or veterans' organization which is operated exclusively for the benefit of its members, which pays no part of its income to its shareholders or individual members, which owns or leases a building or other premises to which club are admitted only duly elected or approved dues-paying members in good standing of the corporation or association and their guests while in the company of a member and to which club the general public is not admitted, and which club maintains in the building or on the premises a suitable kitchen and dining facility with related equipment for serving food to members and their guests; (2) is a

nonprofit social club, which is operated exclusively for the benefit of its members, which pays no part of its income to its shareholders or individual members, which owns or leases a building or other premises to which club are admitted only duly elected or approved dues-paying members in good standing of the corporation or association and their guests while in the company of a member and to which club the general public is not admitted, and which club maintains in the building or on the premises a suitable kitchen and dining facility with related equipment for serving food to members and their guests; (3) is organized and operated for legitimate purposes which has at least 100 duly elected or approved dues-paying members in good standing, which owns or leases a building or other premises, including any vessel licensed or approved by any federal agency to carry or accommodate passengers on navigable waters of this state, to which club are admitted only duly elected or approved dues-paying members in good standing of the corporation or association and their guests while in the company of a member and to which club the general public is not admitted, and which club maintains in the building or on the premises a suitable kitchen and dining facility with related equipment and employs a sufficient number of persons for serving meals to members and their guests; or (4) is organized for legitimate purposes and owns or leases a building or other delimited premises in any state, county, or municipal park or at any airport, in which building or premises a club has been established, to which club are admitted only duly elected and approved dues-paying members in good standing and their guests while in the company of a member and to which club the general public is not admitted, and which maintains in connection with the club a suitable kitchen and dining facility and related equipment and employs a sufficient number of persons for serving meals in the club to the members and their guests.

(f) "Private caterer" means a licensed private club restaurant authorized by the commissioner to cater and serve food and sell and serve alcoholic liquors, or non-intoxicating beer, or non-intoxicating craft beer. A private caterer shall purchase wine sold or served at a catering event from a wine distributor. A private caterer shall purchase nonintoxicating beer and nonintoxicating craft beer sold or served at the catering event from a licensed beer

distributor. A private caterer shall purchase liquor from a retail liquor outlet authorized to sell in the market zone, where the catering event is held. The private caterer or the persons or entity holding the catering event shall:

(1) Have at least 10 members and guests attending the catering event;

(2) Have obtained an open container waiver or have otherwise been approved by a municipality or county in which the event is being held;

(3) Operate a private club restaurant on a daily operating basis;

(4) Only use its employees, independent contractors, or volunteers to sell and serve alcoholic liquors who have received certified training in verifying the legal identification, the age of a purchasing person, and the signs of visible, noticeable, and physical intoxication;

(5) Provide to the commissioner, at least 7 days before the event is to take place:

(A) The name and business address of the unlicensed private venue where the private caterer is to provide food and alcohol for a catering event;

(B) The name of the owner or operator of the unlicensed private venue;

(C) A copy of the contract or contracts between the private caterer, the person contracting with the caterer, and the unlicensed private venue;

(D) A floorplan of the unlicensed private venue to comprise the private catering premises, which shall only include spaces in buildings or rooms of an unlicensed private venue where the private caterer has control of the space for a set time period where the space safely accounts for the ingress and egress of the stated members and guests who will be attending the private catering event at the catering premises. The unlicensed private venue's

floorplan during the set time period as stated in the contract shall comprise the private caterer's licensed premises, which is authorized for the lawful sale, service, and consumption of alcoholic liquors, nonintoxicating beer and nonintoxicating craft beer, and wine throughout the licensed private catering premises; *Provided,* That the unlicensed private venue shall: (i) Be inside a building or structure, (ii) have other facilities to prepare and serve food and alcohol, (iii) have adequate restrooms, and sufficient building facilities for the number of members and guests expected to attend the private catering event, and (iv) otherwise be in compliance with health, fire, safety, and zoning requirements;

(6) Not hold more than 15 private catering events per calendar year. Upon reaching the 16th event, the unlicensed venue shall obtain its own private club license;

(7) Submit to the commissioner, evidence that any noncontiguous area of an unlicensed venue is within 150 feet of the private caterer's submitted floorplan and may submit a floorplan extension for authorization to permit alcohol and food at an outdoor event;

(8) Meet and be subject to all other private club requirements; and

(9) Use an age verification system approved by the commissioner.

(g) "Private club bar" means an applicant for a private club or licensed private club licensee that has a primary function for the use of the licensed premises as a bar for the sale and consumption of alcoholic liquors and nonintoxicating beer or nonintoxicating craft beer when licensed for such sales, while providing a limited food menu for members and guests, and meeting the criteria set forth in this subsection which:

(1) Has at least 100 members;

(2) Operates a bar with a kitchen, including at least: (A) A two-burner hot plate, air fryer, or microwave oven; (B) a sink with hot and cold running water; (C) a 17 cubic foot refrigerator or freezer,

or some combination of a refrigerator and freezer, which is not used for alcohol cold storage; (D) kitchen utensils and other food consumption apparatus, as determined by the commissioner; and (E) food fit for human consumption available to be served during all hours of operation on the licensed premises;

(3) Maintains, at any one time, $500 of food inventory capable of being prepared in the private club bar's kitchen. In calculating the food inventory, the commissioner shall include television dinners, bags of chips or similar products, microwavable food or meals, frozen meals, prepackaged foods, or canned prepared foods;

(4) Uses an age verification system approved by the commissioner for the purpose of verifying that persons under the age of 18 who are in the private club bar are accompanied by a parent or legal guardian, and if a person under 18 years of age is not accompanied by a parent or legal guardian that person may not be admitted as a guest; and

(5) Meets and is subject to all other private club requirements.

(h) "Private club restaurant" means an applicant for a private club or licensed private club licensee that has a primary function of using the licensed premises as a restaurant for serving freshly prepared meals and dining in the restaurant area. The private club restaurant may have a bar area separate from or commingled with the restaurant, seating requirements for members and guests must be met by the restaurant area. The applicant for a private club restaurant license shall meet the criteria set forth in this subsection which:

(1) Has at least 100 members;

(2) Operate a restaurant and full kitchen with at least: (A) Ovens and four-burner ranges; (B) refrigerators or freezers, or some combination of refrigerators and freezers, greater than 50 cubic feet, or a walk-in refrigerator or freezer; (C) other kitchen utensils and apparatus, as determined by the commissioner; and (D) freshly prepared food fit for human consumption available to be served during all hours of operation on the licensed premises;

(3) Maintains, at any one time, $1,000 of fresh food inventory capable of being prepared in the private club restaurant's full kitchen. In calculating the food inventory, the commissioner may not include television dinners, bags of chips, or similar products, microwavable meals, frozen meals, prepackaged foods, or canned prepared foods;

(4) Uses an age verification system approved by the commissioner for the purpose of verifying that persons under 18 years of age who are in the bar area of a private club restaurant are accompanied by a parent or legal guardian. The licensee may not seat a person in the bar area who is under the age of 18 years and who is not accompanied by a parent or legal guardian, but may allow that person, as a guest, to dine for food and nonalcoholic beverage purposes in the restaurant area of a private club restaurant:

(5) May uncork and serve members and guests up to two bottles of wine that a member purchased from a wine retailer, wine specialty shop, an applicable winery or farm winery when licensed for retail sales, or a licensed wine direct shipper when the purchase is for personal use and, not for resale. The licensee may charge a corkage fee of up to $10 dollars per bottle. In no event may a member or a group of members and guests exceed two sealed bottles or containers of wine to carry onto the licensed premises for uncorking and serving by the private club restaurant and for personal consumption by the member and guests. A member or guest may cork and reseal any unconsumed wine bottles as provided in §60-8-3(j) of this code and the legislative rules, for carrying unconsumed wine off the licensed premises;

(6) Must have at least two restrooms for members and their guests: *Provided*, That this requirement may be waived by the local health department upon supplying a written waiver of the requirement to the commissioner: *Provided, however*, That the requirement may also be waived for a historic building by written waiver supplied to commissioner of the requirement from the historic association or district with jurisdiction over a historic building: *Provided, further* That in no event shall a private club restaurant have less than one restroom; and

(7) Shall meet and be subject to all other private club requirements.

(i) "Private manufacturer club" means an applicant for a private club or licensed private club licensee which is also licensed as a distillery, mini-distillery, micro-distillery, winery, farm winery, brewery, or resident brewery that manufacturers liquor, wine, nonintoxicating beer, or nonintoxicating craft beer, which may be sold, served, and furnished to members and guests for on-premises consumption at the licensee's licensed premises and in the area or areas denoted on the licensee's floorplan, and which meets the criteria set forth in this subsection and which:

(1) Has at least 100 members;

(2) Offers tours, may offer complimentary samples, and may offer space as a conference center or for meetings;

(3) Operates a restaurant and full kitchen with ovens, four-burner ranges, a refrigerator, or freezer, or some combination of a refrigerator and freezer, and other kitchen utensils and apparatus as determined by the commissioner on the licensed premises and serves freshly prepared food at least 15 hours per week;

(4) Maintains, at any one time, $500 of fresh food inventory capable of being prepared in the private manufacturer club's full kitchen. In calculating the food inventory, the commissioner may not include television dinners, bags of chips, or similar products, microwavable meals, frozen meals, prepackaged foods, or canned prepared foods;

(5) Owns or leases, controls, operates, and uses acreage amounting to at least one acre which is contiguous bounded or fenced real property that would be listed on the licensee's floorplan and may be used for large events such as weddings, reunions, conferences, meetings, and sporting or recreational events;

(6) Lists the entire property from subdivision (5) of this subsection and all adjoining buildings and structures on the private manufacturer club's floorplan that would comprise the licensed premises, which would be authorized for the lawful sale, service,

and consumption of alcoholic liquors, nonintoxicating beer or nonintoxicating craft beer, and wine throughout the licensed premises, whether these activities were conducted in a building or structure or outdoors while on the private manufacturer club's licensed premises, and as noted on the private manufacturer club's floorplan;

(7) Identifies a person, persons, an entity, or entities who or which has right, title, and ownership or lease interest in the real property, buildings, and structures located on the proposed licensed premises;

(8) Uses an age verification system approved by the commissioner; and

(9) Meets and is subject to all other private club requirements.

(j) "Private fair and festival" means an applicant for a private club or a licensed private club meeting the requirements of §60-7-8a of this code for a temporary event, and the criteria set forth in this subsection which:

(1) Has at least 100 members;

(2) Has been sponsored, endorsed, or approved, in writing, by the governing body (or its duly elected or appointed officers) of either the municipality or of the county in which the festival, fair, or other event is to be conducted;

(3) Prepares, provides, or engages a food vendor to provide adequate freshly prepared food or meals to serve its stated members and guests who will be attending the temporary festival, fair, or other event, and further shall provide any documentation or agreements of such to the commissioner prior to approval;

(4) Does not use third-party entities or individuals to purchase, sell, furnish, or serve alcoholic liquors, nonintoxicating beer, or nonintoxicating craft beer;

(5) Provides adequate restroom facilities, whether permanent or portable, to serve the stated members and guests who will be attending the festival, fair, or other event;

(6) Provides a floorplan for the proposed premises with a defined and bounded area to safely account for the ingress and egress of stated members and guests who will be attending the festival, fair, or other event;

(7) Uses an age verification system approved by the commissioner; and

(8) Meets and is subject to all other private club requirements.

(k) "Private hotel" means an applicant for a private club or licensed private club licensee meeting the criteria set forth in this subsection which:

(1) Has at least 2,000 members;

(2) Offers short-term, daily rate accommodations or lodging for members and their guests amounting to at least 30 separate bedrooms, and also offers a conference center for meetings;

(3) Operates a restaurant and full kitchen with ovens, four-burner ranges, walk-in freezers, and other kitchen utensils and apparatus as determined by the commissioner on the licensed premises and serves freshly prepared food at least 20 hours per week;

(4) Maintains, at any one time, $2,500 of fresh food inventory capable of being prepared in the private hotel's full kitchen, and in calculating the food inventory the commissioner may not include microwavable, frozen, or canned foods;

(5) Owns or leases, controls, operates, and uses acreage amounting to more than one acre but fewer than three acres, which are contiguous acres of bounded or fenced real property which would be listed on the licensee's floorplan and would be used for hotel and conferences and large contracted for group-type events

such as weddings, reunions, conferences, meetings, and sporting or recreational events;

(6) Lists the entire property from subdivision (5) of this subsection and all adjoining buildings and structures on the private hotel's floorplan which would comprise the licensed premises, which would be authorized for the lawful sales, service, and consumption of alcoholic liquors throughout the licensed premises whether these activities were conducted in a building or structure or outdoors while on the private hotel's licensed premises and as noted on the private hotel's floorplan;

(7) Has an identified person, persons, or entity that has right, title, and ownership or lease interest in the real property buildings and structures located on the proposed licensed premises;

(8) Uses an age verification system approved by the commissioner; and

(9) Meets and is subject to all other private club requirements.

(l) "Private resort hotel" means an applicant for a private club or licensed private club licensee meeting the criteria set forth in this subsection which:

(1) Has at least 5,000 members;

(2) Offers short-term, daily rate accommodations or lodging for members and their guests amounting to at least 50 separate bedrooms;

(3) Operates a restaurant and full kitchen with ovens, six-burner ranges, walk-in freezers, and other kitchen utensils and apparatus as determined by the commissioner on the licensed premises and serves freshly prepared food at least 25 hours per week;

(4) Maintains, at any one time, $5,000 of fresh food inventory capable of being prepared in the private resort hotel's full kitchen, and in calculating the food inventory the commissioner may not include microwavable, frozen, or canned foods;

(5) Owns or leases, controls, operates, and uses acreage amounting to at least 10 contiguous acres of bounded or fenced real property which would be listed on the licensee's floorplan and would be used for destination, resort, and large contracted for group-type events such as weddings, reunions, conferences, meetings, and sporting or recreational events;

(6) Lists the entire property from subdivision (5) of this subsection and all adjoining buildings and structures on the private resort hotel's floorplan which would comprise the licensed premises, which would be authorized for the lawful sales, service, and consumption of alcoholic liquors throughout the licensed premises whether these activities were conducted in a building or structure or outdoors while on the private resort hotel's licensed premises and as noted on the private resort hotel's floorplan;

(7) Has an identified person, persons, or entity that has right, title, and ownership or lease interest in the real property, buildings, and structures located on the proposed licensed premises;

(8) Uses an age verification system approved by the commissioner;

(9) Meets and is subject to all other private club requirements; and

(10) May have a separately licensed resident brewer with a brewpub license inner-connected via a walkway, doorway, or entryway, all as determined and approved by the commissioner, for limited access during permitted hours of operation for tours and complimentary samples at the resident brewery.

(m) "Private golf club" means an applicant for a private club or licensed private club licensee meeting the criteria set forth in this subsection which:

(1) Has at least 100 members;

(2) Maintains at least one 18-hole golf course with separate and distinct golf playing holes, not reusing nine golf playing holes to comprise the 18 golf playing holes, and a clubhouse;

(3) Operates a restaurant and full kitchen with ovens, as determined by the commissioner, on the licensed premises and serves freshly prepared food at least 15 hours per week;

(4) Owns or leases, controls, operates, and uses acreage amounting to at least 80 contiguous acres of bounded or fenced real property which would be listed on the private golf club's floorplan and could be used for golfing events and large contracted for group-type events such as weddings, reunions, conferences, meetings, and sporting or recreational events;

(5) Lists the entire property from subdivision (4) of this subsection and all adjoining buildings and structures on the private golf club's floorplan which would comprise the licensed premises, which would be authorized for the lawful sales, service, and consumption of alcoholic liquors throughout the licensed premises whether these activities were conducted in a building or structure or outdoors while on the private golf club's licensed premises and as noted on the private golf club's floorplan;

(6) Has an identified person, persons, or entity that has right, title, and ownership interest in the real property, buildings, and structures located on the proposed licensed premises;

(7) Uses an age verification system approved by the commissioner; and

(8) Meets and is subject to all other private club requirements.

(n) "Private nine-hole golf course" means an applicant for a private club or licensed private club licensee meeting the criteria set forth in this subsection which:

(1) Has at least 50 members;

(2) Maintains at least one nine-hole golf course with separate and distinct golf playing holes;

(3) Operates a restaurant and full kitchen with ovens, as determined by the commissioner, on the licensed premises and serves freshly prepared food at least 15 hours per week;

(4) Owns or leases, controls, operates, and uses acreage amounting to at least 30 contiguous acres of bounded or fenced real property which would be listed on the private nine-hole golf course's floorplan and could be used for golfing events and large contracted for group-type events such as weddings, reunions, conferences, meetings, and sporting or recreational events;

(5) Lists the entire property from subdivision (4) of this subsection and all adjoining buildings and structures on the private nine-hole golf course's floorplan which would comprise the licensed premises, which would be authorized for the lawful sales, service, and consumption of alcoholic liquors throughout the licensed premises whether these activities were conducted in a building or structure or outdoors while on the private nine-hole golf course's licensed premises and as noted on the private nine-hole golf course's floorplan;

(6) Has an identified person, persons, or entity that has right, title, and ownership interest in the real property buildings and structures located on the proposed licensed premises;

(7) Uses an age verification system approved by the commissioner; and

(8) Meets and is subject to all other private club requirements.

(o) "Private tennis club" means an applicant for a private club or licensed private club licensee meeting the criteria set forth in this subsection which:

(1) Has at least 100 members;

(2) Maintains at least four separate and distinct tennis courts, either indoor or outdoor, and a clubhouse or similar facility;

(3) Has a restaurant and full kitchen with ovens, as determined by the commissioner, on the licensed premises and is capable of serving freshly prepared food;

(4) Owns or leases, controls, operates, and uses acreage amounting to at least two contiguous acres of bounded or fenced

real property which would be listed on the private tennis club's floorplan and could be used for tennis events and large events such as weddings, reunions, conferences, tournaments, meetings, and sporting or recreational events;

(5) Lists the entire property from subdivision (4) of this subsection and all adjoining buildings and structures on the private tennis club's floorplan that would comprise the licensed premises, which would be authorized for the lawful sales, service, and consumption of alcoholic liquors throughout the licensed premises whether these activities were conducted in a building or structure or outdoors while on the private tennis club's licensed premises and as noted on the private tennis club's floorplan;

(6) Has identified a person, persons, an entity, or entities who or which has right, title, and ownership interest in the real property buildings and structures located on the proposed licensed premises;

(7) Meets and is subject to all other private club requirements; and

(8) Uses an age verification system approved by the commissioner.

(p) "Private professional sports stadium" means an applicant for a private club or licensed private club licensee that is only open for professional sporting events when such events are affiliated with or sponsored by a professional sporting association, reserved weddings, reunions, conferences, meetings, or other special events and does not maintain daily or regular operating hours as a bar or restaurant. The licensee may not sell alcoholic liquors when conducting or hosting non-professional sporting events, and further the applicant shall:

(1) Have at least 1000 members;

(2) Maintain an open air or closed air stadium venue primarily used for sporting events, such as football, baseball, soccer, auto racing, or other professional sports, and also weddings, reunions, conferences, meetings, or other events where parties must reserve the stadium venue in advance of the event;

(3) Operate a restaurant and full kitchen with ovens, as determined by the commissioner, on the licensed premises and capable of serving freshly prepared food, or meals to serve its stated members, guests, and patrons who will be attending the event at the private professional sports stadium;

(4) Own or lease, control, operate, and use acreage amounting to at least 3 contiguous acres of bounded or fenced real property, as determined by the commissioner, which would be listed on the professional sports stadium's floorplan and could be used for contracted for professional sporting events, group-type weddings, reunions, conferences, meetings, or other events;

(5) List the entire property from subdivision (4) of this subsection and all adjoining buildings and structures on the private professional sports stadium's floorplan which would comprise the licensed premises, which would be authorized for the lawful sales, service, and consumption of alcoholic liquors throughout the licensed premises whether these activities were conducted in a building or structure or outdoors while on the private professional sports stadium's licensed premises and as noted on the private professional sports stadium's floorplan;

(6) Have an identified person, persons, or entity that has right, title, and ownership interest in the real property buildings and structures located on the proposed licensed premises;

(7) Meet and be subject to all other private club requirements; and

(8) Use an age verification system approved by the commissioner.

(q) "Private farmers market" means an applicant for a private club or licensed private club licensee that operates as an association of bars, restaurants, retailers who sell West Virginia made products among other products, and other stores who open primarily during daytime hours of 6:00 a.m. to 6:00 p.m., but may operate in the day or evenings for special events where the sale of food and alcoholic liquors and nonintoxicating beer or nonintoxicating craft beer may

occur for on-premises consumption, such as reserved weddings, reserved dinners, pairing events, tasting events, reunions, conferences, meetings, or other special events and does not maintain daily or regular operating hours as a bar or restaurant, and all business that are members of the association have agreed in writing to be liable and responsible for all sales, service, furnishing, tendering and consumption of alcoholic liquors and nonintoxicating beer or nonintoxicating craft beer occurring on the entire licensed premises of the private farmer's market, including indoor and outdoor bounded areas, and further the applicant shall:

(1) Have at least 100 members;

(2) Have one or more members operating a private club restaurant and full kitchen with ovens, four-burner ranges, a refrigerator, or freezer (or some combination of the two), and other kitchen utensils and apparatus as determined by the commissioner on the licensed premises and serves freshly prepared food at least 15 hours per week;

(3) Have one or more members operating who maintain, at any one time, $1,000 of fresh food inventory capable of being prepared for events conducted at the private farmers market in the private club restaurant's full kitchen, and in calculating the food inventory the commissioner may not include television dinners, bags of chips or similar products, microwavable meals, frozen meals, prepackaged foods, or canned prepared foods;

(4) Have an association that owns or leases, controls, operates, and uses acreage amounting to more than one acre, which is contiguous acreage of bounded or fenced real property which would be listed on the licensee's floorplan and would be used for large contracted for reserved weddings, reserved dinners, pairing events, tasting events, reunions, conferences, meetings, or other special events;

(5) Have an association that lists in the application for licensure the entire property and all adjoining buildings and structures on the private farmers market's floorplan which would comprise the licensed premises, which would be authorized for the lawful sales,

service, and consumption of alcoholic liquors and nonintoxicating beer or nonintoxicating craft beer throughout the licensed premises whether these activities were conducted in a building or structure or outdoors while on the private farmers market's licensed premises and as noted on the private farmers market's floorplan;

(6) Have an identified person, persons, or entity that has right, title, and ownership or lease interest in the real property buildings and structures located on the proposed licensed premises;

(7) Have at least two separate and unrelated vendors applying for the license and certifying that all vendors in the association have agreed to the liability, responsibility associated with a private farmers market license;

(8) Only use its employees, independent contractors, or volunteers to purchase, sell, furnish, or serve liquor, wine, nonintoxicating beer, or nonintoxicating craft beer;

(9) Provide adequate restroom facilities, whether permanent or portable, to serve the stated members and guests who will be attending the private farmers market;

(10) Provide a copy of a written agreement between all the vendors of the association that is executed by all vendors stating that each vendor is jointly and severally liable for any violations of this chapter committed during the event;

(11) Provide a security plan indicating all vendor points of service, entrances, and exits in order to verify members, patrons, and guests ages, whether a member, patron, or guest is intoxicated and to provide for the public health and safety of members, patrons, and guests;

(12) Use an age verification system approved by the commissioner; and

(13) Meet and be subject to all other private club requirements.

(r) "Private wedding venue or barn" means an applicant for a private club or licensed private club licensee that is only open for

reserved weddings, reunions, conferences, meetings, or other events and does not maintain daily or regular operating hours, and which:

(1) Has at least 25 members;

(2) Maintains a venue, facility, barn, or pavilion primarily used for weddings, reunions, conferences, meetings, or other events where parties must reserve or contract for the venue, facility, barn, or pavilion in advance of the event;

(3) Operates a restaurant and full kitchen with ovens, as determined by the commissioner, on the licensed premises and is capable of serving freshly prepared food, or may engage a food caterer to provide adequate freshly prepared food or meals to serve its stated members, guests, and patrons who will be attending the event at the private wedding venue or barn. The applicant or licensee shall provide written documentation including a list of food caterers or written agreements regarding any food catering operations to the commissioner prior to approval of a food catering event;

(4) Owns or leases, controls, operates, and uses acreage amounting to at least two contiguous acres of bounded or fenced real property. The applicant or licensee shall verify that, the property is less than two acres and is remotely located, subject to the commissioner's approval. The bounded or fenced real property may be listed on the private wedding venue's floorplan and may be used for large events such as weddings, reunions, conferences, meetings, or other events;

(5) Lists the entire property from subdivision (4) of this subsection and all adjoining buildings and structures on the private wedding venue or barn's floorplan that would comprise the licensed premises, which would be authorized for the lawful sales, service, and consumption of alcoholic liquors throughout the licensed premises whether these activities were conducted in a building or structure or outdoors while on the private wedding venue or barn's licensed premises and as noted on the private wedding venue or barn's floorplan;

(6) Has an identified person, persons, or entity that has right, title, and ownership interest in the real property buildings and structures located on the proposed licensed premises;

(7) Meets and is subject to all other private club requirements; and

(8) Uses an age verification system approved by the commissioner.

(s) "Private multi-sport complex" means an applicant for a private club or licensed private club licensee that is open for multiple sports events to be played at the complex facilities, reserved weddings, concerts, reunions, conferences, meetings, or other special events, and which:

(1) Has at least 100 members;

(2) Maintains an open air multi-sport complex primarily for use for sporting events, such as baseball, soccer, basketball, tennis, frisbee, or other sports, but may also conduct weddings, concerts, reunions, conferences, meetings, or other events where parties must reserve the parts of the sports complex in advance of the sporting or other event;

(3) Operates a restaurant and full kitchen with ovens in the licensee's main facility, as determined by the commissioner, on the licensed premises and capable of serving freshly prepared food, or meals to serve its stated members, guests, and patrons who will be attending the event at the private professional sports stadium. A licensee may contract with temporary food vendors or food trucks for food sales only, but not on a permanent basis, in areas of the multi-sport complex not readily accessible by the main facility;

(4) Maintains, at any one time, $1,000 of fresh food inventory capable of being prepared in the private multi-sport complex's full kitchen. In calculating the food inventory, the commissioner may not include television dinners, bags of chips, or similar products, microwavable meals, frozen meals, prepackaged foods, or canned prepared foods;

(5) Owns or leases, controls, operates, and uses acreage amounting to at least 50 contiguous acres of bounded or fenced real property, as determined by the commissioner, which would be listed on the private multi-sport complex's floorplan and could be used for contracted for sporting events, group-type weddings, concerts, reunions, conferences, meetings, or other events;

(6) Lists the entire property from subdivision (5) of this subsection and all adjoining buildings and structures on the private multi-sport complex's floorplan which would comprise the licensed premises, which would be authorized for the lawful sales, service, and consumption of alcoholic liquors throughout the licensed premises whether these activities were conducted in a building or structure or outdoors while on the private multi-sport complex's licensed premises and as noted on the private multi-sport complex's floorplan. The licensee may sell alcoholic liquors from a golf cart or food truck owned or leased by the licensee and also operated by the licensee when the golf cart or food truck is located on the private multi-sport complex's licensed premises;

(7) Has an identified person, persons, or entity that has right, title, and ownership interest in the real property buildings and structures located on the proposed licensed premises;

(8) Meets and is subject to all other private club requirements; and

(9) Uses an age verification system approved by the commissioner.

The Department of Natural Resources, the authority governing any county or municipal park, or any county commission, municipality, other governmental entity, public corporation, or public authority operating any park or airport may lease, as lessor, a building or portion thereof or other limited premises in any park or airport to any corporation or unincorporated association for the establishment of a private club pursuant to this article.

§60-7-6. Annual license fee; partial fee; and reactivation fee.

(a) The annual license fee for a license issued under the provisions of this article to a fraternal or veterans' organization or a nonprofit social club is $750.

(b) The annual license fee for a license issued under the provisions of this article to a private club other than a private club of the type specified in subsection (a) of this section is $1,000 if the private club bar or restaurant has fewer than 1,000 members; $1,000 for a private club restaurant to be licensed as a private caterer as defined in §60-7-2 of this code; $1,500 if the private club is a private wedding venue or barn; $2,000 if the private club is a private nine-hole golf course, private farmers market, private professional sports stadium, private multi-sport complex, private manufacturer club, or a private tennis club as defined in §60-7-2 of this code; $2,500 if the private club bar or private club restaurant has 1,000 or more members; $4,000 if the private club is a private hotel with three or fewer designated areas or a private golf club as defined in §60-7-2 of this code; and further, if the private club is a private resort hotel as defined in §60-7-2 of this code, the private resort hotel may designate areas within the licensed premises for the lawful sale, service, and consumption of alcoholic liquors as provided for by this article. The annual license fee for a private resort hotel with five or fewer designated areas is $7,500 and the annual license fee for a private resort hotel with at least six, but no more than 10 designated areas is $12,500. The annual license fee for a private resort hotel with at least 11, but no more than 15 designated areas shall be $17,500. The annual license fee for a private resort hotel with no fewer than 15 nor more than 20 designated areas is $22,500. A private resort hotel that obtained the license and paid the $22,500 annual license fee may, upon application to and approval of the commissioner, designate additional areas for a period not to exceed seven days for an additional fee of $150 per day, per designated area.

(c) The fee for any license issued following January 1 of any year that expires on June 30 of that year is one half of the annual license fee prescribed by subsections (a) and (b) of this section.

(d) A licensee that fails to complete a renewal application and make payment of its annual license fee in renewing its license on or before June 30 of any subsequent year, after initial application, shall be charged an additional $150 reactivation fee. The fee payment may not be prorated or refunded, and the reactivation fee shall be paid prior to the processing of any renewal application and payment of the applicable full year annual license fee. A licensee who continues to operate upon the expiration of its license is subject to all fines, penalties, and sanctions available in §60-7-13 and §60-7-13a of this code, all as determined by the commissioner.

(e) The commissioner shall pay the fees to the State Treasurer and credited to the General Revenue Fund of the state.

(f) The Legislature finds that the hospitality industry has been particularly damaged by the COVID-19 pandemic and that some assistance is warranted to promote reopening and continued operation of private clubs and restaurants licensed under this article. Accordingly, the fees set forth in subsections (a) and (b) of this section are temporarily modified as follows;

(1) License fees for the license period beginning July 1, 2021, shall be reduced to one-third of the rate set forth in subsections (a) and (b) of this section;

(2) License fees for the license period beginning July 1, 2022, shall be two-thirds of the rate set forth in subsections (a) and (b) of this section; and

(3) License fees for the license period beginning July 1, 2023 and beyond, shall be as set forth in subsections (a) and (b) of this section.

§60-7-8b. One-day charitable rare, antique, or vintage liquor auction; licensee fee and application; license subject to provisions of article; exceptions.

(a) The commissioner may issue a special one-day, license to a licensed private club in partnership with one or more duly organized, federally approved nonprofit corporations, associations, organizations, or entities allowing the nonprofit to conduct a

charitable auction of certain sealed bottles of rare, antique, or vintage liquor, as determined by the commissioner, on the private club licensee's licensed premises for off-premises consumption only, when raising money for athletic, charitable, educational, scientific, or religious purposes. A licensed private club may not receive more than 12 licenses under this section per year.

(b) "Auction or auctioning", for the purposes of this section, means any silent, physical act, or verbal bid auction, where the auction requires in-person bidding at a licensed private club or online internet-based auction bidding, with bidders present at the licensed private club during the nonprofit auction, through a secure internet-based application or website.

(c) *Requirements*.-

(1) The licensed private club and nonprofit shall jointly complete an application, at least 15 days prior to the event. The application may require, but is not limited to, information relating to the date, time, place, floorplan of the charitable event, and any other information as the commissioner may require. The applicants shall include with the application a written signed and notarized statement that at least 80 percent of the net proceeds from the charitable event will be donated directly to the nonprofit. The commissioner may audit the licensed private club and nonprofit to verify the 80 percent requirement has been met.

(2) The licensed private club and nonprofit must be in good standing with the commissioner, and the applicants must receive the commissioner's approval prior to the charitable event.

(3) The licensed private club and nonprofit shall submit, and the commissioner shall review, the applicants' list of rare, antique, or vintage liquor, and the applicants shall submit documentation showing that the liquor was purchased from a licensed retail outlet in accordance with §60-3A-1 *et seq.* of this code with all taxes and fees paid. Any rare, antique, or vintage liquor with no documentation or that was not purchased in accordance with §60-3A-1 *et seq.* of this code, may be approved for auction, if all taxes and fees are paid to the commissioner in accordance with §60-3A-

1 *et seq.* of this code. Any undocumented rare, antique, or vintage liquor approved for charitable auction by the commissioner must be labeled in the interest of public health and safety: "Purchase and consume at your own risk, as the authenticity or source of manufacture of this bottle has not been verified".

(4) The private club and nonprofit may not deliver, mail, or ship sealed or unsealed rare, antique, or vintage liquor bottles.

(5) The winning bidder of the auctioned rare, antique, or vintage liquor shall pay and receive the sealed rare, antique, or vintage liquor bottle before the conclusion of the event.

(6) The applicants shall pay a $150 nonrefundable and nonprorated fee for the license.

(d) *Exceptions.* –

(1) A nonprofit's charitable auctioning of sealed rare, antique, or vintage liquor bottles, as determined by the commissioner, is permitted on the private club's licensed premises, notwithstanding the bingo, raffle, and lottery provisions of §47-20-10, §47-21-11, and §61-10-1 *et seq.* of this code, but in compliance with the auction requirements of §19-2c-1 *et seq.* of this code;

(2) The nonprofit, upon licensure by this section, is permitted a limited, one-time exception of the requirement to be a licensed retail outlet and hold a retail license issued pursuant to §60-3A-1 *et seq.* of this code to sell liquor; and

(3) The private club, upon licensure by this section, is provided a limited, one-time exception from §60-7-12(a)(1) and §60-6-8(6) of this code, to permit the licensed nonprofit to sell at auction the sealed rare, antique, or vintage liquor bottles for off-premises consumption, to permit the carrying onto, the sale of, and the carrying off of the licensed premises the approved sealed liquor bottles. Any private club or nonprofit licensed pursuant to this code section are subject to all penalties for violations committed under §60-3A-1 *et seq.* of this code and §60-7-1 *et seq.* of this code.

§60-7-8c. Special license for a multi-vendor private fair and festival; license fee and application; license subject to provisions of article; exception.

(a) There is hereby created a special license designated Class S3 private multivendor fair and festival license for the retail sale of liquor, wine, nonintoxicating beer, and nonintoxicating craft beer for on-premises consumption at an event where multiple vendors shall share liability and responsibility, and apply for this license. Each vendor may temporarily purchase, sell, furnish, or serve liquor, wine, nonintoxicating beer, and nonintoxicating craft beer as provided in this section.

(b) To be eligible for the license authorized by subsection (a) of this section, the private multivendor fair and festival or other event shall:

(1) Be sponsored, endorsed, or approved by the governing body or its designee of the county or municipality in which the private multivendor fair and festival or other event is located;

(2) Jointly apply to the commissioner for the special license at least 15 days prior to the private fair, festival, or other event;

(3) Pay a nonrefundable nonprorated license fee of $500 per event that may be divided among all the vendors attending the event;

(4) Be approved by the commissioner to operate the private multivendor fair, festival, or other event;

(5) Be limited to no more than 15 consecutive days;

(6) Have at least two separate and unrelated vendors applying for the license and certifying that at least 100 members will be in attendance;

(7) Freshly prepare and provide food or meals, or engage a food vendor to prepare and provide adequate freshly prepared food or meals to serve its stated members and guests who will be attending the temporary festival, fair, or other event, and provide any written

documentation or agreements of the food caterer to the commissioner prior to approval of the license;

(8) Only use its employees, independent contractors, or volunteers to purchase, sell, furnish, or serve liquor, wine, nonintoxicating beer, or nonintoxicating craft beer;

(9) Provide adequate restroom facilities, whether permanent or portable, to serve the stated members and guests who will be attending the private multi-vendor festival, fair, or other event;

(10) Provide an executed agreement between the vendors and/or food caterers stating that each vendor is jointly and severally liable for any improper acts or conduct committed during the multi-vendor festival or fair event;

(11) Provide a security plan indicating all vendor points of service, entrances, and exits in order to verify members', patrons', and guests' ages, and whether a member, patron, or guest is intoxicated, to provide for the public health and safety of members, patrons, and guests;

(12) Provide a floorplan for the proposed premises with one defined and bounded indoor and/or outdoor area to safely account for the ingress and egress of stated members, patrons, and guests who will be attending the festival, fair, or other event, and the floorplan that would comprise the licensed premises, which would be authorized for the lawful sales, service, and consumption of liquor, wine, nonintoxicating beer, or nonintoxicating craft beer throughout the licensed premises whether these activities were conducted in a building or structure, or outdoors while on the licensed premises and as noted on the floorplan;

(13) Meet and be subject to all other private club requirements; and

(14) Use an age verification system approved by the commissioner.

(c) Nonintoxicating beer and nonintoxicating craft beer sold, furnished, tendered, or served pursuant to the license created by

this section shall be purchased from the licensed distributor that services the area in which the private multi-vendor fair and festival will be held or from a resident brewer acting in a limited capacity as a distributor, in accordance with §11-16-1 *et seq.* of this code.

(d) Wine sold, furnished, tendered, or served pursuant to the license created by this section shall be purchased from a licensed distributor, winery, or farm winery in accordance with §60-8-1 *et seq.* of this code.

(e) Liquor sold, furnished, tendered, or served pursuant to the license created by this section shall be purchased from a licensed retail liquor outlet in the market zone or contiguous market zone where the private multi-vendor fair or festival will be held, all in accordance with §60-3A-1 *et seq.* of this code.

(f) A licensee authorized by this section may use bona fide employees, independent contractors, or volunteers to sell, furnish, tender, or serve the liquor, wine, nonintoxicating beer, or nonintoxicating craft beer; *Provided,* That the licensee shall train all employees, independent contractors, or volunteers to verify legal identification and to verify signs of intoxication.

(g) Licensed representatives of a brewer, resident brewer, beer distributor, wine distributor, wine supplier, winery, farm winery, distillery, mini-distillery, micro-distillery, and liquor brokers may attend a private multi-vendor festival or fair and discuss their respective products but may not engage in the selling, furnishing, tendering, or serving of any liquor, wine, nonintoxicating beer, or nonintoxicating craft beer.

(h) A licensee licensed under this section is subject to all other provisions of this article and the rules and orders of the commissioner: *Provided*, That the commissioner may, by rule or order, allow certain waivers or exceptions with respect to those provisions, rules, or orders as required by the circumstances of each private multi-vendor fair and festival. The commissioner may revoke or suspend immediately any license issued under this section prior to any notice or hearing, notwithstanding §60-7-13a of this code: *Provided, however*, That under no circumstances may

the provisions of §60-7-12 of this code be waived or an exception granted with respect thereto.

§60-7-8d. Where private clubs may sell and serve alcoholic liquors and nonintoxicating beer or nonintoxicating craft beer.

(a) With prior approval of the commissioner a private club licensee may sell, serve, and furnish alcoholic liquor and, if also licensed to sell, serve, and furnish nonintoxicating beer or nonintoxicating craft beer to be consumed on premises in a legally demarcated area which may include a temporary private outdoor dining area or temporary private outdoor street dining area. A temporary private outdoor street dining area shall be approved by the municipal government or county commission in which the licensee operates. The commissioner shall develop and make available an application form to facilitate the purposes of this subsection.

(b) The private club licensee shall submit to the commissioner: (1) the municipal or county approval of the private outdoor dining area or private outdoor street dining area; and, (2) a revised floorplan requesting to sell alcoholic liquors, and when licensed for nonintoxicating beer or nonintoxicating craft beer, then nonintoxicating beer or nonintoxicating craft beer, subject to the commissioner's requirements, in an approved and bounded outdoor area. The approved and bounded area need not be adjacent to the licensee's licensed premises, but in close proximity, for private outdoor street dining or private outdoor dining. For purposes of this subsection, "close proximity" means an available area within 150 feet of a licensee's licensed premises and under the licensee's control and with right of ingress and egress.

(c) This private outdoor dining or private outdoor street dining may be operated in conjunction with a private wine outdoor dining or private wine outdoor street dining area set forth in §60-8-32a of this code and nonintoxicating beer or nonintoxicating craft beer outdoor dining or outdoor street dining set forth in §11-16-9 of this code.

(d) For purposes of this section, private outdoor dining and private outdoor street dining include dining areas that are:

(1) Outside and not served by an HVAC system for air handling services and use outside air;

(2) Open to the air; and

(3) Not enclosed by fixed or temporary walls; however, the commissioner may seasonally approve a partial enclosure with up to three temporary or fixed walls.

Any area where seating is incorporated inside a permanent building with ambient air through HVAC is not considered outdoor dining pursuant to this subsection.

(e) A private club restaurant or a private manufacturer club licensed for craft cocktail growler sales must provide food or a meal along with sealed craft cocktail growler sales as set forth in this article to a patron who is in-person or in-vehicle while picking up food or a meal, and a sealed craft cocktail growler order-to-go, subject to verification that the purchasing person is 21 years of age or older, and not visibly, or noticeably intoxicated, and as otherwise specified in this article.

§60-7-8e. Private club restaurant or private manufacturer club licensee's authority to sell craft cocktail growlers.

(a) *Legislative findings*. — The Legislature hereby finds that it is in the public interest to regulate, control, and support the brewing, manufacturing, distribution, sale, consumption, transportation, and storage of liquor and its industry in this state to protect the public health, welfare, and safety of the citizens of this state and promote hospitality and tourism. Therefore, this section authorizes a licensed private club restaurant or private manufacturer club, to have certain abilities to promote the sale of liquor manufactured in this state for the benefit of the citizens of this state, the state's growing distilling industry, and the state's hospitality and tourism industry, all of which are vital components for the state's economy.

(b) *Sales of craft cocktail growlers*. — A licensed private club restaurant or private manufacturer club is authorized under a current and valid license and meets the requirements of this section may offer a craft cocktail growler in the ratio of up to one fluid ounce of liquor to four fluid ounces of nonalcoholic beverages or mixers, not to exceed 128 fluid ounces for the entire beverage in the craft cocktail growler, for retail sale to patrons from their licensed premises in a sealed craft cocktail growler for personal consumption only off of the licensed premises. Prior to the sale, the licensee shall verify in-person, using proper identification, that any patron purchasing the craft cocktail growler is 21 years of age or older and that the patron is not visibly or noticeably intoxicated. There shall be a $100 non-prorated, non-refundable annual fee to sell craft cocktail growlers.

(c) *Retail sales*. — Every licensee licensed under this section shall comply with all the provisions of this chapter as applicable to retail sale of liquor at retail liquor outlets, comply with markup specified in §60-3A-17(e)(2) of this code when conducting sealed craft cocktail growler sales, and shall be subject to all applicable requirements and penalties in this article.

(d) *Payment of taxes*. — Every licensee licensed under this section shall pay all sales taxes required of retail liquor outlets, in addition to any other taxes required, and meet any applicable licensing provisions as required by this chapter and by rule of the commissioner.

(e) *Advertising*. — Every licensee licensed under this section may only advertise a particular brand or brands of liquor manufactured by a distillery, mini-distillery, or micro-distillery upon written approval from the distillery, mini-distillery, micro-distillery, or an authorized and licensed broker to the licensee. Advertisements may not encourage intemperance or target minors.

(f) *Craft cocktail growler defined*. – For purposes of this chapter, "Craft Cocktail Growler" means a container or jug that is made of glass, ceramic, metal, plastic, or other material approved by the commissioner, that may be no larger than 128 fluid ounces in size and must be capable of being securely sealed. The growler

is utilized by an authorized licensee for purposes of off-premises sales only of liquor and a nonalcoholic mixer or beverage for personal consumption not on a licensed premise. Notwithstanding any other provision of this code to the contrary, a securely sealed craft cocktail growler is not an open container under state and local law. A craft cocktail growler with a broken seal is an open container under state and local law unless it is located in an area of the motor vehicle physically separated from the passenger compartment. A craft cocktail growler is not an original container of liquor, but once sanitized, filled, properly sealed, and sold, all as set forth in this article, is a sealed container.

(h) *Craft cocktail growler requirements*. — A licensee licensed under this section must prevent patrons from accessing the secure area where the filling of the craft cocktail occurs or to fill a craft cocktail growler. A licensee licensed under this section must sanitize, fill, securely seal, and label any craft cocktail growler prior to its sale. A licensee licensed under this section may refill a craft cocktail growler subject to the requirements of this section. A licensee licensed under this section shall visually inspect any craft cocktail growler before filling or refilling it. A licensee licensed under this section may not fill or refill any craft cocktail growler that appears to be cracked, broken, unsafe, or otherwise unfit to serve as a sealed beverage container. For purposes of this article, a secure sealing means using a tamper-evident seal, such as: (1) A plastic heat shrink wrap band, strip, or sleeve extending around the cap or lid of craft cocktail growler to form a seal that must be broken when the container is opened; or (2) A screw top cap or lid that breaks apart when the craft cocktail growler is opened.

(i) *Craft cocktail growler labeling*. — A licensee licensed under this section selling craft cocktail growlers shall affix a conspicuous label on all sold and securely sealed craft cocktail growlers listing the name of the licensee selling the craft cocktail growler, the brand of the liquor in the craft cocktail growler, the type of craft cocktail or name of the craft cocktail, the alcohol content by volume of the liquor in the craft cocktail growler, and the date the craft cocktail growler was filled or refilled, and, all

labeling on the craft cocktail growler shall be consistent with all federal labeling and warning requirements.

(j) *Craft cocktail growler sanitation*. — A licensee licensed under this section shall clean and sanitize all craft cocktail growlers he or she fills or refills in accordance with all state and county health requirements prior to its sealing. In addition, the licensee licensed under this section shall sanitize, in accordance with all state and county health requirements, all taps, tap lines, pipe lines, barrel tubes, and any other related equipment used to fill or refill craft cocktail growlers. Failure to comply with this subsection may result in penalties under this article: *Provided,* That, if the reuse or refilling of a craft cocktail growler would violate federal law such craft cocktail growler must only be used one-time, for one filling, and be discarded after the one-time use.

(k) *Pre-mixing of craft cocktail*. - A licensee licensed under this section may pre-mix the nonalcoholic beverages or mixers in the advance of a craft cocktail growler purchase and sealing, and add the liquor, as set forth in this section, upon a member or guest's purchase of a craft cocktail growler. A licensee licensed under this section must dispose of any expired premixed nonalcoholic beverages or mixers pursuant to Bureau for Public Health requirements when such premixed nonalcoholic beverages or mixers are no longer fit for human consumption. A licensee authorized under §60-6-8(7) may use a premixed beverage meeting the requirements therein and is also subject to the requirements of this section for a craft cocktail growler.

(l) *Limitations on licensees*. — A licensee licensed under this section shall not sell craft cocktail growlers to other licensees, but only to its members and guests. A licensee licensed under this section must provide food or a meal along with one sealed craft cocktail growler to a patron who is in-person or in-vehicle while picking up food or a meal, and a sealed craft cocktail growler order-to-go, subject to verification that the purchasing person is 21 years of age or older, and not visibly or noticeably intoxicated, and as otherwise specified in this article. A licensee licensed under this section may only sell one sealed craft cocktail growler to a patron who has not been consuming alcoholic liquors or nonintoxicating

beer on its licensed premises or one craft cocktail growler per food or meal in the order delivered per §60-7-8f of this code. A licensee licensed under this section shall be subject to the applicable penalties under this article for violations of this article.

(m) *Rules*. — The commissioner, in consultation with the Bureau for Public Health, may to propose legislative rules concerning sanitation for legislative approval, pursuant to §29A-3-1 *et seq.* of this code, to implement the purposes of this section.

§60-7-8f. Private delivery license for a licensed private club restaurant, private manufacturer club, or a third party; requirements; limitations; third party license fee; private cocktail delivery permit; and requirements.

(a) A licensed private club restaurant or private manufacturer club licensed to sell liquor for on-premises consumption may apply for a private delivery license permitting the order, sale, and delivery of liquor and a nonalcoholic mixer or beverage in a sealed craft cocktail growler, when separately licensed for craft cocktail growler sales. The order, sale, and delivery of a sealed craft cocktail growler is permitted for off-premises consumption when completed by the licensee to a person purchasing the craft cocktail growler through a telephone, a mobile ordering application, or web-based software program, authorized by the licensee's license. There is no additional fee for a licensed private club restaurant or private manufacturer club to obtain a private delivery license. The order, sale, and delivery process shall meet the requirements of this section. The order, sale, and delivery process is subject to the penalties of this article.

(b) A third party, not licensed for liquor sales or distribution, may apply for a private delivery license for the privilege of ordering and delivery of craft cocktail growlers, from a licensee with a craft cocktail growler license. The order and delivery of a sealed craft cocktail growler is permitted by a third party who obtains a license under this section when a private club restaurant or private manufacturer club sells to a person purchasing the sealed craft cocktail growler through telephone orders, a mobile ordering application, or a web-based software program. The private delivery

license nonprorated, nonrefundable annual fee is $200 for each third party entity, with no limit on the number of drivers and vehicles.

(c) The private delivery license application shall comply with licensure requirements in this article and shall require any information required by the commissioner; *Provided,* That the license application may not require a third party applicant to furnish information pursuant to §60-7-12 of this code.

(d) *Sale Requirements*. -

(1) The craft cocktail growler purchase shall accompany the purchase of prepared food or a meal and the completion of the sale may be accomplished by the delivery of the prepared food or a meal, and craft cocktail growler by the licensed private club restaurant, private manufacturer club, or third party private delivery licensee;

(2) Any purchasing person shall be 21 years of age or older, shall not be visibly or noticeably intoxicated at the time of delivery, and shall meet the requirements set forth in this chapter for the sale of alcoholic liquors and as set forth in §11-16-1 *et seq.* of the code for nonintoxicating beer or nonintoxicating craft beer.

(3) "Prepared food or a meal" for this article, means food that has been cooked, grilled, fried, deep-fried, air-fried, smoked, boiled, broiled, twice baked, blanched, sautéed, or in any other manner freshly made and prepared, and does not include pre-packaged food from the manufacturer.

(4) An order, sale, and delivery may consist of multiple sealed craft cocktail growlers for each order of food or meal; *Provided*, That the entire delivery order may not contain any combination of craft cocktail growlers of more than 128 fluid ounces total; and

(5) A third party private delivery licensee shall not have a pecuniary interest in a private club restaurant or private manufacturer club licensee, as set forth in this article. A third party private delivery licensee may only charge a convenience fee for the delivery of any alcohol. The third party private delivery licensee

may not collect a percentage of the delivery order for the delivery of alcohol, but may continue to collect a percentage of the delivery order directly related to the prepared food or a meal. The convenience fee charged by the third-party private delivery licensee to the purchasing person shall be no greater than five dollars per delivery order where a craft cocktail growler is ordered by the purchasing person. For any third party licensee also licensed for wine growler delivery as set forth in §60-8-6c of the code, or nonintoxicating beer or nonintoxicating craft beer growler delivery as set forth in §11-16-6d of the code, the total convenience fee of any order, sale, and delivery of a sealed growler, wine growler, or craft cocktail growler shall not exceed five dollars.

(e) *Craft Cocktail Growler Delivery Requirements*. -

(1) Delivery persons employed for the delivery of a sealed craft cocktail growler shall be 21 years of age or older. The licensed private club restaurant, private manufacturer club, or third party private delivery licensee shall file each delivery person's name, driver's license, and vehicle information with the commissioner;

(2) The licensed private club restaurant, private manufacturer club, or third party private delivery licensee shall train delivery persons on verifying legal identification and in identifying the signs of intoxication. The licensee shall submit certification of the training to the commissioner;

(3) The third party delivery licensee or the private club restaurant or private manufacturing club shall hold a private cocktail delivery permit for each vehicle delivering a craft cocktail growler pursuant to subsection (g) of this section: *Provided,* That a delivery driver may retain an electronic copy of his or her permit as proof of licensure.

(4) Prepared food or a meal, and a sealed craft cocktail growler order delivered by a third party private delivery licensee, a private club restaurant, or private manufacturer club may occur in the county or contiguous counties where the licensed private club restaurant or private manufacturer club is located;

(5) The licensed private club restaurant, private manufacturer club, or third party private delivery licensee may only deliver prepared food or a meal, and a sealed craft cocktail growler to addresses located in West Virginia. The licensed private club restaurant, private manufacturer club, or third party private delivery licensee shall account for and pay all sales and municipal taxes;

(6) The licensed private club restaurant, private manufacturer club, or third party private delivery licensee may not deliver prepared food or a meal, and a sealed craft cocktail growler to any other licensee;

(7) Deliveries of prepared food or a meal, and a sealed craft cocktail growler are only for personal use, and not for resale; and

(8) The licensed private club restaurant, private manufacturer club, or third party private delivery licensee shall not deliver and leave the prepared food or a meal, and a sealed craft cocktail growler at any address without verifying a person's age and identification as required by this section.

(f) *Telephone, mobile ordering application, or web-based software requirements*. -

(1) The delivery person may only permit the person who placed the order through a telephone order, a mobile ordering application, or web-based software to accept the prepared food or meal and a craft cocktail growler delivery, subject to age verification upon delivery with the delivery person's visual review and age verification and, as application, a stored scanned image of the purchasing person's legal identification;

(2) Any mobile ordering application or web-based software used shall create a stored record and image of the purchasing person's legal identification and details of the sale, accessible by the delivery driver for verification, and shall include the delivery driver's name and vehicle information;

(3) Any telephone ordering system shall maintain a log or record of the purchasing person's legal identification and details of

the sale, accessible by the delivery driver for verification, and shall include the delivery driver's name and vehicle information;

(4) All records are subject to inspection by the commissioner. The licensed private club restaurant, private manufacturer club, or third party private delivery licensee shall retain records for three years, and may not unreasonably withhold the records from the commissioner's inspection; and

(5) The third party private delivery licensee or the private club restaurant or private manufacturing club shall hold a valid private cocktail delivery permit under subsection (g) of this section for each vehicle used for delivery: *Provided,* That a delivery driver may retain an electronic copy of his or her permit as proof of licensure.

(g) *Private Cocktail Delivery Permit*. -

(1) The licensed private club restaurant, private manufacturer club, or third party private delivery licensee shall obtain and maintain a retail transportation permit for the delivery of prepared food and a sealed craft cocktail growler, subject to the requirements of this article.

(2) A third party private delivery licensee, a private club restaurant, or private manufacturer club licensee shall provide vehicle and driver information, requested by the commissioner. Upon any change in vehicles or drivers, the licensee shall update the driver and vehicle information with the commissioner within 10 days of the change.

(3) In conjunction with §60-6-12 of this code, a private cocktail delivery permit shall meet the requirements of a transportation permit authorizing the permit holder to transport liquor subject to the requirements of this chapter.

(h) *Enforcement*. -

(1) The third party private delivery licensee, the private club restaurant, or the private manufacturers club licensed by this section are responsible for any violations committed by their

employees or independent contractors under this article, and more than one violation may be issued for a single violation involving multiple licensees, employees, or independent contractors.

(2) Any license or permit granted by this section is subject to the penalties of probation, monetary fines, suspension, and revocation, as set forth in this article, for violations committed by the licensee, its employees, or independent contractors.

(3) It is a violation for any licensee, its employees, or independent contractors to break the seal of a craft cocktail growler. The licensees in violation are subject to the maximum penalties available in this article.

(4) For purposes of criminal enforcement of the provisions of this article, persons ordering, purchasing, and accepting delivery of orders are considered to be purchasers.

§60-7-12. Certain acts of licensee prohibited; criminal penalties.

(a) It is unlawful for any licensee, or agent, employee, or member thereof, on such licensee's premises to:

(1) Sell, offer for sale, tender, or serve any alcoholic liquors other than by the drink poured from the original package or container, except as authorized in §60-6-8 of this code;

(2) Authorize or permit any disturbance of the peace, obscene, lewd, immoral, or improper entertainment, conduct, or practice, gambling or any slot machine, multiple coin console machine, multiple coin console slot machine, or device in the nature of a slot machine; however, various games, gaming, and wagering conducted by duly licensed persons of the West Virginia State Lottery Commission, charitable bingo games conducted by a duly licensed charitable or public service organization (or its auxiliaries), pursuant to §47-20-1 *et seq.* of this code, and charitable raffle games conducted by a duly licensed charitable or public service organization (or its auxiliaries), pursuant to §47-21-1 *et seq.* of this code, all of which are permissible on a licensee's licensed premises when operated in accordance with this code and

rules promulgated thereunder. A private resort hotel holding a license issued pursuant to §60-7-1 *et seq.* of this code, may sell, tender, or dispense nonintoxicating beer, wine, or alcoholic liquors in or on the premises licensed under §29-22A-1 *et seq.* and §29-22C-1 *et seq*., or §29-25-1 *et seq.* of this code, during hours of operation authorized by §29-22A-1 *et seq.* and §29-22C-1 *et seq*., or §29-25-1 *et seq.* of this code;

(3) Sell, give away, or permit the sale of, gift to, or the procurement of any nonintoxicating beer, wine, or alcoholic liquors for or to, or permit the consumption of nonintoxicating beer, wine, or alcoholic liquors on the licensee's premises, by any person less than 21 years of age;

(4) Sell, give away, or permit the sale of, gift to, or the procurement of any nonintoxicating beer, wine, or alcoholic liquors, for or to any person known to be considered legally incompetent, or for or to any person who is physically incapacitated due to consumption of nonintoxicating beer, wine or alcoholic liquor or the use of drugs;

(5) Sell, give, or dispense nonintoxicating beer, wine, or alcoholic liquors in or on any licensed premises, or in any rooms directly connected therewith between the hours of 3:00 a.m. and 6:00 a.m. on weekdays, Saturdays, and Sundays, or, between the hours of 3:00 a.m. and 1:00 p.m. in any county upon approval as provided for in §7-1-3ss of this code, on any Sunday; and

(6) Permit the consumption by, or serve to, on the licensed premises any nonintoxicating beer, wine, or alcoholic liquors, covered by this article, to any person who is less than 21 years of age;

(7) With the intent to defraud, alter, change, or misrepresent the quality, quantity, or brand name of any alcoholic liquor;

(8) Sell or offer for sale any alcoholic liquor to any person who is not a duly elected or approved dues-paying member in good standing of the private club or a guest of the member;

(9) Sell, offer for sale, give away, facilitate the use of or allow the use of carbon dioxide, cyclopropane, ethylene, helium, or nitrous oxide for purposes of human consumption, except as authorized by the commissioner;

(10)(A) Employ any person who is less than 16 years of age in a position where the primary responsibility for such employment is to sell, furnish, tender, serve, or give nonintoxicating beer, wine, or alcoholic liquors to any person;

(B) Employ any person who is between 16 years of age and younger than 21 years of age who is not directly supervised by a person aged 21 or over in a position where the primary responsibility for such employment is to sell, furnish, tender, serve or give nonintoxicating beer, wine, or alcoholic liquors to any person; or

(11) Violate any reasonable rule of the commissioner.

(b) It is lawful for any licensee to advertise price and brand in any news media or other means, outside of the licensee's premises.

(c) Any person who violates any 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, or imprisoned in jail for a period not to exceed one year, or both fined and imprisoned.

ARTICLE 8. SALE OF WINES.

§60-8-2. Definitions.

Unless the context in which used clearly requires a different meaning, as used in this article:

"Commissioner" or "commission" means the West Virginia Alcohol Beverage Control Commissioner.

"Distributor" means any person whose principal place of business is within the State of West Virginia who makes purchases from a supplier to sell or distribute wine to retailers, grocery stores,

private wine bed and breakfasts, private wine restaurants, private wine spas, private clubs, or wine specialty shops and that sells or distributes nonfortified dessert wine, port, sherry and Madeira wines to wine specialty shops, private wine restaurants, private clubs, or retailers under authority of this article and maintains a warehouse in this state for the distribution of wine. For the purpose of a distributor only, the term "person" means and includes an individual, firm, trust, partnership, limited partnership, limited liability company, association, or corporation. Any trust licensed as a distributor or any trust that is an owner of a distributor licensee, and the trustee or other persons in active control of the activities of the trust relating to the distributor license, is liable for acts of the trust or its beneficiaries relating to the distributor license that are unlawful acts or violations of this article, notwithstanding the liability of trustees in §44D-10-1 *et seq.* of this code.

"Fortified wine" means any wine to which brandy or other alcohol has been added where the alcohol content by volume does not exceed 24 percent, and includes nonfortified dessert wines where the alcohol content by volume is greater than 17 percent and does not exceed 24 percent.

"Grocery store" means any retail establishment, commonly known as a grocery store, supermarket, delicatessen, caterer, or party supply store, where food, food products, and supplies for the table are sold for consumption off the premises with average monthly sales (exclusive of sales of wine) of not less than $500 and an average monthly inventory (exclusive of inventory of wine) of not less than $500. The term "grocery store" also includes and means a separate and segregated portion of any other retail store which is dedicated solely to the sale of food, food products, and supplies for the table for consumption off the premises with average monthly sales with respect to the separate or segregated portion (exclusive of sales of wine) of not less than $500 and an average monthly inventory (exclusive of inventory of wine) of not less than $500.

"Hard Cider" means a type of wine that is derived primarily from the fermentation of apples, pears, peaches, honey, or another fruit, or from apple, pear, peach, or another fruit juice concentrate

and water; contains no more than 0.64 grams of carbon dioxide per 100 milliliters; contains at least one half of one percent and less than 12 and one half percent alcohol by volume; and is advertised, labeled, offered for sale, or sold, as hard cider or cider containing alcohol, and not as wine, wine product, or as a substitute for wine.

"Hard Cider Distributor" means any person whose principal place of business is within the State of West Virginia who makes purchases from a supplier to sell or distribute hard cider (but not other types of wine) to retailers, grocery stores, private wine bed and breakfasts, private wine restaurants, private wine spas, private clubs, or wine specialty shops under authority of this code and maintains a warehouse in this state for the distribution of hard cider (but not other types of wine). For the purpose of a hard cider distributor, the term "person" means and includes an individual, firm, trust, partnership, limited partnership, limited liability company, association, or corporation. Any trust licensed as a distributor or any trust that is an owner of a distributor licensee, and the trustee, or any other person or persons in active control of the activities of the trust relating to the distributor license, is liable for acts of the trust or its beneficiaries relating to the distributor license that are unlawful acts or violations of this article, notwithstanding the liability of trustees in §44D-10-1 *et seq.* of this code.

"Licensee" means the holder of a license granted under the provisions of this article.

"Nonfortified dessert wine" means a wine that is a dessert wine to which brandy or other alcohol has not been added, and which has an alcohol content by volume of at least 14.1 percent and less than or equal to 17 percent.

"Person" means and includes an individual, firm, partnership, limited partnership, limited liability company, association, or corporation.

"Private wine bed and breakfast" means any business with the sole purpose of providing, in a residential or country setting, a hotel, motel, inn, or other such establishment properly zoned as to

its municipality or local ordinances, lodging and meals to its customers in the course of their stay at the establishment, which business also: (1) Is a partnership, limited partnership, corporation, unincorporated association, or other business entity which as part of its general business purpose provides meals on its premises to its members and their guests; (2) is licensed under the provisions of this article as to all of its premises or as to a separate segregated portion of its premises to serve wine to its members and their guests when the sale accompanies the serving of food or meals; and (3) admits only duly elected and approved dues-paying members and their guests while in the company of a member and does not admit the general public.

"Private wine restaurant" means a restaurant which: (1) Is a partnership, limited partnership, corporation, unincorporated association, or other business entity which has, as its principal purpose, the business of serving meals on its premises to its members and their guests; (2) is licensed under the provisions of this article as to all of its premises or as to a separate segregated portion of its premises to serve wine to its members and their guests when the sale accompanies the serving of food or meals; and (3) admits only duly elected and approved dues-paying members and their guests while in the company of a member and does not admit the general public. Private clubs that meet the private wine restaurant requirements numbered (1), (2), and (3) in this definition shall be considered private wine restaurants: *Provided,* That, a private wine restaurant shall have at least two restrooms: *Provided, however,* That the two restroom requirement may be waived by a written waiver provided from a local health department to the commissioner: *Provided, further*, That a private wine restaurant located in an historic building may also be relieved of the two restroom requirement if a historic association or district with jurisdiction over a historic building provides a written waiver of the requirement to the commissioner: *And Provided, further*, That in no event shall a private wine restaurant have less than one restroom.

"Private wine spa" means any business with the sole purpose of providing commercial facilities devoted especially to health,

fitness, weight loss, beauty, therapeutic services, and relaxation, and may also be a licensed massage parlor or a salon with licensed beauticians or stylists, which business also: (1) Is a partnership, limited partnership, corporation, unincorporated association, or other business entity which as part of its general business purpose provides meals on its premises to its members and their guests; (2) is licensed under the provisions of this article as to all of its premises or as to a separate segregated portion of its premises to serve up to two glasses of wine to its members and their guests when the sale accompanies the serving of food or meals; and (3) admits only duly elected and approved dues-paying members and their guests while in the company of a member, and does not admit the general public.

"Retailer" means any person licensed to sell wine at retail to the public at his or her established place of business for off-premises consumption and who is licensed to do so under authority of this article.

"Supplier" means any manufacturer, producer, processor, winery, farm winery, national distributor, or other supplier of wine who sells or offers to sell or solicits or negotiates the sale of wine to any licensed West Virginia distributor.

"Table wine" means a wine with an alcohol content by volume between 0.5 percent and 14 percent.

"Tax" includes within its meaning interest, additions to tax, and penalties.

"Taxpayer" means any person liable for any tax, interest, additions to tax, or penalty under the provisions of this article, and any person claiming a refund of tax.

"Varietal wine" means any wine labeled according to the grape variety from which the wine is made.

"Vintage wine" or "vintage-dated wine" means wines from which the grapes used to produce the wine are harvested during a particular year, or wines produced from the grapes of a particular harvest in a particular region of production.

"Wine" means any alcoholic beverage obtained by the natural fermentation of the natural content of grapes, other fruits, or honey or other agricultural products containing sugar to which no alcohol has been added and includes table wine, hard cider, nonfortified dessert wine, wine coolers, and other similar wine-based beverages. Fortified wine and any product defined as or contained within the definition of nonintoxicating beer under the provisions of §11-16-1 *et seq.*, of this code are excluded from this definition of wine.

"Wine specialty shop" means a retailer who deals principally in the sale of table wine, nonfortified dessert wines, wine accessories, and food or foodstuffs normally associated with wine and: (1) Who maintains a representative number of wines for sale in his or her inventory which are designated by label as varietal wine, vintage, generic, and/or according to region of production and the inventory shall contain not less than 15 percent vintage or vintage-dated wine by actual bottle count; and (2) who, any other provisions of this code to the contrary notwithstanding, may maintain an inventory of port, sherry, and Madeira wines having an alcoholic content of not more than 22 percent alcohol by volume and which have been matured in wooden barrels or casks. All wine available for sale shall be for off-premises consumption except where wine tasting or wine sampling is separately authorized by this code.

§60-8-3. Licenses; fees; general restrictions.

(a) No person may engage in business in the capacity of a winery, farm winery, supplier, distributor, retailer, private wine bed and breakfast, private wine restaurant, private wine spa, or wine specialty shop without first obtaining a license from the commissioner, nor shall a person continue to engage in any activity after his or her license has expired, been suspended, or revoked. No person may be licensed simultaneously as a distributor and a retailer. No person, except for a winery or farm winery, may be licensed simultaneously as a supplier and a retailer. No person may be licensed simultaneously as a supplier and a private wine bed and breakfast, private wine restaurant, or a private wine spa. No person may be licensed simultaneously as a distributor and a private wine

bed and breakfast, a private wine restaurant, or a private wine spa. No person may be licensed simultaneously as a retailer and a private wine bed and breakfast, a private wine restaurant, or a private wine spa. Any person who is licensed to engage in any business concerning the manufacture, sale, or distribution of wine may also engage in the manufacture, sale, or distribution of hard cider without obtaining a separate hard cider license.

(b) The commissioner shall collect an annual fee for licenses issued under this article as follows:

(1) One hundred fifty dollars per year for a supplier's license;

(2) Two thousand five hundred dollars per year for a distributor's license and each separate warehouse or other facility from which a distributor sells, transfers, or delivers wine shall be separately licensed and there shall be collected with respect to each location the annual license fee of $2,500 as provided in this subdivision;

(3) One hundred fifty dollars per year for a retailer's license;

(4) Two hundred fifty dollars per year for a wine specialty shop license, in addition to any other licensing fees paid by a winery or retailer holding a license. Except for the amount of the license fee and the restriction to sales of winery or farm winery wines, a winery, or farm winery acting as a wine specialty shop retailer is subject to all other provisions of this article which are applicable to a wine specialty shop retailer as defined in §60-8-2 of this code;

(5) One hundred fifty dollars per year for a wine tasting license;

(6) One hundred fifty dollars per year for a private wine bed and breakfast license. Each separate bed and breakfast from which a licensee sells wine shall be separately licensed and there shall be collected with respect to each location the annual license fee of $150 as provided in this subdivision;

(7) Two hundred fifty dollars per year for a private wine restaurant license. Each separate restaurant from which a licensee sells wine shall be separately licensed and there shall be collected

with respect to each location the annual license fee of $250 as provided in this subdivision;

(8) One hundred fifty dollars per year for a private wine spa license. Each separate private wine spa from which a licensee sells wine shall be separately licensed and there shall be collected with respect to each location the annual license fee of $150 as provided in this subdivision;

(9) One hundred fifty dollars per year for a wine sampling license issued for a wine specialty shop under subsection (n) of this section;

(10) No fee for a special one-day license under subsection (p) of this section or for a heritage fair and festival license under subsection (q) of this section;

(11) $150 per year for a direct shipper's license for a licensee who sells and ships only wine and $250 per year for a direct shipper's license who ships and sells wine, nonfortified dessert wine, port, sherry, or Madeira wines;

(12) Three hundred fifty dollars per year for a multi-capacity winery or farm winery license which enables the holder to operate as a retailer, wine specialty shop, supplier, and direct shipper without obtaining an individual license for each capacity; and

(13) Two hundred fifty dollars per year for a hard cider distributor's license. Each separate warehouse or other facility from which a distributor sells, transfers, or delivers hard cider shall be separately licensed and there shall be collected with respect to each location the annual license fee of $250 as provided in this subdivision: *Provided,* That if a licensee is licensed as a nonintoxicating beer or nonintoxicating beer distributor then there is no additional license fee to distribute hard cider.

(c) The license period begins on July 1 of each year and ends on June 30 of the following year and if granted for a less period, the same shall be computed semiannually in proportion to the remainder of the fiscal year.

(d) No retailer may be licensed as a private club as provided by §60-7-1 *et seq.* of this code, except as provided by subsection (k) of this section.

(e) No retailer may be licensed as a Class A retail dealer in nonintoxicating beer as provided by §11-16-1 *et seq.* of this code: *Provided*, That a delicatessen, a caterer, or party supply store which is a grocery store as defined in §60-8-2 of this code and which is licensed as a Class A retail dealer in nonintoxicating beer may be a retailer under this article: *Provided, however*, That any delicatessen, caterer, or party supply store licensed in both capacities shall maintain average monthly sales exclusive of sales of wine and nonintoxicating beer which exceed the average monthly sales of nonintoxicating beer.

(f) A wine specialty shop under this article may also hold a wine tasting license authorizing the retailer to serve complimentary samples of wine in moderate quantities for tasting. The wine specialty shop shall organize a wine taster's club, which has at least 50 duly elected or approved dues-paying members in good standing. The club shall meet on the wine specialty shop's premises not more than one time per week and shall either meet at a time when the premises are closed to the general public or meet in a separate segregated facility on the premises to which the general public is not admitted. Attendance at tastings shall be limited to duly elected or approved dues-paying members and their guests.

(g) A retailer who has more than one place of retail business shall obtain a license for each separate retail establishment. A retailer's license may be issued only to the proprietor or owner of a bona fide grocery store or wine specialty shop.

(h)(1) The commissioner may issue a license for the retail sale of wine at any festival or fair which is endorsed or sponsored by the governing body of a municipality or a county commission. The license shall be issued for a term of no longer than 10 consecutive days and the fee for the license is $250 regardless of the term of the license. The application for the license shall contain information required by the commissioner and shall be submitted to the

commissioner at least 30 days prior to the first day when wine is to be sold at the festival or fair.

(2) Notwithstanding subdivision (1) of this subsection, if the applicant for the festival or fair license is the manufacturer of the wine, a winery, or a farm winery as defined in §60-1-5a of this code, and the event is located on the premises of a winery or a farm winery, then the license fee is $50 per festival or fair.

(3) A licensed winery or a farm winery, which has the festival or fair licensee's written authorization and approval from the commissioner, may, in addition to or in conjunction with the festival and fair licensee, exhibit, conduct complimentary tastings, or sell samples not to exceed three, two-fluid ounce, tastings or samples per patron, for consumption on the premises during the operation of a festival or fair only; and may sell wine for off-premises consumption only: *Provided*, That for licensed wineries or farm wineries at a licensed festival or fair the tastings, samples and off-premises sales shall occur under the hours of operation as required in this article, except on Sunday, tastings, samples, and off-premises sales are unlawful between the hours of 2:00 a.m. and 6:00 a.m.

(4) A festival or fair license may be issued to a "wine club" as defined in this subdivision for a license fee of $250. The festival or fair committee or the governing body shall designate a person to organize a club under a name which includes the name of the festival or fair and the words "wine club". The license shall be issued in the name of the wine club. A licensee sell wine as provided in this subdivision until the wine club has at least 50 dues-paying members who have been enrolled, and to whom membership cards have been issued. Thereafter, new members may be enrolled and issued membership cards at any time during the period for which the license is issued. A wine club licensed under the provisions of this subdivision may sell wine only to its members, and in portions not to exceed eight ounces per serving. The sales shall take place on premises or in an area cordoned or segregated so as to be closed to the general public, and the general public shall not be admitted to the premises or area. A wine club licensee under the provisions of this subdivision may serve

complimentary samples of wine in moderate quantities for tasting. A wine club may not make wine purchases from a direct shipper where the wine may be consumed on the licensed premises of any Class A private wine retail license or private club. A wine club which violates the provisions of this subdivision is subject to the penalties in this article.

(5) A licensed winery or farm winery approved to participate in a festival or fair under the provisions of this section and the licensee holding the license, or the licensed winery or farm winery approved to attend a licensed festival or fair, is subject to all other provisions of this article and the rules and orders of the commissioner relating to the license: *Provided*, That the commissioner may by rule or order provide for certain waivers or exceptions with respect to the provisions, rules, or orders required by the circumstances of each festival or fair, including, without limitation, the right to revoke or suspend any license issued pursuant to this section prior to any notice or hearing notwithstanding the provisions §60-8-27 and §60-8-28 of this code: *Provided, however*, That under no circumstances shall the provisions of §60-8-20(c) or §60-8-20(d) of this code, be waived nor shall any exception be granted with respect to those subsections.

(6) A license issued under the provisions of this section and the licensee holding the license are not subject to the provisions of subsection (g) of this section.

(7) An unlicensed winery temporarily licensed and meeting the requirements set forth in subsection (q) of this section may conduct the same sampling and sales set forth in subsection (q) of this section at a licensed fair and festival upon approval of the licensee holding the fair and festival license and temporary and limited licensure by the commissioner. An unlicensed winery is subject to the same limits, fees, requirements, restrictions and penalties set forth in subsection (q) of this section: *Provided*, That the commissioner may by rule or order provide for certain waivers or exceptions with respect to the provisions, rules, or orders required by the circumstances of each festival or fair. The commissioner may revoke or suspend any license issued pursuant to this section

prior to any notice or hearing notwithstanding the provisions §60-8-27 and §60-8-28 of this code: *Provided, however*, That under no circumstances shall the provisions of §60-8-20(c) or §60-8-20(d) of this code be waived nor shall any exception be granted with respect to those subsections.

(i)(1) The commissioner may issue a special license for the retail sale of wine in a professional baseball stadium. A license to sell wine granted pursuant to this subsection entitles the licensee to sell and serve wine, for consumption in a professional baseball stadium. For the purpose of this subsection, "professional baseball stadium" means a facility constructed primarily for the use of a major or minor league baseball franchisee affiliated with the National Association of Professional Baseball Leagues, Inc., or its successor, and used as a major or minor league baseball park. Any special license issued pursuant to this subsection shall be for a term beginning on the date of issuance and ending on the next following June 30, and its fee is $250 regardless of the length of the term of the license. The application for the special license shall contain information required by the commissioner and must be submitted to the commissioner at least 30 days prior to the first day when wine is to be sold at the professional baseball stadium. The special license may be issued in the name of the baseball franchisee or the name of the primary food and beverage vendor under contract with the baseball franchisee. These sales must take place within the confines of the professional baseball stadium. The exterior of the area where wine sales may occur shall be surrounded by a fence or other barrier prohibiting entry except upon the franchisee's express permission, and under the conditions and restrictions established by the franchisee, so that the wine sales area is closed to free and unrestricted entry by the general public.

(2) A license issued under this subsection and the licensee holding the license are subject to all other provisions of this article and the rules and orders of the commissioner relating to the special license: *Provided*, That the commissioner may by rule or order grant certain waivers or exceptions to those rules or orders required by the circumstances of each professional baseball stadium. The commissioner may revoke or suspend any license issued pursuant

to this section prior to any notice or hearing notwithstanding §60-8-27 and §60-8-28 of this code: *Provided, however*, That under no circumstances may §60-8-20(c) or §60-8-20(d) of this code be waived nor shall any exception be granted concerning those subsections.

(3) The commissioner may propose legislative rules for promulgation in accordance with §29A-3-1 *et seq.* of this code to implement this subsection.

(j) A license to sell wine granted to a private wine bed and breakfast, private wine restaurant, private wine spa, or a private club under the provisions of this article entitles the operator to sell and serve wine, for consumption on the premises of the licensee, when the sale accompanies the serving of food or a meal to its members and their guests in accordance with the provisions of this article: *Provided*, That a licensed private wine bed and breakfast, private wine restaurant, private wine spa, or a private club may permit a person over 21 years of age to purchase wine, consume wine, and recork or reseal, using a tamper resistant cork or seal, up to two separate bottles of unconsumed wine in conjunction with the serving of food or a meal to its members and their guests in accordance with the provisions of this article and in accordance with rules promulgated by the commissioner for the purpose of consumption of the wine off premises: *Provided, however*, That a licensed private wine restaurant or a private club may offer for sale, for consumption off the premises, sealed bottles of wine to its customers provided that no more than one bottle is sold per each person over 21 years of age, as verified by the private wine restaurant or private club, for consumption off the premises. The licensees may keep and maintain on their premises a supply of wine in quantities appropriate for the conduct of operations thereof. Any sale of wine is subject to all restrictions set forth in §60-8-20 of this code. A private wine restaurant may also be licensed as a Class A retail dealer in nonintoxicating beer as provided by §11-16-1 *et seq.* of this code.

(k) With respect to subsections (h), (i), (j), (o), and (p) of this section, the commissioner shall propose rules for promulgation in accordance with §29A-1-1 *et seq.* of this code, including, but not

limited to, the form of the applications and the suitability of both the applicant and location of the licensed premises.

(l) The commissioner shall propose rules for promulgation in accordance with the provisions of §29A-1-1 *et seq.* of this code to allow restaurants to serve wine with meals and to sell wine by the bottle for off-premises consumption as provided in subsection (j) of this section. Each licensed restaurant shall be charged an additional $100 per year fee.

(m) The commissioner shall establish guidelines to permit wines to be sold in all stores licensed for retail sales.

(n) Wineries and farm wineries may advertise off premises as provided in §17-22-7 of this code.

(o) A wine specialty shop under this article may also hold a wine sampling license authorizing the wine specialty shop to conduct special wine sampling events at a licensed wine specialty shop location during regular hours of business. The wine specialty shop may serve up to three complimentary samples of wine, consisting of no more than two fluid ounces each, to any one consumer in one day. Persons serving the complimentary samples shall be 21 years of age or older and an authorized representative of the licensed wine specialty shop, winery, farm winery, or a representative of a distributor or registered supplier. Distributor and supplier representatives attending wine sampling events shall register with the commissioner. No licensee, employee, or representative may furnish, give, sell, or serve complimentary samples of wine to any person less than 21 years of age or to a person who is physically incapacitated due to the consumption of alcoholic liquor or the use of drugs. The wine specialty shop shall notify and secure permission from the commissioner for all wine sampling events 30 days prior to the event. Wine sampling events may not exceed six hours per calendar day. Licensees shall purchase all wines used during these events from a licensed farm winery or a licensed distributor.

(p) The commissioner may issue special one-day licenses to duly organized, nonprofit corporations and associations allowing

the sale and serving of wine, and may, if applicable, also allow the charitable auctioning of certain sealed bottles of wine for off-premises consumption only, when raising money for athletic, charitable, educational, or religious purposes. "Auction or auctioning", for the purposes of this subsection, means any silent, physical act, or verbal bid auction, whether or not the auction requires in-presence bidding or online Internet-based electronic bidding through a secure application or website, but shall not include any action in violation of §47-20-10, §47-20-11, or §61-10-1 *et seq.* of this code. The license application shall contain information required by the commissioner and shall be submitted to the commissioner at least 30 days prior to the event. Accompanying the license application, the applicant shall submit a signed and notarized statement that at least 80 percent of the net proceeds from the charitable event will be donated directly to the nonprofit corporation or organization. Wines used during these events may be donated by, or purchased from, a licensed retailer, a distributor, winery, or a farm winery. A licensed winery or farm winery which is authorized in writing by a representative of the duly organized, nonprofit corporation or association which has obtained the one-day license; is in good standing with the state; and obtains the commissioner's approval prior to the one-day license event may, in conjunction with the one-day licensee, exhibit, conduct complimentary tastings, or sell samples not to exceed three, two-fluid ounce tastings or samples per patron, for consumption on the premises during the operation of the one-day license event; and may sell certain sealed wine bottles manufactured by the licensed winery or farm winery for off-premises consumption: *Provided*, That for a licensed winery or farm winery at a licensed one-day event, the tastings, samples and off-premises sales shall occur under the hours of operation permitted by this article, except on Sunday, tastings, samples, and off-premises sales are unlawful between the hours of 2:00 a.m. and 6:00 a.m., from the one-day licensee's submitted floor plan for the event subject to the requirements in the code and rules. Under no circumstances may the provisions of §60-8-20(c) or §60-8-20(f) of this code be waived nor may any exception be granted with respect to those subsections.

(q)(1) In addition to the authorization granted to licensed wineries and farm wineries in subsections (h) and (p) of this section, an unlicensed winery, regardless of its designation in another state, but that is duly licensed in its domicile state, may pay a $150 nonrefundable and nonprorated fee and submit an application for temporary licensure on a one-day basis for temporary sampling and sale of wine in sealed containers for off-premises consumption at a special one-day license nonprofit event.

(2) The application shall include, but is not limited to, the person or entity's name, address, taxpayer identification number, and location; a copy of its licensure in its domicile state; a signed and notarized verification that it produces 50,000 gallons or less of wine per year; a signed and notarized verification that it is in good standing with its domicile state; copies of its federal certificate of label approvals and certified lab alcohol analysis for the wines it desires to temporarily provide samples and temporarily sell wine in sealed containers for off-premises consumption at a special one-day license for a nonprofit event issued under subsection (p) of this section; and any other information as the commissioner may reasonably require.

(3) The applicant winery shall include a list of all wines proposed to be temporarily sampled and temporarily sold in sealed containers at a special one-day license for a nonprofit event so that the wines may be reviewed in the interest of public health and safety. Once approved, the submitted wine list creates a temporary wine brand registration for up to two special one-day licenses for a nonprofit event for no additional fee.

(4) An applicant winery that receives this temporary special one-day license for a nonprofit event shall provide the commissioner a signed and notarized written agreement acknowledging that the applicant winery understands its responsibility to pay all municipal, local, and sales taxes applicable to the sale of wine in West Virginia.

(5) An application must be submitted per special one-day license for a nonprofit event the applicant winery desires to attend, and the license fee shall cover up to two special one-day license for

nonprofit events before an additional fee would be is required. In no circumstance would the winery be permitted to attend more than four special one-day licensed events. Any applicant or unlicensed winery desiring to attend more than four special one-day license for nonprofit events per year or otherwise operate in West Virginia would need to seek appropriate licensure as a winery or a farm winery in this state.

(6) Notwithstanding the provisions of this article and requirements for licensure, wine brand registration, payment of wine liter tax, and the winery's appointment of suppliers and distributors, this temporary special one-day license for a nonprofit event, once granted, permits a winery to operate in this limited capacity only at the approved specific, special one-day license for a nonprofit event subject to the limitations contained in this section.

(7) The applicant winery shall also apply for and receive a transportation permit to legally transport wine in the state per §60-6-12 of this code.

(8) The applicant winery is subject to all applicable violations and/or penalties under this article and the legislative rules that are not otherwise excepted by this subsection: *Provided*, That the commissioner may by rule or order provide for certain waivers or exceptions with respect to the provisions, rules, or orders required by the circumstances of each festival or fair. The commissioner may revoke or suspend any license issued pursuant to this article, prior to any notice or hearing.

(r) The commissioner may issue special licenses to heritage fairs and festivals allowing the sale, serving, and sampling of wine from a licensed farm winery. The license application shall contain information required by the commissioner and shall be submitted to the commissioner at least 30 days prior to the event. Wines used during these events may be donated by or purchased from a licensed farm winery. Under no circumstances may the provision of §60-8-20(c) of this code be waived nor may any exception be granted with respect thereto. The commissioner shall propose rules for legislative approval in accordance with §29A-3-1 *et seq.* of this code to implement the provisions of this subsection.

(s)(1) The commissioner may issue a special license for the retail sale of wine in a college stadium. A license to sell wine granted pursuant to this subsection entitles the licensee to sell and serve wine for consumption in a college stadium. For the purpose of this subsection, "college stadium" means a facility constructed primarily for the use of a Division I, II, or III college that is a member of the National Collegiate Athletic Association, or its successor, and used as a football, basketball, baseball, soccer, or other Division I, II, or III sports stadium. A special license issued pursuant to this subsection shall be for a term beginning on the date of its issuance and ending on the next following June 30, and its fee is $250 regardless of the length of the term of the license. The application for the special license shall contain information required by the commissioner and must be submitted to the commissioner at least 30 days prior to the first day when wine is to be sold. The special license may be issued in the name of the National Collegiate Athletic Association Division I, II, or III college or university or the name of the primary food and beverage vendor under contract with that college or university. All sales must take place within the confines of the college stadium: *Provided*, That the exterior of the area where wine sales may occur shall be surrounded by a fence or other barrier prohibiting entry except upon the college or university's express permission, and under the conditions and restrictions established by the college or university, so that the wine sales area is closed to free and unrestricted entry by the general public.

(2) A license issued under this subsection and the licensee are subject to the other requirements of this article and the rules and orders of the commissioner relating to the special license: *Provided*, That the commissioner may by rule or order grant certain waivers or exceptions to those rules or orders as required by the circumstances of each the college stadium. The commissioner may revoke or immediately suspend any license issued pursuant to this section prior to any notice or hearing notwithstanding §60-8-27 and §60-8-28 of this code: *Provided, however*, That §60-8-20(c) or §60-8-20(d) of this code may not be waived, nor shall any exception be granted concerning those subsections.

(3) The commissioner may propose legislative rules for promulgation in accordance with §29A-3-1 *et seq.* of this code to implement this subsection.

§60-8-4. Liter tax.

There is hereby levied and imposed on all wine sold after July 1, 2007, by suppliers to distributors, and including all wine sold and sent to persons 21 years of age or older who reside in West Virginia from direct shippers, except wine sold to the commissioner, a tax of twenty-six and four hundred six-thousandths cents per liter. Effective July 1, 2021, hard cider is excepted from this per liter tax and is taxed pursuant to §60-8A-3 of this code.

Before the 16th day of each month thereafter, every supplier, distributor and direct shipper shall make a written report under oath to the Tax Commissioner and the commissioner showing the identity of the purchasing person, the quantity, label and alcoholic content of wine sold by the supplier to West Virginia distributors or the direct shipper to persons 21 years of age or older who reside in West Virginia during the preceding month and at the same time shall pay the tax imposed by this article on the wine sold to the distributor or to persons 21 years of age or older who reside in West Virginia during the preceding month to the Tax Commissioner.

The reports shall contain other information and be in the form required by the Tax Commissioner. For purposes of this article, the reports required by this section shall be considered tax returns covered by the provisions of §11-10-1 *et seq.* of this code. Failure to timely file the tax returns within five calendar days of the 16th day of each month also subjects a supplier, distributor, and direct shipper to penalties under §60-8-18 of this code.

No wine imported, sold, or distributed in this state or sold and shipped to this state by a direct shipper shall be subject to more than one liter tax.

§60-8-6c. Winery and Farm Winery license to sell wine growlers and provide complimentary samples prior to purchasing a wine growler.

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

(b) *Sales of wine*. — A licensed winery or farm winery with its principal place of business and manufacture located in the State of West Virginia may, when licensed under this section, offer only wine manufactured by the licensed winery or farm winery for retail sale to customers from the winery or farm winery's licensed premises for consumption off of the licensed premises only in the form of original container sealed wine kegs, wine bottles, or wine cans, or also a sealed wine growler for personal consumption, and not for resale. A licensed winery or farm winery may not sell, give, or furnish wine for consumption on the premises of the principal place of business and manufacture located in the State of West Virginia, except for the limited purpose of complimentary samples as permitted in subsection (c) of this section or unless separately licensed as a private wine restaurant or a private manufacturer club.

(c) *Complimentary samples*. — A licensed winery or farm winery with its principal place of business and manufacture located in the State of West Virginia may offer complimentary samples of wine as set forth in §60-4-3b of this code.

(d) *Retail sales*. — Every licensed winery or farm winery under this section shall comply with all the provisions of this article as applicable to wine retailers when conducting wine growler sales

and is subject to all applicable requirements and penalties in this article.

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

(f) *Advertising*. — A winery or farm winery under this section may advertise a particular brand or brands of wine produced by the licensed winery or farm winery and the price of the wine subject to state and federal requirements or restrictions. The advertisement may not encourage intemperance or target minors.

(g) *Wine Growler defined*. – For purposes of this section and section §60-8-6d of the code, "wine growler" means a container or jug that is made of glass, ceramic, metal, or other material approved by the commissioner, that may be no larger than 128 fluid ounces in size and is capable of being securely sealed. The growler may be used by an authorized licensee for purposes of off-premises sales only of wine for personal consumption, and not for resale. Notwithstanding any other provision of this code to the contrary, a securely sealed wine growler is not an open container under state and local law. A wine growler with a broken seal is an open container under state and local law unless it is located in an area of the motor vehicle physically separated from the passenger compartment. For purpose of this article, a secure seal means using a tamper evident seal, such as: (1) A plastic heat shrink wrap band, strip, or sleeve extending around the cap or lid of wine growler to form a seal that must be broken when the container is opened; or (2) A screw top cap or lid that breaks apart when the wine growler is opened.

(h) *Wine Growler requirements*. — A winery or farm winery licensed under this section shall prevent patrons from accessing the secure area where the winery or farm winery fills a wine growler and prevent patrons from filling a wine growler. A licensed winery or farm winery under this section shall sanitize, fill, securely seal, and label any wine growler prior to its sale. A licensed winery or

farm winery under this section may refill a wine growler subject to the requirements of this section. A winery or farm winery shall visually inspect any wine growler before filling or refilling it. A winery or farm winery may not fill or refill any wine growler that appears to be cracked, broken, unsafe, or otherwise unfit to serve as a sealed beverage container.

(i) *Wine Growler labeling*. — A winery or farm winery licensed under this section selling wine growlers shall affix a conspicuous label on all sold and securely sealed wine growlers listing the name of the licensee selling the wine growler, the brand of the wine in the wine growler, the alcohol content by volume of the wine in the wine growler, and the date the wine growler was filled or refilled. All labeling on the wine growler shall be consistent with all federal labeling and warning requirements.

(j) *Wine Growler sanitation*. — A licensed winery or farm winery authorized under this section shall clean and sanitize all wine growlers it fills or refills in accordance with all state and county health requirements prior to its filling and sealing. In addition, the licensed winery or farm winery shall sanitize, in accordance with all state and county health requirements, all taps, tap lines, pipelines, barrel tubes, and any other related equipment used to fill or refill growlers. Failure to comply with this subsection may result in penalties under this article.

(k) *Fee*. — There is no additional fee for a licensed winery or farm winery authorized under this section to sell wine growlers, but the licensee shall meet all other requirements of this section.

(l) *Limitations on licensees*. — To be authorized under this section, a licensed winery or farm winery may not produce more than 10,000 gallons of wine per calendar year at the winery or farm winery's principal place of business and manufacture located in the State of West Virginia. A licensed winery or farm winery authorized under this section is subject to the applicable penalties under this article for violations of this section.

(m) *Rules*. — The commissioner, in consultation with the Bureau for Public Health, may propose legislative rules concerning

sanitation for legislative approval, pursuant to §29A-3-1 *et seq.* of this code, to implement this section.

§60-8-6d. Wine retailer, wine specialty shop, private wine restaurant, private wine bed and breakfast, private wine spa, Class B retail dealer, private club restaurant, private manufacturer club, Class A retail licensee, and Class B retail licensee's authority to sell wine growlers.

(a) *Legislative findings*. — The Legislature hereby finds that it is in the public interest to regulate, control, and support the brewing, manufacturing, distribution, sale, consumption, transportation, and storage of wine and its industry in this state to protect the public health, welfare, and safety of the citizens of this state and promote hospitality and tourism. Therefore, this section authorizes a licensed wine retailer, wine specialty shop, private wine restaurant, private wine bed and breakfast, private wine spa, private club restaurant, private manufacturer club, Class A retail licensee, or Class B retail licensee to have certain abilities in order to promote the sale of wine manufactured in this state for the benefit of the citizens of this state, the state's growing wine industry, and the state's hospitality and tourism industry, all of which are vital components for the state's economy.

(b) *Sales of wine*. — A licensed wine retailer, wine specialty shop, private wine restaurant, private wine bed and breakfast, private wine spa, private club restaurant, private manufacturer club, Class A retail licensee, or Class B retail licensee who pays the fee in subsection (h) of this section and meets the requirements of this section may offer wine for retail sale to patrons from the licensed premises in a sealed wine growler for personal consumption off of the licensed premises, and not for resale. Prior to the sale, the licensee shall verify, using proper identification, that any patron purchasing wine is 21 years of age or over and that the patron is not visibly intoxicated. The nonprorated, nonrefundable annual fee to sell wine growlers is $100.

(c) *Retail sales*. — Every licensee authorized under this section shall comply with all the provisions of this article as applicable to

wine retailers when conducting sales of wine in a wine growler and is subject to all applicable requirements and penalties in this article.

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

(e) *Advertising*. — A licensee authorized under this section may advertise a particular brand or brands of wine and the price of the wine, subject to state and federal requirements or restrictions. The advertisement may not encourage intemperance or target minors.

(f) *Wine Growler defined and requirements*. — A licensee authorized under this section shall use the wine growler definition and requirements in §60-8-6c(g) and §60-8-6c(h) of this code.

(g) *Wine Growler labeling and sanitation*. — A licensee authorized under this section shall label and sanitize wine growlers as set forth in §60-8-6c(i) and §60-8-6c(j) of this code.

(h) *Complimentary samples*. — A licensee authorized under this section may provide complimentary wine growler samples to a person intending to purchase a wine growler which may be no greater than two fluid ounces per wine growler sample and a wine growler sampling shall not exceed three complimentary two fluid ounce samples per patron per day. A licensee authorized under this section providing complimentary wine samples shall, prior to providing any samples, verify that the patron sampling wine is 21 years of age or older and that the patron is not visibly or noticeably intoxicated.

(i) *Limitations on licensees*. — A licensee under this section may only sell wine growlers during the hours of operation set forth in this article. Any licensee licensed under this section shall maintain a secure area for the sale and filling of wine in a wine growler. The secure area shall only be accessible by the licensee.

Any licensee licensed under this section is subject to the applicable penalties under this article for violations.

(j) *Non-applicability of certain statutes*. — Notwithstanding any other provision of this article to the contrary, licensees under this section are permitted to break the seal of the original container for the limited purpose of filling a wine growler or providing complimentary wine samples as provided in this section. Any unauthorized sale of wine or any consumption not permitted on the licensee's licensed premises is subject to penalties under this article.

(k) *Rules*. — The commissioner may propose legislative rules for legislative approval, pursuant to §29A-3-1 *et seq.* of this code, to implement this section.

§60-8-6e. Private wine delivery license for a licensed Class A wine licensee or a third party; requirements; limitations; third party license fee; private retail transportation permit; and requirements.

(a) A Class A wine licensee who is licensed to sell wine for on-premises consumption may apply for a private wine delivery license permitting the order, sale, and delivery of wine in the original container of sealed bottles or cans, or sealed wine growlers, when separately licensed for wine growler sales. The order, sale, and delivery of wine in the original container of sealed bottles or cans, or sealed wine growlers is permitted for off-premises consumption when completed by the licensee or the licensee's employees to a person purchasing the wine through a telephone, mobile ordering application, or web-based software program, authorized by the licensee's license. There is no additional fee for a Class A wine licensee to obtain a private wine delivery license. The order, sale, and delivery process must meet the requirements of this section. The order, sale, and delivery process is subject to the penalties of this article.

(b) A third party, not licensed for wine sales or distribution, may apply for a private wine delivery license for the privilege of ordering and delivery of wine in the original container of sealed

bottles, or cans, or sealed wine growlers, from a licensee with a wine growler license. The order and delivery of wine in the original container of sealed bottles or cans, or sealed wine growlers is permitted by a third party licensee when sold by a Class A wine licensee to a person purchasing the wine through telephone orders, mobile ordering application, or web-based software program for off-premises consumption. The private wine delivery license non-prorated, nonrefundable annual fee is $200 per third party entity, with no limit on the number of drivers and vehicles.

(c) The private wine delivery license application shall comply with licensure requirements in this article and shall contain any information required by the commissioner.

(d) *Sale Requirements*. -

(1) The wine purchase shall accompany the purchase of prepared food or a meal and the completion of the sale may be accomplished by the delivery of prepared food or a meal, and sealed wine by the licensee or third-party licensee.

(2) Any purchasing person shall be 21 years of age or older, shall not be visibly or noticeably intoxicated at the time of delivery, and shall meet the requirements set forth in this article for the sale of wine.

(3) "Prepared food or a meal" for this article, means food that has been cooked, grilled, fried, deep-fried, air-fried, smoked, boiled, broiled, twice baked, blanched, sautéed, or in any other manner freshly made and prepared, and does not include pre-packaged food from the manufacturer.

(4) An order, sale, and delivery may consist of no more than 384 fluid ounces of wine per delivery order; and

(5) A third-party private wine delivery licensee may not have a pecuniary interest in a Class A wine licensee, as set forth in this article. A third-party private wine delivery licensee may only charge a convenience fee for the delivery of wine as provided in this section. The third-party private wine delivery licensee may not collect a percentage of the delivery order for the delivery of alcohol

but may collect a percentage of the delivery order directly related to prepared food or a meal. The convenience fee charged by the third-party private wine delivery licensee to the purchasing person may be no greater than five dollars per delivery order where wine is ordered by the purchasing person. For any third-party private wine delivery licensee also licensed for nonintoxicating beer or nonintoxicating craft beer growler delivery as set forth in §11-16-6d of the code or craft cocktail growler delivery as set forth in §60-7-8f of the code, the total convenience fee of any order, sale, and delivery of a sealed growler, wine growler, or craft cocktail growler shall not exceed five dollars.

(e) *Private Wine Delivery Requirements*. -

(1) Delivery persons employed for the delivery of sealed wine shall be 21 years of age or older. The third-party private wine delivery licensee or a Class A wine licensee shall file each delivery person's name, driver's license, and vehicle information with the commissioner;

(2) The third-party private wine delivery licensee or the Class A wine licensee shall train delivery persons on verifying legal identification and in identifying the signs of intoxication. The third-party private wine delivery licensee shall submit certification of the training to the commissioner;

(3) The third party private wine delivery licensee or Class A wine licensee shall hold a retail transportation permit for each vehicle delivering sealed wine per subsection (g) of this section: *Provided,* That a delivery driver may retain an electronic copy of his or her permit as proof of licensure;

(4) Delivery of food or a meal, and sealed wine orders by a third-party private wine delivery licensee or Class A wine licensee may occur in the county or contiguous counties where the wine licensee is located;

(5) The third-party private wine delivery licensee or Class A wine licensee may only deliver prepared food or a meal and sealed wine to addresses located in West Virginia. The third-party private

wine delivery licensee or Class A wine licensee shall account for and pay all sales and municipal taxes;

(6) The third-party private wine delivery licensee or Class A wine licensee may not deliver prepared food or a meal, and sealed wine to any other wine licensees;

(7) Deliveries of food or a meal, and sealed wine are only for personal use, and not for resale; and

(8) The third-party private wine delivery licensee or Class A wine licensee shall not deliver and leave deliveries of prepared food or a meal, and sealed wine any address without verifying a person's age and identification as required by this section.

(f) *Telephone, mobile ordering application, or web-based software requirements*. -

(1) The delivery person shall only permit the person who placed the order through a telephone order, a mobile ordering application, or web-based software to accept the prepared food or meal, and wine delivery which is subject to age verification upon delivery with the delivery person's visual review and verification and, as applicable, a stored scanned image of the purchasing person's legal identification;

(2) Any mobile ordering application or web-based software used shall create a stored record and image of the purchasing person's legal identification and details of the sale, accessible by the delivery driver for verification, and shall include the delivery driver's name and vehicle information;

(3) Any telephone ordering system shall maintain a log or record of the purchasing person's legal identification and details of the sale, accessible by the delivery driver for verification, and shall include the delivery driver's name and vehicle information;

(4) All records are subject to inspection by the commissioner, and the third-party private wine delivery licensee and Class A wine licensee shall retain the records for inspection for three years. The third-party private wine delivery licensee or Class A wine licensee

may not unreasonably withhold the records from the commissioner's inspection; and

(5) Each vehicle delivering wine shall be issued a private wine retail transportation permit per subsection (g) of this section.

(g) *Private Wine Retail Transportation Permit*. -

(1) A Class A wine licensee or a third-party private wine delivery licensee shall obtain and maintain a retail transportation permit for the delivery of prepared food and sealed wine.

(2) A Class A wine licensee or a third-party private wine delivery licensee shall provide vehicle and driver information, requested by the commissioner. Upon any change in vehicles or drivers, the licensee shall update the driver and vehicle information with the commissioner within 10 days of the change.

(3) In conjunction with §60-6-12 of this code, a private wine retail transportation permit shall meet the requirements of a transportation permit authorizing the permit holder to transport wine subject to the requirements of this chapter.

(h) *Enforcement.* -

(1) The licensee or the third-party private wine delivery licensee are responsible for any violations committed by their employees or independent contractors under this article, and more than one violation may be issued for a single violation involving multiple licensees, employees, or independent contractors.

(2) Any license or permit granted by this section is subject to the penalties of probation, monetary fines, suspension, and revocation, as set forth in this article, for violations committed by the licensee, its employees, or independent contractors.

(3) It is a violation for any licensee, its employees, or independent contractors to break the seal of a wine bottle, wine can, or wine growler. A person who violates the provisions of this subdivision is subject to the maximum penalties available in this article.

(4) For purposes of criminal enforcement of the provisions of this article, persons ordering, purchasing, and accepting delivery of orders are considered to be purchasers.

§60-8-6f. Private wine delivery license for a licensed Class B wine licensee or a third party; requirements; limitations; third party license fee; private retail transportation permit; and requirements.

(a) A Class B wine licensee who is licensed to sell wine for on-premises consumption may apply for a private wine delivery license permitting the order, sale, and delivery of wine in the original container of sealed bottles or cans, or sealed wine growlers, when separately licensed for wine growler sales. The order, sale, and delivery of wine in the original container of sealed bottles, cans, or sealed wine growlers is permitted for off-premises consumption when completed by the licensee or the licensee's employees to a person purchasing the wine through a telephone order, a mobile ordering application, or web-based software program, as authorized by the licensee's license. There is no additional fee for a Class B wine licensee to obtain a private wine delivery license. The order, sale, and delivery process shall meet the requirements of this section, and subject to the penalties of this article.

(b) A third party, not licensed for wine sales or distribution, may apply for a private wine delivery license for the privilege of the ordering and delivery of wine in the original container of sealed bottles, or cans, or sealed wine growlers, from a licensee with a wine growler license. The order and delivery of wine in the original container of sealed bottles or cans, or sealed wine growlers is permitted for off-premises consumption by a third party licensee when sold by a Class B wine licensee to a person purchasing the wine through telephone orders, mobile ordering application, or web-based software program. The private wine delivery license non-prorated, nonrefundable annual fee is $200 per third party entity, with no limit on the number of drivers and vehicles.

(c) The private wine delivery license application shall comply with licensure requirements in this article and shall contain any information required by the commissioner.

(d) *Sale Requirements*. -

(1) The wine purchase may accompany the purchase of food and the completion of the sale may be accomplished by the delivery of food and sealed wine by the licensee or third-party private wine delivery licensee.

(2) Any purchasing person must be 21 years of age or older, shall not be visibly or noticeably intoxicated at the time of delivery, and shall meet the requirements set forth in this article for the sale of wine.

(3) Food, for purposes of this section, means food that has been cooked, microwaved, or that is pre-packaged food from the manufacturer;

(4) An order, sale, or delivery consisting of food and any combination of sealed wine bottles, cans, or growlers shall not be in excess of 384 fluid ounces of wine; and

(5) A third-party private wine delivery licensee shall not have a pecuniary interest in a Class B wine licensee, as set forth in this article. A third-party private wine delivery licensee may only charge a convenience fee for the delivery of wine. The third-party private wine delivery licensee may not collect a percentage of the delivery order for the delivery of alcohol but may collect a percentage of the delivery order directly related to food only. The convenience fee charged by the third-party private wine delivery licensee to the purchasing person shall be no greater than five dollars per delivery order where wine is ordered by the purchasing person. For any third-party licensee also licensed for nonintoxicating beer or nonintoxicating craft beer delivery as set forth in §11-16-6f of the code, the total convenience fee of any order, sale, and delivery shall not exceed five dollars.

(e) *Private Wine Delivery Requirements*. -

(1) Delivery persons employed for the delivery of sealed wine shall be 21 years of age or older. The third-party private wine delivery licensee or a Class B wine licensee shall file each delivery person's name, driver's license, and vehicle information with the commissioner;

(2) The third-party private wine delivery licensee or Class B wine licensee shall train delivery persons on verifying legal identification and in identifying the signs of intoxication and certification. The third-party private wine delivery licensee or Class B wine licensee shall submit certification of the training to the commissioner;

(3) The third party delivery licensee or Class B wine licensee must hold a retail transportation permit for each vehicle delivering sealed wine as required by subsection (g) of this section: *Provided,* That a delivery driver may retain an electronic copy of his or her permit as proof of licensure;

(4) The third-party private wine delivery licensee or Class B wine licensee may only deliver food and sealed wine orders by a third-party private wine delivery licensee or Class B wine licensee in the county where the wine licensee is located;

(5) The third-party private wine delivery licensee or Class B wine licensee may only deliver food and sealed wine to addresses located in West Virginia with all sales and municipal taxes accounted for and paid;

(6) A third-party private wine delivery licensee or Class B wine licensee may not deliver food and sealed wine to any other wine licensees;

(7) Deliveries of food and sealed wine are only for personal use, and not for resale; and

(8) A third-party private wine delivery licensee or Class B wine licensee shall not deliver and leave food and sealed wine at any address without verifying a person's age and identification as required by this section.

(f) *Telephone, mobile ordering application, or web-based software requirements*. -

(1) The delivery person shall only permit the person who placed the order through a telephone, a mobile ordering application, or web-based software to accept the food and wine delivery which is subject to age verification upon delivery with the delivery person's visual review and verification and, as applicable, a stored scanned image of the purchasing person's legal identification;

(2) Any mobile ordering application or web-based software used shall create a stored record and image of the purchasing person's legal identification and details of the sale, accessible by the delivery driver for verification, and shall include the delivery driver's name and vehicle information;

(3) Any telephone ordering system shall maintain a log or record of the purchasing person's legal identification and details of the sale, accessible by the delivery driver for verification, and must include the delivery driver's name and vehicle information;

(4) All records are subject to inspection by the commissioner. The third-party private wine delivery licensee or Class B wine licensee shall retain the records for inspection for three years. The third-party private wine delivery licensee or Class B wine licensee may not unreasonably withhold the records from the commissioner's inspection; and

(5) Each vehicle delivering wine shall be issued a private wine retail transportation permit under subsection (g) of this section.

(g) *Private Wine Retail Transportation Permit*. -

(1) A Class B wine licensee or third party private wine delivery licensee shall obtain and maintain a retail transportation permit for the delivery of food and wine.

(2) A Class B wine licensee or third party private wine delivery licensee shall provide vehicle and driver information requested by the commissioner. Upon any change in vehicles or drivers, the

licensee shall update the driver and vehicle information with the commissioner within 10 days of the change.

(3) In conjunction with §60-6-12 of this code, a private wine retail transportation permit shall meet the requirements of a transportation permit authorizing the permit holder to transport wine subject to the requirements of this chapter.

(h) *Enforcement*. -

(1) The licensee or third-party private wine delivery licensee are each responsible for any violations committed by their employees or agents under this article, and more than one violation may be issued for a single violation involving multiple licensees, employees, or independent contractors.

(2) Any license or permit granted by this section is subject to the penalties of probation, monetary fines, suspension, and revocation, as set forth in this article, for violations committed by the licensee, its employees, or independent contractors.

(3) It is a violation for any licensee, its employees, or independent contractors to break the seal of a wine bottle, wine can, or wine growler. A person who violates the provisions of this subdivision is subject to the maximum penalties available in this article.

(4) For purposes of criminal enforcement of the provisions of this article, persons ordering, purchasing, and accepting delivery of orders are considered to be purchasers.

§60-8-18. Revocation, suspension, and other sanctions which may be imposed by the commissioner upon the licensee; procedure for appealing any final order of the commissioner which revokes, suspends, sanctions, or denies the issuance or renewal of any license issued under this article.

(a) The commissioner may on his or her own motion, or shall on the sworn complaint of any person, conduct an investigation to determine if any provisions of this article or any rule promulgated

or any order issued by the commissioner has been violated by any licensee. After investigation, the commissioner may impose penalties and sanctions as set forth in this section.

(1) If the commissioner finds that the licensee has violated any provision of this article or any rule promulgated or order issued by the commissioner, or if the commissioner finds the existence of any ground on which a license could have been refused, if the licensee were then applying for a license, the commissioner may:

(A) Revoke the licensee's license;

(B) Suspend the licensee's license for a period determined by the commissioner not to exceed 12 months;

(C) Place the licensee on probation for a period not to exceed 12 months; or

(D) Impose a monetary penalty not to exceed $1,000 for each violation where revocation is not imposed.

(2) If the commissioner finds that a licensee has willfully violated any provision of this article or any rule promulgated or any order issued by the commissioner, the commissioner shall revoke the licensee's license.

(b) Whenever the commissioner refuses to issue a license, or suspends or revokes a license, places a licensee on probation, or imposes a monetary penalty, he or she shall enter an order to that effect and cause a copy of the order to be served in person or by certified mail, return receipt requested, on the licensee or applicant.

(c) An applicant or licensee, as the case may be, adversely affected by the order has a right to a hearing before the commissioner if a written demand for hearing is served upon the commissioner within 10 days following the receipt of the commissioner's order by the applicant or licensee. Timely service of a demand for a hearing upon the commissioner operates to suspend the execution of the order with respect to which a hearing has been demanded, except an order suspending a license under the provisions of §60-8-29 of this code. The person demanding a

hearing shall give security for the cost of the hearing in a form and amount required by the commissioner. If the person demanding the hearing does not substantially prevail in the hearing or upon judicial review thereof as provided in subsections (f) and (g) of this section, then the costs of the hearing shall be assessed against him or her by the commissioner and may be collected by an action at law or other proper remedy.

(d) Upon receipt of a timely served written demand for a hearing, the commissioner shall immediately set a date for the hearing and notify the person demanding the hearing of the date, time, and place of the hearing, which shall be held within 30 days after receipt of the demand. At the hearing, the commissioner shall hear evidence and thereafter enter an order supporting by findings of facts, affirming, modifying, or vacating the order. Any such order is final unless vacated or modified upon judicial review.

(e) The hearing and the administrative procedure prior to, during, and following the hearing shall be governed by and in accordance with the provisions of §29A-5-1 *et seq.* of this code.

(f) Notwithstanding the provisions of §29A-5-4(b) of this code, an applicant or licensee adversely affected by a final order entered following a hearing has the right to judicial review of the order code in the Circuit Court of Kanawha County or the circuit court in the county where the proposed or licensed premises is located and will or does conduct sales: *Provided*, That in all other respects, the review shall be conducted in the manner provided in chapter 29A of this code. The applicant or licensee shall file the petition for the review with the circuit court within 30 days following entry of the final order issued by the commissioner. An applicant or licensee obtaining judicial review is required to pay the costs and fees incident to transcribing, certifying, and transmitting the records pertaining to the matter to circuit court.

(g) The judgment of the circuit court reviewing the order of the commissioner is final unless reversed, vacated, or modified on appeal to the Supreme Court of Appeals in accordance with the provisions of §29A-6-1 of this code.

(h) Legal counsel and services for the commissioner in all proceedings in any circuit court and the Supreme Court of Appeals shall be provided by the Attorney General or his or her assistants and in any proceedings in any circuit court by the prosecuting attorney of that county as well, all without additional compensation.

§60-8-20. Unlawful acts generally.

It is unlawful:

(a) For a supplier or distributor to sell or deliver wine purchased or acquired from any source other than a person registered under the provisions of §60-8-6 of this code or for a retailer to sell or deliver wine purchased or acquired from any source other than a licensed distributor or a farm winery as defined in §60-1-5a of this code;

(b) Unless otherwise specifically provided by the provisions of this article, for a licensee under this article to acquire, transport, possess for sale, or sell wine other than in the original package;

(c) For a licensee, his or her servants, agents or employees to sell, furnish or give wine to any person less than 21 years of age, or to a mentally incompetent person or person who is physically incapacitated due to the consumption of alcoholic liquor or the use of drugs: *Provided,* That the provisions of section §60-3A-25a of this code shall apply to sales of wine;

(d) For a licensee to permit a person who is less than 18 years of age to sell, furnish or give wine to any person, except as provided for in subsection (g) of this section;

(e) For a supplier or a distributor to sell or deliver any brand of wine purchased or acquired from any source other than the primary source of supply of the wine which granted the distributor the right to sell the brand at wholesale. For the purposes of this article, "primary source of supply" means the vintner of the wine, the importer of a foreign wine who imports the wine into the United States, the owner of a wine at the time it becomes a marketable product, the bottler of a wine or an agent specifically authorized by

any of the above-enumerated persons to make a sale of the wine to a West Virginia distributor: *Provided,* That no retailer shall sell or deliver wine purchased or acquired from any source other than a distributor or farm winery licensed in this state: *Provided, however,* That nothing herein is considered to prohibit sales of convenience between distributors licensed in this state wherein one distributor sells, transfers, or delivers to another distributor a particular brand or brands for sale at wholesale, of which brand or brands the other distributor has been authorized by a licensed supplier to distribute. The commissioner shall promulgate legislative rules necessary to carry out the provision of this subsection;

(f) For a person to violate any rule promulgated by the commissioner under this article;

(g) Nothing in this article, nor any rule or regulation of the commissioner, shall prevent or be considered to prohibit any licensee from employing any person who is at least 18 years of age to serve in any licensee's lawful employment, including the sale of wine or distribution of wine on behalf of a winery, farm winery, farm entity, supplier, or distributor under the provisions of this article. With the prior approval of the commissioner, a licensee may employ persons who are less than 18 years of age but at least 16 years of age: *Provided,* That the person's duties may include the sale of nonintoxicating beer or wine only when directly supervised by a person 21 years of age or older: *Provided, however,* That the authorization to employ persons under 18 years of age shall be clearly indicated on the licensee's license: *Provided, further*, That nothing in this article, nor any rule or regulation of the commissioner, shall prevent or be considered to prohibit any licensee from employing any person who is at least 21 years of age for the ordering and delivery of wine when licensed for the ordering and delivery of wine under the provisions of this article.

§60-8-29. Affidavit of compliance required of distributors and suppliers.

Each applicant for a distributor's license or a supplier's license shall furnish at the time of application an affidavit of compliance with federal and state laws regarding tied house laws, trade practice

requirements, and furnishing things of value requirements set forth in the code and the rules. The commissioner shall suspend the licenses of licensed distributors and suppliers upon 10 days written notice by the commissioner, for failing to pay their taxes to the Tax Commissioner or who are not otherwise in good standing with the commissioner and other state agencies. If the licensed distributors and suppliers fail to pay their taxes or otherwise fail to take corrective actions to put the licensed distributors and suppliers in good standing within 30 days from the date of suspension of the licensee's license, then the commissioner shall revoke the licensee's license pursuant to the requirements of this article.

§60-8-32a. Where wine may be sold and consumed for on-premises consumption.

(a) With prior approval of the commissioner, a Class A wine licensee may sell, serve, and furnish wine for on premises consumption in a legally demarcated area which may include a temporary private wine outdoor dining area or a temporary private wine outdoor street dining area. A temporary private wine outdoor street area shall be approved by the municipal government or county commission in which the licensee operates. The commissioner shall develop and make available an application form to facilitate the purposes of this subsection.

(b) The Class A wine licensee shall submit to a municipality or county commission for the approval of the private wine outdoor dining area or private wine outdoor street dining area and submit to the municipality or county commission a revised floorplan requesting to sell wine, subject to the commissioner's requirements, in an approved and bounded outdoor area. For private wine outdoor street dining or private wine outdoor dining the approved and bounded outdoor area need not be adjacent to the licensee's licensed premises, but in close proximity and under the licensee's control and with right of ingress and egress. For purposes of this section, "close proximity," means an available area within 150 feet of the licensee's licensed premises.

(c) This private wine outdoor dining or private wine outdoor street dining may be operated in conjunction with a private outdoor

dining or private outdoor street dining area set forth in §60-7-8d of this code, and nonintoxicating beer or nonintoxicating craft beer outdoor dining or outdoor street dining set forth in §11-16-9 of this code.

(d) For purposes of this section, "private wine outdoor dining and private wine outdoor street dining" include dining areas that are:

(1) Outside and not served by an HVAC system for air handling services and use outside air;

(2) Open to the air; and

(3) Not enclosed by fixed or temporary walls; however, the commissioner may seasonally approve a partial enclosure with up to three temporary or fixed walls.

Any areas where seating is incorporated inside a permanent building with ambient air through HVAC is not considered outdoor dining pursuant to this subsection.

(e) Class A licensees licensed for on-premises sales shall provide food or a meal along with sealed wine in the original container or a sealed wine growler sales and service as set forth in this section and in §60-8-3 of this code, to a patron who is in-person or in-vehicle while picking up food and sealed wine in the original containers or sealed wine growlers ordered-to-go, subject to verification that the purchasing person is 21 years of age or older, and not visibly, or noticeably intoxicated, and as otherwise specified in this article.

§60-8-34. When retail sales prohibited.

It is unlawful for a retailer, farm winery, wine specialty shop retailer, private wine bed and breakfast, private wine restaurant, or private wine spa licensee, his or her servants, agents, or employees to sell or deliver wine between the hours of 2:00 a.m. and 6:00 a.m. or, it is unlawful for a winery, farm winery, private wine bed and breakfast, private wine restaurant, or private wine spa, his or her servants, agents, or employees to sell wine between the hours of

2:00 a.m. and 1:00 p.m. in any county upon approval as provided for in §7-1-3ss of this code, or between the hours of 2:00 a.m. and 6:00 a.m. on weekdays, Saturdays, and Sundays.

ARTICLE 8A. MANUFACTURE AND SALE OF HARD CIDER.

§60-8A-1. Definition of Hard Cider.

"Hard Cider" means a type of wine that is derived primarily from the fermentation of apples, pears, peaches, honey, or other fruit, or from apple, pear, peach, or other fruit juice concentrate and water; contains no more than 0.64 grams of carbon dioxide per 100 milliliters; contains at least one half of one percent and less than 12 and one half percent alcohol by volume; and is advertised, labeled, offered for sale, or sold, as hard cider or cider containing alcohol, and not as a wine, wine product, or as a substitute for wine.

§60-8A-2. Applicability of other laws and licenses.

(a) Except as stated in this article, all wine licenses and other wine requirements set forth in §60-8-1 *et seq.*, §60-4-3b, and §60-6-2, of this code, shall apply to the manufacture, distribution, or sale of hard cider. Any person or licensee legally authorized to manufacture, distribute, or sell wine may manufacture, distribute, or sell hard cider in the same manner and to the same persons, and subject to the same limitations and conditions, as such license or legal right authorizes him or her to manufacture, distribute, or sell wine. No additional wine license fees shall be charged for the privilege of manufacturing, distributing, or selling hard cider.

(b) Except as stated in this article, all hard cider distributors are bound by all wine distribution requirements set forth in §60-8-1 *et seq.*, §60-4-3b, and §60-6-2, of this code which shall apply to distribution of hard cider. Any person or licensee legally authorized to distribute hard cider may distribute hard cider in the same manner and to the same persons, and subject to the same limitations and conditions, as a license or legal right would authorize him or her to distribute wine. An additional hard cider license fee shall not be charged for the privilege of distributing hard cider.

§60-8A-3. Taxation; reporting; deposits into Agriculture Development Fund; penalties for failure to file returns; application of state tax law; rulemaking authority.

(a) There is hereby levied and imposed on all hard cider sold on and after July 1, 2021, by wineries, farm wineries, and suppliers to distributors, and including all hard cider sold and sent to persons 21 years of age or older who reside in West Virginia from direct shippers, a tax of 22.6 cents per gallon, in like ratio for any partial gallon or other unit of measure: *Provided*, That wineries, farm wineries, and suppliers eligible for federal tax credits in 26 U.S.C. 5041(c)(1) on hard cider are eligible for the credits in this state against the tax on hard cider. In the case of a person who produces not more than 250,000 wine gallons of hard cider during the calendar year, there shall be allowed as a credit against any tax imposed by this section of 5.6 cents per wine gallon on the first 100,000 wine gallons of hard cider which are removed during such year for consumption or sale and which have been produced at qualified facilities in the United States. That credit shall be reduced by one percent for each 1,000 wine gallons of hard cider produced in excess of 150,000 wine gallons of hard cider during the calendar year. For the purposes of this section, the term "wine gallon" means a United States gallon of liquid measure equivalent to the volume of 231 cubic inches. On lesser quantities, the tax shall be paid proportionately (fractions of less than one-tenth gallon being converted to the nearest one-tenth gallon, and five-hundredths gallon being converted to the next full one-tenth gallon). Hard cider is exempt from the liter tax established under §60-8-4 of this code.

(b) The Tax Commissioner shall deposit, at least quarterly, after deducting the amount of any refunds lawfully paid and any administrative fees authorized by this code, the taxes for the hard cider, pursuant to this section, in the Agriculture Development Fund established by §19-2-12 of this code.

(c) Before the 16th day of each month thereafter, every winery, farm winery, supplier, distributor, and direct shipper shall make a written report under oath to the Tax Commissioner and the commissioner showing the identity of the purchasing person, the quantity, label, and alcoholic content of hard cider sold by the

winery, farm winery, and supplier to West Virginia distributors or the direct shipper to persons 21 years of age or older who reside in West Virginia during the preceding month and at the same time shall pay the tax imposed by this article on the hard cider sold to the distributor or to persons 21 years of age or older who reside in West Virginia during the preceding month to the Tax Commissioner.

The reports shall contain other information and be in the form required by the Tax Commissioner. For purposes of this article, the reports required by this section shall be considered tax returns covered by the provisions of §11-10-1 *et seq.* of this code. Failure to timely file the tax returns within five calendar days of the 16th day of each month subjects a winery, farm winery, supplier, distributor, and direct shipper to penalties under §60-8-18 of this code.

(d) No hard cider imported, sold, or distributed in this state or sold and shipped to this state by a direct shipper shall be subject to more than one per-gallon tax on hard cider.

(e) *Administrative procedures*. — Each and every provision of the West Virginia Tax Procedure and Administration Act set forth in § 11-10-1 *et seq.* of this code, applies to the taxes imposed pursuant to this section, except as otherwise expressly provided in this article, with like effect as if that act were applicable only to the taxes imposed by this section and were set forth in extenso in this article.

(f) *Criminal penalties*. — Each and every provision of the West Virginia Tax Crimes and Penalties Act set forth in § 11-9-1 *et seq.* of this code applies to the taxes imposed pursuant to this section with like effect as if that act were applicable only to the taxes imposed pursuant to this article and were set forth in extenso in this article.

(g) The Tax Commissioner may propose legislative rules for legislative approval, pursuant to §29A-3-1 *et seq.* of this code, to implement this section.

§60-8A-4. Fruit sources; phase in; applications.

(a) On and after July 1, 2021, pursuant to §60-3-25 of this code, any farm winery attempting to manufacture hard cider may apply to the Agriculture Commissioner with a copy to the commissioner showing its inability to obtain 75 percent of the apples, pears, peaches, honey, or other fruits necessary to produce its hard cider from within this state. The Agriculture Commissioner may issue a permit to the applicant to import such fruit, honey, or fruit juice concentrate in an amount determined necessary by the Agriculture Commissioner to allow the farm winery to produce hard cider within the percentage established by §60-1-5a of this code.

(b) The burden of proof is on the applicant to show that apples, pears, peaches, honey, or other fruits, of the type normally used by the licensee are not available from any other source within the State of West Virginia. The commissioner shall not consider an application for a permit under this section unless it is accompanied by written findings by the Agriculture Commissioner in support of the application.

(c) Notwithstanding any provision in §60-3-25 of this code, to the contrary, any permit issued under this section is effective for a period of up to three years: *Provided*, That the applicant files an annual statement of necessity, supported by written findings from the Agriculture Commissioner, with the commissioner. After the five-year permit issued pursuant to this section has expired, the applicant shall submit any subsequent application for a permit pursuant to §60-3-25 of this code.

§60-8A-5. Winery or farm winery licensee's authority to manufacture, sell, and provide complimentary samples; growler sales; advertisements; taxes; fees; rulemaking.

(a) *Sales of hard cider*. — A licensed winery or farm winery with its principal place of business or manufacturing facility located in the State of West Virginia may offer hard cider manufactured by the licensed winery or farm winery for retail sale to customers from the winery's or farm winery's licensed premises for consumption off of the licensed premises only in approved and

registered hard cider kegs, bottles, or cans, or also sealed wine growlers for personal consumption and not for resale. A licensed winery or farm winery may not sell, give, or furnish hard cider for consumption on the premises of the principal place of business or manufacturing facility located in the State of West Virginia, except for the limited purpose of complimentary samples as permitted in subsection (b) of this section. "Wine Growler" has the meaning set forth in §60-8-6c(g) of this code.

(b) *Complimentary samples.* — A licensed winery or farm winery with its principal place of business or manufacturing facility located in the State of West Virginia may offer complimentary samples of hard cider manufactured at the winery's or farm winery's principal place of business or manufacturing facility located in the State of West Virginia. The complimentary samples may be no greater than two fluid ounces per sample per patron, and a sampling shall not exceed six complimentary two-fluid ounce samples per patron per day. A licensed winery or farm winery providing complimentary samples shall provide complimentary food items to the patron consuming the complimentary samples; and prior to any sampling, verify, using proper identification, that the patron sampling is 21 years of age or older and that the patron is not noticeably or visibly intoxicated.

(c) *Retail sales.* — Every licensed winery or farm winery under this section shall comply with all the provisions applicable to wine retailers when conducting sales of hard cider and is subject to all applicable requirements and penalties.

(d) *Payment of taxes and fees.* — A licensed winery or farm winery under this section shall pay all taxes and fees required of licensed wine retailers, in addition to any other taxes and fees required, and meet applicable licensing provisions as required by law and by rule of the commissioner.

(e) *Advertising*. — A licensed winery or farm winery may advertise a particular brand or brands of hard cider produced by the licensed winery or farm winery and the price of the hard cider subject to state and federal requirements or restrictions. The advertisement may not encourage intemperance or target minors.

(f) *Growler requirements.* — A licensed winery or farm winery, if offering wine growler filling services, shall meet the filling, labeling, sanitation, and all other wine growler requirements in §60-8-6c of this code.

(g) *Fee*. — There is no additional fee for a licensed winery or farm winery authorized under §60-8-6c of this code, to sell wine growlers, if a winery or farm winery only desires to sell hard cider in the wine growler, and no other wine, then the annual nonprorated and nonrefundable license fee is $50.

§60-8A-6. Rule-making authorization.

The West Virginia Alcoholic Beverage Control Commissioner may propose legislative rules for legislative approval, pursuant to §29A-3-1 *et seq.* of this code, to implement this article.

CHAPTER 61. CRIMES AND THEIR PUNISHMENT.

ARTICLE 8. CRIMES AGAINST CHASTITY, MORALITY, AND DECENCY.

§61-8-27. Unlawful admission of children to dance house, etc.; penalty.

Any proprietor or any person in charge of a dance house, concert saloon, theater, museum, or similar place of amusement, or other place, where wines or spirituous or malt liquors are sold or given away, or any place of entertainment injurious to health or morals who admits or permits to remain therein any minor under the age of 18 years, unless accompanied by his or her parent or guardian, is guilty of a misdemeanor and, on conviction thereof, shall be punished by a fine not exceeding $200: *Provided*, That there is exemption from this prohibition for: (a) A private caterer, private club restaurant, private manufacturer club, private fair and festival, private resort hotel, private hotel, private golf club, private nine-hole golf course, private tennis club, private wedding venue or barn, private outdoor dining and private outdoor street dining, private multi-vendor fair and festival license, private farmers market, private professional sports stadium, and a private multi-sports complex licensed pursuant to §60-7-1 *et seq.* of this code

and in compliance with §60-7-2(f)(11), §60-7-2(h)(4), §60-7-2(i)(8), §60-7-2(j)(7), §60-7-2(k)(8), §60-7-2(l)(8), §60-7-2(m)(7), §60-7-2(n)(7), §60-7-2(o)(8), §60-7-2(p)(8), §60-7-2(q)(12), §60-7-2(r)(8), §60-7-2(s)(9), §60-7-8c(b)(14), §60-7-8d, and §60-8-32a, of this code; or (b) a private club with more than 1,000 members that is in good standing with the Alcohol Beverage Control Commissioner, that has been approved by the Alcohol Beverage Control Commissioner; and which has designated certain seating areas on its licensed premises as nonalcoholic liquor and nonintoxicating beer areas, as noted in the licensee's floorplan, by using a mandatory carding or identification program by which all members or guests being served or sold alcoholic liquors, nonintoxicating beer, or nonintoxicating craft beer are asked and required to provide their proper identification to verify their identity and further that they are of legal drinking age, 21 years of age or older, prior to each sale or service of alcoholic liquors, nonintoxicating beer, or nonintoxicating craft beer.

CHAPTER 10

(S. B. 717 - By Senators Tarr, Boley, Clements, Hamilton, Martin, Roberts, Swope, Sypolt, Baldwin, Jeffries, Stollings, and Unger)

[Passed April 8, 2021; in effect from passage]
[Approved by the Governor on April 15, 2021.]

AN ACT supplementing and amending appropriations of public moneys out of the Treasury in the State Fund, General Revenue, by decreasing an existing item of appropriation and increasing an existing item of appropriation to West Virginia Council for Community and Technical College Education, West Virginia Council for Community and Technical College Education - Control Account, fund 0596, fiscal year 2021, organization 0420, by supplementing and amending appropriations for the fiscal year ending June 30, 2021.

Whereas, The Governor submitted to the Legislature the Executive Budget Document, dated February 10, 2021, which included a statement of the State Fund, General Revenue, setting forth therein the cash balance as of July 1, 2020, and further included the estimate of revenues for the fiscal year 2021, less net appropriation balances forwarded and regular appropriations for the fiscal year 2021; and

Whereas, It appears from the Executive Budget Document, statement of the State Fund, General Revenue, and this legislation, there remains an unappropriated balance in the State Treasury which is available for appropriation during the fiscal year ending June 30, 2021; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending June 30, 2021, to fund 0596, fiscal year 2021, organization 0420, be supplemented and amended by decreasing an existing item of appropriation as follows:

TITLE II – APPROPRIATIONS.

Section 1. Appropriations from general revenue.

WEST VIRGINIA COUNCIL FOR COMMUNITY AND TECHNICAL COLLEGE EDUCATION

84 - West Virginia Council for

Community and Technical College Education –

Control Account

(WV Code Chapter 18B)

Fund 0596 FY 2021 Org 0420

		Appro-priation	**General Revenue Fund**
4	Community College Workforce Development (R)	87800	2,500,000

And, That the total appropriation for the fiscal year ending June 30, 2021, to fund 0596, fiscal year 2021, organization 0420, be supplemented and amended by increasing an existing item of appropriation as follows:

TITLE II – APPROPRIATIONS.

Section 1. Appropriations from general revenue.

WEST VIRGINIA COUNCIL FOR COMMUNITY AND TECHNICAL COLLEGE EDUCATION

84 - West Virginia Council for

Community and Technical College Education –

Control Account

(WV Code Chapter 18B)

Fund 0596 FY 2021 Org 0420

		Appro-priation	General Revenue Fund
1	West Virginia Council for Community And Technical Education (R).....	39200	2,500,000

CHAPTER 11

(Com. Sub. for H. B. 2022 - By Delegates Hanshaw (Mr. Speaker) and Skaff)

[By Request of the Executive]

[Passed April 10, 2021; in effect from passage.]
[Approved by the Governor on April 15, 2021.]

AN ACT making appropriations of public money out of the Treasury in accordance with section 51, article VI of the Constitution.

Be it enacted by the Legislature of West Virginia:

TITLE I – GENERAL PROVISIONS.

Section 1. General policy. – The purpose of this bill is to appropriate money necessary for the economical and efficient discharge of the duties and responsibilities of the state and its agencies during the fiscal year 2022.

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

"Governor" shall mean the Governor of the State of West Virginia.

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

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

The "fiscal year 2022" shall mean the period from July 1, 2021, through June 30, 2022.

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

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

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

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

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

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

"Employee benefits" shall mean social security matching, workers' compensation, unemployment compensation, pension and retirement contributions, public employees insurance matching, personnel fees or any other benefit normally paid by the employer as a direct cost of employment. Should the appropriation be insufficient to cover such costs, the remainder of such cost shall be paid by each spending unit from its "unclassified" appropriation,

or its "current expenses" appropriation or other appropriate appropriation. Each spending unit is hereby authorized and required to make such payments in accordance with the provisions of Article 2, Chapter 11B of the Code.

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

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

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

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

"Current expenses" shall mean operating costs other than personal services and shall not include equipment, repairs and alterations, buildings or lands. Each spending unit shall be responsible for and charged monthly for all postage meter service and shall reimburse the appropriate revolving fund monthly for all

such amounts. Such expenditures shall be considered a current expense.

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

"Repairs and alterations" shall mean routine maintenance and repairs to structures and minor improvements to property which do not increase the capital assets.

"Buildings" shall include new construction and major alteration of existing structures and the improvement of lands and shall include shelter, support, storage, protection or the improvement of a natural condition.

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

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

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

Appropriations classified in any of the above categories shall be expended only for the purposes as defined above and only for the spending units herein designated: *Provided,* That the secretary of each department shall have the authority to transfer within the department those general revenue funds appropriated to the various agencies of the department: *Provided, however,* That no more than five percent of the general revenue funds appropriated to any one agency or board may be transferred to other agencies or boards within the department: and no funds may be transferred to a "personal services and employee benefits" appropriation unless the source funds are also wholly from a "personal services and employee benefits" line, or unless the source funds are from another appropriation that has exclusively funded employment

expenses for at least twelve consecutive months prior to the time of transfer and the position(s) supported by the transferred funds are also permanently transferred to the receiving agency or board within the department: *Provided further,* That the secretary of each department and the director, commissioner, executive secretary, superintendent, chairman or any other agency head not governed by a departmental secretary as established by Chapter 5F of the Code shall have the authority to transfer funds appropriated to "personal services and employee benefits," "current expenses," "repairs and alterations," "equipment," "other assets," "land," and "buildings" to other appropriations within the same account and no funds from other appropriations shall be transferred to the "personal services and employee benefits" or the "unclassified" appropriation except that during Fiscal Year 2022, and upon approval from the State Budget Office, agencies with the appropriation "Salary and Benefits of Cabinet Secretary and Agency Heads" may transfer between this appropriation and the appropriation "Personal Services and Employee Benefits" an amount to cover annualized salaries and employee benefits for the fiscal year ending June 30,2022, as provided by W.V. Code §6-7-2a: *And provided further,* That no authority exists hereunder to transfer funds into appropriations to which no funds are legislatively appropriated: *And provided further,* That if the Legislature consolidates, reorganizes or terminates agencies, boards or functions, within any fiscal year the secretary or other appropriate agency head, or in the case of the termination of a spending unit of the state, the Director of the State Budget Office, in the absence of general law providing otherwise, may transfer the funds formerly appropriated to such agency, board or function, allocating items of appropriation as may be necessary if only part of the item may be allocated, in order to implement such consolidation, reorganization or termination. No funds may be transferred from a Special Revenue Account, dedicated account, capital expenditure account or any other account or fund specifically exempted by the Legislature from transfer, except that the use of the appropriations from the State Road Fund for the office of the Secretary of the Department of Transportation is not a use other than the purpose for which such funds were dedicated and is permitted.

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

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

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

TITLE II – APPROPRIATIONS.

ORDER OF SECTIONS

SECTION 1. Appropriations from general revenue.

SECTION 2. Appropriations from state road fund.

SECTION 3. Appropriations from other funds.

SECTION 4. Appropriations from lottery net profits.

SECTION 5. Appropriations from state excess lottery revenue.

SECTION 6. Appropriations of federal funds.

SECTION 7. Appropriations from federal block grants.

SECTION 8. Awards for claims against the state.

SECTION 9. Appropriations from general revenue surplus accrued.

SECTION 10. Appropriations from lottery net profits surplus accrued.

SECTION 11. Appropriations from state excess lottery revenue surplus accrued.

SECTION 12. Special revenue appropriations.

SECTION 13. State improvement fund appropriations.

SECTION 14. Specific funds and collection accounts.

SECTION 15. Appropriations for refunding erroneous payment.

SECTION 16. Sinking fund deficiencies.

SECTION 17. Appropriations for local governments.

SECTION 18. Total appropriations.

SECTION 19. General school fund.

Section 1. Appropriations from general revenue. – From the State Fund, General Revenue, there are hereby appropriated conditionally upon the fulfillment of the provisions set forth in Article 2, Chapter 11B the following amounts, as itemized, for expenditure during the fiscal year 2022.

LEGISLATIVE

1 -Senate

Fund 0165 FY 2022 Org 2100

	Appro-priation		General Revenue Fund
Compensation of Members (R).....	00300	$	1,010,000
Compensation and Per Diem of Officers and Employees (R)	00500		4,011,332
Current Expenses and Contingent Fund (R)	02100		276,392
Repairs and Alterations (R)	06400		35,000
Computer Supplies (R)	10100		80,000

Computer Systems (R).....	10200	0
Printing Blue Book (R).....	10300	125,000
Expenses of Members (R).....	39900	370,000
BRIM Premium (R)	91300	44,482
Total.....		$ 5,952,206

The appropriations for the Senate for the fiscal year 2021 are to remain in full force and effect and are hereby reappropriated to June 30, 2022. Any balances so reappropriated may be transferred and credited to the fiscal year 2021 accounts.

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

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

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

of the appropriation for Compensation and Per Diem of Officers and Employees or Current Expenses and Contingent Fund of the Senate.

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

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

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

2 -House of Delegates

Fund 0170 FY 2022 Org 2200

Compensation of Members (R).....	00300	$ 3,000,000
Compensation and Per Diem of Officers and Employees (R)	00500	575,000
Current Expenses and Contingent Fund (R)	02100	4,399,031
Expenses of Members (R).....	39900	1,350,000
BRIM Premium (R)	91300	80,000
Total.....		$ 9,404,031

The appropriations for the House of Delegates for the fiscal year 2021 are to remain in full force and effect and are hereby reappropriated to June 30, 2022. Any balances so reappropriated may be transferred and credited to the fiscal year 2021 accounts.

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

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

The Speaker of the House of Delegates 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 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 and payable out of the appropriation for Compensation and Per Diem of Officers and Employees or Current Expenses and Contingent Fund of the House of Delegates.

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

3 -Joint Expenses

(WV Code Chapter 4)

Fund 0175 FY 2022 Org 2300

Joint Committee on Government and Finance (R).....	10400	$ 7,725,138
Legislative Printing (R).....	10500	260,000
Legislative Rule-Making Review Committee (R).....	10600	147,250
Legislative Computer System (R).....	10700	1,447,500
Legislative Fees & Dues (R).....	10701	600,000
BRIM Premium (R)	91300	60,569
Total.....		$ 10,240,457

The appropriations for the Joint Expenses for the fiscal year 2021 are to remain in full force and effect and are hereby reappropriated to June 30, 2022. Any balances reappropriated may be transferred and credited to the fiscal year 2021 accounts.

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

JUDICIAL

4 -Supreme Court –

General Judicial

Fund 0180 FY 2022 Org 2400

Personal Services and Employee Benefits (R).....	00100	$115,126,000
Current Expenses (R).....	13000	19,911,000
Repairs and Alterations (R)	06400	40,000
Equipment (R).....	07000	1,800,000

Military Service Members Court (R)...	09002	300,000
Judges' Retirement System (R).....	11000	742,000
Buildings (R).....	25800	10,000
Other Assets (R).....	69000	200,000
BRIM Premium (R)	91300	834,000
Total.....		$138,963,000

The appropriations to the Supreme Court of Appeals for the fiscal years 2019, 2020 and 2021 are to remain in full force and effect and are hereby reappropriated to June 30, 2022. Any balances so reappropriated may be transferred and credited to the fiscal year 2022 accounts.

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

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

EXECUTIVE

5 -Governor's Office

(WV Code Chapter 5)

Fund 0101 FY 2022 Org 0100

Personal Services and Employee Benefits.....	00100	$ 3,250,758
Current Expenses (R).....	13000	800,000
Repairs and Alterations.....	06400	25,000
National Governors Association.....	12300	60,700
Herbert Henderson Office of Minority Affairs	13400	396,726
Community Food Program	18500	1,000,000
Office of Resiliency (R).....	18600	596,157
BRIM Premium.....	91300	183,645
Total.....		$ 6,312,986

Any unexpended balances remaining in the appropriations for Unclassified (fund 0101, appropriation 09900), Current Expenses (fund 0101, appropriation 13000), and Office of Resiliency (fund 0101, appropriation 18600) at the close of the fiscal year 2021 are hereby reappropriated for expenditure during the fiscal year 2022.

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

6 -Governor's Office –

Custodial Fund

(WV Code Chapter 5)

Fund 0102 FY 2022 Org 0100

Personal Services and Employee Benefits	00100	$	381,293
Current Expenses (R)	13000		183,158
Repairs and Alterations	06400		5,000
Total		$	569,451

Any unexpended balance remaining in the appropriation for Current Expenses (fund 0102, appropriation 13000) at the close of the fiscal year 2021 is hereby reappropriated for expenditure during the fiscal year 2022.

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

7 -Governor's Office –

Civil Contingent Fund

(WV Code Chapter 5)

Fund 0105 FY 2022 Org 0100

Public Health Emergency Response Fund	21201	$	0

Milton Flood Wall (R)	75701	3,500,000
Total		$ 3,500,000

Any unexpended balances remaining in the appropriations for Business and Economic Development Stimulus – Surplus (fund 0105, appropriation 08400), Civil Contingent Fund – Total (fund 0105, appropriation 11400), 2012 Natural Disasters – Surplus (fund 0105, appropriation 13500), Civil Contingent Fund – Total – Surplus (fund 0105, appropriation 23800), Civil Contingent Fund – Surplus (fund 0105, appropriation 26300), Business and Economic Development Stimulus (fund 0105, appropriation 58600), Civil Contingent Fund (fund 0105, appropriation 61400), Milton Flood Wall (fund 0105, appropriation 75701), Milton Flood Wall – Surplus (fund 0105, appropriation 75799), Natural Disasters – Surplus (fund 0105, appropriation 76400), and Local Economic Development Assistance (fund 0105, appropriation 81900) at the close of the fiscal year 2021 are hereby reappropriated for expenditure during the fiscal year 2022.

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

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

8 -Auditor's Office –

General Administration

(WV Code Chapter 12)

Fund 0116 FY 2022 Org 1200

Personal Services and Employee Benefits	00100	$ 2,377,589
Current Expenses (R)	13000	13,429

BRIM Premium	91300	12,077
Total		$ 2,403,095

Any unexpended balance remaining in the appropriation for Current Expenses (fund 0116, appropriation 13000) at the close of the fiscal year 2021 is hereby reappropriated for expenditure during the fiscal year 2022.

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

9 -Treasurer's Office

(WV Code Chapter 12)

Fund 0126 FY 2022 Org 1300

Personal Services and Employee Benefits	00100	$ 2,570,242
Unclassified	09900	31,463
Current Expenses (R)	13000	572,684
Abandoned Property Program	11800	41,794
Other Assets	69000	10,000
ABLE Program	69201	150,000
BRIM Premium	91300	59,169
Total		$ 3,435,352

Any unexpended balance remaining in the appropriation for Current Expenses (fund 0126, appropriation 13000) at the close of the fiscal year 2021 is hereby reappropriated for expenditure during the fiscal year 2022.

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

10 -Department of Agriculture

(WV Code Chapter 19)

Fund 0131 FY 2022 Org 1400

Personal Services and Employee Benefits	00100	$ 6,298,229
Current Expenses (R)	13000	848,115
Animal Identification Program	03900	131,942
State Farm Museum	05500	87,759
Gypsy Moth Program (R)	11900	1,003,440
WV Farmers Market	12801	150,467
Black Fly Control	13700	453,698
HEMP Program	13701	350,000
Donated Foods Program	36300	45,000
Veterans to Agriculture Program (R)	36301	255,624
Predator Control (R)	47000	176,400
Bee Research	69100	70,634
Microbiology Program	78500	99,828
Moorefield Agriculture Center	78600	975,284
Chesapeake Bay Watershed	83000	112,427
Livestock Care Standards Board	84300	8,820
BRIM Premium	91300	138,905
State FFA-FHA Camp and Conference Center	94101	738,554
Threat Preparedness	94200	73,122
WV Food Banks	96900	426,000
Senior's Farmers' Market Nutrition Coupon Program	97000	55,835
Total		$ 12,500,083

Any unexpended balances remaining in the appropriations for Gypsy Moth Program (fund 0131, appropriation 11900), Current Expenses (fund 0131, appropriation 13000), Veterans to Agriculture Program (fund 0131, appropriation 36301), Predator Control (fund 0131, appropriation 47000), and Agricultural Disaster and Mitigation Needs – Surplus (fund 0131, appropriation 85000) at the close of the fiscal year 2021 are hereby reappropriated for expenditure during the fiscal year 2022.

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

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

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

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

11 -West Virginia Conservation Agency

(WV Code Chapter 19)

Fund 0132 FY 2022 Org 1400

Personal Services and Employee Benefits	00100	$ 794,191
Unclassified	09900	77,059
Current Expenses (R)	13000	317,848
Soil Conservation Projects (R)	12000	9,799,709
BRIM Premium	91300	34,428
Total		$ 11,023,235

Any unexpended balances remaining in the appropriations for Soil Conservation Projects (fund 0132, appropriation 12000) and Current Expenses (fund 0132, appropriation 13000) at the close of the fiscal year 2021 are hereby reappropriated for expenditure during the fiscal year 2022.

12 -Department of Agriculture –

Meat Inspection Fund

(WV Code Chapter 19)

Fund 0135 FY 2022 Org 1400

Personal Services and Employee Benefits	00100	$	668,030
Unclassified	09900		7,090
Current Expenses	13000		82,605
Total		$	757,725

Any part or all of this appropriation may be transferred to a special revenue fund for the purpose of matching federal funds for the above-named program.

13 -Department of Agriculture –

Agricultural Awards Fund

(WV Code Chapter 19)

Fund 0136 FY 2022 Org 1400

Programs and Awards for 4-H Clubs and FFA/FHA	57700	$	15,000
Commissioner's Awards and Programs	73700		39,250
Total		$	54,250

14 -Department of Agriculture –

West Virginia Agricultural Land Protection Authority

(WV Code Chapter 8A)

Fund 0607 FY 2022 Org 1400

Personal Services and Employee Benefits	00100	$	99,547
Unclassified	09900		950
Total		$	100,497

15 -Attorney General

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

Fund 0150 FY 2022 Org 1500

Personal Services and Employee Benefits (R)	00100	$	2,818,788

Unclassified (R)	09900	24,428
Current Expenses (R)	13000	687,795
Repairs and Alterations	06400	1,000
Equipment	07000	1,000
Criminal Convictions and Habeas Corpus Appeals (R)	26000	946,078
Better Government Bureau	74000	279,412
BRIM Premium	91300	120,654
Total		$ 4,879,155

Any unexpended balances remaining in the appropriations for Personal Services and Employee Benefits (fund 0150, appropriation 00100), Unclassified (fund 0150, appropriation 09900), Current Expenses (fund 0150, appropriation 13000), Criminal Convictions and Habeas Corpus Appeals (fund 0150, appropriation 26000), and Agency Client Revolving Liquidity Pool (fund 0150, appropriation 36200) at the close of the fiscal year 2021 are hereby reappropriated for expenditure during the fiscal year 2022.

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

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

16 -Secretary of State

(WV Code Chapters 3, 5, and 59)

Fund 0155 FY 2022 Org 1600

Personal Services and Employee Benefits	00100	$	118,794
Unclassified (R)	09900		8,352
Current Expenses (R)	13000		781,584
BRIM Premium	91300		34,500
Total		$	943,230

Any unexpended balances remaining in the appropriations for Unclassified (fund 0155, appropriation 09900) and Current Expenses (fund 0155, appropriation 13000) at the close of the fiscal year 2021 are hereby reappropriated for expenditure during the fiscal year 2022.

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

17 -State Election Commission

(WV Code Chapter 3)

Fund 0160 FY 2022 Org 1601

Personal Services and Employee Benefits	00100	$	2,477
Unclassified	09900		75
Current Expenses	13000		4,956
Total		$	7,508

DEPARTMENT OF ADMINISTRATION

18 -Department of Administration –

Office of the Secretary

(WV Code Chapter 5F)

Fund 0186 FY 2022 Org 0201

Personal Services and Employee Benefits	00100	$	438,584

Salary and Benefits of Cabinet Secretary and Agency Heads	00201	168,000
Unclassified	09900	9,177
Current Expenses	13000	85,009
Repairs and Alterations	06400	100
Equipment	07000	1,000
Financial Advisor (R)	30400	27,546
Lease Rental Payments	51600	14,850,000
Design-Build Board	54000	4,000
Other Assets	69000	100
BRIM Premium	91300	6,736
Total		$ 15,590,252

Any unexpended balance remaining in the appropriation for Financial Advisor (fund 0186, appropriation 30400) at the close of the fiscal year 2021 is hereby reappropriated for expenditure during the fiscal year 2022.

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

19 -Consolidated Public Retirement Board

(WV Code Chapter 5)

Fund 0195 FY 2022 Org 0205

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

20 -Division of Finance

(WV Code Chapter 5A)

Fund 0203 FY 2022 Org 0209

Personal Services and Employee Benefits	00100	$ 64,696
Unclassified	09900	1,400
Current Expenses	13000	60,721
GAAP Project (R)	12500	612,666
BRIM Premium	91300	13,517
Total		$ 753,000

Any unexpended balance remaining in the appropriation for GAAP Project (fund 0203, appropriation 12500) at the close of the fiscal year 2021 is hereby reappropriated for expenditure during the fiscal year 2022.

21 -Division of General Services

(WV Code Chapter 5A)

Fund 0230 FY 2022 Org 0211

Personal Services and Employee Benefits	00100	$ 2,722,499
Unclassified	09900	20,000
Current Expenses	13000	1,148,349
Repairs and Alterations	06400	500
Equipment	07000	5,000
Fire Service Fee	12600	14,000
Preservation and Maintenance of Statues and Monuments on Capitol Grounds	37100	68,000
Capital Outlay, Repairs and Equipment (R)	58900	23,660,888
BRIM Premium	91300	129,983
Total		$ 27,769,219

Any unexpended balances remaining in the appropriations for Buildings (fund 0230, appropriation 25800), Capital Outlay, Repairs and Equipment (fund 0230, appropriation 58900), Capital Outlay, Repairs and Equipment – Surplus (fund 0230, appropriation 67700), and Land (fund 0230, appropriation 73000)

at the close of the fiscal year 2021 are hereby reappropriated for expenditure during the fiscal year 2022.

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

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

22 -Division of Purchasing

(WV Code Chapter 5A)

Fund 0210 FY 2022 Org 0213

Personal Services and Employee Benefits	00100	$ 1,039,163
Unclassified	09900	144
Current Expenses	13000	1,285
Repairs and Alterations	06400	200
BRIM Premium	91300	6,922
Total		$ 1,047,714

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

23 -Travel Management

(WV Code Chapter 5A)

Fund 0615 FY 2022 Org 0215

Personal Services and Employee Benefits	00100	$ 802,363
Unclassified	09900	12,032

Current Expenses	13000	440,247
Repairs and Alterations	06400	1,000
Equipment	07000	5,000
Buildings (R)	25800	100
Other Assets	69000	100
Total		$ 1,260,842

Any unexpended balance remaining in the appropriation for Buildings (fund 0615, appropriation 25800) at the close of the fiscal year 2021 is hereby reappropriated for expenditure during the fiscal year 2022.

24 -Commission on Uniform State Laws

(WV Code Chapter 29)

Fund 0214 FY 2022 Org 0217

Current Expenses	13000	$ 45,550

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

25 -West Virginia Public Employees Grievance Board

(WV Code Chapter 6C)

Fund 0220 FY 2022 Org 0219

Personal Services and Employee Benefits	00100	$ 969,627
Unclassified	09900	1,000
Current Expenses	13000	145,295
Equipment	07000	50
BRIM Premium	91300	8,740
Total		$ 1,124,712

26 -Ethics Commission

(WV Code Chapter 6B)

Fund 0223 FY 2022 Org 0220

Personal Services and Employee Benefits	00100	$ 606,969
Unclassified	09900	2,200
Current Expenses	13000	104,501
Repairs and Alterations	06400	500
Other Assets	69000	100
BRIM Premium	91300	5,574
Total		$ 719,844

27 -Public Defender Services

(WV Code Chapter 29)

Fund 0226 FY 2022 Org 0221

Personal Services and Employee Benefits	00100	$ 1,780,483
Salary and Benefits of Cabinet Secretary and Agency Heads	00201	119,000
Unclassified	09900	333,300
Current Expenses	13000	12,740
Public Defender Corporations	35200	21,188,435
Appointed Counsel Fees (R)	78800	12,691,113
BRIM Premium	91300	10,575
Total		$ 36,135,646

Any unexpended balance remaining in the appropriation for Appointed Counsel Fees (fund 0226, appropriation 78800) at the close of the fiscal year 2021 is hereby reappropriated for expenditure during the fiscal year 2022.

The director shall have the authority to transfer funds from the appropriation to Public Defender Corporations (fund 0226, appropriation 35200) to Appointed Counsel Fees (fund 0226, appropriation 78800).

28 -Committee for the Purchase of

Commodities and Services from the Handicapped

(WV Code Chapter 5A)

Fund 0233 FY 2022 Org 0224

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

29 -Public Employees Insurance Agency

(WV Code Chapter 5)

Fund 0200 FY 2022 Org 0225

PEIA Subsidy	80100	$	21,000,000

The Division of Highways, Division of Motor Vehicles, Public Service Commission and other departments, bureaus, divisions, or commissions operating from special revenue funds and/or federal funds shall pay their proportionate share of the public employees health insurance cost for their respective divisions.

The above appropriation for PEIA Subsidy (fund 0200, appropriation 80100) may be transferred to a special revenue fund and shall be utilized by the West Virginia Public Employees Insurance Agency for the purposes of offsetting benefit changes to offset the aggregate premium cost-sharing percentage requirements between employers and employees. Such amount shall not be included in the calculation of the plan year aggregate premium cost-sharing percentages between employers and employees.

30 -West Virginia Prosecuting Attorneys Institute

(WV Code Chapter 7)

Fund 0557 FY 2022 Org 0228

Forensic Medical Examinations (R)	68300	$	141,579
Federal Funds/Grant Match (R)	74900		105,074
Total		$	246,653

Any unexpended balances remaining in the appropriations for Forensic Medical Examinations (fund 0557, appropriation 68300) and Federal Funds/Grant Match (fund 0557, appropriation 74900) at the close of the fiscal year 2021 are hereby reappropriated for expenditure during the fiscal year 2022.

31 -Real Estate Division

(WV Code Chapter 5A)

Fund 0610 FY 2022 Org 0233

Personal Services and Employee Benefits	00100	$	681,101
Unclassified	09900		1,000
Current Expenses	13000		137,381
Repairs and Alterations	06400		100
Equipment	07000		2,500
BRIM Premium	91300		9,784
Total		$	831,866

DEPARTMENT OF COMMERCE

32 -Division of Forestry

(WV Code Chapter 19)

Fund 0250 FY 2022 Org 0305

Personal Services and Employee Benefits	00100	$	4,579,781
Salary and Benefits of Cabinet Secretary and Agency Heads	00201		111,674
Unclassified	09900		21,435
Current Expenses	13000		555,963
Repairs and Alterations	06400		80,000
Equipment (R)	07000		2,061
BRIM Premium	91300		98,754
Total		$	5,449,668

Any unexpended balance remaining in the appropriation for Equipment (fund 0250, appropriation 07000) at the close of the fiscal year 2021 is hereby reappropriated for expenditure during the fiscal year 2022.

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

33 -Geological and Economic Survey

(WV Code Chapter 29)

Fund 0253 FY 2022 Org 0306

Personal Services and Employee Benefits	00100	$ 1,575,695
Salary and Benefits of Cabinet Secretary and Agency Heads	00201	112,753
Unclassified	09900	27,678
Current Expenses	13000	51,524
Repairs and Alterations	06400	968
Mineral Mapping System (R)	20700	1,090,234
BRIM Premium	91300	24,486
Total		$ 2,883,338

Any unexpended balance remaining in the appropriation for Mineral Mapping System (fund 0253, appropriation 20700) at the close of the fiscal year 2021 is hereby reappropriated for expenditure during the fiscal year 2022.

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 -Division of Labor

(WV Code Chapters 21 and 47)

Fund 0260 FY 2022 Org 0308

Personal Services and Employee Benefits	00100	$ 1,537,028
Current Expenses	13000	227,000
Repairs and Alterations	06400	28,000
Equipment	07000	15,000
BRIM Premium	91300	8,500
Total		$ 1,815,528

35 -Division of Natural Resources

(WV Code Chapter 20)

Fund 0265 FY 2022 Org 0310

Personal Services and Employee Benefits	00100	$ 16,868,737
Salary and Benefits of Cabinet Secretary and Agency Heads	00201	113,188
Unclassified	09900	184,711
Current Expenses	13000	196,302
Repairs and Alterations	06400	100
Equipment	07000	100
Buildings (R)	25800	100
Capital Outlay – Parks (R)	28800	3,000,000
Litter Control Conservation Officers	56400	146,986
Upper Mud River Flood Control	65400	164,791
Other Assets	69000	100
Land (R)	73000	100
Law Enforcement	80600	2,552,994
BRIM Premium	91300	45,141
Total		$ 23,273,350

Any unexpended balances remaining in the appropriations for Buildings (fund 0265, appropriation 25800), Capital Outlay – Parks (fund 0265, appropriation 28800), Land (fund 0265, appropriation 73000), and State Park Improvements – Surplus (fund 0265, appropriation 76300) at the close of the fiscal year 2021 are hereby reappropriated for expenditure during the fiscal year 2022.

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

36 -Division of Miners' Health, Safety and Training

(WV Code Chapter 22)

Fund 0277 FY 2022 Org 0314

Personal Services and Employee Benefits	00100	$ 9,375,243
Unclassified	09900	111,016
Current Expenses	13000	1,396,141
Coal Dust and Rock Dust Sampling	27000	487,752
BRIM Premium	91300	80,668
Total		$ 11,450,820

Included in the above appropriation for Current Expenses (fund 0277, appropriation 13000) is $500,000 to be used for coal mine training activities at an established mine training facility in southern West Virginia.

37 -Board of Coal Mine Health and Safety

(WV Code Chapter 22)

Fund 0280 FY 2022 Org 0319

Personal Services and Employee Benefits	00100	$ 233,981
Unclassified	09900	3,480
Current Expenses	13000	118,138
Total		$ 355,599

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

38 -WorkForce West Virginia

(WV Code Chapter 23)

Fund 0572 FY 2022 Org 0323

Personal Services and Employee Benefits	00100	$	51,433
Unclassified	09900		593
Current Expenses	13000		6,447
Total		$	58,473

39 -Department of Commerce –

Office of the Secretary

(WV Code Chapter 19)

Fund 0606 FY 2022 Org 0327

Personal Services and Employee Benefits	00100	$	465,122
Salary and Benefits of Cabinet Secretary and Agency Heads	00201		153,750
Unclassified	09900		1,490
Current Expenses	13000		131,847
Directed Transfer	70000		500,000
Total		$	1,252,209

The above appropriation for Directed Transfer (fund 0606, appropriation 70000) shall be transferred to the Broadband Enhancement Fund (fund 3013).

40 -State Board of Rehabilitation –

Division of Rehabilitation Services

(WV Code Chapter 18)

Fund 0310 FY 2022 Org 0932

Personal Services and Employee Benefits	00100	$	11,459,977
Current Expenses	13000		558,815
Independent Living Services	00900		429,418

Workshop Development	16300	1,817,427
Supported Employment		
Extended Services.....	20600	77,960
Ron Yost Personal Assistance Fund	40700	333,828
Employment Attendant Care Program.	59800	131,575
BRIM Premium.....	91300	77,464
Total.....		$ 14,886,464

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

DEPARTMENT OF TOURISM

41 -Department of Tourism –

Office of the Secretary

(WV Code Chapter 5B)

Fund 0246 FY 2022 Org 0304

Tourism – Brand Promotion (R).....	61803	$ 3,000,000
Tourism – Public Relations (R)	61804	1,500,000
Tourism – Events		
and Sponsorships (R).....	61805	500,000
Tourism – Industry Development (R)	61806	500,000
State Parks		
and Recreation Advertising (R).....	61900	1,500,000
Total.....		$ 7,000,000

Any unexpended balances remaining in the appropriations for Tourism – Brand Promotion (fund 0246, appropriation 61803), Tourism – Public Relations (fund 0246, appropriation 61804), Tourism – Events and Sponsorships (fund 0246, appropriation 61805), Tourism – Industry Development (fund 0246,

appropriation 61806), and State Parks and Recreation Advertising (fund 0246, appropriation 61900) at the close of the fiscal year 2021 are hereby reappropriated for expenditure during the fiscal year 2022.

The Secretary of the Department of Tourism shall have the authority to transfer between the above items of appropriation.

DEPARTMENT OF ECONOMIC DEVELOPMENT

42 -Department of Economic Development –

Office of the Secretary

(WV Code Chapter 5B)

Fund 0256 FY 2022 Org 0307

Personal Services and Employee Benefits	00100	$ 4,500,420
Unclassified	09900	108,055
Current Expenses	13000	3,681,460
National Youth Science Camp	13200	241,570
Local Economic Development Partnerships (R)	13300	1,250,000
ARC Assessment	13600	152,585
Guaranteed Work Force Grant (R)	24200	976,579
Directed Transfer	70000	0
Mainstreet Program	79400	167,467
Local Economic Development Assistance (R)	81900	0
BRIM Premium	91300	3,157
Hatfield McCoy Recreational Trail	96000	198,415
Total		$ 11,279,708

Any unexpended balances remaining in the appropriations for Sales and Marketing Enhancement – Surplus (fund 0256, appropriation 05099, Unclassified – Surplus (fund 0256, appropriation 09700), Partnership Grants (fund 0256, appropriation 13100), Local Economic Development Partnerships (fund 0256, appropriation 13300), Guaranteed Work Force Grant

(fund 0256, appropriation 24200), Industrial Park Assistance (fund 0256, appropriation 48000), and Local Economic Development Assistance (fund 0256, appropriation 81900) at the close of the fiscal year 2021 are hereby reappropriated for expenditure during the fiscal year 2022.

From the above appropriation for Current Expenses (fund 0256, appropriation 13000), $50,000 shall be used for the Western Potomac Economic Partnership and $100,000 shall be used for Advantage Valley.

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

43 -Department of Economic Development –

Office of Energy

(WV Code Chapter 5B)

Fund 0612 FY 2022 Org 0328

Personal Services and Employee Benefits	00100	$ 238,299
Unclassified	09900	12,395
Current Expenses	13000	1,031,015
BRIM Premium	91300	3,894
Total		$ 1,285,603

From the above appropriation for Current Expenses (fund 0612, appropriation 13000), $548,915 is for West Virginia University and $298,915 is for Southern West Virginia Community

and Technical College for the Mine Training and Energy Technologies Academy.

DEPARTMENT OF EDUCATION

44 -State Board of Education –

School Lunch Program

(WV Code Chapters 18 and 18A)

Fund 0303 FY 2022 Org 0402

Personal Services and Employee Benefits	00100	$ 348,042
Current Expenses	13000	2,118,865
Total		$ 2,466,907

45 -State Board of Education –

State Department of Education

(WV Code Chapters 18 and 18A)

Fund 0313 FY 2022 Org 0402

Personal Services and Employee Benefits	00100	$ 4,598,523
Unclassified (R)	09900	420,000
Current Expenses (R)	13000	4,580,000
Teachers' Retirement Savings Realized	09500	34,747,000
Center for Professional Development (R)	11500	150,000
Increased Enrollment	14000	22,800,000
Safe Schools	14300	4,550,424
Attendance Incentive Bonus (R)	15001	2,056,717
National Teacher Certification (R)	16100	300,000
Jobs & Hope – Childhood Drug Prevention Education	21901	5,000,000

Allowance for County Transfer	26400	119,087
Technology Repair and Modernization	29800	951,003
HVAC Technicians	35500	516,791
Early Retirement Notification Incentive	36600	300,000
MATH Program	36800	336,532
Assessment Programs (R)	39600	3,865,593
Benedum Professional Development Collaborative (R).....	42700	429,775
Governor's Honors Academy (R).....	47800	1,059,270
21st Century Fellows	50700	274,899
English as a Second Language.....	52800	96,000
Teacher Reimbursement	57300	297,188
Hospitality Training	60000	272,775
Youth in Government	61600	100,000
High Acuity Special Needs (R).....	63400	1,500,000
Foreign Student Education.....	63600	100,294
State Board of Education Administrative Costs	68400	277,403
IT Academy (R)	72100	500,000
Early Literacy Program.....	75600	5,705,624
School Based Truancy Prevention (R)	78101	2,032,238
Communities in Schools (R).....	78103	4,900,000
Mastery Based Education	78104	125,000
Mountain State Digital Literacy Program	86401	415,500
21st Century Learners (R).....	88600	1,756,470
BRIM Premium.....	91300	342,859
21st Century Assessment and Professional Development	93100	2,006,978
21st Century Technology Infrastructure Network Tools and Support (R)	93300	9,636,586
Special Olympic Games.....	96600	25,000
Educational Program Allowance	99600	516,250
Total		$117,661,779

The above appropriations include funding for the state board of education and their executive office.

From the above appropriation for Current Expenses (fund 0313, appropriation 13000), $2,000,000 shall be used for the Department of Education Child Nutrition Program – Non-traditional Child Hunger Solutions.

Any unexpended balances remaining in the appropriations for Unclassified (fund 0313, appropriation 09900), Current Expenses (fund 0313, appropriation 13000), Center for Professional Development (fund 0313, appropriation 11500), Attendance Incentive Bonus (fund 0313, appropriation 15001), National Teacher Certification (fund 0313, appropriation 16100), Assessment Programs (fund 0313, appropriation 39600), Benedum Professional Development Collaborative (fund 0313, appropriation 42700), Governor's Honors Academy (fund 0313, appropriation 47800), High Acuity Special Needs (fund 0313, appropriation 63400), IT Academy (fund 0313, appropriation 72100), School Based Truancy Prevention (fund 0313, appropriation 78101), Communities in Schools (fund 0313, appropriation 78103), 21st Century Learners (fund 0313, appropriation 88600), and 21st Century Technology Infrastructure Network Tools and Support (fund 0313, appropriation 93300) at the close of the fiscal year 2021 are hereby reappropriated for expenditure during the fiscal year 2022.

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).

From the above appropriation for Unclassified (fund 0313, appropriation 09900), $120,000 shall be for assisting low income students with AP and CLEP exam fees.

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

Plans shall be submitted to the State Superintendent of Schools to be considered for funding.

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

46 -State Board of Education –

Aid for Exceptional Children

(WV Code Chapters 18 and 18A)

Fund 0314 FY 2022 Org 0402

Special Education – Counties	15900	$ 7,271,757
Special Education – Institutions.....	16000	3,968,631
Education of Juveniles Held in Predispositional Juvenile Detention Centers	30200	662,300
Education of Institutionalized Juveniles and Adults (R).....	47200	20,520,405
Total.....		$ 32,423,093

Any unexpended balance remaining in the appropriation for Education of Institutionalized Juveniles and Adults (fund 0314, appropriation 47200) at the close of the fiscal year 2021 is hereby reappropriated for expenditure during the fiscal year 2022.

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

47 -State Board of Education –

State Aid to Schools

(WV Code Chapters 18 and 18A)

Fund 0317 FY 2022 Org 0402

Other Current Expenses	02200	$ 161,739,678
Advanced Placement	05300	670,151
Professional Educators	15100	869,082,617
Service Personnel	15200	291,835,429
Fixed Charges	15300	101,669,823
Transportation	15400	69,037,827
Improved Instructional Programs	15600	51,974,496
Professional Student Support Services	65500	59,608,039
21st Century Strategic Technology Learning Growth	93600	26,443,757
Teacher and Leader Induction	93601	5,478,876
Basic Foundation Allowances		1,637,540,693
Less Local Share		(476,260,743)
Adjustments		(3,254,844)
Total Basic State Aid		1,158,025,106
Public Employees' Insurance Matching	01200	206,938,256
Teachers' Retirement System	01900	60,784,000
School Building Authority (R)	45300	24,000,000
Retirement Systems – Unfunded Liability	77500	302,844,000
Total		$1,752,591,362

Any unexpended balances remaining in the appropriations for School Building Authority (fund 0317, appropriation 45300) at the close of the fiscal year 2021 are hereby reappropriated for expenditure during the fiscal year 2022.

48 -State Board of Education –

Vocational Division

(WV Code Chapters 18 and 18A)

Fund 0390 FY 2022 Org 0402

Personal Services and Employee Benefits	00100	$ 1,339,713

Unclassified	09900	268,800
Current Expenses	13000	883,106
Wood Products – Forestry Vocational Program	14600	81,252
Albert Yanni Vocational Program	14700	132,123
Vocational Aid	14800	24,443,275
Adult Basic Education	14900	5,365,530
Jobs & Hope	14902	0
Program Modernization	30500	884,313
High School Equivalency Diploma Testing (R)	72600	803,397
FFA Grant Awards	83900	11,496
Pre-Engineering Academy Program	84000	265,294
Total		$ 34,478,299

Any unexpended balances remaining in the appropriations for Jim's Dream (fund 0390, appropriation 14901) and High School Equivalency Diploma Testing (fund 0390, appropriation 72600) at the close of the fiscal year 2021 are hereby reappropriated for expenditure during the fiscal year 2022.

49 -State Board of Education –

West Virginia Schools for the Deaf and the Blind

(WV Code Chapters 18, and 18A)

Fund 0320 FY 2022 Org 0403

Personal Services and Employee Benefits	00100	$ 11,379,675
Unclassified	09900	110,000
Current Expenses	13000	2,250,696
Repairs and Alterations	06400	164,675
Equipment	07000	77,000
Buildings (R)	25800	45,000
Capital Outlay and Maintenance (R)	75500	520,000
BRIM Premium	91300	130,842
Total		$ 14,677,888

Any unexpended balances remaining in the appropriations for Buildings (fund 0320, appropriation 25800) and Capital Outlay and Maintenance (fund 0320, appropriation 75500) at the close of the fiscal year 2021 are hereby reappropriated for expenditure during the fiscal year 2022.

DEPARTMENT OF ARTS, CULTURE, AND HISTORY

50 -Division of Culture and History

(WV Code Chapter 29)

Fund 0293 FY 2022 Org 0432

Personal Services and Employee Benefits	00100	$ 3,343,387
Salary and Benefits of Cabinet Secretary and Agency Heads	00201	120,106
Unclassified (R)	09900	28,483
Current Expenses	13000	610,843
Repairs and Alterations	06400	1,000
Equipment	07000	1
WV Humanities Council	16800	250,000
Buildings (R)	25800	1
Other Assets	69000	1
Educational Enhancements	69500	573,500
Land (R)	73000	1
Culture and History Programming	73200	231,573
Capital Outlay and Maintenance (R)	75500	19,600
Historical Highway Marker Program	84400	57,548
BRIM Premium	91300	39,337
Total		$ 5,275,381

Any unexpended balances remaining in the appropriations for Unclassified (fund 0293, appropriation 09900), Buildings (fund 0293, appropriation 25800), Capital Outlay, Repairs and Equipment (fund 0293, appropriation 58900), Capital Improvements – Surplus (fund 0293, appropriation 66100), Capital Outlay, Repairs and Equipment – Surplus (fund 0293, appropriation 67700), Land (fund 0293, appropriation 73000), and

Capital Outlay and Maintenance (fund 0293, appropriation 75500) at the close of the fiscal year 2021 are hereby reappropriated for expenditure during the fiscal year 2022.

The Current Expenses appropriation includes funding for the arts funds, department programming funds, grants, fairs and festivals and Camp Washington Carver and shall be expended only upon authorization of the Division of Culture and History and in accordance with the provisions of Chapter 5A, Article 3, and Chapter 12 of the Code.

From the above appropriation for Educational Enhancements (fund 0293, appropriation 69500), $500,000 shall be used for Save the Children and $73,500 shall be used for the Clay Center.

51 -Library Commission

(WV Code Chapter 10)

Fund 0296 FY 2022 Org 0433

Personal Services and Employee Benefits	00100	$	1,070,613
Salary and Benefits of Cabinet Secretary and Agency Heads	00201		112,000
Current Expenses	13000		139,624
Repairs and Alterations	06400		6,500
Services to Blind & Handicapped	18100		161,717
BRIM Premium	91300		18,205
Total		$	1,508,659

52 -Educational Broadcasting Authority

(WV Code Chapter 10)

Fund 0300 FY 2022 Org 0439

Personal Services and Employee Benefits	00100	$	3,144,106
Salary and Benefits of Cabinet Secretary and Agency Heads	00201		120,106
Current Expenses	13000		118,344

Mountain Stage	24900	295,500
Capital Outlay and Maintenance (R)	75500	49,250
BRIM Premium	91300	47,727
Total		$ 3,775,033

Any unexpended balance remaining in the appropriation for Capital Outlay and Maintenance (fund 0300, appropriation 75500) at the close of the fiscal year 2021 is hereby reappropriated for expenditure during the fiscal year 2022.

DEPARTMENT OF ENVIRONMENTAL PROTECTION

53 -Environmental Quality Board

(WV Code Chapter 20)

Fund 0270 FY 2022 Org 0311

Personal Services and Employee Benefits	00100	$ 82,539
Current Expenses	13000	28,453
Repairs and Alterations	06400	800
Equipment	07000	500
Other Assets	69000	400
BRIM Premium	91300	791
Total		$ 113,483

54 -Division of Environmental Protection

(WV Code Chapter 22)

Fund 0273 FY 2022 Org 0313

Personal Services and Employee Benefits	00100	$ 4,005,460
Salary and Benefits of Cabinet Secretary and Agency Heads	00201	168,000
Unclassified	09900	0
Current Expenses	13000	85,816
Repairs and Alterations	06400	0
Water Resources Protection and Management	06800	576,278

Dam Safety	60700	237,824
West Virginia Stream Partners Program	63700	77,396
Meth Lab Cleanup	65600	91,888
WV Contributions to River Commissions	77600	148,485
Office of Water Resources Non-Enforcement Activity	85500	1,009,855
Total		$ 6,401,002

55 -Air Quality Board

(WV Code Chapter 16)

Fund 0550 FY 2022 Org 0325

Personal Services and Employee Benefits	00100	$ 60,737
Current Expenses	13000	11,612
Repairs and Alterations	06400	800
Equipment	07000	400
Other Assets	69000	200
BRIM Premium	91300	2,304
Total		$ 76,053

DEPARTMENT OF HEALTH AND HUMAN RESOURCES

56 -Department of Health and Human Resources –

Office of the Secretary

(WV Code Chapter 5F)

Fund 0400 FY 2022 Org 0501

Personal Services and Employee Benefits	00100	$ 384,638
Unclassified	09900	6,459
Current Expenses	13000	50,613
Commission for the Deaf and Hard of Hearing	70400	225,534
Total		$ 667,244

Any unexpended balance remaining in the appropriation for the Women's Commission (fund 0400, appropriation 19100) at the close of the fiscal year 2021 is hereby reappropriated for expenditure during the fiscal year 2022.

57 -Division of Health –

Central Office

(WV Code Chapter 16)

Fund 0407 FY 2022 Org 0506

Personal Services and Employee Benefits	00100	$ 12,544,773
Unclassified	09900	671,795
Current Expenses	13000	5,388,459
Chief Medical Examiner (R)	04500	8,714,647
State Aid for Local and Basic Public Health Services	18400	14,160,490
Safe Drinking Water Program (R)	18700	1,891,323
Women, Infants and Children	21000	38,621
Early Intervention	22300	8,134,060
Cancer Registry	22500	206,306
Office of Drug Control Policy (R)	35401	545,153
Statewide EMS Program Support (R)	38300	1,695,271
Office of Medical Cannabis (R)	42001	1,459,989
Black Lung Clinics	46700	170,885
Vaccine for Children	55100	338,235
Tuberculosis Control	55300	329,256
Maternal and Child Health Clinics, Clinicians Medical Contracts and Fees (R)	57500	5,892,707
Epidemiology Support	62600	1,497,192
Primary Care Support	62800	1,223,666
Sexual Assault Intervention and Prevention	72300	800,000
Health Right Free Clinics	72700	4,250,000
Capital Outlay and Maintenance (R)	75500	70,000
Healthy Lifestyles	77800	890,000

Maternal Mortality Review.....	83400	49,933
Diabetes Education and Prevention	87300	97,125
BRIM Premium.....	91300	169,791
State Trauma and Emergency Care System.....	91800	1,921,322
WVU Charleston Poison Control Hotline	94400	712,942
Total.....		$ 73,863,941

Any unexpended balances remaining in the appropriations for Chief Medical Examiner (fund 0407, appropriation 04500), Safe Drinking Water Program (fund 0407, appropriation 18700), Office of Drug Control Policy (fund 0407, appropriation 35401), Office of Drug Control Policy – Surplus (fund 0407, appropriation 35402), Statewide EMS Program Support (fund 0407, appropriation 38300), Office of Medical Cannabis (fund 0407, appropriation 42001), Medical Cannabis Surplus (fund 0407, appropriation 42099), Maternal and Child Health Clinics, Clinicians and Medical Contracts and Fees (fund 0407, appropriation 57500), Capital Outlay, Repairs and Equipment Surplus (fund 0525, appropriation 67700), Capital Outlay and Maintenance (fund 0407, appropriation 75500), Emergency Response Entities – Special Projects (fund 0407, appropriation 82200), and Tobacco Education Program (fund 0407, appropriation 90600) at the close of the fiscal year 2021 are hereby reappropriated for expenditure during the fiscal year 2022.

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

From the above appropriation for Current Expenses (fund 0407, appropriation 13000), an amount not less than $100,000 is for the West Virginia Cancer Coalition; $50,000 shall be expended for the West Virginia Aids Coalition; $100,000 is for Adolescent Immunization Education; $73,065 is for informal dispute

resolution relating to nursing home administrative appeals; and $1,000,000 shall be used for the administration of the Telestroke program.

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

58 -Consolidated Medical Services Fund

(WV Code Chapter 16)

Fund 0525 FY 2022 Org 0506

Personal Services and Employee Benefits	00100	$ 1,632,588
Current Expenses	13000	14,113
Jobs & Hope	14902	0
Behavioral Health Program (R)	21900	71,671,175
Institutional Facilities Operations (R)	33500	147,729,180
Substance Abuse Continuum of Care (R)	35400	1,840,000
Capital Outlay and Maintenance (R)	75500	950,000
BRIM Premium	91300	1,296,098
Total		$225,133,154

Any unexpended balances remaining in the appropriations for Jim's Dream (fund 0525, appropriation 14901), Behavioral Health Program (fund 0525, appropriation 21900), Institutional Facilities Operations (fund 0525, appropriation 33500), Substance Abuse Continuum of Care (fund 0525, appropriation 35400), and Capital Outlay and Maintenance (fund 0525, appropriation 75500) at the close of the fiscal year 2021 are hereby reappropriated for expenditure during the fiscal year 2022.

Notwithstanding the provisions of Title I, section three of this bill, the secretary of the Department of Health and Human Resources shall have the authority to transfer funds within the

above appropriations: *Provided,* That no more than five percent of the funds appropriated to one appropriation may be transferred to other appropriations: *Provided, however,* That no funds from other appropriations shall be transferred to the personal services and employee benefits appropriation.

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

The above appropriation for Institutional Facilities Operations (fund 0525, appropriation 33500) contains prior year salary increases due to the Hartley court order in the amount of $2,202,013 for William R. Sharpe Jr. Hospital, and $2,067,984 for Mildred Mitchel-Bateman Hospital.

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

Additional funds have been appropriated in fund 5156, fiscal year 2022, organization 0506, for the operation of the institutional facilities. The secretary of the Department of Health and Human Resources is authorized to utilize up to ten percent of the funds from the Institutional Facilities Operations appropriation to facilitate cost effective and cost saving services at the community level.

59 -Division of Health –

West Virginia Drinking Water Treatment

(WV Code Chapter 16)

Fund 0561 FY 2022 Org 0506

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

The above appropriation for Drinking Water Treatment Revolving Fund – Transfer shall be transferred to the West Virginia

Drinking Water Treatment Revolving Fund or appropriate bank depository and the Drinking Water Treatment Revolving – Administrative Expense Fund as provided by Chapter 16 of the Code.

60 -Human Rights Commission

(WV Code Chapter 5)

Fund 0416 FY 2022 Org 0510

Personal Services and Employee Benefits	00100	$ 961,553
Salary and Benefits of Cabinet Secretary and Agency Heads	00201	112,000
Unclassified	09900	4,024
Current Expenses	13000	331,304
BRIM Premium	91300	10,764
Total		$ 1,419,645

61 -Division of Human Services

(WV Code Chapters 9, 48, and 49)

Fund 0403 FY 2022 Org 0511

Personal Services and Employee Benefits	00100	$ 50,630,531
Salary and Benefits of Cabinet Secretary and Agency Heads	00201	87,031
Unclassified	09900	5,688,944
Current Expenses	13000	11,772,050
Child Care Development	14400	3,102,718
Medical Services	18900	318,512,213
Social Services	19500	226,138,785
Family Preservation Program	19600	1,565,000
Family Resource Networks	27400	1,762,464
Domestic Violence Legal Services Fund	38400	400,000
James “Tiger” Morton Catastrophic Illness Fund	45500	18,664
I/DD Waiver	46600	108,541,736

Child Protective Services		
Case Workers	46800	27,843,073
Title XIX Waiver for Seniors	53300	13,593,620
WV Teaching Hospitals		
Tertiary/Safety Net	54700	6,356,000
In-Home Family Education	68800	1,000,000
WV Works Separate State Program	69800	135,000
Child Support Enforcement	70500	6,458,806
Temporary Assistance for Needy Families/		
Maintenance of Effort	70700	25,819,096
Child Care –		
Maintenance of Effort Match	70800	5,693,743
Grants for Licensed Domestic Violence		
Programs and Statewide Prevention	75000	2,500,000
Capital Outlay and Maintenance (R)	75500	11,875
Community Based Services		
and Pilot Programs for Youth	75900	1,000,000
Medical Services Administrative Costs	78900	43,568,141
Traumatic Brain Injury Waiver	83500	800,000
Indigent Burials (R)	85100	1,550,000
CHIP Administrative Costs	85601	700,000
CHIP Services	85602	6,390,665
BRIM Premium	91300	892,642
Rural Hospitals Under 150 Beds	94000	2,596,000
Children's Trust Fund – Transfer	95100	220,000
PATH	95400	7,162,452
Total		$ 882,511,249

Any unexpended balances remaining in the appropriations for Capital Outlay and Maintenance (fund 0403, appropriation 75500) and Indigent Burials (fund 0403, appropriation 85100) at the close of the fiscal year 2021 are hereby reappropriated for expenditure during the fiscal year 2022.

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

other appropriations: *Provided, however,* That no funds from other appropriations shall be transferred to the personal services and employee benefits appropriation.

The secretary shall have authority to expend funds for the educational costs of those children residing in out-of-state placements, excluding the costs of special education programs.

Included in the above appropriation for Social Services (fund 0403, appropriation 19500) is funding for continuing education requirements relating to the practice of social work.

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

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

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

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

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

Grants for Licensed Domestic Violence Programs and Statewide Prevention (fund 0403, appropriation 75000), shall be distributed according to the formula established by the Family Protection Services Board.

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

DEPARTMENT OF HOMELAND SECURITY

62 -Department of Homeland Security –

Office of the Secretary

(WV Code Chapter 5F)

Fund 0430 FY 2022 Org 0601

Personal Services and Employee Benefits	00100	$	516,426
Salary and Benefits of Cabinet Secretary and Agency Heads	00201		168,000
Unclassified (R)	09900		30,000
Current Expenses	13000		145,886
Repairs and Alterations	06400		500
Equipment	07000		500
Fusion Center (R)	46900		2,683,140
Other Assets	69000		500
Directed Transfer	70000		32,000
BRIM Premium	91300		22,563
WV Fire and EMS Survivor Benefit (R)	93900		200,000
Total		$	3,799,515

Any unexpended balances remaining in the appropriations for Unclassified (fund 0430, appropriation 09900), Fusion Center (fund 0430, appropriation 46900), Justice Reinvestment Training – Surplus (fund 0430, appropriation 69900), WV Fire and EMS Survivor Benefit (fund 0430, appropriation 93900), and Homeland State Security Administrative Agency (fund 0430, appropriation

95300) at the close of the fiscal year 2021 are hereby reappropriated for expenditure during the fiscal year 2022.

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

63 -Division of Emergency Management

(WV Code Chapter 15)

Fund 0443 FY 2022 Org 0606

Personal Services and Employee Benefits	00100	$ 2,128,644
Salary and Benefits of Cabinet Secretary and Agency Heads	00201	61,250
Unclassified	09900	21,022
Current Expenses	13000	51,065
Repairs and Alterations	06400	600
Radiological Emergency Preparedness	55400	17,052
SIRN….	55401	600,000
Federal Funds/Grant Match (R)	74900	1,409,145
Mine and Industrial Accident Rapid Response Call Center	78100	469,911
Early Warning Flood System (R)	87700	1,284,448
BRIM Premium	91300	96,529
Total		$ 6,139,666

Any unexpended balances remaining in the appropriations for Federal Funds/Grant Match (fund 0443, appropriation 74900), Early Warning Flood System (fund 0443, appropriation 87700), and Disaster Mitigation (fund 0443, appropriation 95200) at the close of the fiscal year 2021 are hereby reappropriated for expenditure during the fiscal year 2022.

64 -Division of Corrections and Rehabilitation –

West Virginia Parole Board

(WV Code Chapter 62)

Fund 0440 FY 2022 Org 0608

Personal Services and Employee Benefits	00100	$	307,843
Unclassified	09900		10,000
Current Expenses	13000		334,440
Salaries of Members of West Virginia Parole Board	22700		707,056
BRIM Premium	91300		6,149
Total		$	1,365,488

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

65 -Division of Corrections and Rehabilitation –

Central Office

(WV Code Chapter 15A)

Fund 0446 FY 2022 Org 0608

Personal Services and Employee Benefits	00100	$	450,577
Salary and Benefits of Cabinet Secretary and Agency Heads	00201		126,000
Current Expenses	13000		2,400
Total		$	578,977

66 -Division of Corrections and Rehabilitation –

Correctional Units

(WV Code Chapter 15A)

Fund 0450 FY 2022 Org 0608

Employee Benefits	01000	$	1,258,136

Unclassified	09900	1,578,800
Current Expenses (R)	13000	52,016,936
Children's Protection Act (R)	09000	838,437
Facilities Planning and Administration (R)	38600	1,274,200
Charleston Correctional Center	45600	3,400,402
Beckley Correctional Center	49000	2,518,874
Anthony Correctional Center	50400	6,096,779
Huttonsville Correctional Center	51400	21,697,029
Northern Correctional Center	53400	7,899,965
Inmate Medical Expenses (R)	53500	21,226,064
Pruntytown Correctional Center	54300	8,562,705
Corrections Academy	56900	1,925,980
Information Technology Services	59901	2,759,052
Martinsburg Correctional Center	66300	4,348,990
Parole Services	68600	5,775,564
Special Services	68700	5,694,768
Investigative Services	71600	3,394,070
Capital Outlay and Maintenance (R)	75500	2,000,000
Salem Correctional Center	77400	11,305,381
McDowell County Correctional Center	79000	2,542,590
Stevens Correctional Center	79100	7,863,195
Parkersburg Correctional Center	82800	3,927,845
St. Mary's Correctional Center	88100	14,497,534
Denmar Correctional Center	88200	5,189,043
Ohio County Correctional Center	88300	2,147,492
Mt. Olive Correctional Complex	88800	22,297,226
Lakin Correctional Center	89600	10,711,864
BRIM Premium	91300	2,527,657
Total		$237,276,578

Any unexpended balances remaining in the appropriations for Children's Protection Act (fund 0450, appropriation 09000), Unclassified – Surplus (fund 0450, appropriation 09700), Current Expenses (fund 0450, appropriation 13000), Facilities Planning and Administration (fund 0450, appropriation 38600), Inmate Medical Expenses (fund 0450, appropriation 53500), Capital Improvements – Surplus (fund 0450, appropriation 66100), Capital

Outlay, Repairs and Equipment – Surplus (fund 0450, appropriation 67700), Capital Outlay and Maintenance (fund 0450, appropriation 75500), Security System Improvements – Surplus (fund 0450, appropriation 75501), and Roof Repairs and Mechanical System Upgrades (fund 0450, appropriation 75502) at the close of the fiscal year 2021 are hereby reappropriated for expenditure during the fiscal year 2022.

The Commissioner of Corrections and Rehabilitation shall have the authority to transfer between appropriations.

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

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

67 -Division of Corrections and Rehabilitation –

Bureau of Juvenile Services

(WV Code Chapter 15A)

Fund 0570 FY 2022 Org 0608

Statewide Reporting Centers.....	26200	$ 6,758,529
Robert L. Shell Juvenile Center.....	26700	2,519,068
Resident Medical Expenses (R).....	53501	3,604,999
Central Office.....	70100	1,713,291
Capital Outlay and Maintenance (R) ...	75500	250,000
Gene Spadaro Juvenile Center.....	79300	2,659,469
BRIM Premium.....	91300	115,967
Kenneth Honey Rubenstein Juvenile Center (R).....	98000	5,717,712
Vicki Douglas Juvenile Center	98100	2,389,494
Northern Regional Juvenile Center.....	98200	2,876,302
Lorrie Yeager Jr. Juvenile Center.....	98300	2,422,880
Sam Perdue Juvenile Center	98400	2,614,497

Tiger Morton Center	98500	2,633,060
Donald R. Kuhn Juvenile Center	98600	5,060,657
J.M. "Chick" Buckbee Juvenile Center	98700	2,527,617
Total		$ 43,863,542

Any unexpended balances remaining in the appropriations for Resident Medical Expenses (fund 0570, appropriation 53501), Capital Outlay and Maintenance (fund 0570, appropriation 75500), Roof Repairs and Mechanical System Upgrades (fund 0570, appropriation 75502), and Kenneth Honey Rubenstein Juvenile Center (fund 0570, appropriation 98000) at the close of the fiscal year 2021 are hereby reappropriated for expenditure during the fiscal year 2022.

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

68 -West Virginia State Police

(WV Code Chapter 15)

Fund 0453 FY 2022 Org 0612

Personal Services and Employee Benefits	00100	$ 62,115,935
Salary and Benefits of Cabinet Secretary and Agency Heads	00201	139,300
Children's Protection Act	09000	1,009,529
Current Expenses	13000	10,384,394
Repairs and Alterations	06400	450,523
Trooper Class	52100	3,207,832
Barracks Lease Payments	55600	237,898
Communications and Other Equipment (R)	55800	1,070,968
Trooper Retirement Fund	60500	9,592,923
Handgun Administration Expense	74700	77,892
Capital Outlay and Maintenance (R)	75500	250,000

Retirement Systems – Unfunded Liability	77500	17,798,000
Automated Fingerprint Identification System	89800	2,211,693
BRIM Premium	91300	5,743,921
Total		$ 114,290,808

Any unexpended balances remaining in the appropriations for Communications and Other Equipment (fund 0453, appropriation 55800) and Capital Outlay and Maintenance (fund 0453, appropriation 75500) at the close of the fiscal year 2021 are hereby reappropriated for expenditure during the fiscal year 2022.

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.

69 -Fire Commission

(WV Code Chapter 29)

Fund 0436 FY 2022 Org 0619

Current Expenses	13000	$ 63,061

70 -Division of Protective Services

(WV Code Chapter 5F)

Fund 0585 FY 2022 Org 0622

Personal Services and Employee Benefits	00100	$ 3,029,459
Unclassified (R)	09900	21,991
Current Expenses	13000	422,981
Repairs and Alterations	06400	8,500
Equipment (R)	07000	64,171
BRIM Premium	91300	32,602
Total		$ 3,579,704

Any unexpended balances remaining in the appropriations for Equipment (fund 0585, appropriation 07000) and Unclassified (fund 0585, appropriation 09900) at the close of the fiscal year 2021 are hereby reappropriated for expenditure during the fiscal year 2022.

71 -Division of Justice and Community Services

(WV Code Chapter 15)

Fund 0546 FY 2022 Org 0623

Personal Services and Employee Benefits	00100	$ 570,979
Current Expenses	13000	233,360
Repairs and Alterations	06400	1,804
Child Advocacy Centers (R)	45800	2,206,954
Community Corrections (R)	56100	4,595,222
Statistical Analysis Program	59700	49,819
Sexual Assault Forensic Examination Commission (R)	71400	77,525
Qualitative Analysis and Training for Youth Services (R)	76200	136,278
Law Enforcement Professional Standards	83800	164,272
Justice Reinvestment Initiative (R)	89501	2,332,101
BRIM Premium	91300	2,123
Total		$ 10,370,437

Any unexpended balances remaining in the appropriations for Child Advocacy Centers (fund 0546, appropriation 45800), Community Corrections (fund 0546, appropriation 56100), Sexual Assault Forensic Examination Commission (fund 0546 appropriation 71400), Qualitative Analysis and Training for Youth Services (fund 0546, appropriation 76200), and Justice Reinvestment Initiative (fund 0546, appropriation 89501) at the close of the fiscal year 2021 are hereby reappropriated for expenditure during the fiscal year 2022.

From the above appropriation for Current Expenses (fund 0546, appropriation 13000), $100,000 shall be used for Court Appointed Special Advocates.

From the above appropriation for Child Advocacy Centers (fund 0546, appropriation 45800), the division may retain an amount not to exceed four percent of the appropriation for administrative purposes.

72 -Division of Administrative Services

(WV Code Chapter 15A)

Fund 0619 FY 2022 Org 0623

Personal Services and Employee Benefits	00100	$ 4,629,723
Current Expenses	13000	605,000
Total		$ 5,234,723

DEPARTMENT OF REVENUE

73 -Office of the Secretary

(WV Code Chapter 11)

Fund 0465 FY 2022 Org 0701

Personal Services and Employee Benefits	00100	$ 348,906
Salary and Benefits of Cabinet Secretary and Agency Heads	00201	168,000
Unclassified	09900	437
Current Expenses	13000	81,594
Repairs and Alterations	06400	1,262
Equipment	07000	8,000
Other Assets	69000	500
Total		$ 608,699

Any unexpended balance remaining in the appropriation for Unclassified – Total (fund 0465, appropriation 09600) at the close

of the fiscal year 2021 is hereby reappropriated for expenditure during the fiscal year 2022.

74 -Tax Division

(WV Code Chapter 11)

Fund 0470 FY 2022 Org 0702

Personal Services and Employee Benefits (R)	00100	$ 18,136,041
Salary and Benefits of Cabinet Secretary and Agency Heads	00201	136,500
Unclassified (R)	09900	174,578
Current Expenses (R)	13000	5,823,635
Repairs and Alterations	06400	10,150
Equipment	07000	54,850
Tax Technology Upgrade	09400	3,700,000
Multi State Tax Commission	65300	77,958
Other Assets	69000	10,000
BRIM Premium	91300	15,579
Total		$ 28,139,291

Any unexpended balances remaining in the appropriations for Personal Services and Employee Benefits (fund 0470, appropriation 00100), Unclassified (fund 0470, appropriation 09900), Current Expenses (fund 0470, appropriation 13000), and Integrated Tax Assessment System (fund 0470, appropriation 29200) at the close of the fiscal year 2021 are hereby reappropriated for expenditure during the fiscal year 2022.

75 -State Budget Office

(WV Code Chapter 11B)

Fund 0595 FY 2022 Org 0703

Personal Services and Employee Benefits	00100	$ 794,942
Unclassified (R)	09900	9,200

Current Expenses	13000		119,449
Total		$	923,591

Any unexpended balance remaining in the appropriation for Unclassified (fund 0595, appropriation 09900) at the close of the fiscal year 2021 is hereby reappropriated for expenditure during the fiscal year 2022.

76 -West Virginia Office of Tax Appeals

(WV Code Chapter 11)

Fund 0593 FY 2022 Org 0709

Personal Services and Employee Benefits	00100	$	452,106
Unclassified	09900		5,255
Current Expenses (R)	13000		93,022
BRIM Premium	91300		3,062
Total		$	553,445

Any unexpended balance remaining in the appropriation for Current Expenses (fund 0593, appropriation 13000) at the close of the fiscal year 2021 is hereby reappropriated for expenditure during the fiscal year 2022.

77 -Division of Professional and Occupational Licenses –

State Athletic Commission

(WV Code Chapter 29)

Fund 0523 FY 2022 Org 0933

Personal Services and Employee Benefits	00100	$	7,200
Current Expenses	13000		29,611
Total		$	36,811

DEPARTMENT OF TRANSPORTATION

78 -State Rail Authority

(WV Code Chapter 29)

Fund 0506 FY 2022 Org 0804

Personal Services and Employee Benefits	00100	$	361,627
Current Expenses	13000		287,707
Other Assets (R)	69000		1,270,019
BRIM Premium	91300		201,541
Total		$	2,120,894

Any unexpended balance remaining in the appropriation for Other Assets (fund 0506, appropriation 69000) at the close of the fiscal year 2021 is hereby reappropriated for expenditure during the fiscal year 2022.

79 -Division of Public Transit

(WV Code Chapter 17)

Fund 0510 FY 2022 Org 0805

Equipment (R)	07000	$	25,000
Current Expenses (R)	13000		2,137,989
Buildings	25800		50,000
Other Assets (R)	69000		50,000
Total		$	2,262,989

Any unexpended balances remaining in the appropriations for Equipment (fund 0510, appropriation 07000), Current Expenses (fund 0510, appropriation 13000), Buildings (fund 0510, appropriation 25800), and Other Assets (fund 0510, appropriation 69000) at the close of the fiscal year 2021 are hereby reappropriated for expenditure during the fiscal year 2022.

80 -Aeronautics Commission

(WV Code Chapter 29)

Fund 0582 FY 2022 Org 0807

Personal Services and Employee Benefits	00100	$ 223,740
Current Expenses (R)	13000	591,839
Repairs and Alterations	06400	100
BRIM Premium	91300	4,438
Total		$ 820,117

Any unexpended balance remaining in the appropriation for Current Expenses (fund 0582, appropriation 13000) at the close of the fiscal year 2021 is hereby reappropriated for expenditure during the fiscal year 2022.

DEPARTMENT OF VETERANS' ASSISTANCE

81 -Department of Veterans' Assistance

(WV Code Chapter 9A)

Fund 0456 FY 2022 Org 0613

Personal Services and Employee Benefits	00100	$ 1,931,772
Salary and Benefits of Cabinet Secretary and Agency Heads	00201	110,880
Unclassified	09900	20,000
Current Expenses	13000	161,450
Repairs and Alterations	06400	5,000
Veterans' Field Offices	22800	405,550
Buildings (R)	25800	7,000,000
Veterans' Nursing Home (R)	28600	6,861,472
Veterans' Toll Free Assistance Line	32800	2,015
Veterans' Reeducation Assistance (R)	32900	40,000
Veterans' Grant Program (R)	34200	560,000
Veterans' Grave Markers	47300	10,000
Veterans' Cemetery	80800	389,215
BRIM Premium	91300	50,000
Total		$ 17,547,354

Any unexpended balances remaining in the appropriations for Buildings – Surplus (fund 0456, appropriation #####), Veterans' Nursing Home (fund 0456, appropriation 28600), Veterans' Reeducation Assistance (fund 0456, appropriation 32900), Veterans' Grant Program (fund 0456, appropriation 34200), Veterans' Bonus – Surplus (fund 0456, appropriation 34400), and Educational Opportunities for Children of Deceased Veterans (fund 0456, appropriation 85400) at the close of the fiscal year 2021 are hereby reappropriated for expenditure during the fiscal year 2022.

82 -Department of Veterans' Assistance –

Veterans' Home

(WV Code Chapter 9A)

Fund 0460 FY 2022 Org 0618

Personal Services and Employee Benefits	00100	$ 1,217,096
Current Expenses (R)	13000	46,759
Veterans Outreach Programs	61700	200,740
Total		$ 1,464,595

Any unexpended balance remaining in the appropriation for Current Expenses (fund 0460, appropriation 13000) at the close of fiscal year 2021 is hereby reappropriated for expenditure during the fiscal year 2022.

BUREAU OF SENIOR SERVICES

83 -Bureau of Senior Services

(WV Code Chapter 29)

Fund 0420 FY 2022 Org 0508

Current Expenses	13000	$ 0
Transfer to Division of Human Services for Health Care and Title XIX Waiver for Senior Citizens	53900	29,950,955
Total		$ 29,950,955

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

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

WEST VIRGINIA COUNCIL FOR COMMUNITY AND TECHNICAL COLLEGE EDUCATION

84 -West Virginia Council for

Community and Technical College Education –

Control Account

(WV Code Chapter 18B)

Fund 0596 FY 2022 Org 0420

West Virginia Council for Community and Technical Education (R)	39200	$ 727,871
Transit Training Partnership	78300	34,293
Community College Workforce Development (R)	87800	2,786,925
College Transition Program	88700	278,222
West Virginia Advance Workforce Development (R)	89300	3,118,960
Technical Program Development (R) ..	89400	1,800,735
WV Invests Grant Program (R)	89401	7,034,748
Total		$ 15,781,754

Any unexpended balances remaining in the appropriations for West Virginia Council for Community and Technical Education (fund 0596, appropriation 39200), Capital Improvements – Surplus (fund 0596, appropriation 66100), Community College Workforce Development (fund 0596, appropriation 87800), West Virginia Advance Workforce Development (fund 0596, appropriation 89300), Technical Program Development (fund 0596,

appropriation 89400), and WV Invests Grant Program (fund 0596, appropriation 89401) at the close of the fiscal year 2021 are hereby reappropriated for expenditure during the fiscal year 2022.

85 -Mountwest Community and Technical College

(WV Code Chapter 18B)

Fund 0599 FY 2022 Org 0444

Mountwest Community and Technical College	48700	$	6,391,967

86 -New River Community and Technical College

(WV Code Chapter 18B)

Fund 0600 FY 2022 Org 0445

New River Community and Technical College	35800	$	5,776,913

87 -Pierpont Community and Technical College

(WV Code Chapter 18B)

Fund 0597 FY 2022 Org 0446

Pierpont Community and Technical College	93000	$	7,820,129

88 -Blue Ridge Community and Technical College

(WV Code Chapter 18B)

Fund 0601 FY 2022 Org 0447

Blue Ridge Community and Technical College	88500	$	7,713,379

89 -West Virginia University at Parkersburg

(WV Code Chapter 18B)

Fund 0351 FY 2022 Org 0464

West Virginia University – Parkersburg	47100	$ 10,164,495

90 -Southern West Virginia Community and Technical College

(WV Code Chapter 18B)

Fund 0380 FY 2022 Org 0487

Southern West Virginia Community and Technical College	44600	$ 8,118,196

91 -West Virginia Northern Community and Technical College

(WV Code Chapter 18B)

Fund 0383 FY 2022 Org 0489

West Virginia Northern Community and Technical College	44700	$ 7,176,538

92 -Eastern West Virginia Community and Technical College

(WV Code Chapter 18B)

Fund 0587 FY 2022 Org 0492

Eastern West Virginia Community and Technical College	41200	$ 2,147,213

93 -BridgeValley Community and Technical College

(WV Code Chapter 18B)

Fund 0618 FY 2022 Org 0493

BridgeValley Community and Technical College	71700	$ 7,977,329

HIGHER EDUCATION POLICY COMMISSION

94 -Higher Education Policy Commission –

Administration –

Control Account

(WV Code Chapter 18B)

Fund 0589 FY 2022 Org 0441

Personal Services and Employee Benefits	00100	$ 2,669,502
Current Expenses	13000	1,096,902
RHI Program and Site Support – RHEP Program Administration	03700	80,000
Mental Health Provider Loan Repayment (R)	11301	330,000
Higher Education Grant Program	16400	40,619,864
Tuition Contract Program (R)	16500	1,225,120
Underwood-Smith Scholarship Program-Student Awards	16700	628,349
Facilities Planning and Administration	38600	1,760,254
Higher Education System Initiatives	48801	1,630,000
PROMISE Scholarship – Transfer	80000	18,500,000
HEAPS Grant Program (R)	86700	5,014,728
Health Professionals' Student Loan Program	86701	547,470
BRIM Premium	91300	17,817
Total		$ 74,120,006

Any unexpended balances remaining in the appropriations for Tuition Contract Program (fund 0589, appropriation 16500), HEAPS Grant Program (fund 0589, appropriation 86700), Health Professionals' Student Loan Program (fund 0589, appropriation 86701), Mental Health Provider Loan Repayment (fund 0589, appropriation 11301), RHI Program and Site Support – RHEP Program Administration (fund 0589, 03700) at the close of the fiscal year 2021 are hereby reappropriated for expenditure during the fiscal year 2022.

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

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

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

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

95 -West Virginia University –

School of Medicine

Medical School Fund

(WV Code Chapter 18B)

Fund 0343 FY 2022 Org 0463

WVU School of Health Science – Eastern Division	05600	$ 2,201,822
WVU – School of Health Sciences	17400	14,830,524
WVU – School of Health Sciences – Charleston Division	17500	2,252,410
Rural Health Outreach Programs (R)	37700	164,517
West Virginia University School of Medicine BRIM Subsidy	46000	1,203,087
Total		$ 20,652,360

Any unexpended balance remaining in the appropriation for Rural Health Outreach Programs (fund 0343, appropriation 37700) at the close of fiscal year 2021 is hereby reappropriated for expenditure during the fiscal year 2022.

96 -West Virginia University –

General Administrative Fund

(WV Code Chapter 18B)

Fund 0344 FY 2022 Org 0463

West Virginia University	45900	$ 79,017,960
Jackson's Mill (R).....	46100	491,458
West Virginia University Institute of Technology.....	47900	8,020,938
State Priorities – Brownfield Professional Development (R).....	53100	316,556
Energy Express (R).....	86100	382,935
West Virginia University – Potomac State	99400	4,512,711
Total.....		$ 92,742,558

Any unexpended balances remaining in the appropriations for Jackson's Mill (fund 0344, appropriation 46100), State Priorities – Brownfield Professional Development (fund 0344, appropriation 53100), and Energy Express (fund 0344, appropriation 86100) at the close of fiscal year 2021 are hereby reappropriated for expenditure during the fiscal year 2022.

97 -Marshall University –

School of Medicine

(WV Code Chapter 18B)

Fund 0347 FY 2022 Org 0471

Marshall Medical School	17300	$ 12,051,542

Rural Health Outreach Programs (R)....	37700	156,022
Forensic Lab (R)	37701	227,415
Center for Rural Health (R)	37702	157,096
Marshall University Medical School		
BRIM Subsidy	44900	872,612
Total.....		$ 13,464,687

Any unexpended balances remaining in the appropriations for Rural Health Outreach Program (fund 0347, appropriation 37700), Forensic Lab (fund 0347, appropriation 37701), and Center for Rural Health (fund 0347, appropriation 37702) at the close of the fiscal year 2021 are hereby reappropriated for expenditure during the fiscal year 2022.

98 -Marshall University –

General Administration Fund

(WV Code Chapter 18B)

Fund 0348 FY 2022 Org 0471

Marshall University	44800	$ 36,761,199
Luke Lee Listening Language		
and Learning Lab (R).....	44801	149,015
Vista E-Learning (R).....	51900	229,019
State Priorities – Brownfield		
Professional Development (R).....	53100	309,606
Marshall University Graduate		
College Writing Project (R).....	80700	25,412
WV Autism Training Center (R)	93200	1,808,381
Total.....		$ 39,282,632

Any unexpended balances remaining in the appropriations for Luke Lee Listening Language and Learning Lab (fund 0348, appropriation 44801), Vista E-Learning (fund 0348, appropriation 51900), State Priorities – Brownfield Professional Development (fund 0348, appropriation 53100), Marshall University Graduate College Writing Project (fund 0348, appropriation 80700), and WV Autism Training Center (fund 0348, appropriation 93200) at

the close of the fiscal year 2021 are hereby reappropriated for expenditure during the fiscal year 2022.

99 -West Virginia School of Osteopathic Medicine

(WV Code Chapter 18B)

Fund 0336 FY 2022 Org 0476

West Virginia School of Osteopathic Medicine	17200	$ 8,746,107
Rural Health Outreach Programs (R)	37700	166,111
West Virginia School of Osteopathic Medicine BRIM Subsidy	40300	153,405
Rural Health Initiative – Medical Schools Support	58100	397,592
Total		$ 9,463,215

Any unexpended balance remaining in the appropriation for Rural Health Outreach Programs (fund 0336, appropriation 37700) at the close of fiscal year 2021 is hereby reappropriated for expenditure during the fiscal year 2022.

100 -Bluefield State College

(WV Code Chapter 18B)

Fund 0354 FY 2022 Org 0482

Bluefield State College	40800	$ 6,287,473

101 -Concord University

(WV Code Chapter 18B)

Fund 0357 FY 2022 Org 0483

Concord University	41000	$ 10,319,269

102 -Fairmont State University

(WV Code Chapter 18B)

Fund 0360 FY 2022 Org 0484

Fairmont State University	41400	$ 18,600,341

103 -Glenville State College

(WV Code Chapter 18B)

Fund 0363 FY 2022 Org 0485

Glenville State College	42800	$ 6,350,238

104 -Shepherd University

(WV Code Chapter 18B)

Fund 0366 FY 2022 Org 0486

Shepherd University.....	43200	$ 12,493,572

105 -West Liberty University

(WV Code Chapter 18B)

Fund 0370 FY 2022 Org 0488

West Liberty University.....	43900	$ 8,966,122

106 -West Virginia State University

(WV Code Chapter 18B)

Fund 0373 FY 2022 Org 0490

West Virginia State University	44100	$ 11,172,374
West Virginia State University		
Land Grant Match.....	95600	2,950,192
Total.....		$ 14,122,566

From the above appropriation for West Virginia State University (fund 0373, appropriation 44100), $300,000 shall be for the Healthy Grandfamilies program.

107 -Higher Education Policy Commission –

Administration -

West Virginia Network for Educational Telecomputing (WVNET)

(WV Code Chapter 18B)

Fund 0551 FY 2022 Org 0495

WVNET	16900	$	1,747,826

MISCELLANEOUS BOARDS AND COMMISSIONS

108 -Adjutant General –

State Militia

(WV Code Chapter 15)

Fund 0433 FY 2022 Org 0603

Salary and Benefits of Cabinet Secretary and Agency Heads	00201	$	189,000
Unclassified (R)	09900		106,798
College Education Fund	23200		4,000,000
Civil Air Patrol	23400		249,664
Armory Board Transfer	70015		2,317,555
Mountaineer ChalleNGe Academy	70900		3,200,000
Military Authority (R)	74800		6,071,251
Drug Enforcement and Support	74801		1,500,000
Total		$	17,634,268

Any unexpended balances remaining in the appropriations for Unclassified (fund 0433, appropriation 09900), Military Authority (fund 0433, appropriation 74800), and Military Authority – Surplus (fund 0433, appropriation 74899) at the close of the fiscal year 2021 are hereby reappropriated for expenditure during the fiscal year 2022.

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

The adjutant general shall have the authority to transfer between appropriations.

From the above appropriation and other state and federal funding, the Adjutant General shall provide an amount not less than $4,800,000 to the Mountaineer ChalleNGe Academy to meet anticipated program demand.

109 -Adjutant General –

Military Fund

(WV Code Chapter 15)

Fund 0605 FY 2022 Org 0603

Personal Services and Employee Benefits	00100	$	100,000
Current Expenses	13000		57,775
Total.....		$	157,775

Total TITLE II, Section 1 – General Revenue (Including claims against the state).....	$4,495,032,115

Sec. 2. Appropriations from state road fund. — From the state road fund there are hereby appropriated conditionally upon the fulfillment of the provisions set forth in Article 2, Chapter 11B of the Code the following amounts, as itemized, for expenditure during the fiscal year 2022.

DEPARTMENT OF TRANSPORTATION

110 -Division of Motor Vehicles

(WV Code Chapters 17, 17A, 17B, 17C, 17D, 20, and 24A)

Fund 9007 FY 2022 Org 0802

	Appro-priation	State Road Fund
Personal Services and Employee Benefits	00100	$ 26,867,939
Salary and Benefits of Cabinet Secretary and Agency Heads	00201	129,500
Current Expenses	13000	16,576,540
Repairs and Alterations	06400	144,000
Equipment	07000	1,080,000
Buildings	25800	10,000
Other Assets	69000	8,154,000
BRIM Premium	91300	89,940
Total		$ 53,051,919

111 -Division of Highways

(WV Code Chapters 17 and 17C)

Fund 9017 FY 2022 Org 0803

Salary and Benefits of Cabinet Secretary and Agency Heads	00201	$ 200,000
Debt Service	04000	124,000,000
Maintenance	23700	520,000,000
Inventory Revolving	27500	4,000,000
Equipment Revolving	27600	20,000,000
General Operations	27700	152,800,000
Interstate Construction	27800	115,000,000
Other Federal Aid Programs	27900	345,000,000
Appalachian Programs	28000	100,000,000
Highway Litter Control	28200	1,650,000
Courtesy Patrol	28201	0
Total		$1,382,650,000

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

The Commissioner of Highways shall have the authority to operate revolving funds within the State Road Fund for the

operation and purchase of various types of equipment used directly and indirectly in the construction and maintenance of roads and for the purchase of inventories and materials and supplies.

There is hereby appropriated in addition to the above appropriations, sufficient money for the payment of claims, accrued or arising during this budgetary period, to be paid in accordance with Sections 17 and 18, Article 2, Chapter 14 of the code.

It is the intent of the Legislature to capture and match all federal funds available for expenditure on the Appalachian highway system at the earliest possible time. Therefore, should amounts in excess of those appropriated be required for the purposes of Appalachian programs, funds in excess of the amount appropriated may be made available upon recommendation of the commissioner and approval of the Governor. Further, for the purpose of Appalachian programs, funds appropriated by appropriation may be transferred to other appropriations upon recommendation of the commissioner and approval of the Governor.

112 -Office of Administrative Hearings

(WV Code Chapter 17C)

Fund 9027 FY 2022 Org 0808

Personal Services and Employee Benefits	00100	$	44,600
Current Expenses	13000		100
Repairs and Alterations	06400		100
Equipment	07000		100
BRIM Premium	91300		100
Total		$	45,000

Total TITLE II, Section 2 – State Road Fund (Including claims against the state) $1,436,368,684

Sec. 3. Appropriations from other funds. — From the funds designated there are hereby appropriated conditionally upon the

fulfillment of the provisions set forth in Article 2, Chapter 11B of the Code the following amounts, as itemized, for expenditure during the fiscal year 2022.

LEGISLATIVE

113 -Crime Victims Compensation Fund

(WV Code Chapter 14)

Fund 1731 FY 2022 Org 2300

	Appro-priation		Other Funds
Personal Services and Employee Benefits	00100	$	498,020
Current Expenses	13000		133,903
Repairs and Alterations	06400		1,000
Economic Loss Claim Payment Fund	33400		2,000,000
Other Assets	69000		3,700
Total		$	2,636,623

JUDICIAL

114 -Supreme Court –

Court Advanced Technology Subscription Fund

(WV Code Chapter 51)

Fund 1704 FY 2022 Org 2400

Current Expenses	13000	$	100,000

115 -Supreme Court –

Adult Drug Court Participation Fund

(WV Code Chapter 62)

Fund 1705 FY 2022 Org 2400

Current Expenses	13000	$	200,000

116 -Supreme Court –

Family Court Fund

(WV Code Chapter 51)

Fund 1763 FY 2022 Org 2400

Current Expenses	13000	$	1,050,000

EXECUTIVE

117 -Governor's Office –

Minority Affairs Fund

(WV Code Chapter 5)

Fund 1058 FY 2022 Org 0100

Personal Services and Employee Benefits	00100	$	177,737
Current Expenses	13000		503,200
Martin Luther King, Jr. Holiday Celebration	03100		8,926
Total		$	689,863

118 -Auditor's Office –

Land Operating Fund

(WV Code Chapters 11A, 12, and 36)

Fund 1206 FY 2022 Org 1200

Personal Services and Employee Benefits	00100	$	799,211
Unclassified	09900		15,139
Current Expenses	13000		715,291
Repairs and Alterations	06400		2,600
Equipment	07000		426,741
Cost of Delinquent Land Sales	76800		1,841,168
Total		$	3,800,150

There is hereby appropriated from this fund, in addition to the above appropriations if needed, the necessary amount for the expenditure of funds other than Personal Services and Employee Benefits to enable the division to pay the direct expenses relating to land sales as provided in Chapter 11A of the West Virginia Code.

The total amount of these appropriations shall be paid from the special revenue fund out of fees and collections as provided by law.

119 -Auditor's Office –

Local Government Purchasing Card Expenditure Fund

(WV Code Chapter 6)

Fund 1224 FY 2022 Org 1200

Personal Services and Employee Benefits	00100	$ 627,779
Current Expenses	13000	282,030
Repairs and Alterations	06400	6,000
Equipment	07000	10,805
Other Assets	69000	50,000
Statutory Revenue Distribution	74100	3,500,000
Total		$ 4,476,614

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

120 -Auditor's Office –

Securities Regulation Fund

(WV Code Chapter 32)

Fund 1225 FY 2022 Org 1200

Personal Services and Employee Benefits	00100	$ 2,737,017
Unclassified	09900	31,866
Current Expenses	13000	1,463,830
Repairs and Alterations	06400	12,400
Equipment	07000	594,700
Other Assets	69000	1,200,000
Total		$ 6,039,813

121 -Auditor's Office – Technology Support and Acquisition Fund

(WV Code Chapter 12)

Fund 1233 FY 2022 Org 1200

Current Expenses	13000	$ 10,000
Other Assets	69000	5,000
Total		$ 15,000

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

122 -Auditor's Office –

Purchasing Card Administration Fund

(WV Code Chapter 12)

Fund 1234 FY 2022 Org 1200

Personal Services and Employee Benefits	00100	$ 3,074,837
Current Expenses	13000	2,303,622
Repairs and Alterations	06400	5,500
Equipment	07000	850,000
Other Assets	69000	508,886
Statutory Revenue Distribution	74100	8,000,000
Total		$ 14,742,845

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

123 -Auditor's Office –

Chief Inspector's Fund

(WV Code Chapter 6)

Fund 1235 FY 2022 Org 1200

Personal Services and Employee Benefits	00100	$ 3,583,096
Current Expenses	13000	765,915
Equipment	07000	50,000
Total		$ 4,399,011

124 -Auditor's Office –

Volunteer Fire Department Workers'

Compensation Premium Subsidy Fund

(WV Code Chapters 12 and 33)

Fund 1239 FY 2022 Org 1200

Volunteer Fire Department Workers' Compensation Subsidy	83200	$ 2,500,000

125 -Treasurer's Office –

College Prepaid Tuition and Savings Program

Administrative Account

(WV Code Chapter 18)

Fund 1301 FY 2022 Org 1300

Personal Services and Employee Benefits	00100	$ 810,372
Unclassified	09900	14,000
Current Expenses	13000	897,559
Total		$ 1,721,931

126 -Department of Agriculture –

Agriculture Fees Fund

(WV Code Chapter 19)

Fund 1401 FY 2022 Org 1400

Personal Services and Employee Benefits	00100	$ 2,425,446
Unclassified	09900	37,425
Current Expenses	13000	1,856,184
Repairs and Alterations	06400	158,500
Equipment	07000	436,209
Other Assets	69000	10,000
Total		$ 4,923,764

127 -Department of Agriculture –

West Virginia Rural Rehabilitation Program

(WV Code Chapter 19)

Fund 1408 FY 2022 Org 1400

Personal Services and Employee Benefits	00100	$ 78,251
Unclassified	09900	10,476
Current Expenses	13000	2,200,000
Total		$ 2,288,727

128 -Department of Agriculture –

General John McCausland Memorial Farm Fund

(WV Code Chapter 19)

Fund 1409 FY 2022 Org 1400

Personal Services and Employee Benefits	00100	$	71,937
Unclassified	09900		2,100
Current Expenses	13000		89,500
Repairs and Alterations	06400		36,400
Equipment	07000		15,000
Total		$	214,937

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

129 -Department of Agriculture –

Farm Operating Fund

(WV Code Chapter 19)

Fund 1412 FY 2022 Org 1400

Personal Services and Employee Benefits	00100	$	868,492
Unclassified	09900		15,173
Current Expenses	13000		1,367,464
Repairs and Alterations	06400		388,722
Equipment	07000		399,393
Other Assets	69000		20,000
Total		$	3,059,244

130 -Department of Agriculture –

Capital Improvements Fund

(WV Code Chapter 19)

Fund 1413 FY 2022 Org 1400

Unclassified	09900		20,000
Current Expenses	13000		510,000
Repairs and Alterations	06400		250,000
Equipment	07000		350,000
Building Improvements	25800		670,000
Other Assets	69000		200,000
Total		$	2,000,000

131 -Department of Agriculture –

Donated Food Fund

(WV Code Chapter 19)

Fund 1446 FY 2022 Org 1400

Personal Services and Employee Benefits	00100	$	1,030,451
Unclassified	09900		45,807
Current Expenses	13000		3,410,542
Repairs and Alterations	06400		128,500
Equipment	07000		10,000
Other Assets	69000		27,000
Land	73000		250,000
Total		$	4,902,300

132 -Department of Agriculture –

Integrated Predation Management Fund

(WV Code Chapter 7)

Fund 1465 FY 2022 Org 1400

Current Expenses	13000	$	112,500

133 -Department of Agriculture –

West Virginia Spay Neuter Assistance Fund

(WV Code Chapter 19)

Fund 1481 FY 2022 Org 1400

Current Expenses	13000	$	500,000

134 -Department of Agriculture –

Veterans and Warriors to Agriculture Fund

(WV Code Chapter 19)

Fund 1483 FY 2022 Org 1400

Current Expenses	13000	$	7,500

135 -Department of Agriculture –

State FFA-FHA Camp and Conference Center

(WV Code Chapters 18 and 18A)

Fund 1484 FY 2022 Org 1400

Personal Services and Employee Benefits	00100	$	1,218,564
Unclassified	09900		17,000
Current Expenses	13000		1,143,306
Repairs and Alterations	06400		82,500
Equipment	07000		76,000
Buildings	25800		1,000
Other Assets	69000		10,000
Land	73000		1,000
Total		$	2,549,370

136 -Attorney General –

Antitrust Enforcement Fund

(WV Code Chapter 47)

Fund 1507 FY 2022 Org 1500

Personal Services and Employee Benefits	00100	$	363,466
Current Expenses	13000		148,803
Repairs and Alterations	06400		1,000
Equipment	07000		1,000
Total		$	514,269

137 -Attorney General –

Preneed Burial Contract Regulation Fund

(WV Code Chapter 47)

Fund 1513 FY 2022 Org 1500

Personal Services and Employee Benefits	00100	$	222,569
Current Expenses	13000		54,615
Repairs and Alterations	06400		1,000
Equipment	07000		1,000
Total		$	279,184

138 -Attorney General –

Preneed Funeral Guarantee Fund

(WV Code Chapter 47)

Fund 1514 FY 2022 Org 1500

Current Expenses	13000	$	901,135

139 -Secretary of State –

Service Fees and Collection Account

(WV Code Chapters 3, 5, and 59)

Fund 1612 FY 2022 Org 1600

Personal Services and Employee Benefits	00100	$	1,065,106
Unclassified	09900		4,524
Current Expenses	13000		8,036
Total		$	1,077,666

140 -Secretary of State –

General Administrative Fees Account

(WV Code Chapters 3, 5, and 59)

Fund 1617 FY 2022 Org 1600

Personal Services and Employee Benefits	00100	$	2,947,630

Unclassified.....	09900	25,529
Current Expenses	13000	976,716
Technology Improvements	59900	720,000
Total.....		$ 4,669,875

DEPARTMENT OF ADMINISTRATION

141 -Department of Administration –

Office of the Secretary –

Tobacco Settlement Fund

(WV Code Chapter 4)

Fund 2041 FY 2022 Org 0201

Tobacco Settlement Securitization Trustee Pass Thru	65000	$ 80,000,000

142 -Department of Administration –

Office of the Secretary –

Employee Pension and Health Care Benefit Fund

(WV Code Chapter 18)

Fund 2044 FY 2022 Org 0201

Current Expenses	13000	$ 34,747,000

The above appropriation for Current Expenses (fund 2044, appropriation 13000) shall be transferred to the Consolidated Public Retirement Board – Teachers' Accumulation Fund (fund 2600).

143 -Department of Administration –

Division of Finance –

Shared Services Section Fund

(WV Code Chapter 5A)

Fund 2020 FY 2022 Org 0209

Personal Services and Employee Benefits	00100	$ 1,500,000
Current Expenses	13000	500,000
Total		$ 2,000,000

144 -Division of Information Services and Communications

(WV Code Chapter 5A)

Fund 2220 FY 2022 Org 0210

Personal Services and Employee Benefits	00100	$ 22,464,463
Unclassified	09900	382,354
Current Expenses	13000	13,378,766
Repairs and Alterations	06400	1,000
Equipment	07000	2,050,000
Other Assets	69000	1,045,000
Total		$ 39,321,583

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

Each spending unit operating from the General Revenue Fund, from special revenue funds or receiving reimbursement for postage from the federal government shall be charged monthly for all postage meter service and shall reimburse the revolving fund monthly for all such amounts.

145 -Division of Purchasing –

Vendor Fee Fund

(WV Code Chapter 5A)

Fund 2263 FY 2022 Org 0213

Personal Services and Employee Benefits	00100	$ 566,589

Unclassified	09900	2,382
Current Expenses	13000	109,115
Repairs and Alterations	06400	5,000
Equipment	07000	2,500
Other Assets	69000	2,500
BRIM Premium	91300	810
Total		$ 688,896

146 -Division of Purchasing –

Purchasing Improvement Fund

(WV Code Chapter 5A)

Fund 2264 FY 2022 Org 0213

Personal Services and Employee Benefits	00100	$ 953,176
Unclassified	09900	5,562
Current Expenses	13000	492,066
Repairs and Alterations	06400	500
Equipment	07000	500
Other Assets	69000	500
BRIM Premium	91300	850
Total		$ 1,453,154

147 -Travel Management –

Aviation Fund

(WV Code Chapter 5A)

Fund 2302 FY 2022 Org 0215

Unclassified	09900	$ 1,000
Current Expenses	13000	149,700
Repairs and Alterations	06400	875,237
Equipment	07000	1,000
Buildings	25800	100
Other Assets	69000	100
Land	73000	100
Total		$ 1,027,237

148 -Fleet Management Division Fund

(WV Code Chapter 5A)

Fund 2301 FY 2022 Org 0216

Personal Services and Employee Benefits	00100	$ 757,145
Unclassified	09900	4,000
Current Expenses	13000	11,630,614
Repairs and Alterations	06400	12,000
Equipment	07000	800,000
Other Assets	69000	2,000
Total		$ 13,205,759

149 -Division of Personnel

(WV Code Chapter 29)

Fund 2440 FY 2022 Org 0222

Personal Services and Employee Benefits	00100	$ 4,638,183
Salary and Benefits of Cabinet Secretary and Agency Heads	00201	122,500
Unclassified	09900	51,418
Current Expenses	13000	1,262,813
Repairs and Alterations	06400	5,000
Equipment	07000	20,000
Other Assets	69000	60,000
Total		$ 6,159,914

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

150 -West Virginia Prosecuting Attorneys Institute

(WV Code Chapter 7)

Fund 2521 FY 2022 Org 0228

Personal Services and Employee Benefits	00100	$	132,663
Salary and Benefits of Cabinet Secretary and Agency Heads	00201		119,000
Unclassified	09900		4,023
Current Expenses	13000		297,528
Repairs and Alterations	06400		600
Equipment	07000		500
Other Assets	69000		500
Total		$	554,814

151 -Office of Technology –

Chief Technology Officer Administration Fund

(WV Code Chapter 5A)

Fund 2531 FY 2022 Org 0231

Personal Services and Employee Benefits	00100	$	414,722
Unclassified	09900		6,949
Current Expenses	13000		227,116
Repairs and Alterations	06400		1,000
Equipment	07000		50,000
Other Assets	69000		10,000
Total		$	709,787

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

DEPARTMENT OF COMMERCE

152 -Division of Forestry

(WV Code Chapter 19)

Fund 3081 FY 2022 Org 0305

Personal Services and Employee Benefits	00100	$	1,574,177
Current Expenses	13000		282,202
Repairs and Alterations	06400		53,000
Equipment	07000		300,000
Total		$	2,209,379

153 -Division of Forestry –

Timbering Operations Enforcement Fund

(WV Code Chapter 19)

Fund 3082 FY 2022 Org 0305

Personal Services and Employee Benefits	00100	$	239,244
Current Expenses	13000		87,036
Repairs and Alterations	06400		11,250
Total		$	337,530

154 -Division of Forestry –

Severance Tax Operations

(WV Code Chapter 11)

Fund 3084 FY 2022 Org 0305

Personal Services and Employee Benefits	00100	$	859,626
Current Expenses	13000		435,339
Total		$	1,294,965

155 -Geological and Economic Survey –

Geological and Analytical Services Fund

(WV Code Chapter 29)

Fund 3100 FY 2022 Org 0306

Personal Services and Employee Benefits	00100	$	37,966

Unclassified	09900	2,182
Current Expenses	13000	141,631
Repairs and Alterations	06400	50,000
Equipment	07000	20,000
Other Assets	69000	10,000
Total		$ 261,779

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

156 -Division of Labor –

West Virginia Jobs Act Fund

(WV Code Chapter 21)

Fund 3176 FY 2022 Org 0308

Current Expenses	13000	75,000
Equipment	07000	25,000
Total		$ 100,000

157 -Division of Labor –

HVAC Fund

(WV Code Chapter 21)

Fund 3186 FY 2022 Org 0308

Personal Services and Employee Benefits	00100	$ 300,000
Unclassified	09900	4,000
Current Expenses	13000	82,000
Repairs and Alterations	06400	4,500
Buildings	25800	1,000
BRIM Premium	91300	8,500
Total		$ 400,000

158 -Division of Labor –

Contractor Licensing Board Fund

(WV Code Chapter 21)

Fund 3187 FY 2022 Org 0308

Personal Services and Employee Benefits	00100	$	2,532,000
Unclassified	09900		21,000
Current Expenses	13000		500,000
Repairs and Alterations	06400		10,000
BRIM Premium	91300		8,500
Total		$	3,071,500

159 -Division of Labor –

Elevator Safety Fund

(WV Code Chapter 21)

Fund 3188 FY 2022 Org 0308

Personal Services and Employee Benefits	00100	$	293,682
Salary and Benefits of Cabinet Secretary and Agency Heads	00201		104,180
Unclassified	09900		2,261
Current Expenses	13000		94,712
Repairs and Alterations	06400		2,000
Buildings	25800		1,000
BRIM Premium	91300		8,500
Total		$	506,335

160 -Division of Labor –

Steam Boiler Fund

(WV Code Chapter 21)

Fund 3189 FY 2022 Org 0308

Personal Services and Employee Benefits	00100	$	77,716
Unclassified	09900		1,000
Current Expenses	13000		20,000
Repairs and Alterations	06400		2,000

Buildings	25800		1,000
BRIM Premium	91300		1,000
Total		$	102,716

161 -Division of Labor –

Crane Operator Certification Fund

(WV Code Chapter 21)

Fund 3191 FY 2022 Org 0308

Personal Services and Employee Benefits	00100	$	191,899
Unclassified	09900		1,380
Current Expenses	13000		51,265
Repairs and Alterations	06400		1,500
Buildings	25800		1,000
BRIM Premium	91300		7,000
Total		$	254,044

162 -Division of Labor –

Amusement Rides and Amusement Attraction Safety Fund

(WV Code Chapter 21)

Fund 3192 FY 2022 Org 0308

Personal Services and Employee Benefits	00100	$	187,462
Unclassified	09900		1,281
Current Expenses	13000		44,520
Repairs and Alterations	06400		2,000
Buildings	25800		1,000
BRIM Premium	91300		8,500
Total		$	244,763

163 -Division of Labor –

State Manufactured Housing Administration Fund

(WV Code Chapter 21)

Fund 3195 FY 2022 Org 0308

Personal Services and Employee Benefits	00100	$	289,199
Unclassified	09900		1,847
Current Expenses	13000		43,700
Repairs and Alterations	06400		1,000
Buildings	25800		1,000
BRIM Premium	91300		3,404
Total		$	340,150

164 -Division of Labor –

Weights and Measures Fund

(WV Code Chapter 47)

Fund 3196 FY 2022 Org 0308

Unclassified	09900	$	1,200
Current Expenses	13000		93,000
Repairs and Alterations	06400		10,000
Equipment	07000		10,000
BRIM Premium	91300		7,000
Total		$	121,200

165 -Division of Labor –

Bedding and Upholstery Fund

(WV Code Chapter 21)

Fund 3198 FY 2022 Org 0308

Personal Services and Employee Benefits	00100	$	150,000
Unclassified	09900		2,000
Current Expenses	13000		145,400
Repairs and Alterations	06400		2,000
Buildings	25800		1,000
BRIM Premium	91300		8,700
Total		$	309,100

166 -Division of Labor –

Psychophysiological Examiners Fund

(WV Code Chapter 21)

Fund 3199 FY 2022 Org 0308

Current Expenses	13000	$	4,000

167 -Division of Natural Resources –

License Fund – Wildlife Resources

(WV Code Chapter 20)

Fund 3200 FY 2022 Org 0310

Wildlife Resources.....	02300	$	5,200,996
Administration	15500		1,300,249
Capital Improvements and Land Purchase (R).....	24800		1,300,248
Law Enforcement.....	80600		5,200,996
Total.....		$	13,002,489

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

Any unexpended balance remaining in the appropriation for Capital Improvements and Land Purchase (fund 3200, appropriation 24800) at the close of the fiscal year 2021 is hereby reappropriated for expenditure during the fiscal year 2022.

168 -Division of Natural Resources –

Natural Resources Game Fish and Aquatic Life Fund

(WV Code Chapter 22)

Fund 3202 FY 2022 Org 0310

Current Expenses	13000	$	125,000

169 -Division of Natural Resources –

Nongame Fund

(WV Code Chapter 20)

Fund 3203 FY 2022 Org 0310

Personal Services and Employee Benefits	00100	$	688,103
Current Expenses	13000		201,810
Equipment	07000		106,615
Total		$	996,528

170 -Division of Natural Resources –

Planning and Development Division

(WV Code Chapter 20)

Fund 3205 FY 2022 Org 0310

Personal Services and Employee Benefits	00100	$	457,738
Current Expenses	13000		257,864
Repairs and Alterations	06400		15,016
Equipment	07000		8,300
Buildings	25800		8,300
Other Assets	69000		1,900,000
Land	73000		31,700
Total		$	2,678,918

171 -Division of Natural Resources –

State Parks and Recreation Endowment Fund

(WV Code Chapter 20)

Fund 3211 FY 2022 Org 0310

Current Expenses	13000	$	6,000

Repairs and Alterations	06400		3,000
Equipment	07000		2,000
Buildings	25800		3,000
Other Assets	69000		4,000
Land	73000		2,000
Total		$	20,000

172 -Division of Natural Resources –

Whitewater Study and Improvement Fund

(WV Code Chapter 20)

Fund 3253 FY 2022 Org 0310

Personal Services and Employee Benefits	00100	$	67,641
Current Expenses	13000		64,778
Equipment	07000		1,297
Buildings	25800		6,969
Total		$	140,685

173 -Division of Natural Resources –

Whitewater Advertising and Promotion Fund

(WV Code Chapter 20)

Fund 3256 FY 2022 Org 0310

Unclassified	09900	$	200
Current Expenses	13000		19,800
Total		$	20,000

174 -Division of Miners' Health, Safety and Training –

Special Health, Safety and Training Fund

(WV Code Chapter 22A)

Fund 3355 FY 2022 Org 0314

Personal Services and Employee Benefits	00100	$	501,228

Unclassified	09900	40,985
Current Expenses	13000	1,954,557
WV Mining Extension Service	02600	150,000
Buildings	25800	2,481,358
Land	73000	1,000,000
Total		$ 6,128,128

175 -Department of Commerce –

Office of the Secretary –

Marketing and Communications Operating Fund

(WV Code Chapter 5B)

Fund 3002 FY 2022 Org 0327

Personal Services and Employee Benefits	00100	$ 2,069,353
Unclassified	09900	30,000
Current Expenses	13000	1,315,078
Equipment	07000	36,000
Total		$ 3,450,431

176 -Department of Commerce –

Office of the Secretary –

Broadband Enhancement Fund

Fund 3013 FY 2022 Org 0327

Personal Services and Employee Benefits	00100	$ 131,682
Current Expenses	13000	51,648,318
Total		$ 51,780,000

177 -State Board of Rehabilitation –

Division of Rehabilitation Services –

West Virginia Rehabilitation Center Special Account

(WV Code Chapter 18)

Fund 8664 FY 2022 Org 0932

Personal Services and Employee Benefits	00100	$	119,738
Current Expenses	13000		1,180,122
Repairs and Alterations	06400		85,500
Equipment	07000		220,000
Buildings	25800		150,000
Other Assets	69000		150,000
Total		$	1,905,360

DEPARTMENT OF ECONOMIC DEVELOPMENT

178 -Department of Economic Development –

Office of the Secretary –

Entrepreneurship and Innovation Investment Fund

(WV Code Chapter 5B)

Fund 3014 FY 2022 Org 0307

Entrepreneurship and Innovation Investment Fund	70301	$	500,000

179 -Department of Economic Development –

Office of the Secretary –

Office of Coalfield Community Development

(WV Code Chapter 5B)

Fund 3162 FY 2022 Org 0307

Personal Services and Employee Benefits	00100	$	435,661
Unclassified	09900		8,300
Current Expenses	13000		399,191
Total		$	843,152

180 -Department of Economic Development –

Office of Energy –

Energy Assistance

(WV Code Chapter 5B)

Fund 3010 FY 2022 Org 0328

Energy Assistance – Total	64700	$	7,211

DEPARTMENT OF EDUCATION

181 -State Board of Education –

Strategic Staff Development

(WV Code Chapter 18)

Fund 3937 FY 2022 Org 0402

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

182 -State Board of Education –

School Construction Fund

(WV Code Chapters 18 and 18A)

Fund 3952 FY 2022 Org 0404

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

The above appropriation for Directed Transfer (fund 3951, appropriation 70000) shall be transferred to the School Building

Authority Fund (fund 3959) for the administrative expenses of the School Building Authority.

183 -School Building Authority

(WV Code Chapter 18)

Fund 3959 FY 2022 Org 0404

Personal Services and Employee Benefits	00100	$ 1,134,522
Current Expenses	13000	244,100
Repairs and Alterations	06400	13,150
Equipment	07000	26,000
Total		$ 1,417,772

DEPARTMENT OF ARTS, CULTURE, AND HISTORY

184 -Division of Culture and History –

Public Records and Preservation Revenue Account

(WV Code Chapter 5A)

Fund 3542 FY 2022 Org 0432

Personal Services and Employee Benefits	00100	$ 226,624
Current Expenses	13000	862,241
Equipment	07000	75,000
Buildings	25800	1,000
Other Assets	69000	52,328
Land	73000	1,000
Total		$ 1,218,193

DEPARTMENT OF ENVIRONMENTAL PROTECTION

185 -Solid Waste Management Board

(WV Code Chapter 22C)

Fund 3288 FY 2022 Org 0312

Personal Services and Employee Benefits	00100	$	842,305
Current Expenses	13000		2,060,457
Repairs and Alterations	06400		1,000
Equipment	07000		5,000
Other Assets	69000		4,403
Total		$	2,913,165

186 -Division of Environmental Protection –

Hazardous Waste Management Fund

(WV Code Chapter 22)

Fund 3023 FY 2022 Org 0313

Personal Services and Employee Benefits	00100	$	779,766
Unclassified	09900		8,072
Current Expenses	13000		155,969
Repairs and Alterations	06400		500
Equipment	07000		1,505
Other Assets	69000		2,000
Total		$	947,812

187 -Division of Environmental Protection –

Air Pollution Education and Environment Fund

(WV Code Chapter 22)

Fund 3024 FY 2022 Org 0313

Personal Services and Employee Benefits	00100	$	950,135
Unclassified	09900		14,647
Current Expenses	13000		1,026,863
Repairs and Alterations	06400		13,000
Equipment	07000		53,105
Other Assets	69000		20,000
Total		$	2,077,750

188 -Division of Environmental Protection –

Special Reclamation Fund

(WV Code Chapter 22)

Fund 3321 FY 2022 Org 0313

Personal Services and Employee Benefits	00100	$ 1,627,573
Current Expenses	13000	16,185,006
Repairs and Alterations	06400	79,950
Equipment	07000	130,192
Other Assets	69000	32,000
Total		$ 18,054,721

189 -Division of Environmental Protection –

Oil and Gas Reclamation Fund

(WV Code Chapter 22)

Fund 3322 FY 2022 Org 0313

Personal Services and Employee Benefits	00100	$ 543,906
Current Expenses	13000	1,956,094
Total		$ 2,500,000

190 -Division of Environmental Protection –

Oil and Gas Operating Permit and Processing Fund

(WV Code Chapter 22)

Fund 3323 FY 2022 Org 0313

Personal Services and Employee Benefits	00100	$ 2,141,500
Unclassified	09900	15,700
Current Expenses	13000	932,300
Repairs and Alterations	06400	9,500
Equipment	07000	500

Other Assets	69000	500
Total		$ 3,100,000

191 -Division of Environmental Protection –

Mining and Reclamation Operations Fund

(WV Code Chapter 22)

Fund 3324 FY 2022 Org 0313

Personal Services and Employee Benefits	00100	$ 3,566,280
Unclassified	09900	920
Current Expenses	13000	2,202,231
Repairs and Alterations	06400	60,260
Equipment	07000	83,000
Other Assets	69000	57,500
Total		$ 5,970,191

192 -Division of Environmental Protection –

Underground Storage Tank

Administrative Fund

(WV Code Chapter 22)

Fund 3325 FY 2022 Org 0313

Personal Services and Employee Benefits	00100	$ 476,417
Unclassified	09900	7,520
Current Expenses	13000	318,420
Repairs and Alterations	06400	5,350
Equipment	07000	3,610
Other Assets	69000	3,500
Total		$ 814,817

193 -Division of Environmental Protection –

Hazardous Waste Emergency Response Fund

(WV Code Chapter 22)

Fund 3331 FY 2022 Org 0313

Personal Services and Employee Benefits	00100	$	598,154
Unclassified	09900		10,616
Current Expenses	13000		767,905
Repairs and Alterations	06400		7,014
Equipment	07000		9,000
Other Assets	69000		3,500
Total		$	1,396,189

194 -Division of Environmental Protection –

Solid Waste Reclamation and

Environmental Response Fund

(WV Code Chapter 22)

Fund 3332 FY 2022 Org 0313

Personal Services and Employee Benefits	00100	$	825,811
Unclassified	09900		22,900
Current Expenses	13000		3,604,737
Repairs and Alterations	06400		25,000
Equipment	07000		31,500
Buildings	25800		500
Other Assets	69000		1,000
Total		$	4,511,448

195 -Division of Environmental Protection –

Solid Waste Enforcement Fund

(WV Code Chapter 22)

Fund 3333 FY 2022 Org 0313

Personal Services and Employee Benefits	00100	$	3,274,054

Unclassified	09900	31,145
Current Expenses	13000	940,229
Repairs and Alterations	06400	30,930
Equipment	07000	23,356
Other Assets	69000	25,554
Total		$ 4,325,268

196 -Division of Environmental Protection –

Air Pollution Control Fund

(WV Code Chapter 22)

Fund 3336 FY 2022 Org 0313

Personal Services and Employee Benefits	00100	$ 5,934,859
Unclassified	09900	70,572
Current Expenses	13000	1,469,467
Repairs and Alterations	06400	84,045
Equipment	07000	103,601
Other Assets	69000	52,951
Total		$ 7,715,495

197 -Division of Environmental Protection –

Environmental Laboratory

Certification Fund

(WV Code Chapter 22)

Fund 3340 FY 2022 Org 0313

Personal Services and Employee Benefits	00100	$ 352,834
Unclassified	09900	1,120
Current Expenses	13000	201,146
Repairs and Alterations	06400	1,000
Other Assets	69000	163,000
Total		$ 719,100

198 -Division of Environmental Protection –

Stream Restoration Fund

(WV Code Chapter 22)

Fund 3349 FY 2022 Org 0313

Current Expenses	13000	$	5,182,076

199 -Division of Environmental Protection –

Litter Control Fund

(WV Code Chapter 22)

Fund 3486 FY 2022 Org 0313

Current Expenses	13000	$	60,000

200 -Division of Environmental Protection –

Recycling Assistance Fund

(WV Code Chapter 22)

Fund 3487 FY 2022 Org 0313

Personal Services and Employee Benefits	00100	$	660,575
Unclassified	09900		400
Current Expenses	13000		2,754,258
Repairs and Alterations	06400		800
Equipment	07000		500
Other Assets	69000		2,500
Total		$	3,419,033

201 -Division of Environmental Protection –

Mountaintop Removal Fund

(WV Code Chapter 22)

Fund 3490 FY 2022 Org 0313

Personal Services and Employee Benefits	00100	$	1,250,562
Unclassified	09900		1,180
Current Expenses	13000		642,934
Repairs and Alterations	06400		30,112
Equipment	07000		23,500
Other Assets	69000		11,520
Total		$	1,959,808

202 -Division of Environmental Protection –

Wind and Solar Decommissioning Fund

(WV Code Chapter 22)

Fund #### FY 2022 Org 0313

Personal Services and Employee Benefits	00100	$	53,600

203 -Oil and Gas Conservation Commission –

Special Oil and Gas Conservation Fund

(WV Code Chapter 22C)

Fund 3371 FY 2022 Org 0315

Personal Services and Employee Benefits	00100	$	162,161
Current Expenses	13000		161,225
Repairs and Alterations	06400		1,000
Equipment	07000		9,481
Other Assets	69000		1,500
Total		$	335,367

DEPARTMENT OF HEALTH AND HUMAN RESOURCES

204 -Division of Health –

Ryan Brown Addiction Prevention and Recovery Fund

(WV Code Chapter 19)

Fund 5111 FY 2022 Org 0506

Current Expenses	13000	$ 10,667,392

205 -Division of Health –

The Vital Statistics Account

(WV Code Chapter 16)

Fund 5144 FY 2022 Org 0506

Personal Services and Employee Benefits	00100	$ 938,484
Unclassified.....	09900	15,500
Current Expenses	13000	2,757,788
Total.....		$ 3,711,772

206 -Division of Health –

Hospital Services Revenue Account

Special Fund

Capital Improvement, Renovation and Operations

(WV Code Chapter 16)

Fund 5156 FY 2022 Org 0506

Institutional Facilities Operations	33500	$ 35,555,221
Medical Services Trust Fund – Transfer.....	51200	27,800,000
Total.....		$ 63,355,221

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

Additional funds have been appropriated in fund 0525, fiscal year 2022, organization 0506, for the operation of the institutional facilities. The Secretary of the Department of Health and Human Resources is authorized to utilize up to ten percent of the funds from the appropriation for Institutional Facilities Operations to facilitate cost effective and cost saving services at the community level.

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

207 -Division of Health –

Laboratory Services Fund

(WV Code Chapter 16)

Fund 5163 FY 2022 Org 0506

Personal Services and Employee Benefits	00100	$	936,712
Unclassified	09900		18,114
Current Expenses	13000		2,209,105
Total		$	3,163,931

208 -Division of Health –

The Health Facility Licensing Account

(WV Code Chapter 16)

Fund 5172 FY 2022 Org 0506

Personal Services and Employee Benefits	00100	$	645,446
Unclassified	09900		7,113
Current Expenses	13000		98,247
Total		$	750,806

209 -Division of Health –

Hepatitis B Vaccine

(WV Code Chapter 16)

Fund 5183 FY 2022 Org 0506

Current Expenses	13000	$	9,740

210 -Division of Health –

Lead Abatement Account

*(*WV Code Chapter 16)

Fund 5204 FY 2022 Org 0506

Personal Services and Employee Benefits	00100	$	19,100
Unclassified.....	09900		373
Current Expenses	13000		17,875
Total.....		$	37,348

211 -Division of Health –

West Virginia Birth-to-Three Fund

(WV Code Chapter 16)

Fund 5214 FY 2022 Org 0506

Personal Services and Employee Benefits	00100	$	691,978
Unclassified.....	09900		223,999
Current Expenses	13000		30,134,400
Total.....		$	31,050,377

212 -Division of Health –

Tobacco Control Special Fund

(WV Code Chapter 16)

Fund 5218 FY 2022 Org 0506

Current Expenses	13000	$	7,579

213 -Division of Health –

Medical Cannabis Program Fund

(WV Code Chapter 16A)

Fund 5420 FY 2022 Org 0506

Personal Services and Employee Benefits	00100	$	509,658
Current Expenses	13000		2,046,040
Total		$	2,555,698

214 -West Virginia Health Care Authority –

Health Care Cost Review Fund

(WV Code Chapter 16)

Fund 5375 FY 2022 Org 0507

Personal Services and Employee Benefits	00100	$	1,345,380
Unclassified.....	09900		20,100
Current Expenses	13000		785,445
Total		$	2,150,925

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

215 -West Virginia Health Care Authority –

Certificate of Need Program Fund

(WV Code Chapter 16)

Fund 5377 FY 2022 Org 0507

Personal Services and Employee Benefits	00100	$ 829,798
Current Expenses	13000	474,967
Total		$ 1,304,765

216 -Division of Human Services –

Health Care Provider Tax –

Medicaid State Share Fund

(WV Code Chapter 11)

Fund 5090 FY 2022 Org 0511

Medical Services	18900	$213,594,315
Medical Services Administrative Costs	78900	242,287
Total		$213,836,602

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

217 -Division of Human Services –

Child Support Enforcement Fund

(WV Code Chapter 48A)

Fund 5094 FY 2022 Org 0511

Personal Services and Employee Benefits	00100	$ 24,809,509
Unclassified	09900	380,000
Current Expenses	13000	12,810,491
Total		$ 38,000,000

218 -Division of Human Services –

Medical Services Trust Fund

(WV Code Chapter 9)

Fund 5185 FY 2022 Org 0511

Medical Services	18900	$ 77,500,000
Medical Services Administrative Costs	78900	602,486
Total		$ 78,102,486

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

219 -Division of Human Services –

James "Tiger" Morton Catastrophic Illness Fund

(WV Code Chapter 16)

Fund 5454 FY 2022 Org 0511

Unclassified	09900	$ 7,000
Current Expenses	13000	393,000
Total		$ 400,000

220 -Division of Human Services –

Domestic Violence Legal Services Fund

(WV Code Chapter 48)

Fund 5455 FY 2022 Org 0511

Current Expenses	13000	$	900,000

221 -Division of Human Services –

West Virginia Works Separate State College Program Fund

(WV Code Chapter 9)

Fund 5467 FY 2022 Org 0511

Current Expenses	13000	$	500,000

222 -Division of Human Services –

West Virginia Works Separate State Two-Parent Program Fund

(WV Code Chapter 9)

Fund 5468 FY 2022 Org 0511

Current Expenses	13000	$	1,500,000

223 -Division of Human Services –

Marriage Education Fund

(WV Code Chapter 9)

Fund 5490 FY 2022 Org 0511

Personal Services and Employee Benefits	00100	$	10,000
Current Expenses	13000		25,000
Total		$	35,000

DEPARTMENT OF HOMELAND SECURITY

224 -Department of Homeland Security –

Office of the Secretary –

Law-Enforcement, Safety and Emergency Worker

Funeral Expense Payment Fund

(WV Code Chapter 15)

Fund 6003 FY 2022 Org 0601

Current Expenses	13000	$	32,000

225 -Division of Emergency Management –

Statewide Interoperable Radio Network Account

(WV Code Chapter 15)

Fund 6208 FY 2022 Org 0606

Current Expenses	13000	$	80,000

226 -Division of Emergency Management –

West Virginia Interoperable Radio Project

(WV Code Chapter 24)

Fund 6295 FY 2022 Org 0606

Unclassified.....	09900	$	20,000
Current Expenses	13000		1,480,000
Repairs and Alterations.....	06400		250,000
Equipment.....	07000		250,000
Total.....		$	2,000,000

Any unexpended balance remaining in the appropriation for Unclassified – Total (fund 6295, appropriation 09600) at the close of fiscal year 2021 is hereby reappropriated for expenditure during the fiscal year 2022.

227 -Division of Corrections and Rehabilitation –

Parolee Supervision Fees

(WV Code Chapter 15A)

Fund 6362 FY 2022 Org 0608

Personal Services and Employee Benefits	00100	$ 1,118,697
Unclassified	09900	9,804
Current Expenses	13000	758,480
Equipment	07000	30,000
Other Assets	69000	40,129
Total		$ 1,957,110

228 -Division of Corrections and Rehabilitation –

Regional Jail and Correctional Facility Authority

(WV Code Chapter 15A)

Fund 6675 FY 2022 Org 0608

Personal Services and Employee Benefits	00100	$ 544,798
Debt Service	04000	9,000,000
Current Expenses	13000	245,472
Total		$ 9,790,270

229 -West Virginia State Police –

Motor Vehicle Inspection Fund

(WV Code Chapter 17C)

Fund 6501 FY 2022 Org 0612

Personal Services and Employee Benefits	00100	$ 1,907,726
Current Expenses	13000	1,488,211
Repairs and Alterations	06400	204,500
Equipment	07000	3,770,751
Buildings	25800	534,000
Other Assets	69000	5,000
BRIM Premium	91300	302,432
Total		$ 8,212,620

The total amount of these appropriations shall be paid from the special revenue fund out of fees collected for inspection stickers as provided by law.

230 -West Virginia State Police –

Forensic Laboratory Fund

(WV Code Chapter 15)

Fund 6511 FY 2022 Org 0612

Personal Services and Employee Benefits	00100	$ 1,600,000
Current Expenses	13000	90,000
Repairs and Alterations	06400	5,000
Equipment	07000	545,000
Total		$ 2,240,000

231 -West Virginia State Police –

Drunk Driving Prevention Fund

(WV Code Chapter 15)

Fund 6513 FY 2022 Org 0612

Current Expenses	13000	$ 1,327,000
Equipment	07000	3,491,895
BRIM Premium	91300	154,452
Total		$ 4,973,347

The total amount of these appropriations shall be paid from the special revenue fund out of receipts collected pursuant to W.Va. Code §11-15-9a and 16 and paid into a revolving fund account in the State Treasury.

232 -West Virginia State Police –

Surplus Real Property Proceeds Fund

(WV Code Chapter 15)

Fund 6516 FY 2022 Org 0612

Buildings	25800	$	1,022,778
Land	73000		1,000
BRIM Premium	91300		77,222
Total		$	1,101,000

233 -West Virginia State Police –

Surplus Transfer Account

(WV Code Chapter 15)

Fund 6519 FY 2022 Org 0612

Current Expenses	13000	$	225,000
Repairs and Alterations	06400		20,000
Equipment	07000		250,000
Buildings	25800		40,000
Other Assets	69000		45,000
BRIM Premium	91300		5,000
Total		$	585,000

234 -West Virginia State Police –

Central Abuse Registry Fund

(WV Code Chapter 15)

Fund 6527 FY 2022 Org 0612

Personal Services and Employee Benefits	00100	$	256,629
Current Expenses	13000		376,443
Repairs and Alterations	06400		500
Equipment	07000		300,500
Other Assets	69000		300,500
BRIM Premium	91300		18,524
Total		$	1,253,096

235 -West Virginia State Police –

Bail Bond Enforcer Account

(WV Code Chapter 15)

Fund 6532 FY 2022 Org 0612

Current Expenses	13000	$	8,300

236 -West Virginia State Police –

State Police Academy Post Exchange

(WV Code Chapter 15)

Fund 6544 FY 2022 Org 0612

Current Expenses	13000	$	160,000
Repairs and Alterations	06400		40,000
Total		$	200,000

237 -Fire Commission –

Fire Marshal Fees

(WV Code Chapter 29)

Fund 6152 FY 2022 Org 0619

Personal Services and Employee Benefits	00100	$	3,480,533
Unclassified	09900		3,800
Current Expenses	13000		1,246,550
Repairs and Alterations	06400		58,500
Equipment	07000		140,800
BRIM Premium	91300		65,000
Total		$	4,995,183

238 -Division of Administrative Services –

WV Community Corrections Fund

(WV Code Chapter 62)

Fund 6386 FY 2022 Org 0623

Personal Services and Employee Benefits	00100	$	161,923
Unclassified	09900		750
Current Expenses	13000		1,846,250
Repairs and Alterations	06400		1,000
Total		$	2,009,923

239 -Division of Administrative Services –

Court Security Fund

(WV Code Chapter 51)

Fund 6804 FY 2022 Org 0623

Personal Services and Employee Benefits	00100	$	23,840
Current Expenses	13000		1,478,135
Total		$	1,501,975

240 -Division of Administrative Services –

Second Chance Driver's License Program Account

(WV Code Chapter 17B)

Fund 6810 FY 2022 Org 0623

Current Expenses	13000	$	125,000

DEPARTMENT OF REVENUE

241 -Division of Financial Institutions

(WV Code Chapter 31A)

Fund 3041 FY 2022 Org 0303

Personal Services and Employee Benefits	00100	$	2,584,057

Salary and Benefits of Cabinet Secretary and Agency Heads	00201	119,000
Current Expenses	13000	650,475
Equipment	07000	8,500
Total		$ 3,362,032

242 -Office of the Secretary –

State Debt Reduction Fund

(WV Code Chapter 29)

Fund 7007 FY 2022 Org 0701

Retirement Systems – Unfunded Liability	77500	$ 20,000,000

The above appropriation for Retirement System – Unfunded Liability shall be transferred to the Consolidated Public Retirement Board – West Virginia Teachers Retirement System Employers School Aid Formula Funds Holding Account Fund (fund 2606).

243 -Home Rule Board Operations

(WV Code Chapter 8)

Fund 7010 FY 2022 Org 0701

Personal Services and Employee Benefits	00100	$ 25,000
Unclassified	09900	680
Current Expenses	13000	42,000
Repairs and Alterations	06400	120
Equipment	07000	200
Total		$ 68,000

244 -Tax Division –

Cemetery Company Account

(WV Code Chapter 35)

Fund 7071 FY 2022 Org 0702

Personal Services and Employee Benefits	00100	$	25,928
Current Expenses	13000		7,717
Total		$	33,645

245 -Tax Division –

Special Audit and Investigative Unit

(WV Code Chapter 11)

Fund 7073 FY 2022 Org 0702

Personal Services and Employee Benefits	00100	$	696,428
Unclassified	09900		8,500
Current Expenses	13000		273,297
Repairs and Alterations	06400		7,000
Equipment	07000		5,000
Total		$	990,225

246 -Tax Division –

Wine Tax Administration Fund

(WV Code Chapter 60)

Fund 7087 FY 2022 Org 0702

Personal Services and Employee Benefits	00100	$	268,973
Current Expenses	13000		5,406
Total		$	274,379

247 -Tax Division –

Reduced Cigarette Ignition Propensity

Standard and Fire Prevention Act Fund

(WV Code Chapter 47)

Fund 7092 FY 2022 Org 0702

Current Expenses	13000	$	35,000
Equipment	07000		15,000
Total		$	50,000

248 -Tax Division –

Local Sales Tax and Excise Tax

Administration Fund

(WV Code Chapter 11)

Fund 7099 FY 2022 Org 0702

Personal Services and Employee Benefits	00100	$	1,543,527
Unclassified	09900		10,000
Current Expenses	13000		784,563
Repairs and Alterations	06400		1,000
Equipment	07000		5,000
Total		$	2,344,090

249 -State Budget Office –

Public Employees Insurance Reserve Fund

(WV Code Chapter 11B)

Fund 7400 FY 2022 Org 0703

Public Employees Insurance Reserve Fund – Transfer	90300	$	6,800,000

The above appropriation for Public Employees Insurance Reserve Fund – Transfer shall be transferred to the Medical Services Trust Fund (fund 5185, org 0511) for expenditure.

250 -Insurance Commissioner –

Examination Revolving Fund

(WV Code Chapter 33)

Fund 7150 FY 2022 Org 0704

Personal Services and Employee Benefits	00100	$ 748,764
Current Expenses	13000	1,357,201
Repairs and Alterations	06400	3,000
Equipment	07000	81,374
Buildings	25800	8,289
Other Assets	69000	11,426
Total		$ 2,210,054

251 -Insurance Commissioner –

Consumer Advocate

(WV Code Chapter 33)

Fund 7151 FY 2022 Org 0704

Personal Services and Employee Benefits	00100	$ 571,976
Current Expenses	13000	202,152
Repairs and Alterations	06400	5,000
Equipment	07000	34,225
Buildings	25800	4,865
Other Assets	69000	19,460
Total		$ 837,678

252 -Insurance Commissioner –

Insurance Commission Fund

(WV Code Chapter 33)

Fund 7152 FY 2022 Org 0704

Personal Services and Employee Benefits	00100	$ 24,032,521
Salary and Benefits of Cabinet Secretary and Agency Heads	00201	136,500
Current Expenses	13000	8,797,758

Repairs and Alterations	06400	68,614
Equipment	07000	1,728,240
Buildings	25800	25,000
Other Assets	69000	340,661
Total		$ 35,129,294

253 -Insurance Commissioner –

Insurance Fraud Prevention Fund

(WV Code Chapter 33)

Fund 7153 FY 2022 Org 0704

Current Expenses	13000	$ 15,000

254 -Insurance Commissioner –

Workers' Compensation Old Fund

(WV Code Chapter 23)

Fund 7162 FY 2022 Org 0704

Employee Benefits	01000	$ 50,000
Current Expenses	13000	250,500,000
Total		$250,550,000

255 -Insurance Commissioner –

Workers' Compensation Uninsured Employers' Fund

(WV Code Chapter 23)

Fund 7163 FY 2022 Org 0704

Current Expenses	13000	$ 15,000,000

256 -Insurance Commissioner –

Self-Insured Employer Guaranty Risk Pool

(WV Code Chapter 23)

Fund 7164 FY 2022 Org 0704

Current Expenses	13000	$	9,000,000

257 -Insurance Commissioner –

Self-Insured Employer Security Risk Pool

(WV Code Chapter 23)

Fund 7165 FY 2022 Org 0704

Current Expenses	13000	$	14,000,000

258 -Municipal Bond Commission

(WV Code Chapter 13)

Fund 7253 FY 2022 Org 0706

Personal Services and Employee Benefits	00100	$	309,502
Current Expenses	13000		154,344
Equipment	07000		100
Total		$	463,946

259 -Racing Commission –

Relief Fund

(WV Code Chapter 19)

Fund 7300 FY 2022 Org 0707

Medical Expenses – Total	24500	$	57,000

The total amount of this appropriation shall be paid from the special revenue fund out of collections of license fees and fines as provided by law.

No expenditures shall be made from this fund except for hospitalization, medical care and/or funeral expenses for persons contributing to this fund.

260 -Racing Commission –

Administration and Promotion Account

(WV Code Chapter 19)

Fund 7304 FY 2022 Org 0707

Personal Services and Employee Benefits	00100	$	264,564
Current Expenses	13000		85,433
Other Assets	69000		5,000
Total		$	354,997

261 -Racing Commission –

General Administration

(WV Code Chapter 19)

Fund 7305 FY 2022 Org 0707

Personal Services and Employee Benefits	00100	$	2,303,863
Salary and Benefits of Cabinet Secretary and Agency Heads	00201		48,443
Current Expenses	13000		497,284
Repairs and Alterations	06400		5,000
Other Assets	69000		40,000
Total		$	2,894,590

262 -Racing Commission –

Administration, Promotion, Education, Capital Improvement

and Greyhound Adoption Programs

to include Spaying and Neutering Account

(WV Code Chapter 19)

Fund 7307 FY 2022 Org 0707

Personal Services and Employee Benefits	00100	$	918,781

Current Expenses	13000	160,099
Other Assets	69000	200,000
Total		$ 1,278,880

263 -Alcohol Beverage Control Administration –

Wine License Special Fund

(WV Code Chapter 60)

Fund 7351 FY 2022 Org 0708

Personal Services and Employee Benefits	00100	$ 147,213
Current Expenses	13000	54,186
Repairs and Alterations	06400	7,263
Equipment	07000	10,000
Buildings	25800	100,000
Transfer Liquor Profits and Taxes	42500	30,750
Other Assets	69000	100
Total		$ 349,512

To the extent permitted by law, four classified exempt positions shall be provided from Personal Services and Employee Benefits appropriation for field auditors.

264 -Alcohol Beverage Control Administration

(WV Code Chapter 60)

Fund 7352 FY 2022 Org 0708

Personal Services and Employee Benefits	00100	$ 5,668,074
Salary and Benefits of Cabinet Secretary and Agency Heads	00201	122,500
Current Expenses	13000	2,890,577
Repairs and Alterations	06400	91,000
Equipment	07000	108,000
Buildings	25800	375,100
Purchase of Supplies for Resale	41900	76,500,000
Transfer Liquor Profits and Taxes	42500	21,200,000
Other Assets	69000	125,100

Land	73000	100
Total		$107,080,451

The total amount of these appropriations shall be paid from a special revenue fund out of liquor revenues and any other revenues available.

The above appropriations include the salary of the commissioner and the salaries, expenses, and equipment of administrative offices, warehouses, and inspectors.

The above appropriations include funding for the Tobacco/Alcohol Education Program.

There is hereby appropriated from liquor revenues, in addition to the above appropriations as needed, the necessary amount for the purchase of liquor as provided by law and the remittance of profits and taxes to the General Revenue Fund.

265 -State Athletic Commission Fund

(WV Code Chapter 29)

Fund 7009 FY 2022 Org 0933

Personal Services and Employee Benefits	00100	$	12,000
Current Expenses	13000		28,000
Total		$	40,000

DEPARTMENT OF TRANSPORTATION

266 -Division of Motor Vehicles –

Dealer Recovery Fund

(WV Code Chapter 17)

Fund 8220 FY 2022 Org 0802

Current Expenses	13000	$	189,000

267 -Division of Motor Vehicles –

Motor Vehicle Fees Fund

(WV Code Chapter 17B)

Fund 8223 FY 2022 Org 0802

Personal Services and Employee Benefits	00100	$	3,733,074
Current Expenses	13000		4,357,773
Repairs and Alterations	06400		16,000
Equipment	07000		75,000
Other Assets	69000		10,000
BRIM Premium	91300		89,939
Total		$	8,281,786

268 -Division of Highways –

A. James Manchin Fund

(WV Code Chapter 22)

Fund 8319 FY 2022 Org 0803

Current Expenses	13000	$	2,500,000

269 -State Rail Authority -

West Virginia Commuter Rail Access Fund

(WV Code Chapter 29)

Fund 8402 FY 2022 Org 0804

Current Expenses	13000	$	600,000

DEPARTMENT OF VETERANS' ASSISTANCE

270 -Veterans' Facilities Support Fund

(WV Code Chapter 9A)

Fund 6703 FY 2022 Org 0613

Current Expenses	13000	$ 1,654,234
Other Assets	69000	10,000
Total		$ 1,664,234

271 -Department of Veterans' Assistance –

WV Veterans' Home –

Special Revenue Operating Fund

(WV Code Chapter 9A)

Fund 6754 FY 2022 Org 0618

Current Expenses	13000	$ 289,400
Repairs and Alterations	06400	10,600
Total		$ 300,000

BUREAU OF SENIOR SERVICES

272 -Bureau of Senior Services –

Community Based Service Fund

(WV Code Chapter 29)

Fund 5409 FY 2022 Org 0508

Personal Services and Employee Benefits	00100	$ 148,983
Salary and Benefits of Cabinet Secretary and Agency Heads	00201	11,900
Current Expenses	13000	10,348,710
Total		$ 10,509,593

The total amount of these appropriations are funded from annual table game license fees to enable the aged and disabled citizens of West Virginia to stay in their homes through the provision of home and community-based services.

HIGHER EDUCATION POLICY COMMISSION

273 -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 2022 Org 0442

Debt Service.....	04000	$ 27,713,123
General Capital Expenditures	30600	5,000,000
Facilities Planning and Administration	38600	441,111
Total.....		$ 33,154,234

The total amount of these appropriations shall be paid from the Special Capital Improvement Fund created in W.Va. Code §18B-10-8. Projects are to be paid on a cash basis and made available on July 1.

The above appropriations, except for Debt Service, may be transferred to special revenue funds for capital improvement projects at the institutions.

274 -Tuition Fee Revenue Bond Construction Fund

(WV Code Chapters 18 and 18B)

Fund 4906 FY 2022 Org 0442

Any unexpended balance remaining in the appropriation for Capital Outlay (fund 4906, appropriation 51100) at the close of the fiscal year 2021 is hereby reappropriated for expenditure during the fiscal year 2022.

The appropriation shall be paid from available unexpended cash balances and interest earnings accruing to the fund. The appropriation shall be expended at the discretion of the Higher Education Policy Commission and the funds may be allocated to any institution within the system.

The total amount of this appropriation shall be paid from the unexpended proceeds of revenue bonds previously issued pursuant to W.Va. Code §18-12B-8, which have since been refunded.

275 -Community and Technical College –

Capital Improvement Fund

(WV Code Chapter 18B)

Fund 4908 FY 2022 Org 0442

Any unexpended balance remaining in the appropriation for Capital Improvements – Total (fund 4908, appropriation 95800) at the close of fiscal year 2021 is hereby reappropriated for expenditure during the fiscal year 2022.

The total amount of this appropriation shall be paid from the sale of the Series 2017 Community and Technical College Capital Improvement Refunding Revenue Bonds and anticipated interest earnings.

276 -West Virginia University –

West Virginia University Health Sciences Center

(WV Code Chapters 18 and 18B)

Fund 4179 FY 2022 Org 0463

Personal Services and Employee Benefits	00100	$ 10,764,347
Current Expenses	13000	4,524,300
Repairs and Alterations	06400	425,000
Equipment	07000	512,000
Buildings	25800	150,000

Other Assets	69000	50,000
Total		$ 16,425,647

MISCELLANEOUS BOARDS AND COMMISSIONS

277 -Board of Barbers and Cosmetologists –

Barbers and Beauticians Special Fund

(WV Code Chapters 16 and 30)

Fund 5425 FY 2022 Org 0505

Personal Services and Employee Benefits	00100	$ 543,993
Current Expenses	13000	234,969
Repairs and Alterations	06400	5,000
Total		$ 783,962

The total amount of these appropriations shall be paid from a special revenue fund out of collections made by the Board of Barbers and Cosmetologists as provided by law.

278 -Hospital Finance Authority –

Hospital Finance Authority Fund

(WV Code Chapter 16)

Fund 5475 FY 2022 Org 0509

Salary and Benefits of Cabinet Secretary and Agency Heads	00201	$ 93,279
Unclassified	09900	1,501
Current Expenses	13000	55,328
Total		$ 150,108

The total amount of these appropriations shall be paid from the special revenue fund out of fees and collections as provided by Article 29A, Chapter 16 of the Code.

279 -State Armory Board –

General Armory Fund

(WV Code Chapter 15)

Fund 6057 FY 2022 Org 0603

Personal Services and Employee Benefits	00100	$ 1,681,247
Current Expenses	13000	650,000
Repairs and Alterations	06400	385,652
Equipment	07000	250,000
Buildings	25800	520,820
Other Assets	69000	350,000
Land	73000	200,000
Total		$ 4,037,719

From the above appropriations, the Adjutant General may receive and expend funds to conduct operations and activities to include functions of the Military Authority. The Adjutant General may transfer funds between appropriations, except no funds may be transferred to Personal Services and Employee Benefits (fund 6057, appropriation 00100).

280 -WV State Board of Examiners for Licensed Practical Nurses –

Licensed Practical Nurses

(WV Code Chapter 30)

Fund 8517 FY 2022 Org 0906

Personal Services and Employee Benefits	00100	$ 495,505
Current Expenses	13000	107,700
Total		$ 603,205

281 -WV Board of Examiners for Registered Professional Nurses –

Registered Professional Nurses

(WV Code Chapter 30)

Fund 8520 FY 2022 Org 0907

Personal Services and Employee Benefits	00100	$ 1,300,612
Current Expenses	13000	312,655
Repairs and Alterations	06400	3,000
Equipment	07000	25,000
Other Assets	69000	4,500
Total		$ 1,645,767

282 -Public Service Commission

(WV Code Chapter 24)

Fund 8623 FY 2022 Org 0926

Personal Services and Employee Benefits	00100	$ 12,163,281
Salary and Benefits of Cabinet Secretary and Agency Heads	00201	318,640
Unclassified	09900	147,643
Current Expenses	13000	2,507,202
Repairs and Alterations	06400	390,000
Equipment	07000	160,000
Buildings	25800	10
PSC Weight Enforcement	34500	4,605,652
Debt Payment/Capital Outlay	52000	350,000
Land	73000	10
BRIM Premium	91300	172,216
Total		$ 20,814,654

The total amount of these appropriations shall be paid from a special revenue fund out of collections for special license fees from public service corporations as provided by law.

The Public Service Commission is authorized to transfer up to $500,000 from this fund to meet the expected deficiencies in the Motor Carrier Division (fund 8625, org 0926) due to the amendment and reenactment of W.Va. Code §24A-3-1 by Enrolled House Bill Number 2715, Regular Session, 1997.

283 -Public Service Commission –

Gas Pipeline Division –

Public Service Commission Pipeline Safety Fund

(WV Code Chapter 24B)

Fund 8624 FY 2022 Org 0926

Personal Services and Employee Benefits	00100	$	282,709
Salary and Benefits of Cabinet Secretary and Agency Heads	00201		11,949
Unclassified	09900		3,851
Current Expenses	13000		93,115
Repairs and Alterations	06400		4,000
Total		$	395,624

The total amount of these appropriations shall be paid from a special revenue fund out of receipts collected for or by the Public Service Commission pursuant to and in the exercise of regulatory authority over pipeline companies as provided by law.

284 -Public Service Commission –

Motor Carrier Division

(WV Code Chapter 24A)

Fund 8625 FY 2022 Org 0926

Personal Services and Employee Benefits	00100	$	2,309,803
Salary and Benefits of Cabinet Secretary and Agency Heads	00201		67,711
Unclassified	09900		29,233
Current Expenses	13000		577,557
Repairs and Alterations	06400		23,000
Equipment	07000		50,000
Total		$	3,057,304

The total amount of these appropriations shall be paid from a special revenue fund out of receipts collected for or by the Public Service Commission pursuant to and in the exercise of regulatory authority over motor carriers as provided by law.

285 -Public Service Commission –

Consumer Advocate Fund

(WV Code Chapter 24)

Fund 8627 FY 2022 Org 0926

Personal Services and Employee Benefits	00100	$	876,994
Current Expenses	13000		386,472
Equipment	07000		9,872
BRIM Premium	91300		4,660
Total		$	1,277,998

The total amount of these appropriations shall be supported by cash from a special revenue fund out of collections made by the Public Service Commission.

286 -Real Estate Commission –

Real Estate License Fund

(WV Code Chapter 30)

Fund 8635 FY 2022 Org 0927

Personal Services and Employee Benefits	00100	$	607,098
Current Expenses	13000		293,122
Repairs and Alterations	06400		2,500
Equipment	07000		5,000
Total		$	907,720

The total amount of these appropriations shall be paid out of collections of license fees as provided by law.

287 -WV Board of Examiners for Speech-Language

Pathology and Audiology –

Speech-Language Pathology and Audiology Operating Fund

(WV Code Chapter 30)

Fund 8646 FY 2022 Org 0930

Personal Services and Employee Benefits	00100	$	91,513
Current Expenses	13000		63,499
Total		$	155,012

288 -WV Board of Respiratory Care –

Board of Respiratory Care Fund

(WV Code Chapter 30)

Fund 8676 FY 2022 Org 0935

Personal Services and Employee Benefits	00100	$	85,878
Current Expenses	13000		62,709
Total		$	148,587

289 -WV Board of Licensed Dietitians –

Dietitians Licensure Board Fund

(WV Code Chapter 30)

Fund 8680 FY 2022 Org 0936

Personal Services and Employee Benefits	00100	$	20,219
Current Expenses	13000		20,250
Total		$	40,469

290 -Massage Therapy Licensure Board –

Massage Therapist Board Fund

(WV Code Chapter 30)

Fund 8671 FY 2022 Org 0938

Personal Services and Employee Benefits	00100	$	109,555
Current Expenses	13000		42,448
Total		$	152,003

291 -Board of Medicine –

Medical Licensing Board Fund

(WV Code Chapter 30)

Fund 9070 FY 2022 Org 0945

Personal Services and Employee Benefits	00100	$	1,378,807
Current Expenses	13000		1,108,789
Repairs and Alterations	06400		8,000
Total		$	2,495,596

292 -West Virginia Enterprise Resource Planning Board –

Enterprise Resource Planning System Fund

(WV Code Chapter 12)

Fund 9080 FY 2022 Org 0947

Personal Services and Employee Benefits	00100	$	6,856,239
Unclassified	09900		182,000
Current Expenses	13000		13,662,210
Repairs and Alterations	06400		300
Equipment	07000		352,000
Buildings	25800		2,000

Other Assets	69000	203,500
Total		$ 21,258,249

293 -Board of Treasury Investments –

Board of Treasury Investments Fee Fund

(WV Code Chapter 12)

Fund 9152 FY 2022 Org 0950

Personal Services and Employee Benefits	00100	$ 832,889
Unclassified	09900	14,850
Current Expenses	13000	605,714
BRIM Premium	91300	31,547
Fees of Custodians, Fund Advisors and Fund Managers	93800	3,500,000
Total		$ 4,985,000

There is hereby appropriated from this fund, in addition to the above appropriation if needed, an amount of funds necessary for the Board of Treasury Investments to pay the fees and expenses of custodians, fund advisors and fund managers for the consolidated fund of the State as provided in Article 6C, Chapter 12 of the Code.

The total amount of these appropriations shall be paid from the special revenue fund out of fees and collections as provided by law.

Total TITLE II, Section 3 – Other Funds (Including claims against the state)	$ 1,551,094,882

Sec. 4. Appropriations from lottery net profits. — Net profits of the lottery are to be deposited by the Director of the Lottery to the following accounts in the amounts indicated. The Director of the Lottery shall prorate each deposit of net profits in the proportion the appropriation for each account bears to the total of the appropriations for all accounts.

After first satisfying the requirements for Fund 2252, Fund 3963, and Fund 4908 pursuant to W.Va. Code §29-22-18, the

Director of the Lottery shall make available from the remaining net profits of the lottery any amounts needed to pay debt service for which an appropriation is made for Fund 9065, Fund 4297, Fund 3390, Fund 3514, Fund 9067, and Fund 9068 and is authorized to transfer any such amounts to Fund 9065, Fund 4297, Fund 3390, Fund 3514, Fund 9067, and Fund 9068 for that purpose. Upon receipt of reimbursement of amounts so transferred, the Director of the Lottery shall deposit the reimbursement amounts to the following accounts as required by this section.

294 -Education, Arts, Sciences and Tourism –

Debt Service Fund

(WV Code Chapter 5)

Fund 2252 FY 2022 Org 0211

	Appro-priation	**Lottery Funds**
Debt Service – Total	31000	$ 10,000,000

295 -Department of Tourism –

Office of the Secretary

(WV Code Chapter 5B)

Fund 3067 FY 2022 Org 0304

Tourism – Telemarketing Center	46300	$ 82,080
Tourism – Advertising (R).....	61800	2,422,407
Tourism – Operations (R)	66200	4,227,938
Total.....		$ 6,732,425

Any unexpended balances remaining in the appropriations for Tourism – Advertising (fund 3067, appropriation 61800) and Tourism – Operations (fund 3067, appropriation 66200) at the close of the fiscal year 2021 are hereby reappropriated for expenditure during the fiscal year 2022.

296 -Division of Natural Resources

(WV Code Chapter 20)

Fund 3267 FY 2022 Org 0310

Personal Services and Employee Benefits	00100	$ 2,428,178
Current Expenses	13000	26,900
Pricketts Fort State Park	32400	106,560
Non-Game Wildlife (R)	52700	386,935
State Parks and Recreation Advertising (R)	61900	494,578
Total		$ 3,443,151

Any unexpended balances remaining in the appropriations for Unclassified (fund 3267, appropriation 09900), Capital Outlay – Parks (fund 3267, appropriation 28800), Non-Game Wildlife (fund 3267, appropriation 52700), and State Parks and Recreation Advertising (fund 3267, appropriation 61900) at the close of the fiscal year 2021 are hereby reappropriated for expenditure during the fiscal year 2022.

297 -State Board of Education

(WV Code Chapters 18 and 18A)

Fund 3951 FY 2022 Org 0402

FBI Checks	37200	$ 116,548
Vocational Education Equipment Replacement	39300	800,000
Assessment Program (R)	39600	490,439
Literacy Project	89900	350,000
21st Century Technology Infrastructure Network Tools and Support (R)	93300	12,600,383
Total		$ 14,357,370

Any unexpended balances remaining in the appropriations for Unclassified (fund 3951, appropriation 09900), Current Expenses (fund 3951, appropriation 13000), Assessment Program (fund 3951, appropriation 39600), and 21st Century Technology Infrastructure Network Tools and Support (fund 3951,

appropriation 93300) at the close of the fiscal year 2021 are hereby reappropriated for expenditure during the fiscal year 2022.

298 -State Department of Education –

School Building Authority –

Debt Service Fund

(WV Code Chapter 18)

Fund 3963 FY 2022 Org 0404

Debt Service – Total	31000	$ 15,320,363
Directed Transfer	70000	2,679,637
Total.....		$ 18,000,000

The School Building Authority shall have the authority to transfer between the above appropriations in accordance with W.Va. Code §29-22-18.

The above appropriation for Directed Transfer (fund 3963, appropriation 70000) may be transferred to the Department of Education, State Board of Education, School Building Authority, School Construction Fund, fund 3952, organization 0404 to be used for school construction and maintenance projects.

299 -Division of Culture and History –

Lottery Education Fund

(WV Code Chapter 29)

Fund 3534 FY 2022 Org 0432

Huntington Symphony	02700	$ 59,058
Preservation West Virginia (R).....	09200	491,921
Fairs and Festivals (R)	12200	1,346,814
Commission for National and Community Service (R)	19300	374,980
Archeological Curation/Capital Improvements (R).....	24600	36,276
Historic Preservation Grants (R).....	31100	417,933

West Virginia Public Theater.....	31200	120,019
Greenbrier Valley Theater	42300	115,000
Theater Arts of West Virginia.....	46400	90,000
Marshall Artists Series.....	51800	36,005
Grants for Competitive Arts Program (R)	62400	811,500
West Virginia State Fair.....	65700	31,241
Save the Music.....	68000	40,000
Contemporary American Theater Festival	81100	57,281
Independence Hall	81200	27,277
Mountain State Forest Festival	86400	38,187
WV Symphony.....	90700	59,058
Wheeling Symphony.....	90800	59,058
Appalachian Children's Chorus.....	91600	54,554
Total.....		$ 4,266,162

From the above appropriation for Preservation West Virginia (fund 3534, appropriation 09200) funding shall be provided to the African-American Heritage Family Tree Museum (Fayette) $2,673, Arts Monongahela (Monongalia) $11,881, Barbour County Arts and Humanities Council $0,891, Beckley Main Street (Raleigh) $2,970, Buffalo Creek Memorial (Logan) $2,970, Carnegie Hall (Greenbrier) $46,899, Ceredo Historical Society (Wayne) $1,188, Ceredo Kenova Railroad Museum (Wayne) $1,188, Ceredo Museum (Wayne) $0,720, Children's Theatre of Charleston (Kanawha) $3,127, Chuck Mathena Center (Mercer) $62,532, Collis P. Huntington Railroad Historical Society (Cabell) $5,941, Country Music Hall of Fame and Museum (Marion) $4,159, First Stage Children's Theater Company $1,188, Flannigan Murrell House (Summers) $3,781, Fort Ashby Fort (Mineral) $0,891, Fort New Salem (Harrison) $2,198, Fort Randolph (Mason) $2,970, General Adam Stephen Memorial Foundation (Berkeley) $11,006, Grafton Mother's Day Shrine Committee (Taylor) $9,029, Hardy County Tour and Crafts Association $11,881, Heartwood in the Hills (Calhoun) $5,040, Heritage Farm Museum & Village (Cabell) $29,703, Historic Fayette Theater (Fayette) $3,267, Historic Middleway Conservancy (Jefferson) $0,594, Jefferson County Black History

Preservation Society $2,970, Jefferson County Historical Landmark Commission $4,753, Maddie Carroll House (Cabell) $4,455, Marshall County Historical Society $5,049, McCoy Theater (Hardy) $11,881, Memorial Day Patriotic Exercise (Taylor) $20,000, Morgantown Theater Company (Monongalia) $11,881, Mountaineer Boys' State (Lewis) $5,941, Nicholas Old Main Foundation (Nicholas) $1,188, Norman Dillon Farm Museum (Berkeley) $5,941, Old Opera House Theater Company (Jefferson) $8,911, Parkersburg Arts Center (Wood) $11,881, Pocahontas Historic Opera House $3,564, Raleigh County All Wars Museum $5,941, Rhododendron Girl's State (Ohio) $5,941, Roane County 4-H and FFA Youth Livestock Program $2,970, Society for the Preservation of McGrew House (Preston) $2,079, Southern West Virginia Veterans' Museum $3,393, Summers County Historic Landmark Commission $2,970, Those Who Served War Museum (Mercer) $2,376, Three Rivers Avian Center (Summers) $5,311, Veterans Committee for Civic Improvement of Huntington (Wayne) $2,970, West Virginia Museum of Glass (Lewis) $2,970, West Virginia Music Hall of Fame (Kanawha) $20,792, YMCA Camp Horseshoe (Tucker) $59,406, Youth Museum of Southern West Virginia (Raleigh) $7,129, Z.D. Ramsdell House (Wayne) $0,720.

From the above appropriation for Fairs and Festivals (fund 3534, appropriation 12200) funding shall be provided to the A Princeton 4th (Mercer) $1,800, African-American Cultural Heritage Festival (Jefferson) $2,970, Alderson 4th of July Celebration (Greenbrier) $2,970, Allegheny Echo (Pocahontas) $4,456, Alpine Festival/Leaf Peepers Festival (Tucker) $6,683, American Civil War (Grant) $3,127, American Legion Post 8 Veterans Day Parade (McDowell) $1,250, Angus Beef and Cattle Show (Lewis) $891, Annual Don Redman Heritage Concert & Awards (Jefferson) $938, Annual Ruddle Park Jamboree (Pendleton) $4,690, Antique Market Fair (Lewis) $1,188, Apple Butter Festival (Morgan) $3,564, Arkansaw Homemaker's Heritage Weekend (Hardy) $2,079, Armed Forces Day-South Charleston (Kanawha) $1,782, Arthurdale Heritage New Deal Festival (Preston) $2,970, Athens Town Fair (Mercer) $1,188, Augusta Fair (Randolph) $2,970, Autumn Harvest Fest (Monroe)

$2,448, Back Home Festival (Wetzel) $5,000, Barbour County Fair (Barbour) $14,851, Barboursville Octoberfest (Cabell) $2,970, Battelle District Fair (Monongalia) $3,340, Battle of Dry Creek (Greenbrier) $891, Battle of Point Pleasant Memorial Committee (Mason) $2,970, Belle Town Fair (Kanawha) $2,673, Belleville Homecoming (Wood) $11,881, Bergoo Down Home Days (Webster) $1,485, Berkeley County Youth Fair (Berkeley) $10,990, Black Bear 4K Mountain Bike Race (Kanawha) $684, Black Heritage Festival (Harrison) $3,564, Black Walnut Festival (Roane) $5,940, Blacksville VFD Memorial Day Celebration (Monongalia) $1,000, Blast from the Past (Upshur) $1,440, Blue-Gray Reunion (Barbour) $2,079, Boone County Fair (Boone) $5,940, Boone County Labor Day Celebration (Boone) $2,376, Bradshaw Fall Festival (McDowell) $1,188, Bramwell Labor Day (Mercer) $5,000, Brandonville Heritage Day (Preston) $1,048, Braxton County Fair (Braxton) $6,832, Braxton County Monster Fest / West Virginia Autumn Festival (Braxton) $1,485, Brooke County Fair (Brooke) $2,079, Bruceton Mills Good Neighbor Days (Preston) $1,188, Buckwheat Festival (Preston) $5,050, Buffalo 4th of July Celebration (Putnam) $400, Buffalo October Fest (Putnam) $3,240, Burlington Apple Harvest Auxiliary (Mineral) $13,821, Burlington Pumpkin Harvest Festival (Raleigh) $2,970, Burlington Volunteer Fire and Rescue Carnival (Mineral) $4,000, Burnsville Freedom Festival (Braxton) $1,407, Cabell County Fair (Cabell) $5,940, Calhoun County Wood Festival (Calhoun) $1,188, Campbell's Creek Community Fair (Kanawha) $1,485, Cape Coalwood Festival Association (McDowell) $1,485, Cacapon River Fest (Hampshire) $2,500, Capon Bridge Founders Day Festival (Hampshire) $1,188, Capon Springs Ruritan 4th of July (Hampshire) $684, Cass Homecoming (Pocahontas) $1,188, Cedarville Town Festival (Gilmer) $684, Celebration of America (Monongalia) $3,564, Chapmanville Apple Butter Festival (Logan) $684, Chapmanville Fire Department 4th of July (Logan) $1,782, Charles Town Christmas Festival (Jefferson) $2,970, Charles Town Heritage Festival (Jefferson) $2,970, Cherry River Festival (Nicholas) $3,861, Chester Fireworks (Hancock) $891, Chester 4th of July Festivities (Hancock) $2,970, Chief Logan

State Park-Civil War Celebration (Logan) $4,752, Chilifest West Virginia State Chili Championship (Cabell) $1,563, Christmas In Our Town (Marion) $3,127, Christmas in Shepherdstown (Jefferson) $2,376, Christmas in the Park (Brooke) $2,970, Christmas in the Park (Logan) $14,851, City of Dunbar Critter Dinner (Kanawha) $5,940, City of Logan Polar Express (Logan) $4,456, City of New Martinsville Festival of Memories (Wetzel) $6,534, Clay County Golden Delicious Apple Festival (Clay) $4,158, Clay District Fair (Monongalia) $3,341, Coal Field Jamboree (Logan) $20,792, Coalton Days Fair (Randolph) $4,158, Craigsville Fall Festival (Nicholas) $2,079, Cruise into Princeton (Mercer) $2,160, Culturefest World Music & Arts Festival (Mercer) $4,690, Delbarton Homecoming (Mingo) $2,079, Doddridge County Fair (Doddridge) $4,158, Dorcas Ice Cream Social (Grant) $3,564, Durbin Days (Pocahontas) $2,970, Elbert/Filbert Reunion Festival (McDowell) $891, Fairview 4th of July Celebration (Marion) $684, Farm Safety Day (Preston) $1,188, Farmer's Day Festival (Monroe) $2,330, Fenwick Mountain Old Time Community Festival (Nicholas) $2,880, FestivALL Charleston (Kanawha) $11,881, Flemington Days Fair and Festival (Taylor) $2,379, Follansbee Community Days (Brooke) $4,900, Fort Gay Mountain Heritage Days (Wayne) $2,970, Fort Henry Days (Ohio) $3,148, Fort Henry Living History (Ohio) $1,563, Fort New Salem Spirit of Christmas Festival (Harrison) $2,432, Frankford Autumnfest (Greenbrier) $2,970, Franklin Fishing Derby (Pendleton) $10,709, Freshwater Folk Festival (Greenbrier) $2,970, Friends Auxiliary of W.R. Sharpe Hospital (Lewis) $2,970, Frontier Days (Harrison) $1,782, Fund for the Arts-Wine & All that Jazz Festival (Kanawha) $1,485, Gassaway Days Celebration (Braxton) $2,970, Gilbert Elementary Fall Blast (Mingo) $2,188, Gilbert Spring Fling (Mingo) $3,595, Gilmer County Farm Show (Gilmer) $2,376, Grant County Arts Council (Grant) $1,188, Great Greenbrier River Race (Pocahontas) $5,940, Greater Quinwood Days (Greenbrier) $781, Guyandotte Civil War Days (Cabell) $5,941, Hamlin 4th of July Celebration (Lincoln) $2,970, Hampshire Civil War Celebration Days (Hampshire) $684, Hampshire County 4th of July Celebration (Hampshire) $11,881, Hampshire County Fair (Hampshire) $5,002,

Hampshire Highlands Art & Music Festival (Hampshire) $4,252, Hancock County Oldtime Fair (Hancock) $2,970, Hardy County Commission - 4th of July (Hardy) $5,940, Hatfield McCoy Matewan Reunion Festival (Mingo) $12,330, Hatfield McCoy Trail National ATV and Dirt Bike Weekend (Wyoming) $2,970, Heat'n the Hills Chilifest (Lincoln) $2,970, Heritage Craft Festival (Monroe) $1,044, Heritage Days Festival (Roane) $891, Hilltop Festival (Cabell) $684, Hilltop Festival of Lights (McDowell) $1,188, Hinton Railroad Days (Summers) $4,347, Holly River Festival (Webster) $891, Hometown Mountain Heritage Festival (Fayette) $2,432, Hundred 4th of July (Wetzel) $4,307, Hurricane 4th of July Celebration (Putnam) $2,970, Iaeger Town Fair (McDowell) $891, Irish Heritage Festival of West Virginia (Raleigh) $2,970, Irish Spring Festival (Lewis) $684, Italian Heritage Festival-Clarksburg (Harrison) $17,821, Jackson County Fair (Jackson) $2,970, Jamboree (Pocahontas) $2,970, Jane Lew Arts and Crafts Fair (Lewis) $684, Jefferson County Fair Association (Jefferson) $14,851, Jersey Mountain Ruritan Pioneer Days (Hampshire) $684, John Henry Days Festival (Monroe) $4,698, Johnnie Johnson Blues and Jazz Festival (Marion) $2,970, Johnstown Community Fair (Harrison) $1,485, Junior Heifer Preview Show (Lewis) $1,188, Kanawha Coal Riverfest-St. Albans 4th of July Festival (Kanawha) $2,970, Keeper of the Mountains-Kayford (Kanawha) $1,485, Kenova Autumn Festival (Wayne) $4,377, Kermit Fall Festival (Mingo) $1,782, Keystone Reunion Gala (McDowell) $1,563, King Coal Festival (Mingo) $2,970, Kingwood Downtown Street Fair and Heritage Days (Preston) $1,188, L.Z. Rainelle West Virginia Veterans Reunion (Greenbrier) $2,970, Lady of Agriculture (Preston) $684, Larry Joe Harless Center Octoberfest Hatfield McCoy Trail (Mingo) $5,940, Larry Joe Harless Community Center Spring Middle School Event (Mingo) $2,970, Last Blast of Summer (McDowell) $2,970, Lewisburg Shanghai (Greenbrier) $1,188, Lincoln County Fall Festival (Lincoln) $4,752, Lincoln County Winterfest (Lincoln) $2,970, Lindside Veterans' Day Parade (Monroe) $720, Little Levels Heritage Festival (Pocahontas) $1,188, Lost Creek Community Festival (Harrison) $4,158, Main Street Arts Festival (Upshur) $3,127, Main Street Martinsburg

Chocolate Fest and Book Fair (Berkeley) $2,813, Malden Salt Fest (Kanawha) $2,000, Mannington District Fair (Marion) $3,564, Maple Syrup Festival (Randolph) $684, Marion County FFA Farm Fest (Marion) $1,485, Marmet Labor Day Celebration (Kanawha) $3,078, Marshall County Antique Power Show (Marshall) $1,485, Marshall County Fair (Marshall) $5,000, Mason County Fair (Mason) $2,970, Matewan Massacre Reenactment (Mingo) $5,004, Matewan-Magnolia Fair (Mingo) $15,932, McARTS-McDowell County (McDowell) $11,881, McGrew House History Day (Preston) $1,188, McNeill's Rangers (Mineral) $4,752, Meadow Bridge Hometown Festival (Fayette) $743, Meadow River Days Festival (Greenbrier) $1,782, Mercer County Fair (Mercer) $1,188, Mercer County Heritage Festival (Mercer) $3,474, Milton Christmas in the Park (Cabell) $1,485, Milton Old Timey Days (Cabell) $1,485, Mineral County Fair (Mineral) $1,040, Mineral County Veterans Day Parade (Mineral) $891, Molasses Festival (Calhoun) $1,188, Monongahfest (Marion) $3,752, Monongalia County Fair (Monongalia) $7,250, Moon Over Mountwood Fishing Festival (Wood) $1,782, Morgan County Fair-History Wagon (Morgan) $891, Moundsville Bass Festival (Marshall) $2,376, Moundsville July 4th Celebration (Marshall) $2,970, Mount Liberty Fall Festival (Barbour) $1,485, Mountain Festival (Mercer) $2,747, Mountain Heritage Arts and Crafts Festival (Jefferson) $2,970, Mountain Music Festival (McDowell) $1,485, Mountain State Apple Harvest Festival (Berkeley) $4,456, Mountain State Arts & Crafts Fair Cedar Lakes (Jackson) $26,732, Mullens Dogwood Festival (Wyoming) $4,158, Multi-Cultural Festival of West Virginia (Kanawha) $11,881, Music and Barbecue - Banks District VFD (Upshur) $1,278, New Cumberland Christmas Parade (Hancock) $1,782, New Cumberland 4th of July (Hancock) $2,970, New River Bridge Day Festival (Fayette) $23,762, Nicholas County Fair (Nicholas) $2,970, Nicholas County Potato Festival (Nicholas) $2,079, Oak Leaf Festival (Fayette) $6,253, Oceana Heritage Festival (Wyoming) $3,564, Oglebay City Park - Festival of Lights (Ohio) $47,524, Oglebay Festival (Ohio) $5,940, Ohio County Country Fair (Ohio) $5,346, Ohio River Fest (Jackson) $4,320, Ohio Valley Beef Association (Ohio)

$1,485, Ohio Valley Black Heritage Festival (Ohio) $3,267, Old Central City Fair (Cabell) $2,970, Old Tyme Christmas (Jefferson) $1,425, Osage Street Fair (Monongalia) $1,000, Paden City Labor Day Festival (Wetzel) $3,861, Parkersburg Homecoming (Wood) $8,754, Patty Fest (Monongalia) $1,188, Paw Paw District Fair (Marion) $2,079, Pax Reunion Committee (Fayette) $2,970, Pendleton County 4-H Weekend (Pendleton) $1,188, Pendleton County Committee for Arts (Pendleton) $8,910, Pennsboro Country Road Festival (Ritchie) $1,188, Petersburg 4th of July Celebration (Grant) $11,881, Petersburg HS Celebration (Grant) $5,940, Piedmont-Annual Back Street Festival (Mineral) $2,376, Pinch Reunion (Kanawha) $891, Pine Bluff Fall Festival (Harrison) $2,376, Pine Grove 4th of July Festival (Wetzel) $4,158, Pineville Festival (Wyoming) $3,564, Pleasants County Agriculture Youth Fair (Pleasants) $2,970, Poca Heritage Days (Putnam) $1,782, Pocahontas County Pioneer Days (Pocahontas) $4,159, Point Pleasant Stern Wheel Regatta (Mason) $2,970, Pratt Fall Festival (Kanawha) $1,485, Princeton Autumnfest (Mercer) $1,563, Princeton Street Fair (Mercer) $2,970, Putnam County Fair (Putnam) $2,970, Quartets on Parade (Hardy) $2,376, Rainelle Fall Festival (Greenbrier) $3,127, Rand Community Center Festival (Kanawha) $1,485, Randolph County Community Arts Council (Randolph) $1,782, Randolph County Fair (Randolph) $4,158, Randolph County Ramps and Rails (Randolph) $2,188, Randolph County Ramp and Rails (Randolph) $1,188, Ranson Christmas Festival (Jefferson) $2,970, Ranson Festival (Jefferson) $2,970, Renick Liberty Festival (Greenbrier) $684, Ripley 4th of July (Jackson) $8,910, Ritchie County Fair and Exposition (Ritchie) $2,970, Ritchie County Pioneer Days (Ritchie) $684, River City Festival (Preston) $684, Roane County Agriculture Field Day (Roane) $1,782, Rock the Park (Kanawha) $3,240, Rocket Boys Festival (Raleigh) $1,710, Romney Heritage Days (Hampshire) $1,876, Ronceverte River Festival (Greenbrier) $2,970, Rowlesburg Labor Day Festival (Preston) $684, Rupert Country Fling (Greenbrier) $1,876, Saint Spyridon Greek Festival (Harrison) $1,485, Salem Apple Butter Festival (Harrison) $2,376, Sistersville 4th of July (Tyler) $3,267, Skirmish on the River (Mingo) $1,250, Smoke on the

Water (Wetzel) $1,782, South Charleston Summerfest (Kanawha) $5,940, Southern Wayne County Fall Festival (Wayne) $684, Spirit of Grafton Celebration (Taylor) $6,240, Spring Mountain Festival (Grant) $500, St. Albans City of Lights - December (Kanawha) $2,970, Sternwheel Festival (Wood) $1,782, Stoco Reunion (Raleigh) $1,485, Stonewall Jackson Heritage Arts & Crafts Jubilee (Lewis) $6,534, Stonewall Jackson's Roundhouse Raid (Berkeley) $7,200, Strawberry Festival (Upshur) $17,821, Sylvester Big Coal River Festival (Boone) $1,944, Tacy Fair (Barbour) $684, Taste of Parkersburg (Wood) $2,970, Taylor County Fair (Taylor) $3,567, The Gathering at Sweet Creek (Wood) $1,782, Three Rivers Coal Festival (Marion) $4,604, Thunder on the Tygart - Mothers' Day Celebration (Taylor) $7,300, Town of Delbarton 4th of July Celebration (Mingo) $1,782, Town of Fayetteville Heritage Festival (Fayette) $4,456, Town of Rivesville 4th of July Festival (Marion) $3,127, Town of Winfield - Putnam County Homecoming (Putnam) $3,240, St. Albans Train Fest (Kanawha) $6,120, Treasure Mountain Festival (Pendleton) $16,851, Tri-County Fair (Grant) $22,548, Tucker County Arts Festival and Celebration (Tucker) $10,692, Tucker County Fair (Tucker) $2,821, Tucker County Health Fair (Tucker) $1,188, Turkey Festival (Hardy) $1,782, Tyler County Fair (Tyler) $3,088, Tyler County Fireworks Celebration (Tyler) $2,000, Union Community Irish Festival (Barbour) $648, Upper Kanawha Valley Oktoberfest (Kanawha) $1,485, Upper Ohio Valley Italian Festival (Ohio) $7,128, Valley District Fair (Preston) $2,079, Veterans Welcome Home Celebration (Cabell) $938, Vietnam Veterans of America # 949 Christmas Party (Cabell) $684, Volcano Days at Mountwood Park (Wood) $2,970, War Homecoming Fall Festival (McDowell) $891, Wardensville Fall Festival (Hardy) $2,970, Wayne County Fair (Wayne) $2,970, Wayne County Fall Festival (Wayne) $2,970, Webster County Fair (Webster) $3,600, Webster County Wood Chopping Festival (Webster) $8,910, Webster Wild Water Weekend (Webster) $1,188, Weirton July 4th Celebration (Hancock) $11,881, Welcome Home Family Day (Wayne) $1,900, Wellsburg 4th of July Celebration (Brooke) $4,456, Wellsburg Apple Festival of Brooke County (Brooke) $2,970, West Virginia Blackberry

Festival (Harrison) $2,970, West Virginia Chestnut Festival (Preston) $684, West Virginia Coal Festival (Boone) $5,940, West Virginia Coal Show (Mercer) $1,563, West Virginia Dairy Cattle Show (Lewis) $5,940, West Virginia Dandelion Festival (Greenbrier) $2,970, West Virginia Day at the Railroad Museum (Mercer) $1,800, West Virginia Fair and Exposition (Wood) $4,812, West Virginia Fireman's Rodeo (Fayette) $1,485, West Virginia Oil and Gas Festival (Tyler) $6,534, West Virginia Peach Festival (Hampshire) $3,240, West Virginia Polled Hereford Association (Braxton) $891, West Virginia Pumpkin Festival (Cabell) $5,940, West Virginia Rivers and Rails Festival (Pleasants) $1,099, West Virginia State Folk Festival (Gilmer) $2,970, West Virginia Water Festival - City of Hinton (Summers) $9,144, Weston VFD 4th of July Firemen Festival (Lewis) $1,188, Wetzel County Autumnfest (Wetzel) $3,267, Wetzel County Town and Country Days (Wetzel) $10,098, Wheeling Celtic Festival (Ohio) $1,166, Wheeling City of Lights (Ohio) $4,752, Wheeling Sternwheel Regatta (Ohio) $5,940, Wheeling Vintage Raceboat Regatta (Ohio) $11,881, Whipple Community Action (Fayette) $1,485, Wine Festival and Mountain Music Event (Harrison) $2,970, Wirt County Fair (Wirt) $1,485, Wirt County Pioneer Days (Wirt) $1,188, Wyoming County Civil War Days (Wyoming) $1,296, Youth Stockman Beef Expo (Lewis) $1,188.

Any unexpended balances remaining in the appropriations for Preservation West Virginia (fund 3534, appropriation 09200), Fairs and Festivals (fund 3534, appropriation 12200), Commission for National and Community Service (fund 3534, appropriation 19300), Archeological Curation/Capital Improvements (fund 3534, appropriation 24600), Historic Preservation Grants (fund 3534, appropriation 31100), Grants for Competitive Arts Program (fund 3534, appropriation 62400), and Project ACCESS (fund 3534, appropriation 86500) at the close of the fiscal year 2021 are hereby reappropriated for expenditure during the fiscal year 2022.

Any Fairs & Festivals awards shall be funded in addition to, and not in lieu of, individual grant allocations derived from the Arts Council and Cultural Grant Program allocations.

300 -Library Commission –

Lottery Education Fund

(WV Code Chapter 10)

Fund 3559 FY 2022 Org 0433

Books and Films	17900	$	360,784
Services to Libraries	18000		550,000
Grants to Public Libraries	18200		9,439,571
Digital Resources	30900		219,992
Infomine Network	88400		943,353
Total		$	11,513,700

Any unexpended balance remaining in the appropriation for Libraries – Special Projects (fund 3559, appropriation 62500) at the close of fiscal year 2021 is hereby reappropriated for expenditure during the fiscal year 2022.

301 -Educational Broadcasting Authority

(WV Code Chapter 10)

Fund 3587 FY 2022 Org 0439

Any unexpended balance remaining in the appropriation for Capital Outlay and Maintenance (fund 3587, appropriation 75500) at the close of fiscal year 2021 is hereby reappropriated for expenditure during the fiscal year 2022.

302 -Higher Education Policy Commission –

Lottery Education –

Higher Education Policy Commission –

Control Account

(WV Code Chapters 18B and 18C)

Fund 4925 FY 2022 Org 0441

RHI Program and Site Support (R)	03600	$	1,912,491

RHI Program and Site Support – RHEP Program Administration	03700	146,653
RHI Program and Site Support – Grad Med Ed and Fiscal Oversight (R).....	03800	88,913
Minority Doctoral Fellowship (R)	16600	129,604
Health Sciences Scholarship (R).....	17600	225,527
Vice Chancellor for Health Sciences – Rural Health Residency Program (R).....	60100	62,725
WV Engineering, Science, and Technology Scholarship Program...	86800	452,831
Total.....		$ 3,018,744

Any unexpended balances remaining in the appropriations for RHI Program and Site Support (fund 4925, appropriation 03600), RHI Program and Site Support – Grad Med Ed and Fiscal Oversight (fund 4925, appropriation 03800), Minority Doctoral Fellowship (fund 4925, appropriation 16600), Health Sciences Scholarship (fund 4925, appropriation 17600), and Vice Chancellor for Health Sciences – Rural Health Residency Program (fund 4925, appropriation 60100) at the close of fiscal year 2021 are hereby reappropriated for expenditure during the fiscal year 2022.

The above appropriation for WV Engineering, Science, and Technology Scholarship Program (fund 4925, appropriation 86800) shall be transferred to the West Virginia Engineering, Science and Technology Scholarship Fund (fund 4928, org 0441) established by W.Va. Code §18C-6-1.

303 -Community and Technical College –

Capital Improvement Fund

(WV Code Chapter 18B)

Fund 4908 FY 2022 Org 0442

Debt Service – Total	31000	$ 5,000,000

Any unexpended balance remaining in the appropriation for Capital Outlay and Improvements – Total (fund 4908, appropriation 84700) at the close of fiscal year 2021 is hereby reappropriated for expenditure during the fiscal year 2022.

304 -Higher Education Policy Commission –

Lottery Education –

West Virginia University – School of Medicine

(WV Code Chapter 18B)

Fund 4185 FY 2022 Org 0463

WVU Health Sciences – RHI Program and Site Support (R)	03500	$ 1,181,728
MA Public Health Program and Health Science Technology (R)	62300	52,445
Health Sciences Career Opportunities Program (R)	86900	336,987
HSTA Program (R)	87000	1,761,948
Center for Excellence in Disabilities (R)	96700	313,517
Total		$ 3,646,625

Any unexpended balances remaining in the appropriations for WVU Health Sciences – RHI Program and Site Support (fund 4185, appropriation 03500), MA Public Health Program and Health Science Technology (fund 4185, appropriation 62300), Health Sciences Career Opportunities Program (fund 4185, appropriation 86900), HSTA Program (fund 4185, appropriation 87000), and Center for Excellence in Disabilities (fund 4185, appropriation 96700) at the close of fiscal year 2021 are hereby reappropriated for expenditure during the fiscal year 2022.

305 -Higher Education Policy Commission –

Lottery Education –

Marshall University – School of Medicine

(WV Code Chapter 18B)

Fund 4896 FY 2022 Org 0471

Marshall Medical School – RHI Program and Site Support (R)	03300	$	427,075
Vice Chancellor for Health Sciences – Rural Health Residency Program (R)	60100		171,361
Total		$	598,436

Any unexpended balances remaining in the appropriations for Marshall Medical School – RHI Program and Site Support (fund 4896, appropriation 03300) and Vice Chancellor for Health Sciences – Rural Health Residency Program (fund 4896, appropriation 60100) at the close of fiscal year 2021 are hereby reappropriated for expenditure during the fiscal year 2022.

306 -Bureau of Senior Services –

Lottery Senior Citizens Fund

(WV Code Chapter 29)

Fund 5405 FY 2022 Org 0508

Personal Services and Employee Benefits	00100	$	144,190
Salary and Benefits of Cabinet Secretary and Agency Heads	00201		65,190
Current Expenses	13000		332,284
Repairs and Alterations	06400		1,000
Local Programs Service Delivery Costs	20000		2,435,250
Silver Haired Legislature	20200		18,500

Transfer to Division of Human Services for Health Care and Title XIX Waiver for Senior Citizens	53900	4,615,503
Roger Tompkins Alzheimer's Respite Care	64300	2,302,016
WV Alzheimer's Hotline	72400	45,000
Regional Aged and Disabled Resource Center	76700	425,000
Senior Services Medicaid Transfer	87100	16,400,070
Legislative Initiatives for the Elderly	90400	9,671,239
Long Term Care Ombudsman	90500	297,226
BRIM Premium	91300	7,718
In-Home Services and Nutrition for Senior Citizens	91700	8,095,941
Total		$ 44,856,387

Any unexpended balance remaining in the appropriation for Senior Citizen Centers and Programs (fund 5405, appropriation 46200) at the close of the fiscal year 2021 is hereby reappropriated for expenditure during the fiscal year 2022.

Included in the above appropriation for Current Expenses (fund 5405, appropriation 13000), is funding to support an in-home direct care workforce registry.

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

Total TITLE II, Section 4 – Lottery Revenue	$ 125,433,000

Sec. 5. Appropriations from state excess lottery revenue fund. — In accordance with W.Va. Code §29-22-18a, §29-22A-10d, §29-22A-10e, §29-22C-27a and §29-25-22b, the following appropriations shall be deposited and disbursed by the Director of

the Lottery to the following accounts in this section in the amounts indicated.

After first funding the appropriations required by W.Va. Code §29-22-18a, §29-22A-10d, §29-22A-10e, §29-22C-27a and §29-25-22b, the Director of the Lottery shall provide funding from the State Excess Lottery Revenue Fund for the remaining appropriations in this section to the extent that funds are available. In the event that revenues to the State Excess Lottery Revenue Fund are sufficient to meet all the appropriations required made pursuant to this section, then the Director of the Lottery shall then provide the funds available for fund 5365, appropriation 18900.

307 -Governor's Office

(WV Code Chapter 5)

Fund 1046 FY 2022 Org 0100

	Appro-priation	**Excess Lottery Funds**

Any unexpended balance remaining in the appropriation for Publication of Papers and Transition Expenses – Lottery Surplus (fund 1046, appropriation 06600) at the close of the fiscal year 2021 is hereby reappropriated for expenditure during the fiscal year 2022.

308 -Office of Technology

(WV Code Chapter 5A)

Fund 2532 FY 2022 Org 0231

Any unexpended balances remaining in the appropriations for Cyber Security (fund 2532, appropriation 99001), Enterprise Data Center (fund 2532, appropriation 99002), and Enterprise Telephony Modernization (fund 2532, appropriation 99003) at the close of the fiscal year 2021 are hereby reappropriated for expenditure during the fiscal year 2022.

309 -Department of Economic Development –

Office of the Secretary –

West Virginia Development Office

(WV Code Chapter 5B)

Fund 3170 FY 2022 Org 0307

Any unexpended balance remaining in the appropriation for Recreational Grants or Economic Development Loans (fund 3170, appropriation 25300) at the close of the fiscal year 2021 is hereby reappropriated for expenditure during the fiscal year 2022.

310 -Division of Natural Resources –

State Park Improvement Fund

Fund 3277 FY 2022 Org 0310

Current Expenses (R)	13000	$	23,300
Repairs and Alterations (R)	06400		161,200
Equipment (R)	07000		200,000
Buildings (R)	25800		100,000
Other Assets (R)	69000		1,020,500
Total		$	1,505,000

Any unexpended balances remaining in the appropriations for Repairs and Alterations (fund 3277, appropriation 06400), Equipment (fund 3277, appropriation 07000), Unclassified – Total (fund 3277, appropriation 09600), Unclassified (fund 3277, appropriation 09900), Current Expenses (fund 3277, appropriation 13000), Buildings (fund 3277, appropriation 25800), and Other Assets (fund 3277, appropriation 69000) at the close of the fiscal year 2021 are hereby reappropriated for expenditure during the fiscal year 2022.

311 -West Virginia Infrastructure Council –

West Virginia Infrastructure Transfer Fund

Fund 3390 FY 2022 Org 0316

Directed Transfer	70000	$ 46,000,000

The above appropriation shall be allocated pursuant to W.Va. Code §29-22-18d and §31-15-9.

312 -Department of Education –

School Building Authority

Fund 3514 FY 2022 Org 0404

Debt Service - Total	31000	$ 18,999,900
Directed Transfer	70000	100
Total		$ 19,000,000

The School Building Authority shall have the authority to transfer between the above appropriations in accordance with W.Va. Code §29-22-18a.

The above appropriation for Directed Transfer (fund 3514, appropriation 70000) may be transferred to the Department of Education, State Board of Education, School Building Authority, School Construction Fund, fund 3952, organization 0404 to be used for school construction and maintenance projects.

313 -Higher Education Policy Commission –

Education Improvement Fund

Fund 4295 FY 2022 Org 0441

PROMISE Scholarship – Transfer.....	80000	$ 29,000,000

The above appropriation shall be transferred to the PROMISE Scholarship Fund (fund 4296, org 044) established by W.Va. Code §18C-7-7.

The Legislature has explicitly set a finite amount of available appropriations and directed the administrators of the Program to provide for the award of scholarships within the limits of available appropriations.

314 -Higher Education Policy Commission –

Higher Education Improvement Fund

Fund 4297 FY 2022 Org 0441

Directed Transfer ..... 70000 $ 15,000,000

The above appropriation shall be transferred to fund 4903, org 0442 as authorized by Senate Concurrent Resolution No. 41.

315 -Higher Education Policy Commission –

Administration –

Control Account

Fund 4932 FY 2022 Org 0441

Any unexpended balance remaining in the appropriation for Advanced Technology Centers (fund 4932, appropriation 02800) at the close of the fiscal year 2021 is hereby reappropriated for expenditure during the fiscal year 2022.

316 -Division of Human Services

(WV Code Chapters 9, 48, and 49)

Fund 5365 FY 2022 Org 0511

Medical Services..... 18900 $ 16,302,960

317 -Division of Corrections and Rehabilitation –

Correctional Units

(WV Code Chapter 15A)

Fund 6283 FY 2022 Org 0608

Any unexpended balance remaining in the appropriation for Capital Outlay and Maintenance (fund 6283, appropriation 75500) at the close of the fiscal year 2021 is hereby reappropriated for expenditure during the fiscal year 2022.

318 -Lottery Commission –

General Purpose Account

Fund 7206 FY 2022 Org 0705

General Revenue Fund – Transfer	70011	$ 65,000,000

The above appropriation shall be transferred to the General Revenue Fund as determined by the Director of the Lottery in accordance with W.Va. Code §29-22-18a.

319 -Lottery Commission –

Refundable Credit

Fund 7207 FY 2022 Org 0705

Directed Transfer	70000	$ 10,000,000

The above appropriation shall be transferred to the General Revenue Fund to provide reimbursement for the refundable credit allowable under W.Va. Code §11-21-21. The amount of the required transfer shall be determined solely by the State Tax Commissioner and shall be completed by the Director of the Lottery upon the commissioner's request.

320 -Lottery Commission –

Distributions to Statutory Funds and Purposes

Fund 7213 FY 2022 Org 0705

Parking Garage Fund – Transfer.....	70001	$ 500,000
2004 Capitol Complex Parking Garage Fund – Transfer....	70002	216,478
Capitol Dome and Improvements Fund – Transfer	70003	1,796,256
Capitol Renovation and Improvement Fund – Transfer ..	70004	2,381,252
Development Office Promotion Fund – Transfer.....	70005	1,298,864
Research Challenge Fund – Transfer...	70006	1,731,820

Tourism Promotion Fund – Transfer ...	70007	4,808,142
Cultural Facilities and Capitol Resources Matching Grant Program Fund – Transfer.....	70008	1,250,535
State Debt Reduction Fund – Transfer....	70010	20,000,000
General Revenue Fund – Transfer	70011	1,167,799
West Virginia Racing Commission Racetrack Video Lottery Account....	70012	3,463,637
Historic Resort Hotel Fund	70013	24,010
Licensed Racetrack Regular Purse Fund	70014	22,383,247
Total.....		$ 61,022,040

321 -Racing Commission

Fund 7308 FY 2022 Org 0707

Special Breeders Compensation (WVC §29-22-18a, subsection (I)) ..	21800	$ 2,000,000

322 -Economic Development Authority –

Economic Development Project Fund

Fund 9065 FY 2022 Org 0944

Debt Service – Total	31000	$ 19,000,000

Pursuant to W.Va. Code §29-22-18a, subsection (f), excess lottery revenues are authorized to be transferred to the lottery fund as reimbursement of amounts transferred to the economic development project fund pursuant to section four of this title and W.Va. Code §29-22-18, subsection (f).

323 -Economic Development Authority –

Cacapon and Beech Fork State Parks –

Lottery Revenue Debt Service

Fund 9067 FY 2022 Org 0944

Debt Service.....	04000	$ 2,032,000

324 -Economic Development Authority –

State Parks Lottery Revenue Debt Service Fund

Fund 9068 FY 2022 Org 0944

Debt Service.....	04000	$ 4,395,000
Total TITLE II, Section 5 – Excess Lottery Funds.....		$ 290,257,000

Sec. 6. Appropriations of federal funds. — In accordance with Article 11, Chapter 4 of the Code from federal funds there are hereby appropriated conditionally upon the fulfillment of the provisions set forth in Article 2, Chapter 11B of the Code the following amounts, as itemized, for expenditure during the fiscal year 2022.

LEGISLATIVE

325 -Crime Victims Compensation Fund

(WV Code Chapter 14)

Fund 8738 FY 2022 Org 2300

	Appro-priation	Federal Funds
Economic Loss Claim Payment Fund....	33400	$ 1,100,000

JUDICIAL

326 -Supreme Court

Fund 8867 FY 2022 Org 2400

Personal Services and Employee Benefits.....	00100	$ 1,813,000
Current Expenses	13000	1,557,000
Repairs and Alterations.....	06400	100,000
Equipment.....	07000	250,000

Other Assets	69000	280,000
Total		$ 4,000,000

EXECUTIVE

327 -Department of Agriculture

(WV Code Chapter 19)

Fund 8736 FY 2022 Org 1400

Personal Services and Employee Benefits	00100	$ 2,628,780
Unclassified	09900	50,534
Current Expenses	13000	6,828,661
Repairs and Alterations	06400	650,000
Equipment	07000	910,500
Buildings	25800	1,000,000
Other Assets	69000	550,000
Land	73000	500,000
Total		$ 13,118,475

328 -Department of Agriculture –

Meat Inspection Fund

(WV Code Chapter 19)

Fund 8737 FY 2022 Org 1400

Personal Services and Employee Benefits	00100	$ 658,571
Unclassified	09900	8,755
Current Expenses	13000	136,012
Repairs and Alterations	06400	5,500
Equipment	07000	114,478
Total		$ 923,316

329 -Department of Agriculture –

State Conservation Committee

(WV Code Chapter 19)

Fund 8783 FY 2022 Org 1400

Personal Services and Employee Benefits	00100	$ 97,250
Current Expenses	13000	15,599,974
Total		$ 15,697,224

330 -Department of Agriculture –

Land Protection Authority

Fund 8896 FY 2022 Org 1400

Personal Services and Employee Benefits	00100	$ 46,526
Unclassified	09900	5,004
Current Expenses	13000	448,920
Total		$ 500,450

331 -Attorney General –

Medicaid Fraud Unit

Fund 8882 FY 2022 Org 1500

Personal Services and Employee Benefits	00100	$ 1,257,042
Unclassified	09900	15,336
Current Expenses	13000	456,638
Repairs and Alterations	06400	4,313
Equipment	07000	7,500
Other Assets	69000	11,336
Total		$ 1,752,165

332 -Secretary of State –

State Election Fund

(WV Code Chapter 3)

Fund 8854 FY 2022 Org 1600

Personal Services and Employee Benefits	00100	$ 210,240

Unclassified	09900	7,484
Current Expenses	13000	415,727
Repairs and Alterations	06400	15,000
Other Assets	69000	100,000
Total		$ 748,451

DEPARTMENT OF COMMERCE

333 -Division of Forestry

(WV Code Chapter 19)

Fund 8703 FY 2022 Org 0305

Personal Services and Employee Benefits	00100	$ 1,640,060
Unclassified	09900	51,050
Current Expenses	13000	5,232,560
Repairs and Alterations	06400	155,795
Equipment	07000	100,000
Other Assets	69000	1,808,300
Total		$ 8,987,765

334 -Geological and Economic Survey

(WV Code Chapter 29)

Fund 8704 FY 2022 Org 0306

Personal Services and Employee Benefits	00100	$ 54,432
Unclassified	09900	2,803
Current Expenses	13000	195,639
Repairs and Alterations	06400	5,000
Equipment	07000	7,500
Other Assets	69000	15,000
Total		$ 280,374

335 -Division of Labor

(WV Code Chapters 21 and 47)

Fund 8706 FY 2022 Org 0308

Personal Services and Employee Benefits	00100	$ 409,251
Unclassified	09900	5,572
Current Expenses	13000	167,098
Repairs and Alterations	06400	500
Total	$	582,421

336 -Division of Natural Resources

(WV Code Chapter 20)

Fund 8707 FY 2022 Org 0310

Personal Services and Employee Benefits	00100	$ 10,064,006
Unclassified	09900	107,693
Current Expenses	13000	7,887,660
Repairs and Alterations	06400	566,250
Equipment	07000	2,126,141
Administration	15500	50,325
Buildings	25800	951,000
Other Assets	69000	7,088,880
Land	73000	2,893,920
Total		$ 31,735,875

337 -Division of Miners' Health,

Safety and Training

(WV Code Chapter 22)

Fund 8709 FY 2022 Org 0314

Personal Services and Employee Benefits	00100	$ 642,799
Current Expenses	13000	150,000
Total		$ 792,799

338 -WorkForce West Virginia

(WV Code Chapter 23)

Fund 8835 FY 2022 Org 0323

Unclassified	09900	$ 5,127
Current Expenses	13000	507,530
Reed Act 2002 – Unemployment Compensation	62200	2,850,000
Reed Act 2002 – Employment Services	63000	1,650,000
Total		$ 5,012,657

Pursuant to the requirements of 42 U.S.C. 1103, Section 903 of the Social Security Act, as amended, and the provisions of W.Va. Code §21A-9-9, the above appropriation to Unclassified and Current Expenses shall be used by WorkForce West Virginia for the specific purpose of administration of the state's unemployment insurance program or job service activities, subject to each and every restriction, limitation or obligation imposed on the use of the funds by those federal and state statutes.

339 -State Board of Rehabilitation –

Division of Rehabilitation Services

(WV Code Chapter 18)

Fund 8734 FY 2022 Org 0932

Personal Services and Employee Benefits	00100	$ 11,725,244
Salary and Benefits of Cabinet Secretary and Agency Heads	00201	138,000
Current Expenses	13000	34,440,940
Repairs and Alterations	06400	350,400
Equipment	07000	1,275,870
Total		$ 47,930,454

340 -State Board of Rehabilitation –

Division of Rehabilitation Services –

Disability Determination Services

(WV Code Chapter 18)

Fund 8890 FY 2022 Org 0932

Personal Services and Employee Benefits	00100	$ 12,476,122
Current Expenses	13000	13,383,206
Repairs and Alterations	06400	1,100
Equipment	07000	83,350
Total		$ 25,943,778

DEPARTMENT OF ECONOMIC DEVELOPMENT

341 -Department of Economic Development –

Office of the Secretary

(WV Code Chapter 5B)

Fund 8705 FY 2022 Org 0307

Personal Services and Employee Benefits	00100	$ 1,039,921
Unclassified	09900	50,000
Current Expenses	13000	4,504,019
Total		$ 5,593,940

342 -Department of Economic Development –

Office of the Secretary –

Office of Economic Opportunity

(WV Code Chapter 5)

Fund 8901 FY 2022 Org 0307

Personal Services and Employee Benefits	00100	$	497,289
Repairs and Alterations	06400		250
Equipment	07000		6,000
Unclassified	09900		106,795
Current Expenses	13000		10,069,166
Total		$	10,679,500

343 -Department of Economic Development –

Office of Energy

(WV Code Chapter 5B)

Fund 8892 FY 2022 Org 0328

Personal Services and Employee Benefits	00100	$	426,385
Unclassified	09900		7,350
Current Expenses	13000		2,816,076
Total		$	3,249,811

DEPARTMENT OF EDUCATION

344 -State Board of Education –

State Department of Education

(WV Code Chapters 18 and 18A)

Fund 8712 FY 2022 Org 0402

Personal Services and Employee Benefits	00100	$	5,785,359
Unclassified	09900		2,000,000
Current Expenses	13000		1,434,146,008
Repairs and Alterations	06400		10,000
Equipment	07000		10,000
Other Assets	69000		10,000
Total			$1,441,961,367

345 -State Board of Education –

School Lunch Program

(WV Code Chapters 18 and 18A)

Fund 8713 FY 2022 Org 0402

Personal Services and Employee Benefits	00100	$ 1,881,766
Unclassified	09900	1,150,500
Current Expenses	13000	148,281,265
Repairs and Alterations	06400	20,000
Equipment	07000	100,000
Other Assets	69000	25,000
Total		$ 151,458,531

346 -State Board of Education –

Vocational Division

(WV Code Chapters 18 and 18A)

Fund 8714 FY 2022 Org 0402

Personal Services and Employee Benefits	00100	$ 1,896,249
Unclassified	09900	155,000
Current Expenses	13000	17,820,081
Repairs and Alterations	06400	10,000
Equipment	07000	10,000
Other Assets	69000	10,000
Total		$ 19,901,330

347 -State Board of Education –

Aid for Exceptional Children

(WV Code Chapters 18 and 18A)

Fund 8715 FY 2022 Org 0402

Personal Services and Employee Benefits	00100	$ 3,477,006
Unclassified	09900	1,000,000
Current Expenses	13000	123,346,390
Repairs and Alterations	06400	10,000
Equipment	07000	10,000
Other Assets	69000	10,000
Total		$ 127,853,396

DEPARTMENT OF ARTS, CULTURE, AND HISTORY

348 -Division of Culture and History

(WV Code Chapter 29)

Fund 8718 FY 2022 Org 0432

Personal Services and Employee Benefits	00100	$ 810,436
Current Expenses	13000	1,947,372
Repairs and Alterations	06400	1,000
Equipment	07000	1,000
Buildings	25800	1,000
Other Assets	69000	1,000
Land	73000	360
Total		$ 2,762,168

349 -Commission for National and Community Service

(WV Code Chapter 5F)

Fund 8841 FY 2022 Org 0432

Personal Services and Employee Benefits	00100	$ 437,040
Current Expenses	13000	5,587,325
Repairs and Alterations	06400	1,000
Total		$ 6,025,365

350 -Library Commission

(WV Code Chapter 10)

Fund 8720 FY 2022 Org 0433

Personal Services and Employee Benefits	00100	$ 353,396
Current Expenses	13000	1,076,162
Equipment	07000	543,406
Total		$ 1,972,964

351 -Educational Broadcasting Authority

(WV Code Chapter 10)

Fund 8721 FY 2022 Org 0439

Equipment	07000	$ 200,000

DEPARTMENT OF ENVIRONMENTAL PROTECTION

352 -Division of Environmental Protection

(WV Code Chapter 22)

Fund 8708 FY 2022 Org 0313

Personal Services and Employee Benefits	00100	$ 31,406,529
Unclassified	09900	1,923,580
Current Expenses	13000	153,850,118
Repairs and Alterations	06400	739,783
Equipment	07000	1,712,238
Other Assets	69000	2,177,261
Land	73000	80,000
Total		$191,889,509

DEPARTMENT OF HEALTH AND HUMAN RESOURCES

353 -Consolidated Medical Service Fund

(WV Code Chapter 16)

Fund 8723 FY 2022 Org 0506

Personal Services and Employee Benefits	00100	$ 1,532,219
Unclassified	09900	73,307
Current Expenses	13000	81,583,302
Total		$ 83,188,828

354 -Division of Health –

Central Office

(WV Code Chapter 16)

Fund 8802 FY 2022 Org 0506

Personal Services and Employee Benefits	00100	$ 14,610,947
Unclassified	09900	856,614
Current Expenses	13000	69,201,885
Equipment	07000	456,972
Buildings	25800	155,000
Other Assets	69000	380,000
Total		$ 85,661,418

355 -Division of Health –

West Virginia Safe Drinking Water Treatment

(WV Code Chapter 16)

Fund 8824 FY 2022 Org 0506

West Virginia Drinking Water Treatment Revolving Fund – Transfer	68900	$ 16,000,000

356 -Human Rights Commission

(WV Code Chapter 5)

Fund 8725 FY 2022 Org 0510

Personal Services and Employee Benefits	00100	$ 449,874

Unclassified	09900	5,050
Current Expenses	13000	64,950
Total		$ 519,874

357 -Division of Human Services

(WV Code Chapters 9, 48, and 49)

Fund 8722 FY 2022 Org 0511

Personal Services and Employee Benefits	00100	$ 76,720,133
Unclassified	09900	22,855,833
Current Expenses	13000	112,181,984
Medical Services	18900	3,860,302,514
Medical Services Administrative Costs	78900	132,247,536
CHIP Administrative Costs	85601	4,539,496
CHIP Services	85602	49,752,412
Federal Economic Stimulus	89100	5,000,000
Total		$4,263,599,908

DEPARTMENT OF HOMELAND SECURITY

358 -Office of the Secretary

(WV Code Chapter 5F)

Fund 8876 FY 2022 Org 0601

Unclassified	09900	$ 5,000
Current Expenses	13000	495,000
Total		$ 500,000

359 -Division of Emergency Management

(WV Code Chapter 15)

Fund 8727 FY 2022 Org 0606

Personal Services and Employee Benefits	00100	$ 1,199,172

Salary and Benefits of Cabinet Secretary and Agency Heads	00201	61,250
Current Expenses	13000	20,429,281
Repairs and Alterations	06400	5,000
Equipment	07000	100,000
Total		$ 21,794,703

360 -Division of Corrections and Rehabilitation

(WV Code Chapters 15A)

Fund 8836 FY 2022 Org 0608

Unclassified	09900	$ 1,100
Current Expenses	13000	108,900
Total		$ 110,000

361 -West Virginia State Police

(WV Code Chapter 15)

Fund 8741 FY 2022 Org 0612

Personal Services and Employee Benefits	00100	$ 2,480,877
Current Expenses	13000	2,125,971
Repairs and Alterations	06400	42,000
Equipment	07000	2,502,285
Buildings	25800	750,500
Other Assets	69000	144,500
Land	73000	500
Total		$ 8,046,633

362 -Fire Commission

(WV Code Chapter 29)

Fund 8819 FY 2022 Org 0619

Current Expenses	13000	$ 80,000

363 -Division of Administrative Services

(WV Code Chapter 15)

Fund 8803 FY 2022 Org 0623

Personal Services and Employee Benefits	00100	$ 1,222,258
Unclassified	09900	25,185
Current Expenses	13000	75,381,973
Repairs and Alterations	06400	1,750
Total		$ 76,631,166

DEPARTMENT OF REVENUE

364 -Insurance Commissioner

(WV Code Chapter 33)

Fund 8883 FY 2022 Org 0704

Personal Services and Employee Benefits	00100	$ 145,000
Current Expenses	13000	2,825,000
Equipment	07000	30,000
Total		$ 3,000,000

DEPARTMENT OF TRANSPORTATION

365 -Division of Motor Vehicles

(WV Code Chapter 17B)

Fund 8787 FY 2022 Org 0802

Personal Services and Employee Benefits	00100	$ 551,394
Current Expenses	13000	5,448,106
Repairs and Alterations	06400	500
Total		$ 6,000,000

366 -Division of Public Transit

(WV Code Chapter 17)

Fund 8745 FY 2022 Org 0805

Personal Services and Employee Benefits	00100	$ 1,010,320
Current Expenses	13000	20,913,149
Repairs and Alterations	06400	2,500
Equipment	07000	2,801,714
Buildings	25800	1,250,000
Other Assets	69000	100,000
Total		$ 26,077,683

367 -Aeronautics Commission

(WV Code Chapter 29)

Fund 8831 FY 2022 Org 0807

Current Expenses	13000	$ 400,000
Other Assets	69000	100
Total		$ 400,100

DEPARTMENT OF VETERANS' ASSISTANCE

368 -Department of Veterans' Assistance

(WV Code Chapter 9A)

Fund 8858 FY 2022 Org 0613

Personal Services and Employee Benefits	00100	$ 2,890,365
Salary and Benefits of Cabinet Secretary and Agency Heads	00201	57,120
Current Expenses	13000	2,840,300
Repairs and Alterations	06400	20,000
Equipment	07000	25,000
Buildings	25800	250,000
Land	73000	500
Veterans' Cemetery	80800	175,000
Total		$ 6,258,285

369 -Department of Veterans' Assistance –

Veterans' Home

(WV Code Chapter 9A)

Fund 8728 FY 2022 Org 0618

Personal Services and Employee Benefits	00100	$ 906,850
Current Expenses	13000	595,700
Repairs and Alterations	06400	60,500
Equipment	07000	10,500
Buildings	25800	500
Other Assets	69000	6,500
Land	73000	100
Total		$ 1,580,650

BUREAU OF SENIOR SERVICES

370 -Bureau of Senior Services

(WV Code Chapter 29)

Fund 8724 FY 2022 Org 0508

Personal Services and Employee Benefits	00100	$ 761,414
Salary and Benefits of Cabinet Secretary and Agency Heads	00201	5,950
Current Expenses	13000	13,811,853
Repairs and Alterations	06400	3,000
Total		$ 14,582,217

MISCELLANEOUS BOARDS AND COMMISSIONS

371 -Adjutant General –

State Militia

(WV Code Chapter 15)

Fund 8726 FY 2022 Org 0603

Unclassified	09900	$ 982,705
Mountaineer ChalleNGe Academy	70900	7,200,000
Martinsburg Starbase	74200	439,622
Charleston Starbase	74300	424,685
Military Authority	74800	91,380,274
Total		$100,427,286

The Adjutant General shall have the authority to transfer between appropriations.

372 -Adjutant General –

West Virginia National Guard Counterdrug Forfeiture Fund

(WV Code Chapter 15)

Fund 8785 FY 2022 Org 0603

Personal Services and Employee Benefits	00100	$ 1,350,000
Current Expenses	13000	150,000
Repairs and Alterations	06400	50,000
Equipment	07000	200,000
Buildings	25800	100,000
Other Assets	69000	100,000
Land	73000	50,000
Total		$ 2,000,000

373 -Public Service Commission –

Motor Carrier Division

(WV Code Chapter 24A)

Fund 8743 FY 2022 Org 0926

Personal Services and Employee Benefits	00100	$ 1,352,576
Current Expenses	13000	368,953
Repairs and Alterations	06400	39,000

Equipment	07000		413,400
Total		$	2,173,929

374 -Public Service Commission –

Gas Pipeline Division

(WV Code Chapter 24B)

Fund 8744 FY 2022 Org 0926

Personal Services and Employee Benefits	00100	$	621,039
Unclassified	09900		4,072
Current Expenses	13000		124,628
Equipment	07000		3,000
Total		$	752,739

375 -National Coal Heritage Area Authority

(WV Code Chapter 29)

Fund 8869 FY 2022 Org 0941

Personal Services and Employee Benefits	00100	$	163,405
Current Expenses	13000		242,195
Repairs and Alterations	06400		5,000
Equipment	07000		3,000
Other Assets	69000		2,000
Total		$	415,600

Total TITLE II, Section 6 – Federal Funds	$6,842,455,104

Sec. 7. Appropriations from federal block grants. — The following items are hereby appropriated from federal block grants to be available for expenditure during the fiscal year 2022.

376 -Department of Economic Development –

Office of the Secretary –

Community Development

Fund 8746 FY 2022 Org 0307

Personal Services and Employee Benefits	00100	$ 10,658,978
Unclassified	09900	2,375,000
Current Expenses	13000	224,476,883
Total		$237,510,861

377 -Department of Economic Development –

Office of the Secretary –

Office of Economic Opportunity –

Community Services

Fund 8902 FY 2022 Org 0307

Personal Services and Employee Benefits	00100	$ 362,389
Unclassified	09900	125,000
Current Expenses	13000	12,002,111
Repairs and Alterations	06400	1,500
Equipment	07000	9,000
Total		$ 12,500,000

378 -WorkForce West Virginia –

Workforce Investment Act

Fund 8749 FY 2022 Org 0323

Personal Services and Employee Benefits	00100	$ 2,875,479
Salary and Benefits of Cabinet Secretary and Agency Heads	00201	124,018

Unclassified	09900	23,023
Current Expenses	13000	39,263,511
Repairs and Alterations	06400	1,600
Equipment	07000	500
Buildings	25800	1,100
Total		$ 42,289,231

379 -Division of Health –

Maternal and Child Health

Fund 8750 FY 2022 Org 0506

Personal Services and Employee Benefits	00100	$ 2,268,209
Unclassified	09900	81,439
Current Expenses	13000	5,794,267
Total		$ 8,143,915

380 -Division of Health –

Preventive Health

Fund 8753 FY 2022 Org 0506

Personal Services and Employee Benefits	00100	$ 268,337
Unclassified	09900	22,457
Current Expenses	13000	1,895,366
Equipment	07000	165,642
Total		$ 2,351,802

381 -Division of Health –

Substance Abuse Prevention and Treatment

Fund 8793 FY 2022 Org 0506

Personal Services and Employee Benefits	00100	$ 657,325
Unclassified	09900	115,924
Current Expenses	13000	10,853,740
Total		$ 11,626,989

382 -Division of Health –

Community Mental Health Services

Fund 8794 FY 2022 Org 0506

Personal Services and Employee Benefits	00100	$ 551,368
Unclassified	09900	33,533
Current Expenses	13000	4,883,307
Total		$ 5,468,208

383 -Division of Human Services –

Energy Assistance

Fund 8755 FY 2022 Org 0511

Personal Services and Employee Benefits	00100	$ 1,860,574
Unclassified	09900	350,000
Current Expenses	13000	38,182,151
Total		$ 40,392,725

384 -Division of Human Services –

Social Services

Fund 8757 FY 2022 Org 0511

Personal Services and Employee Benefits	00100	$ 8,806,005
Unclassified	09900	171,982
Current Expenses	13000	8,870,508
Total		$ 17,848,495

385 -Division of Human Services –

Temporary Assistance for Needy Families

Fund 8816 FY 2022 Org 0511

Personal Services and Employee Benefits	00100	$ 20,604,174

Unclassified	09900	1,250,000
Current Expenses	13000	105,871,588
Total		$127,725,762

386 -Division of Human Services –

Child Care and Development

Fund 8817 FY 2022 Org 0511

Personal Services and Employee Benefits	00100	$ 2,797,226
Unclassified	09900	350,000
Current Expenses	13000	47,000,307
Total		$ 50,147,533

Total TITLE II, Section 7 – Federal Block Grants	$556,005,521

Sec. 8. Awards for claims against the state. — There are hereby appropriated for fiscal year 2022, from the fund as designated, in the amounts as specified, general revenue funds in the amount of $4,310,008, special revenue funds in the amount of $68,539, and state road funds in the amount of $621,765 for payment of claims against the state.

Sec. 9. Appropriations from general revenue fund surplus accrued. — The following item is hereby appropriated from the state fund, general revenue, and is to be available for expenditure during the fiscal year 2022 out of surplus funds only, accrued from the fiscal year ending June 30, 2021, subject to the terms and conditions set forth in this section.

It is the intent and mandate of the Legislature that the following appropriation be payable only from surplus as of July 31, 2021 from the fiscal year ending June 30, 2021, only after first meeting requirements of W.Va. Code §11B-2-20(b).

In the event that surplus revenues available on July 31, 2021, are not sufficient to meet the appropriation made pursuant to this section, then the appropriation shall be made to the extent that

surplus funds are available as of the date mandated to meet the appropriation in this section and shall be allocated first to provide the necessary funds to meet the first appropriation of this section and each subsequent appropriation in the order listed in this section.

387 -Mountwest Community and Technical College

(WV Code Chapter 18B)

Fund 0599 FY 2022 Org 0444

Mountwest Community and Technical College - Surplus....	#####	$	97,340

388 -New River Community and Technical College

(WV Code Chapter 18B)

Fund 0600 FY 2022 Org 0445

New River Community and Technical College - Surplus....	#####	$	87,973

389 -Blue Ridge Community and Technical College

(WV Code Chapter 18B)

Fund 0601 FY 2022 Org 0447

Blue Ridge Community and Technical College - Surplus....	#####	$	117,463

390 -West Virginia University at Parkersburg

(WV Code Chapter 18B)

Fund 0351 FY 2022 Org 0464

West Virginia University – Parkersburg - Surplus	#####	$	154,789

391 -Southern West Virginia Community and Technical College

(WV Code Chapter 18B)

Fund 0380 FY 2022 Org 0487

Southern West Virginia Community and Technical College - Surplus....	#####	$	123,627

392 -West Virginia Northern Community and Technical College

(WV Code Chapter 18B)

Fund 0383 FY 2022 Org 0489

West Virginia Northern Community and Technical College - Surplus....	#####	$	109,287

393 -Eastern West Virginia Community and Technical College

(WV Code Chapter 18B)

Fund 0587 FY 2022 Org 0492

Eastern West Virginia Community and Technical College - Surplus....	#####	$	32,699

394 -BridgeValley Community and Technical College

(WV Code Chapter 18B)

Fund 0618 FY 2022 Org 0493

BridgeValley Community and Technical College - Surplus....	#####	$	121,482

395 -West Virginia University –

School of Medicine

Medical School Fund

(WV Code Chapter 18B)

Fund 0343 FY 2022 Org 0463

WVU School of Health Science – Eastern Division - Surplus.....	#####	$	33,530
WVU – School of Health Sciences - Surplus.....	#####		225,846
WVU – School of Health Sciences – Charleston Division - Surplus.....	#####		34,301
Total.....		$	293,677

396 -Marshall University –

School of Medicine

(WV Code Chapter 18B)

Fund 0347 FY 2022 Org 0471

Marshall Medical School - Surplus.....	#####	$	183,526

397 -West Virginia School of Osteopathic Medicine

(WV Code Chapter 18B)

Fund 0336 FY 2022 Org 0476

West Virginia School of Osteopathic Medicine - Surplus.....	#####	$	133,189

398 -Bluefield State College

(WV Code Chapter 18B)

Fund 0354 FY 2022 Org 0482

Bluefield State College - Surplus.....	#####	$	95,748

399 -Concord University

(WV Code Chapter 18B)

Fund 0357 FY 2022 Org 0483

Concord University - Surplus	#####	$	157,146

400 -Glenville State College

(WV Code Chapter 18B)

Fund 0363 FY 2022 Org 0485

Glenville State College - Surplus.....	#####	$	96,704

401 -Shepherd University

(WV Code Chapter 18B)

Fund 0366 FY 2022 Org 0486

Shepherd University - Surplus.....	#####	$	190,257

402 -West Liberty University

(WV Code Chapter 18B)

Fund 0370 FY 2022 Org 0488

West Liberty University – Surplus.....	#####	$	136,540

403 -West Virginia State University

(WV Code Chapter 18B)

Fund 0373 FY 2022 Org 0490

West Virginia State University – Surplus.....	#####	$	170,138

404 -Governor's Office –

Civil Contingent Fund

(WV Code Chapter 5)

Fund 0105 FY 2022 Org 0100

Milton Flood Wall - Surplus.....	75799	$	17,500,000

405 -Department of Tourism-

Office of the Secretary

(WV Code Chapter 5B)

Fund 0246 FY 2022 Org 0304

Tourism – Brand Promotion – Surplus....	61893	$	7,000,000

406 -Marshall University –

General Administration Fund

(WV Code Chapter 18B)

Fund 0348 FY 2022 Org 0471

Marshall University - Surplus.....	#####	$	9,700,000

407 -West Virginia Council for

Community and Technical College Education –

Control Account

(WV Code Chapter 18B)

Fund 0596 FY 2022 Org 0420

West Virginia Council for Community and Technical Education - Surplus....	#####	$	3,000,000

408 -Higher Education Policy Commission –

Administration –

Control Account

(WV Code Chapter 18B)

Fund 0589 FY 2022 Org 0441

Current Expenses - Surplus.....	#####	$	1,600,000

The above appropriation for Current Expenses - Surplus (fund 0589, appropriation #####) shall be used for workforce development initiatives.

409 -West Virginia University –

General Administrative Fund

(WV Code Chapter 18B)

Fund 0344 FY 2022 Org 0463

West Virginia University - Surplus.....	#####	$ 16,600,000

410 -Department of Economic Development –

Office of the Secretary

(WV Code Chapter 5B)

Fund 0256 FY 2022 Org 0307

Directed Transfer - Surplus.....	70099	$ 1,000,000

The above appropriation for Directed Transfer - Surplus (fund 0256, appropriation 70099) shall be transferred to the Economic Development Promotion and Closing Fund (fund 3171).

Total TITLE II, Section 9 –
Surplus Accrued..... $ 58,701,585

Sec. 10. Appropriations from lottery net profits surplus accrued. — The following item is hereby appropriated from the lottery net profits, and is to be available for expenditure during the fiscal year 2022 out of surplus funds only, as determined by the director of lottery, accrued from the fiscal year ending June 30, 2021, subject to the terms and conditions set forth in this section.

It is the intent and mandate of the Legislature that the following appropriation be payable only from surplus accrued from the fiscal year ending June 30, 2021.

In the event that surplus revenues available from the fiscal year ending June 30, 2021, 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.

411 -Bureau of Senior Services –

Lottery Senior Citizens Fund

(WV Code Chapter 29)

Fund 5405 FY 2022 Org 0508

Senior Services Medicaid Transfer – Lottery Surplus	68199	$ 16,000,000
In-Home Services and Nutrition for Senior Citizens – Lottery Surplus	76699	750,000
Total.....		$ 16,750,000
Total TITLE II, Section 10 – Surplus Accrued		$ 16,750,000

Sec. 11. Appropriations from state excess lottery revenue surplus accrued. — The following item is hereby appropriated from the state excess lottery revenue fund, and is to be available for expenditure during the fiscal year 2022 out of surplus funds only, as determined by the director of lottery, accrued from the fiscal year ending June 30, 2021, subject to the terms and conditions set forth in this section.

It is the intent and mandate of the Legislature that the following appropriation be payable only from surplus accrued from the fiscal year ending June 30, 2021.

In the event that surplus revenues available from the fiscal year ending June 30, 2021, 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.

412 -Racing Commission –

General Administration

(WV Code Chapter 19)

Fund 7308 FY 2022 Org 0707

Directed Transfer	70000	$	800,000

From the above appropriation for Directed Transfer (fund 7308, appropriation 70000), $800,000 shall be transferred to the Racing Commission – General Administration (Fund 7305).

413 -Division of Human Services

(WV Code Chapters 9, 48, and 49)

Fund 5365 FY 2022 Org 0511

Medical Services – Lottery Surplus.....	68100	$	17,000,000
Total TITLE II, Section 11 – Surplus Accrued		$	17,800,000

Sec. 12. Special revenue appropriations. — There are hereby appropriated for expenditure during the fiscal year 2022 special revenues collected pursuant to general law enactment of the Legislature which are not paid into the state fund as general revenue under the provisions of W.Va. Code §12-2-2 and are not expressly appropriated under this act: Provided, That none of the money so appropriated by this section shall be available for expenditure except in compliance with the provisions of W.Va. Code §12-2-1 et seq., W.Va. Code §12-3-1 et seq., and W.Va. Code §11B-2-1 et seq., unless the spending unit has filed with the director of the budget and the legislative auditor prior to the beginning of each fiscal year:

(a) An estimate of the amount and sources of all revenues accruing to such fund; and

(b) A detailed expenditure schedule showing for what purposes the fund is to be expended: *Provided, however*, That federal funds received by the state may be expended only in accordance with Sections (6) or (7) of this Title and with W.Va. Code §4-11-1, *et seq. Provided further*, That federal funds that become available to a spending unit for expenditure while the Legislature is not in session and the availability of such funds could not reasonably have

been anticipated and included in this act may be only be expended in the limited circumstances provided by W. Va. Code §4-11-5(d): *And provided further*, That no provision of this Act may be construed to authorize the expenditure of federal funds except as provided in this section.

During fiscal year 2022, the following funds are hereby available and are to be transferred to the appropriate funds as specified from available balances per the following:

414 -Attorney General

Consumer Protection Recovery Fund

(WV Code Chapter 46A)

Fund 1509 FY 2022 Org 1500

Directed Transfer ..... 70000 $ 4,500,000

From the above appropriation for Directed Transfer (fund 1509, appropriation 70000), $2,500,000 shall be transferred to the Department of Health and Human Resources, Division of Human Services – Medical Services Trust Fund (fund 5185) and $2,000,000 shall be transferred to the Governor's Office – Civil Contingent Fund – Local Economic Development Assistance (fund 0105, appropriation 81900).

Total TITLE II, Section 12 –
Appropriations for Special Revenue
Appropriations ..... $ 4,500,000

Sec. 13. State improvement fund appropriations. — Bequests or donations of nonpublic funds, received by the Governor on behalf of the state during the fiscal year 2022, for the purpose of making studies and recommendations relative to improvements of the administration and management of spending units in the executive branch of state government, shall be deposited in the state treasury in a separate account therein designated state improvement fund.

There are hereby appropriated all moneys so deposited during the fiscal year 2022 to be expended as authorized by the Governor, for such studies and recommendations which may encompass any problems of organization, procedures, systems, functions, powers or duties of a state spending unit in the executive branch, or the betterment of the economic, social, educational, health and general welfare of the state or its citizens.

Sec. 14. Specific funds and collection accounts. — A fund or collection account which by law is dedicated to a specific use is hereby appropriated in sufficient amount to meet all lawful demands upon the fund or collection account and shall be expended according to the provisions of Article 3, Chapter 12 of the Code.

Sec. 15. Appropriations for refunding erroneous payment. — Money that has been erroneously paid into the state treasury is hereby appropriated out of the fund into which it was paid, for refund to the proper person.

When the officer authorized by law to collect money for the state finds that a sum has been erroneously paid, he or she shall issue his or her requisition upon the Auditor for the refunding of the proper amount. The Auditor shall issue his or her warrant to the Treasurer and the Treasurer shall pay the warrant out of the fund into which the amount was originally paid.

Sec. 16. Sinking fund deficiencies. — There is hereby appropriated to the Governor a sufficient amount to meet any deficiencies that may arise in the mortgage finance bond insurance fund of the West Virginia housing development fund which is under the supervision and control of the municipal bond commission as provided by W.Va. Code §31-18-20b, or in the funds of the municipal bond commission because of the failure of any state agency for either general obligation or revenue bonds or any local taxing district for general obligation bonds to remit funds necessary for the payment of interest and sinking fund requirements. The Governor is authorized to transfer from time to time such amounts to the municipal bond commission as may be necessary for these purposes.

The municipal bond commission shall reimburse the state of West Virginia through the Governor from the first remittance collected from the West Virginia housing development fund or from any state agency or local taxing district for which the Governor advanced funds, with interest at the rate carried by the bonds for security or payment of which the advance was made.

Sec. 17. Appropriations for local governments. — There are hereby appropriated for payment to counties, districts and municipal corporations such amounts as will be necessary to pay taxes due counties, districts and municipal corporations and which have been paid into the treasury:

(a) For redemption of lands;

(b) By public service corporations;

(c) For tax forfeitures.

Sec. 18. Total appropriations. — Where only a total sum is appropriated to a spending unit, the total sum shall include personal services and employee benefits, annual increment, current expenses, repairs and alterations, buildings, equipment, other assets, land, and capital outlay, where not otherwise specifically provided and except as otherwise provided in TITLE I – GENERAL PROVISIONS, Sec. 3.

Sec. 19. General school fund. — The balance of the proceeds of the general school fund remaining after the payment of the appropriations made by this act is appropriated for expenditure in accordance with W.Va. Code §18-9A-16.

TITLE III – ADMINISTRATION

Sec. 1. Appropriations conditional. — The expenditure of the appropriations made by this act, except those appropriations made to the legislative and judicial branches of the state government, are conditioned upon the compliance by the spending unit with the requirements of Article 2, Chapter 11B of the Code.

Where spending units or parts of spending units have been absorbed by or combined with other spending units, it is the intent of this act that appropriations and reappropriations shall be to the succeeding or later spending unit created, unless otherwise indicated.

Sec. 2. Constitutionality. — If any part of this act is declared unconstitutional by a court of competent jurisdiction, its decision shall not affect any portion of this act which remains, but the remaining portion shall be in full force and effect as if the portion declared unconstitutional had never been a part of the act.

CHAPTER 12

(H. B. 2768 - By Delegates Hanshaw (Mr. Speaker), and Skaff)

[By Request of the Executive]

[Passed April 6, 2021; in effect from passage.]
[Approved by the Governor on April 15, 2021.]

AN ACT supplementing, amending and increasing an existing item of appropriation from the State Road Fund, to the Department of Transportation, Division of Highways, fund 9017, fiscal year 2021, organization 0803, for the fiscal year ending June 30, 2021.

WHEREAS, The Governor submitted to the Legislature the Executive Budget Document, dated February 10, 2021, which included a statement of the State Road Fund setting forth therein the cash balances and investments as of July 1, 2020, and further included the estimate of revenues for the fiscal year 2021, less regular appropriations for the fiscal year 2021; and

WHEREAS, It appears from the Statement of the State Road Fund there now remains an unappropriated balance in the State Treasury which is available for appropriation during the fiscal year ending June 30, 2021; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending June 30, 2021, to fund 9017, fiscal year 2021, organization 0803, be supplemented and amended by increasing an existing item of appropriation as follows:

TITLE II – APPROPRIATIONS.

Sec. 2. Appropriations from state road fund.

DEPARTMENT OF TRANSPORTATION

111 – Division of Highways –

(WV Code Chapters 17 and 17C)

Fund 9017 FY 2021 Org 0803

		Appro-priation	State Road Fund
2	Maintenance	23700	$ 68,067,146

CHAPTER 13

(Com. Sub. for H. B. 2769 - By Delegates Hanshaw (Mr. Speaker) and Skaff)

[By Request of the Executive]

[Passed April 6, 2021; in effect from passage.]
[Approved by the Governor on April 15, 2021.]

AN ACT supplementing, amending, and increasing items of existing appropriation from the State Road Fund to the Department of Transportation, Division of Motor Vehicles, fund 9007, fiscal year 2021, organization 0802, for the fiscal year ending June 30, 2021.

WHEREAS, The Governor submitted to the Legislature the Executive Budget Document, dated February 10, 2021, which included a statement of the State Road Fund setting forth therein the cash balances and investments as of July 1, 2020, and further included the estimate of revenues for the fiscal year 2021, less regular appropriations for the fiscal year 2021; and

WHEREAS, It appears from the Statement of the State Road Fund there now remains an unappropriated balance in the State Treasury which is available for appropriation during the fiscal year ending June 30, 2021; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending June 30, 2021, to fund 9007, fiscal year 2021, organization 0802, be supplemented and amended by increasing existing items of appropriation as follows:

TITLE II – APPROPRIATIONS.

Sec. 2. Appropriations from state road fund.

DEPARTMENT OF TRANSPORTATION

110 – Division of Motor Vehicles –

(WV Code Chapters 17, 17A, 17B, 17C, 17D, 20, and 24A)

Fund 9007 FY 2021 Org 0802

		Appro-priation	State Road Fund
2	Current Expenses	13000	$ 500,000

CHAPTER 14

(H. B. 2788 - By Delegates Hanshaw (Mr. Speaker) and Skaff)

[By Request of the Executive]

[Passed March 22, 2021; in effect from passage.]
[Approved by the Governor on April 1, 2021.]

AN ACT expiring funds to the unappropriated surplus balance in the State Fund, General Revenue, for the fiscal year ending June 30, 2021, in the amount of $6,497,548 from the balance of moneys remaining as an unappropriated balance in the State Excess Lottery Revenue Fund.

WHEREAS, The Governor submitted the Executive Budget Document to the Legislature on February 10, 2021, containing a statement of the State Fund, General Revenue, setting forth therein the cash balance as of July 1, 2020, and further included the estimate of revenue for the fiscal year 2021, less net appropriation balances forwarded and regular and surplus appropriations for the fiscal year 2021, and further included recommended expirations to the unappropriated surplus balance of the State Fund General Revenue; 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, 2021; 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, 2021; therefore

Be it enacted by the Legislature of West Virginia:

That the balance of the funds remaining as an unappropriated balance for the fiscal year ending June 30, 2021, in the State Excess Lottery Revenue Fund be decreased by expiring the amount of $6,497,548 to the unappropriated surplus balance of the State Fund, General Revenue to be available for appropriation during the fiscal year ending June 30, 2021.

CHAPTER 15

(Com. Sub. for H. B. 2789 - By Delegates Hanshaw (Mr. Speaker) and Skaff)

[By Request of the Executive]

[Passed March 22, 2021; in effect from passage.]
[Approved by the Governor on April 1, 2021.]

AN ACT supplementing and amending the appropriations of public moneys out of the Treasury from the balance of moneys remaining as an unappropriated surplus balance in the State Fund, General Revenue, to the Department of Administration, Public Defender Services, fund 0226, fiscal year 2021, organization 0221, by supplementing and amending the appropriations for the fiscal year ending June 30, 2021.

WHEREAS, The Governor submitted to the Legislature a Statement of the State Fund, General Revenue, dated February 10, 2021, setting forth therein the cash balance as of July 1, 2020, and further included the estimate of revenues for the fiscal year 2021, less net appropriation balances forwarded and regular appropriations for the fiscal year 2021; and

WHEREAS, It appears from the Statement of the State Fund, General Revenue, there now remains an unappropriated surplus balance in the State Treasury which is available for appropriation during the fiscal year ending June 30, 2021; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending June 30, 2021, to fund 0226, fiscal year 2021, organization 0221, be supplemented and amended by increasing existing items of appropriation as follows:

TITLE II – APPROPRIATIONS.

Section 1. Appropriations from general revenue.

DEPARTMENT OF ADMINISTRATION

27 – Public Defender Services

(WV Code Chapter 29)

Fund 0226 FY 2021 Org 0221

		Appro-priation	General Revenue Fund
4	Public Defender Corporations – Surplus	35299	$ 1,200,000
5	Appointed Counsel Fees – Surplus	43500	18,800,000

CHAPTER 16

(H. B. 2790 - By Delegates Hanshaw (Mr. Speaker) and Skaff)

[By Request of the Executive]

[Passed April 6, 2021; in effect from passage.]
[Approved by the Governor on April 15, 2021.]

AN ACT supplementing, amending, decreasing, and increasing items of existing appropriation from the State Road Fund to the Department of Transportation, Division of Highways, fund 9017, fiscal year 2021, organization 0803, for the fiscal year ending June 30, 2021.

WHEREAS, The Governor submitted to the Legislature the Executive Budget Document, dated February 10, 2021, which included a statement of the State Road Fund setting forth therein the cash balances and investments as of July 1, 2020, and further included the estimate of revenues for the fiscal year 2021, less regular appropriations for the fiscal year 2021; and

WHEREAS, It appears from the Statement of the State Road Fund there now remains an unappropriated balance in the State Treasury which is available for appropriation during the fiscal year ending June 30, 2021; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending June 30, 2021, to fund 9017, fiscal year 2021, organization 0803, be supplemented and amended by decreasing existing items of appropriation as follows:

TITLE II – APPROPRIATIONS.

Sec. 2. Appropriations from state road fund.

DEPARTMENT OF TRANSPORTATION

111 – Division of Highways –

(WV Code Chapters 17 and 17C)

Fund 9017 FY 2021 Org 0803

		Appro-priation	State Road Fund
1	Debt Service	04000	$ 36,000,000
7	Other Federal Aid Programs	27900	10,000,000
8	Appalachian Programs	28000	10,000,000

And, That the total appropriation for the fiscal year ending June 30, 2021, to fund 9017, fiscal year 2021, organization 0803, be supplemented and amended by increasing existing items of appropriation as follows:

TITLE II – APPROPRIATIONS.

Sec. 2. Appropriations from state road fund.

DEPARTMENT OF TRANSPORTATION

111 – Division of Highways –

(WV Code Chapters 17 and 17C)

Fund 9017 FY 2019 Org 0803

		Appro-priation	State Road Fund
5	General Operations	27700	$ 53,000,000
6	Interstate Construction	27800	20,000,000

CHAPTER 17

(Com. Sub. for H. B. 2802 - By Delegates Hanshaw (Mr. Speaker) and Skaff)

[By Request of the Executive]

[Passed March 22, 2021; in effect from passage.]
[Approved by the Governor on April 1, 2021.]

AN ACT supplementing and amending the appropriations of public moneys out of the Treasury from the balance of moneys remaining as an unappropriated surplus balance in the State Fund, General Revenue, to the Department of Homeland Security, Division of Emergency Management, fund 0443, fiscal year 2021, organization 0606, by supplementing and amending the appropriations for the fiscal year ending June 30, 2021.

WHEREAS, The Governor submitted to the Legislature the Executive Budget document, dated February 10, 2021, which included a Statement of the State Fund, General Revenue, setting forth therein the cash balance as of July 1, 2020, and further included the estimate of revenues for the fiscal year 2021, less net appropriation balances forwarded and regular appropriations for the fiscal year 2021; and

WHEREAS, It appears from the Executive Budget Document, Statement of the State Fund, General Revenue, and this legislation, there now remains an unappropriated surplus balance in the State Treasury which is available for appropriation during the fiscal year ending June 30, 2021; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending June 30, 2021, to fund 0443, fiscal year 2021, organization 0606, be

supplemented and amended by increasing an existing item of appropriation as follows:

TITLE II – APPROPRIATIONS.

Section 1. Appropriations from general revenue.

DEPARTMENT OF HOMELAND SECURITY

64 – Division of Emergency Management

(WV Code Chapter 15)

Fund 0443 FY 2021 Org 0606

		Appro-priation	General Revenue Fund
3	Current Expenses - Surplus	13099	$ 650,000

CHAPTER 18

(Com. Sub. for H. B. 2803 - By Delegates Hanshaw (Mr. Speaker) and Skaff)

[By Request of the Executive]

[Passed March 22, 2021; in effect from passage.]
[Approved by the Governor on April 1, 2021.]

AN ACT supplementing and amending the appropriations of public moneys out of the Treasury from the balance of moneys remaining as an unappropriated surplus balance in the State Fund, General Revenue, to the Department of Commerce, Division of Forestry, fund 0250, fiscal year 2021, organization 0305, by supplementing and amending the appropriations for the fiscal year ending June 30, 2021.

WHEREAS, The Governor submitted to the Legislature the Executive Budget document, dated February 10, 2021, which included a Statement of the State Fund, General Revenue, setting forth therein the cash balance as of July 1, 2020, and further included the estimate of revenues for the fiscal year 2021, less net appropriation balances forwarded and regular appropriations for the fiscal year 2021; and

WHEREAS, It appears from the Executive Budget Document, Statement of the State Fund, General Revenue, and this legislation, there now remains an unappropriated surplus balance in the State Treasury which is available for appropriation during the fiscal year ending June 30, 2021; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending June 30, 2021, to fund 0250, fiscal year 2021, organization 0305, be

supplemented and amended by increasing existing items of appropriation as follows:

TITLE II – APPROPRIATIONS.

Section 1. Appropriations from general revenue.

DEPARTMENT OF COMMERCE

33 – Division of Forestry

(WV Code Chapter 19)

Fund 0250 FY 2021 Org 0305

		Appro-priation		General Revenue Fund
1	Personal Services and Employee Benefits - Surplus	24301	$	800,000
3	Current Expenses - Surplus	13099		200,000

CHAPTER 19

(H. B. 2804 - By Delegates Hanshaw (Mr. Speaker) and Skaff)

[By Request of the Executive]

[Passed March 22, 2021; in effect from passage.]
[Approved by the Governor on April 1, 2021.]

AN ACT expiring funds to the unappropriated surplus balance in the State Fund, General Revenue, for the fiscal year ending June 30, 2021 in the amount of $13,500,000 from the Department of Administration, Board of Risk and Insurance Management, Mine Subsidence Insurance Fund, fund 2361, fiscal year 2021, organization 0218; and in the amount of $2,000,000 from the Department of Veterans' Assistance, Veterans' Facilities Support Fund, fund 6703, fiscal year 2021, organization 0613.

WHEREAS, The Governor finds that the account balances in the Department of Administration, Board of Risk and Insurance Management, Mine Subsidence Insurance Fund, fund 2361, fiscal year 2021, organization 0218; and in the Department of Veterans' Assistance, Veterans' Facilities Support Fund, fund 6703, fiscal year 2021, organization 0613, exceed that which is necessary for the purposes for which the accounts were established; and

WHEREAS, The Governor submitted to the Legislature the Executive Budget document, dated February 10, 2021, which included a Statement of the State Fund, General Revenue, setting forth therein the cash balance as of July 1, 2020, and further included the estimate of revenues for the fiscal year 2021, less net appropriation balances forwarded and regular appropriations for the fiscal year 2021 and further included recommended expirations to the surplus balance of the State Fund General Revenue; and

WHEREAS, It appears from the Executive Budget document, Statement of the State Fund, General Revenue, and this legislation, there now remains an unappropriated surplus balance in the State Treasury which is available for appropriation during the fiscal year ending June 30, 2021;

Be it enacted by the Legislature of West Virginia:

That the balance of the funds available for expenditure in the fiscal year ending June 30, 2021, in the Department of Administration, Board of Risk and Insurance Management, Mine Subsidence Insurance Fund, fund 2361, fiscal year 2021, organization 0218, be decreased by expiring the amount of $13,500,000; and in the Department of Veterans' Assistance, Veterans' Facilities Support Fund, fund 6703, fiscal year 2021, organization 0613, be decreased by expiring the amount of $2,000,000, all to the unappropriated surplus balance of the State Fund, General Revenue to be available for appropriation during the fiscal year ending June 30, 2021.

CHAPTER 20

(H. B. 2895 - By Delegates Hanshaw (Mr. Speaker) and Skaff)

[By Request of the Executive]

[Passed April 10, 2021; in effect from passage.]
[Approved by the Governor on April 15, 2021.]

AN ACT supplementing and amending the appropriations of public moneys out of the Treasury from the balance of moneys remaining as an unappropriated surplus balance in the State Fund, General Revenue, to the Department of Veterans' Assistance, Department of Veterans' Assistance fund 0456, fiscal year 2021, organization 0613, by supplementing and amending the appropriations for the fiscal year ending June 30, 2021.

WHEREAS, The Governor submitted to the Legislature the Executive Budget document, dated February 10, 2021, which included a Statement of the State Fund, General Revenue, setting forth therein the cash balance as of July 1, 2020, and further included the estimate of revenues for the fiscal year 2021, less net appropriation balances forwarded and regular appropriations for the fiscal year 2021; and

WHEREAS, It appears from the Executive Budget Document, Statement of the State Fund, General Revenue, and this legislation, there now remains an unappropriated surplus balance in the State Treasury which is available for appropriation during the fiscal year ending June 30, 2021; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending June 30, 2021, to fund 0456, fiscal year 2021, organization 0613, be

supplemented and amended by adding a new item of appropriation as follows:

TITLE II – APPROPRIATIONS.

Section 1. Appropriations from general revenue.

DEPARTMENT OF VETERANS' ASSISTANCE

81 – Department of Veterans' Assistance

(WV Code Chapter 9A)

Fund 0456 FY 2021 Org 0613

		Appro-priation	General Revenue Fund
5a	Buildings – Surplus.....	XXXXX	$ 8,500,000

Any unexpended balances remaining in the appropriations for Buildings - Surplus (fund 0456, appropriation XXXXX) at the close of the fiscal year 2021 are hereby reappropriated for expenditure during the fiscal year 2022.

CHAPTER 21

(Com. Sub. for H. B. 2896 - By Delegates Hanshaw (Mr. Speaker) and Skaff)

[By Request of the Executive]

[Passed March 26, 2021; in effect from passage.]
[Approved by the Governor on April 7, 2021.]

AN ACT making a supplementary appropriation of federal funds out of the Treasury from the balance of federal moneys remaining unappropriated for the fiscal year ending June 30, 2021, to the Department of Health and Human Resources, Division of Human Services, fund 8722, fiscal year 2021, organization 0511, by supplementing and amending the appropriations for the fiscal year ending June 30, 2021.

WHEREAS, The Governor has established the availability of federal funds for expenditure in the fiscal year ending June 30, 2021, which is hereby appropriated by the terms of this supplementary appropriation bill; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending June 30, 2021, to fund 8722, fiscal year 2021, organization 0511, be supplemented and amended by increasing existing items of appropriation as follows:

TITLE II – APPROPRIATIONS.

Sec. 6. Appropriations of federal funds.

DEPARTMENT OF HEALTH AND HUMAN RESOURCES

355 – Division of Human Services

(WV Code Chapters 9, 48, and 49)

Fund 8722 FY 2021 Org 0511

		Appro-priation	Federal Funds
4	Medical Services	18900	$287,086,625

CHAPTER 22

(H. B. 2897 - By Delegates Hanshaw (Mr. Speaker) and Skaff)

[By Request of the Executive]

[Passed March 29, 2021; in effect from passage.]
[Approved by the Governor on April 7, 2021.]

AN ACT expiring funds to the balance of the Department of Commerce, West Virginia Development Office, Marketing and Communications Operating Fund, fund 3002, fiscal year 2021, organization 0307, in the amount of $222,563, from the Department of Commerce, West Virginia Development Office, Synthetic Fuel – Producing County Fund, fund 3165, fiscal year 2021, organization 0307, by supplementing and amending the appropriations for the fiscal year ending June 30, 2021.

Whereas, The Governor finds that the account balance in the Department of Commerce, West Virginia Development Office, Synthetic Fuel – Producing County Fund, fund 3165, fiscal year 2021, organization 0307, exceeds that which is necessary for the purpose for which the account was established; therefore

Be it enacted by the Legislature of West Virginia:

That the balance of funds available for expenditure in the fiscal year ending June 30, 2021, to the Department of Commerce, West Virginia Development Office, Synthetic Fuel – Producing County Fund, fund 3165, fiscal year 2021, organization 0307, be decreased by expiring the amount of $222,563 to the Department of Commerce, West Virginia Development Office, Marketing and Communications Operating Fund, fund 3002, fiscal year 2021, organization 0307.

CHAPTER 23

(H. B. 2898 - By Delegates Hanshaw (Mr. Speaker) and Skaff)

[By Request of the Executive]

[Passed April 1, 2021; in effect from passage.]
[Approved by the Governor on April 15, 2021.]

AN ACT making a supplementary appropriation of federal funds out of the Treasury from the balance of federal moneys remaining unappropriated for the fiscal year ending June 30, 2021, to WorkForce West Virginia – Workforce Investment Act, fund 8749, fiscal year 2021, organization 0323, by supplementing and amending the appropriations for the fiscal year ending June 30, 2021.

WHEREAS, The Governor has established the availability of federal funds for expenditure in the fiscal year ending June 30, 2021 which is hereby appropriated by the terms of this supplementary appropriation bill; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending June 30, 2021, to fund 8749, fiscal year 2021, organization 0323, be supplemented and amended by increasing an existing item of appropriation as follows:

TITLE II – APPROPRIATIONS.

Sec. 7. Appropriations from federal block grants.

376 – WorkForce West Virginia–

Workforce Investment Act

Fund 8749 FY 2021 Org 0323

		Appro-priation	Federal Funds
3	Current Expenses	13000	$ 6,800,000

CHAPTER 24

(H. B. 2899 - By Delegates Hanshaw (Mr. Speaker) and Skaff)

[By Request of the Executive]

[Passed March 29, 2021; in effect from passage.]
[Approved by the Governor on April 7, 2021.]

AN ACT making a supplementary appropriation of public moneys out of the Treasury from the balance of moneys remaining unappropriated for the fiscal year ending June 30, 2021, to the Department of Commerce, Division of Labor - Elevator Safety Fund, fund 3188, fiscal year 2021, organization 0308; the Department of Commerce, Division of Labor - Bedding and Upholstery Fund, fund 3198, fiscal year 2021, organization 0308; and that Chapter 11, Acts of the Legislature, Regular Session, 2020, known as the budget bill, be supplemented and amended by adding to Title II a new item of appropriation to the Department of Commerce, Division of Natural Resources – West Virginia Parks and Recreation Endowment Fund, fund 3211, fiscal year 2021, organization 0310 by supplementing, amending and adding appropriations for the fiscal year ending June 30, 2021.

WHEREAS, The Governor has established that there now remains an unappropriated balance in the Department of Commerce, Division of Labor - Elevator Safety Fund, fund 3188, fiscal year 2021, organization 0308; the Department of Commerce, Division of Labor - Bedding and Upholstery Fund, fund 3198, fiscal year 2021, organization 0308; and to the Department of Commerce, Division of Natural Resources – West Virginia Parks and Recreation Endowment Fund, fund 3211, fiscal year 2021, organization 0310 that is available for expenditure during the fiscal year ending June 30, 2021 which is hereby appropriated by the terms of this supplementary appropriation bill; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending June 30, 2021, to fund 3188, fiscal year 2021, organization 0308, be supplemented and amended by increasing an existing item of appropriation as follows:

TITLE II – APPROPRIATIONS.

Sec. 3. Appropriations from other funds.

DEPARTMENT OF COMMERCE

162 – Division of Labor –

Elevator Safety Fund

(WV Code Chapter 21)

Fund 3188 FY 2021 Org 0308

		Appro-priation		Other Funds
3	Current Expenses	13000	$	50,600

And, that the total appropriation for the fiscal year ending June 30, 2021, to fund 3198, fiscal year 2021, organization 0308, be supplemented and amended by increasing an existing item of appropriation as follows:

TITLE II – APPROPRIATIONS.

Sec. 3. Appropriations from other funds.

DEPARTMENT OF COMMERCE

168 – Division of Labor –

Bedding and Upholstery Fund

(WV Code Chapter 21)

Fund 3198 FY 2021 Org 0308

		Appro-priation		Other Funds
3	Current Expenses	13000	$	102,400
6	BRIM Premium	91300		6,700

And, that Chapter 11, Acts of the Legislature, Regular Session, 2020, known as the budget bill, be supplemented and amended by adding to Title II, section three thereof, the following:

TITLE II – APPROPRIATIONS.

Sec. 3. Appropriations from other funds.

DEPARTMENT OF COMMERCE

173a– Division of Natural Resources –

West Virginia Parks and Recreation Endowment Fund

(WV Code Chapter 20)

Fund 3211 FY 2021 Org 0310

		Appro-priation		Other Funds
1	Repairs and Alterations	06400	$	3,000
2	Equipment	07000		2,000
3	Current Expenses	13000		6,000
4	Buildings	25800		3,000
5	Other Assets	69000		4,000
6	Land	73000		2,000
	Total		$	20,000

CHAPTER 25

(H. B. 2900 - By Delegates Hanshaw (Mr. Speaker) and Skaff)

[By Request of the Executive]

[Passed April 10, 2021; in effect from passage.]
[Approved by the Governor on April 15, 2021.]

AN ACT expiring funds to the balance of the Department of Education – State Board of Education – School Building Authority – School Construction Fund, fund 3952, fiscal year 2021, organization 0404, in the amount of $2,766,137, from the State Department of Education – School Building Authority – Debt Service Fund, fund 3963, organization 0404, by supplementing and amending the appropriations for the fiscal year ending June 30, 2021.

Whereas, The Governor finds that the account balance in the State Department of Education – School Building Authority – Debt Service Fund, fund 3963, fiscal year 2021, organization 0404, exceeds that which is necessary for the purposes for which the account was established; therefore

Be it enacted by the Legislature of West Virginia:

That the balance of funds available for expenditure in the fiscal year ending June 30, 2021 to the State Department of Education – School Building Authority – Debt Service Fund, fund 3963, fiscal year 2021, organization 0404, be decreased by expiring the amount of $2,766,137 to the Department of Education – State Board of Education - School Building Authority – School Construction Fund, fund 3952, organization 0404.

CHAPTER 26

(H. B. 2901 - By Delegates Hanshaw (Mr. Speaker) and Skaff)

[By Request of the Executive]

[Passed March 26, 2021; in effect from passage.]
[Approved by the Governor on April 7, 2021.]

AN ACT making a supplementary appropriation of federal funds out of the Treasury from the balance of federal moneys remaining unappropriated for the fiscal year ending June 30, 2021, to the Department of Health and Human Resources, Division of Human Services, fund 8722, fiscal year 2021, organization 0511, by supplementing and amending the appropriations for the fiscal year ending June 30, 2021.

WHEREAS, The Governor has established the availability of federal funds for expenditure in the fiscal year ending June 30, 2021 which is hereby appropriated by the terms of this supplementary appropriation bill; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending June 30, 2021, to fund 8722, fiscal year 2021, organization 0511, be supplemented and amended by increasing an existing item of appropriation as follows:

TITLE II – APPROPRIATIONS.

Sec. 6. Appropriations of federal funds.

DEPARTMENT OF HEALTH AND HUMAN RESOURCES

355 – Division of Human Services

(WV Code Chapters 9, 48, and 49)

Fund 8722 FY 2021 Org 0511

		Appro-priation	Federal Funds
7	CHIP Services.....	85602	$ 3,723,266

CHAPTER 27

(H. B. 2903 - By Delegates Hanshaw (Mr. Speaker) and Skaff)

[By Request of the Executive]

[Passed March 26, 2021; in effect from passage.]
[Approved by the Governor on April 7, 2021.]

AN ACT making a supplementary appropriation of federal funds out of the Treasury from the balance of federal moneys remaining unappropriated for the fiscal year ending June 30, 2021, to the Department of Homeland Security, West Virginia State Police, fund 8741, fiscal year 2021, organization 0612, by supplementing and amending the appropriations for the fiscal year ending June 30, 2021.

WHEREAS, The Governor has established the availability of federal funds for expenditure in the fiscal year ending June 30, 2021 which is hereby appropriated by the terms of this supplementary appropriation bill; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending June 30, 2021, to fund 8741, fiscal year 2021, organization 0612, be supplemented and amended by increasing an existing item of appropriation as follows:

TITLE II – APPROPRIATIONS.

Sec. 6. Appropriations of federal funds.

DEPARTMENT HOMELAND SECURITY

359 – West Virginia State Police

(WV Code Chapter 15)

Fund 8741 FY 2021 Org 0612

		Appro-priation		Federal Funds
1	Personal Services and Employee Benefits	00100	$	1,700,000

CHAPTER 28

(H. B. 2920 - By Delegates Hanshaw (Mr. Speaker) and Skaff)

[By Request of the Executive]

[Passed March 29, 2021; in effect from passage.]
[Approved by the Governor on April 7, 2021.]

AN ACT making a supplementary appropriation of public moneys out of the Treasury from the balance of moneys remaining unappropriated for the fiscal year ending June 30, 2021, to the Department of Health and Human Resources, Division of Health – Laboratory Services Fund, fund 5163, fiscal year 2021, organization 0506, by supplementing and amending the appropriations for the fiscal year ending June 30, 2021.

WHEREAS, The Governor has established that there now remains an unappropriated balance in the Department of Health and Human Resources, Division of Health – Laboratory Services Fund, fund 5163, fiscal year 2021, organization 0506, that is available for expenditure during the fiscal year ending June 30, 2021 which is hereby appropriated by the terms of this supplementary appropriation bill; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending June 30, 2021, to fund 5163, fiscal year 2021, organization 0506, be supplemented and amended by increasing an existing item of appropriation as follows:

TITLE II – APPROPRIATIONS.

Sec. 3. Appropriations from other funds.

DEPARTMENT OF HEALTH AND HUMAN RESOURCES

205 – Division of Health –

Laboratory Services Fund

(WV Code Chapter 16)

Fund 5163 FY 2021 Org 0506

		Appro-priation	Other Funds
3	Current Expenses	13000	$ 469,868

CHAPTER 29

(H. B. 2940 - By Delegates Hanshaw (Mr. Speaker) and Skaff)

[By Request of the Executive]

[Passed March 26, 2021; in effect from passage.]
[Approved by the Governor on April 7, 2021.]

AN ACT making a supplementary appropriation of federal funds out of the Treasury from the balance of federal moneys remaining unappropriated for the fiscal year ending June 30, 2021, to the Department of Education, State Board of Education – State Department of Education, fund 8712, fiscal year 2021, organization 0402, by supplementing and amending the appropriations for the fiscal year ending June 30, 2021.

WHEREAS, The Governor has established the availability of federal funds for expenditure in the fiscal year ending June 30, 2021 which are hereby appropriated by the terms of this supplementary appropriation bill; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending June 30, 2021, to fund 8712, fiscal year 2021, organization 0402, be supplemented and amended by increasing an existing item of appropriation as follows:

TITLE II – APPROPRIATIONS.

Sec. 6. Appropriations of federal funds.

DEPARTMENT OF EDUCATION

342 – State Board of Education –

State Department of Education

(WV Code Chapters 18 and 18A)

Fund 8712 FY 2021 Org 0402

		Appro-priation	Federal Funds
3	Current Expenses	13000	$340,000,000

CHAPTER 30

(H. B. 2941 - By Delegates Hanshaw (Mr. Speaker) and Skaff)

[By Request of the Executive]

[Passed April 1, 2021; in effect from passage.]
[Approved by the Governor on April 15, 2021.]

AN ACT making a supplementary appropriation of federal funds out of the Treasury from the balance of federal moneys remaining unappropriated for the fiscal year ending June 30, 2021, by decreasing an existing item and adding a new item of appropriation to the Department of Revenue, Insurance Commissioner, fund 8883, fiscal year 2021, organization 0704, by supplementing and amending the appropriations for the fiscal year ending June 30, 2021.

WHEREAS, The Governor has established the availability of federal funds for expenditure in the fiscal year ending June 30, 2021 which is hereby appropriated by the terms of this supplementary appropriation bill; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending June 30, 2021, to fund 8883, fiscal year 2021, organization 0704, be supplemented and amended by decreasing an existing item of appropriation as follows:

TITLE II – APPROPRIATIONS.

Sec. 6. Appropriations of federal funds.

DEPARTMENT OF REVENUE

362 – Insurance Commissioner

(WV Code Chapter 33)

Fund 8883 FY 2021 Org 0704

		Appro-priation		Federal Funds
2	Current Expenses	13000	$	83,000

And, that the total appropriation for the fiscal year ending June 30, 2021, to fund 8883, fiscal year 2021, organization 0704, be supplemented and amended by adding a new item of appropriation as follows:

TITLE II – APPROPRIATIONS.

Sec. 6. Appropriations of federal funds.

DEPARTMENT OF REVENUE

362 – Insurance Commissioner

(WV Code Chapter 33)

Fund 8883 FY 2021 Org 0704

		Appro-priation		Federal Funds
1a	Personal Services and Employee Benefits	00100	$	83,000

CHAPTER 31

(H. B. 3286 - By Delegates Hanshaw (Mr. Speaker) and Skaff)

[By Request of the Executive]

[Passed April 8, 2021; in effect from passage.]
[Approved by the Governor on April 15, 2021.]

AN ACT making a supplementary appropriation of federal funds out of the Treasury from the balance of federal moneys remaining unappropriated for the fiscal year ending June 30, 2021, to the Division of Human Services – Child Care and Development, fund 8817, fiscal year 2021, organization 0511, by supplementing and amending the appropriations for the fiscal year ending June 30, 2021.

WHEREAS, The Governor has established the availability of federal funds for expenditure in the fiscal year ending June 30, 2021 which is hereby appropriated by the terms of this supplementary appropriation bill; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending June 30, 2021, to fund 8817, fiscal year 2021, organization 0511, be supplemented and amended by increasing an existing item of appropriation as follows:

TITLE II – APPROPRIATIONS.

Sec. 7. Appropriations from federal block grants.

384 – Division of Human Services –

Child Care and Development

Fund 8817 FY 2021 Org 0511

		Appro-priation	Federal Funds
3	Current Expenses	13000	$ 55,000,000

CHAPTER 32

(H. B. 3287 - By Delegates Hanshaw (Mr. Speaker) and Skaff)

[By Request of the Executive]

[Passed April 8, 2021; in effect from passage.]
[Approved by the Governor on April 15, 2021.]

AN ACT making a supplementary appropriation of public monies out of the Treasury from the balance of monies remaining unappropriated for the fiscal year ending June 30, 2021, to the Department of Homeland Security, Department of Homeland Security – Office of the Secretary – Law-Enforcement, Safety and Emergency Worker Funeral Expense Payment Fund, fund 6003, fiscal year 2021, organization 0601, by supplementing and amending the appropriations for the fiscal year ending June 30, 2021.

WHEREAS, The Governor has established that there now remains an unappropriated balance in the Department of Homeland Security, Department of Homeland Security – Office of the Secretary – Law-Enforcement, Safety and Emergency Worker Funeral Expense Payment Fund, fund 6003, fiscal year 2021, organization 0601, that is available for expenditure during the fiscal year ending June 30, 2021 which is hereby appropriated by the terms of this supplementary appropriation bill; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending June 30, 2021, to fund 6003, fiscal year 2021, organization 0601, be supplemented and amended by increasing an existing item of appropriation as follows:

TITLE II – APPROPRIATIONS.

Sec. 3. Appropriations from other funds.

DEPARTMENT OF HOMELAND SECURITY

222 – Department of Homeland Security –

Office of the Secretary –

Law-Enforcement, Safety and Emergency Worker

Funeral Expense Payment Fund

(WV Code Chapter 15)

Fund 6003 FY 2021 Org 0601

		Appro-priation		Other Funds
1	Current Expenses	13000	$	48,000

CHAPTER 33

(H. B. 3288 - By Delegates Hanshaw (Mr. Speaker) and Skaff)

[By Request of the Executive]

[Passed April 10, 2021; in effect from passage.]
[Approved by the Governor on April 15, 2021.]

AN ACT supplementing and amending appropriations of public moneys out of the Treasury in the State Fund, General Revenue, by decreasing an existing item of appropriation and adding a new item of appropriation to Executive, Governor's Office, fund 0101, fiscal year 2021, organization 0100, by decreasing existing items of appropriation from the Department of Health and Human Resources, Division of Human Services, fund 0403, fiscal year 2021, organization 0511 and from the Department of Health and Human Resources, Division of Health – Central Office, fund 0407, fiscal year 2021, organization 0506 and increasing an existing item of appropriation to the Department of Health and Human Resources, Division of Human Services, fund 0403, fiscal year 2021, organization 0511, by supplementing and amending appropriations for the fiscal year ending June 30, 2021.

WHEREAS, The Governor submitted to the Legislature the Executive Budget document, dated February 10, 2021, which included a Statement of the State Fund, General Revenue, setting forth therein the cash balance as of July 1, 2020, and further included the estimate of revenues for the fiscal year 2021, less net appropriation balances forwarded and regular appropriations for the fiscal year 2021; and

WHEREAS, It appears from the Executive Budget document, Statement of the State Fund, General Revenue, and this legislation, there remains an unappropriated balance in the State Treasury

which is available for appropriation during the fiscal year ending June 30, 2021; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending June 30, 2021, to fund 0101, fiscal year 2021, organization 0100, be supplemented and amended by decreasing an existing item of appropriation as follows:

TITLE II – APPROPRIATIONS.

Section 1. Appropriations from general revenue.

EXECUTIVE

5 – Governor's Office

(WV Code Chapter 5)

Fund 0101 FY 2021 Org 0100

		Appro-priation	General Revenue Fund
2	Current Expenses (R).....	13000	$ 65,000

And, That the total appropriation for the fiscal year ending June 30, 2021, to fund 0101, fiscal year 2021, organization 0100, be supplemented and amended by adding a new item of appropriation as follows:

TITLE II – APPROPRIATIONS.

Section 1. Appropriations from general revenue.

EXECUTIVE

5 – Governor's Office

(WV Code Chapter 5)

Fund 0101 FY 2021 Org 0100

		Appro-priation		General Revenue Fund
3a	Equipment	07000	$	65,000

And, That the total appropriation for the fiscal year ending June 30, 2021, to fund 0403, fiscal year 2021, organization 0511, be supplemented and amended by decreasing an existing item of appropriation as follows:

TITLE II – APPROPRIATIONS.

Section 1. Appropriations from general revenue.

DEPARTMENT OF HEALTH AND HUMAN RESOURCES

61 – Division of Human Services

(WV Code Chapters 9, 48, and 49)

Fund 0403 FY 2021 Org 0511

		Appro-priation		General Revenue Fund
5	Medical Services	18900	$	4,660,595

And, That the total appropriation for the fiscal year ending June 30, 2021, to fund 0407, fiscal year 2021, organization 0506, be supplemented and amended by decreasing an existing item of appropriation as follows:

TITLE II – APPROPRIATIONS.

Section 1. Appropriations from general revenue.

DEPARTMENT OF HEALTH AND HUMAN RESOURCES

57 – Division of Health –

Central Office

(WV Code Chapter 16)

Fund 0407 FY 2021 Org 0506

		Appro-priation	General Revenue Fund
19	Primary Care Support	62800	$ 3,040,040

And, That the total appropriation for the fiscal year ending June 30, 2021, to fund 0403, fiscal year 2021, organization 0511, be supplemented and amended by increasing an existing item of appropriation as follows:

TITLE II – APPROPRIATIONS.

Section 1. Appropriations from general revenue.

DEPARTMENT OF HEALTH AND HUMAN RESOURCES

61 – Division of Human Services

(WV Code Chapters 9, 48 and 49)

Fund 0403 FY 2021 Org 0511

		Appro-priation	General Revenue Fund
25	Medical Services Administrative Costs	78900	$ 7,700,635

CHAPTER 34

(H. B. 3289 - By Delegates Hanshaw (Mr. Speaker) and Skaff)

[By Request of the Executive]

[Passed April 8, 2021; in effect from passage.]
[Approved by the Governor on April 15, 2021.]

AN ACT making a supplementary appropriation of federal funds out of the Treasury from the balance of federal monies remaining unappropriated for the fiscal year ending June 30, 2021, to the Department of Commerce, Geological and Economic Survey, fund 8704, fiscal year 2021, organization 0306, by supplementing and amending the appropriations for the fiscal year ending June 30, 2021.

WHEREAS, The Governor has established the availability of federal funds for expenditure in the fiscal year ending June 30, 2021 which are hereby appropriated by the terms of this supplementary appropriation bill; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending June 30, 2021, to fund 8704, fiscal year 2021, organization 0306, be supplemented and amended by increasing an existing item of appropriation as follows:

TITLE II – APPROPRIATIONS.

Sec. 6. Appropriations of federal funds.

DEPARTMENT OF COMMERCE

332 – Geological and Economic Survey

(WV Code Chapter 29)

Fund 8704 FY 2021 Org 0306

		Appro-priation		Federal Funds
1	Personal Services and Employee Benefits.....	00100	$	100,000

CHAPTER 35

(H. B. 3291 - By Delegates Hanshaw (Mr. Speaker) and Skaff)

[By Request of the Executive]

[Passed April 8, 2021; in effect from passage.]
[Approved by the Governor on April 15, 2021.]

AN ACT making a supplementary appropriation of federal funds out of the Treasury from the balance of federal monies remaining unappropriated for the fiscal year ending June 30, 2021, to the Department of Homeland Security, Division of Administrative Services, fund 8803, fiscal year 2021, organization 0623, by supplementing and amending the appropriations for the fiscal year ending June 30, 2021.

WHEREAS, The Governor has established the availability of federal funds for expenditure in the fiscal year ending June 30, 2021 which are hereby appropriated by the terms of this supplementary appropriation bill; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending June 30, 2021, to fund 8803, fiscal year 2021, organization 0623, be supplemented and amended by increasing an existing item of appropriation as follows:

TITLE II – APPROPRIATIONS.

Sec. 6. Appropriations of federal funds.

DEPARTMENT OF HOMELAND SECURITY

361 – Division of Administrative Services

(WV Code Chapter 15)

Fund 8803 FY 2021 Org 0623

		Appro-priation	Federal Funds
3	Current Expenses	13000	$ 20,000,000

CHAPTER 36

(H. B. 3292 - By Delegates Hanshaw (Mr. Speaker) and Skaff)

[By Request of the Executive]

[Passed April 8, 2021; in effect from passage.]
[Approved by the Governor on April 9, 2021.]

AN ACT making a supplementary appropriation of federal funds out of the Treasury from the balance of federal monies remaining unappropriated for the fiscal year ending June 30, 2021, to the Department of Health and Human Resources, Division of Health – Central Office, fund 8802, fiscal year 2021, organization 0506, by supplementing and amending the appropriations for the fiscal year ending June 30, 2021.

WHEREAS, The Governor has established the availability of federal funds for expenditure in the fiscal year ending June 30, 2021 which are hereby appropriated by the terms of this supplementary appropriation bill; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending June 30, 2021, to fund 8802, fiscal year 2021, organization 0506, be supplemented and amended by increasing an existing item of appropriation as follows:

TITLE II – APPROPRIATIONS.

Sec. 6. Appropriations of federal funds.

DEPARTMENT OF HEALTH AND HUMAN RESOURCES

352 – Division of Health –

Central Office

(WV Code Chapter 16)

Fund 8802 FY 2021 Org 0506

		Appro-priation	Federal Funds
3	Current Expenses	13000	$ 90,000,000

CHAPTER 37

(Com. Sub. for H. B. 3295 - By Delegates Hanshaw (Mr. Speaker) and Skaff)

[By Request of the Executive]

[Passed April 8, 2021; in effect from passage.]
[Approved by the Governor on April 15, 2021.]

AN ACT supplementing and amending appropriations of public moneys out of the Treasury in the State Fund, General Revenue, by decreasing and increasing existing items of appropriation to the Department of Health and Human Resources, Division of Human Services, fund 0403, fiscal year 2021, organization 0511 and increasing existing items of appropriation to the Department of Health and Human Resources, Division of Health – Central Office, fund 0407, fiscal year 2021, organization 0506, by supplementing and amending appropriations for the fiscal year ending June 30, 2021.

WHEREAS, The Governor submitted to the Legislature the Executive Budget document, dated February 10, 2021, which included a Statement of the State Fund, General Revenue, setting forth therein the cash balance as of July 1, 2020, and further included the estimate of revenues for the fiscal year 2021, less net appropriation balances forwarded and regular appropriations for the fiscal year 2021; and

WHEREAS, It appears from the Executive Budget document, Statement of the State Fund, General Revenue, and this legislation, there remains an unappropriated balance in the State Treasury which is available for appropriation during the fiscal year ending June 30, 2021; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending June 30, 2021, to fund 0403, fiscal year 2021, organization 0511, be supplemented and amended by decreasing an existing item of appropriation as follows:

TITLE II – APPROPRIATIONS.

Section 1. Appropriations from general revenue.

DEPARTMENT OF HEALTH AND HUMAN RESOURCES

61 –Division of Human Services

(WV Code Chapters 9, 48, and 49)

Fund 0403 FY 2021 Org 0511

		Appro-priation	General Revenue Fund
5	Medical Services	18900	$ 1,829,846

And, That the total appropriation for the fiscal year ending June 30, 2021, to fund 0403, fiscal year 2021, organization 0511, be supplemented and amended by increasing existing items of appropriation as follows:

TITLE II – APPROPRIATIONS.

Section 1. Appropriations from general revenue.

DEPARTMENT OF HEALTH AND HUMAN RESOURCES

61 –Division of Human Services

(WV Code Chapters 9, 48, and 49)

Fund 0403 FY 2021 Org 0511

		Appro-priation	General Revenue Fund
1	Personal Services and Employee Benefits	00100	$ 51,639

3	Current Expenses	13000	67,568

And, That the total appropriation for the fiscal year ending June 30, 2021, to fund 0407, fiscal year 2021, organization 0506, be supplemented and amended by increasing an existing item of appropriation as follows:

TITLE II – APPROPRIATIONS.

Section 1. Appropriations from general revenue.

DEPARTMENT OF HEALTH AND HUMAN RESOURCES

57 – Division of Health –

Central Office

(WV Code Chapter 16)

Fund 0407 FY 2021 Org 0506

		Appro-priation		General Revenue Fund
2	Chief Medical Examiner	04500	$	1,710,639

CHAPTER 38

(Com. Sub. for H. B. 3297 - By Delegates Hanshaw (Mr. Speaker) and Skaff)

[By Request of the Executive]

[Passed April 8, 2021; in effect from passage.]
[Approved by the Governor on April 15, 2021.]

AN ACT expiring funds to the unappropriated surplus balance in the State Fund, General Revenue, for the fiscal year ending June 30, 2021 in the amount of $550,000 from the Department of Veterans' Assistance, Department of Veterans' Assistance, fund 0456, fiscal year 2012, organization 0613, appropriation 34400 and making a supplementary appropriation of public moneys out of the Treasury from the balance of moneys remaining as an unappropriated surplus balance in the State Fund, General Revenue, to the Department of Veterans' Assistance – Department of Veterans' Assistance - Veterans' Home, fund 0460, fiscal year 2021, organization 0618, by supplementing and amending the appropriations for the fiscal year ending June 30, 2021.

WHEREAS, The Governor submitted to the Legislature the Executive Budget document, dated February 10, 2021, which included a Statement of the State Fund, General Revenue, setting forth therein the cash balance as of July 1, 2020, and further included the estimate of revenues for the fiscal year 2021, less net appropriation balances forwarded and regular appropriations for the fiscal year 2021 and further included recommended expirations to the surplus balance of the State Fund, General Revenue; and

WHEREAS, It appears from the Executive Budget document, Statement of the State Fund, General Revenue, and this legislation, there now remains an unappropriated surplus balance in the State

Treasury which is available for appropriation during the fiscal year ending June 30, 2021; therefore

Be it enacted by the Legislature of West Virginia:

That the balance of the funds available for expenditure in the fiscal year ending June 30, 2021, to the Department of Veterans' Assistance, Department of Veterans' Assistance, fund 0456, fiscal year 2012, organization 0613, appropriation 34400, be decreased by expiring the amount of $550,000 to the unappropriated surplus balance of the State Fund, General Revenue to be available for appropriation during the fiscal year ending June 30, 2021.

And, That the total appropriation for the fiscal year ending June 30, 2021, to fund 0460, fiscal year 2021, organization 0618, be supplemented and amended by increasing an existing item of appropriation as follows:

TITLE II – APPROPRIATIONS.

Section 1. Appropriations from general revenue.

DEPARTMENT OF VETERANS' ASSISTANCE

82 – Department of Veterans' Assistance –

Veterans' Home

(WV Code Chapter 9A)

Fund 0460 FY 2021 Org 0618

		Appro-priation	General Revenue Fund
2	Current Expenses – Surplus.....	13099	$ 550,000

CHAPTER 39

(H. B. 3298 - By Delegates Hanshaw (Mr. Speaker) and Skaff)

[By Request of the Executive]

[Passed April 6, 2021; in effect from passage.]
[Approved by the Governor on April 15, 2021.]

AN ACT supplementing and amending Chapter eleven, Acts of the Legislature, Regular Session, 2020, known as the budget bill, in Title II from the appropriations of public moneys out of the Treasury in the State Fund, General Revenue, to the Department of Commerce, West Virginia Development Office, fund 0256, fiscal year 2021, organization 0307; the Department of Education, State Board of Education – State Department of Education, fund 0313, fiscal year 2021, organization 0402 and the Bureau of Senior Services, Bureau of Senior Services, fund 0420, fiscal year 2021, organization 0508; and to Executive, Governor's Office – Civil Contingent Fund, fund 0105, fiscal year 2021, organization 0100 by supplementing and amending the appropriations for the fiscal year ending June 30, 2021; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending June 30, 2021, to fund 0256, fiscal year 2021, organization 0307, be supplemented and amended by reducing an existing item of appropriation as follows:

TITLE II – APPROPRIATIONS.

Section 1. Appropriations from general revenue.

DEPARTMENT OF COMMERCE

35 – West Virginia Development Office

(WV Code Chapter 5B)

Fund 0256 FY 2021 Org 0307

9	Local Economic Development Assistance (R)	81900	$ 1,750,000

And, That Chapter 11, Acts of the Legislature, Regular Session, 2020, known as the budget bill to fund 0313, fiscal year 2021, organization 0402 be supplemented and amended to read as follows:

TITLE II – APPROPRIATIONS.

Section 1. Appropriations from general revenue.

DEPARTMENT OF EDUCATION

45 - State Board of Education –

State Department of Education

(WV Code Chapters 18, and 18A)

Fund 0313 FY 2021 Org 0402

1	Personal Services and Employee Benefits	00100	$ 4,598,523
2	Teachers' Retirement Savings Realized	09500	33,028,000
3	Unclassified (R)	09900	500,000
4	Current Expenses (R)	13000	4,580,000
5	Center for Professional Development (R)	11500	150,000
6	Increased Enrollment	14000	1,440,241

7	Safe Schools	14300	5,104,544
8	Attendance Incentive Bonus	15001	5,706,476
9	National Teacher Certification (R)	16100	300,000
10	Jobs & Hope – Childhood Drug Prevention Education	21901	5,000,000
11	Allowance for County Transfer	26400	238,174
12	Technology Repair and Modernization	29800	951,003
13	HVAC Technicians	35500	516,791
14	Early Retirement Notification Incentive	36600	300,000
15	MATH Program	36800	336,532
16	Assessment Programs	39600	1,339,588
17	Benedum Professional Development Collaborative (R)	42700	429,775
18	Governor's Honors Academy (R)	47800	1,059,270
19	21st Century Fellows	50700	274,899
20	English as a Second Language	52800	96,000
21	Teacher Reimbursement	57300	297,188
22	Hospitality Training	60000	272,775
23	Youth in Government	61600	100,000
24	High Acuity Special Needs (R)	63400	1,500,000
25	Foreign Student Education	63600	100,294
26	State Board of Education Administrative Costs	68400	277,403
27	IT Academy (R)	72100	500,000

28	Early Literacy Program	75600	5,705,624
29	School Based Truancy Prevention (R)	78101	2,032,238
30	Communities in Schools (R)	78103	4,900,000
31	Mastery Based Education	78104	125,000
32	Mountain State Digital Literacy Program	86401	415,500
33	21st Century Learners (R)	88600	1,756,470
34	BRIM Premium	91300	342,859
35	21st Century Assessment and Professional Development	93100	2,006,978
36	21st Century Technology Infrastructure Network		
37	Tools and Support	93300	7,636,586
38	Special Olympic Games	96600	25,000
39	Educational Program Allowance	99600	516,250
	Total		$ 90,629,981

The above appropriations include funding for the state board of education and their executive office.

From the above appropriation for Unclassified (fund 0313, appropriation 09900) $80,000 shall be used for creating a career exploration tool for students.

From the above appropriation for Current Expenses (fund 0313, appropriation 13000), $2,000,000 shall be used for the Department of Education Child Nutrition Program – Non-traditional Child Hunger Solutions.

Any unexpended balances remaining in the appropriations for Unclassified (fund 0313, appropriation 09900), Current Expenses (fund 0313, appropriation 13000), Center for Professional

Development (fund 0313, appropriation 11500), National Teacher Certification (fund 0313, appropriation 16100), Benedum Professional Development Collaborative (fund 0313, appropriation 42700), Governor's Honors Academy (fund 0313, appropriation 47800), High Acuity Special Needs (fund 0313, appropriation 63400), IT Academy (fund 0313, appropriation 72100), School Based Truancy Prevention (fund 0313, appropriation 78101), Communities in Schools (fund 0313, appropriation 78103), and 21st Century Learners (fund 0313, appropriation 88600) at the close of the fiscal year 2020 are hereby reappropriated for expenditure during the fiscal year 2021.

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).

From the above appropriation for Unclassified (fund 0313, appropriation 09900), $120,000 shall be for assisting low income students with AP exam fees.

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

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

And, That Chapter eleven, Acts of the Legislature, Regular Session, 2020, known as the budget bill to fund 0420, fiscal year 2021, organization 0508 be supplemented and amended to read as follows:

TITLE II – APPROPRIATIONS.

Section 1. Appropriations from general revenue.

BUREAU OF SENIOR SERVICES

83 - Bureau of Senior Services

(WV Code Chapter 29)

Fund 0420 FY 2021 Org 0508

1 Transfer to Division of Human Services
for Health Care and Title XIX Waiver
for Senior Citizens .....53900 $ 29,950,955

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

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

And, That the total appropriation for the fiscal year ending June 30, 2021, to fund 0105, fiscal year 2021, organization 0100 be supplemented and amended by adding a new item of appropriation as follows:

TITLE II – APPROPRIATIONS.

Section 1. Appropriations from general revenue.

EXECUTIVE

7- Governor's Office –

Civil Contingent Fund

(WV Code Chapter 5)

Fund 0105 FY 2021 Org 0100

2a Local Economic
Development Assistance (R) ..... 81900 $ 3,000,000

Any unexpended balance remaining in the appropriation for Local Economic Development Assistance (fund 0105, appropriation 81900) at the close of the fiscal year 2021 is hereby reappropriated for expenditure during the fiscal year 2022.

CHAPTER 40

(H. B. 3313 - By Delegates Hanshaw (Mr. Speaker) and Skaff)

[By Request of the Executive]

[Passed April 10, 2021; in effect from passage.]
[Approved by the Governor on April 15, 2021.]

AN ACT supplementing, amending and increasing items of existing appropriation from the State Road Fund to the Department of Transportation, Division of Motor Vehicles, fund 9007, fiscal year 2021, organization 0802, for the fiscal year ending June 30, 2021.

WHEREAS, The Governor submitted to the Legislature the Executive Budget Document, dated February 10, 2021, which included a statement of the State Road Fund setting forth therein the cash balances and investments as of July 1, 2020, and further included the estimate of revenues for the fiscal year 2021, less regular appropriations for the fiscal year 2021; and

WHEREAS, It appears from the Statement of the State Road Fund there now remains an unappropriated balance in the State Treasury which is available for appropriation during the fiscal year ending June 30, 2021; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending June 30, 2021, to fund 9007, fiscal year 2021, organization 0802, be supplemented and amended by increasing existing items of appropriation as follows:

TITLE II – APPROPRIATIONS.

Sec. 2. Appropriations from state road fund.

DEPARTMENT OF TRANSPORTATION

110 – Division of Motor Vehicles –

(WV Code Chapters 17, 17A, 17B, 17C, 17D, 20, and 24A)

Fund 9007 FY 2021 Org 0802

		Appro-priation	State Road Fund
1	Personal Services and Employee Benefits	00100	$ 1,000,000
3	Current Expenses	13000	400,000

CHAPTER 41

(H. B. 3314 - By Delegates Hanshaw (Mr. Speaker) and Skaff)

[By Request of the Executive]

[Passed April 10, 2021; in effect from passage.]
[Approved by the Governor on April 15, 2021.]

AN ACT supplementing and amending Chapter eleven, Acts of the Legislature, Regular Session, 2020, known as the budget bill, in Title II from the appropriations of public moneys out of the Treasury in the State Fund, General Revenue, to the Department of Homeland Security, West Virginia State Police, fund 0453, fiscal year 2021, organization 0612, by supplementing and amending the appropriations for the fiscal year ending June 30, 2021 by adding new language; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending June 30, 2021, to fund 0453, fiscal year 2021, organization 0612, be supplemented and amended to read as follows:

TITLE II – APPROPRIATIONS.

Section 1. Appropriations from general revenue.

DEPARTMENT OF HOMELAND SECURITY

68 – West Virginia State Police

(WV Code Chapter 15)

Fund 0453 FY 2021 Org 0612

1 Personal Services
and Employee Benefits.....00100 $ 62,255,235

2	Children's Protection Act	09000	1,009,529
3	Current Expenses	13000	10,384,394
4	Repairs and Alterations	06400	450,523
5	Trooper Class	52100	3,207,832
6	Barracks Lease Payments	55600	237,898
7	Communications and Other Equipment (R)	55800	1,070,968
8	Trooper Retirement Fund	60500	11,487,590
9	Handgun Administration Expense	74700	77,892
10	Capital Outlay and Maintenance (R)	75500	250,000
11	Retirement Systems – Unfunded Liability	77500	16,648,000
12	Automated Fingerprint Identification System	89800	2,211,693
13	BRIM Premium	91300	5,743,921
14	Total		$115,035,475

Any unexpended balances remaining in the appropriations for Communications and Other Equipment (fund 0453, appropriation 55800), and Capital Outlay and Maintenance (fund 0453, appropriation 75500) at the close of the fiscal year 2020 are hereby reappropriated for expenditure during the fiscal year 2021.

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.

The West Virginia State Police shall have the authority to transfer funds from any of the above appropriations, with the

exception of Trooper Retirement Fund (fund 0453, appropriation 60500) or Retirement Systems – Unfunded Liability (fund 0453, appropriation 77500), for the fiscal year ending June 30, 2021 to the appropriation for Capital Outlay and Maintenance (fund 0453, appropriation 75500) in an amount not to exceed $3,700,000.

CHAPTER 42

(H. B. 3315 - By Delegates Hanshaw (Mr. Speaker) and Skaff)

[By Request of the Executive]

[Passed April 10, 2021; in effect from passage.]
[Approved by the Governor on April 15, 2021.]

AN ACT making a supplementary appropriation of public monies out of the Treasury from the balance of monies remaining unappropriated for the fiscal year ending June 30, 2021, to the Department of Environmental Protection, Division of Environmental Protection - Oil and Gas Reclamation Fund, fund 3322, fiscal year 2021, organization 0313, by supplementing and amending the appropriations for the fiscal year ending June 30, 2021.

WHEREAS, The Governor has established that there now remains an unappropriated balance in the Department of Environmental Protection, Division of Environmental Protection - Oil and Gas Reclamation Fund, fund 3322, fiscal year 2021, organization 0313, that is available for expenditure during the fiscal year ending June 30, 2021 which is hereby appropriated by the terms of this supplementary appropriation bill; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending June 30, 2021, to fund 3322, fiscal year 2021, organization 0313, be supplemented and amended by increasing existing items of appropriation as follows:

TITLE II – APPROPRIATIONS.

Sec. 3. Appropriations from other funds.

DEPARTMENT OF ENVIRONMENTAL PROTECTION

188 – Division of Environmental Protection –

Oil and Gas Reclamation Fund

(WV Code Chapter 22)

Fund 3322 FY 2021 Org 0313

		Appro-priation		Other Funds
1	Personal Services and Employee Benefits	00100	$	90,000
2	Current Expenses	13000	$	500,000

CHAPTER 43

(H. B. 3316 - By Delegates Espinosa, Hornbuckle, Rowan, Maynard, Boggs, Toney, Statler, Ellington, Rohrbach, J. Pack and Hardy)

[Passed April 10, 2021; in effect from passage.]
[Approved by the Governor on April 15, 2021.]

AN ACT making a supplementary appropriation of federal funds out of the Treasury from the balance of federal moneys remaining unappropriated for the fiscal year ending June 30, 2021, to the Department of Education, State Board of Education – State Department of Education, Fund 8712, fiscal year 2021, organization 0402, by supplementing and amending the appropriations for the fiscal year ending June 30, 2021.

WHEREAS, The Governor has established the availability of federal funds for expenditure in the fiscal year ending June 30, 2021 which are hereby appropriated by the terms of this supplementary appropriation bill; therefore,

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending June 30, 2021, to fund 8712, fiscal year 2021, organization 0402, be supplemented and amended by increasing an existing item of appropriation as follows:

TITLE II – APPROPRIATIONS.

Sec. 6. Appropriations of federal funds.

DEPARTMENT OF EDUCATION

342 – State Board of Education –

State Department of Education

(WV Code Chapters 18 and 18A)

Fund 8712 FY 2021 Org 0402

		Appro-priation	State Road Fund
3	Current Expenses	13000	$781,778,188

CHAPTER 44

(H. B. 2709 - By Delegates Capito, Keaton and L. Pack)

[Passed March 19, 2021; in effect ninety days from passage.]
[Approved by the Governor on March 30, 2021.]

AN ACT to amend and reenact §31A-8G-4 of the Code of West Virginia, 1931, as amended, relating to the aggregate liability of a surety on a consumer protection bond under the West Virginia Fintech Regulatory Sandbox Program.

Be it enacted by the Legislature of West Virginia:

ARTICLE 8G. THE WEST VIRGINIA REGULATORY SANDBOX PROGRAM.

§31A-8G-4. Scope; testing period; licenses; consumer protections.

(a) If the Division of Financial Institutions approves an application under §31A-8G-3 of this code, the regulatory sandbox participant has 24 months after the day on which the application was approved to test the innovative product or service described in the regulatory sandbox participant's application.

(b) An innovative product or service that is tested within the regulatory sandbox program is subject to the following:

(1) All consumers participating in the innovative product or service being tested shall be residents of the state;

(2) The Division of Financial Institutions may, on a case-by-case basis, specify the maximum number of consumers that may transact through or enter into an agreement to use the innovative product or service:

(A) For a regulatory sandbox participant testing a consumer loan, the Division of Financial Institutions may, on a case-by-case basis, specify the maximum amount of an individual loan that may be issued to an individual consumer and the maximum amount of aggregate loans that may be issued to an individual consumer; and

(B) For a regulatory sandbox participant testing an innovative product or service that would normally require a money transmission license pursuant to this code, the Division of Financial Institutions may, on a case-by-case basis, specify the maximum amount of a single transaction for an individual consumer and the maximum aggregate amount of transactions for an individual consumer.

(c) This section does not restrict a regulatory sandbox participant who holds a license or other authorization in another jurisdiction from acting in accordance with that license or other authorization.

(d) A regulatory sandbox participant is deemed to possess an appropriate license under the laws of this state for the purposes of any provision of federal law requiring state licensure or authorization.

(e) Except as otherwise provided in this chapter, including subsections (f), (g), and (h), a regulatory sandbox participant that is testing an innovative product or service is not subject to state laws that regulate financial products or services.

(f) Regulatory sandbox participants and the innovative products and services that they are testing in the regulatory sandbox program are subject to all applicable consumer protection laws, including, but not limited to those contained in chapter 46A of this code, the Collection Agency Act contained in chapter 47A of this code, and any limitations on interest rates, whether or not those interest rates would otherwise require licensure.

(g)(1) The Division of Financial Institutions may determine that additional state laws that regulate a financial product or service apply to a regulatory sandbox participant if the Division of

Financial Institutions, at its sole discretion, determines that an applicant's proposed testing plan or the innovative product or service to be tested poses significant risk to consumers or to the safety and soundness of other institutions within the financial services marketplace as to warrant the imposition of other applicable state laws.

(2) The Division of Financial Institutions shall determine the applicability of certain state laws to each innovative product or service prior to approval of any application to participate in the regulatory sandbox program and shall notify the regulatory sandbox participant of the specific regulatory provisions that shall apply to the innovative product or service throughout the duration of the regulatory sandbox testing period.

(3) If at any time during the regulatory sandbox testing period, the Division of Financial Institutions determines that the imposition of certain state laws is necessary to eliminate the risk of harm to consumers or the safety and soundness of other institutions operating within the financial services marketplace, the division may require that the regulatory sandbox participant come into compliance with such state laws within a reasonable time.

(h) Notwithstanding any other provision of this chapter, a regulatory sandbox participant does not have immunity related to any criminal offense committed during the regulatory sandbox participant's participation in the regulatory sandbox program.

(i) By written notice, the Division of Financial Institutions may end a regulatory sandbox participant's participation in the regulatory sandbox program at any time and for any reason, including if the Division of Financial Institutions determines a regulatory sandbox participant is not operating in good faith to bring an innovative product or service to market.

(j) The Division of Financial Institutions shall require a regulatory sandbox participant to post a consumer protection bond as security for potential losses suffered by consumers. The bond amount shall be determined by the commissioner in an amount not less than $5,000 and shall be commensurate with the risk profile of

the innovative product or service. The commissioner may require that a bond be increased or decreased at any time based on risk profile and shall provide the regulatory sandbox participant with 30 days prior written notice of such increase or decrease. The aggregate liability of the surety in no event shall exceed the principal sum of the bond. The commissioner may use bond proceeds to offset losses suffered by consumers as a result of an innovative product or service. The bond shall expire two years after the date of the conclusion of the regulatory sandbox testing period. The commissioner may accept electronic bonds from any regulatory sandbox participant.

CHAPTER 45

(H. B. 2764 - By Delegates Capito, Keaton and L. Pack)

[Passed March 19, 2021; in effect ninety days from passage.]
[Approved by the Governor on March 30, 2021.]

AN ACT to amend and reenact §31A-8G-3 of the Code of West Virginia, 1931, as amended, relating to allowing the Division of Financial Institutions enter into agreements with state, federal or foreign regulatory agencies to allow persons who make an innovative financial product or service available in West Virginia, under the program available under the West Virginia FinTech Regulatory Sandbox Act, to make their products or services available in other jurisdictions and to allow persons operating in similar regulatory sandboxes in other jurisdictions to make innovative financial products and services available in West Virginia under the standards provided in the West Virginia FinTech Regulatory Sandbox Act.

Be it enacted by the Legislature of West Virginia:

ARTICLE 8G. THE WEST VIRGINIA FINTECH REGULATORY SANDBOX PROGRAM.

§31A-8G-3. Regulatory Sandbox Program; administration; application requirements; fee; rulemaking.

(a) There is created in the Division of Financial Institutions the Regulatory Sandbox Program.

(b) In administering the regulatory sandbox program, the Division of Financial Institutions:

(1) Shall consult with the West Virginia Development Office relating to the economic development opportunities relating to the

potential regulatory sandbox participant and may consult with any applicable agency which otherwise may have jurisdiction or authority relating to any activity proposed for the regulatory sandbox program for which the applicant is seeking to proceed without authorization or license;

(2) Shall have the authority to promulgate rules in accordance with §31A-2-4 and §29A-3-1 *et seq.* of this code for the purposes of administering the regulatory sandbox program;

(3) Shall establish a program permitting an individual or an entity to obtain limited access to the market in the state to test an innovative product or service without obtaining a license or other authorization that might otherwise be required;

(4) May enter into cooperative, coordinating, or information-sharing agreements with or follow the best practices of the federal Consumer Financial Protection Bureau or other states that are administering similar programs as well as other state and federal agencies to carry out the mandates of this article; and

(5) May enter into agreements with state, federal or foreign regulatory agencies to allow persons who make an innovative financial product or service available in West Virginia through the regulatory sandbox program to make their products or services available in other jurisdictions and to allow persons operating in similar regulatory sandboxes in other jurisdictions to make innovative financial products and services available in West Virginia under the standards of this article.

(c) An applicant for the regulatory sandbox program shall provide to the Division of Financial Institutions an application in a form prescribed by the Division of Financial Institutions that:

(1) Demonstrates that the applicant is subject to the jurisdiction of the state;

(2) Demonstrates that the applicant has established a physical location in the state; where all required records, documents, and data relating to any approved testing can be made available for

examination and review by the Division of Financial Institutions and any other applicable agency with jurisdiction;

(3) Demonstrates that the applicant has attempted in good faith to establish a partnership with a bank operating within the State of West Virginia or another financial institution licensed by the State of West Virginia to implement the applicant's proposed test of an innovative product or service within the regulatory sandbox program: *Provided,* That the applicant may not be excluded from participation in the regulatory sandbox program solely based on the applicant's ability to establish a partnership with a bank operating within the State of West Virginia or another financial institution licensed by the State of West Virginia;

(4) Contains relevant personal and contact information for the applicant, including legal names, addresses, telephone numbers, email addresses, website addresses, and other information required by the Division of Financial Institutions;

(5) Discloses any and all criminal convictions of the applicant or other participating personnel, if any, and submits to a criminal background investigation, including requiring fingerprints for submission to the Federal Bureau of Investigation or any governmental agency or entity authorized to receive such information for a state, national or international criminal history check;

(6) Demonstrates that the applicant has the necessary personnel, financial and technical expertise, access to capital, and a developed plan to test, monitor, and assess the innovative product or service;

(7) Contains a description of the innovative product or service to be tested, including statements regarding all of the following:

(A) How the innovative product or service is subject to licensing or other authorization requirements outside of the regulatory sandbox program;

(B) How the innovative product or service would benefit consumers;

(C) How the innovative product or service is different from other products or services available in the state;

(D) What risks may confront consumers that use or purchase the innovative product or service;

(E) What measures will be put into place to limit potential risks and harm to consumers and to resolve complaints during the regulatory sandbox testing period;

(F) How participating in the regulatory sandbox program would enable a successful test of the innovative product or service;

(G) A description of the proposed testing plan, including estimated time periods for beginning the test, ending the test, and obtaining necessary licensure or authorizations after the testing is complete;

(H) A description of how the applicant will perform ongoing duties after the test; and

(I) How the applicant will end the test and protect consumers if the test fails;

(8) Sets forth whether the applicant has been provided any license or authorization by any state or federal agency; whether any state or federal agency has previously investigated, sanctioned, or pursued legal action against the applicant; and whether the applicant has had licensure or authorization denied or withdrawn by any state or federal agency;

(9) Demonstrates registration with the West Virginia Secretary of State;

(10) Demonstrates that the applicant has an exit plan to limit consumer harm at the conclusion of the regulatory sandbox testing period, including a plan to notify consumers and advise them of next steps; and

(11) Provides any other information as required by the Division of Financial Institutions.

(d) The Division of Financial Institutions may collect an application fee of not more than $1,500 from an applicant.

(e) An applicant shall file a separate application for each innovative product or service that the applicant wants to test.

(f) After an application is filed, the Division of Financial Institutions may seek additional information from the applicant as it deems necessary.

(g) Subject to subsection (h) of this section, not later than 90 days after the day on which a complete application is received by the Division of Financial Institutions, the division shall inform the applicant as to whether the application is approved for entry into the regulatory sandbox program.

(h) The Division of Financial Institutions and an applicant may mutually agree to extend the 90-day time period described in subsection (g) of this section in order for the Division to determine whether an application is approved for entry into the regulatory sandbox program.

(i)(1) In reviewing an application under this section, the Division of Financial Institutions may consult with, and seek the approval of, any applicable agency before admitting an applicant into the regulatory sandbox program.

(2) The consultation with an applicable agency may include but is not limited to seeking information about whether:

(A) The applicant could obtain a license or other authorization from the applicable agency after exiting the regulatory sandbox program; and

(B) Certain licensure or other regulations should not be waived even if the applicant is accepted into the regulatory sandbox program.

(j) In reviewing an application under this section, the Division of Financial Institutions shall consider whether a competitor to the applicant is or has been a regulatory sandbox participant and, if so,

weigh that as a factor in favor of allowing the applicant to also become a regulatory sandbox participant.

(k) If the Division of Financial Institutions approves admitting an applicant into the regulatory sandbox program, an applicant may become a regulatory sandbox participant.

(I)(1) The Division of Financial Institutions may deny any application submitted under this section, for any reason, at the division's discretion.

(2) If the Division of Financial Institutions denies an application submitted under this section, the division shall provide to the applicant a written description of the reasons for the denial as a regulatory sandbox participant.

CHAPTER 46

(H. B. 2730 - By Delegates Brown, Lovejoy, Garcia and Zukoff)

[Passed April 8, 2021; in effect ninety days from passage.]
[Approved by the Governor on April 26, 2021.]

AN ACT to amend and reenact §38-10-4 of the Code of West Virginia, 1931, as amended, relating generally to exemptions of property in bankruptcy; allowing a debtor in bankruptcy to use the federal law exemptions under 11 U.S.C. §522(d); increasing the value of a debtor's interest in property the debtor or a dependent of the debtor uses as a residence, in a cooperative that owns property that the debtor or a dependent of the debtor uses as a residence or in a burial plot for the debtor or a dependent of the debtor to $35,000; increasing the value of a debtor physician's interest that is exempt to $35,000; increasing the value of a debtor's interest in one motor vehicle to $7,500; and providing for an effective date.

Be it enacted by the Legislature of West Virginia:

ARTICLE 10. TAX LIENS; ORDERS AND DECREES IN BANKRUPTCY.

§38-10-4. Exemptions of property in bankruptcy proceedings.

Any person who files a petition under the federal bankruptcy law may exempt from property of the estate in a bankruptcy proceeding the following property:

(a) The debtor's interest, not to exceed $35,000 in value, in real property or personal property that the debtor or a dependent of the debtor uses as a residence, in a cooperative that owns property that the debtor or a dependent of the debtor uses as a residence or in a burial plot for the debtor or a dependent of the debtor: *Provided,*

That when the debtor is a physician licensed to practice medicine in this state under §30-3-1 *et seq.* or §30-14-1, *et seq.* of this code, and has commenced a bankruptcy proceeding in part due to a verdict or judgment entered in a medical professional liability action, if the physician has current medical malpractice insurance in the amount of at least $1 million for each occurrence, the debtor physician's interest that is exempt under this subsection may exceed $35,000 in value but may not exceed $250,000 per household.

(b) The debtor's interest, not to exceed $7,500 in value, in one motor vehicle.

(c) The debtor's interest, not to exceed $400 in value in any particular item, in household furnishings, household goods, wearing apparel, appliances, books, animals, crops or musical instruments that are held primarily for the personal, family or household use of the debtor or a dependent of the debtor: *Provided,* That the total amount of personal property exempted under this subsection may not exceed $8,000.

(d) The debtor's interest, not to exceed $1,000 in value, in jewelry held primarily for the personal, family or household use of the debtor or a dependent of the debtor.

(e) The debtor's interest, not to exceed in value $800 plus any unused amount of the exemption provided under subsection (a) of this section in any property.

(f) The debtor's interest, not to exceed $1,500 in value, in any implements, professional books or tools of the trade of the debtor or the trade of a dependent of the debtor.

(g) Any unmeasured life insurance contract owned by the debtor, other than a credit life insurance contract.

(h) The debtor's interest, not to exceed in value $8,000 less any amount of property of the estate transferred in the manner specified in 11 U.S.C. §542(d), in any accrued dividend or interest under, or loan value of, any unmeasured life insurance contract owned by the

debtor under which the insured is the debtor or an individual of whom the debtor is a dependent.

(i) Professionally prescribed health aids for the debtor or a dependent of the debtor.

(j) The debtor's right to receive:

(1) A social security benefit, unemployment compensation or a local public assistance benefit;

(2) A veterans' benefit;

(3) A disability, illness or unemployment benefit;

(4) Alimony, support or separate maintenance, to the extent reasonably necessary for the support of the debtor and any dependent of the debtor;

(5) A payment under a stock bonus, pension, profit sharing, annuity or similar plan or contract on account of illness, disability, death, age or length of service, to the extent reasonably necessary for the support of the debtor and any dependent of the debtor, and funds on deposit in an individual retirement account (IRA), including a simplified employee pension (SEP) regardless of the amount of funds, unless:

(A) The plan or contract was established by or under the auspices of an insider that employed the debtor at the time the debtor's rights under the plan or contract arose;

(B) The payment is on account of age or length of service;

(C) The plan or contract does not qualify under Section 401(a), 403(a), 403(b), 408 or 409 of the Internal Revenue Code of 1986; and

(D) With respect to an individual retirement account, including a simplified employee pension, the amount is subject to the excise tax on excess contributions under Section 4973 and/or Section 4979 of the Internal Revenue Code of 1986, or any successor provisions, regardless of whether the tax is paid.

(k) The debtor's right to receive or property that is traceable to:

(1) An award under a crime victim's reparation law;

(2) A payment on account of the wrongful death of an individual of whom the debtor was a dependent, to the extent reasonably necessary for the support of the debtor and any dependent of the debtor;

(3) A payment under a life insurance contract that insured the life of an individual of whom the debtor was a dependent on the date of the individual's death, to the extent reasonably necessary for the support of the debtor and any dependent of the debtor;

(4) A payment, not to exceed $15,000 on account of personal bodily injury, not including pain and suffering or compensation for actual pecuniary loss, of the debtor or an individual of whom the debtor is a dependent;

(5) A payment in compensation of loss of future earnings of the debtor or an individual of whom the debtor is or was a dependent, to the extent reasonably necessary for the support of the debtor and any dependent of the debtor;

(6) Payments made to the prepaid tuition trust fund or to the savings plan trust fund, including earnings, in accordance with article thirty, chapter eighteen of this code on behalf of any beneficiary.

(l) Solely for the purpose of applying the provisions of 11 U.S.C. § 552(b)(2) in a federal bankruptcy proceeding and only to the extent otherwise allowed by applicable federal law, an individual debtor domiciled in this state may exempt from property the debtor's bankruptcy estate the property specified under 11 U.S.C. § 552(d).

(m) The amendments made to this section during the 2021 session of the Legislature shall apply to bankruptcies filed on or after the effective date of those amendments.

CHAPTER 47

(Com. Sub. for S. B. 295 - By Senators Blair (Mr. President) and Baldwin)

[By Request of the Executive]

[Passed March 15, 2021; in effect from passage]
[Approved by the Governor on March 27, 2021.]

AN ACT to amend and reenact §12-6C-11 of the Code of West Virginia, 1931, as amended; to amend said code by adding thereto a new section, designated §12-6C-11a; to amend and reenact §31-15-8 of said code; and to amend said code by adding thereto a new section, designated §31-15-8a, all relating generally to economic development loans and loan insurance issued by the state; clarifying provision stating that the Board of Treasury Investments has no fiduciary duty with regard to economic development loans administered by the Economic Development Authority; providing that the Board of Treasury Investments may inspect and copy, upon written notice, all records related to loans made available by the board to the Economic Development Authority and providing that certain records so copied and inspected shall be exempt from disclosure pursuant to the provisions of chapter 29B of the code and other law; defining terms; limiting the total amount of loan moneys that the board shall make available to the authority for the Broadband Loan Insurance Program to $80 million; establishing requirements that must be met before broadband loan insurance moneys will be made available to the authority; limiting the amount of loan insurance that the authority may award in a single year to a single broadband provider to $20 million; providing that the authority shall maintain broadband loan insurance loan moneys in a separate

and segregated account; providing that broadband loan insurance moneys may only be drawn upon in the event of a broadband provider default on an insured debt or security instrument; clarifying that the authority may not deduct administrative or operational costs from broadband loan insurance loan moneys; setting forth requirements that must be met before the authority may withdraw loan insurance moneys in the event of a broadband provider's default; providing that the authority may only use loan insurance moneys to satisfy certain obligations arising under a loan insurance agreement; requiring the authority to submit quarterly reports to the Joint Committee on Government and Finance and to the Governor containing certain information related to its loan insurance program; requiring the authority to make application forms for broadband loan insurance publicly available on its website; establishing the minimum information an applicant for broadband loan insurance shall be required to submit to the authority; establishing minimum criteria that the authority must consider in its broadband loan insurance application review process; establishing that the authority may provide loan insurance for eligible broadband providers pursuant to awards made by federally funded broadband expansion programs; providing that the authority may not issue loan insurance to a broadband provider that has previously defaulted on any debt or security instrument insured by the authority; requiring the authority to post certain information regarding loan insurance agreements on its website; requiring the authority to adhere to certain accounting and record-keeping practices; requiring the authority to submit quarterly reports to the Board of Treasury Investments, the Joint Committee on Government and Finance, and the Governor containing certain information on insured loans and broadband projects financed by insured loans; requiring a biennial legislative audit of the Broadband Loan Insurance Program; removing obsolete language; and making technical corrections.

Be it enacted by the Legislature of West Virginia:

CHAPTER 12. PUBLIC MONEYS AND SECURITIES.

ARTICLE 6C. WEST VIRGINIA BOARD OF TREASURY INVESTMENTS.

*§12-6C-11. Legislative findings; loans for industrial development; availability of funds and interest rates.

(a) The Legislature finds and declares that the citizens of the state benefit from the creation of jobs and businesses within the state; that business and industrial development loan programs provide for economic growth and stimulation within the state; that loans from pools established in the Consolidated Fund will assist in providing the needed capital to assist business and industrial development; and that time constraints relating to business and industrial development projects prohibit duplicative review by both the board and West Virginia Economic Development Authority Board.

(b) The West Virginia Board of Treasury Investments shall make available, subject to a liquidity determination, in the form of a revolving loan, up to $175 million from the Consolidated Fund to loan the West Virginia Economic Development Authority for business or industrial development projects authorized by §31-15-7 of this code and to consolidate existing loans authorized to be made to the West Virginia Economic Development Authority pursuant to this section and pursuant to §31-15-2 of this code which authorizes a $175 million revolving loan and §31-18B-1 *et seq.* of this code which authorizes a $50 million investment pool: *Provided,* That the West Virginia Economic Development Authority may not loan more than $15 million for any one business or industrial development project. The revolving loan authorized by this subsection shall be secured by one note at a variable interest rate equal to the 12-month average of the board's yield on its West Virginia Money Market pool. The rate shall be set on July 1 and adjusted annually on the same date. The maximum annual adjustment may not exceed one percent. Monthly payments made

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***NOTE:** This section was also amended by S. B. 534 (Chapter 94), which passed subsequent to this act.

by the West Virginia Economic Development Authority to the board shall be calculated on a 120-month amortization. The revolving loan is secured by a security interest that pledges and assigns the cash proceeds of collateral from all loans under this revolving loan pool. The West Virginia Economic Development Authority may also pledge as collateral certain revenue streams from other revolving loan pools which source of funds does not originate from federal sources or from the board.

(c) The outstanding principal balance of the revolving loan from the board to the West Virginia Economic Development Authority may at no time exceed 103 percent of the aggregate outstanding principal balance of the business and industrial loans from the West Virginia Economic Development Authority to economic development projects funded from this revolving loan pool. The independent audit of the West Virginia Economic Development Authority financial records shall annually certify that 103 percent requirement.

(d) The interest rates and maturity dates on the loans made by the West Virginia Economic Development Authority for business and industrial development projects authorized by §31-15-7 of this code shall be at competitive rates and maturities as determined by the West Virginia Economic Development Authority Board.

(e) Any and all outstanding loans made by the West Virginia Board of Treasury Investments, or any predecessor entity, to the West Virginia Economic Development Authority are refundable by proceeds of the revolving loan contained in this section and the board shall make no loans to the West Virginia Economic Development Authority pursuant to §31-15-20 of this code or §31-18B-1 *et seq.* of this code.

(f) The directors of the West Virginia Board of Treasury Investments shall bear no fiduciary responsibility with regard to any of the loans contemplated in this section.

(g) *Inspection of records*. — Within 30 days of receiving a written request from the board, the authority shall provide the board with the opportunity to inspect and copy any records in the

custody of the authority related to any loan issued by the board to the authority or any loan from the authority to a third party funded by a loan issued by the board. Records to be made available pursuant to this subsection include, but are not limited to, accounting records, loan applications, loan agreements, board minutes, audit reports, and transaction records. Records of the authority held from time to time by the board pursuant to this subsection that are exempt from disclosure pursuant to the provisions of §31-15-22 of this code or §29B-1-1 *et seq.* of this code shall remain so while held by the board.

§12-6C-11a. Broadband Loan Insurance Program; requirements.

(a) *Definitions.* — For the purposes of this section, the following terms have the following meanings:

(1) "Authority" refers to the West Virginia Economic Development Authority.

(2) "Board" refers to the West Virginia Board of Treasury Investments.

(3) "Broadband Loan Insurance Program" or the "program" refers to the program through which the authority issues loan insurance, as authorized by §31-15-8a of this code.

(4) "Debt instrument" means any note, loan agreement, or any other form of indebtedness whatsoever and shall expressly include a letter of credit or other agreement relating to a letter of credit.

(5) "Eligible broadband provider" has the same meaning provided in §31-15-8a of this code.

(6) "Financial institution" means the bank, insurance company, or other institution in the business of lending money, that conditions issuance of a debt or security instrument on loan insurance by the authority, as described in §31-15-8a(b)(2) of this code.

(b) *Loan for broadband deployment.* —

(1) The loan previously authorized by §12-6C-11(h) of this code is hereby continued, subject to the requirements of this section.

(2) Subject to a liquidity determination and cash availability, the board shall provide a nonrecourse revolving loan to the authority, from the Consolidated Fund, in an amount not to exceed $80 million, for the purpose of funding the Broadband Loan Insurance Program authorized by §31-15-8a of this code.

(3) The board shall make the loan moneys available to the authority upon receipt of the following:

(A) A written request by the authority that the board transfer a specific amount of loan moneys to the authority; and

(B) A written statement by the authority certifying that the authority is in full compliance with all applicable provisions of federal and state law, as well as any agreements entered into with the board.

(4) The authority may not award an amount of the loan moneys exceeding $20 million, in any single calendar year, to insure the debt or security instruments, or costs related thereto, of any one broadband provider.

(5) The authority shall maintain the loan moneys made available pursuant to this section in an account that is separate and segregated from its other assets and programs. The loan moneys may not be transferred to any other fund or account or used for any purpose other than to insure debt and security instruments, as expressly authorized in §31-15-8a of this code. The authority may withdraw the loan moneys from the account only as provided in subsection(d) of this section.

(6) The authority may not deduct or use any amount of loan moneys transferred pursuant to this subsection to pay for the authority's operating or administrative expenses.

(c) *Loan terms and requirements.* —

(1) The loan authorized by this section shall be classified by the board as a long-term fixed income investment and shall bear interest on the outstanding principal balance of the loan at a variable interest rate equal to the 12-month average of the board's yield on its West Virginia Money Market pool. The rate shall be the rate set on July 1, 2017, under prior enactment of §12-6C-11(h) of this code and adjusted quarterly during each year thereafter. The maximum annual adjustment may not exceed one percent.

(2) The loan authorized by this section is nonrecourse. Upon payment in full of any said insured debt instruments or release in full of any security instruments, the authority shall reduce the outstanding balance of the loan by a like amount. Additionally, quarterly, the authority shall determine the outstanding balance of all such insured debt and security instruments and shall accordingly adjust the outstanding balance of the loan to equal the outstanding obligations of the authority for all said insured debt and security instruments. The authority shall notify the board, in writing, of any such adjustment.

(3) The loan is secured by a security interest that pledges and assigns the cash proceeds of all collateral securing all insurance agreements entered into by the authority pursuant to §31-15-8a of this code. In the event moneys received by the authority respecting any individual insured debt or security instrument relating to providing broadband service under §31-15-8a of this code is insufficient to pay when due the principal or interest installments, or both, with respect to the loan authorized by this section by the board to the authority, the principal or interest, or both, as the case may be, due on the loan made to the authority pursuant to this section shall be deferred and any and all past-due principal and interest payments shall promptly be paid to the fullest extent possible upon receipt by the authority of all moneys respecting said debt instruments.

(d) *Withdraw of moneys in event of default.* – The authority may withdraw loan moneys from the separate and segregated account required by subdivision (5), subsection (b) of this section, only in the event that a broadband provider has defaulted on a debt instrument or security interest insured by the authority. The loan

monies may not be used for any purpose other than to pay amounts due to a financial institution resulting from the broadband provider's default, according to a loan insurance agreement entered into pursuant to §31-15-8a of this code. Prior to withdrawing any amount of loan monies from the separate and segregated account, the authority shall provide notice of the default to the board and certify to the board that:

(1) The broadband provider has defaulted on a debt instrument or security interest insured by the authority and the broadband provider does not have the option to enter into a forbearance agreement with the financial institution; and

(2) The authority has pursued or will pursue any reasonable remedies to recoup the costs to the state resulting from the default, including, but not limited to, instituting a legal action to seize the collateral described in subdivision (3), subsection (c) of this section.

(e) *Inspection of records.* – Within 30 days of receiving a written request from the board, the authority shall provide the board with the opportunity to inspect and copy any records in the custody of the authority related to the Broadband Loan Insurance Program. Records to be made available pursuant to this subsection include, but are not limited to, accounting records, loan insurance applications, loan insurance agreements, authority meeting minutes, audit reports, and transaction records. Records of the authority that may be held from time to time by the board pursuant to this subsection shall not be considered public records and shall be exempt from disclosure pursuant to the provisions of §29B-1-1 *et seq.* of this code.

CHAPTER 31. CORPORATIONS.

ARTICLE 15. WEST VIRGINIA ECONOMIC DEVELOPMENT AUTHORITY.

§31-15-8. Insurance fund.

(a) There is hereby created an insurance fund which shall be a continuing, nonlapsing, revolving fund that consists of:

(1) Moneys appropriated by the state to the insurance fund;

(2) Premiums, fees, and any other amounts received by the authority with respect to financial assistance provided by the authority from the insurance fund;

(3) Upon the satisfaction of any indebtedness or other obligation owed on any property held or acquired by the authority, such proceeds as designated by the authority from the sale, lease, or other disposition of such property;

(4) Income from investments made from moneys in the insurance fund; and

(5) Any other moneys transferred to the insurance fund or made available to it for the purposes described under this section, under this article, or pursuant to any other provisions of this code.

Subject to the provisions of any outstanding insurance agreements entered into by the authority under this section, the authority may enter into covenants or agreements with respect to the insurance fund, and establish accounts within the insurance fund which may be used to implement the purposes of this article. If the authority elects to establish separate accounts within the insurance fund, the authority may allocate its revenues and receipts among the respective accounts in any manner the authority considers appropriate.

If the authority at any time finds that more money is needed to keep the reserves of the insurance fund at an adequate level, the authority, with the consent of the chair, shall send a written request to the Legislature for additional funds.

(b) The insurance fund shall be used for the following purposes by the authority to financially assist projects so long as such financial assistance will, as determined by the authority, fulfill the public purposes of this article:

(1) To insure the payment or repayment of all or any part of the principal of, redemption or prepayment premiums or penalties on, and interest on bonds or notes whether issued under this article or

under the Industrial Development and Commercial Development Bond Act, the West Virginia Hospital Finance Authority Act or, with respect to health care facilities only, §8-33-1 *et seq.* of this code;

(2) To insure the payment or repayment of all or any part of the principal of, redemption or prepayment premiums or penalties on, and interest on any instrument executed, obtained, or delivered in connection with the issuance and sale of bonds or notes whether under this article or under the Industrial Development and Commercial Development Bond Act, the West Virginia Hospital Finance Authority Act or, with respect to health care facilities only, §8-33-1 *et seq.* of this code;

(3) To insure the payment or repayment of all or any part of the principal of, prepayment premiums or penalties on, and interest on any form of debt instrument entered into by an enterprise, public body or authority of the state with a financial institution, including, but not limited to, banks, insurance companies and other institutions in the business of lending money, which debt instruments shall include, but not be limited to, instruments relating to loans for working capital and to the refinancing of existing debt: *Provided,* That nothing contained in this subsection or any other provision of this article shall be construed as permitting the authority to insure the refinancing of existing debt except when such insurance will result in the expansion of the enterprise whose debt is to be refinanced or in the creation of new jobs;

(4) To pay or insure the payment of any fees or premiums necessary to obtain insurance, guarantees, letters of credit, or other credit support from any person or financial institution in connection with financial assistance provided by the authority under this section;

(5) To pay any and all expenses of the authority, including, but not limited to:

(A) Any and all expenses for administrative, legal, actuarial, and other services related to the operation of the insurance fund; and

(B) All costs, charges, fees, and expenses of the authority related to the authorizing, preparing, printing, selling, issuing, and insuring of bonds or notes (including, by way of example, bonds or notes, the proceeds of which are used to refund outstanding bonds or notes) and the funding of reserves; and

(6) To insure, for up to 20 years, the payment or repayment of all or any part of the principal of and interest on any form of debt instrument entered into by an eligible broadband provider with a financial institution, including, but not limited to, banks, insurance companies, and other institutions in the business of lending money, which debt instruments are to be solely for capital costs relating to the purposes authorized in §31-15-8a of this code: *Provided,* That beginning on the effective date of the amendments made to this section during the regular session of the Legislature, 2021, loan moneys shall not be transferred to the fund except as authorized by §12-6C-11a of this code.

(c) Except as relating to insured portions of debt instruments under subdivision (6), subsection (b) of this section, the total aggregate amount of insurance from the insurance fund with respect to the insured portions of principal of bonds or notes or other instruments may not exceed at any time an amount equal to five times the balance in the insurance fund.

(d) The authority may, in its sole and absolute discretion, set the premiums and fees to be paid to it for providing financial assistance under this section. The premiums and fees set by the authority shall be payable in the amounts, at the time, and in the manner that the authority, in its sole and absolute discretion, requires. The premiums and fees need not be uniform among transactions and may vary in amount: (1) Among transactions; and (2) at different stages during the terms of transactions.

(e) The authority may, in its sole and absolute discretion, require the security it believes sufficient in connection with its insuring of the payment or repayment of any bonds, notes, debt, or other instruments described in subdivisions (1) through (4), subsection (b) of this section.

(f) The authority may itself approve the form of any insurance agreement entered into under this section or may authorize the chair or his or her designee to approve the form of any such agreement. Any payment by the authority under an agreement entered into by the authority under this section shall be made at the time and in the manner that the authority, in its sole and absolute discretion, determines.

(g) The obligations of the authority under any insurance agreement entered into pursuant to this article shall not constitute a debt or a pledge of the faith and credit or taxing powers of this state or of any county, municipality, or any political subdivision of this state for the payment of any amount due thereunder or pursuant thereto, but the obligations evidenced by such insurance agreement shall be payable solely from the funds pledged for their payment.

(h) By October 30, 2021, and on or before the 30th day of January, April, July, and October of each year thereafter, the authority shall prepare and submit to the Joint Committee on Government and Finance and the Governor a quarterly report which shall include, at a minimum:

(A) The aggregate outstanding amount of insurance issued from the insurance fund; and

(B) For each agreement to insure a debt or security instrument, the name of the parties to the agreement; the lending financial institution to which any insured debt or security instrument is owed; the total value of any insured debt or security interest; the maturity date of the insured debt or security instrument; and the status of the insured debt or security instrument, including whether the party to the insurance agreement is delinquent or in default on any insured debt or security instrument.

§31-15-8a. Broadband Loan Insurance Program; requirements.

(a) *Definitions.* – For the purposes of this section:

(1) "Broadband Enhancement Council" or "council" refers to the governmental instrumentality established by §31G-1-3 of this code.

(2) "Broadband Loan Insurance Program" or the "program" refers to the program through which the authority issues loan insurance, as authorized by this section.

(3) "Broadband provider" or "provider" means a business or enterprise providing broadband service, as defined in §31G-1-2 of this code.

(4) "Debt instrument" means any note, loan agreement, or any other form of indebtedness whatsoever and shall expressly include a letter of credit or other agreement relating to a letter of credit.

(5) "Eligible broadband provider" means a business or enterprise certified, in writing, by the Broadband Enhancement Council to the authority to be a broadband provider, and that is not disqualified from participating in the Broadband Loan Insurance Program according to subdivision (4), subsection (c) of this section, as certified, in writing, by the authority.

(6) "Federally funded broadband expansion program" means the Rural Digital Opportunity Fund of the Federal Communications Commission, the Broadband ReConnect Program of the United States Department of Agriculture, or any other federally funded broadband expansion or enhancement program that Congress may from time to time establish.

(7) "Financial institution" means the bank, insurance company, or other institution in the business of lending money, that conditions issuance of a debt or security instrument on loan insurance by the authority, as provided in subdivision (2), subsection (b) of this section.

(8) "Loan insurance" refers to an agreement to insure the payment or repayment of all or any part of the principal of and interest on a debt or security instrument.

(b) *Insurance of certain debt or security instruments authorized.* –

(1) The authority is authorized to insure, for up to 20 years, the payment or repayment of all or any part of the principal of and interest on any form of debt or security instrument entered into by an eligible broadband provider with a financial institution, which debt or security instruments are to be solely for capital costs relating to:

(A) A project which has as its principal purpose providing broadband service, as defined in §31G-1-2 of this code, to a household or business located in an unserved area, as defined in §31G-1-2 of this code, or to an underserved area meeting the following criteria:

(i) Access to internet service is only available by wireline or fixed wireless technology; and

(ii) Access to internet service in which 15 percent or more of households and businesses cannot obtain internet service with an actual downstream or upstream data rate equivalent to or faster than the current definition of broadband service as defined by the Federal Communications Commission and further certified by the council; or

(B) A project which has as its principal purpose building a segment of a telecommunications network that links a network operator's core network to a local network plant that serves either an unserved area, as defined in §31G-1-2 of this code, or an area in which no more than two wireline providers are operating.

(2) The authority may not issue loan insurance to a provider, unless the participating financial institution provides written certification to the authority that, but for the authority's insuring the debt instrument, the financial institution would not otherwise make the loan based solely on the creditworthiness of the loan applicant: *Provided*, That nothing contained in this section or any other provision of this article may be construed as permitting the authority to insure the refinancing of existing debt.

(3) The authority may make the provision of loan insurance authorized by this section contingent upon the eligible broadband provider receiving an award under a federally funded broadband expansion program.

(4) To fund the loan insurance authorized by this section, the authority shall request a loan from the West Virginia Board of Treasury Investments, according to the requirements of §12-6C-11a of this code.

(c) *Insurance application requirements. –*

(1) An eligible provider may apply to the authority for loan insurance. The authority shall make the application form or forms available to the public on its website.

(2) The application for loan insurance shall, at a minimum, require the applicant to submit:

(A) Proof of business ownership and other business registration information;

(B) Detailed information regarding all current, previous, and pending business debt, including any past instances of loan delinquency or default or any breach of a borrower covenant;

(C) Detailed records of the provider's financial history, including, but not limited to, tax returns and financial statements detailing the provider's income, cash flow, and account balances for the past five years;

(D) The number of persons employed by the provider and the names and contact information for all managers of the project to be insured;

(E) Detailed information regarding assets being presented as collateral, including, but not limited to, serial or identification numbers for all large value machinery, equipment, furniture and fixtures, inventory records, and accounts receivable;

(F) Detailed business plans, financial plans, and financial projections related to the broadband deployment project for which the applicant is requesting loan insurance; and

(G) Any additional information that is relevant to the provider's eligibility to receive loan insurance and the provider's ability to deploy broadband in the state, including, but not limited to, any required authorizations or determinations by any applicable regulatory bodies.

(3) The authority shall ensure that applicants are eligible to receive loan insurance and shall select applicants who demonstrate a minimal risk of default on any debt or security instrument to be insured through the program. At a minimum, the authority shall consider the following criteria in determining whether to approve a loan insurance application:

(A) The financial ability of the applicant to complete the insured project and repay the loan;

(B) The credit history of the provider;

(C) The past earnings and projected cash flow of the provider;

(D) The provider's past performance as a participant in any previous economic development program of this state or of any other state;

(E) The provider's experience with broadband service deployment in the state or any other state; and

(F) The nature and value of the collateral being offered for the loan insurance.

(4) The authority may not issue loan insurance to a provider if the provider, or a parent company of the provider, has previously defaulted on a debt or security instrument insured by the authority.

(5) The requirements of this subsection do not apply to applications received by the authority for broadband loan insurance

or debt instrument insurance prior to the effective date of this section for such applications.

(d) *Public notice by applicant.* –

(1) Upon the filing of an application for loan insurance under this section, the broadband provider shall cause to be published as a Class II legal advertisement in compliance with §59-3-1 *et seq.* of this code notice of the filing of the application and that the authority may approve the same unless within 10 business days after completion of publication a written objection is received by the authority from a person or persons alleging that the proposed broadband project does not satisfy the provisions of this section.

(2) The publication area for such notice is to be the county or counties in which any portion of the proposed broadband project is to be constructed. The notice shall be in such form as the authority shall direct and shall include a map of the area or areas to be served by the proposed broadband project. The applicant shall also cause to be mailed by first class, on or before the first day of publication of the notice, a copy of the notice to all known current providers of broadband service within the area proposed to be served.

(3) If an objection under this subsection is timely received by the authority, the authority shall advise the council within five business days. The council shall set the matter for hearing within 30 days of receipt of notice from the authority. The council may establish procedural rules governing such hearings by legislative rule, or the council may follow the Rules of Practice and Procedure of the Public Service Commission. The council shall issue a decision on whether the proposed project satisfies the requirements of this section or not within 30 days of completion of the hearing. Any party participating in the hearing may appeal the council's decision within 30 days of the issuance of the council's decision to the Circuit Court of Kanawha County.

(4) This subsection shall apply to all applicants except to those broadband providers that plan on providing a downstream data rate of at least one gigabyte per second to the end user or applicants that

have been preliminarily determined to be eligible for a federally funded broadband expansion program.

(5) The requirements this subsection do not apply to applications received by the authority for broadband loan insurance or debt instrument insurance prior to the effective date of this section.

(e) *Information to be posted by the authority.* — The authority shall make the following information, pertaining to all loan insurance agreements, available on its website:

(1) The name of the insured provider;

(2) The location or locations of the project;

(3) The amount of the authority loan or financial assistance provided by the insurance fund;

(4) The purpose of the loan or financial assistance;

(5) The term, rate, and interest of the loan; and

(6) The fixed assets that serve as security for the loan or insurance provided.

(f) *Internal controls and accounting.* — The authority shall keep itemized records of all transactions and agreements entered into in furtherance of the program. In administering the program, the authority shall adopt appropriate accounting practices and develop internal controls, including, but not limited to, strict compliance with the requirements of §5A-8-9 of this code.

(g) *Quarterly reports and biennial legislative audits.* —

(1) By October 30, 2021, and on or before the 30th day of January, April, July, and October of each year thereafter, the authority shall prepare and submit to the Joint Committee on Government and Finance, the Governor, and the West Virginia Board of Treasury Investments a quarterly report which shall include, at a minimum:

(A) For each insured project, the provider name; the lending financial institution; the total value of the loan; the total amount of the loan that is insured pursuant to this section; the maturity date of the loan; the balance of loan moneys outstanding with the authority; and the status of the loan, including whether the loan is in delinquent or in default status.

(B) For loans not in good standing with the financial institution, the reason for the delinquent or default status of the loan; the provider's plans to address the delinquency or default; the availability of loan collateral that may be seized by the state; the expected outcome of the delinquency or default; and the estimated loss to any state funds that will result from the delinquency or default.

(2) Beginning in 2022, and during each year in which a loan insurance agreement entered into pursuant to this section remains in effect, the authority shall prepare and submit to the Joint Committee on Government and Finance, the Governor, and the board an annual report addressing the status of each project that is insured, pursuant to this section. The report shall, at a minimum, provide project-specific data addressing the broadband service levels being provided by the project, the geographic area to which different broadband service levels are being provided by the project, and the number of households actively receiving broadband service from the project.

(3) Beginning in 2022, and every other year thereafter so long as a loan insurance agreement entered into pursuant to this section remains in effect, the Legislative Auditor shall audit the procedures, accounting practices, and internal controls of the authority for compliance with this section and §12-6C-11a of this code and report the findings of the audit to the Joint Committee on Government and Finance.

CHAPTER 48

(Com. Sub. for H. B. 2002 - By Delegates Linville, Capito, Holstein, Ferrell, Miller, Riley, Barnhart, Sypolt, Statler, Rowan and Reed)

[Passed April 10, 2021; in effect May 27, 2021.]
[Approved by the Governor on April 28, 2021.]

AN ACT to repeal §17-2E-6 of the Code of West Virginia, 1931, as amended; to repeal §31G-1-6, §31G-1-9, and §31G-1-12 of said code; to amend and reenact §17-2E-3, §17-2E-5, §17-2E-7, §17-2E-8, and §17-2E-9 of said code; to amend and reenact §31G-1-4 of said code; to amend said code by adding thereto a new article, designated §31G-1A-1, §31G-1A-2, §31G-1A-3, §31G-1A-4, §31G-1A-5, and §31G-1A-6; to amend said code by adding thereto two new sections, designated §31G-3-3 and §31G-3-4; to amend and reenact §31G-4-1, §31G-4-2, and §31G-4-4 of said code; and to amend said code by adding thereto a new article, designated §31G-6-1 and §31G-6-2, all relating to broadband expansion policies; establishing requirements for agreements between the Division of Highways and an entity seeking to install telecommunications facilities; providing that if such installation can be accommodated as a utility pursuant to federal and state law, the division shall issue a permit for access to rights-of-way; providing for permit procedures and requirements; requiring notice to the Office of Broadband of a telecommunication entity's intent to seek construction in division rights-of-way; providing the Office of Broadband is responsible for ensuring compliance with certain terms of permit requirements; granting the division authority to determine whether its use of a telecommunication carrier's trench warrants apportionment of costs to it; modifying exceptions to dig once requirements; providing the division authority to allow carriers to use excess telecommunications facilities; allowing the division to transfer

or assign ownership of excess telecommunications facilities to another state agency upon approval by Governor; providing rulemaking authority to the division; modifying the powers and duties of Broadband Enhancement Council; establishing the Office of Broadband within the Department of Economic Development; creating the position of the Director of the Office of Broadband; requiring the Office of Broadband report annually to the Joint Committee on Government and Finance; establishing the powers and duties of the Office of Broadband; requiring the Office of Broadband to coordinate with the Consumer Protection Division of the Attorney General's Office on specified consumer protection claims; requiring the Office of Broadband to map broadband in the state and establish an interactive public map; defining "unserved area"; requiring certain executive agencies to cooperate and provide information to the Office of Broadband regarding AREA maps; allowing Office of Broadband to establish a voluntary data collection program; providing that information collected in program not subject to the Freedom of Information Act; providing procedures and requirements for a data collection program; protecting proprietary business information provided to the Office of Broadband and exempting such information from Freedom of Information Act requirements; providing rulemaking authority to the Office of Broadband; establishing requirements for counites, municipalities, and political subdivisions regarding installation of conduit; authorizing a broadband operator to construct or operate a system over public rights-of-way and through easements which are within the area to be served and which have been dedicated for compatible uses; establishing requirements for broadband operators related to installation and construction; requiring broadband operators to indemnify the state for any claims for injury and damage to persons or property; establishing requirements for broadband operator related to the use of public highways and other public places; providing installations in railroad rights of way and trackways do not have any greater or lesser requirement to comply with stated railroad safety requirements; establishing requirements for broadband operator related easements; defining terms; requiring that an ILEC who accepts payment

for make-ready work, and fails to perform that work within 45 days, to immediately return and refund the moneys paid for that work which was not completed, and providing remedies and exceptions in such instances; requiring the Public Service Commission to promulgate rules to address abandoned cable, conductor, and related facilities attached to utility poles and providing requirements for said rules; requiring the Public Service Commission to promulgate rules to govern the timely transfer of facilities from an old pole to a new pole and the removal of utility poles that have had electric facilities moved to new poles but continue to have other facilities attached in the telecommunications space on the old existing poles and providing requirements for said rules; providing for preemption of West Virginia Code, the Code of State Rules, and ordinances relating to installation of certain broadband equipment; providing private agreements, promulgated or effective after the effective date of this legislation, may not regulate or prevent the exterior installation of antennas and equipment necessary to or typically utilized for broadband deployment; providing for scheme of construction of such language in favor of encouraging and assisting broadband installation and deployment; providing for preemption of West Virginia Code, the Code of State Rules, and ordinances relating to pole attachment of certain broadband equipment; and providing for scheme of construction of language of private agreements relating to pole attachment.

Be it enacted by the Legislature of West Virginia:

CHAPTER 17. ROADS AND HIGHWAYS.

ARTICLE 2E. DIG ONCE POLICY.

§17-2E-3. Use of rights-of-way; broadband conduit installation in rights-of-way; permits; agreements; compensation; valuation of compensation; telecommunications facilities construction and installation in rights-of-way.

(a) If in-ground construction or installation of a telecommunications facility in rights-of-way owned or controlled

by the division serves a public purpose and shall be accommodated as a utility pursuant to federal and state law, the division will receive applications and issue a permit consistent with this section with respect to requirements and conditions for performing work in division rights-of-way.

(b) Upon receipt of a complete application as specified in the Accommodation of Utilities on Highway Right-of-Way and Adjustment and Relocation of Utility Facilities on Highway Projects Policy, or equivalent policy, as may be currently enforced by the division, that specifies the requirements and conditions for performing work in a right-of-way, the division shall, within 60 business days, advise applicant in writing of any deficiencies with the planned project that:

(1) Adversely affect the safety, design, construction, operation, maintenance, or stability of the state road system;

(2) Interfere with or impair the present use or planned future expansion of any affected highway or bridge;

(3) Conflict with applicable division policy with respect to requirements and conditions for performing work in division rights-of-way; or

(4) Violates applicable federal or state law.

(c) An applicant may correct any deficiencies and resubmit the application, which shall be reviewed by the division and either approved or denied within 30 days of the resubmittal. Any denial of a resubmittal shall be in writing and explain any deficiencies as provided in subsection (b) of this section. After the division approves a permit application, notwithstanding any other provision of this code to the contrary, the division shall issue a specific district level construction authorization for the approved project within 10 business days unless specific logistical issues reasonably prevent commencement.

(d) Compliance with applicable environmental laws shall at all times be the responsibility of the applicant. If any environmental clearance must be performed by the division before an application

is approved, the division will notify the applicant in writing of all necessary requirements for such clearance within 15 business days of receiving a complete application. The division will also provide a list of all known federal and state entities with whom an applicant may also need to consult and coordinate for environmental clearance purposes.

(e) The division will create and make available for potential applicants an informational notice specific to in-ground telecommunications facility construction and installation that explains routine issues for such projects, including a consolidated checklist or flow chart of all state or federal regulatory requirements, including but not limited to applicable permits, required reviews, required approvals, and required forms. The division shall annually update such informational notice for accuracy and completeness by coordination with each state or federal agency having required regulatory action in the permitting process legal, regulatory, and division requirements and may request the assistance of the Office of Broadband in preparing this informational notice.

(f) The provisions of this article shall not apply to the relocation or modification of existing telecommunications facilities in a right-of-way, nor shall these provisions apply to aerial telecommunications facilities or associated apparatus or equipment in a right-of-way. Relocation of telecommunications facilities within rights-of-way for state highways shall be in accordance with the provisions of §17-4-17b of this code.

§17-2E-5. Telecommunications carrier initiated construction and joint use.

(a) Upon application for a permit, the applicant shall notify, by email, the Office of Broadband and all other telecommunications carriers on record with the office of the application. Other telecommunications carriers have 15 calendar days to notify the applicant of their interest to share the applicant's trench. This requirement extends to all underground construction technologies.

(b) If no competing telecommunications carrier provides notice of interest to share the applicant's trench within 15 calendar days of notice of the project, the applicant shall provide written certification in accordance with subsection (g) of this section.

(c) If a competing telecommunications carrier provides notice of interest to share the applicant's trench, an agreement between the two (or more) telecommunications carriers shall be executed by those entities within 30 days of the notice of interest, outlining the responsibilities and financial obligations of each, with respect to the installation within the right-of-way. The financial obligations of each carrier shall be based on the proportionate sharing of costs between each carrier for joint trenching or trench sharing based on the amount of conduit or innerduct space or excess conduit that is authorized in the agreements entered into pursuant to this article. If the division uses a trench, it shall also pay its proportional share unless it is utilizing the trench as in-kind payment for use of the right-of-way, or the division has otherwise determined, in its sole discretion, that including the division in the apportionment of costs is not warranted. A copy of the executed agreement shall be provided to the division.

(d) Should a dispute arise between the initial applying telecommunications carrier and a competing telecommunications carrier, including a failure to execute an agreement required by subsection (c) of this section, the dispute shall be adjudicated by the Public Service Commission. All disputes brought to the Public Service Commission under this article shall be adjudicated within 45 days.

(e) If two or more telecommunications carriers are required or authorized to share a single trench, each carrier in the trench must share the cost and benefits of the trench in a fair, reasonable, competitively neutral, and nondiscriminatory manner. This requirement extends to all underground construction technologies.

(f) The provisions of this section do not apply to the following projects:

(1) Projects where the total continuous length of the trench is less than 1,000 feet;

(2) Projects that use the direct bury of cable or wire facilities;

(3) Projects that are solely for the service of entities involved in national security matters or where the disclosure or sharing of a trench location would be against federal policy; or

(4) Projects made available for lease to competing telecommunications carriers on a nondiscriminatory basis at rates established by the rules of the Federal Communications Commission Projects where the telecommunications carrier installs an amount of spare conduit or innerduct equal to what is being installed for its own use and which is given to the Office of Broadband. Such spare conduit or innerduct shall be made available for sale or lease to competing telecommunications carriers on a nondiscriminatory basis at rates apportioned on the basis of the cost of the installation thereof, to other telecommunications providers, and the revenues derived from such sale, less any costs associated therewith, shall be remitted to the telecommunications carrier that installed such spare conduit or innerduct in a manner consistent with all applicable state and federal law and regulations. All carriers installing spare conduit or innerduct shall notify the council and the Office of Broadband of the location and capacity of such spare conduit and innerduct upon completion of the project, and the council shall make such information publicly available for competing telecommunications carriers.

(g) The Office of Broadband is responsible for ensuring compliance with this section and will provide the division and the applicant with certification of compliance at such time as the applicant has met all of the requirements of this section.

§17-2E-6. In-kind compensation.

[Repealed].

§17-2E-7. Use of telecommunications facilities owned or controlled by Division of Highways.

The division may enter into an agreement and issue a permit consistent with the requirements of §17-2E-3 of this code to allow

any carrier to use excess telecommunications facilities owned or controlled by the division: *Provided*, That this section shall be subject to the provisions of the Vertical Real Estate Management and Availability Act, as provided for in §31G-5-1 *et seq.* of this code, and no excess telecommunications facilities owned or controlled by the division subject to §31G-5-1 *et seq.* of this code shall be governed by the provisions of this section.

§17-2E-8. Disposal of in-kind compensation; excess telecommunications facilities.

Upon written approval of the Governor, the division may transfer or assign the ownership, control, or any rights related to any excess telecommunications facilities owned or controlled by the division to any other state agency.

§17-2E-9. Rule-making authority.

The commissioner of the division may promulgate rules pursuant to the provisions of §29A-3-1 *et seq.* of this code as may be necessary to carry out the purpose of this article.

CHAPTER 31G. BROADBAND ENHANCEMENT AND EXPANSION POLICIES.

ARTICLE 1. BROADBAND ENHANCEMENT COUNCIL.

§31G-1-4. Powers and duties of the council generally.

(a) The council shall:

(1) Explore any and all ways to expand access to broadband services, including, but not limited to, middle mile, last mile and wireless applications;

(2) Gather data regarding the various speeds provided to consumers in comparison to what is advertised. The council may request the assistance of the Legislative Auditor in gathering this data;

(3) Explore the potential for increased use of broadband service for the purposes of education, career readiness, workforce preparation and alternative career training;

(4) Explore ways for encouraging state and municipal agencies to expand the development and use of broadband services for the purpose of better serving the public, including audio and video streaming, voice-over Internet protocol, teleconferencing and wireless networking;

(5) Cooperate and assist in the expansion of electronic instruction and distance education services; and

(6) Explore ways to achieve digital equality of opportunity throughout the state, which is a condition where all individuals and communities have the information technology capacity needed for full participation in our society, democracy and economy.

(b) In addition to the powers set forth elsewhere in this article, the council is hereby granted the authority to:

(1) Promote awareness of public facilities that have community broadband access that can be used for distance education and workforce development;

(2) Advise on deployment of e-government portals such that all public bodies and political subdivisions have homepages, encourage one-stop government access and that all public entities stream audio and video of all public meetings;

(3) Make and execute contracts, commitments and other agreements necessary or convenient for the exercise of its powers including, but not limited to, the hiring of consultants to perform the duties of the council;

(4) Acquire by gift or purchase, hold, or dispose of real property and personal property in the exercise of its powers and performance of its duties as set forth in this article; and

(5) Receive and dispense funds appropriated for its use by the Legislature to carry out its statutory duties.

(c) The council shall advise and make recommendations to the Office of Broadband, and shall coordinate with the office on bringing broadband service to unserved and underserved areas, as well as to propose statutory changes that may enhance and expand broadband in the state.

(d) The council shall report to the Secretary of Economic Development on or before December 1 of each year. The report shall include the action that was taken by the council during the previous year in carrying out the provisions of this article. The council shall also make any other reports as may be required by the Legislature or the Governor.

§31G-1-6. Mapping of areas within state.

[Repealed]

§31G-1-9. Collection of data.

[Repealed]

§31G-1-12. Grants.

[Repealed]

ARTICLE 1A. OFFICE OF BROADBAND.

§31G-1A-1. Office of Broadband; Director of Office.

There is hereby established an Office of Broadband, which shall be organized within the Department of Economic Development under the authority of the Secretary of Economic Development. The Office of Broadband shall be managed by a director, who shall report to the Secretary of Economic Development.

§31G-1A-2. Powers and duties of the Office of Broadband generally.

(a) The Office of Broadband shall have the following duties:

(1) Explore any and all ways to expand access to broadband services, including, but not limited to, middle mile, last mile, and wireless applications;

(2) Gather data regarding the various speeds provided to consumers in comparison to what is advertised. The office may request the assistance of the Legislative Auditor in gathering this data;

(3) Cooperate and assist in the expansion of electronic instruction and distance education services;

(4) Gather and report data regarding the adoption by broadband services, by speed, and by community, separately for residential and non-residential consumers;

(5) Gather and report data regarding prices charged for broadband services to residential and non-residential consumers, including, but not limited to one-time fees, monthly fees, termination fees, equipment fees, and other fees;

(6) Incorporate the goal of digital equality in its fulfillment of responsibilities, which is a condition where all individuals and communities have the information technology capacity needed for full participation in our society, democracy, and economy;

(7) Provide for the increased public awareness of issues concerning broadband services; and

(8) Report to the Joint Committee on Government and Finance of the West Virginia Legislature on or before December 30 of each year.

(b) In addition to the powers set forth elsewhere in this article, the Office of Broadband is hereby granted the authority necessary and appropriate to carry out and effectuate the purpose and intent of this article, including, but not limited to, the authority to:

(1) Make and execute contracts, commitments, and other agreements necessary or convenient for the exercise of its powers, including, but not limited to, the hiring of consultants to assist in

the mapping of the state and categorization of areas within the state;

(2) Acquire by gift or purchase, hold, or dispose of real or personal property in the exercise of its powers and performance of its duties as set forth in this article;

(3) Receive and dispense funds appropriated for its use by the Legislature or other funding sources or solicit, apply for, and receive any funds, property, or services from any person, governmental agency, or organization to carry out its statutory duties;

(4) To oversee the use of conduit installed pursuant to §31G-3-2 of this code;

(5) Make recommendations to the Legislature on bringing broadband service to areas of the state;

(6) Contract with and retain outside expert consultants to assist in the purposes of this article;

(7) Create guidelines for, and recommend to the Legislature, a means of implementing a voluntary donation program to allow for pipeline, railroad, and other similar structures and rights-of-way in the state to be donated to the state for use by public or private entities to facilitate broadband service and availability through placement of fiber;

(8) Create guidelines for, and recommend to the Legislature, a means of implementing a program to allow for an easement program to be established to allow public or private entities to facilitate broadband service and availability through placement of fiber;

(9) Coordinate with the Consumer Protection Division of the Office of the Attorney General to provide for the following consumer protections:

(A) If a broadband service to a subscriber is interrupted for more than 24 continuous hours, such subscriber shall, upon request,

receive a credit or refund from the broadband operator in an amount that represents the proportionate share of such service not received in a billing period, provided such interruption is not caused by the subscriber;

(B) A broadband operator may not deny service, deny access, or otherwise discriminate against subscribers, channel users, or any other citizens on the basis of age, race, religion, sex, physical handicap, political affiliation, political views, or exercise of other speech protected by the 1st Amendment to the United States Constitution, or country of natural origin;

(C) A broadband operator shall provide subscribers 30 days advance written notice of any changes to rates or charges, including the expiration of any promotion or special pricing that would result in an increase in the subscribers billing or cost of service; and

(D) A broadband operator shall inform subscribers and provide written notice to subscribers that disputes regarding interrupted or substandard service or billing issues, which are unresolved to satisfaction of the subscriber; and

(10) Perform any and all other activities in furtherance of the purposes of this article.

(c) In furtherance of the purposes of this article, the Office of Broadband is permitted to seek non-state funding and grants. The Office of Broadband may utilize funding and grants to support the responsibilities, initiatives, and projects set forth in this article. The Office of Broadband may additionally disburse such moneys to fund projects and initiatives in furtherance of the enhancement and expansion of broadband services in this state, and the other purposes of this article.

§31G-1A-3. Mapping of areas within state.

(a) Based on its analysis of data, broadband demand, and other relevant information, the Office of Broadband shall establish a mapping of broadband services in the state. The council shall publish an annual assessment and map of the status of broadband, including specific designations of unserved areas of the state. With

respect to unserved areas of the state, the Office of Broadband shall, to the extent it is able, map project areas with funding provided by public entities. For the purposes of this section, the term "unserved area" means an area lacking broadband internet service from at least one terrestrial broadband internet service provider offering all of the following in at least one service plan to residential consumers: (1) an actual downstream data rate of at least 25 megabits per second; and (2) an actual upstream data rate of at least three megabits per second; and (3) unlimited data usage without overage charges; and (4) unlimited data usage without "throttling" or reduction of downstream or upstream data rate due, in whole or in part, to the amount of data transferred in any period.

(b) To the extent possible, and subject to limitations contained in subsection (g) of this section, the Office of Broadband shall additionally establish an interactive public map reflecting estimated or actual downstream data rate and upstream data rate in a particular region, area, community, street or location. Any such mapping may only specify data rates at a particular street address or physical location, and shall not make public the IP address or the name of the specific individual at such location. This map shall be known as the West Virginia Broadband Availability Map.

(c) To the extent possible, and subject to limitations contained in subsection (g) of this section, the Office of Broadband shall additionally establish an interactive public map reflecting the adoption of broadband services, separately by estimated or actual downstream data rate and upstream data rates, in a particular region, area, community, street or location. Any such mapping shall provide data separately for residential connections and non-residential connections. This map shall be known as the West Virginia Broadband Adoption Map.

(d) The mapping provided for in this section may be based on information collected or received by the Broadband Council and Office of Broadband, including, but not limited to, data collected from:

(1) State and federal agencies or entities that collect data on broadband services;

(2) Industry provided information;

(3) Consumer data provided to the Broadband Council or Office of Broadband pursuant to §31G-1A-6 and §31G-1A-9 of this code; and

(4) Other data sources procured by or provided to the Office of Broadband or the Broadband Council.

(e) Any entity that has received or hereinafter receives state or federal moneys, and which has used those moneys to install infrastructure used for broadband services, shall furnish detailed information concerning the location, type, and extent of such infrastructure to the Office of Broadband for use in mapping and shall furnish the location, type, and prices of any broadband services subscribed to by residential (and separately non-residential) consumers as a result of the installed infrastructure.

(f) The mapping and designations provided for under this section may be revised on a continuing basis by the office as warranted by the data and information provided.

(g) In addition to the provisions of §31G-1A-13 of this code, the mapping of broadband services may exclude from public accessibility and availability:

(1) The location or identity of any critical infrastructure used by public or private entities in furtherance of their internet services;

(2) Personal name and personal IP addresses connected with particular data rates; and

(3) Information designated as confidential for public security reasons by either state or federal homeland security agencies: *Provided*, That it shall be duty of the public and private entities to make the Office of Broadband aware of such confidential designation: *Provided, however*, That unless the Office of Broadband determines good cause exists, the actual or estimated upstream and downstream data rates of an area or region of the state shall not be excluded from public or private availability.

(h) All executive agencies which have permitting and/or regulatory approval authority over any project permitted or reviewed and approved pursuant to §17-2E-3 of this code shall cooperate with and provide all necessary information to the Office of Broadband to determine the feasibility and federal allowability of creating Advanced Regulatory Environment Analysis (AREA) maps. AREA maps will pre-survey likely routes for middle-mile infrastructure so all relevant information can be included in a centralized GIS mapping system to be maintained by the Office of Broadband for utilization by the private sector when extending new fiber infrastructure pursuant to §17-2E-1 *et seq*. of this code. AREA mapping shall also include, but is not limited to, any areas already granted Finding of No Significant Impact ("FONSI"), categorical exclusions ("CATEX"), areas prior approved by the West Virginia State Historic Preservation Office ("SHPO"), and all West Virginia Division of Highways mapping for permits that include installation of infrastructure.

(i) If in analyzing the consumer-supplied speed data for an area of two square miles or more, the Office of Broadband finds that speeds supplied by a provider are less than 80% of the lowest speed tier advertised by the provider in more than 40% of the tests in that area in a calendar year, then the Office of Broadband shall notify the Consumer Protection Division of the Attorney General's Office, and shall transmit such records of any relevant speed tests in their custody to the Consumer Protection Division of the Attorney General's Office.

§31G-1A-4. Collection of data.

(a) In order to ascertain, categorize, analyze, map, and update the status of broadband in the state, as well as to enable the Office of Broadband to make informed policy and legislative recommendations, the Office of Broadband may establish a voluntary data collection program. The program may include voluntarily submitted data from internet service providers, including any home or region data rate meters utilized by the provider. The program may also utilize and collect voluntarily submitted data rate information submitted by any person reflecting the person's personal data rate at a particular IP address. This

personal data rate may be based upon a web-based test or analysis program.

(b) Any and all data collected by the Office of Broadband shall not be deemed public information and is not subject to public release or availability pursuant to §29B-1-1 *et seq.* of this code.

(c) Any data collection program established by the Office of Broadband shall:

(1) Make clear to those providers or persons submitting information that the data rate speed may become public, including specific reference to the person's physical address;

(2) Make clear this is a voluntary data collection program and that submission of information shall be deemed consent to use and make public such data rate information; and

(3) Not include any person's personal web history or search information, or otherwise publicly identify the person's name in connection with an IP address or physical address.

(d) The Office of Broadband may establish guidelines and additional rules governing a data collection program through the legislative rulemaking pursuant to the provisions of §29A-3-1 *et seq.* of this code.

§31G-1A-5. Protection of proprietary business information.

(a) Broadband deployment information provided to the Office of Broadband or its consultants and other agents, including, but not limited to, physical plant locations, subscriber levels, and market penetration data, constitutes proprietary business information and, along with any other information that constitutes trade secrets, shall be exempt from disclosure under the provisions of §29B-1-1 *et seq.* of this code: *Provided,* That the information is identified as or would reasonably be contemplated to be confidential information when submitted to the Office of Broadband.

(b) Trade secrets or proprietary business information obtained by the council or the Office of Broadband from broadband

providers and other persons or entities shall be secured and safeguarded by the state. Such information or data shall not be disclosed to the public or to any firm, individual, or agency other than officials or authorized persons of the state.

(c) The official charged with securing and safeguarding trade secrets and proprietary data for the Office of Broadband is the Secretary of Economic Development, who is authorized to establish and administer appropriate security measures.

§31G-1A-6. Legislative rule-making authority.

In order to implement and carry out the intent of this article, the Secretary of the Department of Economic Development may propose rules for legislative approval pursuant to the provisions of §29A-3-1 *et seq.* of this code.

ARTICLE 3. CONDUIT INSTALLATION; MICROTRENCHING.

§31G-3-3. Conduit installation or fiber installation by counties, municipalities, and other political subdivisions.

(a) Notwithstanding any other provision of this code to the contrary, any county, municipality, or other political subdivision of the State of West Virginia may:

(1) Install or contract with any entity for the installation of conduit, fiber, or broadband facilities throughout that political subdivision;

(2) Partner with any of the following entities, or any combination thereof, to install such conduit or communications facilities throughout that political subdivision:

(A) Nonprofit organization;

(B) Cooperative association;

(C) Another county, municipality, or political subdivision;

(D) Private corporations, company, or person; or

(E) Public-private partnership; and

(4) Partner with any of the following entities, or any combination thereof, which operate a network operations center, to operate a fiber network: *Provided,* That a political subdivision may operate a network for their own use:

(A) Nonprofit organization;

(B) Cooperative association;

(C) Another county, municipality, or political subdivision;

(D) Private corporations, company, or person; or

(E) Public-private partnership.

§31G-3-4. Compatible use.

(a) A broadband operator shall be authorized to construct or operate a broadband system:

(1) Over public rights-of-way; and

(2) Through easements, which are within the area to be served by the broadband system and which have been dedicated for compatible uses.

(b) In installing, operating, and maintaining facilities, the broadband operator shall avoid all unnecessary damage and injury to any trees, structures, and improvements in and along the routes utilized for the system.

(c) The broadband operator shall indemnify and hold the state, county and municipality harmless at all times from any and all claims for injury and damage to persons or property, both real and personal, caused by the installation, operation, or maintenance of its broadband system, notwithstanding any negligence on the part of the state, county, and/or municipality, their employees, or agents. Upon receipt of notice in writing from the state, county, and/or municipality, the broadband operator shall, at its own expense, defend any action or proceeding against the state, county

and/or municipality in which it is claimed that personal injury or property damage was caused by activities of the broadband operator in the installation, operation or maintenance of its broadband system.

(d) The use of public highways and other public places shall be subject to:

(1) All applicable state statutes, municipal ordinances and all applicable rules governing the construction, maintenance, and removal of overhead and underground facilities of public utilities;

(2) For county highways, all applicable rules adopted by the governing body of the county in which the county highways are situated;

(3) For state or federal-aid highways, all public welfare rules adopted by the Commissioner of the Division of Highways; and

(4) With respect to the use of any public highway that crosses the trackway of any railroad, nothing in this article shall be construed to provide for any greater or any lesser compliance with any safety policy or procedure established by the railroad with respect to the construction of utility crossings across the railroad's trackway that is applicable to any other similarly situated utility, whether utilizing aerial or buried lines.

(e) In the use of easements dedicated for compatible uses, the broadband operator shall ensure:

(1) That the safety, functioning, and appearance of the property and the convenience and safety of other persons is not adversely affected by the installation or construction of facilities necessary for a broadband system; and

(2) That the owner of the property is justly compensated by the broadband operator for any damages caused by the installation, construction, operation, or removal of facilities by the broadband operator.

(f) An "easement dedicated for compatible uses" is a public or private easement for electric, gas, telephone, or other utility transmission

ARTICLE 4. MAKE-READY POLE ACCESS.

§31G-4-1. Definitions.

As used in this article, the following terms are defined as follows:

(1) "Applicable codes" means uniform building, fire, electrical, plumbing, or mechanical codes adopted by a recognized national code organization, including, but not limited to, the National Electrical Safety Code, or any local amendments to those codes: *Provided,* That notwithstanding any other provisions of said applicable codes, the Code of West Virginia, or the West Virginia Code of State Rules, variances for the installation and maintenance of broadband service infrastructure on utility poles shall be permitted if these are agreed upon between infrastructure owners.

(2) "Attacher" means any person, corporation, or other entity, or the agents or contractors of such seeking to permanently or temporarily fasten or affix any type of equipment, antenna, line, or facility of any kind to a utility pole in the right of way or its adjacent ground space.

(3) "Attachment Application" means the application made by an Attacher to a Pole Owner for attachment of equipment, antenna, line or facility of any kind to a utility pole. It shall include:

(A) Proof of insurance; or

(B) An indemnification agreement prepared by the Pole Owner.

(4) "Make Ready Costs" means the costs incurred by an Attacher associated with the transfer of the facilities, antenna, lines, or equipment of a Pre-Existing Third Party User, undertaken by an Attacher to enable attachment to the utility pole or similar structure. Make-Ready Costs that are to be paid by an Attacher

include, without limitation, all costs and expenses to relocate or alter the attachments or facilities of any Pre-Existing Third Party User as may be necessary to accommodate an Attacher's attachment.

(5) "Pole Owner" means a person, corporation or entity having ownership of a pole or similar structure in the right of way to which utilities, including without limitation, electric and communications facilities, are located or may be located whether such ownership is in fee simple or by franchise.

(6) "Pre-Existing Third Party User" means the owner of any currently operating facilities, antenna, lines or equipment on a pole or its adjacent ground space in the right of way.

§31G-4-2. Attachment to third party facilities.

(a) Upon approval of an Attachment Application, an Attacher may relocate or alter the attachments or facilities of any Pre-Existing Third Party User as may be necessary to accommodate an Attacher's attachment using Pole Owner approved contractors; provided, however, that an Attacher will not effectuate a relocation or alteration of a Pre-Existing Third Party User's facilities that causes or would reasonably be expected to cause a customer outage without first providing 45 days prior written notice to the Pre-Existing Third Party User, in order to permit the Pre-Existing Third Party User to relocate its facilities on its own.

(b) In the event the Pre-Existing Third Party Users of such other facilities fail to transfer or rearrange their facilities within 45 days from receipt of notice of relocation or alteration of a Pre-Existing Third Party User's facilities that causes or would reasonably be expected to cause a customer outage, an Attacher may undertake such work.

(c) Within 30 days of the completion of any relocation or alteration, an Attacher shall send notice of the move and as-built reports to the Pre-Existing Third Party User and the owner of all poles or other structures on which such relocations or alterations

were made. The as-built reports shall include a unique field label identifier, and an address or coordinates.

(d) Upon receipt of the as-built reports, the Pre-Existing Third Party User and pole or structure owner(s) may conduct an inspection within 14 days at an Attacher's expense. An Attacher shall pay the actual, reasonable, and documented expenses incurred by the Pre-Existing Third Party User and pole or structure owner for the inspection. If any such relocation or alteration results in the facilities of the Pre-Existing Third Party User on the pole or other structure failing to conform with the applicable safety Pole Owner's standards, the Pre-Existing Third Party User shall, within seven days of the inspection, notify an Attacher of such failure to conform.

(e) In a notice, the Pre-Existing Third Party User may elect to either:

(1) Perform the correction itself and bill the Attacher for the actual, reasonable and documented costs of the correction, or

(2) Instruct the Attacher to correct such conditions at Attacher's expense. Any post-inspection corrections performed by the Attacher must be completed within 30 days of such notification.

(f) As a condition of exercising the ability to relocate, rearrange, or alter a Pre-Existing Third Party User's facilities pursuant to this section, an Attacher shall indemnify, defend and hold harmless the owner or owners of all poles or other structures on which such relocation, rearrangement or alteration takes place, the affiliates of such owner or owners, and the officers, directors and employees of such owner or owners and their affiliates, each being deemed an Indemnitee, from and against all third party damage, loss, claim, demand, suit, liability, penalty or forfeiture of every kind and nature, including, but not limited to, costs and expenses of defending against the same, payment of any settlement or judgment therefor and reasonable attorney's fees, that are actually and reasonably incurred by an Indemnitee, by reason of any claim by an affected Pre-Existing Third Party User or any

person or entity claiming through such Pre-Existing Third Party User arising from such relocation, rearrangement or alteration.

(g) All work performed must be in accordance with applicable codes, as defined in section one of this article, including, but not limited to, the National Electrical Safety Code: *Provided*, That the variances to applicable codes and to private agreements as set forth in §31G-6-1 of this code shall apply to this section.

(h) In the event an ILEC accepts payment for make-ready work, and fails to perform that work within 45 days, the ILEC which has been paid and which has failed to perform the work, shall immediately return and refund the moneys paid for that work which was not completed. Failure to return those funds within 14 calendar days shall be cause for a fine, payable to the Public Service Commission, equal to the amount of the payment and a cause of action in circuit court for return of the payment and is subject to treble damages, reasonable attorney's fees, and any applicable court costs. Good-cause and good-faith efforts to have performed the work shall be a defense against the imposition of any fine: *Provided,* That the provisions of this subsection shall not apply to any make-ready work where a pole replacement is necessary.

§31G-4-4. Public Service Commission jurisdiction; rulemaking; enforcement.

(a) The Public Service Commission shall possess and exercise regulatory jurisdiction over the provisions of this article. The commission shall administer and adjudicate disputes relating to the issues and procedures provided for under this article.

(b) The commission shall adopt the rates, terms, and conditions of access to and use of poles, ducts, conduits, and rights-of-way as provided in 47 U.S.C. § 224 and 47 C.F.R. § 1.1401 – 1.1415, inclusive, of the dispute resolution process incorporated by reference in those regulations and any subsequent modifications or additions to the provisions of the United States Code or Code of Federal Regulations provisions referenced herein.

(c) The commission shall certify to the Federal Communications Commission that this state, as evidenced by the enactment of this article, hereby exercises jurisdiction over the regulation of pole attachments. The certification shall include notice that the State of West Virginia hereby:

(1) Regulates the rates, terms, and conditions related to pole attachments; and

(2) In so regulating such rates, terms, and conditions, the state has the authority to consider and does consider the interests of the subscribers of the services offered via such attachments, as well as the interests of the consumers of the services.

(d) (1) Notwithstanding subsection (b), the commission shall promulgate rules to address abandoned cable, conductor, and related facilities attached to utility poles. The rules shall include provisions that:

(A) Provide for the pole owner to fully recover from the owner of the attachment the costs incurred by the pole owner for the removal and disposal of abandoned cable, conductors, and related facilities;

(B) Address situations where the pole owner is unable to receive full recovery of its removal and disposal costs from the owner of the attachment by instead receiving recovery of its net unrecovered costs from its jurisdictional customers, including other Attachers, in such manner as the commission determines is just and reasonable; and

(C) Allow the pole owner to book or defer these net costs on its accounting books and request recovery to the commission outside of a base rate case proceeding through a surcharge or other rate recovery mechanism.

(2) Any pole owner, after making reasonable efforts to require the attachment owner to remove abandoned facilities, that proceeds to remove what the pole owner reasonably believes is abandoned cable, conductor, and related facilities, shall be released and held harmless from liability from claims or any related losses claimed

by the Attacher or others for the pole owner's removal work, including any loss of property value, potential business value, salvage value, or any other value of such cable, conductor, and related facilities.

(e) Notwithstanding subsection (b), the commission shall promulgate rules to govern the timely transfer of facilities from an old pole to a new pole and the removal of utility poles that have had electric facilities moved to new poles but continue to have other facilities attached in the telecommunications space on the old existing poles. Should the attached facilities not be transferred in a timely manner from the old pole to the new pole by the owner of the attachments, as determined by the commission, the rules shall address this matter and include the right and mechanism of the pole owner itself to transfer the facilities to the new pole, to remove the old pole, and to recover its costs fully and timely from the owner of the facilities transferred. Any pole owner who transfers facilities from an old pole to a new pole, after reasonable due diligence, shall be released and held harmless from liability for its transfer work, except for acts of negligence or willful misconduct.

ARTICLE 6. PRE-EMPTION OF CONFLICTING LOCAL ORDINANCES AND PRIVATE RESTRICTIONS

§31G-6-1. Pre-emption in favor of broadband services; construction of language in agreements.

(a) Notwithstanding any other provision of the West Virginia Code or the West Virginia Code of State Rules to the contrary, any ordinance of any political subdivision relating to broadband service is hereby pre-empted to the extent necessary in favor of such broadband installation.

(b) No corporate policy, organizational policy, institutional policy, agreement, contract, or other like document, including the rules and regulations of any Home Owners Association, or any similar entity or organization, promulgated or made effective after the effective date of this section, may regulate or prevent the exterior installation of antennas and equipment necessary to or typically utilized for broadband deployment and the terms of any

such document shall be strictly construed in favor of encouraging and assisting broadband installation and deployment.

§31G-6-2. Pre-emption in favor of broadband service in pole attachments; construction of language in pole attachment agreements.

(a) Notwithstanding any other provision of the West Virginia Code or the West Virginia Code of State Rules to the contrary, any ordinance of any political subdivision regarding pole attachment spacing, positioning, or order by or between any Investor Owned Utility ("IOU") and any Incumbent Local Exchange Carrier ("ILEC") and/or Competitive Local Exchange Carrier ("CLEC") which would seek to provide broadband service, is hereby pre-empted to the extent necessary in favor of such broadband installation or deployment.

(b) Any corporate policy, individual agreement, organizational policy, contract, or like document relating to pole attachment spacing, positioning, or order by or between any Investor Owned Utility ("IOU") and any Incumbent Local Exchange Carrier ("ILEC") and/or Competitive Local Exchange Carrier ("CLEC") shall be strictly construed in favor of encouraging and assisting broadband installation and deployment.

CHAPTER 49

(S. B. 89 - By Senators Roberts and Rucker)

[Repassed April 5, 2021; in effect 90 days from passage (July 4, 2021)]
[Approved by the Governor on April 15, 2021.]

AN ACT to amend and reenact §49-2-113 of the Code of West Virginia, 1931, as amended, relating to clarifying what programs operated by a county parks and recreation commission, boards, and municipalities can be exempt from licensure requirements; and exempting from licensure requirements certain education programs operated by nonpublic schools recognized as accredited by the West Virginia Department of Education.

Be it enacted by the Legislature of West Virginia:

ARTICLE 2. STATE RESPONSIBILITIES FOR CHILDREN.

§49-2-113. Residential child-care centers; licensure, certification, approval, and registration; requirements.

(a) Any person, corporation, or child welfare agency, other than a state agency, which operates a residential child-care center shall obtain a license from the department.

(b) Any residential child-care facility, day-care center, or any child-placing agency operated by the state shall obtain approval of its operations from the secretary.

(c) Any family day-care facility which operates in this state, including family day-care facilities approved by the department for receipt of funding, shall obtain a statement of certification from the department.

(d) Every family day-care home which operates in this state, including family day-care homes approved by the department for receipt of funding, shall obtain a certificate of registration from the department. The facilities and placing agencies shall maintain the same standards of care applicable to licensed facilities, centers, or placing agencies of the same category.

(e) This section does not apply to:

(1) A kindergarten, preschool, or school education program which is operated by a public school or which is accredited by the West Virginia Department of Education or any other kindergarten, preschool, or school programs which operate with sessions not exceeding four hours per day for any child;

(2) An individual or facility which offers occasional care of children for brief periods while parents are shopping, engaging in recreational activities, attending religious services, or engaging in other business or personal affairs;

(3) Summer recreation camps operated for children attending sessions for periods not exceeding 30 days;

(4) Hospitals or other medical facilities which are primarily used for temporary residential care of children for treatment, convalescence, or testing;

(5) Persons providing family day care solely for children related to them;

(6) Any juvenile detention facility or juvenile correctional facility operated by or under contract with the Division of Corrections and Rehabilitation for the secure housing or holding of juveniles committed to its custody;

(7) Any out-of-school time program that has been awarded a grant by the West Virginia Department of Education to provide out-of-school time programs to kindergarten through 12th grade students when the program is monitored by the West Virginia Department of Education;

(8) Any out-of-school time program serving children six years of age or older and meets all of the following requirements, or is an out-of-school time program that is affiliated and in good standing with a national congressionally chartered organization or is an out-of-school time, summer recreation camp, or day camp program operated by a county parks and recreation commission, boards, and municipalities and meets all of the following requirements:

(A) The program is located in a facility that meets all fire and health codes;

(B) The program performs state and federal background checks on all volunteers and staff;

(C) The program's primary source of funding is not from fees for service except for programs operated by county parks and recreation commissions, boards, and municipalities; and

(D) The program has a formalized monitoring system in place; or

(9) Any kindergarten, preschool, or school education program which is operated by a private, parochial, or church school that is recognized by the West Virginia Department of Education under Policy 2330.

(f) The secretary is authorized to issue an emergency rule relating to conducting a survey of existing facilities in this state in which children reside on a temporary basis in order to ascertain whether they should be subject to licensing under this article or applicable licensing provisions relating to behavioral health treatment providers.

(g) Any informal family child-care home or relative family child-care home may voluntarily register and obtain a certificate of registration from the department.

(h) All facilities or programs that provide out-of-school time care shall register with the department upon commencement of operations and on an annual basis thereafter. The department shall

obtain information such as the name of the facility or program, the description of the services provided, and any other information relevant to the determination by the department as to whether the facility or program meets the criteria for exemption under this section.

(i) Any child-care service that is licensed or receives a certificate of registration shall have a written plan for evacuation in the event of fire, natural disaster, or other threatening situation that may pose a health or safety hazard to the children in the child-care service.

(1) The plan shall include, but not be limited to:

(A) A designated relocation site and evacuation;

(B) Procedures for notifying parents of the relocation and ensuring family reunification;

(C) Procedures to address the needs of individual children including children with special needs;

(D) Instructions relating to the training of staff or the reassignment of staff duties, as appropriate;

(E) Coordination with local emergency management officials; and

(F) A program to ensure that appropriate staff are familiar with the components of the plan.

(2) A child-care service shall update the evacuation plan by December 31 of each year. If a child-care service fails to update the plan, no action shall be taken against the child-care services license or registration until notice is provided and the child-care service is given 30 days after the receipt of notice to provide an updated plan.

(3) A child-care service shall retain an updated copy of the plan for evacuation and shall provide notice of the plan and notification that a copy of the plan will be provided upon request to any parent,

custodian, or guardian of each child at the time of the child's enrollment in the child-care service and when the plan is updated.

(4) All child-care centers and family child-care facilities shall provide the plan and each updated copy of the plan to the Director of the Office of Emergency Services in the county where the center or facility is located.

(j) A residential child-care center which has entered into a contract with the department to provide services to a certain number of foster children, shall accept any foster child who meets the residential child-care center's program criteria, if the residential child-care center has not met its maximum capacity as provided for in the contract. Any residential child-care center which has entered into a contract with the department may not discharge any child in its program, except as provided in the contract, including that if the youth does not meet the residential treatment level and target population, the provider shall request a MDT and work toward an alternative placement.

CHAPTER 50

(Com. Sub. for S. B. 361 - By Senators Grady, Woelfel, Ihlenfeld, Plymale, Phillips, Smith, Trump, Roberts, Karnes, Rucker, Lindsay, Azinger, and Woodrum)

[Passed April 6, 2021; in effect 90 days from passage (July 5, 2021)]
[Approved by the Governor on April 21, 2021.]

AN ACT to amend and reenact §62-12-26 of the Code of West Virginia, 1931, as amended, relating to extended supervised release for certain offenders generally; requiring extended supervision for persons convicted of distribution of obscene matter to minors, soliciting a minor via computer, and soliciting a minor by use of obscene matter; and removing antiquated language.

Be it enacted by the Legislature of West Virginia:

ARTICLE 12. PROBATION AND PAROLE.

§62-12-26. Extended supervision for certain sex offenders; sentencing; conditions; supervision provisions; supervision fee.

(a) Notwithstanding any other provision of this code to the contrary, any defendant convicted after the effective date of this section of a violation of §61-8-12 of this code or a felony violation of the provisions of §61-8B-1 *et seq*., §61-8C-1 *et seq*., and §61-8D-1 *et seq*., of this code shall, as part of the sentence imposed at final disposition, be required to serve, in addition to any other penalty or condition imposed by the court, a period of supervised release of up to 50 years: *Provided*, That the period of supervised release imposed by the court pursuant to this section for a defendant convicted after the effective date of this section as amended and reenacted during the first extraordinary session of the

Legislature, 2006, of a violation of §61-8B-3 or §61-8B-7 of this code and sentenced pursuant to §62-12-9(a) of this code, shall be no less than 10 years: *Provided, however,* That a defendant designated after the effective date of this section as amended and reenacted during the first extraordinary session of the Legislature, 2006, as a sexually violent predator pursuant to the provisions of §15-12-2a of this code shall be subject, in addition to any other penalty or condition imposed by the court, to supervised release for life: *Provided further*, That a defendant convicted of a violation of §61-8A-2, §61-8A-4, or §61-3C-14b of this code on and after the effective date of the amendment to this section enacted during the 2021 regular session of the Legislature is subject to the provisions of this section: *And Provided further*, That pursuant to the provisions of subsections (a) and (h) of this section, a court may modify, terminate, or revoke any term of supervised release imposed pursuant to this subsection.

(b) Any person required to be on supervised release between the minimum term of 10 years and life pursuant to the provisos of §62-12-26(a) of this code also shall be further prohibited from:

(1) Establishing a residence or accepting employment within 1,000 feet of a school or child care facility or within 1,000 feet of the residence of a victim or victims of any sexually violent offenses for which the person was convicted;

(2) Loitering within 1,000 feet of a school or child care facility or within 1,000 feet of the residence of a victim or victims of any sexually violent offenses for which the person was convicted: *Provided*, That the imposition of this prohibition applies to a defendant convicted after the effective date of this section as amended and reenacted during the regular session of the Legislature, 2015: *Provided, however*, That as used in this subdivision "loitering" means to enter or remain on property while having no legitimate purpose or, if a legitimate purpose exists, remaining on that property beyond the time necessary to fulfill that purpose: *Provided further*, That nothing in this subdivision shall be construed to prohibit or limit a person's presence within 1,000 feet of a location or facility referenced in this subdivision if the person is present for the purposes of supervision, counseling, or other

activity in which the person is directed to participate as a condition of supervision or where the person has the express permission of his or her supervising officer to be present;

(3) Establishing a residence or any other living accommodation in a household in which a child under 16 resides if the person has been convicted of a sexually violent offense against a child, unless the person is one of the following:

(i) The child's parent;

(ii) The child's grandparent; or

(iii) The child's stepparent and the person was the stepparent of the child prior to being convicted of a sexually violent offense, the person's parental rights to any children in the home have not been terminated, the child is not a victim of a sexually violent offense perpetrated by the person, and the court determines that the person is not likely to cause harm to the child or children with whom such person will reside: *Provided*, That nothing in this subsection shall preclude a court from imposing residency or employment restrictions as a condition of supervised release on defendants other than those subject to the provision of this subsection.

(c) In addition to any other prohibitions, any person found guilty of violating the provisions of §61-8B-3 or §61-8B-7 of this code is also prohibited from being in a supervisory position, playing a supervisory role, or being responsible for groups of children, including, but not limited to, religious organizations, Boy Scouts, Girl Scouts, 4H organizations, sporting and scholastic teams, music, sporting, and theatre groups and camps, and summer day camps.

(d) The period of supervised release imposed by the provisions of this section shall begin upon the expiration of any period of probation, the expiration of any sentence of incarceration or the expiration of any period of parole supervision imposed or required of the person so convicted, whichever expires later.

(e) Any person sentenced to a period of supervised release pursuant to the provisions of this section shall be supervised by a

multi-judicial circuit probation officer, if available. Until a multi-judicial circuit probation officer is available, the offender shall be supervised by the probation office of the sentencing court or of the circuit in which he or she resides.

(f) A defendant sentenced to a period of supervised release is subject to any or all of the conditions applicable to a person placed upon probation pursuant to the provisions of §62-12-9 of this code: *Provided*, That any defendant sentenced to a period of supervised release pursuant to this section shall participate in appropriate offender treatment programs or counseling during the period of supervised release unless the court determines the offender treatment programs or counseling to no longer be appropriate or necessary and makes express findings in support thereof.

(g) The sentencing court may, based upon defendant's ability to pay, impose a supervision fee to offset the cost of supervision. The fee shall not exceed $50 per month. The fee may be modified periodically based upon the defendant's ability to pay.

(h) *Modification of conditions or revocation*. — The court may:

(1) Terminate a term of supervised release and discharge the defendant released at any time after the expiration of two years of supervised release, pursuant to the provisions of the West Virginia Rules of Criminal Procedure relating to the modification of probation, if it is satisfied that such action is warranted by the conduct of the defendant released and the interests of justice;

(2) Extend a period of supervised release if less than the maximum authorized period was previously imposed or modify, reduce, or enlarge the conditions of supervised release, at any time prior to the expiration or termination of the term of supervised release, consistent with the provisions of the West Virginia Rules of Criminal Procedure relating to the modification of probation and the provisions applicable to the initial setting of the terms and conditions of post-release supervision;

(3) Revoke a term of supervised release and require the defendant to serve in prison all or part of the term of supervised

release without credit for time previously served on supervised release if the court, pursuant to the West Virginia Rules of Criminal Procedure applicable to revocation of probation, finds by clear and convincing evidence that the defendant violated a condition of supervised release, except that a defendant whose term is revoked under this subdivision may not be required to serve more than the period of supervised release; or

(4) Order the defendant to remain at his or her place of residence during nonworking hours and, if the court directs, to have compliance monitored by telephone or electronic signaling devices, except that an order under this subdivision may be imposed only as an alternative to incarceration.

(i) *Written statement of conditions*. — The court shall direct that the probation officer provide the defendant with a written statement at the defendant's sentencing hearing that sets forth all the conditions to which the term of supervised release is subject and that it is sufficiently clear and specific to serve as a guide for the defendant's conduct and for such supervision as is required.

(j) *Supervised release following revocation*. — When a term of supervised release is revoked and the defendant is required to serve a term of imprisonment that is less than the maximum term of supervised release authorized under §62-12-26(a) of this code, the court may include a requirement that the defendant be placed on a term of supervised release after imprisonment. The length of the term of supervised release shall not exceed the term of supervised release authorized by this section less any term of imprisonment that was imposed upon revocation of supervised release.

(k) *Delayed revocation*. — The power of the court to revoke a term of supervised release for violation of a condition of supervised release and to order the defendant to serve a term of imprisonment and, subject to the limitations in §62-12-26(j) of this code, a further term of supervised release extends beyond the expiration of the term of supervised release for any period necessary for the adjudication of matters arising before its expiration if, before its expiration, a warrant or summons has been issued on the basis of an allegation of a violation.

CHAPTER 51

(Com. Sub. for S. B. 562 - By Senator Trump)

[Passed April 10, 2021; in effect 90 days from passage (July 9, 2021)]
[Approved by the Governor on April 28, 2021.]

AN ACT to amend and reenact §49-4-712 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto nine new sections, designated §49-4-727, §49-4-728, §49-4-729, §49-4-730, §49-4-731, §49-4-732, §49-4-733, §49-4-734, and §49-4-735, all relating to juvenile competency proceedings generally; creating a process to raise and resolve questions of a competency in juvenile delinquency matters; prohibiting a juvenile found to be incompetent to stand trial to be placed in Bureau of Juvenile Services facility; defining terms; creating a rebuttable presumption that juveniles 14 years of age and older are competent to proceed; creating a rebuttable presumption that juveniles under 14 years of age are incompetent to proceed; providing all proceedings stayed until competency resolved; requiring the appointment of a guardian ad litem when the issue of a juvenile's competency is raised or a rebuttable presumption of incompetency exists; establishing qualifications for qualified forensic evaluators; requiring written competency evaluation report; requesting the Supreme Court to establish a training program for guardians ad litem; establishing time frames for jurisdiction and competency attainment services; establishing procedures for competency hearings; and providing disposition alternatives for incompetent juveniles and staying transfer to criminal jurisdiction.

Be it enacted by the Legislature of West Virginia:

ARTICLE 4. COURT ACTIONS.

§49-4-712. Intervention and services by the department pursuant to initial disposition for status offenders or

juvenile found incompetent to stand trial; enforcement; further disposition; detention; out-of-home placement; department custody; least restrictive alternative; appeal; prohibiting placement of status offenders or a juvenile found incompetent to stand trial in a Bureau of Juvenile Services facility.

(a) Services provided by the department to juveniles adjudicated as status offenders shall be consistent with §49-2-1001 *et seq.* of this code. Services provided by the department for juveniles adjudicated as status offenders pursuant to §49-4-711 of this code and juveniles found to be incompetent to proceed and in need of services pursuant to §49-4-734(b)(2) of this code shall be designed to develop skills and supports within families and to resolve problems related to the juveniles or conflicts within their families. Services may include, but are not limited to, referral of juveniles and parents, guardians, or custodians and other family members to services for psychiatric or other medical care, or psychological, welfare, legal, educational, or other social services, as appropriate to the needs of the juvenile and his or her family.

(b) If the juvenile, or his or her parent, guardian, or custodian, fails to comply with the services provided in subsection (a) of this section, the department may petition the circuit court:

(1) For a valid court order, as defined in §49-1-207 of this code, to enforce compliance with a service plan or to restrain actions that interfere with or defeat a service plan; or

(2) For a valid court order to place a juvenile out of home in a nonsecure or staff-secure setting, and/or to place a juvenile in custody of the department: *Provided,* That a juvenile adjudicated as a status offender may not be placed in an out-of-home placement, excluding placements made for abuse and neglect, if that juvenile has had no prior adjudications for a status or delinquency offense, or no prior disposition to a pre-adjudicatory improvement period or probation for the current matter: *Provided, however,* That if the court finds by clear and convincing evidence the existence of a significant and likely risk of harm to the juvenile, a family member, or the public and continued placement in the

home is contrary to the best interests of the juvenile, the juvenile may be ordered to an out-of-home placement: *Provided further,* That the court finds the department has made all reasonable efforts to prevent removal of the juvenile from his or her home, or that such reasonable efforts are not required due to an emergent situation.

(c) In ordering any further disposition under this section, the court is not limited to the relief sought in the department's petition and shall make reasonable efforts to prevent removal of the juvenile from his or her home or, as an alternative, to place the juvenile in a community-based facility which is the least restrictive alternative appropriate to the needs of the juvenile and the community. The disposition may include reasonable and relevant orders to the parents, guardians, or custodians of the juvenile that are necessary and proper to effectuate the disposition.

(d) (1) If the court finds that placement in a residential facility is necessary to provide the services under subsection (a) of this section, except as prohibited by subdivision (2), subsection (b) of this section, the court shall make findings of fact as to the necessity of this placement, stated on the record or reduced to writing and filed with the record or incorporated into the order of the court.

(2) The findings of fact shall include the factors that indicate:

(A) The likely effectiveness of placement in a residential facility for the juvenile; and

(B) The community services which were previously attempted.

(e) The disposition of the juvenile may not be affected by the fact that the juvenile demanded a trial by jury or made a plea of not guilty. Any order providing disposition other than mandatory referral to the department for services is subject to appeal to the Supreme Court of Appeals.

(f) Following any further disposition by the court, the court shall inquire of the juvenile whether or not appeal is desired and the response shall be transcribed; a negative response may not be construed as a waiver. The evidence shall be transcribed as soon as

practicable and made available to the juvenile or his or her counsel if it is requested for purposes of further proceedings. A judge may grant a stay of execution pending further proceedings.

(g) A juvenile adjudicated solely as a status offender or a juvenile found to be incompetent to proceed may not be placed in a Bureau of Juvenile Services facility.

§49-4-727. Juvenile competency proceedings.

(a) Subject to the provisions of subsection (c) of this section, a juvenile's attorney, the prosecuting attorney, or the court may raise the issue of his or her competency to participate in the proceeding any time during proceedings under this article. Once competency is raised, all proceedings unrelated to competency shall be stayed until the issue of competency is resolved. A juvenile presumed incompetent under subsection (c) of this section shall not be adjudicated unless the presumption of incompetency has been rebutted as provided in subsections (b) and (c) of this section.

(b) In any delinquency proceeding pursuant to this article, a juvenile 14 years or older is presumed to be competent. A juvenile has the burden of proof to rebut this presumption by showing incompetency by a preponderance of the evidence.

(c) In any delinquency proceeding pursuant to this article, if the juvenile is under 14 years of age, there exists a rebuttable presumption that he or she is incompetent to proceed beyond the stage of the proceeding resolving the issue of competency, unless judicially determined to be competent pursuant to the procedures set forth in §49-4-728 through §49-4-734 of this code. The state has the burden of proof to rebut this presumption by showing competency by a preponderance of the evidence.

(d) Regardless of the age of the juvenile, the court may dismiss the petition without ordering a competency evaluation or competency hearing if the prosecuting attorney, the juvenile's attorney, and the guardian ad litem, if previously appointed, agree that there is compelling evidence that the juvenile is not competent to participate in the proceedings: *Provided*, That a court may not

order services authorized by §49-4-733 of this code without a competency evaluation.

(e) If and when the issue of a juvenile's competency is raised under subsection (a) of this section or, a rebuttable presumption of incompetency exists under subsection (c) of this section, the court shall appoint a guardian ad litem for the juvenile. The Supreme Court of Appeals is requested to establish a training program for persons acting as guardians ad litem in juvenile competency matters.

§49-4-728. Definitions for juvenile competency proceedings.

As used in §49-4-727 through §49-4-734 of this code:

"Competent" and "competency" refer to whether or not a juvenile has sufficient present ability to consult with his or her lawyer with a reasonable degree of rational understanding and has a rational as well as factual understanding of the proceedings against him or her. A juvenile is incompetent if, due to developmental disability, intellectual disability, or mental illness, the juvenile is presently incapable of understanding the nature and objective of proceedings against him or her or of assisting in his or her defense.

"Competency attainment services" means services provided to a juvenile to assist the juvenile in attaining competency.

"Department" means the Department of Health and Human Resources.

"Developmental disability" means a severe and chronic disability that is attributable to a mental or physical impairment, including, but not limited to, neurological conditions that lead to impairment of general intellectual functioning or adaptive behavior.

"Developmental immaturity" means a condition based on a juvenile's chronological age and significant lack of developmental skills when the juvenile has no significant mental illness or intellectual disability.

"Intellectual disability" means a disability characterized by significant limitations both in intellectual functioning and in adaptive behavior as expressed in conceptual, social, and practical domains.

"Mental illness" means a manifestation in a person of significantly impaired capacity to maintain acceptable levels of functioning in the areas of intellect, emotion, and physical well-being.

"Proceeding" means any delinquency proceeding under this article.

"Qualified forensic evaluator" means a licensed psychologist or psychiatrist with the necessary education, training, and experience to perform juvenile competency evaluations, and who has been approved to render opinions for the court pursuant to the requirements of §49-4-729 of this code.

§49-4-729. Motion for determination of competency, time frames, order for evaluation.

(a) When the prosecuting attorney, the juvenile's attorney, or the guardian ad litem has reasonable basis to believe that:

(1) A juvenile age 14 or older is incompetent to proceed in the delinquency action, that party shall file a motion for a determination of competency. The motion shall state any known facts to the movant of in support thereof. If the court raises the issue sua sponte, it shall, by written order, set forth the basis for ordering a competency evaluation.

(2) A juvenile under the age of 14 is competent to proceed in the delinquency action, the prosecuting attorney shall file a motion for determination of competency. The motion shall state the basis to believe the juvenile is competent to proceed despite the presumption of incompetency due to age and shall state any known facts to the prosecuting attorney in support of the motion. If the court raises the issue sua sponte, the court by written order shall set forth the factual basis supporting the finding that the juvenile is competent to proceed.

(b) Within 10 judicial days after a motion is made, the court shall make one of the following determinations regardless of which presumption applies:

(1) Find that there is compelling evidence that the juvenile is not competent to participate in the proceedings and dismiss the case pursuant to §49-4-727(d) of this code;

(2) Without conducting a hearing, find that there exists a reasonable basis to conduct a competency evaluation; or

(3) Schedule a hearing to determine whether there exists a reasonable basis to conduct a competency evaluation. The hearing shall be held within 30 judicial days. The court's determination shall be announced no later than three judicial days after the conclusion of the hearing.

(c) If the court determines there is a reasonable basis to order a competency evaluation pursuant to §49-4-731 of this code, or if the prosecutor and the juvenile's attorney agree to the evaluation, the court shall order a competency evaluation. If the court orders a competency evaluation, the court shall order that the competency evaluation be conducted in the least restrictive environment, taking into account the public safety and the best interests of the juvenile.

(1) Notwithstanding any other provisions of this code, the court shall provide in its order that the qualified forensic evaluator shall have access to all relevant confidential and public records related to the juvenile, including competency evaluations and reports conducted in prior delinquent proceedings. The court shall provide to the qualified forensic evaluator a copy of the petition and the names and contact information for the judge, prosecutor, juvenile's attorney, and parents or legal guardians.

(2) Within five judicial days after the court orders an evaluation, the prosecutor shall deliver to the evaluator copies of relevant police reports and other background information relevant to the juvenile that are in the prosecutor's possession.

(3) Within five judicial days after the court orders an evaluation, the juvenile's attorney shall deliver to the qualified

forensic evaluator copies of police reports and other records including, but not limited to, educational, medical, psychological, and neurological records that are relevant to the evaluation and that are in the attorney's possession. Upon good cause shown, the court may extend the time frame to deliver these documents noting that time is of the essence.

§49-4-730. Juvenile competency qualified forensic evaluator; qualifications.

An evaluation ordered by the court shall be conducted by a qualified forensic evaluator.

(1) A qualified forensic evaluator shall have education and training in the following areas:

(A) Forensic evaluation procedures for juveniles, including accepted criteria used in evaluating competency;

(B) Evaluation, diagnosis, and treatment of children and adolescents with developmental disability, developmental immaturity, intellectual disability, or mental illness;

(C) Clinical understanding of child and adolescent development; and

(D) Familiarity with competency standards in this state.

(2) The department shall establish procedures for ensuring the training and qualifications of qualified forensic evaluators. Annually, the department shall provide a list of qualified forensic evaluators to the Administrative Office of the Supreme Court of Appeals of West Virginia.

§49-4-731. Juvenile competency evaluation.

(a) The qualified forensic evaluator shall file with the court a written competency evaluation report within 30 days after the date of entry of the order requiring the juvenile to be evaluated and appointing the qualified forensic evaluator. For good cause shown, the court may extend the time for filing for a period not to exceed an additional 30 days. The report shall include the evaluator's

opinion as to whether or not a juvenile, due to developmental disability, intellectual disability, or mental illness, has sufficient present ability to consult with his or her lawyer with a reasonable degree of rational understanding and whether the juvenile has a rational as well as factual understanding of the proceedings against him or her. The report shall not include the evaluator's opinion as to whether the juvenile committed the alleged offense or recite or reference any self-incriminating or inculpatory statements as reported by the juvenile. A self-incrimination or inculpatory statement made by a juvenile during an evaluation or hearing conducted pursuant to this article shall not be admissible on the issue of responsibility or guilt in subsequent court proceedings, including adjudication and disposition or transfer hearings.

(b) A competency evaluation report shall include:

(1) A statement of the procedures used, including psychometric tests administered, records reviewed, and the identity of persons interviewed;

(2) Pertinent background information, including a history of educational performance, psychiatric or psychological history, developmental and family history;

(3) Results of the mental status examination;

(4) A diagnosis, if one has been made, which shall address any psychological or psychiatric conditions or cognitive deficiencies determined to exist; and

(5) An opinion as to the juvenile's developmental maturity or developmental immaturity as it would affect his or her ability to proceed.

(c) If the qualified forensic evaluator determines that the juvenile is not competent to participate in the proceedings, the competency evaluation report shall address the following questions:

(1) Whether the juvenile has a developmental disability, intellectual disability, or mental illness;

(2) Whether the juvenile has sufficient present ability to consult with his or her lawyer with a reasonable degree of rational understanding;

(3) Whether a juvenile has a rational as well as factual understanding of the proceedings against him or her; and

(4) Whether the juvenile can attain competency in the foreseeable future if provided with a course of treatment, therapy, or training.

(d) If the qualified forensic evaluator determines that the juvenile is incompetent, but that there is a reasonable probability that he or she can attain competency within the periods set forth in §49-4-733(c)(3) of this code, the report shall include the following recommendations:

(1) A recommendation as to the treatment or therapy; and

(2) The least restrictive setting for juvenile competency attainment services consistent with the juvenile's ability to attain competency and the safety of both the juvenile and the public.

(e) The court shall provide a copy of each competency evaluation report it receives to the prosecutor, the juvenile's attorney, and guardian ad litem and may provide a copy upon request to the juvenile's parents or legal guardian.

(f) The department shall pay qualified forensic evaluators for all matters related to conducting a court-ordered competency evaluation. The department shall develop and implement a process for prompt payment of qualified forensic evaluators including a rate schedule. The amount of payment for court-ordered evaluations shall reasonably compensate qualified forensic evaluators for the work performed in a particular case.

§49-4-732. Hearing to determine juvenile's competency to participate in the proceedings.

(a) Not more than 15 judicial days after receiving the evaluator's report, the court shall conduct a hearing to determine

the juvenile's competency to participate in the proceedings. The court may continue the hearing for good cause shown.

(b) The competency evaluation report is admissible as evidence in the competency proceedings. The qualified forensic evaluator may be called as a witness and is subject to cross examination by all parties. If authorized by the court, hearings held pursuant to this section may be conducted by or participated in using teleconference or video conference technology. If the court contacts the qualified forensic evaluator to obtain clarification of the report contents, the court shall promptly inform all parties and allow each party to participate in each contact.

(c) In determining the competency of the juvenile to participate in the proceedings, the court shall consider the content of all competency evaluation reports admitted as evidence. The court may consider additional evidence introduced at the hearing by the prosecuting attorney, the juvenile's attorney, or guardian ad litem.

(d) (1) Except as otherwise provided, the court shall make a written determination as to the juvenile's competency based on a preponderance of the evidence within 10 judicial days after completion of the hearing. The applicable burden of proof shall be as set forth in §49-4-727 of this code.

(2) The court shall not find a juvenile competent to proceed solely because the juvenile is receiving or has received in-patient treatment or is receiving or has received psychotropic or other medication, even if the juvenile might become incompetent to proceed without that medication.

§49-4-733. Procedure after determination of juvenile's competency to participate in the proceedings.

(a) After a hearing pursuant to §49-4-732 of this code, if the court determines by a preponderance of the evidence that the juvenile is competent to proceed despite any presumption that may have applied, the delinquency proceedings shall resume as provided by law.

(b) If the court determines by a preponderance of the evidence that a juvenile is incompetent to proceed, but is likely to attain competency within a reasonable time with services, the court shall stay the proceedings and order the juvenile to receive services designated to assist the juvenile in attaining competency, based upon the recommendations in the competency evaluation report, unless the court makes specific findings that the recommended services are not justified. The court shall order the juvenile's parent or legal guardian to contact a court-designated provider by a specified date to arrange for services.

(1) The competency attainment services provided to a juvenile shall be based on the recommendations contained in the qualified forensic evaluator's report described in §49-4-731(d) of this code, and are subject to the conditions and time periods required pursuant to this section measured from the date the court approves the plan.

(2) The court shall order that the competency attainment services ordered are provided in the least restrictive environment, taking into account the public safety and the best interests of the juvenile. If the juvenile has been released on temporary orders and refuses or fails to cooperate with the service provider, the court may modify the orders to require a more appropriate setting for further services. A juvenile may not be placed in a Bureau of Juvenile Services facility to receive competency attainment services. Additionally, a juvenile presumed incompetent under §49-4-727(c) of this code shall not be placed in a Bureau of Juvenile Services facility, except in compliance with §49-4-705 and §49-4-706 of this code, and corresponding Rules of Juvenile Procedure as adopted by the Supreme Court of Appeals of West Virginia.

(3) A juvenile shall not be required to participate in competency attainment services for longer than is necessary to attain competency or after the court determines that there is no reasonable likelihood that competency can be attained. The following maximum time limits apply to the participation of a juvenile:

(A) A juvenile charged with an act which would constitute a misdemeanor or nonviolent felony if committed by an adult shall not be required to participate in competency attainment services beyond his or her 19th birthday and there shall be a rebuttable presumption that competency is not attainable if the juvenile has not attained competency after 90 days of services.

(B) A juvenile charged with an act which would constitute a felony crime of violence if committed by an adult shall not be required to participate in competency attainment services beyond his or her 21st birthday and there shall be a rebuttable presumption that competency is not attainable if the juvenile has not attained competency after 180 days of services.

(4) Not later than 10 judicial days after the court orders competency attainment services, the department shall identify the appropriate entity and location to provide those services.

(5) Within 10 judicial days after the department identifies the appropriate entity and location, the provider responsible for the juvenile's competency attainment services shall commence. The court shall deliver to that provider:

(A) The name and address of the juvenile's counsel;

(B) A copy of the juvenile's petition;

(C) A copy of the competency evaluation report;

(D) The name, address, and phone number of the juvenile's parents or legal guardian;

(E) The name of the department's caseworker, if any; and

(F) Any other relevant documents or reports concerning the juvenile's health that have come to the attention of the court.

(c) The court shall order and conduct review hearings no less often than every 90 days as determined appropriate by the court. The multidisciplinary team shall meet prior to any review hearing and provide a written status report to the court prior to the hearing.

Unless sooner ordered by the court, the qualified forensic evaluator shall submit a report to the court prior to any review hearing, and upon completion or termination of services, and shall include the following:

(1) The services provided to the juvenile, including medication, education, and counseling;

(2) The likelihood that the competency of the juvenile to proceed will be restored within the applicable period of time set forth in subdivision (3), subsection (b) of this section; and

(3) The progress made toward the goals and objectives for the restoration of competency identified in the recommendations from the competency evaluation adopted by the court.

(d) The provider responsible for the juvenile's competency attainment services shall report to the court within three judicial days if he or she determines that:

(1) The juvenile is failing to cooperate, and the lack of cooperation is significantly impeding or precluding the attainment of competency; or

(2) The current setting is no longer the least restrictive setting that is consistent with the juvenile's ability to attain competency taking into account public safety and the best interests of the juvenile. The provider shall include in the report an assessment of the danger the juvenile poses to himself, herself or others and an assessment of the appropriateness of the placement.

(e) The provider responsible for the juvenile's competency attainment services shall request a subsequent evaluation when the provider has reason to believe:

(1) The juvenile has achieved the goals of the plan and would be able to understand the nature and objectives of the proceedings against him or her, to assist in his or her defense, and to understand and appreciate the consequences that may be imposed or result from the proceedings with or without reasonable accommodations; and

(2) The juvenile will not achieve the goals of the plan within the applicable period of time pursuant to subdivision (3), subsection (b) of this section.

(f) The evaluator shall assess the observation of the provider and provide a written report to the court within 10 days of receiving a report from the provider pursuant to subsection (e) of this section.

(g) The court shall provide copies of any report made by the provider to the prosecuting attorney, the juvenile's attorney, the juvenile's case worker, and the juvenile's guardian ad litem, if any. The court shall provide copies of any reports made by the provider to the juvenile's parents or legal guardians, unless the court finds that doing so is not in the best interest of the juvenile.

(h) Within 15 judicial days after receiving an evaluator's report, the court may hold a hearing to determine if new, additional, or further orders are necessary.

(i) If the court determines that the juvenile is not making progress toward competency or is so uncooperative that attainment services cannot be effective, the court may order a change in setting or services that would help the juvenile attain competency within the relevant period of time as set forth in subdivision (3), subsection (b) of this section.

§49-4-734. Disposition alternatives for incompetent juveniles.

(a) If the court determines that the juvenile has attained competency, the court shall proceed with the delinquent juvenile's proceeding in accordance with this article.

(b) After a hearing pursuant to §49-4-732 of this code, if the court determines by the preponderance of the evidence that the juvenile is incompetent to proceed and cannot attain competency within the period of time set forth in §49-4-733(b)(3) of this code, the court may dismiss the petition without prejudice, or may take the following actions or any combination thereof the court determines to be in the juvenile's best interest and the interest of protecting the public:

(1) Refer the matter to the department and request a determination on whether a child abuse or neglect petition, pursuant to §49-4-601 *et seq.* of this code, should be filed;

(2) Refer the juvenile to the department for services pursuant to §49-4-712 of this code. Services may include, but are not limited to, referral of the juvenile and his or her parents, guardians, or custodians and other family members to services for psychiatric or other medical care, or psychological, welfare, legal, education, or other social services, as appropriate to the needs of the juvenile and his or her family;

(3) Place the juvenile in the custody of his or her parents or other suitable person or private or public institution or agency under terms and conditions as determined to be in the best interests of the juvenile and the public, which conditions may include the provision of out-patient services by any suitable public or private agency; or

(4) Upon motion by the prosecuting attorney, stay the proceeding for no more than 20 days to allow the prosecuting attorney to initiate proceedings for civil commitment pursuant to §27-5-1 *et seq.* of this code if the juvenile has attained majority.

(c) A circuit court may, sua sponte or upon a motion by any party direct that a dangerous assessment be performed prior to directing the resolutions set forth in subsection (b) of this section.

§49-4-735. Stay of transfer to criminal jurisdiction.

If a juvenile is presumed incompetent under §49-4-727(c) of this code, or if the issue of the juvenile's competency to participate in the proceedings is raised at any time during the proceedings for a juvenile presumed competent under §49-4-727(b) of this code, the procedures outlined in §49-4-727 through §49-4-734 of this code shall be used to determine the juvenile's competency and if appropriate, restore the juvenile's competency regardless of whether the case is to proceed under the court's juvenile jurisdiction or transfer to adult criminal jurisdiction pursuant to §49-4-710 of this code and corresponding Rules of Juvenile Procedure adopted by the Supreme Court of Appeals of West Virginia.

CHAPTER 52

(Com. Sub. for S. B. 658 - By Senators Grady, Stollings, Baldwin, Woodrum, Romano, Rucker, Lindsay, and Phillips)

[Passed April 9, 2021; in effect 90 days from passage (July 8, 2021)]
[Approved by the Governor on April 26, 2021.]

AN ACT to amend and reenact §7-26-2 of the Code of West Virginia, 1931, as amended, relating to the West Virginia Sheriffs' Bureau of Professional Standards working with the sheriffs of each county of the state to actively participate in and utilize all components of the Handle With Care Program to help trauma-inflicted children in the public or private school system.

Be it enacted by the Legislature of West Virginia:

ARTICLE 26. WEST VIRGINIA SHERIFFS' BUREAU OF PROFESSIONAL STANDARDS.

§7-26-2. General powers and duties; legislative rules.

(a) The bureau may enter into contracts regarding training and operation of state sheriffs' offices. The bureau may recommend policies and procedures to sheriffs' offices, including, but not limited to, those that promote cooperation between all state and local law-enforcement officers, eliminate duplication of work, promote the proper and efficient operation of the office of the sheriff, and which seek to standardize operations of sheriffs' offices throughout the state. The bureau may propose legislative rules which adopt a standard badge, uniform, and color for the motor vehicles used by the various sheriffs and deputy sheriffs of West Virginia.

(b) The bureau may assist the sheriffs of each county of the state to provide Handle With Care program training to law-

enforcement supervisors and patrols and to actively participate in and use all law enforcement-related components of the Handle With Care program to help trauma-inflicted children in the public or private school systems.

CHAPTER 53

(Com. Sub. for H. B. 2094 - By Delegates Graves, Espinosa, Summers, Hanna, B. Ward, Pritt, J. Pack, Burkhammer, L. Pack, Capito and Barnhart)

[Passed April 1, 2021; in effect ninety days from passage.]
[Approved by the Governor on April 15, 2021.]

AN ACT to amend and reenact §49-1-206 of the Code of West Virginia, 1931, as amended; and to amend and reenact §49-4-725 of said code, all relating to the juvenile restorative justice programs; defining the term "restorative justice program"; authorizing a court or prosecuting attorney to offer a juvenile, against whom a petition has been filed alleging that the juvenile has committed certain offenses, the opportunity to participate in a voluntary restorative justice program, where available, at any time prior to disposition of the case; listing offenses alleged to have been committed by a juvenile eligible for participation in a restorative justice program; authorizing the juvenile or victim or both to decline participation in a restorative justice program; providing for future participation in a restorative justice program after any declination by a juvenile or victim or both; requiring certain measures agreed to by the victim and juvenile to be included in a restorative justice program to provide redress to the victim and community; requiring dismissal of a petition against a juvenile upon successful completion of a restorative justice program including all agreed-to measures; clarifying information which is inadmissible against a juvenile in a subsequent proceeding.

Be it enacted by the Legislature of West Virginia:

CHAPTER 49. CHILD WELFARE.

ARTICLE 1. GENERAL PROVISIONS AND DEFINITIONS.

§49-1-206. Definitions related, but not limited to, child advocacy, care, residential, and treatment programs.

When used in this chapter, the following terms have the following meanings, unless the context clearly indicates otherwise:

"Child Advocacy Center (CAC)" means a community-based organization that is a member, in good standing, of the West Virginia Child Advocacy Network, Inc., as set forth in §49-3-101 of this code.

"Child care" means responsibilities assumed and services performed in relation to a child's physical, emotional, psychological, social, and personal needs and the consideration of the child's rights and entitlements, but does not include secure detention or incarceration under the jurisdiction of the Division of Corrections and Rehabilitation pursuant to §49-2-901 *et seq.* of this code. It includes the provision of child care services or residential services.

"Child care center" means a facility maintained by the state or any county or municipality thereof, or any agency or facility maintained by an individual, firm, corporation, association, or organization, public or private, for the care of 13 or more children for child care services in any setting, if the facility is open for more than 30 days per year per child.

"Child care services" means direct care and protection of children during a portion of a 24-hour day outside of the child's own home which provides experiences to children that foster their healthy development and education.

"Child placing agency" means a child welfare agency organized for the purpose of placing children in private family homes for foster care or for adoption. The function of a child placing agency may include the investigation and certification of foster family homes and foster family group homes as provided in this chapter. The function of a child placing agency may also include the supervision of children who are 16 or 17 years of age and living in unlicensed residences.

"Child welfare agency" means any agency or facility maintained by the state or any county or municipality thereof, or any agency or facility maintained by an individual, firm, corporation, association, or organization, public or private, to receive children for care and maintenance or for placement in residential care facilities, including, without limitation, private homes or any facility that provides care for unmarried mothers and their children. A child welfare agency does not include juvenile detention facilities or juvenile correctional facilities operated by or under contract with the Division of Corrections and Rehabilitation, pursuant to §49-2-901 *et seq.* of this code, nor any other facility operated by that division for the secure housing or holding of juveniles committed to its custody.

"Community based" means a facility, program, or service located near the child's home or family and involving community participation in planning, operation, and evaluation and which may include, but is not limited to, medical, educational, vocational, social, and psychological guidance, training, special education, counseling, substance abuse, and any other treatment or rehabilitation services.

"Community-based juvenile probation sanctions" means any of a continuum of nonresidential accountability measures, programs, and sanctions in response to a technical violation of probation, as part of a system of community-based juvenile probation sanctions and incentives, that may include, but are not limited to:

(A) Electronic monitoring;

(B) Drug and alcohol screening, testing, or monitoring;

(C) Youth reporting centers;

(D) Reporting and supervision requirements;

(E) Community service; and

(F) Rehabilitative interventions such as family counseling, substance abuse treatment, restorative justice programs, and behavioral or mental health treatment.

"Community services" means nonresidential prevention or intervention services or programs that are intended to reduce delinquency and future court involvement.

"Evidence-based practices" means policies, procedures, programs, and practices demonstrated by research to reliably produce reductions in the likelihood of reoffending.

"Facility" means a place or residence, including personnel, structures, grounds, and equipment used for the care of a child or children on a residential or other basis for any number of hours a day in any shelter or structure maintained for that purpose. Facility does not include any juvenile detention facility or juvenile correctional facility operated by or under contract with the Division of Corrections and Rehabilitation for the secure housing or holding of juveniles committed to its custody.

"Family child care facility" means any facility which is used to provide nonresidential child care services for compensation for seven to 12 children, including children who are living in the household, who are under six years of age. A facility may be in a provider's residence or a separate building.

"Family child care home" means a facility which is used to provide nonresidential child care services for compensation in a provider's residence. The provider may care for four to six children at one time, including children who are living in the household, who are under six years of age.

"Family resource network" means:

(A) A local community organization charged with service coordination, needs and resource assessment, planning, community mobilization, and evaluation, and which has met the following criteria:

(i) Has agreed to a single governing entity;

(ii) Has agreed to engage in activities to improve service systems for children and families within the community;

(iii) Addresses a geographic area of a county or two or more contiguous counties;

(iv) Has, as the majority of the members of the governing body, nonproviders, which includes family representatives and other members who are not employees of publicly funded agencies, with family representatives as the majority of those members who are nonproviders;

(v) Has members of the governing body who are representatives of local service agencies, including, but not limited to, the public health department, the behavioral health center, the local health and human resources agency, and the county school district; and

(vi) Adheres to principles consistent with the cabinet's mission as part of its philosophy.

(B) A family resource network may not provide direct services, which means to provide programs or services directly to children and families.

"Family support", for the purposes of §49-2-601 *et seq.* of this code, means goods and services needed by families to care for their family members with developmental disabilities and to enjoy a quality of life comparable to other community members.

"Family support program" means a coordinated system of family support services administered by the Department of Health and Human Resources through contracts with behavioral health agencies throughout the state.

"Fictive kin" means an adult of at least 21 years of age, who is not a relative of the child, as defined herein, but who has an established, substantial relationship with the child, including but not limited to, teachers, coaches, ministers, and parents, or family members of the child's friends.

"Foster family home" means a private residence which is used for the care on a residential basis of no more than six children who are unrelated, by blood, marriage, or adoption, to any adult member of the household.

"Foster parent" means a person with whom the department has placed a child and who has been certified by the department, a child placing agency, or another agent of the department to provide foster care.

"Health care and treatment" means:

(A) Developmental screening;

(B) Mental health screening;

(C) Mental health treatment;

(D) Ordinary and necessary medical and dental examination and treatment;

(E) Preventive care including ordinary immunizations, tuberculin testing, and well-child care; and

(F) Nonemergency diagnosis and treatment. However, nonemergency diagnosis and treatment does not include an abortion.

"Home-based family preservation services" means services dispensed by the Department of Health and Human Resources or by another person, association, or group who has contracted with that division to dispense services when those services are intended to stabilize and maintain the natural or surrogate family in order to prevent the placement of children in substitute care. There are two types of home-based family preservation services and they are as follows:

(A) Intensive, short-term intervention of four to six weeks; and

(B) Home-based, longer-term after care following intensive intervention.

"Informal family child care" means a home that is used to provide nonresidential child care services for compensation for three or fewer children, including children who are living in the household who are under six years of age. Care is given in the provider's own home to at least one child who is not related to the caregiver.

"Kinship parent" means a person with whom the department has placed a child to provide a kinship placement.

"Kinship placement" means the placement of the child with a relative of the child, as defined herein, or a placement of a child with a fictive kin, as defined herein.

"Needs Assessment" means an evidence-informed assessment which identifies the needs a child or family has, which, if left unaddressed, will likely increase the chance of reoccurring.

"Nonsecure facility" means any public or private residential facility not characterized by construction fixtures designed to physically restrict the movements and activities of individuals held in lawful custody in that facility and which provides its residents access to the surrounding community with supervision.

"Nonviolent misdemeanor offense" means a misdemeanor offense that does not include any of the following:

(A) An act resulting in bodily injury or death;

(B) The use of firearm or other deadly weapon in the commission of the offense;

(C) A domestic abuse offense involving a significant or likely risk of harm to a family member or household member;

(D) A criminal sexual conduct offense; or

(E) Any offense for driving under the influence of alcohol or drugs.

"Out-of-home placement" means a post-adjudication placement in a foster family home, kinship parent home, group

home, nonsecure facility, emergency shelter, hospital, psychiatric residential treatment facility, staff secure facility, hardware secure facility, detention facility, or other residential placement other than placement in the home of a parent, custodian, or guardian.

"Out-of-school time" means a child care service which offers activities to children before and after school, on school holidays, when school is closed due to emergencies, and on school calendar days set aside for teacher activities.

"Placement" means any temporary or permanent placement of a child who is in the custody of the state in any foster home, kinship parent home, group home, or other facility or residence.

"Pre-adjudicatory community supervision" means supervision provided to a youth prior to adjudication, for a period of supervision up to one year for an alleged status or delinquency offense.

"Regional family support council" means the council established by the regional family support agency to carry out the responsibilities specified in §49-2-601 *et seq.* of this code.

"Relative family child care" means a home that provides nonresidential child care services only to children related to the caregiver. The caregiver is a grandparent, great-grandparent, aunt, uncle, great-aunt, great-uncle, or adult sibling of the child or children receiving care. Care is given in the provider's home.

"Relative of the child" means an adult of at least 21 years of age who is related to the child, by blood or marriage, within at least three degrees.

"Residential services" means child care which includes the provision of nighttime shelter and the personal discipline and supervision of a child by guardians, custodians, or other persons or entities on a continuing or temporary basis. It may include care or treatment, or both, for transitioning adults. Residential services does not include or apply to any juvenile detention facility or juvenile correctional facility operated by the Division of

Corrections and Rehabilitation, created pursuant to this chapter, for the secure housing or holding of juveniles committed to its custody.

"Restorative justice program" means a voluntary, community based program which utilizes evidence-based practices that provide an opportunity for a juvenile to accept responsibility for and participate in setting consequences to repair harm caused by the juvenile against the victim and the community by means of facilitated communication including, but not limited to, mediation, dialogues, or family group conferencing, attended voluntarily by the victim, the juvenile, a facilitator, a victim advocate, community members, or supporters of the victim or the juvenile.

"Risk and needs assessment" means a validated, standardized actuarial tool which identifies specific risk factors that increase the likelihood of reoffending and the factors that, when properly addressed, can reduce the likelihood of reoffending.

"Scattered-site living arrangement" means a living arrangement where youth, 17 to 26 years of age, live in a setting that allows staff to be available as needed, depending on the youth's level of autonomy. Sites for such living arrangements shall be in community environments to allow the youth full access to services and resources in order to fully develop independent living skills.

"Secure facility" means any public or private residential facility which includes construction fixtures designed to physically restrict the movements and activities of juveniles or other individuals held in lawful custody in such facility.

"Staff secure facility" means any public or private residential facility characterized by staff restrictions of the movements and activities of individuals held in lawful custody in such facility, and which limits its residents' access to the surrounding community, but is not characterized by construction fixtures designed to physically restrict the movements and activities of residents.

"Standardized screener" means a brief, validated nondiagnostic inventory or questionnaire designed to identify juveniles in need of further assessment for medical, substance abuse, emotional,

psychological, behavioral, or educational issues, or other conditions.

"State family support council" means the council established by the Department of Health and Human Resources pursuant to §49-2-601 *et seq.* of this code to carry out the responsibilities specified in §49-2-101 *et seq.* of this code.

"Supervised group setting" means a setting where youth, 16 to 21 years of age, live with staff onsite or are available 24 hours per day and seven days per week. In this setting, staff provide face to face daily contact with youth.

"Time-limited reunification services" means individual, group, and family counseling, inpatient, residential, or outpatient substance abuse treatment services, mental health services, assistance to address domestic violence, services designed to provide temporary child care, and therapeutic services for families, including crisis nurseries and transportation to or from those services, provided during 15 of the most recent 22 months a child or juvenile has been in foster or in a kinship placement, as determined by the earlier date of the first judicial finding that the child is subjected to abuse or neglect, or the date which is 60 days after the child or juvenile is removed from home.

"Technical violation" means an act that violates the terms or conditions of probation or a court order that does not constitute a new delinquent offense.

"Truancy diversion specialist" means a school-based probation officer or truancy social worker within a school or schools who, among other responsibilities, identifies truants and the causes of the truant behavior, and assists in developing a plan to reduce the truant behavior prior to court involvement.

ARTICLE 4. COURT ACTIONS.

§49-4-725. Restorative justice programs.

(a) The court or prosecuting attorney may offer a juvenile, against whom a petition has been filed alleging that the juvenile has committed any of the offenses set forth in subsection (b) of this section, the opportunity to participate in a voluntary restorative

justice program, where available, at any time prior to disposition of the case.

(b) A juvenile is eligible to participate in a restorative justice program if the offense that the juvenile is alleged to have committed is:

(1) A status offense;

(2) An offense that would constitute a nonviolent offense if committed by an adult;

(3) An offense that would constitute misdemeanor assault pursuant to §61-2-9(b) of this code if committed by an adult; or

(4) An offense that would constitute misdemeanor battery pursuant to §61-2-9(c) of this code if committed by an adult.

(c) The juvenile or the victim or both may decline and shall not be required to participate in a restorative justice program: *Provided,* That any declination by the juvenile or the victim or both shall not preclude future participation in a restorative justice program during the current proceeding or any subsequent proceeding under this article.

(d) A restorative justice program shall implement measures agreed to by the victim and the juvenile which are designed to provide redress to the victim and community, including, but not limited to, restitution to the victim, restitution to the community, services for the victim, services for the community, or any other reasonable measure intended to provide restitution or services to the victim or the community.

(e) If a juvenile is referred to, and successfully completes, a restorative justice program, including all agreed-to measures pursuant to subsection (d) of this section, the petition against the juvenile shall be dismissed.

(f) No self-incriminating information obtained from the juvenile as the result of a restorative justice program is admissible as evidence against him or her in a subsequent proceeding under this article.

CHAPTER 54

(Com. Sub. for H. B. 2260 - By Delegates J. Pack, Rohrbach, Summers, Longanacre, Rowan, G. Ward, Forsht, Smith, Steele, Espinosa and Barrett)

[Passed March 30, 2021; in effect from passage.]
[Approved by the Governor on April 9, 2021.]

AN ACT to amend and reenact §49-2-111a of the Code of West Virginia, 1931, as amended, relating to the department's obligations to enter into performance-based contracts with child-placing agencies; extending a deadline; and exempting the contract from purchasing.

Be it enacted by the Legislature of West Virginia:

ARTICLE 2. STATE RESPONSIBILITIES FOR CHILDREN

§49-2-111a. Performance based contracting for child placing agencies.

(a) For purposes of this section:

(1) "Child" means:

(A) A person of less than 18 years of age; or

(B) A person 18 to 21 years of age who is eligible to receive the extended foster care services.

(2) "Child-placing agency" means an agency licensed by the department to place a child in a foster care home.

(3) "Department" means the Department of Health and Human Resources.

(4) "Evidence-based" means a program or practice that is cost-effective and includes at least two randomized or statistically controlled evaluations that have demonstrated improved outcomes for its intended population.

(5) "Performance-based contracting" means structuring all aspects of the service contract around the purpose of the work to be performed and the desired results with the contract requirements set forth in clear, specific, and objective terms with measurable outcomes and linking payment for services to contractor performance.

(6) "Promising practice" means a practice that presents, based upon preliminary information, potential for becoming a research-based or consensus-based practice.

(7) "Research-based" means a program or practice that has some research demonstrating effectiveness, but that does not yet meet the standard of evidence-based practices.

(b) No later than July 1, 2021, the department shall enter into performance-based contracts with child placing agencies.

(c) The department shall actively consult with other state agencies and other entities with expertise in performance-based contracting with child placing agencies to develop the requirements of the performance-based contract.

(d) The performance-based contract shall be developed and implemented in a manner that complies with applicable provisions of this code. Contracts for child placing agencies are exempt from §5A-3-1 of this code.

(e) The resulting contracts shall include, but are not limited to, the following:

(1) Adequate capacity to meet the anticipated service needs in the contracted service area of the child placing agency;

(2) The use of evidence-based, research-based, and promising practices, where appropriate, including fidelity and quality assurance provisions;

(3) Child placing agency data reporting, including data on performance and service outcomes, including, but not limited to:

(A) Safety outcomes;

(B) Permanency outcomes;

(C) Well-being outcomes;

(D) Incentives earned;

(E) Placement of older children;

(F) Placement of children with special needs; and

(G) Recruitment and retention of foster parents; and

(4) A hold harmless period to determine a baseline for evaluation.

(f) Performance-based payment methodologies must be used in child placing agency contracting. Performance measures should relate to successful engagement by a child or parent in services included in their case plan, and resulting improvement in identified problem behaviors and interactions. For the first year of implementation of performance-based contracting, the department may transfer financial risk for the provision of services to the child placing agency only to the limited extent necessary to implement a performance-based payment methodology, such as phased payment for services. However, the department may develop a shared savings methodology through which the child placing agency will receive a defined share of any savings that result from improved performance. If the department receives a Title IV-E waiver, the shared savings methodology must be consistent with the terms of the waiver. If a shared savings methodology is adopted, the child placing agency shall reinvest the savings in

enhanced services to better meet the needs of the families and children they serve.

(g) The department shall actively monitor the child placing agency's compliance with the terms of contracts executed under this section.

(h) The use of performance-based contracts under this section shall be done in a manner that does not adversely affect the state's ability to continue to obtain federal funding for child welfare-related functions currently performed by the state and with consideration of options to further maximize federal funding opportunities and increase flexibility in the use of such funds, including use for preventive and in-home child welfare services.

(i) The department shall pay child placing agencies contracted to provide adoption services to foster families a minimum of $1,000 per child for each adoption finalized.

(j) The rate of payment to foster parents and child placing agencies shall be reviewed by the department, at a minimum of every two years, to determine whether the level of foster care payments facilitates or hinders the efficient placement of foster children with West Virginia families. The department shall remit payments to foster parents on the same week each month to facilitate foster parents' ability to budget and appropriately expend payments for the benefit of the children in their custody.

(k) The department shall report the performance of the child placing agency to the Legislative Oversight Commission on Health and Human Resources Accountability by December 31, annually.

CHAPTER 55

(H. B. 2830 - By Delegates Graves, Rowan, D. Jeffries, Riley, Smith, Clark, Steele, Bridges, Holstein, Sypolt and Hanshaw (Mr. Speaker))

[Passed April 8, 2021; in effect ninety days from passage.]
[Approved by the Governor on April 21, 2021.]

AN ACT to amend and reenact §49-5-104 of the Code of West Virginia, 1931, as amended; to amend and reenact §61-8-5 of said code; and to amend and reenact §61-14-2, §61-14-8, and §61-14-9 of said code, all relating to strengthening sex trafficking laws; allowing for accessibility of juvenile adjudication records for child victims of sex trafficking; providing for immunity from prosecution for child victims of sex trafficking; providing for criminal liability of a person who aids, assists, or abets the trafficking of an adult or child; providing that a child victim of sex trafficking be eligible for comprehensive and specialized trauma-informed child welfare services; and allowing a child victim of sex trafficking to expunge records of conviction or juvenile delinquency adjudication; establishing penalties.

Be it enacted by the Legislature of West Virginia:

CHAPTER 49. CHILD WELFARE.

ARTICLE 5. RECORD KEEPING AND DATABASE.

§49-5-104. Confidentiality of juvenile records for children who become of age while a ward of the state or who have been transferred to adult criminal jurisdiction; separate and secure location; penalties; damages; accessibility of records for child victims of sex trafficking.

(a) One year after the juvenile's 18th birthday, or one year after personal or juvenile jurisdiction has terminated, whichever is later, the records of a juvenile proceeding conducted under this chapter, including, but not limited to, law-enforcement files and records, may be kept in a separate secure confidential place and the records may not be inspected except by order of the circuit court.

(b) The records of a juvenile proceeding in which a juvenile was transferred to criminal jurisdiction pursuant to §49-4-710 of this code shall be kept in a separate secure confidential place and the records may not be inspected except by order of the circuit court if the juvenile is subsequently acquitted or found guilty only of an offense other than an offense upon which the waiver or order of transfer was based, or if the offense upon which the waiver or order of transfer was based is subsequently dismissed.

(c) To keep the confidentiality of juvenile records, they shall be returned to the circuit court in which the case was pending and be kept in a separate confidential file. The records shall be physically marked to show that they are to remain confidential and shall be securely kept and filed in a manner so that no one can have access to determine the identity of the juvenile, except upon order of the circuit court.

(d) Marking the juvenile records to show they are to remain confidential has the legal effect of extinguishing the offense as if it never occurred.

(e) The records of a juvenile convicted under the criminal jurisdiction of the circuit court pursuant to §49-4-710(d)(1) of this code may not be marked and kept as confidential.

(f) Any person who willfully violates this section is guilty of a misdemeanor and, upon conviction, shall be fined not more than $1,000, or confined in jail for not more than six months, or both so fined and confined, and is liable for damages in the amount of $300 or actual damages, whichever is greater.

(g) Notwithstanding any other provision of this code, the records of a juvenile victim of sex trafficking within the meaning

of §61-14-1 *et seq.* of this code, may be immediately accessible to the juvenile victim upon written request to the circuit court in which a juvenile delinquency case was pending.

CHAPTER 61. CRIMES AND THEIR PUNISHMENT.

ARTICLE 8. CRIMES AGAINST CHASTITY, MORALITY, AND DECENCY.

§61-8-5. Houses of ill fame and assignation; immunity for minor victims of sex trafficking; penalties; jurisdiction of courts.

(a) Any person who shall keep, set up, maintain, or operate any house, place, building, hotel, tourist camp, other structure, or part thereof, or vehicle, trailer, or other conveyance for the purpose of prostitution, lewdness, or assignation; or who shall own any place, house, hotel, tourist camp, other structure, or part thereof, or trailer or other conveyance knowing the same to be used for the purpose of prostitution, lewdness, or assignation, or who shall let, sublet, or rent any such place, premises, or conveyance to another with knowledge or good reason to know of the intention of the lessee or rentee to use such place, premises, or conveyance for prostitution, lewdness, or assignation; or who shall offer, or offer to secure, another for the purpose of prostitution, or for any other lewd or indecent act; or who shall receive or offer or agree to receive any person into any house, place, building, hotel, tourist camp, or other structure, or vehicle, trailer, or other conveyance for the purpose of prostitution, lewdness, or assignation, or to permit any person to remain there for such purpose; or who for another or others shall direct, take, or transport, or offer or agree to take or transport, or aid or assist in transporting, any person to any house, place, building, hotel, tourist camp, other structure, vehicle, trailer, or other conveyance, or to any other person with knowledge or having reasonable cause to believe that the purpose of such directing, taking, or transporting is prostitution, lewdness, or assignation; or who shall aid, abet, or participate in the doing of any acts herein prohibited, shall, upon conviction for the first offense under this section, be punished by imprisonment in the county jail for a period not less than six months nor more than one year, and by a fine of

not less than $100 and not to exceed $250, and upon conviction for any subsequent offense under this section shall be punished by imprisonment in the penitentiary for a period of not less than one year nor more than five years.

(b) Any person who shall engage in prostitution, lewdness, or assignation, or who shall solicit, induce, entice, or procure another to commit an act of prostitution, lewdness, or assignation; or who shall reside in, enter, or remain in any house, place, building, hotel, tourist camp, or other structure, or enter or remain in any vehicle, trailer, or other conveyance for the purpose of prostitution, lewdness, or assignation; or who shall aid, abet, or participate in the doing of any of the acts herein prohibited, shall, upon conviction for the first offense under this section, be punished by imprisonment in the county jail for a period of not less than 60 days nor more than six months, and by a fine of not less than $50 and not to exceed $100; and upon conviction for the second offense under this section, be punished by imprisonment in the county jail for a period of not less than six months nor more than one year, and by a fine of not less than $100 and not to exceed $250, and upon conviction for any subsequent offense under this section shall be punished by confinement in a state correctional facility for not less than one year nor more than three years: *Provided*, That no minor shall be prosecuted nor held criminally liable for an offense of prostitution in violation this subsection if the court determines that the minor is a victim of an offense under §61-14-1 *et seq.* of this code.

The subsequent offense provision shall apply only to the pimp, panderer, solicitor, operator, or any person benefiting financially or otherwise from the earnings of a prostitute.

(c) All leases and agreements, oral or written, for letting, subletting, or renting any house, place, building, hotel, tourist camp, or other structure which is used for the purpose of prostitution, lewdness, or assignation, shall be void from and after the date of any person who is a party to such an agreement shall be convicted of an offense hereunder. The term "tourist camp" shall include any temporary or permanent buildings, tents, cabins, or

structures, or trailers, or other vehicles which are maintained, offered, or used for dwelling or sleeping quarters for pay.

(d) In the trial of any person, charged with a violation of any of the provisions of this section, testimony concerning the reputation or character of any house, place, building, hotel, tourist camp, or other structure, and of the person or persons who reside in or frequent same, and of the defendant or defendants, shall be admissible in evidence in support of the charge. Justices of the peace shall have concurrent jurisdiction with circuit, intermediate, and criminal courts to try and determine the misdemeanors set forth and described in this section.

ARTICLE 14. HUMAN TRAFFICKING.

§61-14-2. Human trafficking of an individual; aiding and abetting human trafficking; penalties.

(a) Any person who knowingly and willfully traffics an adult, or who knowingly and willfully aids, assists, or abets in any manner in the trafficking of an adult, is guilty of a felony and, upon conviction, shall be confined in a state correctional facility for not less than three nor more than 15 years, fined not more than $200,000, or both confined and fined.

(b) Any person who knowingly and willfully traffics a minor, or who knowingly and willfully aids, assists, or abets in any manner in the trafficking of a minor, is guilty of a felony and, upon conviction, shall be confined in a state correctional facility for not less than five nor more than 20 years, fined not more than $300,000, or both confined and fined.

§61-14-8. Immunity for minor victim of sex trafficking.

(a) In a prosecution or a juvenile prosecution for an offense of prostitution in violation of §61-8-5(b) of this code, a minor shall not be held criminally liable if the court determines that the minor is a victim of an offense under this article: *Provided*, That subject to proof, a minor so charged shall be rebuttably presumed to be a victim under the provisions of this article.

(b) This section does not apply in a prosecution or a juvenile proceeding for any of the other offenses under §61-8-5(b) of this code, including specifically soliciting, inducing, enticing, or procuring another to commit an act or offense of prostitution, unless it is determined by the court that the minor was coerced into the criminal behavior.

(c) A minor who, under subsection (a) or (b) of this section, is not subject to criminal liability or adjudication as a juvenile delinquent is presumed to be an abused child, as defined in §49-1-201 of this code, and may be eligible for services under chapter 49 of this code including, but not limited to, appropriate child welfare services including, but not limited to, comprehensive trauma-informed services that are specialized to the needs of child victims of sexual abuse and exploitation or child sex trafficking victims.

§61-14-9. Petition to vacate and expunge conviction or juvenile delinquency adjudication of sex trafficking victim.

(a) Notwithstanding the age and criminal history limitations set forth in §61-11-26 of this code or the provisions in §49-4-103 of this code, an individual convicted of prostitution in violation of §61-8-5(b) of this code as a direct result of being a victim of trafficking, may apply by petition to the circuit court in the county of conviction or juvenile adjudication to vacate the conviction or adjudication of juvenile delinquency and expunge the record of conviction or record of adjudication of juvenile delinquency. The court may grant the petition upon a finding that the individual's participation in the offense was a direct result of being a victim of trafficking.

(b) A victim of trafficking seeking relief under this section is not required to complete any type of rehabilitation in order to obtain expungement.

(c) A petition filed under subsection (a) of this section, any hearing conducted on the petition, and any relief granted are subject to the procedural requirements of §61-11-26 of this code: *Provided,* That the age or criminal history limitations in that section and the provisions of §49-4-103 of this code are inapplicable to victims of human trafficking.

CHAPTER 56

(Com. Sub. for H. B. 2797 - By Delegates Householder, Boggs, Anderson, Barrett, Criss, Ellington, Espinosa, Gearheart, Pethtel, Riley and Rowan)

[Passed March 25, 2021; in effect from passage.]
[Approved by the Governor on April 5, 2021.]

AN ACT finding and declaring certain claims against the state and its agencies to be moral obligations of the state; and directing the Auditor to issue warrants for the payment thereof.

Be it enacted by the Legislature of West Virginia:

§1. Finding and declaring certain claims against the Legislature, Commission on Special Investigations; Department of Administration, Office of Technology; Department of Arts, Culture, and History, Educational Broadcasting Authority; Board of Medicine; Department of Health & Human Resources; Department of Health & Human Resources, Office of Emergency Medical Services; Department of Homeland Security, Division of Corrections and Rehabilitation; Department of Transportation, Division of Highways; Department of Transportation, Division of Motor Vehicles; Department of Transportation, Public Port Authority; and Department of Veterans Affairs, West Virginia Veterans Nursing Facility to be moral obligations of the state and directing payment thereof.

The Legislature has considered the findings of fact and recommendations reported to it by the Legislative Claims Commission concerning various claims against the state and agencies thereof and, in respect to each of the following claims, the Legislature adopts those findings of fact as its own and in respect of the claims herein, the Legislature has independently made

findings of fact and determinations of award and hereby declares it to be the moral obligation of the state to pay each such claim in the amount specified below and directs the Auditor to issue warrants for the payment thereof out of any fund appropriated and available for the purpose.

(a) Claim against the Legislature, Commission on Special investigations:

(TO BE PAID FROM GENERAL REVENUE FUND)

(1) John's Lock and Key Service $166.15

(b) Claims against the Department of Administration, Office of Technology:

(TO BE PAID FROM SPECIAL REVENUE FUND)

(2) Ricoh USA$3,285.00

(3) State Electric Supply.....$16,624.95

(c) Claim against the Department of Arts, Culture, and History, Educational Broadcasting Authority:

(TO BE PAID FROM GENERAL REVENUE FUND)

(1) Elizabeth Anne McCormick $8,229.00

(d) Claim against the Board of Medicine:

(TO BE PAID FROM SPECIAL REVENUE FUND)

(1) Albertson Consulting, Inc. $19,125.00

(e) Claim against the Department of Health & Human Resources:

(TO BE PAID FROM GENERAL REVENUE FUND)

(1) Manpower of WV, Inc. dba Manpower.....$7,989.39

(f) Claim against the Department of Health & Human Resources, Office of Emergency Medical Services:

(TO BE PAID FROM GENERAL REVENUE FUND)

(1) Premier Construction Group, LLC $34,890.00

(g) Claims against the Department of Homeland Security, Division of Corrections and Rehabilitation:

(TO BE PAID FROM GENERAL REVENUE FUND)

(1) Brian Alt $1,436.22

(2) Jose Cantu.....$196.10

(3) Anthony Cartagena $599.01

(4) Anthony Cartagena $513.09

(5) Anthony Cartagena $774.58

(6) Billy Evans $204.95

(7) Brandon Graham.....$240.05

(8) Thomas Gravely, Jr.....$212.00

(9) Tayron Jerome Griffin $500.00

(10) Mark Harris.....$783.20

(11) Willard Hutchinson.....$18.00

(12) John Maudlin $9.00

(13) Brian Morgan.....$23.59

(14) Chad D. Robinson.....$1,000.00

(15) Joshua Stitley $64.61

(16) WV Regional Jail Authority $4,248,238.76

(h) Claims against Department of Transportation, Division of Highways:

(TO BE PAID FROM STATE ROAD FUND)

(1) Beth Adams and Joseph M. Adams.....$250.00

(2) Frank Adams and Nancy Adams.....$1,000.00

(3) Brenda Adkins and Chris Adkins.....$186.15

(4) Kelli Adkins.....$367.81

(5) Shawn M. Adkins.....$227.63

(6) Lori G. Akers Barton.....$500.00

(7) Chris Allender.....$232.35

(8) Kenneth M. Allison.....$250.00

(9) Osama Al-Omar.....$307.93

(10) Dreama Andrews and Leslie Andrews.....$205.72

(11) Robert R. Antill and Cynthia M. Antill.....$409.70

(12) Stephenson Arbaugh.....$250.00

(13) S. Renee Arruda.....$500.00

(14) Jamie Austin.....$286.18

(15) Tabitha D. Austin and Richard Austin.....$250.00

(16) Bryan Backus.....$74.33

(17) Bryan Backus.....$69.50

(18) Jared Wade Bailey.....$405.11

(19) Eric Wayne Baker.....$808.22

(20) Clyde B. Ball and Margaret A. Ball.....$257.56

(21) Curtis L. Ball, Jr. $945.07

(22) Karon A. Barnard $500.00

(23) Charles Barnett $3,000.00

(24) Jane Ann Bartsch $17,500.00

(25) Amber D. Beller $148.73

(26) Leo Bennett $876.16

(27) Vickie Bennett $175.99

(28) Debra Benson and Russell Benson $172.78

(29) Cassandra Bentley $540.00

(30) Dorthea Berisford $500.00

(31) Kendra E. Berkhouse and Stephen Berkhouse $500.00

(32) Julie E. Blake and Aaron L. Blake $500.00

(33) Kathleen Bland $500.00

(34) Denise Blankenship $171.29

(35) Thomas Blasingim, Jr. and Stephanie Blasingim ...$500.00

(36) Joanne Bonar $183.91

(37) Jenna Born and Derek Born $331.78

(38) James M. Boston $340.62

(39) Danny L. Botkins and Terri E. Botkins $277.55

(40) Michael Bowman and Connie Bowman $243.80

(41) Douglas Branham $426.82

(42) Austin Brislin and Laura Brislin $475.21

(43) Luciana A. Britton $500.00

(44) Joann Brooks $500.00

(45) Elva Marie Brown and Chris Brown $1,000.00

(46) Joel Brown, John Brown and Linda Brown $309.50

(47) Ronald W. Brown $250.00

(48) Michael Brown, Jr. $219.39

(49) Patricia A. Brownfield $1,000.00

(50) Robert S. Browning $467.43

(51) Nancy A. Broyles and David Broyles $500.00

(52) Floyd J. Burdine $250.00

(53) Donald J. Burns $500.00

(54) Crystal L. Bush $500.00

(55) Patrick Butler $100.00

(56) Allen H. Butler, Jr. and E & J Auto Sales $1,956.53

(57) Gina Butts $250.00

(58) Misty Calvert and Michael Calvert $364.00

(59) Leigh Ann Campbell Vankirk $240.24

(60) Molly C. Cancino Murphy $500.00

(61) Cynthia R. Carpenter and John Carpenter $500.00

(62) Virginia Carpenter $100.00

(63) Mary Carter $222.60

(64) John Edward Carter and Deborah Jane Carter.....$130.91

(65) Heath Casto $1,000.00

(66) Anna Wentz Chandler $235.19

(67) Jody Chapman and Leah Chapman $510.39

(68) Jacob L. Chapman, III and Holly Gumbert $257.67

(69) Roger Childers and Mary Childers.....$118.19

(70) City of McMechen.....$1,000.00

(71) David L. Clark and Margaret P. Clark $107.00

(72) Phyllis Sue Clay and Milton Clay, Jr. $500.00

(73) Jeremy Cobb and Megan Cobb $425.51

(74) Loretta Cogar.....$500.00

(75) Cynthia Coleman and Alexandria Musilli.....$1,000.00

(76) Jeffrey S. Conaway.....$296.60

(77) Anthony Conner and Donald Conner.....$991.79

(78) Morgan Conner.....$439.47

(79) Frederick Dean Connors, Sr. $500.00

(80) Carol Sue Cook.....$334.26

(81) Teresa Copley and Teddy Copley $343.12

(82) John Corbett, Admin. Of the Estate
of Lisa Corbett, Deceased $75,000.00

(83) Terry A. Corder $219.35

(84) Korey Coulter $460.74

(85) Sandra N. Counts and Jesse Counts-Nenni $211.85

(86) Kennedy Cowan-Davis and Pamela Cowan.....$500.00

(87) Robert H. Cox.....$2,198.63

(88) Eva G. Crago $310.29

(89) Juanita E. Cremeans $266.62

(90) Troy Crites and Donna Myers $270.30

(91) Richard Cross and Linda Cross $1,000.00

(92) Jesse A. Crouch $170.66

(93) Elizabeth C. Cruikshank and James Arbogast.....$170.13

(94) James M. Cumberledge
and Marcie A. Cumberledge $271.18

(95) Mona Cumberledge $240.51

(96) Edward M. Cyphert $126.00

(97) Donna D'Amico and James D'Amico.....$113.21

(98) Judith M. Damron.....$199.75

(99) Michael R. Davies $213.86

(100) Bobby L. Davis.....$163.24

(101) Jeffrey G. Davis.....$250.00

(102) Charles Day $2,701.36

(103) Cindy Dean and Kylee Dean $228.05

(104) Henry G. Dean and Barbara T. Dean $159.00

(105) James Dean and Vickie Dean $192.60

(106) Nicole Debolt.....$277.72

(107) Gordon Degenhardt $451.47

(108) Shannon E. Delisi $250.00

(109) Sherry Dennison $50.00

(110) Cathy S. Dent.....$440.28

(111) Donna A. Deskins Greene $227.90

(112) Maggie Deweirdt $500.00

(113) Crisha Deyton and James Deyton.....$384.86

(114) Jessica Dianellos.....$634.36

(115) Jane Dinardi and David Dinardi $201.35

(116) Cody Dolin $961.37

(117) James D. Dolin and Sheila Dolin $292.15

(118) Kimberly S. Donnally.....$1,000.00

(119) Courtney M. Dove $252.00

(120) Dennis Driscoll, Sr. $500.00

(121) Allen G. Eastman.....$160.94

(122) Teena M. Edmonds.....$60.42

(123) Ali K. El-Amin and Yuliya A. El-Amin.....$500.00

(124) Timothy Elischer $250.00

(125) Melissa A. Ellis and Christopher Queen $500.00

(126) William R. Ellis, Jr. $199.79

(127) Larry Emerson $98.58

(128) Sherri L. England and Michael England $307.01

(129) Andrew Corin Enoch.....$750.00

(130) Regina Evans $180.29

(131) Carl E. Exline, Jr. $209.29

(132) Justin D. Fields $270.85

(133) Bryce Fink $500.00

(134) Brian L. Finley.....$500.00

(135) Jack G. Finney and Theresa Finney $445.81

(136) Jennifer A. Finnicum $233.20

(137) Deeanna Fleshman and William Fleshman $230.00

(138) William Edward Fogle $347.50

(139) Matthew Patrick Forester $273.32

(140) Stephen J. Fortunato and Dona J. Fortunato.....$500.00

(141) Janet L. Frame and Roger Frame $500.00

(142) Linda Francis and William Clayton $168.00

(143) Bryan Furrow.....$56.17

(144) Vincent A. Gala, Jr. $756.45

(145) Larry Gander $527.43

(146) Patricia Garcia-Torres $200.00

(147) Amy Renee Gay $447.68

(148) Emily Gay and Aaron Gay $327.31

(149) Brent Allen Gearhart $417.62

(150) Ryan M. Geisel and Michael J. Geisel $750.00

(151) Johnny George, Jr. and Johnny George, Sr. $2,024.60

(152) Samuel T. Geso $500.00

(153) Kassee Gibson $2,341.67

(154) Mercedes Glaspell $551.07

(155) Graham Godwin and Thomas Godwin.....$500.00

(156) James E. Goodman $500.00

(157) Laura Greathouse and Rodney Greathouse $712.32

(158) C. Sam Green.....$1,000.00

(159) Julie A. Gross and David Gross $235.36

(160) Julie A. Gross and David Gross $235.36

(161) Stephanie Gunnells and Stephanie Gunnells,
as Admin. Of the Estate of Eugene Brogan.....$500.00

(162) Thomas P. Gunnoe and Linda A. Gunnoe.....$500.00

(163) Eva S. Guthrie $500.00

(164) Jacqueline Guthrie $315.52

(165) Donna Hager and Paul Hager $431.64

(166) Robert Ray Haines and Kelly Haines.....$250.00

(167) Cara Hall.....$112.57

(168) Edmond E. Hall $315.56

(169) Jason Hamilton $500.00

(170) Kathryn Hanifan $500.00

(171) Linda Hapney and John L. Hapney, Sr.....$250.00

(172) Larry Harbison.....$1,000.00

(173) Connie Hardman.....$239.29

(174) Grover Allen Harmon.....$276.62

(175) Jeffrey C. Harrah and Joshua Harrah $188.25

(176) Johnathan Harrah.....$500.00

(177) Anne E. Harris.....$175.89

(178) Harley Hart.....$500.00

(179) Beverly A. Haught.....$487.88

(180) Steven R. Haught.....$500.00

(181) Mary J. Hawkins.....$320.00

(182) Roger A. Hawkins and Fonda Renee Hawkins $25,000.00

(183) Michael R. Hefner.....$113.17

(184) Steve M. Henderson $500.00

(185) Alice Hern $82.00

(186) Mark W. Knotts and Cathy Jo Higgins $250.00

(187) Lois Hill.....$573.51

(188) Stephanie Hitchman and Robert Hitchman $334.04

(189) David A. Hobbs.....$1,222.60

(190) Terri L. Holmes and Keith O. Holmes $148.73

(191) Andrew Holt.....$188.66

(192) Jarin Hongpaisan and Phenphone Suanse $682.01

(193) Charles Hopson $91.16

(194) Melissa M. Howell-Lees $500.00

(195) Shirley June Hubbard.....$370.60

(196) Brandy Hudson.....$321.00

(197) Carol A. Hughes $435.71

(198) Steve Hunt $107.80

(199) Thomas Hutchinson and Joanna Hutchinson $788.01

(200) Michelle Jack.....$500.00

(201) Joseph R. Jackson.....$140.93

(202) Mistie Jackson and Michael Jackson.....$731.60

(203) Lisa A. Baker and Tyler Jarr $176.19

(204) Carolyn Faye Jarrell $1,000.00

(205) Amos Christopher Jarrett.....$309.55

(206) Brock Jarrett $137.84

(207) Haley Jelinek $500.00

(208) Briseis L. Jenkins.....$349.63

(209) Fairley E. Jewell and Melissa J. Jewell $500.00

(210) Steven Joe.....$500.00

(211) James Ray Johnson.....$325.00

(212) Jerry B. Johnson and Barbara J. Johnson $500.00

(213) David Jones and Kathryn Jones.....$578.80

(214) Donna Jones.....$494.48

(215) Kathy Jones $603.53

(216) Lora Jones.....$289.36

(217) Melody R. Jordan $526.02

(218) Michelle Joseph $500.00

(219) Gary R. Justice, Sr. $513.00

(220) Aaron Kalar $1,005.32

(221) Desiree Jane Kimball.....$1,000.00

(222) Jared King.....$244.44

(223) Christopher S. Knapp $134.30

(224) Timothy L. Koch and Kathleen Reilly $500.00

(225) Rosalie Kovalyk $601.92

(226) Glenn W. Kraynie, Jr. $500.00

(227) Brian LaRue and Brittany LaRue $487.60

(228) Marcel Lazare.....$159.43

(229) Valerie Leggett and Jarrel Leggett $500.00

(230) William M. Lemon $243.26

(231) Ryan Scott Lieving.....$95.23

(232) Edward R. Link and Elizabeth Link $50,000.00

(233) Chase Long.....$228.94

(234) Valerie Long.....$500.00

(235) Deborah Lonzer.....$1,875.50

(236) Kelly Loughry $300.00

(237) Rikki McCormick Lowe.....$223.63

(238) Luther Lumley.....$891.07

(239) Michael Lykins.....$2,000.00

(240) Paulette Mabry.....$278.20

(241) Ian MacFawn $680.00

(242) Nicholas Maltese and Stacy Maltese $8,002.00

(243) Douglas Markley $890.43

(244) Barbara Marple $223.89

(245) Carey Marra $216.97

(246) Greg Martin $450.45

(247) Mary Ann Matheny $574.53

(248) Christopher Mattox $164.30

(249) James A. McCord and Cab East LLC $250.00

(250) Dakota A. McCormick $380.00

(251) Elizabeth McDonald and Stephen McDonald $500.00

(252) Nikia McGhee $250.00

(253) Catherine T. McKinney $239.48

(254) Catherine T. McKinney $1,000.00

(255) Mary Kay McQuain $282.70

(256) Jared Lee Melton $238.75

(257) Linda J. Mendetta $250.00

(258) Clara A. Michael $500.00

(259) Jan Miles and Mark Miles $671.86

(260) Ben Millard $453.86

(261) Martha K. Miller $633.81

(262) Nicole Minor and Dwight Minor $231.90

(263) Sharon Klein and Jackie Mitchell.....$480.54

(264) MJ Trucking and Trailer Leasing, Inc.....$1,000.00

(265) Levi Moore and Rene Moore $500.00

(266) Mary M. Moore $500.00

(267) Pamela Mae Moore.....$133.89

(268) Robert C. Moore and Lovetta Moore $417.16

(269) Barbara S. Morris $500.00

(270) Timothy Morris $3,000.00

(271) Jeffrey Lee Morrison $250.00

(272) Linda L. Morton $139.34

(273) Carol S. Moser.....$222.50

(274) Joshua Moss $1,000.00

(275) Mountaineer Contractors, Inc.....$25,900.43

(276) Charles E. Mullins.....$105.90

(277) Justin G. Mullins $250.00

(278) Jessica Muncy, Eric Mills and Mills Service, Inc.....$500.00

(279) Corey Murphy and Lauren Murphy $24,200.00

(280) Norma Jean Murphy.....$340.83

(281) Alexander Murray $390.00

(282) James Murray $306.68

(283) Rebecca Nagy and John Nagy.....$542.93

(284) Melanie K. Naternicola $168.99

(285) Brad D. Nelson $1,000.00

(286) Carder Nicholas $500.00

(287) Robert P. Nichols and Victoria A. Nichols $250.00

(288) Brandon Nicholson and Lisa M. Nicholson $297.39

(289) O.R. Colan Associates, LLC $44,017.00

(290) Valerie L. Oldaker and Jeffrey S. Oldaker $491.84

(291) Reggie Ours $500.00

(292) Joyce C. Overbay.....$392.58

(293) Joyce C. Overbay.....$500.00

(294) David Palmer and Brenda Palmer $500.00

(295) William Pantili and Bilco, Inc. $1,000.00

(296) Michael Parker.....$250.00

(297) Randy A. Parks and Melinda Parks.....$431.02

(298) Sheri L. Parsons.....$500.00

(299) Emmitt C. Patterson.....$306.34

(300) Cecil E. Peck $500.00

(301) Robert Peck and Diana Peck $500.00

(302) Carol L. Phillips.....$130.91

(303) Carol L. Phillips.....$517.16

(304) David E. Pierce and Dave's Auto Repair
of Ritchie County $500.00

(305) Douglas J. Pinn and Cynthia L. Sweitzer $1,000.00

(306) Kellie S. Poore.....$330.63

(307) A. Robert Potesta and Carolyn Potesta.....$197.99

(308) Phyllis Ann Propst and David Propst $5,000.00

(309) Randy Pullen $842.00

(310) Robert E. Queen $500.00

(311) Robert Raley.....$500.00

(312) Stanley W. Ratliff.....$822.21

(313) Louis J. Rauso $500.00

(314) Jerry L. Ray $234.20

(315) Carolyn E. Reed.....$250.00

(316) Rhonda K. Reed and Thomas Reed.....$500.00

(317) Christopher Wayne Reeves $645.29

(318) John W. Reisenweber
and Erin K. Reisenweber.....$16,000.00

(319) Deneane R. Reneau $251.59

(320) Mustafa Rfat and Nazli Khazirova $289.33

(321) Patricia Richardson and William Richardson.....$262.00

(322) Robert Rickard.....$95.40

(323) James R. Ridgeway $185.50

(324) Angela Lorraine Rogers
and James Andrew Rogers $95.00

(325) Viola A. Rogers.....$2,655.00

(326) Irene Renee Rollins $183.83

(327) Chandler Rose $425.69

(328) Beth Ross.....$154.95

(329) Holly Rowan.....$567.63

(330) James J. Rowe $242.74

(331) Michael Rowe.....$500.00

(332) Roger A. Rumbaugh.....$277.00

(333) Andrew Thomas Ryan.....$304.18

(334) George Samsell and Patty Samsell.....$650.00

(335) Jeff Sandy $500.00

(336) Jeffrey W. Sapp, Jr. $500.00

(337) Mohamad Sarraj and Ghaddy Alsaty $500.00

(338) Shawn Scarberry.....$500.00

(339) Erik D. Schafer $1,300.00

(340) Fred F. Schneider, Jr.....$500.00

(341) Delane Schoolcraft and Jennifer Schoolcraft $500.00

(342) Marissa Schrebe.....$1,000.00

(343) Lance E. Schultz.....$392.63

(344) Kristin N. Scullen and Michael A. Scullen $223.72

(345) Sharon Sears $924.37

(346) Timothy See.....$154.58

(347) Stephanie Serig.....$440.00

(348) Martha H. Setterstrom $140.17

(349) Ellen L. Shafer.....$500.00

(350) Shavonna E. Shafer and Jeffrey P. Shafer $266.71

(351) Courtney Shamblin $262.76

(352) Wesley Shanholtzer and Karen Shanholtzer $318.00

(353) Clinton E. Sheets $500.00

(354) Kayla M. Sheets.....$135.00

(355) Larry Shepherd $100.05

(356) Barbara Sherrell, Michael Sherrell and Michael and Barbara Sherrell Living Trust.....$1,000.00

(357) Pamela Shiflett.....$500.00

(358) Rebecca Shilot and Michael Shilot.....$1,000.00

(359) Randy S. Short and Angel D. Short.....$500.00

(360) Steve Short, Jr.....$500.00

(361) Michael G. Simon.....$293.00

(362) Deborah J. Simpkins.....$500.00

(363) Jerry L. Sink and Bonita L. Sink $213.48

(364) Beverly Sisson $254.87

(365) David Sites $1,897.15

(366) Denzil Slaughter $174.90

(367) Joann Slie and Rusty Slie $500.00

(368) Dewey T. Smith.....$250.00

(369) Forrest Smith $82.39

(370) Janice Smith.....$250.00

(371) Sharla Smith $219.64

(372) Sabrina N. Smith and June Haught.....$277.00

(373) Donald K. Smith, II $500.00

(374) Danny R. Smith, Jr. $2,375.00

(375) Mark E. Snapp $250.00

(376) Kenneth D. Snare and Renny S. Snare $284.21

(377) James E. Snead and Hope R. Snead $500.00

(378) Dennis Snider and Donna Snider $280.00

(379) Johnny Brent Snyder, II.....$379.74

(380) Sharon Splane.....$111.25

(381) Kelly Staats and Daniel Staats.....$500.00

(382) Joshua D. Stear $406.58

(383) Douglas Stearns and JMS Natural Gas Consulting, LLC.....$1,000.00

(384) Chanda Stemple.....$198.11

(385) Vicki L. Stemple.....$679.44

(386) Carl Stepek $424.98

(387) Julia Stephens $75.96

(388) Shannon A. Stephens and Erin M-K Stephens.....$465.52

(389) Lila Rae Stetter $228.60

(390) Beverly J. Stickel.....$135.39

(391) Jami T. Stollings and Jennifer Stollings $249.10

(392) Terri Stricklen.....$250.00

(393) Randall P. Stump, Sr. and Virginia Stump.....$90.95

(394) Alan Sturm $169.86

(395) Goldie Suttle.....$200.00

(396) Gregory Swiger $250.00

(397) Ronald P. Syrolo.....$412.00

(398) Cayley Tackett and Robin Tackett $500.00

(399) Raymond R. Taylor and Frances Taylor $101.36

(400) Samantha Taylor.....$500.00

(401) Mark W. Teter $500.00

(402) Richard E. Thoman.....$257.17

(403) Penny Ellen Thompson.....$500.00

(404) Sonda Toney.....$648.43

(405) Jennifer Tucker.....$1,236.00

(406) Jennifer Tucker.....$742.00

(407) Stephanie Tuel and Jeffrey Tuel.....$500.00

(408) Roy H. Tunick $250.00

(409) Angela D. Turner and Richard Turner $644.33

(410) Ira T. Turner $1,500.00

(411) Justin Tyree and Kaylee Tyree $3,600.00

(412) Elijah Underwood.....$4,774.97

(413) Maggie E. Uphold $181.44

(414) Phyllis Van Horn $121.76

(415) Susan Vealey $500.00

(416) Hazel Walker $140.00

(417) Jackie R. Walker $966.12

(418) Brian Wallis $242.45

(419) Derrick G. Walls $372.06

(420) Floyd L. Walters, Jr. $707.12

(421) Floyd L. Walters, Jr. $760.00

(422) Kathy Wayman and Vincent Wayman $319.66

(423) Michael J. Weaver $581.83

(424) Daniel Webb $95.23

(425) David A. Weekley and Diana G. Weekley $250.00

(426) Tracy Westerman $1,962.54

(427) Adrian Hurl White $99.09

(428) Tony White $1,000.00

(429) John Ralph Whitmore $38.77

(430) John Ralph Whitmore $325.00

(431) Myra E. Wickline $448.10

(432) Barbara Wile and James Butcher $250.00

(433) Shelly Willham and David Willham $398.10

(434) Gary W. Williams and Pam Williams $146.59

(435) Peggy S. Williams and Roger Williams $465.55

(436) Britney Williamson $355.66

(437) David A. Wilson and Cheryle A. Wilson $145.22

(438) Ryan E. Wilson.....$913.73

(439) Brenda K. Wolverton and Johnny Wolverton $2,495.00

(440) John M. Woods.....$443.02

(441) Jackie K. Woodson.....$117,050.00

(442) Patricia Wright.....$250.00

(443) Raymond D. Wukeson.....$235.40

(444) Leslie D. Wylie.....$146.99

(445) Stephen A. Yaczola $500.00

(446) John L. Yelcich and Larinda Yelcich $385.30

(447) Sandra D. Yocum $224.01

(448) Aaron M. Zaltzman $500.00

(449) Jeffrey Zemerick.....$256.00

(i) Claim against the Department of Transportation, Division of Motor Vehicles:

(TO BE PAID FROM STATE ROAD FUND)

(1) Paul White Chevrolet.....$357.50

(j) Claim against Department of Transportation, Public Port Authority:

(TO BE PAID FROM SPECIAL REVENUE FUND)

(1) Parsec, Inc.....$29,503.93

(k) Claim against the Department of Veterans Affairs, West Virginia Veterans Nursing Facility:

(TO BE PAID FROM GENERAL REVENUE FUND)

(1) Janet I. Bennett. $3,920.00

The Legislature finds that the above moral obligations and the appropriations made in satisfaction thereof shall be the full compensation for all claimants and that prior to the payments to any claimant provided in this bill, the Legislative Claims Commission shall receive a release from said claimant releasing any and all claims for moral obligations arising from the matters considered by the Legislature in the finding of the moral obligations and the making of the appropriations for said claimant. The Legislative Claims Commission shall deliver all releases obtained from claimants to the department against which the claim was allowed.

CHAPTER 57

(H. B. 2905 - By Delegates Rohrbach, L. Pack, Barnhart and Forsht)

[Passed March 25, 2021; in effect ninety days from passage.]
[Approved by the Governor on April 5, 2021.]

AN ACT to repeal §61-10-21 of the Code of West Virginia, 1931, as amended, relating to the criminal offense of using the word "Doctor" or the abbreviation "Dr.", without specifying the type of degree held.

Be it enacted by the Legislature of West Virginia:

ARTICLE 10. CRIMES AGAINST PUBLIC POLICY.

§61-10-21. Unlawful use of prefix "Doctor" or "Dr." penalty.

[Repealed].

CHAPTER 58

(H. B. 2957 - By Delegates Steele and Foster)

[Passed April 5, 2021; in effect ninety days from passage.]
[Approved by the Governor on April 26, 2021.]

AN ACT to repeal §5-20-1, §5-20-2, §5-20-3, §5-20-4, §5-20-5, §5-20-6, §5-20-7, §5-20-8, and §5-20-9, of the Code of West Virginia, 1931, to repeal §5A-2A-1, §5A-2A-2, §5A-2A-3, and §5A-2A-4, of said code, and to repeal §16-6-13, and §16-6-22a of said code, all relating to the repeal of outdated code sections.

Be it enacted by the Legislature of West Virginia:

CHAPTER 5. GENERAL POWERS AND AUTHORITY OF THE GOVERNOR, SECRETARY OF STATE AND ATTORNEY GENERAL; BOARD OF PUBLIC WORKS; MISCELLANEOUS AGENCIES, COMMISSIONS, OFFICES, PROGRAMS, ETC.

ARTICLE 20. THE GOVERNOR'S COMMISSION ON WILLOW ISLAND.

§5-20-1. Legislative findings, purposes and intent.

[Repealed]

§5-20-2. Governor's commission on Willow Island continued; composition; appointment of members.

[Repealed]

§5-20-3. Powers of the commission.

[Repealed]

§5-20-4. Compensation and expenses of members; expenses of the commission.

[Repealed]

§5-20-5. Executive sessions authorized; demand to be heard in open hearing.

[Repealed]

§5-20-6. Immunity granted to commission members.

[Repealed]

§5-20-7. Privilege granted to commission findings, reports and evidence.

[Repealed]

§5-20-8. Reports of the commission; termination of commission.

[Repealed]

§5-20-9. Interpretation of section.

[Repealed]

CHAPTER 5A. DEPARTMENT OF ADMINISTRATION.

ARTICLE 2A. USE OF ALTERNATIVE FUELS IN STATE-OWNED VEHICLES.

§5A-2A-1. Definitions.

[Repealed]

§5A-2A-2. Purchase or lease of fleet vehicles; use of alternative fuels.

[Repealed]

§5A-2A-3. Regulation of compressed natural gas.

[Repealed]

§5A-2A-4. Prohibition of subsidies or incentive payments.

[Repealed]

CHAPTER 16. PUBLIC HEALTH.

ARTICLE 6. HOTELS AND RESTAURANTS.

§16-6-13. Privies.

[Repealed]

§16-6-22a. Sulfite use warning.

[Repealed]

CHAPTER 59

(H. B. 2958 - By Delegates Steele and Foster)

[Passed April 5, 2021; in effect ninety days from passage.]
[Approved by the Governor on April 21, 2021.]

AN ACT to repeal §10-1-10 of the Code of West Virginia, 1931, as amended; to repeal §19-2A-5 of said code; to repeal §31-3-1, §31-3-2, §31-3-3, §31-3-4, §31-3-5, §31-3-6, §31-3-7, §31-3-8, §31-3-9, §31-3-10, §31-3-11 of said code; to repeal §31-15-12a of said code; and to repeal §34-1-11 of said code, all relating to repealing outdated sections of state code.

Be it enacted by the Legislature of West Virginia:

CHAPTER 10. PUBLIC LIBRARIES; PUBLIC RECREATION; ATHLETIC ESTABLISHMENTS; MONUMENTS AND MEMORIALS; ROSTER OF SERVICEMEN; EDUCATIONAL BROADCASTING AUTHORITY.

ARTICLE 1. PUBLIC LIBRARIES.

§10-1-10. Injury to library property; penalty.

[Repealed]

CHAPTER 19. AGRICULTURE.

ARTICLE 2A. PUBLIC MARKETS.

§19-2A-5. Permits for existing markets.

[Repealed]

CHAPTER 31. CORPORATIONS.

ARTICLE 3. BOOM COMPANIES.

§31-3-1. Consent of State to construction of booms.

[Repealed]

§31-3-2. Powers of boom company; boomage; lien; sale for tolls; free passage of logs.

[Repealed]

§31-3-3. Injuries to property of boom company.

[Repealed]

§31-3-4. Measurement of timber in boom.

[Repealed]

§31-3-5. Removal of timber lodging on lands; damages; taking or carrying away without authority.

[Repealed]

§31-3-6. Obstruction of use of stream to drive logs into boom.

[Repealed]

§31-3-7. Liability of boom company for timber within boom.

[Repealed]

§31-3-8. Meaning of "logs or timber."

[Repealed]

§31-3-9. Injury to mill and other riparian property.

[Repealed]

§31-3-10. Filing marks and brands before driving logs.

[Repealed]

§31-3-11. Obstruction of public roads or fords.

[Repealed]

ARTICLE 15. WEST VIRGINIA ECONOMIC DEVELOPMENT AUTHORITY.

§31-15-12a. Horseshoe pitcher's hall of fame.

[Repealed]

CHAPTER 34. ESTRAYS, DRIFT AND DERELICT PROPERTY.

ARTICLE 1. ESTRAYS AND DRIFT PROPERTY.

§34-1-11. Taking up timber adrift in certain rivers; compensation; sale.

[Repealed]

CHAPTER 60

(H. B. 3175 - By Delegates Fluharty, Capito, L. Pack, Westfall and Pinson)

[Passed April 7, 2021; in effect from passage.]
[Approved by the Governor on April 21, 2021.]

AN ACT to repeal §17A-6E-1, §17A-6E-2, §17A-6E-3, §17A-6E-4, §17A-6E-5, §17A-6E-6, §17A-6E-7, §17A-6E-8, §17A-6E-9, §17A-6E-10, §17A-6E-11, §17A-6E-12, §17A-6E-13, and §17A-6E-14 of the Code of West Virginia, 1931, as amended, all relating to repeal of the motor vehicle salesperson license.

Be it enacted by the Legislature of West Virginia:

ARTICLE 6E. MOTOR VEHICLE SALESPERSON LICENSE.

§17A-6E-1. Findings and purpose.

[Repealed.]

§17A-6E-2. Definitions.

[Repealed.]

§17A-6E-3. License required.

[Repealed.]

§17A-6E-4. Eligibility and issuance of license.

[Repealed.]

§17A-6E-5. Expiration of license, renewal and expired license.

[Repealed.]

§17A-6E-6. Change of employer.

[Repealed.]

§17A-6E-7. Change of address, lost or stolen license, duplicate license.

[Repealed.]

§17A-6E-8. Display of license.

[Repealed.]

§17A-6E-9. Revocation, suspension, or refusal to renew license.

[Repealed.]

§17A-6E-10. Administrative due process.

[Repealed.]

§17A-6E-11. Investigation, matters, confidential.

[Repealed.]

§17A-6E-12. Injunctive relief.

[Repealed.]

§17A-6E-13. Authority for rules.

[Repealed.]

§17A-6E-14. Motor Vehicle Salesperson License Fund.

[Repealed.]

CHAPTER 61

(Com. Sub. for S. B. 5 - By Senators Rucker, Trump, Takubo, Maroney, and Swope)

[Passed March 18, 2021; in effect 90 days from passage (June 16, 2021)]
[Approved by the Governor on March 29, 2021.]

AN ACT to amend and reenact §46A-5-104 and §46A-5-108 of the Code of West Virginia, 1931, as amended; to amend said code by adding thereto a new section, designated §46A-5-109; to amend and reenact §46A-6-106 of said code; and to amend and reenact §46A-8-101 of said code, all relating generally to the West Virginia Consumer Credit and Protection Act and claims arising thereunder; providing criteria for the court to evaluate reasonable attorney's fees and expense awards to the consumer in an action under the act; providing a unified mechanism for pre-suit notices of violation and offers to cure; providing that a cure offer is not admissible at trial of an action under the act, except that a timely delivered cure offer may be presented in a proceeding before the court, after entry of judgment, to determine attorney's fees, if any; providing that either party in a private action under the act may serve upon the other an offer to settle or for judgment to be entered, establishing a process therefor, and providing that if the offer is rejected, the circumstances under which parties may or may not recover attorney's fees; providing for the award of attorney's fees and expenses in actions under the act upon a judicial determination that a claim or defense presented in the case is frivolous; and providing for an effective date.

Be it enacted by the Legislature of West Virginia:

ARTICLE 5. CIVIL LIABILITY AND CRIMINAL PENALTIES.

§46A-5-104. Attorney's fees.

(a) Except as provided in §46A-5-108 and §46A-5-109 of this code, in any cause of action brought under this chapter, the court may award reasonable attorney's fees and expenses to the consumer upon examination of the following factors:

(1) The time and labor required;

(2) The novelty and difficulty of the questions;

(3) The skill requisite to perform the legal service properly;

(4) Preclusion of other employment by the attorney due to acceptance of the case;

(5) The customary fee;

(6) Whether the fee is fixed or contingent;

(7) Time limitations imposed by the client or the circumstances;

(8) The amount involved and the amount of the judgment and any nonmonetary relief obtained;

(9) The experience, reputation, and ability of the attorneys;

(10) The undesirability of the case;

(11) The nature and length of the professional relationship with the client; and

(12) Awards in similar cases.

(b) Upon a finding by the court that a claim brought under this chapter was brought in bad faith and for the purposes of harassment, the court may award reasonable attorney's fees and expenses to the defendant under an analysis of the factors set forth in subsection (a) of this section.

§46A-5-108. Right to cure.

(a) An action may not be brought pursuant to this article and §46A-2-1 *et seq.*, §46A-3-1 *et seq.*, §46A-4-1 *et seq.*, and §46A-6-1 *et seq.* of this code until 45 days after the consumer has informed the creditor, debt collector, seller, or lessor in writing and by certified mail, return receipt requested, to the creditor's, debt collector's, seller's, or lessor's registered agent identified by the creditor, debt collector, seller, or lessor at the Office of the West Virginia Secretary of State or, if not registered with the West Virginia Secretary of State, then to the creditor's, debt collector's, seller's, or lessor's principal place of business, of the alleged violation and the factual basis for the violation. Upon receiving the notice of alleged violation, the creditor, debt collector, seller, or lessor 45 days from receipt by the agent or at the principal place of business referenced in this subsection of the notice of violation but 20 days in the case a cause of action has already been filed to make a cure offer, which shall be provided to the consumer's counsel or, if unrepresented, to the consumer by certified mail, return receipt requested: *Provided*, That the consumer has 20 days from receipt of the cure offer to accept the cure offer or it is deemed refused and withdrawn. When a claim under the provisions set forth in §46A-1-101 of this code is presented as a counterclaim, cross-claim, or third-party claim, the notice of right to cure shall be served with the counterclaim, cross-claim, or third-party claim in any manner permitted by the Rules of Civil Procedure.

(b) If a cure offer is accepted, the creditor, debt collector, seller, or lessor has 20 days to begin effectuating the agreed upon cure and the cure must be completed within a reasonable time.

(c) Any applicable statute of limitations is tolled for the 45-day period set forth in subsection (a) of this section or for the period the effectuation of the cure offer is being performed, whichever is longer.

(d) Nothing in this section prevents a consumer that has accepted a cure offer from bringing a civil action against a creditor, debt collector, seller, or lessor for failing to timely effect the cure offer.

(e) Where an action is brought under this article or §46A-2-1 *et seq.*, §46A-3-1 *et seq.*, §46A-4-1 *et seq.*, and §46A-6-1 *et seq.* of this code, it is a complete defense that a cure offer was made, accepted, and the agreed upon cure was performed. If the court determines that the cure offer was accepted and the agreed upon cure performed, the creditor, debt collector, seller, or lessor is entitled to reasonable attorney's fees and costs attendant to defending the action.

(f) A cure offer is not admissible in any proceeding initiated pursuant to the provisions of this article, except that if the cure offer is timely delivered by the creditor, debt collector, seller, or lessor, then the cure offer may be introduced in a proceeding before the court to determine an award of attorney's fees and expenses, if any, following entry of a judgment. The creditor, debt collector, seller, or lessor is not liable for the consumer's attorney's fees and court costs incurred following delivery of the cure offer unless the actual damages, civil penalties, and any other monetary or equitable relief provided for under this article and §46A-2-1 *et seq.*, §46A-3-1 *et seq.*, §46A-4-1 *et seq.*, and §46A-6-1 *et seq.* of this code are found to have been sustained and awarded, without consideration of attorney's fees and court costs, exceed the value of the cure offer.

§46A-5-109. Offers to settle or of judgment; damages for frivolous claims or defenses.

(a) In a private cause of action under this chapter, at any time more than 30 days after the service of a summons and complaint on a party but not less than 30 days (or 20 days if it is a counteroffer) before trial, either party may serve upon the other party, but shall not file with the court, a written offer to settle a claim under this chapter for the money specified in the offer and to enter into an agreement dismissing the claim or to allow judgment to be entered accordingly. An offer must:

(1) Be in writing and state that it is being made pursuant to this section;

(2) Identify the party or parties making the proposal and the party or parties to whom the proposal is being made;

(3) Identify with specificity the claim or claims the proposal is attempting to resolve;

(4) State with particularity any relevant conditions;

(5) State the total amount of the proposal and, if it includes attorney's fees and expenses, specify the amount offered for the fees and expenses provided that counsel for the plaintiff has provided an estimate of fees and costs to counsel for the defendant upon request;

(6) Include a certificate of service and be served by certified mail, return receipt requested, postage prepaid or by overnight delivery using a nationally recognized carrier.

(b) If a defendant makes an offer under this section which is rejected by the plaintiff, the plaintiff is not entitled to recover attorney's fees or expenses from the date of the offer through the entry of judgment if the final judgment is one of no liability or if the final judgment obtained by the plaintiff, exclusive of attorney's fees and expenses, but inclusive of actual damages, civil penalties, and any other monetary or equitable relief provided for under this chapter, is less than 75 percent of the offer: *Provided*, That if the amount of attorney's fees and expenses were not separately specified in an offer of settlement or judgment, the court may consider any award of attorney's fees and costs earned through the date of the offer in determining whether the total award exceeds 75 percent of the offer. If the judgment entered does not exceed 75 percent of the offer, the defendant may petition the court for reasonable fees and expenses incurred from the date of the offer to the entry of final judgment. Upon petition, the court may award reasonable fees and expenses if it finds that the plaintiff acted without substantial justification or without good faith in rejecting the defendant's offer. If attorney's fees and expenses were specified in the offer, the court may consider whether the defendant's offer concerning plaintiff's attorney's fees and expenses was made in bad faith when determining either party's petition for fees and expenses.

(c) Any offer made under this section shall remain open for 14 days unless sooner withdrawn by a writing served on the offeree prior to acceptance by the offeree. A counteroffer shall be considered a rejection but may serve as an offer under subsection (a) of this section if it is denominated as an offer and meets the requirements of subsection (a) of this section. Acceptance or rejection of the offer by the offeree must be in writing and served upon the offeror. An offer that is neither withdrawn nor accepted within 14 days shall be considered rejected. The fact that an offer is made but not accepted does not preclude no more than two amended offers. If an offer is made or amended under this section, all prior offers made by that party, including any cure offer made under §46A-5-108 of this code, are null and void. Evidence of an offer is not admissible except in proceedings to enforce a settlement or to determine reasonable attorney's fees and expenses under this section.

(d) If an appeal is taken from the judgment, the court shall order payment of reasonable attorney's fees and expenses of litigation only upon order affirming the judgment, or in which the person or entity seeking attorney's fees and expenses otherwise substantially prevail on appeal.

(e) Upon motion by the prevailing party at the time that the verdict or judgment is rendered, the moving party may request that the court determine whether the opposing party presented a frivolous claim or defense. In that event, the court shall hold a separate bifurcated hearing in which the court shall make a determination of whether the frivolous claims or defenses were asserted and to award damages, if any, against the party presenting the frivolous claims or defenses. Under this subsection:

(1) Frivolous claims shall include, but are not limited to, the following:

(A) A claim, defense, or other position that lacks substantial justification or that is not made in good faith or that is made with malice or a wrongful purpose;

(B) A claim, defense, or other position with respect to which there existed such a complete absence of any justiciable issue of law or fact that it could not be reasonably believed that a court would accept the asserted claim, defense, or other position; and/or

(C) A claim, defense, or other position that was interposed for delay or harassment;

(2) Damages awarded may include reasonable attorney's fees and expenses of litigation.

ARTICLE 6. GENERAL CONSUMER PROTECTION.

§46A-6-106. Private causes of action.

(a) Subject to subsection (b) of this section, any person who purchases or leases goods or services and thereby suffers an ascertainable loss of money or property, real or personal, as a result of the use or employment by another person of a method, act, or practice prohibited or declared to be unlawful by the provisions of this article may bring an action in the circuit court of the county in which the seller or lessor resides or has his or her principal place of business or is doing business, or as provided for in §46A-1-1 and §46A-1-2 of this code, to recover actual damages or $200, whichever is greater. The court may, in its discretion, provide such equitable relief it considers necessary or proper. Any party to an action for damages under this subsection has the right to demand a jury trial.

(b) An award of damages in an action pursuant to subsection (a) of this section may not be made without proof that the person seeking damages suffered an actual out-of-pocket loss that was proximately caused by a violation of this article. If a person seeking to recover damages for a violation of this article alleges that an affirmative misrepresentation is the basis for his or her claim then he or she must prove that the deceptive act or practice caused him or her to enter into the transaction that resulted in his or her damages. If a person seeking to recover damages for a violation of this article alleges that the concealment or omission of information is the basis for his or her claim, then he or she must prove that the person's loss was proximately caused by the concealment or omission.

(c) Any permanent injunction, judgment, or order of the court under §46A-7-108 of this code for a violation of §46A-6-104 of this code is prima facie evidence in an action brought pursuant to the provisions of this section that the respondent used or employed a method, act, or practice declared unlawful by §46A-6-104 of this code.

ARTICLE 8. OPERATIVE DATE AND PROVISIONS FOR TRANSITION.

*§46A-8-101. Time of becoming operative; provisions for transition; enforceability of prior transactions; applicability and effective dates of amendments.

(a) Except as otherwise provided in this section, this chapter became operative at 12:01 a.m. on September 1, 1974.

(b) Notwithstanding the provisions of subsection (a) of this section, in order to allow sufficient time to prepare for the implementation and operation of this chapter and to act on applications for licenses to make regulated consumer loans under this chapter, as amended, the provisions of §46A-4-1 *et seq.* of this code relating to regulated consumer lenders, and the provisions of §46A-7-4 of this code relating to their administration, shall, to the extent necessary, became operative for such purposes at 12:01 a.m. on September 1, 1996.

(c) Transactions entered into before this chapter becomes operative and the rights, duties, and interests flowing from them thereafter may be terminated, completed, consummated, or enforced as required or permitted by any statute, rule of law, or other law amended, repealed, or modified by this chapter as though the repeal, amendment, or modification had not occurred, but this chapter applies to:

(1) Refinancings and consolidations made after this chapter becomes operative of consumer credit sales, consumer leases, and consumer loans whenever made;

***NOTE:** This section was also amended by S. B. 401 (Chapter 62), which passed subsequent to this act.

(2) Consumer credit sales or consumer loans made after this chapter becomes operative pursuant to revolving charge accounts or revolving loan accounts entered into, arranged, or contracted for before this chapter becomes operative; and

(3) All consumer credit transactions made before this chapter becomes operative insofar as this chapter limits the remedies of creditors.

(d) *Applicability.* —

(1) The amendments made during the regular session of the Legislature, 2017, to §46A-2-105 of this code shall apply to consumer credit sales or consumer loans entered into on after the effective date of those amendments. The amendments made during the regular session of the Legislature, 2017, to §46A-2-128 and §46A-2-140 of this code, shall apply to all causes of accruing on or after the effective date of those amendments. The amendments made during the regular session of the Legislature, 2017, to §46A-2-122 and §46A-5-108 of this code shall apply to all causes of action filed on or after the effective date of those amendments.

(2) The amendments made during the regular session of the Legislature, 2021, to §46A-5-104, §46A-5-108, §46A-5-109, and §46A-6-106 of this code shall apply to all causes of action filed on or after the effective date of those amendments.

CHAPTER 62

(Com. Sub. for S. B. 401 - By Senator Nelson)

[Passed April 6, 2021; in effect 90 days from passage (July 5, 2021)]
[Approved by the Governor on April 26, 2021.]

AN ACT to amend and reenact §46A-6-105 of the Code of West Virginia, 1931, as amended; and to amend and reenact §46A-8-101 of said code, all relating to the Consumer Credit and Protection Act; excluding time, savings, and demand accounts offered by a bank from general consumer protection claims; and providing for an effective date.

Be it enacted by the Legislature of West Virginia:

ARTICLE 6. GENERAL CONSUMER PROTECTION.

§46A-6-105. Exempted transactions.

(a) This article does not apply to acts done by the publisher, owner, agent, or employee of a newspaper, periodical, or radio or television station in the publication or dissemination of an advertisement, when the owner, agent, or employee did not have knowledge of the false, misleading, or deceptive character of the advertisement, did not prepare the advertisement, and did not have a direct financial interest in the sale or distribution of the advertised goods or services.

(b) This article does not apply to time, savings, or demand deposit accounts provided by a bank as defined in §31A-1-2 of this code.

ARTICLE 8. OPERATIVE DATE AND PROVISIONS FOR TRANSITION.

*§46A-8-101. Time of becoming operative; provisions for transition; enforceability of prior transactions; applicability and effective dates of amendments.

(a) Except as otherwise provided in this section, this chapter shall become operative at 12:01 a.m. on September 1, 1974.

(b) Notwithstanding the provisions of subsection (a) of this section, in order to allow sufficient time to prepare for the implementation and operation of this chapter and to act on applications for licenses to make regulated consumer loans under this chapter as amended, the provisions of §46A-4-1 *et seq.* of this code relating to regulated consumer lenders, and the provisions of §46A-7-1 *et seq.* of this code relating to their administration, shall, to the extent necessary, become operative for such purposes at 12:01 a.m. on September 1, 1996.

(c) Transactions entered into before this chapter becomes operative and the rights, duties, and interests flowing from them thereafter may be terminated, completed, consummated, or enforced as required or permitted by any statute, rule of law, or other law amended, repealed, or modified by this chapter as though the repeal, amendment, or modification had not occurred, but this chapter applies to:

(1) Refinancings and consolidations made after this chapter becomes operative of consumer credit sales, consumer leases, and consumer loans whenever made;

(2) Consumer credit sales or consumer loans made after this chapter becomes operative pursuant to revolving charge accounts or revolving loan accounts entered into, arranged, or contracted for before this chapter becomes operative; and

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***NOTE:** This section was also amended by S. B. 5 (Chapter 61), which passed prior to this act

(3) All consumer credit transactions made before this chapter becomes operative insofar as this chapter limits the remedies of creditors.

(d) *Applicability.* —

(1) The amendments made during the regular session of the Legislature, 2017, to §46A-2-105 of this code shall apply to consumer credit sales or consumer loans entered into on after the effective date of those amendments. The amendments made during the regular session of the Legislature, 2017, to §46A-2-128 and §46A-2-140 of this code, shall apply to all causes of accruing on or after the effective date of those amendments. The amendments made during the regular session of the Legislature, 2017, to §46A-2-122 and §46A-5-108 of this code shall apply to all causes of action filed on or after the effective date of those amendments.

(2) The amendments made during the regular session of the Legislature, 2021, to §46A-5-104, §46A-5-108, §46A-5-109, §46A-6-105, and §46A-6-106 of this code shall apply to all causes of action filed on or after the effective date of those amendments.

CHAPTER 63

(H. B. 2028 - By Delegates Summers, J. Pack and Rohrbach)

[Passed April 5, 2021; in effect ninety days from passage.]
[Approved by the Governor on April 19, 2021.]

AN ACT to amend and reenact §60A-9-2 of the Code of West Virginia, 1931, as amended, relating to exempting a veterinarian from the requirements of controlled substance monitoring.

Be it enacted by the Legislature of West Virginia:

§60A-9-2. Establishment of program; purpose.

There is continued a West Virginia controlled substances monitoring act the purpose of which is to require the recordation and retention in a single repository of information regarding the prescribing, dispensing and consumption of certain controlled substances. A veterinarian is exempt from the requirements of this article.

CHAPTER 64

(H. B. 2262 - By Delegates Rohrbach, J. Pack, Summers, G. Ward, Smith, Steele, Espinosa and Worrell)

[Passed March 2, 2021; in effect ninety days from passage.]
[Approved by the Governor on March 10, 2021.]

AN ACT to amend and reenact §60A-9-5 and §60A-9-5a of the Code of West Virginia, 1931, as amended, all relating to the controlled substances monitoring database; removing the requirement that a veterinarian monitor the controlled substance monitoring database; adding the requirement that a pharmacist licensed by the West Virginia Board of Pharmacy monitor the controlled substance database; and updating the code to reflect previous changes.

Be it enacted by the Legislature of West Virginia:

ARTICLE 9. CONTROLLED SUBSTANCES MONITORING.

§60A-9-5. Confidentiality; limited access to records; period of retention; no civil liability for required reporting.

(a)(1) The information required by this article to be kept by the Board of Pharmacy is confidential and not subject to the provisions of §29B-1-1 *et seq.* of this code or obtainable as discovery in civil matters absent a court order and is open to inspection only by inspectors and agents of the Board of Pharmacy, members of the West Virginia State Police expressly authorized by the Superintendent of the West Virginia State Police to have access to the information, authorized agents of local law-enforcement agencies as members of a federally affiliated drug task force, authorized agents of the federal Drug Enforcement Administration, duly authorized agents of the Bureau for Medical Services, duly authorized agents of the Office of the Chief Medical Examiner for

use in post-mortem examinations, duly authorized agents of the Office of Health Facility Licensure and Certification for use in certification, licensure, and regulation of health facilities, duly authorized agents of licensing boards of practitioners in this state and other states authorized to prescribe Schedules II, III, IV, and V controlled substances, prescribing practitioners and pharmacists, a dean of any medical school or his or her designee located in this state to access prescriber level data to monitor prescribing practices of faculty members, prescribers, and residents enrolled in a degree program at the school where he or she serves as dean, a physician reviewer designated by an employer of medical providers to monitor prescriber level information of prescribing practices of physicians, advance practice registered nurses, or physician assistants in their employ, and a chief medical officer of a hospital or a physician designated by the chief executive officer of a hospital who does not have a chief medical officer, for prescribers who have admitting privileges to the hospital or prescriber level information, and persons with an enforceable court order or regulatory agency administrative subpoena. All law-enforcement personnel who have access to the Controlled Substances Monitoring Program Database shall be granted access in accordance with applicable state laws and the Board of Pharmacy's rules, shall be certified as a West Virginia law-enforcement officer and shall have successfully completed training approved by the Board of Pharmacy. All information released by the Board of Pharmacy must be related to a specific patient or a specific individual or entity under investigation by any of the above parties except that practitioners who prescribe or dispense controlled substances may request specific data related to their Drug Enforcement Administration controlled substance registration number or for the purpose of providing treatment to a patient: *Provided*, That the West Virginia Controlled Substances Monitoring Program Database Review Committee established in §60A-9-5(b) of this code is authorized to query the database to comply with §60A-9-5(b) of this code.

(2) Subject to the provisions of §60A-9-5(a)(1) of this code, the Board of Pharmacy shall also review the West Virginia Controlled Substances Monitoring Program Database and issue reports that

identify abnormal or unusual practices of patients and practitioners with prescriptive authority who exceed parameters as determined by the advisory committee established in this section. The Board of Pharmacy shall communicate with practitioners and dispensers to more effectively manage the medications of their patients in the manner recommended by the advisory committee. All other reports produced by the Board of Pharmacy shall be kept confidential. The Board of Pharmacy shall maintain the information required by this article for a period of not less than five years. Notwithstanding any other provisions of this code to the contrary, data obtained under the provisions of this article may be used for compilation of educational, scholarly, or statistical purposes, and may be shared with the West Virginia Department of Health and Human Resources for those purposes, as long as the identities of persons or entities and any personally identifiable information, including protected health information, contained therein shall be redacted, scrubbed, or otherwise irreversibly destroyed in a manner that will preserve the confidential nature of the information. No individual or entity required to report under §60A-9-4 of this code may be subject to a claim for civil damages or other civil relief for the reporting of information to the Board of Pharmacy as required under and in accordance with the provisions of this article.

(3) The Board of Pharmacy shall establish an advisory committee to develop, implement, and recommend parameters to be used in identifying abnormal or unusual usage patterns of patients and practitioners with prescriptive authority in this state. This advisory committee shall:

(A) Consist of the following members: A physician licensed by the West Virginia Board of Medicine; a dentist licensed by the West Virginia Board of Dental Examiners; a physician licensed by the West Virginia Board of Osteopathic Medicine; a licensed physician certified by the American Board of Pain Medicine; a licensed physician board certified in medical oncology recommended by the West Virginia State Medical Association; a licensed physician board certified in palliative care recommended by the West Virginia Center on End of Life Care; a pharmacist licensed by the West Virginia Board of Pharmacy; a licensed

physician member of the West Virginia Academy of Family Physicians; an expert in drug diversion; and such other members as determined by the Board of Pharmacy.

(B) Recommend parameters to identify abnormal or unusual usage patterns of controlled substances for patients in order to prepare reports as requested in accordance with §60A-9-5(a)(2) of this code.

(C) Make recommendations for training, research, and other areas that are determined by the committee to have the potential to reduce inappropriate use of prescription drugs in this state, including, but not limited to, studying issues related to diversion of controlled substances used for the management of opioid addiction.

(D) Monitor the ability of medical services providers, health care facilities, pharmacists, and pharmacies to meet the 24-hour reporting requirement for the Controlled Substances Monitoring Program set forth in §60A-9-3 of this code, and report on the feasibility of requiring real-time reporting.

(E) Establish outreach programs with local law enforcement to provide education to local law enforcement on the requirements and use of the Controlled Substances Monitoring Program Database established in this article.

(b) The Board of Pharmacy shall create a West Virginia Controlled Substances Monitoring Program Database Review Committee of individuals consisting of two prosecuting attorneys from West Virginia counties, two physicians with specialties which require extensive use of controlled substances and a pharmacist who is trained in the use and abuse of controlled substances. The review committee may determine that an additional physician who is an expert in the field under investigation be added to the team when the facts of a case indicate that the additional expertise is required. The review committee, working independently, may query the database based on parameters established by the advisory committee. The review committee may make determinations on a case-by-case basis on specific unusual prescribing or dispensing patterns indicated by outliers in the system or abnormal or unusual

usage patterns of controlled substances by patients which the review committee has reasonable cause to believe necessitates further action by law enforcement or the licensing board having jurisdiction over the practitioners or dispensers under consideration. The licensing board having jurisdiction over the practitioner or dispenser under consideration shall report back to the Board of Pharmacy regarding any findings, investigation, or discipline resulting from the findings of the review committee within 30 days of resolution of any action taken by the licensing board resulting from the information provided by the Board of Pharmacy. The review committee shall also review notices provided by the chief medical examiner pursuant to §61-12-10(h) of this code and determine on a case-by-case basis whether a practitioner who prescribed or dispensed a controlled substance resulting in or contributing to the drug overdose may have breached professional or occupational standards or committed a criminal act when prescribing the controlled substance at issue to the decedent. Only in those cases in which there is reasonable cause to believe a breach of professional or occupational standards or a criminal act may have occurred, the review committee shall notify the appropriate professional licensing agency having jurisdiction over the applicable practitioner or dispenser and appropriate law-enforcement agencies and provide pertinent information from the database for their consideration. The number of cases identified shall be determined by the review committee based on a number that can be adequately reviewed by the review committee. The information obtained and developed may not be shared except as provided in this article and is not subject to the provisions of §29B-1-1 *et seq.* of this code or obtainable as discovering in civil matters absent a court order.

(c) The Board of Pharmacy is responsible for establishing and providing administrative support for the advisory committee and the West Virginia Controlled Substances Monitoring Program Database Review Committee. The advisory committee and the review committee shall elect a chair by majority vote. Members of the advisory committee and the review committee may not be compensated in their capacity as members but shall be reimbursed for reasonable expenses incurred in the performance of their duties.

(d) The Board of Pharmacy shall promulgate rules with advice and consent of the advisory committee, after consultation with the licensing boards set forth in §60A-9-5(d)(4) of this code and in accordance with the provisions of §29A-3-1 *et seq.* of this code. The legislative rules must include, but shall not be limited to, the following matters:

(1) Identifying parameters used in identifying abnormal or unusual prescribing or dispensing patterns;

(2) Processing parameters and developing reports of abnormal or unusual prescribing or dispensing patterns for patients, practitioners, and dispensers;

(3) Establishing the information to be contained in reports and the process by which the reports will be generated and disseminated;

(4) Dissemination of these reports at least quarterly to:

(A) The West Virginia Board of Medicine codified in §30-3-1 *et seq.* of this code;

(B) The West Virginia Board of Osteopathic Medicine codified in §30-14-1 *et seq.* of this code;

(C) The West Virginia Board of Examiners for Registered Professional Nurses codified in §30-7-1 *et seq.* of this code;

(D) The West Virginia Board of Dentistry codified in §30-4-1 *et seq.* of this code; and

(E) The West Virginia Board of Optometry codified in §30-8-1 *et seq.* of this code; and

(5) Setting up processes and procedures to ensure that the privacy, confidentiality, and security of information collected, recorded, transmitted, and maintained by the review committee is not disclosed except as provided in this section.

(e) Persons or entities with access to the West Virginia Controlled Substances Monitoring Program Database pursuant to

this section may, pursuant to rules promulgated by the Board of Pharmacy, delegate appropriate personnel to have access to said database.

(f) Good faith reliance by a practitioner on information contained in the West Virginia Controlled Substances Monitoring Program Database in prescribing or dispensing or refusing or declining to prescribe or dispense a Schedule II, III, IV, or V controlled substance shall constitute an absolute defense in any civil or criminal action brought due to prescribing or dispensing or refusing or declining to prescribe or dispense.

(g) A prescribing or dispensing practitioner may notify law enforcement of a patient who, in the prescribing or dispensing practitioner's judgment, may be in violation of §60A-4-410 of this code, based on information obtained and reviewed from the Controlled Substances Monitoring Program Database. A prescribing or dispensing practitioner who makes a notification pursuant to this subsection is immune from any civil, administrative, or criminal liability that otherwise might be incurred or imposed because of the notification if the notification is made in good faith.

(h) Nothing in the article may be construed to require a practitioner to access the West Virginia Controlled Substances Monitoring Program Database except as provided in §60A-9-5 of this code.

(i) The Board of Pharmacy shall provide an annual report on the West Virginia Controlled Substances Monitoring Program to the Legislative Oversight Commission on Health and Human Resources Accountability with recommendations for needed legislation no later than January 1 of each year.

§60A-9-5a. Practitioner requirements to access database and conduct annual search of the database; required rulemaking.

(a) All practitioners, as that term is defined in §60A-2-201 of this code who prescribe or dispense Schedule II, III, IV or V controlled substances shall register with the West Virginia

Controlled Substances Monitoring Program and obtain and maintain online or other electronic access to the program database: *Provided*, That compliance with the provisions of this subsection must be accomplished within 30 days of the practitioner obtaining a new license: *Provided, however*, That the Board of Pharmacy may renew a practitioner's license without proof that the practitioner meet the requirements of this subsection.

(b) All persons with prescriptive or dispensing authority and in possession of a valid Drug Enforcement Administration registration identification number and who are licensed by the Board of Medicine as set forth in §30-3-1 *et seq.* of this code, the Board of Registered Professional Nurses as set forth in §30-7-1 *et seq.* of this code, the Board of Dental Examiners as set forth in §30-4-1 *et seq.* of this code, the Board of Osteopathic Medicine as set forth in §30-14-1 *et seq.* of this code, the West Virginia Board of Optometrists as set forth in §30-8-1 *et seq.* of this code, and a pharmacist licensed by the West Virginia Board of Pharmacy as set forth in §30-5-1 *et seq.* upon initially prescribing or dispensing any Schedule II controlled substance, any opioid or any benzodiazepine to a patient who is not suffering from a terminal illness, and at least annually thereafter should the practitioner or dispenser continue to treat the patient with a controlled substance, shall access the West Virginia Controlled Substances Monitoring Program Database for information regarding specific patients. The information obtained from accessing the West Virginia Controlled Substances Monitoring Program Database for the patient shall be documented in the patient's medical record maintained by a private prescriber or any inpatient facility licensed pursuant to the provisions of chapter 16 of this code. A pain-relieving controlled substance shall be defined as set forth in §30-3A-1 of this code.

(c) The various boards mentioned in §60A-9-5(b) of this code shall amend its legislative rules pursuant to the provisions of §29A-3-1 *et seq.* of this code to effectuate the provisions of this article.

CHAPTER 65

(H. B. 3081 - By Delegates Westfall, Hott, Barnhart, Bates, Criss, Espinosa, Garcia, Lovejoy, Reed, Rowe and Williams)

[Passed April 2, 2021; in effect from passage.]
[Approved by the Governor on April 26, 2021.]

AN ACT to amend and reenact §31D-7-708 of the Code of West Virginia, 1931, as amended; and to amend and reenact §31E-7-708 of said code, all relating to remote communications for shareholder meetings; amending the West Virginia Business Corporation Act and the West Virginia Nonprofit Corporation Act; authorizing corporations to conduct shareholder meetings by remote communication; requiring shareholder meetings by remote communications be subject to guidelines and procedures; providing the board of directors the authority to set a shareholder meeting by remote communication; authorizing nonprofit corporations to conduct member meetings by remote communication; requiring member meetings by remote communications be subject to guidelines and procedures; and providing the board of directors the authority to set a member meeting by remote communication and making the amendments effective upon passage.

Be it enacted by the Legislature of West Virginia:

CHAPTER 31D. WEST VIRGINIA BUSINESS CORPORATION ACT.

ARTICLE 7. SHAREHOLDERS.

§ 31D-7-708. Conduct of the meeting.

(a) At each meeting of shareholders, a chair shall preside. The chair is to be appointed as provided in the bylaws or, in the absence of a provision in the bylaws, by the board of directors.

(b) The chair, unless the articles of incorporation or bylaws provide otherwise, shall determine the order of business and has the authority to establish rules for the conduct of the meeting.

(c) Any rules adopted for, and the conduct of, the meeting are to be fair to shareholders.

(d) The chair of the meeting shall announce at the meeting when the polls close for each matter voted upon. If no announcement is made, the polls are to be deemed to have closed upon the final adjournment of the meeting. After the polls close, no ballots, proxies or votes nor any revocations or changes to a ballot, proxy or vote may be accepted.

(e) Shareholders of any class or series of shares may participate in any meeting of shareholders by means of remote communication to the extent the board of directors authorizes such participation for such class or series. Participation as a shareholder by means of remote communication shall be subject to such guidelines and procedures as the board of directors adopts.

(f) Shareholders participating in a shareholders' meeting by means of remote communication shall be deemed present and may vote at such a meeting if the corporation has implemented reasonable measures to:

(1) Verify that each person participating remotely as a shareholder is a shareholder or a shareholder's proxy; and

(2) Provide such shareholders a reasonable opportunity to participate in the meeting and to vote on matters submitted to the shareholders, including an opportunity to read or hear the proceedings of the meetings, in a manner substantially concurrent with such proceedings.

(g) Unless expressly prohibited by the articles of incorporation or bylaws, the board of directors may determine that any meeting of shareholders shall not be held at any place and shall instead be held solely by means of remote communication in conformity with subsection (f).

(h) Amendments to this § 31D-7-708 passed during the regular session of the 2021 Legislative Session shall be effective upon passage and shall apply to all such shareholder meetings held on or after March 1, 2020.

CHAPTER 31E. WEST VIRGINIA NONPROFIT CORPORATION ACT

ARTICLE 7. MEMBERS – MEETINGS AND VOTING

§ 31E-7-708. Conduct of the meeting

(a) At each meeting of members, a chair must preside. The chair is to be appointed as provided in the bylaws or, in the absence of a provision in the bylaws, by the board of directors.

(b) The chairperson, unless the articles of incorporation or bylaws provide otherwise, shall determine the order of business and has the authority to establish rules for the conduct of the meeting.

(c) Any rules adopted for, and the conduct of, the meeting are to be fair to members.

(d) The chair of the meeting shall announce at the meeting when the polls close for each matter voted upon. If no announcement is made, the polls are to be deemed to have closed upon the final adjournment of the meeting. After the polls close, no ballots, proxies or votes, nor any revocations or changes to a ballot, proxy or vote, may be accepted.

(e) Any member may participate in any meeting of members by means of remote communication to the extent the board of directors authorizes such participation for members. Participation as a member by means of remote communication shall be subject to such guidelines and procedures as the board of directors adopts.

(f) Members participating in a members' meeting by means of remote communication shall be deemed present and may vote at such a meeting if the corporation has implemented reasonable measures to:

(1) Verify that each person participating remotely as a member is a member or a member's proxy; and

(2) Provide such members a reasonable opportunity to participate in the meeting and to vote on matters submitted to the members, including an opportunity to read or hear the proceedings of the meetings, in a manner substantially concurrent with such proceedings.

(g) Unless expressly prohibited by the articles of incorporation or bylaws, the board of directors may determine that any meeting of members shall not be held at any place and shall instead be held solely by means of remote communication in conformity with subsection (f).

(h) Amendments to this § 31E-7-708 passed during the regular session of the 2021 Legislative Session shall be effective upon passage and shall apply to all such member meetings held on or after March 1, 2020.

CHAPTER 66

(S. B. 713 - By Senators Azinger, Caputo, Lindsay, Maynard, Phillips, Romano, Rucker, Smith, Stover, Weld, Woelfel, Woodrum, and Trump)

[Passed April 6, 2021; to take effect April 30, 2021]
[Approved by the Governor on April 19, 2021.]

AN ACT to amend and reenact §15A-4-17 of the Code of West Virginia, 1931, as amended, relating generally to inmate good time; updating references to personnel; clarifying that inmates in the custody of the Commissioner of the Division of Corrections and Rehabilitation receive basic good time unless expressly excluded; creating certain exclusions; clarifying that inmates who received good time on or before October 21, 2020, are entitled to the good time, unless it is lost due to a disciplinary violation; establishing basis for earning extra good time in the discretion of the commissioner; and granting civil immunity to the Division of Corrections and Rehabilitation, its commissioner, employees, agents, and assigns for any and all claims relating to calculation of good time for certain offenders occurring before October 21, 2020.

Be it enacted by the Legislature of West Virginia:

ARTICLE 4. CORRECTIONS MANAGEMENT.

§15A-4-17. Deduction from sentence for good conduct; mandatory supervision.

(a) All adult inmates placed in the custody of the Commissioner of the Division of Corrections and Rehabilitation pursuant to a term of court-ordered incarceration for a misdemeanor or felony, except those committed pursuant to §25-4-1 *et seq.* and §62-12-26 of this code, shall be granted commutation from their sentences for good

conduct in accordance with this section: *Provided,* That nothing in this section shall be considered to recalculate the "good time" of inmates currently serving a sentence or of giving back good time to inmates who have previously lost good time earned for a disciplinary violation: *Provided, however*, That as of the effective date of the amendments to this section enacted during the regular session of the Legislature, 2021, an inmate who had good time calculated into his or her release date prior to October 21, 2020, is entitled to the benefit of the good time awarded or earned before that date, unless the good time was lost due to a disciplinary violation.

(b) The commutation of sentence, known as "good time", shall be deducted from the maximum term of indeterminate sentences or from the fixed term of determinate sentences.

(c) Each eligible inmate committed to the custody of the commissioner and incarcerated in a facility pursuant to that commitment shall be granted one day good time for each day he or she is incarcerated, including any and all days in jail awaiting sentence which are credited by the sentencing court to his or her sentence pursuant to §61-11-24 of this code, or for any other reason relating to the commitment. An inmate may not be granted any good time for time served either on parole or bond or in any other status when he or she is not physically incarcerated.

(d) An inmate sentenced to serve a life sentence is not eligible to earn or receive any good time pursuant to this section.

(e) An eligible inmate under two or more consecutive sentences shall be allowed good time as if the several sentences, when the maximum terms of the consecutive sentences are added together, were all one sentence.

(f) The commissioner shall promulgate disciplinary rules and policies. The rules and policies shall describe acts that inmates are prohibited from committing, procedures for charging individual inmates for violation of the rules, and for determining the guilt or innocence of inmates charged with the violations, and the sanctions which may be imposed for the violations. A copy of the rules shall

be given to each inmate. For each violation any part or all of the good time which has been granted to the inmate pursuant to this section may be forfeited and revoked by the superintendent of the institution in which the violation occurred. The superintendent, when appropriate and with approval of the commissioner, may restore any forfeited good time.

(g) Each inmate, upon his or her commitment to, and being placed into the custody of, the commissioner, or upon his or her return to custody as the result of violation of parole under §62-12-19 of this code, or supervised release under §62-12-26 of this code shall be given a statement setting forth the term or length of his or her sentence or sentences and the time of his or her minimum discharge computed according to this section.

(h) Each inmate shall be given a revision of the statement described in subsection (g) of this section when any part or all of the good time has been forfeited and revoked or restored pursuant to subsection (f) of this section, by which the time of his or her earliest discharge is changed.

(i)(1) An eligible inmate may receive extra good time in the sole discretion of the commissioner for meritorious service or performing extra assigned duties during emergencies; and

(2) In addition to the good time granted under subsection (c) of this section and that authorized by subdivision (1) of this subsection, an eligible inmate serving a felony sentence may receive up to 90 days good time per program for successfully completing an approved, but not required, academic or vocational program, which is not part of the inmate's required individualized reentry programing plan. The commissioner shall adopt a written policy to effectuate the purposes of this subsection.

(j) There shall be no grants or accumulations of good time or credit to any inmate serving a sentence in the custody of the Division of Corrections and Rehabilitation except in the manner provided in this section.

(k) Prior to the calculated discharge date of an inmate serving a sentence for a felony crime of violence against the person, a felony offense where the victim was a minor child, or a felony offense involving the use of a firearm, one year shall be deducted from the inmate's accumulated good time to provide for one year of mandatory post-release supervision following the first instance in which the inmate reaches his or her calculated discharge date. All inmates released pursuant to this subsection are subject to electronic or GPS monitoring for the entire period of supervision. The provisions of this subsection are applicable to offenses committed on or after July 1, 2013.

(l) Upon sentencing of an inmate for a felony offense not referenced in subsection (k) of this section, the court may order that 180 days of the sentence, or some lesser period, be served through post-release mandatory supervision if the court determines supervision is appropriate and in the best interest of justice, rehabilitation, and public safety. All inmates released pursuant to this subsection are subject to electronic or GPS monitoring for the entire period of supervision. The provisions of this subsection are applicable to offenses committed on or after July 1, 2013.

(m) The commissioner shall adopt policies and procedures to implement the mandatory supervision provided for in subsections (k) and (l) of this section which may include terms, conditions, and procedures for supervision, modification, and violation applicable to persons on parole.

(n) As used in this section, "felony crime of violence against the person" means felony offenses set forth in §61-2-1 *et seq.,* §61-3E-1 *et seq*., §61-8B-1 *et seq*., or §61-8D-1 *et seq.* of this code, and the felony offenses of arson and burglary of a residence where an individual is physically located at the time of the offense as set forth in §61-3-1 *et seq.* of this code.

(o) As used in this section, "felony offense where the victim was a minor child" means any felony crime of violence against the person and any felony offense set forth in §61-8-1 *et seq*., §61-8A-1 *et seq*., §61-8C-1 *et seq*., or §61-8D-1 *et seq.* of this code.

(p) The Division of Corrections and Rehabilitation, its commissioner, employees, agents, and assigns, shall be granted absolute immunity from liability from any claims or actions of any person serving, or who has served, a term of incarceration pursuant to §62-12-26 of this code, for any matter or claim arising out of good time calculations or awards which may or may not have been awarded, given, removed, or taken which caused a person to be reincarcerated or to increase the expected term of his or her incarceration, which calculation, award, removal, taking, or reincarceration occurred prior to the effective date of the amendments to this section enacted during the regular session of the Legislature, 2021.

CHAPTER 67

(H. B. 3304 - By Delegates Capito, Pushkin, L. Pack, Lovejoy, Queen, Fast, Westfall, Fluharty, Bruce, Pinson and B. Ward)

[Passed April 10, 2021; in effect from passage.]
[Approved by the Governor on April 26, 2021.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §15A-4A-1, 15A-4A-2, 15A-4A-3, 15A-4A-4, 15A-4A-5, 15A-4A-6 and 15A-4A-7, all relating generally to creating an expanded required work release pilot project within the Division of Corrections and Rehabilitation; stating the purposes of the article, setting forth findings; limiting programs to no more than five locations; defining terms; establishing eligibility and ineligibility criteria; directing the commissioner to establish policies and procedures; and providing for the return offenders who do not successfully complete work release to other facilities.

Be it enacted by the Legislature of West Virginia:

CHAPTER 15A. DEPARTMENT OF MILITARY AFFAIRS AND PUBLIC SAFETY.

ARTICLE 4A. EXPANDED WORK RELEASE PILOT PROGRAM.

§15A-4A-1. Purpose of article and legislative findings.

(a) The purpose of this article is to establish an expanded required work release pilot program in no more than five locations in this state.

(b) The Legislature finds that the primary reasons for requiring participation in a work release program are to increase public

protection while aiding the transition of the offender back into the community where he or she will be going with or without work release program participation. Participating in work release may reduce the likelihood of recidivism by gradually reintroducing an offender to the community while providing security, structure, and supervision and providing necessary services.

(c) The Legislature further finds that participation in a work release program provides an transitional environment for offenders nearing the end of their sentences while maintaining structure, supervision, offender accountability, improved program opportunities, employment counseling and placement, substance abuse, and life skills training.

§15A-4A-2. Definitions.

As used in this article, unless the context clearly requires a different meaning, the term:

(1) "Commissioner" means the commissioner of the Division of Corrections and Rehabilitation;

(2) "Division" means the Division of Corrections and Rehabilitation;

(3) "Offender" means a person sentenced to the custody of the Commissioner for service of a sentence of incarceration due to conviction of a felony or felonies.

§15A-4A-3. Expanded work release pilot program.

The Commissioner of the Division of Corrections and Rehabilitation is hereby authorized to establish a pilot program expanding available work release facilities to no more than a total of five locations be used for eligible offenders who are sentenced to serve a term of imprisonment in the custody of the commissioner and whom the commissioner requires to serve the last portion of their sentences in a work release facility in accordance with this article.

§15A-4A-4. Eligibility; Funding.

(a) An offender is eligible to participate in the work release program if he or she:

(1) Is 18 years of age or older;

(2) Is physically and psychologically able, as determined by the commissioner, to participate in the program: *Provided*, That offenders with medical conditions or disabilities shall be eligible for work release placement.

(3) Is directed by the Commissioner of Corrections to participate in the work release program; and

(4) Meets other criteria as the commissioner of the Division of Corrections and Rehabilitation may direct.

(b) The expansion of work release authorized by this article is subject to funds being appropriated by the Legislature therefor or appropriated funds being redirected thereto.

§15A-4A-5. Limitations on eligibility for work release participation.

The following persons may not participate in the work release program:

(1) An offender who requires inpatient psychological or psychiatric treatment;

(2) An offender who refuses to participate in the Offender Financial Responsibility Program;

(3) An offender who refuses to participate in the Institution Release Preparation Program; and

(4) An offender determined by the commissioner, in his or her sole discretion, to pose a threat to the safety of another or to the community or to be an otherwise inappropriate candidate for participation in the program.

§15A-4A-6. Internal policy development.

(a) The commissioner shall develop operational procedures and policies for the work release program. The procedures and policies may, pursuant to §15A-3-12 of this code, allow the division to partner with contractors to be established at multiple sites, which sites shall subject to the control and authority of the commissioner.

(b) The procedures and policies shall include the following:

(1) A period of Imprisonment in work release of no more than 6 months prior to release on parole or discharge which period of Imprisonment may include substance abuse education, mandatory employment or employment skills training, social skills training, and psychological evaluation and treatment. Additionally, the state Board of Education and State Superintendent of Schools, pursuant to section five, article twenty, chapter eighteen of this code, respectively, may, as funds are available, establish an education program for those eligible offenders who are not recipients of a high school diploma or a certificate of high school equivalency.

(2) Policies and procedures identifying the facilities subject to the control and authority of the commissioner that will be used for offenders serving a sentence in a work release program;

(3) Policies and procedures establishing additional criteria the commissioner deems necessary and appropriate to determine eligibility and of offenders to serve the last portion of his or her sentence in a work release program;

(4) Policies and procedures to effectuate notification to a sentencing court of the performance of an eligible offender serving part of his or her sentence in a work release facility; and

(5) Any other policies and procedures that are necessary for the proper operation of the program.

(c) Upon successful completion of the work release program, an offender shall be released on parole or discharged in accordance with this article.

(d) An offender who does not satisfactorily complete the work release program shall be removed from the program and returned to serve the remainder of his or her sentence in a facility designated by the commissioner.

§15A-4A-7. Funding and financial implications.

Funding for the expanded work release pilot program may be derived from the state's general revenue fund or budget assigned annually to the division.

CHAPTER 68

(Com. Sub. for S. B. 42 - By Senators Woelfel, Weld, Stollings, Jeffries, and Lindsay)

[Passed March 18, 2021; in effect 90 days from passage (June 16, 2021)]
[Approved by the Governor on March 29, 2021.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §8-12-22, relating to foreclosure actions involving abandoned properties; authorizing a municipality to compel a foreclosure; defining "vacant and abandoned property"; designating the Zombie Property Remediation Act of 2021; and requiring conveyance of the deed following foreclosure.

Be it enacted by the Legislature of West Virginia:

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

§8-12-22. Foreclosure actions involving abandoned properties.

(a) This section shall be known and may be cited as the Zombie Property Remediation Act of 2021.

(b) No action may be brought pursuant to this section until the municipality has informed any and all mortgagees in writing and by certified mail, return receipt requested, to the mortgagee's registered agent identified by the mortgagee at the office of the West Virginia Secretary of State or, if not registered with the West Virginia Secretary of State, then to the mortgagee's principal place of business, of the municipality's intent to file a proceeding pursuant to subsection (c) of this section and provide the mortgagee

45 days from receipt by the agent or at the principal place of business referenced above of the notice of intent to file an action pursuant to subsection (c) of this section to respond to the notice and notify the municipality of the status of the property, the status of the note and the mortgagee's response to the notice: *Provided*, That the municipality may not issue a notice pursuant to this subsection or bring an action pursuant to subsection (c) of this section if the owner of the property is in bankruptcy without the express consent of the bankruptcy court.

(c) If a property has been determined to be unsafe, unsanitary, dangerous, or detrimental to the public safety or welfare pursuant to an ordinance adopted pursuant to §8-12-16 of this code, or determined vacant and abandoned pursuant to subsection (d) of this section, the municipality in which the property is located may commence a proceeding in which the property is located to compel any or all mortgagees to:

(1) If the mortgagee has classified that the note is in default, the trustee or mortgagee shall commence a foreclosure procedure within four months and shall meet all deadlines to ensure the case is ready to be moved to a trustee sale within a reasonable time period but not to exceed one year;

(2) In the case of a loss mitigation application being filed by the borrower, all provisions of this section shall be tolled until such time as the note is again in default and the time period described in subdivision (1) of this subsection of this section has passed, or otherwise until the mortgagee has determined that the borrower is ineligible for loss mitigation;

(3) If a foreclosure has already been commenced, submit the necessary notices and documentation needed to move the foreclosure to a trustee sale within four months; or

(4) Issue a certificate of discharge of the trust deed lien or mortgage within three months and file a release of the lien or mortgage with the office of the clerk of the county commission in the county where the property is located.

(d) As used in this section, "vacant and abandoned property" means real property with respect to which the plaintiff has proven, by a preponderance of the evidence, that it meets any of the following requirements:

(1) No person or persons actually and currently conduct a lawfully licensed business, or lawfully reside, dwell, or live in any part of the building as the legal or equitable owner(s), tenant-occupant(s), owner-occupant(s), or tenant(s) on a permanent, nontransient basis; or

(2) If the exterior maintenance and major systems of the building and the surrounding real property thereof are in violation of applicable building codes or health and sanitation codes and there is no continual utility service evidencing actual use of electric, gas, water service, etc.; or

(3) Each mortgagor has separately issued a sworn written statement, expressing his or her intent to vacate and abandon the property and an inspection of the property shows no evidence of occupancy to indicate that any persons are residing there.

(4) As used in this section, "continual" shall mean to be without more than one 30-day interruption in any given 360-day period and must be more than merely registered to the owner for purposes of billing and must be utilized, at a minimum, in order to keep the property and the major systems of the building in compliance with applicable building and safety codes.

(5) Residential real property may not be considered vacant and abandoned if a structure located on the property meets any of the following:

(A) An unoccupied building that is undergoing construction, renovation, or rehabilitation that is proceeding diligently to completion;

(B) A building occupied on a seasonal basis, but otherwise secure;

(C) A building that is secure, but is the subject of a probate action, action to quit title, or other ownership dispute of which the mortgage servicer has actual notice;

(D) A building damaged by a natural disaster and one or more of its owners intends to repair and reoccupy the property; or

(E) A building occupied by the mortgagor, a relative of the mortgagor, or a tenant lawfully in possession.

(e) For any foreclosure resulting under this section or otherwise pursuant to any trust deed of record, if the successful bidder is the mortgagee, the trustee shall transfer by recorded deed, the property to the mortgagee within 30 days of the foreclosure sale. Any municipality wherein the property is located may seek an injunction to require the trustee, acting on behalf of the mortgagee, to convey the property to the mortgagee by recorded deed of record. Any municipality filing such an action and obtaining relief by injunction may recover attorney's fees and costs related to the action.

(f) Any property fitting the criteria described in subsection (d) of this section which is not situated within the boundaries of any incorporated municipality may be served in the manner described in subsections (b) and (c) of this section by the county commission of the county in which the property is located, with all attendant duties thereto.

(g) Nothing in this section may be construed to limit or restrain any incorporated municipality's powers to dispose of unencumbered properties that are unsafe, unsanitary, dangerous, or detrimental to the public safety or welfare pursuant to §8-12-16 of this code.

CHAPTER 69

(S. B. 459 - By Senators Nelson, Azinger, Clements, Karnes, Lindsay, Plymale, and Trump)

[Passed March 4, 2021; in effect from passage]
[Approved by the Governor on March 16, 2021.]

AN ACT to amend and reenact §8-22-26 of the Code of West Virginia, 1931, as amended, relating to providing a mechanism by which contributions paid by a member into a retirement plan would be returned to the member's heirs after the member's death in the event that the member's survivors are deceased and his or her remaining heirs no longer receive death benefits under the retirement plan after reaching the age of 18.

Be it enacted by the Legislature of West Virginia:

ARTICLE 22. RETIREMENT BENEFITS GENERALLY; POLICEMEN'S PENSION AND RELIEF FUND; FIREMEN'S PENSION AND RELIEF FUND; PENSION PLANS FOR EMPLOYEES OF WATERWORKS SYSTEM, SEWERAGE SYSTEM OR COMBINED WATERWORKS AND SEWERAGE SYSTEM.

§8-22-26. Death benefits.

(a) In case:

(1) Any member of a paid police or fire department who has been in continuous service for more than five years dies from any cause other than as specified in subsection (b) of this section before retirement on a disability pension pursuant to §8-22-24 of this code if prior to July 1, 1981, or pursuant to §8-22-23a and §8-22-24 of this code if after June 30, 1981, or a retirement pension pursuant to §8-22-25(a) and §8-22-25(b) of this code, leaving in either case a

surviving spouse, or any dependent child or children under the age of 18 years, or dependent father or mother, or both, or any dependent brothers or sisters, or both, under the age of 18 years, or any dependent child over the age of 18 years of age who is totally physically or mentally disabled so long as such condition exists; or

(2) Any former member of any such department who is on a disability pension pursuant to §8-22-24 of this code if prior to July 1, 1981, , or pursuant to §8-22-23a and §8-22-24 of this code if after June 30, 1981, or is receiving or is entitled to receive retirement pension benefits pursuant to §8-22-25(a) and §8-22-25(b) of this code, dies from any cause other than as specified in subsection (b) of this section leaving in either case a surviving spouse or any dependent child or children under the age of 18 years, or dependent father or mother, or both, or any dependent brothers or sisters, or both, under the age of 18 years, or any dependent child over the age of 18 years of age who is totally physically or mentally disabled so long as such condition exists; then in any of the cases set forth in this subdivision and subdivision (1) of this subsection, the board of trustees of such pension and relief fund shall, immediately following the death of the member, pay to or for each entitled surviving dependent the following pension benefits: To the surviving spouse, until death or remarriage, a sum per month equal to 60 percent of the member's pension or, in the event the member was not receiving a pension at the time of the member's death, a sum per month equal to 60 percent of the monthly retirement pension such member would have been entitled to receive pursuant to §8-22-25 of this code on the date of the member's death if the member had then been eligible for a retirement pension, or the sum of $300 per month, whichever is greater; to each dependent child, a sum per month equal to 20 percent of the member's pension or, in the event the member was not receiving a pension on the date of the member's death, a sum per month equal to 20 percent of the monthly retirement pension the member would have been entitled to receive pursuant to §8-22-25 of this code on the date of the member's death if the member had then been eligible for a retirement pension, or until the child attains the age of 18 years or marries, whichever first occurs; to each dependent orphaned child, a sum per month equal to 25 percent of the member's pension or,

in the event the member was not receiving a pension on the date of the member's death, a sum per month equal to 25 percent of the monthly retirement pension the member would have been entitled to receive pursuant to §8-22-25 of this code on the date of the member's death if the member had then been eligible for a retirement pension, until the child attains the age of 18 years or marries, whichever first occurs; to each dependent father or mother, a sum per month for each equal to 10 percent of the member's pension or, in the event the member was not receiving a pension on the date of the member's death, a sum per month equal to 10 percent of the monthly retirement pension the member would have been entitled to receive pursuant to §8-22-25 of this code on the date of the member's death if the member had then been eligible for a retirement pension; to each dependent brother or sister, the sum of $50 per month until he or she attains the age of 18 years or marries, whichever first occurs, but in no event shall the aggregate amount paid to all brothers and sisters of the member exceed $100 per month. If at any time, because of the number of dependents, all dependents cannot be paid in full as herein provided, then each dependent shall receive his or her pro rata share of the payments. In no case shall the payments to the surviving spouse and children be cut below 65 percent of the total amount paid to all dependents.

(b) The surviving spouse, child or children, or dependent father or mother, or dependent brothers or sisters, of any member who dies by reason of service rendered in the performance of the member's duties shall, regardless of the length of the member's service and irrespective of whether the member was or was not entitled to receive, or was or was not receiving, disability pension or temporary disability payments at the time of the member's death, receive the death benefits provided for in subsection (a) of this section. If the member had less than three years' service at the time of the member's death, the member's pension shall be computed on the basis of the actual number of years of service.

(c) If a member dies without leaving a spouse, dependent child or children, or dependent father or mother, or dependent brothers or sisters, the member's contributions to the fund plus six percent interest shall be refunded to the member's named beneficiary or, if

no beneficiary has been named, to the member's estate to the extent that the contributions plus interest exceed any disability or retirement benefits that the member may have received before the member's death.

(d) This section shall not be construed as creating or establishing any contractual or vested rights in favor of any individual who may be or become qualified as a beneficiary of the death benefits authorized to be made pursuant to this section. This section and benefits provided pursuant to this section are expressly subject to subsequent legislative enactments as may provide for any change, modification, or elimination of the beneficiaries or benefits specified herein.

(e) Notwithstanding the provisions of §8-22-24 of this code, the benefit provided for in this section shall be calculated as if the member had remained unemployed throughout any period of disability.

(f) For the purpose of distributing premium tax proceeds as required by §33-3-14d of this code, one beneficiary of the death benefit authorized by this section shall be included in the average monthly number of retired police officers and firefighters.

(g) If there are no survivors entitled to receive benefits pursuant to the provisions of this section because of death, age, or marital status, to the extent the member's contributions to the fund plus six percent interest exceed any survivor benefits already paid, any excess shall be refunded to the member's named beneficiary. If there is no named beneficiary, any excess shall be paid to the member's heirs to be distributed in accordance with §42-1-1 *et seq.* of this code relating to intestate succession.

CHAPTER 70

(Com. Sub. for S. B. 460 - By Senators Nelson, Phillips, and Stollings)

[Passed April 7, 2021; in effect 90 days from passage (July 6, 2021)]
[Approved by the Governor on April 26, 2021.]

AN ACT to amend and reenact §7-14D-2, §7-14D-11, §7-14D-13, §7-14D-19, §7-14D-20, and §7-14D-24 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §7-14D-32, all relating to the Deputy Sheriff Retirement System Act; defining terms; amending and removing conflicting statutory provisions; removing obsolete restriction on type of annuity required of married members; clarifying preretirement death benefits; clarifying survivor death benefit; authorizing the purchase of service credit for time served as an appointed sheriff in certain circumstances; and adding a severability clause.

Be it enacted by the Legislature of West Virginia:

ARTICLE 14D. DEPUTY SHERIFF RETIREMENT SYSTEM ACT.

§7-14D-2. Definitions.

As used in this article, unless a federal law or regulation or the context clearly requires a different meaning:

(a) "Accrued benefit" means on behalf of any member two and one-quarter percent of the member's final average salary multiplied by the member's years of credited service: *Provided*, That members who are retired on or retire after July 1, 2018, shall have an accrued benefit of two and one-half percent of the member's final average salary multiplied by the member's years of credited

service. A member's accrued benefit may not exceed the limits of Section 415 of the Internal Revenue Code and is subject to the provisions of §7-14D-9a of this code.

(b) "Accumulated contributions" means the sum of all amounts deducted from the compensation of a member, or paid on his or her behalf pursuant to §5-10C-1 *et seq.* of this code, either pursuant to §7-14D-7 of this code or §5-10-29 of this code as a result of covered employment together with regular interest on the deducted amounts.

(c) "Active member" means a member who is active and contributing to the plan.

(d) "Active military duty" means full-time active duty with any branch of the armed forces of the United States, including service with the National Guard or reserve military forces when the member has been called to active full-time duty and has received no compensation during the period of that duty from any board or employer other than the armed forces.

(e) "Actuarial equivalent" means a benefit of equal value computed upon the basis of the mortality table and interest rates as set and adopted by the retirement board in accordance with the provisions of this article: *Provided*, That when used in the context of compliance with the federal maximum benefit requirements of Section 415 of the Internal Revenue Code, "actuarial equivalent" shall be computed using the mortality tables and interest rates required to comply with those requirements.

(f) "Annual compensation" means the wages paid to the member during covered employment within the meaning of Section 3401(a) of the Internal Revenue Code, but determined without regard to any rules that limit the remuneration included in wages based upon the nature or location of employment or services performed during the plan year plus amounts excluded under Section 414(h)(2) of the Internal Revenue Code and less reimbursements or other expense allowances, cash, or noncash fringe benefits or both, deferred compensation, and welfare benefits. Annual compensation for determining benefits during any

determination period may not exceed the maximum compensation allowed as adjusted for cost of living in accordance with §5-10D-7 of this code and Section 401(a)(17) of the Internal Revenue Code.

(g) "Annual leave service" means accrued annual leave.

(h) "Annuity starting date" means the first day of the first calendar month following receipt of the retirement application by the board or the required beginning date, if earlier: *Provided*, That the member has ceased covered employment and reached early or normal retirement age.

(i) "Base salary" means a member's cash compensation exclusive of overtime from covered employment during the last 12 months of employment. Until a member has worked 12 months, annualized base salary is used as base salary.

(j) "Beneficiary" means a natural person who is entitled to, or will be entitled to, an annuity or other benefit payable by the plan.

(k) "Board" means the Consolidated Public Retirement Board created pursuant to §5-10D-1 *et seq.* of this code.

(l) "County commission" has the meaning ascribed to it in §7-1-1 of this code.

(m) "Covered employment" means either: (1) Employment as a deputy sheriff and the active performance of the duties required of a deputy sheriff; (2) the period of time which active duties are not performed but disability benefits are received under §7-14D-14 or §7-14D-15 of this code; or (3) concurrent employment by a deputy sheriff in a job or jobs in addition to his or her employment as a deputy sheriff where the secondary employment requires the deputy sheriff to be a member of another retirement system which is administered by the Consolidated Public Retirement Board pursuant to §5-10D-1 *et seq.* of this code: *Provided*, That the deputy sheriff contributes to the fund created in §7-14D-6 of this code the amount specified as the deputy sheriff's contribution in §7-14D-7 of this code.

(n) "Credited service" means the sum of a member's years of service, active military duty, disability service, unused annual leave service, and unused sick leave service.

(o) "Deputy sheriff" means an individual employed as a county law-enforcement deputy sheriff in this state and as defined by §7-14-2 of this code.

(p) "Dependent child" means either:

(1) An unmarried person under age 18 who is:

(A) A natural child of the member;

(B) A legally adopted child of the member;

(C) A child who at the time of the member's death was living with the member while the member was an adopting parent during any period of probation; or

(D) A stepchild of the member residing in the member's household at the time of the member's death; or

(2) Any unmarried child under age 23:

(A) Who is enrolled as a full-time student in an accredited college or university;

(B) Who was claimed as a dependent by the member for federal income tax purposes at the time of the member's death; and

(C) Whose relationship with the member is described in subparagraph (A), (B), or (C), paragraph (1) of this subdivision.

(q) "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.

(r) "Disability service" means service credit received by a member, expressed in whole years, fractions thereof or both, equal to one half of the whole years, fractions thereof, or both, during

which time a member receives disability benefits under §7-14D-14 or §7-14D-15 of this code.

(s) "Early retirement age" means age 40 or over and completion of 20 years of service.

(t) "Employer error" means an omission, misrepresentation, or violation of relevant provisions of the West Virginia Code or of the West Virginia Code of State Rules or the relevant provisions of both the West Virginia Code and of the West Virginia Code of State Rules by the participating public employer that has resulted in an underpayment or overpayment of contributions required. A deliberate act contrary to the provisions of this section by a participating public employer does not constitute employer error.

(u) "Effective date" means July 1, 1998.

(v) "Final average salary" means the average of the highest annual compensation received for covered employment by the member during any five consecutive plan years within the member's last 10 years of service. If the member did not have annual compensation for the five full plan years preceding the member's attainment of normal retirement age and during that period the member received disability benefits under §7-14D-14 or §7-14D-15 of this code then "final average salary" means the average of the full monthly salary determined paid to the member during that period multiplied by 12.

(w) "Fund" means the West Virginia Deputy Sheriff Retirement Fund created pursuant to §7-14D-6 of this code.

(x) "Hour of service" means:

(1) Each hour for which a member is paid or entitled to payment for covered employment during which time active duties are performed. These hours shall be credited to the member for the plan year in which the duties are performed; and

(2) Each hour for which a member is paid or entitled to payment for covered employment during a plan year but where no duties are performed due to vacation, holiday, illness, incapacity

including disability, layoff, jury duty, military duty, leave of absence, or any combination thereof and without regard to whether the employment relationship has terminated. Hours under this paragraph shall be calculated and credited pursuant to West Virginia Division of Labor rules. A member will not be credited with any hours of service for any period of time he or she is receiving benefits under §7-14D-14 or §7-14D-15 of this code; and

(3) Each hour for which back pay is either awarded or agreed to be paid by the employing county commission, irrespective of mitigation of damages. The same hours of service shall not be credited both under this paragraph and paragraph (1) or (2) of this subdivision. Hours under this paragraph shall be credited to the member for the plan year or years to which the award or agreement pertains rather than the plan year in which the award, agreement, or payment is made.

(y) "Member" means a person first hired as a deputy sheriff after the effective date of this article, as defined in subdivision (u) of this section, or a deputy sheriff first hired prior to the effective date and who elects to become a member pursuant to §7-14D-5 or §7-14D-17 of this code. A member shall remain a member until the benefits to which he or she is entitled under this article are paid or forfeited or until cessation of membership pursuant to §7-14D-5 of this code.

(z) "Monthly salary" means the portion of a member's annual compensation which is paid to him or her per month.

(aa) "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.

(bb) "Normal retirement age" means the first to occur of the following: (1) Attainment of age 50 years and the completion of 20

or more years of service; (2) while still in covered employment, attainment of at least age 50 years, and when the sum of current age plus years of service equals or exceeds 70 years; (3) while still in covered employment, attainment of at least age 60 years, and completion of five years of service; or (4) attainment of age 62 years and completion of five or more years of service.

(cc) "Partially disabled" means a member's inability to engage in the duties of deputy sheriff by reason of any medically determinable physical or mental impairment that can be expected to result in death or that has lasted or can be expected to last for a continuous period of not less than 12 months. A member may be determined partially disabled for the purposes of this article and maintain the ability to engage in other gainful employment which exists within the state but which ability would not enable him or her to earn an amount at least equal to two thirds of the average annual compensation earned by all active members of this plan during the plan year ending as of the most recent June 30, as of which plan data has been assembled and used for the actuarial valuation of the plan.

(dd) "Public Employees Retirement System" means the West Virginia Public Employees Retirement System created by §5-10-1 *et seq.* of this code.

(ee) "Plan" means the West Virginia Deputy Sheriff Death, Disability, and Retirement Plan established by this article.

(ff) "Plan year" means the 12-month period commencing on July 1 of any designated year and ending the following June 30.

(gg) "Qualified public safety employee" means any employee of a participating state or political subdivision who provides police protection, fire-fighting services, or emergency medical services for any area within the jurisdiction of the state or political subdivision, or such other meaning given to the term by Section 72(t)(10)(B) of the Internal Revenue Code or by Treasury Regulation §1.401(a)-1(b)(2)(v) as they may be amended from time to time.

(hh) "Regular interest" means the rate or rates of interest per annum, compounded annually, as the board adopts in accordance with the provisions of this article.

(ii) "Required beginning date" means April 1 of the calendar year following the later of: (i) The calendar year in which the member attains age 70 and one half; or (ii) the calendar year in which he or she retires or otherwise separates from covered employment.

(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.

(kk) "Retirement income payments" means the annual retirement income payments payable under the plan.

(ll) "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.

(nn) "Totally disabled" means a member's inability to engage in substantial gainful activity by reason of any medically determined physical or mental impairment that can be expected to result in death or that has lasted or can be expected to last for a continuous period of not less than 12 months. For purposes of this subdivision:

(1) A member is totally disabled only if his or her physical or mental impairment or impairments are so severe that he or she is not only unable to perform his or her previous work as a deputy sheriff but also cannot, considering his or her age, education and work experience, engage in any other kind of substantial gainful employment which exists in the state regardless of whether: (A) The work exists in the immediate area in which the member lives; (B) a specific job vacancy exists; or (C) the member would be hired if he or she applied for work.

(2) "Physical or mental impairment" is an impairment that results from an anatomical, physiological, or psychological abnormality that is demonstrated by medically accepted clinical and laboratory diagnostic techniques. A member's receipt of Social Security disability benefits creates a rebuttable presumption that the member is totally disabled for purposes of this plan. Substantial gainful employment rebuts the presumption of total disability.

(oo) "Year of service". — A member shall, except in his or her first and last years of covered employment, be credited with year of service credit based upon the hours of service performed as covered employment and credited to the member during the plan year based upon the following schedule:

Hours of Service	Years of Service Credited
Less than 500	0
500 to 999	1/3
1,000 to 1,499	2/3
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 a year of service for each month during the plan year in which the member is credited with an hour of service. A member is not entitled to credit for years of service for any time period during which he or she received disability payments under §7-14D-14 or §7-14D-15 of this code. Except as specifically excluded, years of service include covered employment prior to the effective date. Years of service which are credited to a member prior to his or her receipt of accumulated contributions upon termination of employment pursuant to §7-14D-13 or §5-10-30 of this code, shall be disregarded for all purposes under this plan unless the member repays the accumulated contributions with interest pursuant to §7-14D-13 of this code or had prior to the effective date made the repayment pursuant to §5-10-18 of this code.

§7-14D-11. Retirement benefits.

This section provides for a member's accrued benefit payable starting at the member's annuity starting date which follows the completion of a written application for the commencement of benefits. The member shall receive the accrued retirement benefit in the normal form or in an actuarial equivalent amount in an optional form as provided under §7-14D-12 of this code, subject to reduction if necessary to comply with the maximum benefit provisions of Section 415 of the Internal Revenue Code and §7-14D-9a of this code. The first day of the calendar month following the calendar month of birth shall be used in lieu of any birth date that does not fall on the first day of a calendar month.

(a) *Normal retirement*. — A member whose annuity starting date is the date the member attains normal retirement age or later is entitled to his or her accrued retirement benefit based on years of service and final average salary at termination of employment.

(b) *Early retirement*. — A member who ceases covered employment and has attained early retirement age while in covered employment may elect to receive retirement income payments commencing on the first day of the month coincident with or following the date the member ceases covered employment. "Normal retirement age" for such a member is the first day of the calendar month coincident with or next following the month in which the member attains the age of 50 years. If the member's annuity starting date is prior to the date the member attains normal retirement age, his or her accrued benefit is reduced to the actuarial equivalent benefit amount based on the years and months by which his or her annuity starting date precedes the date he or she attains normal retirement age.

(c) Retirement benefits shall be paid monthly in an amount equal to one twelfth of the retirement income payments elected and at those times established by the board.

§7-14D-13. Refunds to certain members upon discharge or resignation; deferred retirement; preretirement death; forfeitures.

(a) Any member who terminates covered employment and is not eligible to receive disability or retirement income benefits under this article is, by written request filed with the board, entitled to receive from the fund the member's accumulated contributions after offset of any outstanding loan balance, plus accrued interest, pursuant to §7-14D-23 of this code. Except as provided in subsection (b) of this section, upon withdrawal the member shall forfeit his or her accrued benefit and cease to be a member.

(b) Any member of this plan who ceases employment in covered employment and active participation in this plan, and who thereafter becomes reemployed in covered employment may not receive any credited service for any prior withdrawn or offset accumulated contributions from either this plan or the Public Employees Retirement System relating to the prior covered employment unless following his or her return to covered employment and active participation in this plan, the member redeposits in this plan the amount of the withdrawn accumulated contributions submitted on salary earned while a deputy sheriff, together with interest on the accumulated contributions at the rate determined by the board from the date of withdrawal to the date of redeposit. Upon repayment he or she shall receive the same credit on account of his or her former service in covered employment as if no refund had been made. The repayment authorized by this subsection shall be made in a lump sum within 60 months of the deputy sheriff's reemployment in covered employment or if later, within 60 months of the effective date of this article.

(c) A member of this plan who has elected to transfer from the Public Employees Retirement System into this plan pursuant to §7-14D-5(b) of this code may not, after having transferred into and become an active member of this plan, reinstate to his or her credit in this plan any service credit relating to periods of nondeputy sheriff service which were withdrawn from the Public Employees Retirement System plan prior to his or her elective transfer into this plan.

(d) Every member who completes 60 months of covered employment is eligible, upon cessation of covered employment, to either withdraw his or her accumulated contributions in accordance with subsection (a) of this section, or to choose not to withdraw his or her accumulated contribution and to receive retirement income payments upon attaining normal retirement age.

(e) In the event a member dies from any cause other than those specified in §7-14D-18 of this code and does not have 10 or more years of credited service, the member's accumulated contributions may be paid to a named beneficiary or beneficiaries. If no beneficiary is named, then the accumulated contributions shall be paid to the estate of the deceased member.

(f) Notwithstanding any other provision of this article, forfeitures under the plan shall not be applied to increase the benefits any member would otherwise receive under the plan.

§7-14D-19. Awards and benefits to surviving spouse − when member dies from nonservice-connected causes.

(a) In any case where a member who has been a member for at least 10 years, while in covered employment after the effective date of this article, has died or dies from any cause other than those specified in §7-14D-18 of this code and not due to vicious habits, intemperance, or willful misconduct on his or her part, the fund shall pay annually in equal monthly installments to the surviving spouse during his or her lifetime, a sum equal to the greater of: (i) One half of the annual compensation received in the preceding 12-month employment period by the deceased member; or (ii) if the member dies after his or her early or normal retirement age, the monthly amount which the spouse would have received had the member retired the day before his or her death, elected a 100 percent joint and survivor annuity with the spouse as the joint annuitant, and then died.

(b) Benefits for a surviving spouse received under this section, §7-14D-20, and §7-14D-21 of this code are in lieu of receipt of any other benefits under this article for the spouse or any other person

or under the provisions of any other state retirement system based upon the member's covered employment.

§7-14D-20. Additional death benefits and scholarships - dependent children.

(a) In addition to the spouse death benefits in §7-14D-18 and §7-14D-19 of this code, the surviving spouse is entitled to receive and there shall be paid to the spouse $100 monthly for each dependent child.

(b) If the surviving spouse dies while receiving death benefits provided in §7-14D-18 or §7-14D-19 of this code or if there is no surviving spouse, the fund shall pay monthly to each dependent child a sum equal to one fourth of the surviving spouse's entitlement under either §7-14D-18 and §7-14D-19 of this code. If there is neither a surviving spouse nor a dependent child, the fund shall pay in equal monthly installments to the dependent parents of the deceased member during their joint lifetimes a sum equal to the amount which a surviving spouse, without children, would have received: *Provided*, That when there is only one dependent parent surviving, that parent is entitled to receive during his or her lifetime one-half the amount which both parents, if living, would have been entitled to receive: *Provided, however*, That if there is no surviving spouse, dependent child, nor dependent parent of the deceased member the accumulated contributions shall be paid to a named beneficiary or beneficiaries: *Provided further*, That if there is no surviving spouse, dependent child, nor dependent parent of the deceased member, nor any named beneficiary or beneficiaries then the accumulated contributions shall be paid to the estate of the deceased member.

(c) Any person qualifying as a dependent child under this section, in addition to any other benefits due under this or other sections of this article, is entitled to receive a scholarship to be applied to the career development education of that person. This sum, up to but not exceeding $7,500 per year, shall be paid from the fund to any higher education institution in this state, career-technical education provider in this state, or other entity in this state approved by the board, to offset the expenses of tuition, room and

board, books, fees, or other costs incurred in a course of study at any of these institutions so long as the recipient makes application to the board on an approved form and under such rules as the board may provide, and maintains scholastic eligibility as defined by the institution or the board. The board may propose legislative rules for promulgation in accordance with §29A-3-1 *et seq.* of this code which define age requirements, physical and mental requirements, scholastic eligibility, disbursement methods, institutional qualifications, and other requirements as necessary and not inconsistent with this section. Scholarship benefits awarded pursuant to this subsection are not subject to division or payable to an alternate payee by any Qualified Domestic Relations Order.

§7-14D-24. Service as sheriff.

(a) Any member who, after the effective date of this article, is elected sheriff of a county in West Virginia may elect to continue as a member in this plan by paying the amounts required by §7-14D-7 of this code. Upon the election, service as a sheriff shall be treated as covered employment and the sheriff is not entitled to any credit for that service under any other retirement system of the state.

(b) Any member retired as a deputy sheriff under this plan who, after the effective date of this article, is elected or appointed sheriff of a county in West Virginia, may elect to suspend the payment of his or her annuity from this system and again become a contributing member of this plan by paying the amounts required by §7-14D-7 of this code. Upon such election, service as a sheriff shall be treated as covered employment, and the sheriff is not entitled to any credit for that period of elected service under any other retirement system of the state. At the end of his or her term as sheriff, the member making such election shall have his or her annuity recalculated and shall be granted an adjustment to his or her previous annuity to include the period of elected service.

(c) Any person who, before the effective date of this article, was elected sheriff of a county in West Virginia, and who, immediately prior to being so elected sheriff, was a deputy sheriff with at least 20 years of credited service under the Public

Employees Retirement System, with at least 16 of those 20 years having been earned as a deputy sheriff, may elect to become a member of this plan by paying the amounts required by §7-14D-7 of this code. Upon such election, service shall be transferred from the Public Employees Retirement System pursuant to §7-14D-8 of this code: *Provided,* That any service as a sheriff shall be treated as covered employment under this article and the sheriff is not entitled to any credit for that service as a sheriff or the prior service as a deputy sheriff under any other retirement system of the state. Persons making the election provided for in this subsection shall do so within 10 days of taking office as sheriff or within 10 days of the effective date of this provision.

(d) Any person who, before the effective date of this article, was elected sheriff of a county of West Virginia, and who, prior to being elected sheriff, was a deputy sheriff and also a previously elected sheriff, with credited service under the Public Employees Retirement System, with at least 16 of those years having been earned as combined service as a deputy sheriff and a previously elected sheriff, may elect to become a member of this plan by paying the amounts required by §7-14D-7 of this code. Upon such election, service shall be transferred from the Public Employees Retirement System pursuant to §7-14D-8 of this code: *Provided,* That a person's service as a sheriff shall be treated as covered employment under this article, and that person is not entitled to any credit for that service as a sheriff or deputy sheriff under any other retirement system of this state. A person making the election provided in this subsection shall do so within 30 days of taking office as a sheriff or within 30 days of the effective date of this provision.

(e) Notwithstanding any other provision of the code to the contrary, any member who was elected sheriff of a county of West Virginia to serve on or after January 1, 2013, and who has not commenced retirement in the Deputy Sheriff Retirement System or the Public Employees Retirement System, must notify the board in writing by July 31, 2020, of his or her intent to pay the difference in the employee contribution between the Public Employees Retirement System and the Deputy Sheriff Retirement System in

order to transfer all service credit earned as a sheriff or purchased in accordance with Section 414(u) of the Internal Revenue Code and the federal Uniformed Services Employment and Reemployment Rights Act from the Public Employees Retirement System to the Deputy Sheriff Retirement System. The board shall compute the difference in employee contributions owed up through September 30, 2020, on the total compensation for which assets are being transferred and notify the sheriff of the amount owed in writing by letter mailed no later than August 21, 2020. This difference in employee contributions must be paid in full by the sheriff to the Deputy Sheriff Retirement System no later than September 30, 2020. If timely paid, employee and employer contributions to the Deputy Sheriff Retirement System shall commence October 1, 2020.

(1) The board shall transfer assets from the Public Employees Retirement System into the Deputy Sheriff Retirement System no later than November 30, 2020.

(2) The amount of assets to be transferred for each transferring sheriff shall be computed as of July 1, 2019, using the actuarial valuation assumptions in effect for the July 1, 2019, actuarial valuation of the Public Employees Retirement System, and updated with seven and one-half percent annual interest to the date of the actual asset transfer. The market value of the assets of the transferring sheriff in the Public Employees Retirement System shall be determined as of the end of the month preceding the actual transfer. To determine the computation of the asset share to be transferred the board shall:

(A) Compute the market value of the Public Employees Retirement System assets;

(B) Compute the accrued liability for all Public Employees Retirement System retirees, beneficiaries, disabled retirees, and terminated inactive members;

(C) Reduce the market value of Public Employees Retirement System assets by the accrued liability determined in paragraph (B) of this subdivision;

(D) Compute the entry age method accrued liability for all active Public Employees Retirement System members;

(E) Compute the share of accrued liability as determined pursuant to paragraph (D) of this subdivision, that is attributable to those sheriffs in the Public Employees Retirement System who have elected to transfer to the plan;

(F) Compute the percentage of active member's accrued liability computed to the sheriffs by dividing paragraph (E) by paragraph (D) of this subdivision; and

(G) Determine the asset share to be transferred from Public Employees Retirement System to the plan by multiplying paragraph (C) times paragraph (F) of this subdivision.

(f) Any member who was appointed sheriff of a county in West Virginia in which retirement contributions were not made to the Deputy Sheriff Retirement System or the Public Employees Retirement System may purchase service credit for the period he or she served as appointed sheriff by the member remitting the required employee contribution and any interest thereon, and the participating public employer remitting the required employer contribution and any interest thereon. Interest shall accumulate at a rate of 7.5 percent per annum. Payments for the purchase of service credit authorized by this section must be made in full on or before September 30, 2021.

§7-14D-32. Severability.

If any part of this article is declared unconstitutional by a court of competent jurisdiction, such decision shall not affect the validity of the remaining provisions of this article, or the article in its entirety.

CHAPTER 71

(S. B. 488 - By Senators Maynard and Woodrum)

[Passed April 8, 2021; in effect 90 days from passage (July 7, 2021)]
[Approved by the Governor on April 21, 2021.]

AN ACT to amend and reenact §7-18-13a and §7-18-14 of the Code of West Virginia, 1931, as amended, all relating to the distribution of hotel occupancy tax proceeds to convention and visitor's bureaus; providing that a convention and visitor's bureau shall satisfy certain requirements to receive funding from hotel occupancy taxes; requiring certain reporting from convention and visitor's bureaus; requiring triennial financial reviews of convention and visitor's bureaus; clarifying that the State Auditor and Legislative Auditor may review the operations and finances of a convention and visitor's bureau; prohibiting the authorization of a new convention and visitor's bureau that does not satisfy certain requirements; and clarifying that it is a misdemeanor offense for a member of a governing body to facilitate the distribution of hotel occupancy tax proceeds to a convention and visitor's bureau that does not satisfy certain requirements.

Be it enacted by the Legislature of West Virginia:

ARTICLE 18. HOTEL OCCUPANCY TAX.

§7-18-13a. Annual reports by convention and visitor's bureaus; eligibility for hotel occupancy tax proceeds.

(a) On or before 90 days after the end of its fiscal year, every convention and visitor's bureau which receives any appropriation of hotel occupancy tax from one or more counties or municipalities shall file with each such county or municipality, the State Auditor, the Joint Committee on Government and Finance, and the West

Virginia Association of Convention and Visitors Bureaus a report, including an income statement and balance sheet, showing all amounts of hotel occupancy tax appropriated to the convention and visitor's bureau and all expenditures of hotel occupancy tax made by the convention and visitor's bureau for the prior fiscal year, as well as any such information required by subsection (b) of this section. A convention and visitor's bureau that has not filed a report in accordance with the provisions of this section shall be ineligible to receive additional appropriations of hotel occupancy tax proceeds until such report has been filed.

(b) In order to qualify for a distribution of net proceeds pursuant to §7-18-14 of this code, a convention and visitor's bureau shall satisfy the following requirements:

(1) The convention and visitor's bureau shall have a minimum annual budget;

(2) The convention and visitor's bureau shall establish a marketing plan targeting markets outside of a 50-mile radius of the bureau's municipality or county of operation;

(3) The annual operating budget for the convention and visitor's bureau allocates approximately 40 percent of annual revenues to advertising and marketing, approximately 40 percent to salaries and personnel, and approximately 20 percent to other operating expenses: *Provided,* That a convention and visitor's bureau that allocates less than 40 percent of annual revenues to salaries and personnel shall be considered to have satisfied the budget allocation requirement;

(4) The convention and visitor's bureau has a full-time executive director that maintains the minimum number of continuing education hours recommended annually by industry standards;

(5) The convention and visitor's bureau has a physical office and/or visitor center that is accessible at least 40 hours per week and has a dedicated phone line;

(6) The convention and visitor's bureau maintains a website and appropriate marketing materials;

(7) The convention and visitor's bureau has received accreditation from an accrediting body; and

(8) The convention and visitor's bureau submits an annual report to all of its funding entities, which shall include, but not be limited to, the information provided for in this subsection.

Nothing in this section may be construed as to interfere with the ability of a county or municipality to enter into any agreements or partnerships with convention and visitor's bureaus in neighboring counties or municipalities for the purposes of distributing net tax proceeds pursuant to §7-18-14 of this code, so long as all other requirements of this section are met.

(c) At least once every three years, any bureau that receives any appropriation of hotel occupancy tax from one or more counties or municipalities shall cause an audit or financial review, in a form as is appropriate to the particular bureau, to be made by an independent certified public accountant of all its books, accounts, and records relating to all receipts and expenditures of any hotel occupancy tax appropriations for the three prior fiscal years of the bureau. A copy of the audit or financial review shall be filed with each county or municipality from which the bureau received an appropriation of hotel occupancy tax, the State Auditor, the Joint Committee on Government and Finance, and the West Virginia Association of Convention and Visitors Bureaus. After July 1, 2024, a bureau that has not caused such an audit or financial review to be made is ineligible to receive an appropriation of hotel occupancy tax proceeds pursuant to §7-18-14 of this code.

(d) In order to encourage counties and municipalities to work within the existing framework of convention and visitor's bureaus, there shall be a moratorium on the authorization of new convention and visitors bureaus until June 30, 2024. A county or municipality may not appropriate any net proceeds of hotel occupancy taxes, pursuant to §7-18-14 of this code, to any convention or visitor's bureau created on or after the amendments to this section enacted

during the regular session of the Legislature, 2021, and prior to the end of the moratorium imposed by this subsection. On or after July 1, 2024, a county or municipality may authorize the creation of a new convention and visitor's bureau so long as the bureau meets all of the requirements of subsection (b) of this section.

(e) Nothing in this section may prohibit either the State Auditor or the Legislative Auditor from conducting regular reviews or audits of the operations or finances of a convention and visitor's bureau to ensure compliance with this code.

§7-18-14. Proceeds of tax; application of proceeds.

(a) *Application of proceeds*. — The net proceeds of the tax collected and remitted to the taxing authority pursuant to this article shall be deposited into the general revenue fund of such municipality or county commission and, after appropriation thereof, shall be expended only as provided in this section.

(b) *Required expenditures*. — At least 50 percent of the net revenue receivable during the fiscal year by a county or a municipality pursuant to this article shall be expended in the following manner for the promotion of conventions and tourism:

(1) *Municipalities*. — If a convention and visitor's bureau is located within the municipality, county, or region, and has complied with the requirements of §7-18-13a of this code, the governing body of such municipality shall appropriate the percentage required by this subsection to that bureau. If a convention and visitor's bureau is not located within such municipality, county or region, or a bureau located within such municipality has not complied with the requirements of §7-18-13a of this code, then the percentage appropriation required by this subsection shall be appropriated as follows:

(A) Any hotel located within such municipality may apply to such municipality for an appropriation to such hotel of a portion of the tax authorized by this article and collected by such hotel and remitted to such municipality for uses directly related to the promotion of tourism and travel, including advertising, salaries,

travel, office expenses, publications, and similar expenses. The portion of such tax allocable to such hotel shall not exceed 75 percent of that portion of such tax collected and remitted by such hotel which is required to be expended pursuant to this subsection: *Provided*, That prior to appropriating any moneys to such hotel, such municipality shall require the submission of, and give approval to, a budget setting forth the proposed uses of such moneys.

(B) If there is more than one convention and visitor's bureau that is in compliance with the requirements of §7-18-13a of this code located within a municipality, the city council may allocate the tax authorized by this article to one or more of such bureaus in such portion as the city council in its sole discretion determines.

(2) *Counties*. — If a convention and visitor's bureau is located within a county or region and has complied with the requirements of §7-18-13a of this code, the county commission shall appropriate the percentage required by this subsection to that convention and visitor's bureau. If a convention and visitor's bureau is not located within such county or region, or a bureau located within the county or region has not complied with the requirements of §7-18-13a of this code, then the percentage appropriation required by this subsection shall be appropriated as follows:

(A) Any hotel located within the county or region may apply to the county for an appropriation to the hotel of a portion of the tax authorized by this article and collected by the hotel and remitted to the county for uses directly related to the promotion of tourism and travel, including advertising, salaries, travel, office expenses, publications, and similar expenses. The portion of the tax allocable to the hotel may not exceed 75 percent of that portion of the tax collected and remitted by the hotel which is required to be expended pursuant to this subsection: *Provided*, That prior to appropriating any moneys to the hotel, the county shall require the submission of, and give approval to, a budget setting forth the proposed uses of such moneys.

(B) If there is more than one convention and visitor's bureau that is in compliance with the requirements of §7-18-13a of this

code located within a county or region, the county commission may allocate the tax authorized by this article to one or more of the bureaus in such portion as the county commission in its sole discretion determines.

(3) *Legislative finding*. — The Legislature hereby finds and declares that in order to attract new business and industry to this state and to retain existing business and industry all to provide the citizens of the state with economic security and to advance the business prosperity and economic welfare of this state, it is necessary to enhance recreational and tourism opportunities. Therefore, in order to promote recreation and tourism, the Legislature finds that public financial support should be provided for constructing, equipping, improving, and maintaining projects, agencies, and facilities which promote recreation and tourism. The Legislature also finds that the support of convention and visitor's bureaus and hotels is a public purpose for which funds may be expended. Local convention and visitor's bureaus and hotels receiving funds under this subsection may expend the funds for the payment of administrative expenses, and for the direct or indirect promotion of conventions and tourism, and for any other uses and purposes authorized by this subsection.

(c) *Permissible expenditures*. — After making the appropriation required by subsection (b) of this section, the remaining portion of the net revenues receivable during the fiscal year by the county or municipality, pursuant to this article, may be expended for one or more of the purposes set forth in this subsection, but for no other purpose. The purposes for which expenditures may be made pursuant to this subsection are as follows:

(1) The planning, construction, reconstruction, establishment, acquisition, improvement, renovation, extension, enlargement, equipment, maintenance, repair, and operation of publicly owned convention facilities, including, but not limited to, arenas, auditoriums, civic centers, and convention centers;

(2) The payment of principal or interest or both on revenue bonds issued to finance the convention facilities;

(3) The promotion of conventions;

(4) The construction, operation, or maintenance of public parks, tourist information centers, and recreation facilities, including land acquisition;

(5) The promotion of the arts;

(6) Historic sites;

(7) Beautification projects;

(8) Passenger air service incentives and subsidies directly related to increasing passenger air service availability to tourism destinations in this state;

(9) Medical care and emergency services in any county where:

(A) There is an urgent necessity to preserve the delivery of acute medical care and emergency services;

(B) There is an increase in need for acute medical care and emergency services directly related to tourism;

(C) Recurrent flooding in the county significantly disrupts, on a periodic basis, the delivery of acute medical care and emergency services;

(D) There is an inadequate economic base within the county from any source other than tourism to preserve the delivery of acute medical care and emergency services;

(E) There is an inadequate economic base directly related to low population in the county, specifically, a population of less than 10,000 persons according to the most recent decennial census taken under the authority of the United States;

(F) There is no more than one hospital within the county; and

(G) The county commission makes specific findings, by resolution, that all of the foregoing conditions within the county exist;

(10) Support and operation of the Hatfield-McCoy Recreation Area by the participating county commissions in the Hatfield-McCoy Regional Recreational Authority; or

(11) Support and operation of economic development activities, including site development, facilities, and infrastructure in an amount not to exceed $200,000.

(d) *Definitions*. — For purposes of this section, the following terms are defined:

(1) *Convention and visitor's bureau and visitor's and convention bureau*. — "Convention and visitor's bureau" and "visitor's and convention bureau" are interchangeable and either shall mean a nonstock, nonprofit corporation with a full-time staff working exclusively to promote tourism and to attract conventions, conferences, and visitors to the municipality, county, or region in which the convention and visitor's bureau or visitor's and convention bureau is located or engaged in business within.

(2) *Convention center*. — "Convention center" means a convention facility owned by the state, a county, a municipality, or other public entity or instrumentality and shall include all facilities, including armories, commercial, office, community service, and parking facilities and publicly owned facilities constructed or used for the accommodation and entertainment of tourists and visitors, constructed in conjunction with the convention center and forming reasonable appurtenances thereto.

(3) *Fiscal year*. — "Fiscal year" means the year beginning July 1 and ending June 30 of the next calendar year.

(4) *Net proceeds*. — "Net proceeds" means the gross amount of tax collections less the amount of tax lawfully refunded.

(5) *Promotion of the arts*. — "Promotion of the arts" means activity to promote public appreciation and interest in one or more of the arts. It includes the promotion of music for all types, the dramatic arts, dancing, painting, and the creative arts through shows, exhibits, festivals, concerts, musicals, and plays.

(6) *Recreational facilities*. — "Recreational facilities" means and includes any public park, parkway, playground, public recreation center, athletic field, sports arena, stadium, skating rink or arena, golf course, tennis courts, and other park and recreation facilities, whether of a like or different nature, that are owned by a county or municipality.

(7) *Region*. — "Region" means an area consisting of one or more counties or municipalities that have agreed by contract to fund a convention and visitor's bureau to promote those counties or municipalities.

(8) *Historic site*. — "Historic site" means any site listed on the United States National Register of Historic Places, or listed by a local historical landmarks commission, established under state law, when the sites are owned by a city, a county, or a nonprofit historical association and are open, from time to time, to accommodate visitors.

(e) Any member of a governing body who willingly and knowingly votes to or causes to be expended moneys generated by the provisions of this section for purposes other than specifically set forth in this section, or who approves of or otherwise facilitates the distribution of net proceeds to a convention and visitor's bureau failing to meet the requirements of §7-18-13a(b) of this code, is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than $100.

CHAPTER 72

(Com. Sub. for S. B. 695 - By Senator Rucker)

[Passed April 9, 2021; in effect from passage]
[Approved by the Governor on April 28, 2021.]

AN ACT to amend and reenact §8-6-4a and §8-6-5 of the Code of West Virginia, 1931, as amended; and to amend and reenact §8-7-2 of said code, all relating to counties and municipalities; and providing procedures for decreasing corporate limits or increasing corporate limits by annexation and annexation by minor boundary adjustments.

Be it enacted by the Legislature of West Virginia:

ARTICLE 6. ANNEXATION.

§8-6-4a. Annexation without election for municipalities in counties that have an adopted countywide zoning ordinance which includes urban growth boundaries.

(a) This section applies to municipalities in counties that have adopted a countywide zoning ordinance with designated urban growth boundaries and, prior to January 1, 2009, have adopted local impact fees pursuant to the provisions of §7-20-1 *et seq.* of this code that want to annex additional property without an election.

(b) For purposes of this section only:

(1) "Contiguous" means property that is next to, abutting, and having a boundary that is coterminous with the municipality's designated urban growth boundary. The length of a street, highway, road, or other traffic or utility easement, streams, rivers, or other natural topography are not to be used to determine if a property is

contiguous: *Provided,* That the width of a street, highway, road, or other traffic or utility easement, streams, rivers, or other natural topography may be used to determine contiguous boundaries.

(2) "Urban growth boundary" means a site-specific line, delineated on a zoning map or a written description in a zoning ordinance identifying an area around and outside the corporate limits of a municipality within which there is a sufficient supply of developable land within the boundary for at least a prospective 20-year period of municipal growth based on demographic forecasts and the time reasonably required to effectively provide municipal services to the identified area. The urban growth boundary may be called by any name chosen by the county commission, but the word "boundary" shall be used in the name of the boundary. The boundary shall be established by the county commission in agreement with each individual municipality regarding that municipality's boundary. If the county commission and municipality cannot agree upon the location or size of the boundary, either party may file for declaratory judgment relief in the circuit court which shall submit the dispute to mediation or arbitration prior to final resolution by the circuit court. Once a county has adopted an urban growth boundary by its designation on an adopted county zoning map, the gross area inside the boundary may not be reduced without written consent of the municipality. The county commission shall review each urban growth boundary at a period not to exceed 10 years or upon request of the individual municipality.

(c) *Procedure for a municipality to annex property within an urban growth boundary*. —

(1) If the proposed property to be annexed by a municipality is entirely within the municipality's designated urban growth boundary, then the municipality may annex without an election the proposed property pursuant to the provisions of §8-6-4 of this code. Agreement with the county commission is not required.

(2) If the proposed property to be annexed by minor boundary adjustment by a municipality is entirely within the municipality's designated urban growth boundary, then the municipality may

annex without an election the proposed property if the provisions of §8-6-5 of this code are followed, except that agreement with the county commission is not required.

(d) *Procedure for a municipality to annex property within urban growth boundaries of two or more municipalities*. —

If the proposed property to be annexed by a municipality is partially or wholly within another municipality's urban growth boundary, then the municipality may annex without an election the proposed property pursuant to the provisions of §8-6-4 of this code if the two municipalities have executed an intergovernmental agreement regarding the annexation of the subject property. Agreement with the county commission is not required.

(e) *Procedure for a municipality to annex contiguous property outside an urban growth boundary*. —

(1) If the proposed property to be annexed by a municipality is outside the municipality's designated urban growth boundary, then the municipality may annex without an election the proposed property pursuant to the provisions of §8-6-4 of this code, if:

(A) The proposed property to be annexed is contiguous to the municipality, as defined in this section; and

(B) The municipality has the county commission's agreement.

(2) Prior to the agreement of the county commission to the annexation of the proposed property, the county commission shall:

(A) Hold a public hearing;

(B) Place a notice on the subject property, which notice shall be the same as that required for property to be rezoned; and

(C) At least 15 days prior to the public hearing, publish a notice of the date, time, and place of the public hearing as a Class I legal advertisement in compliance with the provisions of §59-3-1 *et seq.* of this code.

(f) *Procedure for a municipality to annex noncontiguous property outside an urban growth boundary*. —

(1) If the proposed property to be annexed by a municipality is entirely outside the municipality's designated urban growth boundary and is not contiguous to the municipality, as defined in this section, then the municipality may annex without an election the proposed property pursuant to the provisions of §8-6-4 of this code if the municipality has the county commission's agreement and, prior to the agreement of the county commission to the annexation of the proposed property, the county commission shall:

(A) Hold a public hearing;

(B) Place a notice on the subject property, which notice shall be the same as that required for property to be rezoned; and

(C) At least 15 days prior to the public hearing, publish a notice of the date, time, and place of the public hearing as a Class I legal advertisement in compliance with the provisions of §59-3-1 *et seq.* of this code.

(2) After the public hearing and on-site notice, if the county commission finds, by a written record, that the proposed annexation is for the good of the county as a whole, then the county commission may agree to the annexation.

(g) Prior to the county commission entering an order for any annexation pursuant to this section, the annexed property shall be surveyed by a licensed professional surveyor and a metes and bounds description of the annexed property must be provided to the county commission of the county in which the property is located.

(h) After a municipality has annexed property pursuant to this section and the property has been surveyed, the county commission shall enter an order. After the order is entered, the corporate limits of the municipality include the annexed property.

§8-6-5. Annexation by minor boundary adjustment.

(a) If a municipality desires to increase its corporate limits by making a minor boundary adjustment, the governing body of the municipality may apply to the county commission of the county

wherein the municipality or the major portion of the territory thereof, including the territory to be annexed, is located for permission to effect annexation by minor boundary adjustment. The municipality shall pay the costs of all proceedings before the commission: *Provided,* That:

(1) A minor boundary adjustment may not exceed 105 percent of the existing total municipal boundary;

(2) A minor boundary adjustment may not exceed 120 percent of the current area of the municipality; and

(3) A minor boundary adjustment made in this manner is limited to one boundary annexation within a two-year period, regardless of subdivisions (1) and (2) of this subsection.

(b) In addition to any other annexation configuration, a municipality may incorporate by minor boundary adjustment: (i) Territory that consists of a street or highway as defined in §17C-1-35 of this code and one or more freeholders; or (ii) territory that consists of a street or highway as defined in §17C-1-35 of this code which does not include a freeholder, but which is necessary for the provision of emergency services in the territory being annexed.

(c) A county commission may develop a form application for annexation for minor boundary adjustment. An application for annexation by minor boundary adjustment shall include, but not be limited to:

(1) The number of businesses located in and persons residing in the additional territory;

(2) An affidavit of each business located in, each person residing in, and each freeholder of the additional territory stating that he, she, or it has consented to be included in the annexation, in such form as the county commission deems sufficient. If the municipality cannot obtain an affidavit from a business, resident, or freeholder within 90 days after sending the affidavit form and a letter explaining the purpose of the affidavit via certified mail, return receipt requested, to the best available address for the

business, resident, or freeholder, such business, resident, or freeholder shall be considered to have consented to the annexation;

(3) An accurate map showing the metes and bounds of the additional territory;

(4) A statement setting forth the municipality's plan for providing the additional territory with all applicable public services such as police and fire protection, solid waste collection, public water and sewer services, and street maintenance services, including to what extent the public services are or will be provided by a private solid waste collection service or a public service district;

(5) A statement of the impact of the annexation on any private solid waste collection service or public service district currently doing business in the territory proposed for annexation in the event the municipality should choose not to utilize the current service providers;

(6) A statement of the impact of the annexation on fire protection and fire insurance rates in the territory proposed for annexation;

(7) A statement of how the proposed annexation will affect the municipality's finances and services; and

(8) A statement that the proposed annexation meets the requirements of this section.

(d) Upon receipt of a complete application for annexation by minor boundary adjustment, the county commission shall determine whether the application meets the threshold requirements for consideration as a minor boundary adjustment including whether the annexation could be efficiently and cost effectively accomplished under §8-6-2 or §8-6-4 of this code. If the county commission determines that the annexation could be cost effectively and efficiently accomplished under §8-6-2 or §8-6-4 of this code, that the application lacks sufficient evidence that all affected parties of the additional territory consent to the annexation, or that the application otherwise fails to meet the

threshold requirements for consideration as a minor boundary adjustment, it shall enter an order denying the application, which order shall include the reasons upon which it is based.

(e) If the application meets the threshold requirements, the county commission shall order publication of a notice of the proposed annexation to the corporate limits and of the date and time set by the commission for a hearing on the proposal. Publication shall be as in the case of an order calling for an election, as set forth in §8-6-2 of this code. A like notice shall be prominently posted at not less than five public places within the area proposed to be annexed.

(f) In making its final decision on an application for annexation by minor boundary adjustment, the county commission shall, at a minimum, consider the following factors:

(1) Whether the territory proposed for annexation is contiguous to the corporate limits of the municipality. For purposes of this section, "contiguous" means that at the time the application for annexation is submitted, the territory proposed for annexation either abuts directly on the municipal boundary or is separated from the municipal boundary by an unincorporated street or highway, or street or highway right-of-way, a creek or river, or the right-of-way of a railroad or other public service corporation, or lands owned by the state or the federal government;

(2) Whether the proposed annexation is limited solely to a Division of Highways right-of-way or whether the Division of Highways holds title to the property in fee;

(3) Whether affected parties of the territory to be annexed oppose or support the proposed annexation. For purposes of this section, "affected parties" means freeholders, firms, corporations, and qualified voters in the territory proposed for annexation and in the municipality, and a freeholder whose property abuts a street or highway, as defined in §17C-1-35 of this code, when: (i) The street or highway is being annexed to provide emergency services; or (ii) the annexation includes one or more freeholders at the end of the street or highway proposed for annexation;

(4) Whether the proposed annexation consists of a street or highway as defined in §17C-1-35 of this code and one or more freeholders;

(5) Whether the proposed annexation consists of a street or highway as defined in §17C-1-35 of this code which does not include a freeholder, but which is necessary for the provision of emergency services in the territory being annexed;

(6) Whether another municipality has made application to annex the same or substantially the same territory; and

(7) Whether the proposed annexation is in the best interest of the county as a whole.

(g) If the county commission denies the application for annexation by minor boundary adjustment, the commission may allow the municipality to modify the proposed annexation to meet the commissions objections. The commission must order another public hearing if significant modifications are proposed.

(h) The final order of the commission shall include the reasons for the grant or denial of the application.

(i) The municipality applying for annexation or any affected party may appeal the commission's final order to the circuit court of the county in which the municipality or the major portion thereof, including the area proposed to be annexed, is located. The county commission may participate in any appeal taken from its order in the same manner and to the same extent as a party to the appeal. The order may be reviewed by the circuit court as an order of a county commission ordering an election may be reviewed under §8-5-16 of this code.

(j) If the final order of the county commission is a denial of the application for annexation, the municipality may appeal as set forth in this section, but the municipality may not present the commission with another application for annexation relating to the same proposed change or any part thereof for a period of two years after issuance of the final order of the commission, unless such application is directed by the circuit court as the result of an appeal.

ARTICLE 7. DECREASE OF CORPORATE LIMITS.

Part II. Decrease of Corporate Limits by Election.

§8-7-2. Procedure to decrease corporate limits.

A petition to decrease the corporate limits of a municipality may be filed with the governing body thereof by five percent or more of the freeholders in the territory proposed for elimination, setting forth the change proposed in the metes and bounds of the municipality, and asking that a vote be taken upon the proposed change. The petition shall be verified and shall be accompanied by an accurate survey map showing the territory which would be eliminated from the corporate limits by the proposed change: *Provided,* That within 90 days after notice of the petition shall have been given by publication of a Class II-0 legal advertisement pursuant to §59-3-1 *et seq.* of this code, cost to be paid by the petitioners each business and freeholder within the territory proposed for elimination may file a sworn statement objecting to the change to the metes and bounds of the municipality. If a business or freeholder files a timely objection, that property shall remain within the territory or the municipality and shall be removed from the metes and bounds description and survey map submitted to the qualified voters as provided in this section. The governing body, upon bond in penalty prescribed by the governing body with good and sufficient surety being given by petitioners, and conditioned to pay the costs of such election if a majority of the legal votes cast are against the proposed change in boundary, shall thereupon order a vote of the qualified voters of such municipality to be taken upon the proposed change on a date and at a time and place therein to be named in the order, not less than 20 nor more than 30 days from the date thereof. The governing body shall cause the order to be published, at the cost of the municipality, as a Class II-0 legal advertisement in compliance with §59-3-1 *et seq.* of this code, and the publication area for such publication shall be the municipality. The first publication shall be at least 14 days prior to the date upon which the vote is to be taken. The order so published shall contain an accurate description by metes and bounds of the territory which would be eliminated from

the corporate limits by the proposed change, and, if practicable, shall also contain a popular description of the territory.

The election shall be held, superintended, and conducted, and the results thereof ascertained, certified, returned, and canvassed in the same manner and by the same individuals as elections for municipal officers. The ballots, or ballot labels where voting machines are used, shall have written, or printed on them the words:

[ ] For Decrease of Corporate Limits

[ ] Against Decrease of Corporate Limits

When an election is held in any municipality in accordance with the provisions of this section, another such election relating to the same proposed change or any part thereof shall not be held for a period of one year.

If a majority of all of the legal votes cast within such municipality are in favor of the proposed change, then the governing body shall proceed as specified in the immediately succeeding section of this article.

CHAPTER 73

(H. B. 2500 - By Delegates Foster, Dean, Steele, Mandt and J. Jeffries)

[Passed April 10, 2021; in effect from passage.]
[Approved by the Governor on April 19, 2021.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §16-63-1, §16-63-2, and §16-63-3, all relating to establishing statewide uniformity for auxiliary container regulations.

Be it enacted by the Legislature of West Virginia:

ARTICLE 63. STATEWIDE UNIFORMITY FOR AUXILIARY CONTAINER REGULATIONS.

§16-63-1. Definitions.

As used in this article:

"Auxiliary container" means a bag, cup, bottle, or other packaging, whether reusable or single-use, that meets both of the following requirements:

(1) Is made of cloth, paper, plastic, cardboard, corrugated material, aluminum, glass, postconsumer recycled material, or similar material or substrates, including coated, laminated, or multilayer substrates.

(2) Is designed for transporting, consuming, or protecting merchandise, food, or beverages from or at a food service or retail facility.

"Local unit of government" means a county, municipality, or city.

§16-63-2. Local ordinance requirements.

Subject to §16-63-3 of this code, a local unit of government may not adopt or enforce an ordinance that does any of the following:

(1) Regulates the use, disposition, or sale of auxiliary containers.

(2) Prohibits or restricts auxiliary containers.

(3) Imposes a fee, charge, or tax on auxiliary containers.

§16-63-3. Ordinances permitted.

(a) §16-63-2 of this code may not be construed to prohibit or restrict any of the following:

(1) A curbside recycling program.

(2) A designated residential or commercial recycling location.

(3) A commercial recycling program.

(b) §16-63-2 of this code does not apply to any of the following:

(1) An ordinance that prohibits littering, as described in §22-15A-2 of this code.

(2) The use of auxiliary containers on property owned by a local unit of government.

CHAPTER 74

(H. B. 2829 - By Delegates Storch, Gearheart, Pethtel, Evans, Anderson and J. Pack)

(By Request of the Municipal Pensions Oversight Board)

[Passed April 6, 2021; in effect ninety days from passage.]
[Approved by the Governor on April 21, 2021.]

AN ACT to amend and reenact §8-22-20 of the Code of West Virginia, 1931, as amended, relating to the amortization of annual impacts on funding deficiencies due to new gains or losses on assets and liabilities and changes in actuarial assumptions.

Be it enacted by the Legislature of West Virginia:

ARTICLE 22. RETIREMENT BENEFITS GENERALLY; POLICEMEN'S PENSION AND RELIEF FUND; FIREMEN'S PENSION AND RELIEF FUND; PENSION PLANS FOR EMPLOYEES OF WATERWORKS SYSTEM, SEWERAGE SYSTEM OR COMBINED WATERWORKS AND SEWERAGE SYSTEM.

§8-22-20. Actuary; actuarial valuation report; minimum standards for annual municipality contributions to the fund; definitions; actuarial review and audit.

(a) The West Virginia Municipal Pensions Oversight Board shall contract with or employ a qualified actuary to annually prepare an actuarial valuation report on each pension and relief fund. The selection of contract vendors to provide actuarial services, including the reviewing actuary as provided in subsection (c) of this section, shall be by competitive bid process but is specifically exempt from the purchasing provisions of article three,

chapter five-a of this code. The expense of the actuarial report shall be paid from moneys in the Municipal Pensions Security Fund. Uses of the actuarial valuations from the qualified actuary shall include, but not be limited to, determining a municipal policemen's or firemen's pension and relief fund's eligibility to receive state money and to provide supplemental benefits.

(b) The actuarial valuation report provided pursuant to subsection (a) of this section shall consist of, but is not limited to, the following disclosures: (1) The financial objective of the fund and how the objective is to be attained; (2) the progress being made toward realization of the financial objective; (3) recent changes in the nature of the fund, benefits provided or actuarial assumptions or methods; (4) the frequency of actuarial valuation reports and the date of the most recent actuarial valuation report; (5) the method used to value fund assets; (6) the extent to which the qualified actuary relies on the data provided and whether the data was certified by the fund's auditor or examined by the qualified actuary for reasonableness; (7) a description and explanation of the actuarial assumptions and methods; (8) an evaluation of each plan using the alternative funding method, to assess advantages of changing to other funding methods as provided in this article; and (9) any other information required in §8-22-20a of this code or that the qualified actuary feels is necessary or would be useful in fully and fairly disclosing the actuarial condition of the fund.

(c)(1) Except as provided in subsections (e) and (f) of this section, beginning June 30, 1991, and thereafter, the financial objective of each municipality shall not be less than to contribute to the fund annually an amount which, together with the contributions from the members and the allocable portion of the Municipal Pensions and Protection Fund for municipal pension and relief funds established under §33-3-14d of this code or a municipality's allocation from the Municipal Pensions Security Fund created in §8-22-18b of this code and other income sources as authorized by law will be sufficient to meet the normal cost of the fund and amortize any actuarial deficiency over a period of not more than forty years beginning from July 1, 1991: *Provided,* That in the fiscal year ending June 30, 1991, the municipality may elect

to make its annual contribution to the fund using an alternative contribution in an amount not less than: (i) One hundred seven percent of the amount contributed for the fiscal year ending June 30, 1990; or (ii) an amount equal to the average of the contribution payments made in the five highest fiscal years beginning with the fiscal year ending 1984, whichever is greater: *Provided, however,* That contribution payments in subsequent fiscal years under this alternative contribution method may not be less than 107 percent of the amount contributed in the prior fiscal year: *Provided further,* That in order to avoid penalizing municipalities and to provide flexibility when making contributions, municipalities using the alternative contribution method may exclude a one-time additional contribution made in any one year in excess of the minimum required by this section: *And provided further,* That the governing body of any municipality may elect to provide an employer continuing contribution of one percent more than the municipality's required minimum under the alternative contribution plan authorized in this subsection: *And provided further,* That if any municipality decides to contribute an additional one percent, then that municipality may not reduce the additional contribution until the respective pension and relief fund no longer has any actuarial deficiency: *And provided further,* That any decision and any contribution payment by the municipality is not the liability of the State of West Virginia: *And provided further,* That if any municipality or any pension fund board of trustees makes a voluntary election and thereafter fails to contribute the voluntarily increase as provided in this section and in §8-22-19(c) of this code, then the board of trustees is not eligible to receive funds allocated under §33-3-14d of this code: *And provided further,* That prior to using this alternative contribution method the actuary of the fund shall certify in writing that the fund is projected to be solvent under the alternative contribution method for the next consecutive 15 year period. For purposes of determining this minimum financial objective: (i) The value of the fund's assets shall be determined on the basis of any reasonable actuarial method of valuation which takes into account fair market value; and (ii) all costs, deficiencies, rate of interest and other factors under the fund shall be determined on the basis of actuarial assumptions and methods which, in aggregate, are reasonable (taking into account

the experience of the fund and reasonable expectations) and which, in combination, offer the qualified actuary's best estimate of anticipated experience under the fund: *And provided further,* That any municipality which elected the alternative funding method under this section and which has an unfunded actuarial liability of not more than 25 percent of fund assets, may, beginning September 1, 2003, elect to revert to the standard funding method, which is to contribute to the fund annually an amount which is not less than an amount which, together with the contributions from the members and the allocable portion of the Municipal Pensions and Protection Fund for municipal pension and relief funds established under §33-3-14d of this code and other income sources as authorized by law, will be sufficient to meet the normal cost of the fund and amortize any actuarial deficiency over a period of not more than 40 years, beginning from July 1, 1991.

(2) No municipality may anticipate or use in any manner any state funds accruing to the police or fireman's pension fund to offset the minimum required funding amount for any fiscal year.

(3) Notwithstanding any other provision of this section or article to the contrary, each municipality shall contribute annually to its policemen's pension and relief fund and its firemen's pension and relief fund an amount which may not be less than the normal cost, as determined by the annual actuarial valuation report required by this section: *Provided,* That in any fiscal year in which the actuarial valuation report determines that a municipality's policemen's pension and relief fund or firemen's pension and relief fund is funded at 125 percent or higher and the Municipal Pensions Oversight Board's actuary provides an actuarial recommendation that the normal cost does not need to be paid by the employer for that fiscal year, that municipality may elect to make no contribution for that fiscal year. A municipality's election not to contribute the normal cost in any year does not affect the payments required by §8-22-19 of this code by members to a pension and relief fund and these payments are to continue as required by that section.

(4) The actuarial process, which includes the selection of methods and assumptions, shall be reviewed by the qualified actuary no less than once every five years. Furthermore, the

qualified actuary shall provide a report to the oversight board with recommendations on any changes to the actuarial process.

(5) The oversight board shall hire an independent reviewing actuary to perform an actuarial audit of the work performed by the qualified actuary no less than once every seven years.

(d) For purposes of this section, the term "qualified actuary" means only an actuary who is a member of the Society of Actuaries or the American Academy of Actuaries. The qualified actuary shall be designated a fiduciary and shall discharge his or her duties with respect to a fund solely in the interest of the members and members' beneficiaries of that fund. In order for the standards of this section to be met, the qualified actuary shall certify that the actuarial valuation report is complete and accurate and that in his or her opinion the technique and assumptions used are reasonable and meet the requirements of this section.

(e)(1) Beginning January 1, 2010, municipalities may choose the optional method of financing municipal policemen's or firemen's pension and relief funds as outlined in this subsection in lieu of the standard or alternative methods as provided in subdivision (1), subsection (c) of this section.

(2) For those municipalities choosing the optional method of finance, the minimum standard for annual municipality contributions to each policemen's or firemen's pension and relief fund shall be an amount which, together with the contributions from the members and allocable portion of the Municipal Pensions and Protection Fund or Municipal Pensions Security Fund created in §8-22-18b of this code, and other income sources as authorized by law, will be sufficient to meet the normal cost of the fund and amortize any actuarial deficiency over a period of not more than 40 years beginning January 1, 2010: *Provided,* That those municipalities using the standard method of financing in 2009 shall continue to amortize their actuarial deficiencies over a period of not more than 40 years beginning July 1, 1991. The required contribution shall be determined each plan year as described above by the actuary retained by the oversight board, based on an actuarial valuation reflecting actual demographic and investment

experience and consistent with the Actuarial Standards of Practice published by the Actuarial Standards Board.

(3) A municipality choosing the optional method of financing a policemen's or firemen's pension and relief fund as provided in this subsection shall close the fund to police officers or fire fighters newly hired on or after January 1, 2010, and provide for those employees to be members of the Municipal Police Officers and Firefighters Retirement System as established in §8-22A-1 *et seq.*, of this code.

(f)(1) Beginning April 1, 2011, any municipality using the alternative method of financing may choose a conservation method of financing its municipal policemen's and firemen's pension and relief funds as outlined in this subsection, in lieu of the alternative method as provided in subdivision (1), subsection (c), or the optional method as provided in subsection (e) of this section.

(2) For those municipalities choosing the conservation method of finance, until a plan is funded at 100 percent, a part of each plan member's employee contribution to the fund equal to one and one-half percent of the employee's compensation, shall be deposited into and remain in the trust and accumulate investment return. In addition, until a plan is funded at 100 percent, an actuarially determined portion of the premium tax allocation to each fund provided in accordance with section fourteen-d, article three, and section seven, article twelve-c of chapter thirty-three of this code shall also be deposited into and remain in the trust and accumulate investment return. This variable percentage of premium tax allocation to be retained in each fund shall be determined annually by the qualified actuary provided pursuant to subsection (a) of this section to be an amount required, along with other assets of the fund as necessary to reach a funded level of 100 percent in 35 years from the time of adoption of the conservation financing method. The variable percentage shall be calculated using a prospective four-year rolling average.

(3) Upon adoption of the conservation method of finance, the municipality shall close its pension and relief funds to new members and shall place police officers and firefighters newly

hired after adoption of the conservation method into the Municipal Police Officers and Firefighters Retirement System created in §8-22A-1 *et seq.,* of this code.

(4) Upon adoption of the conservation method of financing, the minimum standard for annual municipality contributions to each policemen's or firemen's pension and relief fund shall be an amount which, together with member contributions and premium tax proceeds not required to be retained in the trust pursuant to this subsection, and other income sources as authorized by law, is sufficient to meet the annual benefit and administrative expense payments from the funds on a pay-as-you-go basis: *Provided,* That at the time the actuarial report required by this section indicates no actuarial deficiency in the municipal policemen's or firemen's pension and relief fund, the minimum annual required contribution of the municipality may not be less than an amount which together with all member contributions and other income authorized by law, is sufficient to pay normal cost.

(g) Beginning with the July 1, 2020, actuarial valuation, the existing actuarial deficiency, prior to reflecting any new gains or losses as of July 1, 2020, such as those due to investment experience, differences between actual and expected contributions, demographic experience, and changes to actuarial assumptions, shall continue to be amortized as required by subsections (c) and (e) of this section: *Provided,* That on July 1, 2020, and each successive annual valuation date thereafter, the annual impacts on the funding deficiency due to: (i) New gains or losses on assets and liabilities; and (ii) changes in actuarial assumptions, shall each be amortized over a closed period of 15 years, thereby creating layers of amortization bases rather than amortizing the entire actuarial deficiency over the same single and decreasing period: *Provided, however,* That impacts on the funding deficiency due to plan changes shall be amortized over closed five year periods. The management of these amortization bases by the actuary should entail the consideration, at least every five years, of whether to implement strategies, such as the synchronization of certain amortization layers, to help avoid volatility to the sum of the amortization payments generally resulting from the expiration of

charge and credit layers at different times. The required contribution shall be determined each plan year as described above by the actuary retained by the oversight board, based on an actuarial valuation reflecting actual demographic and investment experience and consistent with the Actuarial Standards of Practice published by the Actuarial Standards Board.

CHAPTER 75

(Com. Sub. for H. B. 2842 - By Delegates Higginbotham, Anderson, Householder, J. Kelly, Wamsley, Kessinger, Statler, Ellington, G. Ward, Kimble and Zatezalo)

[Passed April 8, 2021; in effect ninety days from passage.]
[Approved by the Governor on April 26, 2021.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §8-12-23, relating to placing limitations on the authority of municipalities, political subdivisions, and local governing bodies generally; forbidding a municipality, political subdivision, or a local governing body to enact any code, ordinance, or land use regulation that would prohibit, have the effect of prohibiting, or regulate in any manner a public utility or department of public utilities from furnishing a utility service to a utility customer based on an energy source which is provided or used by a utility service; forbidding a municipality, political subdivision, or a local governing body to enact any code, ordinance, or land use regulation that would prohibit or regulate a customer of a public utility or department of public utilities from purchasing, using, or connecting or reconnecting to a utility service based on the energy source provided or used by a utility service, forbidding a municipality, political subdivision, or a local governing body to enact any code, ordinance, or land use regulation that would prohibit or regulate a public utility or department of public utilities from utilizing vehicles, equipment, machinery, or tools, to provide utility services to a utility customer based on the energy source used by or powering those vehicles, equipment, machinery, or tools used by the utility service; and defining terms.

Be it enacted by the Legislature of West Virginia:

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

§8-12-23. Limitations on municipalities, political subdivisions, and local governing bodies' authority over energy usage and development.

(a) As used in this section:

"Energy source" means the method of generation, or the fuel source, used to provide or supply utility service to a customer. The term includes any nonrenewable or renewable energy source.

"Governing body" shall mean the mayor and council together, the council, the board of directors, the commission, or other board or body of any municipality with the responsibility of enacting ordnances and determining public policy, as defined in §8-1-2(b)(1) of this code.

"Municipality" shall mean and include any Class I, Class II, and Class III city and any Class IV town or village, heretofore or hereafter incorporated as a municipal corporation under the laws of this state, as defined in §8-1-2(a)(1) of this code.

"Political subdivision" shall have the meaning as defined in §29-12A-3 of this Code.

"Private property" means real property that is not owned or leased by a municipality or county.

"Utility service" means any service provided by a public utility or private business, including, but not limited to:

(1) The generation, production, transmission, or distribution of electricity to or for the public, for compensation; or the production, manufacture, storage, transportation, distribution, sale, or

(2) furnishing of:

(A) Natural gas; propane; artificial or manufactured gas; or

(B) a mixture of natural gas and artificial or manufactured gas; to or for the public, for compensation; for heat, light, power, or other uses.

(b) A municipality, political subdivision, or governing body, as defined in this section, does not have the power to enact any code, ordinance, or land use regulation, that would prohibit or have the effect of prohibiting, or, to otherwise regulate in any manner prohibiting or have the effect of prohibiting:

(1) A public utility, private business, or department of public utilities from furnishing a utility service to a utility customer based on an energy source provided or used by a utility service;

(2) A customer of a public utility or department of public utilities from purchasing, using, or connecting or reconnecting to a utility service based on the energy source provided or used by a utility service; or

(3) A public utility, private business, or department of public utilities, from utilizing any vehicles, equipment, machinery, or tools, to provide utility services to a utility customer based on the energy source used by or powering vehicles, equipment, machinery, or tools that are used by the utility service.

(c) Any code, ordinance, land use regulation, or general or specific plan provision adopted by a municipality, political subdivision, or governing body, must preserve the ability of an owner of private property to use the utility service of a utility service provider that is otherwise authorized under this code.

CHAPTER 76

(H. B. 2854 - By Delegates Storch, Gearheart, Pethtel, Evans, Anderson, Graves, J. Pack and Riley)

(By Request of the Consolidated Public Retirement Board)

[Passed March 24, 2021; in effect ninety days from passage.]
[Approved by the Governor on April 5, 2021.]

AN ACT to amend and reenact §8-22A-2, §8-22A-14, §8-22A-16, §8-22A-17, §8-22A-18, and §8-22A-22 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto two new sections, designated §8-22A-34 and §8-22A-35, all relating to the West Virginia Municipal Police Officers and Firefighters Retirement System; defining terms; removing conflicting and obsolete statutory provisions; eliminating conflicting provisions relating to late retirement and restrictions on annuity options for married members; clarifying preretirement death benefits; clarifying commencement date of disability benefits; clarifying death benefit for dependent children; providing for return to covered employment; and providing for severability.

Be it enacted by the Legislature of West Virginia:

CHAPTER 8. MUNICIPAL CORPORATIONS.

ARTICLE 22A. WEST VIRGINIA MUNICIPAL POLICE OFFICERS AND FIREFIGHTERS RETIREMENT SYSTEM.

§8-22A-2. Definitions.

As used in this article, unless a federal law or regulation or the context clearly requires a different meaning:

(a) "Accrued benefit" means on behalf of any member two and six-tenths percent per year of the member's final average salary for the first 20 years of credited service. Additionally, two percent per year for 21 through 25 years and one percent per year for 26 through 30 years will be credited with a maximum benefit of 67 percent of a member's final average salary. 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 §8-22A-10 of this code.

(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.

(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 §5-10D-7 of this code and Section 401(a) (17) of the Internal Revenue Code.

(f) "Annual leave service" means accrued annual leave.

(g) "Annuity starting date" means the first day of the month for which an annuity is payable after submission of a retirement application or the required beginning date, if earlier. For purposes of this subsection, if retirement income payments commence after the normal retirement age, "retirement" means the first day of the month following or coincident with the latter of the last day the member worked in covered employment or the member's normal retirement age and after completing proper written application for retirement on an application supplied by the board.

(h) "Beneficiary" means a natural person who is entitled to, or will be entitled to, an annuity or other benefit payable by the plan.

(i) "Board" means the Consolidated Public Retirement Board.

(j) "Covered employment" means either: (1) Employment as a full-time municipal police officer or firefighter and the active performance of the duties required of that employment; or (2) the period of time during which active duties are not performed but disability benefits are received under this article; or (3) concurrent employment by a municipal police officer or firefighter in a job or jobs in addition to his or her employment as a municipal police officer or firefighter in this plan where the secondary employment requires the police officer or firefighter to be a member of another retirement system which is administered by the Consolidated Public Retirement Board pursuant to this code: *Provided*, That the police officer or firefighter contributes to the fund created in this

article the amount specified as the member's contribution in §8-22A-8 of this code.

(k) "Credited service" means the sum of a member's years of service, active military duty and disability service.

(l) "Dependent child" means either: (1) An unmarried person under age 18 who is: (A) A natural child of the member; (B) a legally adopted child of the member; (C) a child who at the time of the member's death was living with the member while the member was an adopting parent during any period of probation; or (D) a stepchild of the member residing in the member's household at the time of the member's death; or (2) Any unmarried child under age 23: (A) Who is enrolled as a full-time student in an accredited college or university; (B) who was claimed as a dependent by the member for federal income tax purposes at the time of the member's death; and (C) whose relationship with the member is described in paragraph (A), (B) or (C), subdivision (1) of this subsection.

(m) "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.

(n) "Disability service" means service credit received by a member, expressed in whole years, fractions thereof, or both, equal to one half of the whole years, fractions thereof, or both, during which time a member receives disability benefits under this article.

(o) "Effective date" means January 1, 2010.

(p) "Final average salary" means the average of the highest annual compensation received for covered employment by the member during any five consecutive plan years within the member's last 10 years of service while employed, prior to any disability payment. If the member did not have annual compensation for the five full plan years preceding the member's attainment of normal retirement age and during that period the member received disability benefits under this article, then "final average salary" means the average of the monthly compensation

which the member was receiving in the plan year prior to the initial disability. "Final average salary" does not include any lump sum payment for unused, accrued leave of any kind or character.

(q) "Full-time employment" means permanent employment of an employee by a participating municipality in a position which normally requires 12 months per year service and requires at least 1,040 hours per year service in that position.

(r) "Fund" means the West Virginia Municipal Police Officers and Firefighters Retirement Fund created by this article.

(s) "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 may not be credited with any hours of service for any period of time he or she is receiving benefits under §8-22A-17 and §8-22A-18 of this code; and (3) each hour for which back pay is either awarded or agreed to be paid by the employing municipality, irrespective of mitigation of damages. The same hours of service may 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.

(t) "Member" means, except as provided in §8-22A-32 and §8-22A-33 of this code, a person hired as a municipal police officer or municipal firefighter, as defined in this section, by a participating municipal employer on or after January 1, 2010. A member shall

remain a member until the benefits to which he or she is entitled under this article are paid or forfeited.

(u) "Monthly salary" means the W-2 reportable compensation received by a member during the month.

(v) "Municipality" has the meaning ascribed to it in this code.

(w)(1) "Municipal police officer" means an individual employed as a member of a paid police department by a West Virginia municipality or municipal subdivision which has established and maintains a municipal policemen's pension and relief fund, and who is not a member of, and not eligible for membership in, a municipal policemen's pension and relief fund as provided in §8-22-16 of this code: *Provided,* That municipal police officer also means an individual employed as a member of a paid police department by a West Virginia municipality or municipal subdivision which is authorized to elect to participate in the plan pursuant to §8-22A-33 of this code. 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 §8-22-16 of this code*: 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 §8-22A-33 of this code. 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.

(x) "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.

(y) "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.

(z) "Normal retirement age" means the first to occur of the following: (1) Attainment of age 50 years and the completion of 20 or more years of regular contributory service; (2) while still in covered employment, attainment of at least age 50 years and when the sum of current age plus regular contributory service equals or exceeds 70 years; (3) while still in covered employment, attainment of at least age 60 years and completion of 10 years of regular contributory service; or (4) attainment of age 62 years and completion of five or more years of regular contributory service.

(aa) "Plan" means the West Virginia Municipal Police Officers and Firefighters Retirement System established by this article.

(bb) "Plan year" means the 12-month period commencing on January 1 of any designated year and ending the following December 31.

(cc) "Qualified public safety employee" means any employee of a participating state or political subdivision who provides police protection, firefighting services or emergency medical services for any area within the jurisdiction of the state or political subdivision, or such other meaning given to the term by Section 72(t) (10) (B) of the Internal Revenue Code or by Treasury Regulation §1.401(a)-1(b) (2) (v) as they may be amended from time to time.

(dd) "Regular contributory service" means a member's credited service excluding active military duty, disability service and accrued annual and sick leave service.

(ee) "Regular interest" means the rate or rates of interest per annum, compounded annually, as the board adopts in accordance with the provisions of this article.

(ff) "Required beginning date" means April 1 of the calendar year following the later of: (1) The calendar year in which the member attains age 70 and one-half; or (2) the calendar year in which he or she retires or otherwise separates from covered employment.

(gg) "Retirement income payments" means the monthly retirement income payments payable.

(hh) "Spouse" means the person to whom the member is legally married on the annuity starting date.

(ii) "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.

(jj) "Totally disabled" means a member's inability to engage in substantial gainful activity by reason of any medically determined physical or mental impairment that can be expected to result in death or that has lasted or can be expected to last for a continuous period of not less than 12 months. For purposes of this subsection: (1) A member is totally disabled only if his or her physical or mental impairment or impairments is so severe that he or she is not only unable to perform his or her previous work as a police officer or firefighter but also cannot, considering his or her age, education and work experience, engage in any other kind of substantial gainful employment which exists in the state regardless of whether: (A) The work exists in the immediate area in which the member lives; (B) a specific job vacancy exists; or (C) the member would be hired if he or she applied for work. For purposes of this article, substantial gainful employment is the same definition as used by the United States Social Security Administration; and (2) "Physical or mental impairment" is an impairment that results from an anatomical, physiological or psychological abnormality that is demonstrated by medically accepted clinical and laboratory diagnostic techniques. The board may require submission of a

member's annual tax return for purposes of monitoring the earnings limitation.

(kk) "Vested" means eligible for retirement income payments after completion of five or more years of regular contributory service.

(ll) "Year of service" means a member shall, except in his or her first and last years of covered employment, be credited with years of service credit based on the hours of service performed as covered employment and credited to the member during the plan year based on the following schedule:

Hours of Service	Year of Service Credited
Less than 500	0
500 to 999	1/3
1,000 to 1,499	2/3
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 a year of service for each month during the plan year in which the member is credited with an hour of service for which contributions were received by the fund. A member is not entitled to credit for years of service for any time period during which he or she received disability payments under §8-22A-17 and §8-22A-18 of this code.

§8-22A-14. Retirement benefits.

This section describes when adjustment of a member's accrued benefit to reflect the difference in age, in years and months, between the member's annuity starting date and the date the member attains normal retirement age shall be made. This age adjustment, when required, shall be made based on the normal form of benefit and shall be the actuarial equivalent of the accrued benefit at the member's normal retirement age. The member shall receive the age adjusted retirement income in the normal form or

in an actuarial equivalent amount in an optional form as provided under this article, subject to reduction if necessary to comply with the maximum benefit limitations of Section 415 of the Internal Revenue Code and §8-22A-10 of this code. The first day of the calendar month following the month of birth shall be used in lieu of any birth date that does not fall on the first day of a calendar month.

Normal retirement. — A member whose annuity starting date is the date the member attains normal retirement age is entitled to his or her accrued benefit without adjustment for age at commencement.

Retirement benefits shall be paid monthly in an amount equal to one twelfth of the retirement income payments elected and at those times established by the board.

§8-22A-16. Refunds to certain members on discharge or resignation; deferred retirement; preretirement death; forfeitures.

(a) Any member who terminates covered employment and is not eligible to receive disability benefits under this article is, by written request filed with the board, entitled to receive from the fund the member's accumulated contributions. Except as provided in subsection (b) of this section, on withdrawal, the member shall forfeit his or her accrued benefit and cease to be a member.

(b)(1) Any member who ceases employment in covered employment and active participation in this plan and who thereafter becomes reemployed in covered employment may not receive any credited service for any prior accumulated contributions withdrawn from the plan unless following his or her return to covered employment and active participation in this plan, the member redeposits in the fund the amount of the accumulated contributions withdrawn from previous covered employment, together with interest on the accumulated contributions at the rate determined by the board from the date of withdrawal to the date of redeposit. On repayment he or she shall receive the same credit on account of his or her former covered employment as if no refund had been made.

(2) The repayment authorized by this subsection shall be made in a lump sum within 60 months of the police officer's or firefighter's reemployment in covered employment.

(c) Every member who completes 60 months of regular contributory service may, on cessation of covered employment, either withdraw his or her accumulated contributions in accordance with this section or choose not to withdraw his or her accumulated contribution and receive retirement income payments, if eligible, on attaining normal retirement age.

(d) If a member dies from any cause other than those specified in §8-22A-20 of this code and does not have 10 or more years of credited service, the member's accumulated contributions may be paid to a named beneficiary or beneficiaries. If no beneficiary is named, then the accumulated contributions shall be paid to the estate of the deceased member.

(e) Notwithstanding any other provision of this article, forfeitures under the plan may not be applied to increase the benefits any member would otherwise receive under the plan.

§8-22A-17. Awards and benefits for disability — duty related; exception during early period.

(a) Except as provided in §8-22A-9(a) of this code, any member who after the effective date of this article and during covered employment: (1) Has been or becomes totally disabled by injury, illness or disease; and (2) the disability is a result of an occupational risk or hazard inherent in or peculiar to the services required of members; or (3) the disability was incurred while performing police officer or firefighter functions during either scheduled work hours or at any other time; and (4) in the opinion of two physicians after medical examination, at least one of whom shall be named by the board, the member is by reason of the disability not only unable to perform his or her previous work as a police officer or firefighter but also cannot, considering his or her age, education and work experience, engage in any other kind of substantial gainful employment which exists in the state regardless of whether: (A) The work exists in the immediate area in which the

member lives; (B) a specific job vacancy exists; or (C) the member would be hired if he or she applied for work, is entitled to receive and shall be paid from the fund in monthly installments during the lifetime of the member or, if sooner, until the member attains normal retirement age or until the disability sooner terminates, the compensation under this section. For purposes of this article, substantial gainful employment is the same definition as used by the United States Social Security Administration.

(b) If the member is totally disabled, the member shall receive 90 percent of his or her average monthly compensation for months in which full compensation was received for the 12-month contributory period preceding the member's disability or the shorter period if the member has not worked 12 months.

(c) If the member remains totally disabled until attaining 65 years of age, the member shall then receive the retirement benefit provided in §8-22A-14 and §8-22A-15 of this code.

(d) The disability benefit payments will begin the first day of the month following termination of employment and receipt of the disability retirement application by the Consolidated Public Retirement Board.

§8-22A-18. Awards and benefits for disability — due to other causes; exception during early period.

(a) Except as provided in §8-22A-9(a) of this code, any municipal police officer or municipal firefighter with 10 or more years of contributory service who, after the effective date of this article and during covered employment: (1) Has been or becomes totally disabled from any cause other than those set forth in §8-22A-17 of this code and not due to vicious habits, intemperance or willful misconduct on his or her part; and (2) in the opinion of two physicians after medical examination, at least one of whom shall be named by the board, he or she is by reason of the disability not only unable to perform his or her previous work as a police officer or firefighter but also cannot, considering his or her age, education and work experience, engage in any other kind of substantial gainful employment which exists in the state regardless of whether:

(A) The work exists in the immediate area in which the member lives; (B) a specific job vacancy exists; or (C) the member would be hired if he or she applied for work, is entitled to receive and shall be paid from the fund in monthly installments during the lifetime of the member or, if sooner, until the member attains normal retirement age or until the disability sooner terminates, the compensation set forth in, either subsection (b) or (c) of this section.

(b) If the member is totally disabled, he or she shall receive 66 and two-thirds percent of his or her average monthly compensation for months in which full compensation was received for the 12-month contributory period preceding the disability.

(c) If the member remains totally disabled until attaining 60 years of age, then the member shall receive the retirement benefit provided in §8-22A-14 and §8-22A-15 of this code.

(d) The disability benefit payments will begin the first day of the month following termination of employment and receipt of the disability retirement application by the Consolidated Public Retirement Board.

§8-22A-22. Additional death benefits and scholarships - Dependent children.

(a) Except as provided in §8-22A-9(a) of this code, in addition to the spouse death benefits in this article, the surviving spouse is entitled to receive and there shall be paid to the spouse $100 monthly for each dependent child.

(b) If the surviving spouse dies while receiving death benefits provided in §8-22A-20 or §8-22A-21 of this code, or if there is no surviving spouse, the fund shall pay monthly to each dependent child a sum equal to 100 percent of the spouse's entitlement under this article divided by the number of dependent children. If there is neither a surviving spouse nor a dependent child, the fund shall pay in equal monthly installments to the dependent parents of the deceased member during their joint lifetimes a sum equal to the amount which a surviving spouse, without children, would have

received: *Provided*, That when there is only one dependent parent surviving, that parent is entitled to receive during his or her lifetime one-half the amount which both parents, if living, would have been entitled to receive: *Provided, however,* That if there is no surviving spouse, dependent child or dependent parent of the deceased member, the accumulated contributions shall be paid to a named beneficiary or beneficiaries: *Provided further,* That if there is no surviving spouse, dependent child or dependent parent of the deceased member, or any named beneficiary or beneficiaries, then the accumulated contributions shall be paid to the estate of the deceased member.

(c) Any person qualifying as a dependent child under this section, in addition to any other benefits due under this or other sections of this article, is entitled to receive a scholarship to be applied to the career development education of that person. This sum, up to but not exceeding $7,500 per year, shall be paid from the fund to any higher education institution in this state, career-technical education provider in this state or other entity in this state approved by the board, to offset the expenses of tuition, room and board, books, fees or other costs incurred in a course of study at any of these institutions so long as the recipient makes application to the board on an approved form and under rules provided by the board and maintains scholastic eligibility as defined by the institution or the board. The board may propose legislative rules for promulgation in accordance with §29A-3-1 *et seq.* of this code which define age requirements, physical and mental requirements, scholastic eligibility, disbursement methods, institutional qualifications and other requirements as necessary and not inconsistent with this section. Scholarship benefits awarded pursuant to this subsection are not subject to division or payable to an alternate payee by any Qualified Domestic Relations Order.

§8-22A-34. Return to covered employment by retirant.

The annuity of any member who retires under the provisions of this article and who resumes service in covered employment shall be suspended while the member continues in covered employment. The monthly annuity payment for the month in which the service resumes shall be pro rated to the date of commencement of service,

and the member shall again become a contributing member during resumption of service. At the conclusion of resumed service in covered employment, the member shall have his or her annuity recalculated to take into account the entirety of service in covered employment.

§8-22A-35. Severability.

If any part of this article is declared unconstitutional by a court of competent jurisdiction, such decision shall not affect the validity of the remaining provisions of this article, or the article in its entirety.

CHAPTER 77

(Com. Sub. for H. B. 2953 - By Delegates Hardy, Westfall, Jennings, Clark, Linville, Hott, D. Jeffries, Graves, Tully, Storch and Forsht)

[Passed April 10, 2021; in effect ninety days from passage.]
[Approved by the Governor on April 26, 2021.]

AN ACT to amend and reenact §7-17-3 and §7-17-12 of the Code of West Virginia, 1931, as amended, all relating to county fire protection services; clarifying that county commission may contract with fire department of any political subdivision for fire protection services; and modifying existing method for imposing fire service fees to add procedure for a ballot referendum to be used, if desired, instead of utilizing current procedure requiring 10 percent of voters to petition for imposition of such fees.

Be it enacted by the Legislature of West Virginia:

ARTICLE 17. COUNTY FIRE BOARDS.

§7-17-3. County fire association creation; prohibiting entrance by a municipality maintaining a full time paid fire department.

The fire departments within each county are hereby authorized to create and establish a county fire association, hereinafter referred to as "fire association." The county fire association is created to discuss fire protection services to address fire protection problems at the county level.

Upon the creation of a fire association, any full-time paid fire department located in a municipality, as defined in §8-15-9 of this code is excluded from the provisions of this article.

However, this provision shall not prohibit the county commission or the fire board with the approval of the county commission from contracting with the fire department of any political subdivision for fire protection services rendered to the county.

§7-17-12. County fire service fees; petition; election; dedication; and amendment.

(a) Every county commission which provides fire protection services has plenary power and authority to provide by ordinance for the continuance or improvement of such service, to make regulations with respect thereto and to impose by ordinance, upon the users of such services, reasonable fire service rates, fees and charges to be collected in the manner specified in the ordinance.

(b) Any fees imposed under this article are dedicated to the county fire board for the purposes provided in this article.

(c) A county commission can impose by ordinance, upon the users of such service, a reasonable fire service fee, by one of two methods:

(1) Ten percent of the qualified voters shall present a petition duly signed by them in their own handwriting, and filed with the clerk of the county commission, directing that the county commission impose such a fee. The county commission shall not have a lien on any property as security for payments due under the ordinance. Any ordinance enacted under the provisions of this section shall be published as a Class II legal advertisement in compliance with the provisions of §59-3-1 *et seq.* of this code, and the publication area for such publication shall be the county in which the county fire board is located. In the event 30 percent of the qualified voters of the county by petition duly signed by them in their own handwriting and filed with the clerk of the county commission within 45 days after the expiration of such publication protest against such ordinance as enacted or amended, the ordinance may not become effective until it is ratified by a majority of the legal votes cast thereon by the qualified voters of such county at any primary, general or special election as the county

commission directs. Voting thereon may not take place until after notice of the submission has been given by publication as above provided for the publication of the ordinance after it is adopted. The powers and authority hereby granted to county commissions are in addition to and supplemental to the powers and authority otherwise granted to them by other provisions of this code; or

(2) If the county fire board determines an amendment in the fee imposed in subsection (a) of this article is necessary, it may, by resolution, request the county commission for such a change. Upon receipt of the resolution from the county fire board, the county commission shall, by ballot referendum, amend the ordinance imposing a fire fee and adopt the changes in the fee requested by the county fire board.

(A) This referendum, to determine whether it is the will of the voters of a county that an amendment to the fire fee is necessary, may be held at any regular primary or general election, or, in conjunction with any other countywide election. Any election at which the question of amending the fire fee is voted upon shall be held at the voting precincts established for holding primary or general elections. All of the provisions of the election laws, when not in conflict with the provisions of this article, shall apply to voting and elections hereunder, insofar as practicable. The county commission shall, not less than 90 days before the election, order that the issue be placed on the ballot and referendum held at the next primary, general, or special election to determine whether it is the will of the voters of the county that a fire fee be amended: *Provided*, That prior to issuing the order, the county commission shall publish the ordinance which must contain the anticipated allocation of any fees or charges and which would be enacted should the referendum succeed as a Class II legal advertisement in compliance with the provisions of §59-3-1 *et seq.* of this code, and the publication area for such publication shall be the county in which the county fire board is located.

(B) The ballot, or the ballot labels where voting machines are used, shall have printed thereon substantially the following:

"Shall the county commission be permitted to amend the fire fee in _____ County, West Virginia?

__ For the fee amendment.

__ Against the fee amendment.

(Place a cross mark in the square opposite your choice.)"

(C) If a majority of legal votes cast upon the question be for the fire fee amendment, the county commission shall, after the certification of the results of the referendum, thereinafter adopt an ordinance, within 60 days of certification, establishing the fire fee amendment in the county: *Provided,* That such program shall be implemented and operational no later than 12 months following certification. If a majority of the legal votes cast upon the question be against the fire fee amendment, then the policy shall not take effect, but the question may again be submitted to a referendum at any subsequent election in the manner herein provided.

CHAPTER 78

(Com. Sub. for H. B. 3254 - By Delegate Hanshaw (Mr. Speaker))

[Passed April 8, 2021; in effect ninety days from passage.]
[Approved by the Governor on April 21, 2021.]

AN ACT to amend and reenact §7-1-12 of the Code of West Virginia, 1931, as amended; and to amend and reenact §61-10-15 of said code, all relating to reimbursement of members of county and municipal development authorities; providing that a member of a county or municipal development authority may be reimbursed for certain necessary expenses in connection with his or her performance of certain other duties authorized by the authority; providing that such other duties and such reimbursement must first be approved by a vote of the authority with the member to be reimbursed being recused from voting on the question; and providing that the prohibition against certain public officers and officials with any voice, influence, or control with respect to certain contracts becoming pecuniarily interested in such contracts does not apply to certain members of a county or municipal development authority who receive certain reimbursements from such authority.

Be it enacted by the Legislature of West Virginia:

CHAPTER 7. COUNTY COMMISSIONS AND OFFICERS.

ARTICLE 12. COUNTY AND MUNICIPAL DEVELOPMENT AUTHORITIES.

§7-12-5. Compensation of members; expenses; recusal of member from voting where conflict of interest involved.

(a) No member of the authority shall receive any compensation, whether in formal salary, per diem allowance or otherwise, in connection with his or her services as such member: *Provided,* That each member shall, however, be entitled to reimbursement by the authority for any necessary expenditures in connection with the performance of his or her general duties as such member: *Provided however,* That each member may be reimbursed for his or her reasonable and necessary expenses, including but not limited to compensation, in connection with his or her performance of other duties as assigned by the authority in connection with the June 2016 flooding event in West Virginia, if such duties and such reimbursement is first approved by a vote of the authority, with the member to be reimbursed being recused from voting upon the question.

(b) Whenever a person associated with a public utility or bank as set out in section four of this article has a conflict of interest between the board and that public utility or bank, then he or she must recuse himself or herself from any vote, discussion or other activity associated with the board or its members that creates the conflict of interest.

CHAPTER 61. CRIMES AND THEIR PUNISHMENT.

ARTICLE 10. CRIMES AGAINST PUBLIC POLICY.

§61-10-15. Pecuniary interest of county and district officers, teachers and school officials in contracts; exceptions; offering or giving compensation; penalties.

(a) It is unlawful for any member of a county commission, district school officer, secretary of a Board of Education, supervisor or superintendent, principal or teacher of public schools or any member of any other county or district board or any county or district officer to be or become pecuniarily interested, directly or indirectly, in the proceeds of any contract or service or in the furnishing of any supplies in the contract for or the awarding or letting of a contract if, as a member, officer, secretary, supervisor, superintendent, principal or teacher, he or she may have any voice, influence or control: *Provided,* That nothing in this section

prevents or makes unlawful the employment of the spouse of a member, officer, secretary, supervisor, superintendent, principal or teacher as a principal or teacher or auxiliary or service employee in the public schools of any county or prevents or makes unlawful the employment by any joint county and circuit clerk of his or her spouse.

(b) Any person who violates the provisions of subsection (a) of this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than $50 nor more than $500 or confined in jail not more than one year, or both fined and confined.

(c) Any person convicted of violating the provisions of subsection (a) of this section shall also be removed from his or her office and the certificate or certificates of any teacher, principal, supervisor or superintendent so convicted shall, upon conviction thereof, be immediately revoked: *Provided,* That no person may be removed from office and no certificate may be revoked for a violation of the provisions of this section unless the person has first been convicted of the violation.

(d) Any person, firm or corporation that offers or gives any compensation or thing of value or who forebears to perform an act to any of the persons named in subsection (a) of this section or to or for any other person with the intent to secure the influence, support or vote of the person for any contract, service, award or other matter as to which any county or school district becomes or may become the paymaster is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than $500 nor more than $2,500 and, in the court's discretion, the person or any member of the firm or, if it is a corporation, any agent or officer of the corporation offering or giving any compensation or other thing of value may, in addition to a fine, be confined in jail for a period not to exceed one year.

(e) The provisions of subsection (a) of this section do not apply to any person who is a salaried employee of a vendor or supplier under a contract subject to the provisions of said subsection if the employee, his or her spouse or child:

(1) Is not a party to the contract;

(2) Is not an owner, a shareholder, a director or an officer of a private entity under the contract;

(3) Receives no commission, bonus or other direct remuneration or thing of value by virtue of the contract;

(4) Does not participate in the deliberations or awarding of the contract; and

(5) Does not approve or otherwise authorize the payment for any services performed or supplies furnished under the contract.

(f) The provisions of subsection (a) of this section do not apply to any person who has a pecuniary interest in a bank within the county serving or under consideration to serve as a depository of funds for the county or Board of Education, as the case may be, if the person does not participate in the deliberations or any ultimate determination of the depository of the funds.

(g) The provisions of subsection (a) of this section do not apply to any person who has a pecuniary interest in a public utility which is subject to regulation by the Public Service Commission of this state.

(h) Where the provisions of subsection (a) of this section would result in the loss of a quorum in a public body or agency, in excessive cost, undue hardship or other substantial interference with the operation of a governmental body or agency, the affected governmental body or agency may make written application to the West Virginia Ethics Commission pursuant to subsection (d), section five, article two, chapter six-b of this code for an exemption from subsection (a) of this section.

(i) The provisions of this section do not apply to publications in newspapers required by law to be made.

(j) No school employee or school official subject to the provisions of subsection (a) of this section has an interest in the sale, proceeds or profits in any book or other thing used or to be

used in the free school system of this state, as proscribed in section nine, article XII of the Constitution of West Virginia, if they qualify for the exceptions set forth in subsection (e), (f),(g) or (h) of this section.

(k) The provisions of subsection (a) of this section do not prevent or make unlawful the employment of the spouse of any member of a county commission as a licensed health care provider at government-owned hospitals or other government agencies who provide health care services: *Provided,* That the member of a county commission whose spouse is employed or to be employed may not:

(1) Serve on the board for the government-owned hospital or other government agency who provides health care services where his or her spouse is employed or to be employed;

(2) Vote on the appointment of members to the board for the government-owned hospital or other government agency who provides health care services where his or her spouse is employed or to be employed; or

(3) Seek to influence the hiring or promotion of his or her spouse by the government-owned hospital or other government agency who provides health care services.

(l) The provisions of subsection (a) of this section do not make unlawful the employment of a spouse of any elected county official by that county official: *Provided,* That the elected county official may not:

(1) Directly supervise the spouse employee; or

(2) Set the salary of the spouse employee: *Provided,* That the provisions of this subsection shall only apply to spouse employees who were neither married to nor engaged to the elected county official at the time of their initial hiring.

(m) The provisions of subsection (a) of this section do not prohibit reimbursement of a member of a development authority established under §7-12-1 *et seq.* of this code for:

(1) His or her necessary expenditures in connection with the performance of his or her general duties as such member, as permitted by §7-12-5(a) of this code; or

(2) His or her reasonable and necessary expenses, including but not limited to compensation, in connection with his or her performance of other duties as assigned by the authority in connection with the June 2016 flooding event in West Virginia, if such duties and such reimbursement is first approved by a vote of the authority, with the member to be reimbursed being recused from voting upon the question, as permitted by §7-12-5(a) of this code.

CHAPTER 79

(H. B. 3301 - By Delegates Storch, Hardy, Rowan, Boggs, Rowe, Hott, Williams, Anderson, Howell, Hornbuckle and Rohrbach)

[Passed April 10, 2021; in effect ninety days from passage.]
[Approved by the Governor on April 26, 2021.]

AN ACT to amend and reenact §7-11B-3, §7-11B-7, §7-11B-9, §7-11B-10, §7-11B-18, and §7-11B-22 of the Code of West Virginia, 1931, as amended, relating generally to property tax increment financing districts; authorizing payment in lieu of tax agreements for property located within property tax increment financing districts; authorizing a county commission or municipality to extend the termination time of certain districts; modifying the revenue sources for a district that is extended; eliminating certain existing limitations on the terms of property tax increment financing obligations issued to refund existing obligations; and providing clarifications with respect to the base assessed value and termination date when two or more tax increment financing districts have been combined.

Be it enacted by the Legislature of West Virginia:

§7-11B-3. Definitions.

(a) General. — When used in this article, words and phrases defined in this section have the meanings ascribed to them in this section unless a different meaning is clearly required either by the context in which the word or phrase is used or by specific definition in this article.

(b) Words and phrases defined. —

"Agency" includes a municipality, a county or municipal development agency established pursuant to authority granted in §7-12-1 of this code, a port authority, an airport authority or any other entity created by this state or an agency or instrumentality of this state that engages in economic development activity or the Division of Highways.

"Base assessed value" means the taxable assessed value of all real and tangible personal property, excluding personal motor vehicles, having a tax situs within a development or redevelopment district as shown upon the landbooks and personal property books of the assessor on July 1 of the calendar year preceding the effective date of the order or ordinance creating and establishing the development or redevelopment district: *Provided*, That for any development or redevelopment district approved after the effective date of the amendments to this section enacted during the regular session of the Legislature in 2014, personal trailers, personal boats, personal campers, personal motor homes, personal ATVs and personal motorcycles having a tax situs within a development or redevelopment district are excluded from the base assessed value.

"Blighted area" means an area within the boundaries of a development or redevelopment district located within the territorial limits of a municipality or county in which the structures, buildings or improvements, by reason of dilapidation, deterioration, age or obsolescence, inadequate provision for access, ventilation, light, air, sanitation, open spaces, high density of population and overcrowding or the existence of conditions which endanger life or property, are detrimental to the public health, safety, morals or welfare. "Blighted area" includes any area which, by reason of the presence of a substantial number of substandard, slum, deteriorated or deteriorating structures, predominance of defective or inadequate street layout, faulty lot layout in relation to size, adequacy, accessibility or usefulness, unsanitary or unsafe conditions, deterioration of site or other improvements, diversity of ownership, defective or unusual conditions of title or the existence of conditions which endanger life or property by fire and other causes, or any combination of such factors, substantially impairs or arrests the sound growth of a municipality, retards the provision of

housing accommodations or constitutes an economic or social liability and is a menace to the public health, safety, morals or welfare in its present condition and use, or any area which is predominantly open and which because of lack of accessibility, obsolete platting, diversity of ownership, deterioration of structures or of site improvements, or otherwise, substantially impairs or arrests the sound growth of the community.

"Commissioner of Highways" means the Commissioner of the Division of Highways.

"Conservation area" means any improved area within the boundaries of a development or redevelopment district located within the territorial limits of a municipality or county in which fifty percent or more of the structures in the area have an age of thirty-five years or more. A conservation area is not yet a blighted area but is detrimental to the public health, safety, morals or welfare and may become a blighted area because of any one or more of the following factors: Dilapidation; obsolescence; deterioration; illegal use of individual structures; presence of structures below minimum code standards; abandonment; excessive vacancies; overcrowding of structures and community facilities; lack of ventilation, light or sanitary facilities; inadequate utilities; excessive land coverage; deleterious land use or layout; depreciation of physical maintenance; and lack of community planning. A conservation area shall meet at least three of the factors provided in this subdivision.

"County commission" means the governing body of a county of this state and, for purposes of this article only, includes the governing body of a Class I, Class II or Class III municipality in this state.

"Current assessed value" means the annual taxable assessed value of all real and tangible personal property, excluding personal motor vehicles, having a tax situs within a development or redevelopment district as shown upon the landbook and personal property records of the assessor: *Provided*, That for any development or redevelopment district approved after the effective date of the amendments to this section enacted during the regular

session of the Legislature in 2014, personal trailers, personal boats, personal campers, personal motor homes, personal ATVs and personal motorcycles having a tax situs within a development or redevelopment district are excluded from the current assessed value.

"Development office" means the West Virginia Department of Economic Development created in §5B-2-1 of this code.

"Development project" or "redevelopment project" means a project undertaken in a development or redevelopment district for eliminating or preventing the development or spread of slums or deteriorated, deteriorating or blighted areas, for discouraging the loss of commerce, industry or employment, for increasing employment or for any combination thereof in accordance with a tax increment financing plan. A development or redevelopment project may include one or more of the following:

(A) The acquisition of land and improvements, if any, within the development or redevelopment district and clearance of the land so acquired; or

(B) The development, redevelopment, revitalization or conservation of the project area whenever necessary to provide land for needed public facilities, public housing or industrial or commercial development or revitalization, to eliminate unhealthful, unsanitary or unsafe conditions, to lessen density, mitigate or eliminate traffic congestion, reduce traffic hazards, eliminate obsolete or other uses detrimental to public welfare or otherwise remove or prevent the spread of blight or deterioration;

(C) The financial or other assistance in the relocation of persons and organizations displaced as a result of carrying out the development or redevelopment project and other improvements necessary for carrying out the project plan, together with those site improvements that are necessary for the preparation of any sites and making any land or improvements acquired in the project area available, by sale or lease, for public housing or for development, redevelopment or rehabilitation by private enterprise for commercial or industrial uses in accordance with the plan;

(D) The construction of capital improvements within a development or redevelopment district designed to increase or enhance the development of commerce, industry or housing within the development project area; or

(E) Any other projects the county commission or the agency deems appropriate to carry out the purposes of this article.

"Development or redevelopment district" means an area proposed by one or more agencies as a development or redevelopment district which may include one or more counties, one or more municipalities or any combination thereof, that has been approved by the county commission of each county in which the project area is located if the project is located outside the corporate limits of a municipality, or by the governing body of a municipality if the project area is located within a municipality, or by both the county commission and the governing body of the municipality when the development or redevelopment district is located both within and without a municipality.

"Division of Highways" means the state Department of Transportation, Division of Highways.

"Economic development area" means any area or portion of an area within the boundaries of a development or redevelopment district located within the territorial limits of a municipality or county that is neither a blighted area nor a conservation area and for which the county commission finds that development or redevelopment will not be solely used for development of commercial businesses that will unfairly compete in the local economy and that development or redevelopment is in the public interest because it will:

(A) Discourage commerce, industry or manufacturing from moving their operations to another state;

(B) Result in increased employment in the municipality or county, whichever is applicable; or

(C) Result in preservation or enhancement of the tax base of the county or municipality.

"Governing body of a municipality" means the city council of a Class I, Class II or Class III municipality in this state.

"Incremental value", for any development or redevelopment district, means the difference between the base assessed value and the current assessed value. The incremental value will be positive if the current value exceeds the base value and the incremental value will be negative if the current value is less than the base assessed value.

"Includes" and "including", when used in a definition contained in this article, shall not exclude other things otherwise within the meaning of the term being defined.

"Intergovernmental agreement" means any written agreement that may be entered into by and between two or more county commissions, or between two or more municipalities, or between a county commission and a municipality, in the singular and the plural, or between two or more government entities and the Commissioner of Highways: *Provided,* That any intergovernmental agreement shall not be subject to provisions governing intergovernmental agreements set forth in other provisions of this code, including, but not limited to, §8-23-1 *et seq.* of this code, but shall be subject to the provisions of this article.

"Local levying body" means the county board of education and the county commission and includes the governing body of a municipality when the development or redevelopment district is located, in whole or in part, within the boundaries of the municipality.

"Obligations" or "tax increment financing obligations" means bonds, loans, debentures, notes, special certificates or other evidences of indebtedness issued by a county commission or municipality pursuant to this article to carry out a development or redevelopment project or to refund outstanding obligations under this article.

"Order" means an order of the county commission adopted in conformity with the provisions of this article and as provided in this chapter.

"Ordinance" means a law adopted by the governing body of a municipality in conformity with the provisions of this article and as provided in §8-1-1 *et seq.* of this code.

"Payment in lieu of taxes" means a payment with respect to real and personal property located in a development or redevelopment district and owned in title by this state, a political subdivision of this state or an agency or instrumentality thereof, that is made by the lessee of such property pursuant to a written payment in lieu of taxes agreement, whether in effect as of, or subsequent to, the date of creation of the development or redevelopment district.

"Person" means any natural person, and any corporation, association, partnership, limited partnership, limited liability company or other entity, regardless of its form, structure or nature, other than a government agency or instrumentality.

"Private project" means any project that is subject to ad valorem property taxation in this state or to a payment in lieu of tax agreement that is undertaken by a project developer in accordance with a tax increment financing plan in a development or redevelopment district.

"Project" means any capital improvement, facility or both, as specifically set forth and defined in the project plan, requiring an investment of capital including, but not limited to, extensions, additions or improvements to existing facilities, including water or wastewater facilities, and the remediation of contaminated property as provided for in §22-22-1 *et seq.* of this code, but does not include performance of any governmental service by a county or municipal government.

"Project area" means an area within the boundaries of a development or redevelopment district in which a development or

redevelopment project is undertaken as specifically set forth and defined in the project plan.

"Project costs" means expenditures made in preparation of the development or redevelopment project plan and made, or estimated to be made, or monetary obligations incurred, or estimated to be incurred, by the county commission which are listed in the project plan as capital improvements within a development or redevelopment district, plus any costs incidental thereto. "Project costs" include, but are not limited to:

(A) Capital costs, including, but not limited to, the actual costs of the construction of public works or improvements, capital improvements and facilities, new buildings, structures and fixtures, the demolition, alteration, remodeling, repair or reconstruction of existing buildings, structures and fixtures, environmental remediation, parking and landscaping, the acquisition of equipment and site clearing, grading and preparation;

(B) Financing costs, including, but not limited to, an interest paid to holders of evidences of indebtedness issued to pay for project costs, all costs of issuance and any redemption premiums, credit enhancement or other related costs;

(C) Real property assembly costs, meaning any deficit incurred resulting from the sale or lease as lessor by the county commission of real or personal property having a tax situs within a development or redevelopment district for consideration that is less than its cost to the county commission;

(D) Professional service costs including, but not limited to, those costs incurred for architectural planning, engineering and legal advice and services;

(E) Imputed administrative costs including, but not limited to, reasonable charges for time spent by county employees or municipal employees in connection with the implementation of a project plan;

(F) Relocation costs including, but not limited to, those relocation payments made following condemnation and job training and retraining;

(G) Organizational costs including, but not limited to, the costs of conducting environmental impact and other studies and the costs of informing the public with respect to the creation of a development or redevelopment district and the implementation of project plans;

(H) Payments made, in the discretion of the county commission or the governing body of a municipality, which are found to be necessary or convenient to creation of development or redevelopment districts or the implementation of project plans; and

(I) That portion of costs related to the construction of environmental protection devices, storm or sanitary sewer lines, water lines, amenities or streets or the rebuilding or expansion of streets, or the construction, alteration, rebuilding or expansion of which is necessitated by the project plan for a development or redevelopment district, whether or not the construction, alteration, rebuilding or expansion is within the area or on land contiguous thereto.

"Project developer" means any person who engages in the development of projects in the state.

"Project plan" means the plan for a development or redevelopment project that is adopted by a county commission or governing body of a municipality in conformity with the requirements of this article and this chapter or §8-1-1 *et seq.* of this code.

"Real property" means all lands, including improvements and fixtures on them and property of any nature appurtenant to them or used in connection with them and every estate, interest and right, legal or equitable, in them, including terms of years and liens by way of judgment, mortgage or otherwise, and indebtedness secured by the liens.

"Redevelopment area" means an area designated by a county commission or the governing body of a municipality in respect to which the commission or governing body has made a finding that there exist conditions which cause the area to be classified as a blighted area, a conservation area, an economic development area or a combination thereof, which area includes only those parcels of real property directly and substantially benefitted by the proposed redevelopment project located within the development or redevelopment district or land contiguous thereto.

"Redevelopment plan" means the comprehensive program under this article of a county or municipality for redevelopment intended by the payment of redevelopment costs to reduce or eliminate those conditions, the existence of which qualified the redevelopment area as a blighted area, conservation area, economic development area or combination thereof, and to thereby enhance the tax bases of the levying bodies which extend into the redevelopment area. Each redevelopment plan shall conform to the requirements of this article.

"Tax increment" means the amount of regular levy property taxes attributable to the amount by which the current assessed value of real and tangible personal property having a tax situs in a development or redevelopment district exceeds the base assessed value of the property: *Provided*, That where the period of existence of a development or redevelopment district is extended beyond its originally scheduled termination date as permitted by §7-11B-10 of this code, only the regular and excess property tax levies of the county commission and any Class I, II, III or IV municipality, a portion of which is located within the boundaries of the development or redevelopment district, shall be included in the tax increment following the originally scheduled termination date of the development or redevelopment district.

"Tax increment financing fund" means a separate fund for a development or redevelopment district established by the county commission or governing body of the municipality into which all tax increment revenues and other pledged revenues are deposited and from which projected project costs, debt service and other expenditures authorized by this article are paid.

"This code" means the Code of West Virginia, 1931, as amended by the Legislature.

"Total ad valorem property tax regular levy rate" means the aggregate levy rate of all levying bodies on all taxable property having a tax situs within a development or redevelopment district in a tax year but does not include excess levies, levies for general obligation bonded indebtedness or any other levies that are not regular levies.

§7-11B-7. Creation of a development or redevelopment area or district.

(a) County commissions and the governing bodies of Class I, Class II or Class III municipalities, upon their own initiative or upon application of an agency or a developer, may propose creation of a development or redevelopment district and designate the boundaries of the district: *Provided*, That a district may not include noncontiguous land.

(b) The county commission or municipality proposing creation of a development or redevelopment district shall then hold a public hearing at which interested parties are afforded a reasonable opportunity to express their views on the proposed creation of a development or redevelopment district and its proposed boundaries.

(1) Notice of the hearing shall be published as a Class II legal advertisement in accordance with §59-3-2 of this code.

(2) The notice shall include the time, place and purpose of the public hearing, describe in sufficient detail the tax increment financing plan, the proposed boundaries of the development or redevelopment district and, when a development or redevelopment project plan is being proposed, the proposed tax increment financing obligations to be issued to finance the development or redevelopment project costs.

(3) Prior to the first day of publication, a copy of the notice shall be sent by first-class mail to the director of the Development Office and to the chief executive officer of all other local levying

bodies having the power to levy taxes on real and tangible personal property located within the proposed development or redevelopment district.

(4) All parties who appear at the hearing shall be afforded an opportunity to express their views on the proposal to create the development or redevelopment district and, if applicable, the development or redevelopment project plan and proposed tax increment financing obligations.

(c) After the public hearing, the county commission, or the governing body of the municipality, shall finalize the boundaries of the development or redevelopment district, the development or redevelopment project plan, or both, and submit the same to the director of the Development Office for his or her review and approval. The director, within sixty days after receipt of the application, shall approve the application as submitted, reject the application or return the application to the county commission or governing body of the municipality for further development or review in accordance with instructions of the director of the Development Office. A development or redevelopment district or development or redevelopment project plan may not be adopted by the county commission or the governing body of a municipality until after it has been approved by the executive director of the Development Office.

(d) Upon approval of the application by the Development Office, the county commission may enter an order and the governing body of the municipality proposing the district or development or redevelopment project plan may adopt an ordinance, that:

(1) Describes the boundaries of a development or redevelopment district sufficiently to identify with ordinary and reasonable certainty the territory included in the district, which boundaries shall create a contiguous district;

(2) Creates the development or redevelopment district as of a date provided in the order or ordinance;

(3) Assigns a name to the development or redevelopment district for identification purposes.

(A) The name may include a geographic or other designation, shall identify the county or municipality authorizing the district and shall be assigned a number, beginning with the number one.

(B) Each subsequently created district in the county or municipality shall be assigned the next consecutive number;

(4) Contains findings that the real property within the development or redevelopment district will be benefitted by eliminating or preventing the development or spread of slums or blighted, deteriorated or deteriorating areas, discouraging the loss of commerce, industry or employment, increasing employment or any combination thereof;

(5) Approves the development or redevelopment project plan, if applicable;

(6) Establishes a tax increment financing fund as a separate fund into which all tax increment revenues and other revenues designated by the county commission, or governing body of the municipality, for the benefit of the development or redevelopment district shall be deposited, and from which all project costs shall be paid, which may be assigned to and held by a trustee for the benefit of bondholders if tax increment financing obligations are issued by the county commission or the governing body of the municipality; and

(7) Provides that ad valorem property taxes on real and tangible personal property having a tax situs in the development or redevelopment district shall be assessed, collected and allocated in the following manner, commencing upon the date of adoption of such order or ordinance and continuing for so long as any tax increment financing obligations are payable from the tax increment financing fund, hereinafter authorized, are outstanding and unpaid:

(A) For each tax year, the county assessor shall record in the land and personal property books both the base assessed value and

the current assessed value of the real and tangible personal property having a tax situs in the development or redevelopment district;

(B) Ad valorem taxes collected from regular levies upon real and tangible personal property having a tax situs in the district that are attributable to the lower of the base assessed value or the current assessed value of real and tangible personal property located in the development project area shall be allocated to the levying bodies in the same manner as applicable to the tax year in which the development or redevelopment project plan is adopted by order of the county commission or by ordinance adopted by the governing body of the municipality;

(C) The tax increment with respect to real and tangible personal property in the development or redevelopment district shall be allocated and paid into the tax increment financing fund and shall be used to pay the principal of and interest on tax increment financing obligations issued to finance the costs of the development or redevelopment projects in the development or redevelopment district. Any levying body having a development or redevelopment district within its taxing jurisdiction shall not receive any portion of the annual tax increment except as otherwise provided in this article; and

(D) In no event shall the tax increment include any taxes collected from excess levies, levies for general obligation bonded indebtedness or any levies other than the regular levies provided for in §11-8-1 *et seq.* of this code.

(e) Proceeds from tax increment financing obligations issued under this article may only be used to pay for costs of development and redevelopment projects to foster economic development in the development or redevelopment district or land contiguous thereto.

(f) Notwithstanding subsection (d) of this section, a county commission may not enter an order approving a development or redevelopment project plan unless the county commission expressly finds and states in the order that the development or redevelopment project is not reasonably expected to occur without the use of tax increment financing.

(g) Notwithstanding subsection (d) of this section, the governing body of a municipality may not adopt an ordinance approving a development or redevelopment project plan unless the governing body expressly finds and states in the ordinance that the development or redevelopment project is not reasonably expected to occur without the use of tax increment financing.

(h) No county commission shall establish a development or redevelopment district any portion of which is within the boundaries of a Class I, II, III or IV municipality without the formal consent of the governing body of such municipality.

(i) A tax increment financing plan that has been approved by a county commission or the governing body of a municipality may be amended by following the procedures set forth in this article for adoption of a new development or redevelopment project plan.

(j) The county commission may modify the boundaries of the development or redevelopment district, from time to time, or the governing body of a county may extend the length of existence of the development or redevelopment district as set forth in §7-11B-10 of this code, subject to the limitations and requirements of this section, by entry of an order modifying the order creating the development or redevelopment district.

(k) The governing body of a municipality may modify the boundaries of the development or redevelopment district, from time to time, or extend the length of existence of the development or redevelopment district as set forth in §7-11B-10 of this code, by amending the ordinance creating the development or redevelopment district.

(l) Before a county commission or the governing body of a municipality may amend such an order or ordinance, the county commission or municipality shall give the public notice as provided in subdivisions (1) and (2), subsection (b) of this section, hold a public hearing, as provided in subdivision (4), subsection (b) of this section, obtain the approval of the director of the Development Office, and obtain the formal consent of the governing body of any Class I, II, III or IV municipality a portion

of which is located within the boundaries of the development or redevelopment district. In the event any tax increment financing obligations are outstanding with respect to the development or redevelopment district, any change in the boundaries shall not reduce the amount of tax increment available to secure the outstanding tax increment financing obligations.

§7-11B-9. Project plan – amendment.

(a) The county commission may by order, or the governing body of a municipality by ordinance, adopt an amendment to a project plan.

(b) Adoption of an amendment to a project plan shall be preceded by a public hearing held by the county commission, or governing body of the municipality, at which interested parties shall be afforded a reasonable opportunity to express their views on the amendment.

(1) Notice of the hearing shall be published as a Class II legal advertisement in accordance with §59-3-2 of this code.

(2) Prior to publication, a copy of the notice shall be sent by first-class mail to the chief executive officer of all other local levying bodies having the power to levy taxes on property within the development or redevelopment district.

(3) Copies of the proposed plan amendments shall be made available to the public at the county clerk's office or municipal clerk's office at least fifteen days prior to the hearing.

(c) One or more existing development or redevelopment districts may be combined pursuant to lawfully adopted amendments to the original plans for each district: *Provided,* That the county commission, or governing body of the municipality, finds that the combination of the districts will not impair the security for any tax increment financing obligations previously issued pursuant to this article.

(1) The base assessed value of the real and tangible personal property located in the combined development or redevelopment

district following such combination shall be the same base assessed value as existed for such real and tangible personal property in each of the separate development or redevelopment districts prior to such combination.

(2) The termination date for the combined development or redevelopment district which results from the combination of two or more previously created districts shall be the termination date as provided pursuant to §7-11B-10 of this code of the development or redevelopment district which had the latest termination date prior to the combination of such districts.

§7-11B-10. Termination of development or redevelopment district.

(a) No development or redevelopment district may be in existence for a period longer than thirty years and no tax increment financing obligations may have a final maturity date later than the termination date of the area or district: *Provided,* That, for any existing development or redevelopment district for which tax increment financing obligations have been issued by a county commission, or the governing body of a municipality, prior to December 31, 2020, the termination date for that existing development or redevelopment district may be extended not more than five years or until December 31, 2050, whichever is earlier.

(b) The county commission or governing body of the municipality creating the development or redevelopment district may set a shorter period for the existence of the district. In this event, no tax increment financing obligations may have a final maturity date later than the termination date of the district. The county commission or the governing body of the municipality which created the development or redevelopment district may not take action to terminate a district prior to the time otherwise provided in its official action creating or extending the district if the county commission or the governing body of the municipality then has tax increment revenue obligations which remain outstanding and unpaid.

(c) Upon termination of the district, no further ad valorem tax revenues shall be distributed to the tax increment financing fund of the district.

(d) The county commission shall adopt, upon the expiration of the time periods set forth in this section, an order terminating the development or redevelopment district created by the county commission: *Provided,* That no district shall be terminated so long as bonds with respect to the district remain outstanding.

(e) The governing body of the municipality shall repeal, upon the expiration of the time periods set forth in this section, the ordinance establishing the development or redevelopment district: *Provided,* That no district shall be terminated so long as bonds with respect to the district remain outstanding.

§7-11B-18. Payments in lieu of taxes and other revenues.

(a) The county commission or municipality that created the development or redevelopment district shall deposit in the tax increment financing fund of the development or redevelopment district all payments in lieu of taxes received pursuant to any agreement entered into on or subsequent to the date of creation of a development or redevelopment district on tax exempt property located within the development or redevelopment district, and prior to the amendments to this section enacted in the 2021 regular session of the Legislature.

(b) Any real or personal property located within the development or redevelopment district and owned by this state, a political subdivision of this state or an agency or instrumentality thereof may be made subject to a payment in lieu of taxes agreement. The real and personal property subject to a payment in lieu of taxes agreement is deemed public property and exempt from ad valorem property taxation by this state, a political subdivision of this state, an agency or instrumentality thereof or other levying body, so long as it is owned in title by this state, a political subdivision of this state or an agency or instrumentality thereof. The exemption from ad valorem property taxation is applicable to any leasehold or similar interest held by persons other than this

state, a political subdivision of this state or an agency or instrumentality thereof, if acquired or constructed with the written agreement of the county school board, county commission and any municipal authority within whose jurisdiction the real and personal property is physically situated.

(c) Any payment in lieu of taxes agreement shall be made between the public entity that owns the property, the lessee of the property who would be making the payment in lieu of taxes and the county school board, county commission and any municipal authority within whose jurisdiction the real or personal property is situate. The payment in lieu of taxes agreement shall provide the amount that shall be paid by the lessee and the amount, if any, that shall be attributable to the base assessed value of the property and the incremental value.

(d) Following the amendments to this section enacted in the 2021 regular session of the Legislature, any portion of the payment in lieu of taxes attributable in the payment in lieu of tax agreement to the incremental value shall be deposited in the tax increment financing fund. Following the amendments to this section enacted in the 2021 regular session of the Legislature, the remaining portion of the in lieu payment shall be distributed among the levying bodies as follows:

(1) The portion of the in lieu tax payment attributable to the base value of the property shall be distributed to the levying bodies in the same manner as taxes attributable in the payment in lieu of tax agreement to the base value of other property in the district are distributed; and

(2) The portions of the in lieu tax payment attributable in the payment in lieu of tax agreement to levies for bonded indebtedness and excess levies shall be distributed in the same manner as those levies on other property in the district are distributed.

(e) Other revenues to be derived from the development or redevelopment district may also be deposited in the tax increment financing fund at the direction of the county commission.

§7-11B-22. Tax increment financing obligations — terms, conditions.

(a) Tax increment financing obligations may not be issued in an amount exceeding the estimated aggregate project costs, including all costs of issuance of the tax increment financing obligations.

(b) Tax increment financing obligations shall not be included in the computation of the Constitutional debt limitation of the county commission or municipality issuing the tax increment financing obligations.

(c) Tax increment financing obligations shall mature over a period not exceeding thirty years from their issue date, or a period terminating with the date of termination of the development or redevelopment district, whichever period terminates earlier.

(d) Tax increment financing obligations may contain a provision authorizing their redemption, in whole or in part, at stipulated prices, at the option of the county commission or municipality issuing the obligations, and, if so, the obligations shall provide the method of selecting the tax increment financing obligations to be redeemed.

(e) The principal and interest on tax increment financing obligations may be payable at any place set forth in the resolution, trust indenture or other document governing the obligations.

(f) Bonds or notes shall be issued in registered form.

(g) Bonds or notes may be issued in any denomination.

(h) Each tax increment financing obligation issued under this article is declared to be a negotiable instrument.

(i) The tax increment financing obligations may be sold at public or private sale.

(j) Insofar as they are consistent with subsections (a), (b) and (c) of this section, the procedures for issuance, form, contents,

execution, negotiation and registration of county and municipal industrial or commercial revenue bonds set forth in §13-2C-1 *et seq.* of this code are incorporated by reference herein.

(k) The bonds may be refunded or refinanced and refunding bonds may be issued in any principal amount: *Provided,* That the last maturity of the refunding bonds shall not be later than the termination date of the district as set forth in §7-11B-10 of this code.

CHAPTER 80

(Com. Sub. for Com. Sub. for S. B. 275 - By Senators Blair (Mr. President) and Baldwin)

[By Request of the Executive]

[Passed April 1, 2021; in effect 90 days from passage (June 30, 2021)]
[Approved by the Governor on April 8, 2021.]

AN ACT to amend and reenact §3-1-16 of the Code of West Virginia, 1931, as amended; to amend and reenact §3-4A-11a of said code; to amend said code by adding thereto a new section, designated, §3-5-6e; to amend and reenact §3-5-7 and §3-5-13 of said code; to amend and reenact §3-10-3 and §3-10-3a of said code; to amend and reenact §6-5-1 of said code; to amend said code by adding thereto a new section, designated §16-2D-16a; to amend said code by adding thereto a new section, designated §23-1-1h; to amend and reenact §23-5-1, §23-5-3, §23-5-4, §23-5-5, §23-5-6, §23-5-8, §23-5-9, §23-5-10, §23-5-11, §23-5-12, §23-5-13, §23-5-15, and §23-5-16 of said code; to amend said code by adding thereto 12 new sections, designated §23-5-1a, §23-5-3a, §23-5-5a, §23-5-6a, §23-5-8a, §23-5-8b, §23-5-9a, §23-5-10a, §23-5-11a, §23-5-12a, §23-5-13a, and §23-5-16a; to amend and reenact §29A-5-4 of said code; to amend and reenact §29A-6-1 of said code; to amend said code by adding thereto a new section, designated §51-2A-24; to amend and reenact §51-9-1a of said code; to amend said code by adding thereto a new article, designated §51-11-1, §51-11-2, §51-11-3, §51-11-4, §51-11-5, §51-11-6, §51-11-7, §51-11-8, §51-11-9, §51-11-10, §51-11-11, §51-11-12, and §51-11-13; and to amend and reenact §58-5-1 of said code, all relating generally to creating an Intermediate Court of Appeals; requiring the election of judges of the Intermediate Court of Appeals be on a nonpartisan basis; requiring that

elections to certain offices be on a division basis when more than one judge of the Intermediate Court of Appeals is to be elected; providing for the timing, day and frequency of election; providing for the commencement of terms of office; establishing ballot design and printing; providing that election for Judge of the Intermediate Court of Appeals is to be held on the same date as the primary election; requiring nonpartisan ballots be used; establishing filing announcement of candidacies, including the timing, location and information necessary thereto; providing for the order of appearance of offices on the ballot; establishing ballot content; providing for the filling of vacancies on the Intermediate Court of Appeals; defining terms; providing that the Judicial Vacancy Advisory Commission assist initial and subsequent vacancies on the Intermediate Court of Appeals; clarifying meaning of quorum for Judicial Vacancy Advisory Commission; transferring jurisdiction over appeals of decisions of the Health Care Authority in certificate-of-need reviews from the Workers' Compensation Office of Administrative Law Judges and Circuit Court of Kanawha County to the Intermediate Court of Appeals; establishing procedures and time frames for transfer or disposition of unresolved appeals pending with the Office of Judges; transferring jurisdiction over all workers' compensation claims and transferring all powers and duties related thereto from the Office of Judges to the Workers' Compensation Board of Review by a date certain; providing for additional two members to Workers' Compensation Board of Review; providing for modified procedure to appoint members to Workers' Compensation Board of Review; conferring appellate jurisdiction over Office of Judges decisions and Board of Review decisions to the Intermediate Court of Appeals after a date certain; sunsetting certain provisions relating to duties and procedures of the Office of Judges with respect to workers' compensation claims; modifying duties and procedures of Board of Review with respect to workers' compensation claims; terminating the Office of Judges by a date certain; authorizing the Board of Review to employ hearing examiners and other necessary personnel; establishing qualifications for hearing examiners

hired by the Board of Review; setting forth powers of the Board of Review relating to workers' compensation claims; providing for reports requested by the Insurance Commissioner to be made by the chair of the Board of Review; providing for oversight and administrative authority of the Insurance Commissioner over the Board of Review; authorizing the Board of Review to promulgate procedural rules; granting due consideration and an interview to employees of the Office of Judges who apply for positions with the Board of Review on or before a date certain and directing the Board of Review that such consideration and interview prior to considering any other applicant; authorizing the Board of Review to hire attorneys as hearing examiners; requiring that all orders and decisions of the Board of Review pertaining to an objection be issued and signed by a single member of the Board of Review, with certain exceptions; permitting the board of review member assigned to an objection to delegate certain duties to a hearing examiner; establishing the administrative powers and duties of the Board of Review; increasing the limit on the annual salary of a Board of Review member; authorizing the Board of Review to promulgate rules of practice and procedure, and establishing a process therefor; establishing duties of the chair of the Board of Review; providing that the administrative expenses of the Board of Review shall be included in annual budget of the Insurance Commissioner; providing that petitions for review of final decisions of the Workers' Compensation Board of Review must be made to the Intermediate Court of Appeals; establishing certain procedures and other requirements for appeals of Board of Review decisions made to the Intermediate Court of Appeals; providing that the Supreme Court of Appeals has discretion to review final decisions of the Intermediate Court of Appeals in workers' compensation claims; requiring that appeal of contested cases under the State Administrative Procedures Act be made to the Intermediate Court of Appeals; transferring jurisdiction to review family court final orders from circuit courts to the Intermediate Court of Appeals; creating an Intermediate Court of Appeals in West Virginia to be established and operable by a date certain; providing a short title; providing legislative findings; defining terms;

establishing and defining an Intermediate Court of Appeals of three judges; providing eligibility criteria for judges of the Intermediate Court of Appeals; providing that judges of the Intermediate Court of Appeals may not be candidates for any elected public office during the judicial term; providing for the location of proceedings of the Intermediate Court of Appeals; providing for a Clerk of the Intermediate Court of Appeals; authorizing jurisdiction of the Intermediate Court of Appeals over certain matters; excluding certain matters from jurisdiction of the Intermediate Court of Appeals; providing that parties to an appeal in the Intermediate Court of Appeals shall have an opportunity for a full and meaningful review on the record of the lower tribunal and an opportunity to be heard; forbidding jurisdiction of the Intermediate Court of Appeals over certain matters; establishing a procedure by which parties to an appeal in the Intermediate Court of Appeals may file a motion for direct review of an appeal by the Supreme Court of Appeals in certain extraordinary circumstances; providing a process for initial appointment of judges to the Intermediate Court of Appeals to fill vacancies in the Intermediate Court of Appeals upon its creation; providing for the regular election of a judge of the Intermediate Court of Appeals upon the expiration of a sitting judge's term; establishing a procedures for the filling of vacancies in unexpired judicial terms by appointment and, in certain circumstances, subsequent election; providing that the Governor's judicial appointments must be made from a list of candidates submitted by the Judicial Vacancy Advisory Commission and are subject to advice and consent of the Senate; providing that procedures and operations of the Intermediate Court of Appeals shall comply with rules promulgated by the Supreme Court of Appeals; requiring that appeals to the Intermediate Court of Appeals and related filings be filed with the Clerk of the Supreme Court of Appeals; establishing certain requirements for the filing of appeals to the Intermediate Court of Appeals; clarifying that an appeal bond may be required before appeal to the Intermediate Court of Appeals may take effect; authorizing filing fees; providing for deposit of filing fees in a special revenue account to fund the Ryan Brown Addiction

Prevention and Recovery Fund; granting the Intermediate Court of Appeals discretion to require oral argument; recognizing the constitutional authority of the Supreme Court of Appeals to exercise administrative authority over the Intermediate Court of Appeals; providing that Intermediate Court of Appeals proceedings shall take place in publicly available facilities as arranged by the Administrative Director of the Supreme Court of Appeals; authorizing the Administrative Director of the Supreme Court of Appeals to employ staff for Intermediate Court of Appeals operations; providing for a Chief Judge of the Intermediate Court of Appeals; providing that the budget for Intermediate Court of Appeals operations shall be included in the appropriation for the Supreme Court of Appeals; authorizing the Intermediate Court of Appeals to issue opinions as binding precedent for lower courts; providing that the Intermediate Court of Appeals shall issue written decisions as a matter of right; providing for discretionary review of Intermediate Court of Appeals decisions by Supreme Court of Appeals; authorizing an annual salary, retirement benefits, and reimbursement of expenses for judges of the Intermediate Court of Appeals; providing for reimbursement of expenses of Intermediate Court of Appeals staff; authorizing the Attorney General to appear as Counsel for the State before the Intermediate Court of Appeals; providing for severability of any unconstitutional provisions; clarifying when appeal lies before the Intermediate Court of Appeals and the Supreme Court of Appeals; providing internal effective dates; removing obsolete language from the code; and making technical corrections to the code.

Be it enacted by the Legislature of West Virginia:

CHAPTER 3. ELECTIONS.

ARTICLE 1. GENERAL PROVISIONS AND DEFINITIONS.

§3-1-16. Election of state officers.

(a) At the general election to be held in 1968, and every fourth year thereafter, there shall be elected a Governor, Secretary of

State, Treasurer, Auditor, Attorney General and Commissioner of Agriculture. At the general election in 1968, and every second year thereafter, there shall be elected a member of the State Senate for each senatorial district, and a member or members of the House of Delegates of the state from each county or each delegate district.

(b) At the time of the primary election to be held in the year 2016, and every twelfth year thereafter, there shall be elected one justice of the Supreme Court of Appeals, and at the time of the primary election to be held in 2020, and every 12th year thereafter, two justices of the Supreme Court of Appeals and at the time of the primary election to be held in 2024, and every twelfth year thereafter, two justices of the Supreme Court of Appeals. Effective with the primary election held in the year 2016, the election of justices of the Supreme Court of Appeals shall be on a nonpartisan basis and by division as set forth more fully in article five of this chapter.

(c) At the time of the primary election to be held in the year 2024, and every tenth year thereafter, there shall be elected one judge to a seat of the Intermediate Court of Appeals; at the time of the primary election to be held in 2026, and every 10th year thereafter, one judge to a seat of the Intermediate Court of Appeals; and at the time of the primary election to be held in 2028, and every 10th year thereafter, one judge to a seat of the Intermediate Court of Appeals. Effective with the primary election held in the year 2024, the election of Judges of the Intermediate Court of Appeals shall be on a nonpartisan basis and by division as set forth more fully in §3-5-1 *et seq.* of this code.

ARTICLE 4A. ELECTRONIC VOTING SYSTEMS.

§3-4A-11a. Ballots tabulated electronically; arrangement, quantity to be printed, ballot stub numbers.

(a) The board of ballot commissioners in counties using ballots upon which votes may be recorded by means of marking with electronically sensible ink or pencil and which marks are tabulated electronically shall cause the ballots to be printed or displayed upon the screens of the electronic voting system for use in elections.

(b) (1) For the primary election, the heading of the ballot, the type faces, the names and arrangement of offices and the printing of names and arrangement of candidates within each office are to conform as nearly as possible to §3-5-13 and §3-5-13a of this code.

(2) For the general election, the heading of the ballot, the type faces, the names and arrangement of offices and the printing of names and the arrangement of candidates within each office are to conform as nearly as possible to §3-6-2 of this code.

(3) Effective with the primary election held in 2016 and thereafter, the following nonpartisan elections are to be separated from the partisan ballot and separately headed in display type with a title clearly identifying the purpose of the election and constituting a separate ballot wherever a separate ballot is required under this chapter:

(A) Nonpartisan elections for judicial offices, by division, of:

(i) Justice of the Supreme Court of Appeals;

(ii) Judge of the Intermediate Court of Appeals;

(iii) Judge of the circuit court;

(iv) Family court judge; and

(v) Magistrate;

(B) Nonpartisan elections for Board of Education; and

(C) Any question to be voted upon.

(4) Beginning in the primary election to be held in the year 2020 and in each election thereafter, the nonpartisan judicial elections described in subparagraphs (i) through (iv), paragraph (A), subdivision (3), of this subsection shall appear immediately after the state ticket and shall immediately precede the county ticket, in the same manner prescribed in §3-5-13a of this code.

(5) Both the face and the reverse side of the ballot may contain the names of candidates only if means to ensure the secrecy of the

ballot are provided and lines for the signatures of the poll clerks on the ballot are printed on a portion of the ballot which is deposited in the ballot box and upon which marks do not interfere with the proper tabulation of the votes.

(6) The arrangement of candidates within each office is to be determined in the same manner as for other electronic voting systems, as prescribed in this chapter. On the general election ballot for all offices, and on the primary election ballot only for those offices to be filled by election, except delegate to national convention, lines for entering write-in votes are to be provided below the names of candidates for each office, and the number of lines provided for any office shall equal the number of persons to be elected, or three, whichever is fewer. The words "WRITE-IN, IF ANY" are to be printed, where applicable, directly under each line for write-ins. The lines are to be opposite a position to mark the vote.

(c) Except for electronic voting systems that utilize screens upon which votes may be recorded by means of a stylus or by means of touch, the primary election ballots are to be printed in the color of ink specified by the Secretary of State for the various political parties, and the general election ballot is to be printed in black ink. For electronic voting systems that utilize screens upon which votes may be recorded by means of a stylus or by means of touch, the primary ballots and the general election ballot are to be printed in black ink. All ballots are to be printed, where applicable, on white paper suitable for automatic tabulation and are to contain a perforated stub at the top or bottom of the ballot, which is to be numbered sequentially in the same manner as provided in §3-5-13 of this code, or are to be displayed on the screens of the electronic voting system upon which votes are recorded by means of a stylus or touch. The number of ballots printed and the packaging of ballots for the precincts are to conform to the requirements for paper ballots provided in this chapter.

(d) In addition to the official ballots, the ballot commissioners shall provide all other materials and equipment necessary to the proper conduct of the election.

ARTICLE 5. PRIMARY ELECTIONS AND NOMINATING PROCEDURES.

§3-5-6e. Election of judges of the Intermediate Court of Appeals.

(a) An election for the purpose of electing a Judge or Judges of the Intermediate Court of Appeals shall be held on the same date as the primary election, as provided by law, upon a nonpartisan ballot by division printed for this purpose.

(b) In case of a tie vote under this section, §3-6-12 of this code controls in breaking the tie vote.

§3-5-7. Filing certificates of announcements of candidacies; requirements; withdrawal of candidates when section applicable.

(a) Any person who is eligible and seeks to hold an office or political party position to be filled by election in any primary or general election held under the provisions of this chapter shall file a certificate of announcement declaring his or her candidacy for the nomination or election to the office.

(b) The certificate of announcement shall be filed as follows:

(1) Candidates for the House of Delegates, the State Senate, circuit judge, family court judge, and any other office or political position to be filled by the voters of more than one county shall file a certificate of announcement with the Secretary of State.

(2) Candidates for an office or political position to be filled by the voters of a single county or a subdivision of a county, except for candidates for the House of Delegates, State Senate, circuit judge or family court judge, shall file a certificate of announcement with the clerk of the county commission.

(3) Candidates for an office to be filled by the voters of a municipality shall file a certificate of announcement with the recorder or city clerk.

(c) The certificate of announcement shall be filed with the proper officer not earlier than the second Monday in January before the primary election day and not later than the last Saturday in January before the primary election day and must be received before midnight, eastern standard time, of that day or, if mailed, shall be postmarked by the United States Postal Service before that hour. This includes the offices of Justice of the Supreme Court of Appeals, Judge of the Intermediate Court of Appeals, circuit court judge, family court judge and magistrate, which are to be filled on a nonpartisan and division basis at the primary election: Provided, That on the final day of a political filing period, the office of the Secretary of State shall be open from 9:00 a.m. until 11:59 p.m. The offices of the County Clerk in all counties of the state shall be open on that final day of a political filing period from 9:00 a.m. until 12:00 p.m.

(d) The certificate of announcement shall be on a form prescribed by the Secretary of State on which the candidate shall make a sworn statement before a notary public or other officer authorized to administer oaths, containing the following information:

(1) The date of the election in which the candidate seeks to appear on the ballot;

(2) The name of the office sought; the district, if any; and the division, if any;

(3) The legal name of the candidate and the exact name the candidate desires to appear on the ballot, subject to limitations prescribed in §3-5-13 of this code;

(4) The county of residence and a statement that the candidate is a legally qualified voter of that county; and the magisterial district of residence for candidates elected from magisterial districts or under magisterial district limitations;

(5) The specific address designating the location at which the candidate resides at the time of filing, including number and street or rural route and box number and city, state, and zip code;

(6) For partisan elections, the name of the candidate's political party and a statement that the candidate: (A) Is a member of and affiliated with that political party as evidenced by the candidate's current registration as a voter affiliated with that party; and (B) has not been registered as a voter affiliated with any other political party for a period of 60 days before the date of filing the announcement;

(7) For candidates for delegate to national convention, the name of the presidential candidate to be listed on the ballot as the preference of the candidate on the first convention ballot; or a statement that the candidate prefers to remain "uncommitted";

(8) A statement that the person filing the certificate of announcement is a candidate for the office in good faith;

(9) The words "subscribed and sworn to before me this _____ day of _____, 20____" and a space for the signature of the officer giving the oath.

(e) The Secretary of State or the board of ballot commissioners, as the case may be, may refuse to certify the candidacy or may remove the certification of the candidacy upon receipt of a certified copy of the voter's registration record of the candidate showing that the candidate was registered as a voter in a party other than the one named in the certificate of announcement during the 60 days immediately preceding the filing of the certificate: *Provided*, That unless a signed formal complaint of violation of this section and the certified copy of the voter's registration record of the candidate are filed with the officer receiving that candidate's certificate of announcement no later than 10 days following the close of the filing period, the candidate may not be refused certification for this reason.

(f) The certificate of announcement shall be subscribed and sworn to by the candidate before some officer qualified to administer oaths, who shall certify the same. Any person who knowingly provides false information on the certificate is guilty of false swearing and shall be punished in accordance with §3-9-3 of this code.

(g) Any candidate for delegate to a national convention may change his or her statement of presidential preference by notifying the Secretary of State by letter received by the Secretary of State no later than the third Tuesday following the close of candidate filing. When the rules of the political party allow each presidential candidate to approve or reject candidates for delegate to convention who may appear on the ballot as committed to that presidential candidate, the presidential candidate or the candidate's committee on his or her behalf may file a list of approved or rejected candidates for delegate and the Secretary of State shall list as "uncommitted" any candidate for delegate who is disapproved by the presidential candidate.

(h) A person may not be a candidate for more than one office or office division at any election: *Provided*, That a candidate for an office may also be a candidate for President of the United States, for membership on political party executive committees or for delegate to a political party national convention: *Provided, however*, That an unsuccessful candidate for a nonpartisan office in an election held concurrently with the primary election may be appointed under the provisions of section nineteen of this article to fill a vacancy on the general ballot.

(i) A candidate who files a certificate of announcement for more than one office or division and does not withdraw, as provided by §3-5-11 of this code, from all but one office prior to the close of the filing period may not be certified by the Secretary of State or placed on the ballot for any office by the board of ballot commissioners.

§3-5-13. Form and contents of ballots.

The following provisions apply to the form and contents of election ballots:

(1) The face of every primary election ballot shall conform as nearly as practicable to that used at the general election.

(2) The heading of every ballot is to be printed in display type. The heading is to contain a ballot title, the name of the county, the

state, the words "Primary Election" and the month, day and year of the election. The ballot title of the political party ballots is to contain the words "Official Ballot of the (Name) Party" and the official symbol of the political party may be included in the heading.

(A) The ballot title of any separate paper ballot or portion of any electronic or voting machine ballot for all judicial officers shall commence with the words "Nonpartisan Ballot of Election of Judicial Officers" and each such office shall be listed in the following order:

(i) The ballot title of any separate paper ballot or portion of any electronic or voting machine ballot for all justices of the Supreme Court of Appeals shall contain the words "Nonpartisan Ballot of Election of Justice(s) of the Supreme Court of Appeals of West Virginia". The names of the candidates for the Supreme Court of Appeals shall be printed by division without references to political party affiliation or registration.

(ii) The ballot title of any separate paper ballot or portion of any electronic or voting machine ballot for all judges of the Intermediate Court of Appeals shall contain the words "Nonpartisan Ballot of Election of Judge(s) of the Intermediate Court of Appeals". The names of the candidates for the Intermediate Court of Appeals shall be printed by division without references to political party affiliation or registration.

(iii) The ballot title of any separate paper ballot or portion of any electronic or voting machine ballot for all circuit court judges in the respective circuits shall contain the words "Nonpartisan Ballot of Election of Circuit Court Judge(s)". The names of the candidates for the respective circuit court judge office shall be printed by division without references to political party affiliation or registration.

(iv) The ballot title of any separate paper ballot or portion of any electronic or voting machine ballot for all family court judges in the respective circuits shall contain the words "Nonpartisan Ballot of Election of Family Court Judge(s)". The names of the

candidates for the respective family court judge office shall be printed by division without references to political party affiliation or registration.

(v) The ballot title of any separate paper ballot or portion of any electronic or voting machine ballot for all magistrates in the respective circuits shall contain the words "Nonpartisan Ballot of Election of Magistrate(s)". The names of the candidates for the respective magistrate office shall be printed by division without references to political party affiliation or registration.

(B) The ballot title of any separate paper ballot or portion of any electronic or voting machine ballot for the Board of Education is to contain the words "Nonpartisan Ballot of Election of Members of the _____ County Board of Education". The districts for which fewer than two candidates may be elected and the number of available seats are to be specified and the names of the candidates are to be printed without reference to political party affiliation and without designation as to a particular term of office.

(C) Any other ballot or portion of a ballot on a question is to have a heading which clearly states the purpose of the election according to the statutory requirements for that question.

(3) (A) For paper ballots, the heading of the ballot is to be separated from the rest of the ballot by heavy lines and the offices shall be arranged in columns with the following headings, from left to right across the ballot: "National Ticket", "State Ticket", "Nonpartisan Judicial Ballot", "County Ticket", "Nonpartisan Ballot" in a nonpresidential election year, "District Ticket" or, in a presidential election year, "National Convention". The columns are to be separated by heavy lines. Within the columns, the offices are to be arranged in the order prescribed in §3-5-13a of this code.

(B) For voting machines, electronic voting devices and any ballot tabulated by electronic means, the offices are to appear in the same sequence as prescribed in §3-5-13a of this code and under the same headings as prescribed in paragraph (A) of this subdivision. The number of pages, columns or rows, where applicable, may be

modified to meet the limitations of ballot size and composition requirements subject to approval by the Secretary of State.

(C) The title of each office is to be separated from preceding offices or candidates by a line and is to be printed in bold type no smaller than eight point. Below the office is to be printed the number of the district, if any, the number of the division, if any, and the words "Vote for _____" with the number to be nominated or elected or "Vote For Not More Than _____" in multicandidate elections. For offices in which there are limitations relating to the number of candidates which may be nominated, elected or appointed to or hold office at one time from a political subdivision within the district or county in which they are elected, there is to be a clear explanation of the limitation, as prescribed by the Secretary of State, printed in bold type immediately preceding the names of the candidates for those offices on the ballot in every voting system. For counties in which the number of county commissioners exceeds three and the total number of members of the county commission is equal to the number of magisterial districts within the county, the office of county commission is to be listed separately for each district to be filled with the name of the magisterial district and the words "Vote for One" printed below the name of the office: *Provided,* That the office title and applicable instructions may span the width of the ballot so as it is centered among the respective columns.

(D) The location for indicating the voter's choices on the ballot is to be clearly shown. For paper ballots, other than those tabulated electronically, the official primary ballot is to contain a square formed in dark lines at the left of each name on the ballot, arranged in a perpendicular column of squares before each column of names.

(4) (A) The name of every candidate certified by the Secretary of State or the board of ballot commissioners is to be printed in capital letters in no smaller than eight point type on the ballot for the appropriate precincts. Subject to the rules promulgated by the Secretary of State, the name of each candidate is to appear in the form set out by the candidate on the certificate of announcement, but in no case may the name misrepresent the identity of the candidate nor may the name include any title, position, rank,

degree, or nickname implying or inferring any status as a member of a class or group or affiliation with any system of belief.

(B) The city of residence of every candidate, the state of residence of every candidate residing outside the state, the county of residence of every candidate for an office on the ballot in more than one county and the magisterial district of residence of every candidate for an office subject to magisterial district limitations are to be printed in lower case letters beneath the names of the candidates.

(C) The arrangement of names within each office must be determined as prescribed in §3-5-13a of this code.

(D) If the number of candidates for an office exceeds the space available on a column or ballot page and requires that candidates for a single office be separated, to the extent possible, the number of candidates for the office on separate columns or pages are to be nearly equal and clear instructions given the voter that the candidates for the office are continued on the following column or page.

(5) When an insufficient number of candidates has filed for a party to make the number of nominations allowed for the office or for the voters to elect sufficient members to the Board of Education or to executive committees, the vacant positions on the ballot shall be filled with the words "No Candidate Filed": *Provided,* That in paper ballot systems which allow for write-ins to be made directly on the ballot, a blank line shall be placed in any vacant position in the office of Board of Education or for election to any party executive committee. A line shall separate each candidate from every other candidate for the same office. Notwithstanding any other provision of this code, if there are multiple vacant positions on a ballot for one office, the multiple vacant positions which would otherwise be filled with the words "No Candidate Filed" may be replaced with a brief detailed description, approved by the Secretary of State, indicating that there are no candidates listed for the vacant positions.

(6) In presidential election years, the words "For election in accordance with the plan adopted by the party and filed with the Secretary of State" is to be printed following the names of all candidates for delegate to national convention.

(7) All paper ballots are to be printed in black ink on paper sufficiently thick so that the printing or marking cannot be discernible from the back: *Provided,* That no paper ballot voted pursuant to the provisions of 42 U. S. C. §1973, *et seq.*, the Uniformed and Overseas Citizens Absentee Voting Act of 1986, or federal write-in absentee ballot may be rejected due to paper type, envelope type, or notarization requirement. Ballot cards and paper for printing ballots using electronically sensible ink are to meet minimum requirements of the tabulating systems and are to conform in size and weight to ensure ease in tabulation.

(8) Ballots are to contain perforated tabs at the top of the ballots and are to be printed with unique sequential numbers from one to the highest number representing the total number of ballots printed. On paper ballots, the ballot is to be bordered by a solid line at least one sixteenth of an inch wide and the ballot is to be trimmed to within one-half inch of that border.

(9) On the back of every official ballot or ballot card the words "Official Ballot" with the name of the county and the date of the election are to be printed. Beneath the date of the election there are to be two blank lines followed by the words "Poll Clerks".

(10) The face of sample paper ballots and sample ballot labels are to be like other official ballots or ballot labels except that the word "sample" is to be prominently printed across the front of the ballot in a manner that ensures the names of candidates are not obscured and the word "sample" may be printed in red ink. No printing may be placed on the back of the sample.

ARTICLE 10. FILLING VACANCIES.

§3-10-3. Vacancies in offices of state officials, justices, judges, and magistrates.

(a) Any vacancy occurring in the offices of Secretary of State, Auditor, Treasurer, Attorney General, Commissioner of

Agriculture, or in any office created or made elective to be filled by the voters of the entire state, is filled by the Governor of the state by appointment and subsequent election to fill the remainder of the term, if required by §3-10-1 of this code. The Governor shall make the appointment from a list of three legally qualified persons submitted by the party executive committee of the same political party with which the person holding the office immediately preceding the vacancy was affiliated at the time the vacancy occurred. The list of qualified persons to fill the vacancy shall be submitted to the Governor within 15 days after the vacancy occurs, and the Governor shall duly make his or her appointment to fill the vacancy from the list of legally qualified persons within five days after the list is received. If the list is not submitted to the Governor within the 15-day period, the Governor shall appoint, within five days thereafter, a legally qualified person of the same political party with which the person holding the office immediately preceding the vacancy was affiliated at the time the vacancy occurred: *Provided*, That the provisions of this subsection do not apply to §3-10-3(b), §3-10-3(c), §3-10-3(d), and §3-10-3(e) of this code.

(b) Any vacancy occurring in the offices of Justice of the Supreme Court of Appeals, judge of the Intermediate Court of Appeals, judge of a circuit court, or judge of a family court is filled by the Governor of the state by appointment and, if the unexpired term be for a period of more than two years, by a subsequent election to fill the remainder of the term, as required by §3-10-3(d) of this code. If an election is required under §3-10-3(d) of this code, the Governor, circuit court, or the chief judge thereof in vacation, is responsible for the proper proclamation by order and notice required by §3-10-1 of this code.

(c) Any vacancy in the office of magistrate is appointed according to the provisions of §50-1-6 of this code, and, if the unexpired term be for a period of more than two years, by a subsequent election to fill the remainder of the term, as required by §3-10-3(d) of this code.

(d) (1) When the vacancy in the office of Justice of the Supreme Court of Appeals, judge of the Intermediate Court of Appeals,

judge of the circuit court, judge of a family court, or magistrate occurs after the 84th day before a general election, and the affected term of office ends on December 31 following the succeeding general election two years later, the person appointed to fill the vacancy shall continue in office until the completion of the term.

(2) When the vacancy occurs before the close of the candidate filing period for the primary election, and if the unexpired term be for a period of greater than two years, the vacancy shall be filled by election in the nonpartisan judicial election held concurrently with the primary election and the appointment shall continue until a successor is elected and certified.

(3) When the vacancy occurs after the close of candidate filing for the primary election and not later than 84 days before the general election, and if the unexpired term be for a period of greater than two years, the vacancy shall be filled by election in a nonpartisan judicial election held concurrently with the general election, and the appointment shall continue until a successor is elected and certified.

(e) When an election to fill a vacancy is required to be held at the general election, according to the provisions of §3-10-3(d) of this code, a special candidate filing period shall be established. Candidates seeking election to any unexpired term for Justice of the Supreme Court of Appeals, judge of the Intermediate Court of Appeals, judge of a circuit court, judge of the family court, or magistrate shall file a certificate of announcement and pay the filing fee no earlier than the first Monday in August and no later than 77 days before the general election.

§3-10-3a. Judicial Vacancy Advisory Commission.

(a) The Judicial Vacancy Advisory Commission shall assist the Governor in filling judicial vacancies. The commission shall meet and submit a list of no more than five nor less than two of the most qualified persons to the Governor within 90 days of the occurrence of a vacancy, or the formal announcement of the justice or judge by letter to the Governor of an upcoming resignation or retirement that will result in the occurrence of a vacancy, in the office of

Justice of the Supreme Court of Appeals, judge of the Intermediate Court of Appeals, judge of a circuit court, or judge of a family court. The Governor shall make the appointment to fill the vacancy, as required by this article, within 30 days following the receipt of the list of qualified candidates or within 30 days following the vacancy, whichever occurs later.

(b) The commission shall consist of eight appointed members appointed by the Governor for six-year terms, including four public members and four attorney members. The Governor shall appoint attorney members from a list of nominees provided by the Board of Governors of the West Virginia State Bar. The Board of Governors of the West Virginia State Bar shall nominate no more than 20 nor less than 10 of the most qualified attorneys for appointment to the commission whenever there is a vacancy in the membership of the commission reserved for attorney members. The commission shall choose one of its appointed members to serve as chair for a three-year term. No more than four appointed members of the commission shall belong to the same political party. All members of the commission shall be citizens of this state. Public members of the commission may not be licensed to practice law in West Virginia or any other jurisdiction.

(c) (1) No more than two appointed members of the commission may be residents of the same state senatorial district, as provided in §1-2-1 of this code, at the time of appointment: *Provided*, That the members appointed to, and serving on, the commission prior to the enactment of this subdivision are not disqualified from service for the remainder of the member's term based on the residency requirements of this subdivision.

(2) No more than three appointed members of the commission may be residents of the same congressional district: *Provided*, That, if the number of congressional districts in the state is reduced to two, then no more than four appointed members of the commission may be residents of the same congressional district: *Provided, however*, That the members appointed to, and serving on, the commission prior to the date on which the number of congressional districts in the state is reduced to two are not

disqualified from service for the remainder of the member's term based on the residency requirements of this subdivision.

(d) The Governor, or his or her designee, the President of the West Virginia State Bar, and the Dean of the West Virginia University College of Law shall serve as ex officio members of the commission.

(e) Members of the commission shall serve without compensation, except that commission members are entitled to reimbursement of travel and other necessary expenses actually incurred while engaged in official commission activities in accordance with the guidelines of the Travel Management Office of the Department of Administration, or its successor entity. The Governor's Office shall cooperate with the commission to ensure that all resources necessary to carrying out the official duties of the commission are provided, including staff assistance, equipment, and materials.

(f) The commission shall adopt written policies that formalize and standardize all operating procedures and ethical practices of its members, including, but not limited to, procedures for training commission members, publishing notice of judicial vacancies, recruiting qualified individuals for consideration by the commission, receiving applications from qualified individuals, notifying the public of judicial vacancies, notifying state or local groups and organizations of judicial vacancies, and soliciting public comment on judicial vacancies. The written policies of the commission are not subject to the provisions of chapter 29A of this code but shall be filed with the Secretary of State.

(g) A majority of the commission shall constitute a quorum to do business.

(h) All organizational meetings of the commission shall be open to the public and subject to the requirements of §6-9A-1 *et seq.* of this code. An "organizational meeting" means an initial meeting to discuss the commission's procedures and requirements for a judicial vacancy. The commission shall hold at least one organizational meeting upon the occurrence of a judicial vacancy.

All other meetings of the commission are exempt from §6-9A-1 *et seq.* of this code.

(i) The commission shall make available to the public copies of any applications and any letters of recommendation written on behalf of any applicants. All other documents or materials created or received by the commission shall be confidential and exempt from the provisions of chapter 29B of this code, except for the list of the most qualified persons or accompanying memoranda submitted to the Governor in accordance with the provisions of subsection (j) of this section, which shall be available for public inspection, and the written policies required to be filed with the Secretary of State in accordance with subsection (f) of this section.

(j) The commission shall submit its list of the most qualified persons to the Governor in alphabetical order. A memorandum may accompany the list of the most qualified persons and state facts concerning each of the persons listed. The commission shall make copies of any list of the most qualified persons and accompanying memoranda it submits to the Governor available for public inspection.

CHAPTER 6. GENERAL PROVISIONS RESPECTING OFFICERS.

ARTICLE 5. TERMS OF OFFICE; MATTERS AFFECTING THE RIGHT TO HOLD OFFICE.

§6-5-1. When terms of office to begin.

The terms of officers, except when elected or appointed to fill vacancies, shall begin respectively as follows: That of Governor, Secretary of State, State Superintendent of Free Schools, Treasurer, Auditor, Attorney General and Commissioner of Agriculture, on the first Monday after the second Wednesday of January next after their election; that of a member of the Legislature, on December 1, next after his or her election; and that of the justices of the Supreme Court of Appeals, the judges of the Intermediate Court of Appeals, the judges of the several circuit courts, the judges of the family and other inferior courts, the county commissioners, prosecuting

attorneys, surveyors of land, assessors, sheriffs, clerks of the circuit, or other inferior courts, clerks of the county commissions, magistrates, on January 1, next after their election.

Whenever a person is elected or appointed to fill a vacancy, his or her term shall be as prescribed by chapter three of this code.

CHAPTER 16. PUBLIC HEALTH.

ARTICLE 2D. CERTIFICATE OF NEED.

§16-2D-16a. Transfer of appellate jurisdiction to Intermediate Court of Appeals.

(a) Notwithstanding any other provision of this article, effective July 1, 2022:

(1) The Office of Judges may not review a decision of the authority, issued after June 30, 2022, in a certificate of need review. On or before September 30, 2022, the Office of Judges shall issue a final decision in, or otherwise dispose of, each and every appeal, pending before the Office of Judges, of a decision by the authority in a certificate of need review.

(2) An appeal of a final decision in a certificate of need review, issued by the authority after June 30, 2022, shall be made to the West Virginia Intermediate Court of Appeals, pursuant to the provisions governing the judicial review of contested administrative cases in §29A-5-1 *et seq.* of this code.

(b) If the Office of Judges does not issue a final decision or otherwise dispose of any appeal of a decision of the authority in a certificate of need review on or before September 30, 2022, the appeal shall be transferred to the Intermediate Court of Appeals, as provided in §29A-5-4 of this code. For any appeal transferred pursuant to this subsection, the Intermediate Court of Appeals shall adopt any existing records of evidence and proceedings in the Office of Judges, conduct further proceedings as it considers necessary, and issue a final decision or otherwise dispose of the case pursuant to the provisions governing the judicial review of contested administrative cases in §29A-5-1 *et seq.* of this code.

CHAPTER 23. WORKERS' COMPENSATION.

ARTICLE 1. GENERAL ADMINISTRATIVE PROVISIONS.

§23-1-1h. Powers and duties of Office of Judges transferred to Board of Review; definition of certain terms effective July 1, 2022.

(a) Notwithstanding any other provision of this code, with regard to an objection, protest, or any other decision issued after June 30, 2022, all powers and duties of the Workers' Compensation Office of Judges, as provided in this chapter, shall be transferred to the Workers' Compensation Board of Review.

(b) Notwithstanding any other provision of this code, the West Virginia Intermediate Court of Appeals has exclusive appellate jurisdiction over the following matters:

(1) Decisions or orders issued by the Office of Judges after June 30, 2022, and prior to its termination; and

(2) Decisions of the Workers' Compensation Board of Review, issued after June 30, 2022, as provided in §23-5-8a and §51-11-1 *et seq.* of this code.

(c) Unless the context clearly indicates a different meaning, effective July 1, 2022, the following terms shall have the following meanings for the purposes of this chapter, except when used in §23-5-1 *et seq.* of this code:

(1) "Administrative law judge" means a member of the Workers' Compensation Board of Review, or a hearing examiner designated by the Board of Review as authorized in §23-5-1 *et seq.* of this code;

(2) "Office of judges" means the "Workers' Compensation Board of Review"; and

(3) "Workers' Compensation Board of Review" or "Board of Review" when used in reference to an appeal of a Board of Review

decision, means the West Virginia Intermediate Court of Appeals, created by §51-11-1 *et seq.* of this code.

ARTICLE 5. REVIEW.

§23-5-1. Notice by commission or self-insured employer of decision; procedures on claims; objections and hearing; effective until June 30, 2022.

(a) The Insurance Commissioner, private carriers, and self-insured employers may determine all questions within their jurisdiction. In matters arising under §23-2C-8(c) of this code, and under §23-3-1 *et seq.* and §23-4-1 *et seq.* of this code, the Insurance Commissioner, private carriers, and self-insured employers shall promptly review and investigate all claims. The parties to a claim are the claimant and, if applicable, the claimant's dependents, and the employer, and with respect to claims involving funds created in §23-2C-1 *et seq.* of this code for which he or she has been designated the administrator, the Insurance Commissioner. In claims in which the employer had coverage on the date of the injury or last exposure, the employer's carrier has sole authority to act on the employer's behalf in all aspects related to litigation of the claim. With regard to any issue which is ready for a decision, the Insurance Commissioner, private carrier, or self-insured employer, whichever is applicable, shall promptly send the decision to all parties, including the basis of its decision. As soon as practicable after receipt of any occupational pneumoconiosis or occupational disease claim, or any injury claim in which temporary total benefits are being claimed, the Insurance Commissioner, private carrier, or self-insured employer, whichever is applicable, shall send the claimant a brochure approved by the Insurance Commissioner setting forth the claims process.

(b) (1) Except with regard to interlocutory matters, upon making any decision, upon making or refusing to make any award, or upon making any modification or change with respect to former findings or orders, as provided by §23-4-16 of this code, the Insurance Commissioner, private carrier, or self-insured employer, whichever is applicable, shall give notice, in writing, to the parties to the claim of its action. The notice shall state the time allowed for

filing a protest to the finding. The action of the Insurance Commissioner, private carrier, or self-insured employer, whichever is applicable, is final unless the decision is protested within 60 days after the receipt of such decision unless a protest is filed within the 60-day period, the finding or action is final. This time limitation is a condition of the right to litigate the finding or action and hence jurisdictional. Any protest shall be filed with the Office of Judges with a copy served upon the parties to the claim, and other parties in accordance with the procedures set forth in §23-8-1 *et seq.* and §23-9-1 *et seq.* of this code. An employer may protest decisions incorporating findings made by the Occupational Pneumoconiosis Board, decisions made by the Insurance Commissioner acting as administrator of claims involving funds created in §23-2C-1 *et seq.* of this code or decisions entered pursuant to §23-4-7A(c)(1) of this code.

(2) (A) With respect to every application for benefits filed on or after July 1, 2008, in which a decision to deny benefits is protested and the matter involves an issue as to whether the application was properly filed as a new claim or a reopening of a previous claim, the party that denied the application shall begin to make conditional payment of benefits and must promptly give notice to the Office of Judges that another identifiable person may be liable. The Office of Judges shall promptly order the appropriate persons be joined as parties to the proceeding*: Provided,* That at any time during a proceeding in which conditional payments are being made in accordance with the provisions of this subsection, the Office of Judges may, pending final determination of the person properly liable for payment of the claim, order that such conditional payments of benefits be paid by another party.

(B) Any conditional payment made pursuant to paragraph (A) of this subdivision shall not be deemed an admission or conclusive finding of liability of the person making such payments. When the administrative law judge has made a determination as to the party properly liable for payment of the claim, he or she shall direct any monetary adjustment or reimbursement between or among the Insurance Commissioner, private carriers, and self-insured employers as is necessary.

(c) The Office of Judges may direct that:

(1) An application for benefits be designated as a petition to reopen, effective as of the original date of filing;

(2) A petition to reopen be designated as an application for benefits, effective as of the original date of filing; or

(3) An application for benefits or petition to reopen filed with the Insurance Commissioner, private carrier, or self-insured employer be designated as an application or petition to reopen filed with another private carrier, self-insured employer, or Insurance Commissioner, effective as of the original date of filing.

(d) Where an employer protests a written decision entered pursuant to a finding of the Occupational Pneumoconiosis Board, a decision on a claim made by the Insurance Commissioner acting as the administrator of a fund created in §23-2C-1 *et seq.* of this code, or decisions entered pursuant to §23-4-7A(c)(1) of this code, and the employer does not prevail in its protest, and in the event the claimant is required to attend a hearing by subpoena or agreement of counsel, or at the express direction of the Office of Judges, then the claimant, in addition to reasonable traveling and other expenses, shall be reimbursed for loss of wages incurred by the claimant in attending the hearing.

(e) The Insurance Commissioner, private carrier, or self-insured employer, whichever is applicable, may amend, correct, or set aside any order or decision on any issue entered by it, which, at the time of issuance or any time after that, is discovered to be defective or clearly erroneous or the result of mistake, clerical error, or fraud, or with respect to any order or decision denying benefits, otherwise not supported by the evidence, but any protest filed prior to entry of the amended decision is a protest from the amended decision unless and until the administrative law judge before whom the matter is pending enters an order dismissing the protest as moot in light of the amendment. Jurisdiction to issue an amended decision pursuant to this subsection continues until the expiration of two years from the date of a decision to which the amendment is made unless the decision is sooner affected by an

action of an administrative law judge or other judicial officer or body: *Provided,* That corrective actions in the case of fraud may be taken at any time.

(f) This section is of no force and effect after June 30, 2022.

§23-5-1a. Notice by commission or self-insured employer of decision; procedures on claims; objections and hearing; effective July 1, 2022.

(a) The Insurance Commissioner, private carriers, and self-insured employers may determine all questions within their jurisdiction. In matters arising under §23-2C-8(c), and under §23-3-1 *et seq.* and §23-4-1 *et seq.* of this code, the Insurance Commissioner, private carriers, and self-insured employers, whichever is applicable, shall promptly review and investigate all claims. The parties to a claim are the claimant and, if applicable, the claimant's dependents, the employer, and, with respect to claims involving funds created in §23-2C-1 *et seq.* of this code for which he or she has been designated the administrator, the Insurance Commissioner. In claims in which the employer had coverage on the date of the injury or last exposure, the employer's carrier has sole authority to act on the employer's behalf in all aspects related to litigation of the claim. With regard to any issue which is ready for a decision, the Insurance Commissioner, private carrier, or self-insured employer, whichever is applicable, shall promptly send the decision to all parties, including the basis of its decision. As soon as practicable after receipt of any occupational pneumoconiosis or occupational disease claim or any injury claim in which temporary total benefits are being claimed, the Insurance Commissioner, private carrier, or self-insured employer, whichever is applicable, shall send the claimant a brochure approved by the Insurance Commissioner setting forth the claims process.

(b) (1) Except with regard to interlocutory matters, upon making any decision, upon making or refusing to make any award, or upon making any modification or change with respect to former findings or orders, as provided by §23-4-16 of this code, the Insurance Commissioner, private carrier, or self-insured employer,

whichever is applicable, shall give notice, in writing, to the parties to the claim of its action. The notice shall state the time allowed for filing an objection to the finding. The action of the Insurance Commissioner, private carrier, or self-insured employer, whichever is applicable, is final unless an objection to the decision is properly filed within 60 days after the receipt of such decision. This time limitation is a condition of the right to litigate the finding or action and hence jurisdictional. Any objection shall be filed with the Workers' Compensation Board of Review, as provided in §23-5-8a and §23-5-8b of this code, with a copy served upon the parties to the claim, and other parties in accordance with the procedures set forth in §23-5-8a and §23-5-9a of this code. An employer may file an objection to a decision incorporating findings made by the Occupational Pneumoconiosis Board, decisions made by the Insurance Commissioner acting as administrator of claims involving funds created in §23-2C-1 *et seq.* of this code, or decisions entered pursuant to §23-4-7a(c)(1) of this code.

(2) (A) With respect to every application for benefits in which an objection to a decision to deny benefits is filed and the matter involves an issue as to whether the application was properly filed as a new claim or a reopening of a previous claim, the party that denied the application shall begin to make conditional payment of benefits and must promptly give notice to the Workers' Compensation Board of Review that another identifiable person may be liable. The Workers' Compensation Board of Review shall promptly order the appropriate persons be joined as parties to the proceeding: *Provided*, That at any time during a proceeding in which conditional payments are being made in accordance with the provisions of this subsection, the Workers' Compensation Board of Review may, pending final determination of the person properly liable for payment of the claim, order that such conditional payments of benefits be paid by another party.

(B) Any conditional payment made pursuant to paragraph (A) of this subdivision shall not be deemed an admission or conclusive finding of liability of the person making such payments. When the Workers' Compensation Board of Review has made a determination as to the party properly liable for payment of the

claim, the Board of Review shall direct any monetary adjustment or reimbursement between or among the Insurance Commissioner, private carriers, and self-insured employers as is necessary.

(c) The member of the Workers' Compensation Board of Review assigned to an objection, as provided in §23-5-9a(b) of this code, may direct that:

(1) An application for benefits be designated as a petition to reopen, effective as of the original date of filing;

(2) A petition to reopen be designated as an application for benefits, effective as of the original date of filing; or

(3) An application for benefits or petition to reopen filed with the Insurance Commissioner, private carrier, or self-insured employer be designated as an application or petition to reopen filed with another private carrier, self-insured employer, or Insurance Commissioner, effective as of the original date of filing.

(d) Where an employer files an objection to a written decision entered pursuant to a finding of the Occupational Pneumoconiosis Board, a decision on a claim made by the Insurance Commissioner acting as the administrator of a fund created in §23-2C-1 *et seq.* of this code, or decisions entered pursuant to §23-4-7a(c)(1) of this code, and the employer does not prevail in its objection, and in the event the claimant is required to attend a hearing by subpoena, or agreement of counsel, or at the express direction of Workers' Compensation Board of Review, then the claimant, in addition to reasonable traveling and other expenses, shall be reimbursed for loss of wages incurred by the claimant in attending the hearing.

(e) The Insurance Commissioner, private carrier, or self-insured employer, whichever is applicable, may amend, correct, or set aside any order or decision on any issue entered by it which, at the time of issuance or any time after that, is discovered to be defective, or clearly erroneous, or the result of mistake, clerical error, or fraud, or with respect to any order or decision denying benefits, otherwise not supported by the evidence: *Provided*, That any objection filed prior to entry of the amended

decision is an objection to the amended decision unless and until the Workers' Compensation Board of Review enters an order dismissing the objection as moot in light of the amendment. Jurisdiction to issue an amended decision pursuant to this subsection continues until the expiration of two years from the date of a decision to which the amendment is made unless the decision is sooner affected by an action of the Workers' Compensation Board of Review or a judicial officer or body: *Provided, however*, That corrective actions in the case of fraud may be taken at any time.

(f) This section becomes effective on July 1, 2022.

§23-5-3. Refusal to reopen claim; notice; objection; effective until June 30, 2022.

(a) If it appears to the Insurance Commissioner, private insurance carriers, and self-insured employers, whichever is applicable, that an application filed under §23-2-1 *et seq.* of this code fails to disclose a progression or aggravation in the claimant's condition, or some other fact or facts which were not previously considered in its former findings and which would entitle the claimant to greater benefits than the claimant has already received, the Insurance Commissioner, private insurance carriers, and self-insured employers, whichever is applicable, shall, within a reasonable time, notify the claimant and the employer that the application fails to establish a prima facie cause for reopening the claim. The notice shall be in writing stating the reasons for denial and the time allowed for objection to the decision of the commission. The claimant may, within 60 days after receipt of the notice, object in writing to the finding. Unless the objection is filed within the 60-day period, no objection shall be allowed. This time limitation is a condition of the right to objection and hence jurisdictional. Upon receipt of an objection, the Office of Judges shall afford the claimant an evidentiary hearing as provided in §23-9-1 *et seq.* of this code.

(b) This section is of no force and effect after June 30, 2022.

§23-5-3a. Refusal to reopen claim; notice; objection; effective July 1, 2022.

(a) If it appears to the Insurance Commissioner, private insurance carriers, and self-insured employers, whichever is applicable, that an application filed under §23-5-2a of this code fails to disclose a progression or aggravation in the claimant's condition, or some other fact or facts which were not previously considered in its former findings, and which would entitle the claimant to greater benefits than the claimant has already received, the Insurance Commissioner, private insurance carriers, and self-insured employers, whichever is applicable, shall, within a reasonable time, notify the claimant and the employer that the application fails to establish a prima facie cause for reopening the claim. The notice shall be in writing stating the reasons for denial and the time allowed for objection to the decision of the commission. The claimant may, within 60 days after receipt of the notice, object in writing to the finding. Unless the objection is filed within the 60-day period, no objection shall be allowed. This time limitation is a condition of the right to objection and hence jurisdictional. Upon receipt of an objection, the Workers' Compensation Board of Review shall afford the claimant an evidentiary hearing as provided in §23-5-9a of this code.

(b) This section becomes effective on July 1, 2022.

§23-5-4. Application by employer for modification of award; objection to modification; hearing.

In any case in which an employer makes application in writing for a modification of any award previously made to an employee of the employer, the commission, the successor to the commission, other private insurance carriers and self-insured employers, whichever is applicable, shall make a decision upon the application. If the application discloses cause for a further adjustment, the commission, the successor to the commission, other private insurance carriers and self-insured employers, whichever is applicable, shall, after due notice to the employee, make the modifications or changes with respect to former findings or orders that are justified. Any party dissatisfied with any

modification or change made or by the denial of an application for modification is, upon proper and timely objection, entitled to a hearing as provided in either §23-5-9 or §23-5-9a of this code.

§23-5-5. Refusal of modification; notice; objection; effective until June 30, 2022.

(a) If in any case it appears to the commission, the successor to the commission, other private insurance carriers, and self-insured employers, whichever is applicable, that the application filed pursuant to §23-4-1 *et seq.* of this code fails to disclose some fact or facts which were not previously considered by the commission in its former findings, and which would entitle the employer to any modification of the previous award, the commission, the successor to the commission, other private insurance carriers, and self-insured employers, whichever is applicable, shall, within 60 days from the receipt of the application, notify the claimant and employer that the application fails to establish a just cause for modification of the award. The notice shall be in writing stating the reasons for denial and the time allowed for objection to the decision of the commission, the successor to the commission, other private insurance carriers, and self-insured employers, whichever is applicable. The employer may, within 30 days after receipt of the notice, object in writing to the decision. Unless the objection is filed within the 30-day period, no objection shall be allowed. This time limitation is a condition of the right to objection and hence jurisdictional. Upon receipt of the objection, the Office of Judges shall afford the employer an evidentiary hearing as provided in §23-9-1 *et seq.* of this code.

(b) This section is of no force and effect after June 30, 2022.

§23-5-5a. Refusal of modification; notice; objection; effective July 1, 2022.

(a) If in any case it appears to the Insurance Commissioner, other private insurance carriers, and self-insured employers, whichever is applicable, that the application filed pursuant to §23-5-4 of this code fails to disclose some fact or facts which were not previously considered in former findings, and which would

entitle the employer to any modification of the previous award, the Insurance Commissioner, other private insurance carriers, and self-insured employers, whichever is applicable, shall, within 60 days from the receipt of the application, notify the claimant and employer that the application fails to establish a just cause for modification of the award. The notice shall be in writing stating the reasons for denial and the time allowed for objection to the decision of the Insurance Commissioner, other private insurance carriers, and self-insured employers, whichever is applicable. The employer may, within 30 days after receipt of the notice, object in writing to the decision. Unless the objection is filed within the 30-day period, no objection shall be allowed. This time limitation is a condition of the right to objection and hence jurisdictional. Upon receipt of the objection, the Workers' Compensation Board of Review shall afford the employer an evidentiary hearing as provided in §23-5-9 of this code.

(b) This section becomes effective on July 1, 2022.

§23-5-6. Time periods for objections and appeals; extensions; effective until June 30, 2022.

(a) Notwithstanding the fact that the time periods set forth for objections, protests and appeals to or from the workers' compensation Office of Judges are jurisdictional, the periods may be extended or excused upon application of either party within a period of time equal to the applicable period by requesting an extension of the time period showing good cause or excusable neglect, accompanied by the objection or appeal petition. In exercising discretion, the administrative law judge, appeal board, or court, as the case may be, shall consider whether the applicant was represented by counsel and whether timely and proper notice was actually received by the applicant or the applicant's representative.

(b) This section is of no force and effect after June 30, 2022.

§23-5-6a. Time periods for objections and appeals; extensions; effective July 1, 2022.

(a) Notwithstanding the fact that the time periods set forth for objections, protests, and appeals to or from the Workers' Compensation Board of Review are jurisdictional, the periods may be extended or excused upon application of either party within a period of time equal to the applicable period by requesting an extension of the time period showing good cause or excusable neglect, accompanied by the objection or appeal petition. In exercising discretion, the Workers' Compensation Board of Review or court, as the case may be, shall consider whether the applicant was represented by counsel and whether timely and proper notice was actually received by the applicant or the applicant's representative.

(b) This section becomes effective on July 1, 2022.

§23-5-8. Designation of Office of Administrative Law Judges; powers of chief administrative law judge; effective until June 30, 2022.

(a) The Workers' Compensation Office of Administrative Law Judges previously created pursuant to Chapter 12, Acts of the Legislature, second extraordinary session, 1990, is hereby continued and designated to be an integral part of the workers' compensation system of this state. The Office of Judges shall be under the supervision of a chief administrative law judge who shall be appointed by the Governor with the advice and consent of the Senate.

(b) The chief administrative law judge shall be a person who has been admitted to the practice of law in this state and shall also have had at least four years of experience as an attorney. The chief administrative law judge's salary shall be set by the workers' compensation board of managers. The salary shall be within the salary range for comparable chief administrative law judges as determined by the state Personnel Board created by §29-6-6 of this code. The chief administrative law judge may only be removed by a vote of two-thirds of the members of the Workers' Compensation Board of managers. Upon transfer of the Office of Judges to the Insurance Commissioner, the chief administrative law judge shall continue to serve as chief administrative law judge until December

31, 2007. Thereafter, appointments of the chief administrative law judge shall be for terms of four years beginning January 1, 2008, and the chief administrative law judge may be removed only for cause by the vote of four members of the Industrial Council. No other provision of this code purporting to limit the term of office of any appointed official or employee or affecting the removal of any appointed official or employee is applicable to the chief administrative law judge.

(c) The chief administrative law judge shall employ administrative law judges and other personnel that are necessary for the proper conduct of a system of administrative review of orders issued by the Workers' Compensation Commission which orders have been objected to by a party. The employees shall be in the classified service of the state. Qualifications, compensation, and personnel practice relating to the employees of the office of judges, other than the chief administrative law judge, shall be governed by the provisions of this code and rules of the classified service pursuant to §29-6-1 of this code. All additional administrative law judges shall be persons who have been admitted to the practice of law in this state and shall also have had at least two years of experience as an attorney. The chief administrative law judge shall supervise the other administrative law judges and other personnel which collectively shall be referred to in this chapter as the Office of Judges.

(d) The administrative expense of the Office of Judges shall be included within the annual budget of the Workers' Compensation Commission and, upon termination of the commission, the Insurance Commissioner.

(e) The Office of Judges shall, from time to time, promulgate rules of practice and procedure for the hearing and determination of all objections to findings or orders of the Workers' Compensation Commission. The Office of Judges shall not have the power to initiate or to promulgate legislative rules as that phrase is defined in §29A-3-1 *et seq.* of this code. Any rules adopted pursuant to this section which are applicable to the provisions of this article are not subject to §29A-3-9 through §29A-3-16 of this code. The Office of Judges shall follow the remaining provisions

of said chapter for giving notice to the public of its actions and the holding of hearings or receiving of comments on the rules.

(f) The chief administrative law judge has the power to hear and determine all disputed claims in accordance with the provisions of this article, establish a procedure for the hearing of disputed claims, take oaths, examine witnesses, issue subpoenas, establish the amount of witness fees, keep records, and make reports that are necessary for disputed claims and exercise any additional powers, including the delegation of powers to administrative law judges or hearing examiners that are necessary for the proper conduct of a system of administrative review of disputed claims. The chief administrative law judge shall make reports that are requested of him or her by the workers' compensation board of managers.

(g) Effective upon termination of the commission, the Office of Judges and the Board of Review shall be transferred to the Insurance Commissioner, which shall have the oversight and administrative authority heretofore provided to the executive director and the board of managers.

(h) This section is of no force and effect after June 30, 2022.

§23-5-8a. Transfer of powers and duties of the Office of Administrative Law Judges to the Workers' Compensation Board of Review; powers of the Workers' Compensation Board of Review in relation to review of objections; effective July 1, 2022.

(a) The Workers' Compensation Office of Administrative Law Judges, referred to as the Office of Judges, shall terminate on or before October 1, 2022, as provided in §23-5-8b of this code. All powers and duties of the Office of Judges to review objections, protests, or any other matter authorized by this chapter, shall be transferred to the Workers' Compensation Board of Review on July 1, 2022: *Provided*, That any objection or other matter filed pursuant to this chapter and pending before the Office of Judges upon its termination, in which a final decision has not been issued,

shall also be transferred to the Workers' Compensation Board of Review as provided in §23-5-8b of this code.

(b) Pursuant to §23-5-11a(n) of this code, the Workers' Compensation Board of Review shall employ hearing examiners and other personnel that are necessary for the proper conduct of a system of administrative review of objections to decisions of the Insurance Commissioner, private carriers, and self-insured employers, whichever is applicable, made pursuant to the provisions of §23-5-1a of this code and issued after June 30, 2022. All hearing examiners hired by the Workers' Compensation Board of Review shall be persons who have been admitted to the practice of law in this state and shall also have had at least four years of experience as an attorney. The chair of the Workers' Compensation Board of Review shall supervise hearing examiners and other personnel of the board, which collectively shall be referred to in this chapter as the Workers' Compensation Board of Review.

(c) The Workers' Compensation Board of Review has the power to hear and determine all objections in accordance with the provisions of this article, establish a procedure for the hearing of objections, take oaths, examine witnesses, issue subpoenas, establish the amount of witness fees, keep records, and make reports that are necessary for reviewing objections, and exercise any additional powers, including the delegation of powers to hearing examiners that are necessary for the proper conduct of a system of administrative review of objections. The chair of the Workers' Compensation Board of Review shall make reports that are requested of him or her by the Insurance Commissioner.

(d) Effective upon termination of the Office of Judges, the Insurance Commissioner shall have oversight and administrative authority over the Workers' Compensation Board of Review as heretofore provided to the Insurance Commissioner over the Office of Judges.

(e) This section becomes effective on July 1, 2022.

§23-5-8b. Transfer of jurisdiction to review objections to Workers' Compensation Board of Review; termination of Office of Judges; appeals of board decisions to Intermediate Court of Appeals; effective July 1, 2022.

(a) The Office of Judges has no jurisdiction to review objections to a decision of the Insurance Commissioner, private carrier, or self-insured employer, whichever is applicable, made pursuant to the provisions of this chapter and issued after June 30, 2022. The Workers' Compensation Board of Review has exclusive jurisdiction to review objections to a decision of the Insurance Commissioner, private carrier, or self-insured employer, whichever is applicable, made pursuant to the provisions of this chapter and issued after June 30, 2022.

(b) On or before September 30, 2022, the Office of Judges shall issue a final decision in, or otherwise dispose of, each and every objection or other matter pending before the Office of Judges. If the Office of Judges does not issue a final decision or otherwise dispose of any objection or other matter pending before the Office of Judges on or before September 30, 2022, the objection or other matter shall be transferred to the Workers' Compensation Board of Review. For any objections transferred from the Office of Judges to the Workers' Compensation Board of Review, the Board of Review shall adopt any existing records of proceedings in the Office of Judges, conduct further proceedings, and collect evidence as it determines to be necessary, and issue a final decision or otherwise dispose of the case according to the procedural rules promulgated pursuant to §23-5-11a(m) of this code.

(c) Upon the Office of Judges' disposition of every matter pending before the office, or on October 1, 2022, whichever occurs earlier, the Office of Judges is terminated.

(d) The West Virginia Intermediate Court of Appeals, created in §51-11-1 *et seq.* of this code, has exclusive appellate jurisdiction over the following:

(1) Decisions or orders issued by the Office of Judges after June 30, 2022, and prior to its termination; and

(2) All final orders or decisions issued by the Workers' Compensation Board of Review after June 30, 2022.

(e) Notwithstanding the requirements of this section, the Workers' Compensation Board of Review shall review and decide all remaining appeals filed with the Board of Review, of Office of Judges' decisions issued prior to June 30, 2022, according to the procedure and requirements for such appeals heretofore provided in this article.

(f) This section becomes effective on July 1, 2022.

§23-5-9. Hearings on objections to Insurance Commissioner; private carrier or self-insured employer decisions; mediation; remand; effective until June 30, 2022.

(a) Objections to a decision of the Insurance Commissioner, private carrier, or self-insured employer, whichever is applicable, made pursuant to the provisions of §23-5-1 *et seq.* of this code shall be filed with the Office of Judges. Upon receipt of an objection, the Office of Judges shall notify the Insurance Commissioner, private carrier, or self-insured employer, whichever is applicable, and all other parties of the filing of the objection. The Office of Judges shall establish by rule promulgated in accordance with the provisions of §23-5-8(e) of this code an adjudicatory process that enables parties to present evidence in support of their positions and provides an expeditious resolution of the objection. The employer, the claimant, the Insurance Commissioner, private carrier, or self-insured employer, whichever are applicable, shall be notified of any hearing at least 10 days in advance. The Office of Judges shall review and amend, or modify, as necessary, its procedural rules by July 1, 2007.

(b) The Office of Judges shall establish a program for mediation to be conducted in accordance with the requirements of Rule 25 of the West Virginia Trial Court Rules. The parties may agree that the result of the mediation is binding. A case may be referred to mediation by the administrative law judge on his or her own motion, on motion of a party or by agreement of the parties. Upon issuance of an order for mediation, the Office of Judges shall

assign a mediator from a list of qualified mediators maintained by the West Virginia State Bar.

(c) The Office of Judges shall keep full and complete records of all proceedings concerning a disputed claim. Subject to the rules of practice and procedure promulgated pursuant to §23-5-8 of this code, the record upon which the matter shall be decided shall include any evidence submitted by a party to the Office of Judges and evidence taken at hearings conducted by the Office of Judges. The record may include evidence or documents submitted in electronic form or other appropriate medium in accordance with the rules of practice and procedure. The Office of Judges is not bound by the usual common law or statutory rules of evidence.

(d) All hearings shall be conducted as determined by the chief administrative law judge pursuant to the rules of practice and procedure promulgated pursuant to §23-5-8 of this code. Upon consideration of the designated record, the chief administrative law judge or other authorized adjudicator within the Office of Judges shall, based on the determination of the facts of the case and applicable law, render a decision affirming, reversing, or modifying the action protested. The decision shall contain findings of fact and conclusions of law and shall be mailed to all parties.

(e) The Office of Judges may remand a claim to the Insurance Commissioner, private carrier, or self-insured employer, whichever is applicable, for further development of the facts or administrative matters as, in the opinion of the administrative law judge, may be necessary for a full and complete disposition of the case. The administrative law judge shall establish a time within which the Insurance Commissioner, private carrier, or self-insured employer, whichever is applicable, must report back to the administrative law judge.

(f) The decision of the Office of Judges regarding any objections to a decision of the Insurance Commissioner, private carrier, or self-insured employer, whichever is applicable, is final and benefits shall be paid or denied in accordance with the decision, unless an order staying the payment of benefits is specifically entered by the Workers' Compensation Board of

Review created in §23-5-11 of this code or by the administrative law judge who granted the benefits. No stay with respect to any medical treatment or rehabilitation authorized by the Office of Judges may be granted. If the decision is subsequently appealed and reversed in accordance with the procedures set forth in this article, and any overpayment of benefits occurs as a result of such reversal, any such overpayment may be recovered pursuant to the provisions of §23-4-1C(h) and §23-4-1D(d) of this code, as applicable.

(h) This section is of no force and effect after June 30, 2022.

§23-5-9a. Hearings on objections to Insurance Commissioner; private carrier, or self-insured employer decisions; mediation; remand; effective July 1, 2022.

(a) Objections to a decision of the Insurance Commissioner, private carrier, or self-insured employer, whichever is applicable, made pursuant to the provisions of §23-5-1a of this code, shall be filed with the Workers' Compensation Board of Review. Upon receipt of an objection, the Workers' Compensation Board of Review shall notify the Insurance Commissioner, private carrier, or self-insured employer, whichever is applicable, and all other parties of the filing of the objection. The Workers' Compensation Board of Review shall establish by rule, promulgated in accordance with the provisions of §23-5-11a(m) of this code, an adjudicatory process that enables parties to present evidence in support of their positions and provides an expeditious resolution of the objection. The employer, the claimant, the Insurance Commissioner, the private carrier, or the self-insured employer, whichever is applicable, shall be notified of any hearing at least 10 days in advance.

(b) The chair of the Workers' Compensation Board of Review shall assign, on a rotating basis, a member of the Board of Review to preside over the review process and issue a decision in each objection that is properly filed with the Board of Review. The member of the Workers' Compensation Board of Review assigned to an objection shall review evidence, conduct proceedings, and develop a record as is necessary for a full and thorough review of

the objection: *Provided,* That the board member may delegate such duties to a hearing examiner employed by the Board of Review, pursuant to §23-5-8a and §23-5-11a(n) of this code: *Provided, however,* That any order or decision of the Board of Review must be issued and signed by the member of the Board assigned to the objection, as provided in subsection (e) of this section: *Provided further*, That a time frame order, continuance order, show cause order, failure to prosecute order, or other interlocutory order as permitted by the Workers' Compensation Board of Review's procedural rules may be issued and signed by a hearing examiner only, and is not subject to the general requirement that orders be issued and signed by a member of the board.

(c) The Workers' Compensation Board of Review shall establish a program for mediation to be conducted in accordance with the requirements of Rule 25 of the West Virginia Trial Court Rules. The parties may agree that the result of the mediation is binding. A case may be referred to mediation by the Board of Review member assigned to the objection on his or her own motion, on motion of a party, or by agreement of the parties. Upon issuance of an order for mediation, the Workers' Compensation Board of Review shall assign a mediator from a list of qualified mediators maintained by the West Virginia State Bar.

(d) The Workers' Compensation Board of Review shall keep full and complete records of all proceedings concerning an objection. Subject to the rules of practice and procedure promulgated pursuant to §23-5-11a(m) of this code, the record upon which the matter shall be decided shall include any evidence submitted by a party to the Workers' Compensation Board of Review and evidence taken at hearings conducted by the Board of Review. The record may include evidence or documents submitted in electronic form or other appropriate medium in accordance with the rules of practice and procedure. The Workers' Compensation Board of Review is not bound by the usual common law or statutory rules of evidence.

(e) All hearings shall be conducted as determined by the Workers' Compensation Board of Review according to the rules of practice and procedure promulgated pursuant to §23-5-11a(m) of

this code. If a hearing examiner reviews an objection, the hearing examiner shall, at the conclusion of the review process, submit the designated record to the member of the Workers' Compensation Board of Review to whom the objection is assigned, along with the hearing examiner's recommendation of a decision affirming, reversing, or modifying the action that was subject to the objection. Upon consideration of the designated record and, if applicable, the recommendation of the hearing examiner, the member of the Workers' Compensation Board of Review assigned to the objection shall, based on the determination of the facts of the case and applicable law, render a decision affirming, reversing, or modifying the action that was subject to the objection. The decision shall contain findings of fact and conclusions of law, shall be signed by the member of the Workers' Compensation Board of Review rendering the decision, and shall be mailed to all parties.

(f) The Workers' Compensation Board of Review may remand a claim to the Insurance Commissioner, private carrier, or self-insured employer, whichever is applicable, for further development of the facts or administrative matters as, in the opinion of the member of the board of review assigned to the objection, may be necessary for a full and complete disposition of the case. The member of the Workers' Compensation Board of Review assigned to the objection shall establish a time within which the Insurance Commissioner, private carrier, or self-insured employer, whichever is applicable, must report back to the board of review.

(g) The decision of the Workers' Compensation Board of Review regarding any objections to a decision of the Insurance Commissioner, private carrier, or self-insured employer, whichever is applicable, is final, and benefits shall be paid or denied in accordance with the decision, unless an order staying the payment of benefits is specifically entered by a court with appellate jurisdiction over the decision or by the member of the Office of Judges who granted the benefits. A stay with respect to any medical treatment or rehabilitation authorized by the Workers' Compensation Board of Review may not be granted. If the decision is subsequently appealed and reversed in accordance with the

procedures set forth in this article, and any overpayment of benefits occurs as a result of the reversal, the overpayment may be recovered pursuant to the provisions of §23-4-1c(h) or §23-4-1d(d) of this code, as applicable.

(h) This section becomes effective on July 1, 2022.

§23-5-10. Appeal from administrative law judge decision to appeal board; effective until June 30, 2022.

(a) The employer, claimant, Workers' Compensation Commission, the successor to the commission, other private insurance carriers and self-insured employers, whichever is applicable, may appeal to the appeal board created in §23-11-1 *et seq.* of this code for a review of a decision by an administrative law judge. No appeal or review shall lie unless application therefor be made within thirty days of receipt of notice of the administrative law judge's final action or in any event within 60 days of the date of such final action, regardless of notice and, unless the application for appeal or review is filed within the time specified, no such appeal or review shall be allowed, such time limitation being hereby declared to be a condition of the right of such appeal or review and hence jurisdictional.

(b) This section is of no force and effect after June 30, 2022.

§23-5-10a. Appeal from a Workers' Compensation Board of Review decision to the Intermediate Court of Appeals; effective July 1, 2022.

(a) The employer, claimant, Insurance Commissioner, other private insurance carriers, and self-insured employers, whichever is applicable, may appeal to the West Virginia Intermediate Court of Appeals, created by §51-11-1 *et seq.* of this code, for a review of a decision by the Workers' Compensation Board of Review. No appeal or review shall lie unless application is made within 30 days of receipt of notice of the Workers' Compensation Board of Review's final action or in any event within 60 days of the date of such final action, regardless of notice and, unless the application for appeal or review is filed within the time specified, no such

appeal or review shall be allowed, such time limitation being hereby declared to be a condition of the right of such appeal or review and hence jurisdictional.

(b) This section becomes effective on July 1, 2022.

§23-5-11. Workers' Compensation Board of Review generally; administrative powers and duties of the board; effective until June 30, 2022.

(a) On January 31, 2004, the Workers' Compensation Appeal Board heretofore established in this section is hereby abolished.

(b) There is created the "Workers' Compensation Board of Review", which may also be referred to as "the Board of Review" or "the board". Effective February 1, 2004, the Board of Review shall exercise exclusive jurisdiction over all appeals from the Workers' Compensation Office of Judges including any and all appeals pending with the board of Appeals on January 31, 2004.

(c) The board consists of three members.

(d) The Governor shall appoint, from names submitted by the "Workers' Compensation Board of Review Nominating Committee", with the advice and consent of the Senate, three qualified attorneys to serve as members of the Board of Review. If the Governor does not select a nominee for any vacant position from the names provided by the nominating committee, he or she shall notify the nominating committee of that circumstance and the committee shall provide additional names for consideration by the Governor. A member of the Board of Review may be removed by the Governor for official misconduct, incompetence, neglect of duty, gross immorality, or malfeasance, and then only after notice and opportunity to respond and present evidence. No more than two of the members of the board may be of the same political party. The members of the Board of Review shall be paid an annual salary of $85,000: *Provided,* That on and after July 1, 2008, the Governor shall set the salary of the members of the board: *Provided, however,* That the annual salary of a member of the Board of Review shall not exceed $110,000. Members are entitled to be

reimbursed for actual and necessary travel expenses incurred in the discharge of official duties in a manner consistent with the guidelines of the Travel Management Office of the Department of Administration.

(e) The nominating committee consists of the following members: (1) The President of the West Virginia State Bar who serves as the chairperson of the committee; (2) an active member of the West Virginia State Bar Workers' Compensation Committee selected by the major trade association representing employers in this state; (3) an active member of the West Virginia State Bar Workers' Compensation Committee selected by the highest ranking officer of the major employee organization representing workers in this state; (4) the Dean of the West Virginia University School of Law; and (5) the Chairman of the Judicial Investigation Committee.

(f) The nominating committee is responsible for reviewing and evaluating candidates for possible appointment to the Board of Review by the Governor. In reviewing candidates, the nominating committee may accept comments from and request information from any person or source.

(g) Each member of the nominating committee may submit up to three names of qualified candidates for each position on the Board of Review: *Provided,* That the member of the nominating committee selected by the major trade organization representing employers of this state shall submit at least one name of a qualified candidate for each position on the board who either is, or who represents, small business employers of this state. After careful review of the candidates, the committee shall select a minimum of one candidate for each position on the board.

(h) Of the initial appointments, one member shall be appointed for a term ending December 31, 2006; one member shall be appointed for a term ending December 31, 2008; and one member shall be appointed for a term ending December 31, 2010. Thereafter, the appointments shall be for six-year terms.

(i) A member of the Board of Review must, at the time he or she takes office and thereafter during his or her continuance in office, be a resident of this state, be a member in good standing of the West Virginia State Bar, have a minimum of 10 years' experience as an attorney admitted to practice law in this state prior to appointment and have a minimum of five years' experience in preparing and presenting cases or hearing actions and making decisions on the basis of the record of those hearings before administrative agencies, regulatory bodies, or courts of record at the federal, state, or local level.

(j) No member of the Board of Review may hold any other office, or accept any appointment or public trust, nor may he or she become a candidate for any elective public office or nomination thereto. Violation of this subsection requires the member to vacate his or her office. No member of the Board of Review may engage in the practice of law during his or her term of office.

(k) A vacancy occurring on the board other than by expiration of a term shall be filled in the manner original appointments were made, for the unexpired portion of the term.

(l) The board shall designate one of its members in rotation to be chairman of the board for as long as the board may determine by order made and entered of record. In the absence of the chairman, any other member designated by the members present shall act as chairman.

(m) The Board of Review shall meet as often as necessary to hold review hearings, at such times and places as the chairman may determine. Two members shall be present in order to conduct review hearings or other business. All decisions of the board shall be determined by a majority of the members of the board.

(n) The Board of Review shall make general rules regarding the pleading, including the form of the petition and any responsive pleadings, practice, and procedure to be used by the board.

(o) The Board of Review may hire a clerk and other professional and clerical staff necessary to carry out the

requirements of this article. It is the duty of the clerk of the Board of Review to attend in person, or by deputy, all the sessions of the board, to obey its orders and directions, to take care of and preserve in an office, kept for the purpose, all records and papers of the board, and to perform other duties as prescribed by law or required of him or her by the board. All employees of the board serve at the will and pleasure of the board. The board's employees are exempt from the salary schedule or pay plan adopted by the Division of Personnel. All personnel of the Board of Review are under the supervision of the chairman of the Board of Review.

(p) If considered necessary by the board, the board may, through staffing or other resources, procure assistance in review of medical portions of decisions.

(q) Upon the conclusion of any hearing, or prior thereto with concurrence of the parties, the board shall promptly determine the matter and make an award in accordance with its determination.

(r) The award shall become a part of the commission file. A copy of the award shall be sent forthwith by mail to all parties in interest.

(s) The award is final when entered. The award shall contain a statement explaining the rights of the parties to an appeal to the Board of Review and the applicable time limitations involved.

(t) The board shall submit to the Insurance Commissioner a budget sufficient to adequately provide for the administrative and other operating expenses of the board.

(u) The board shall report monthly to the Industrial Council on the status of all claims on appeal.

(v) Effective upon termination of the commission, the Board of Review shall be transferred to the Insurance Commissioner which shall have the oversight and administrative authority heretofore provided to the executive director and the board of managers.

(w) This section is of no force and effect after June 30, 2022.

§23-5-11a. Workers' Compensation Board of Review generally; administrative powers and duties of the board; effective July 1, 2022.

(a) The "Workers' Compensation Board of Review", which may also be referred to as "the Board of Review" or "the board" is hereby continued and granted exclusive jurisdiction over all objections to decisions of the Insurance Commissioner, private carriers, and self-insured employers, whichever is applicable, including any and all matters pending before the Office of Judges after September 30, 2022.

(b) The board consists of five members.

(c) The Governor shall appoint, with the advice and consent of the Senate, five attorneys qualified in accordance with subsection (f) of this section to serve as members of the Board of Review. A member of the Board of Review may be removed by the Governor for official misconduct, incompetence, neglect of duty, gross immorality, or malfeasance and then only after notice and opportunity to respond and present evidence. No more than three of the members of the board may be of the same political party. The Governor shall set the salary of the members of the board: *Provided, however,* That the annual salary of a member of the Board of Review shall not exceed $125,000. Members are entitled to be reimbursed for actual and necessary travel expenses incurred in the discharge of official duties in a manner consistent with the guidelines of the Travel Management Office of the Department of Administration.

(d) Of the initial appointments of the two additional seats created during the 2021 Regular Session, one member shall be appointed for a term ending December 31, 2025; one member shall be appointed for a term ending December 31, 2027. Thereafter, The appointments shall be for six-year terms.

(e) A member of the Board of Review must, at the time he or she takes office and thereafter during his or her continuance in office, be a resident of this state, be a member in good standing of the West Virginia State Bar, have a minimum of 10 years'

experience as an attorney admitted to practice law in this state prior to appointment and have a minimum of five years' experience in preparing and presenting cases or hearing actions and making decisions on the basis of the record of those hearings before administrative agencies, regulatory bodies, or courts of record at the federal, state, or local level.

(f) No member of the Board of Review may hold any other office, or accept any appointment or public trust, nor may he or she become a candidate for any elective public office or nomination thereto. Violation of this subsection requires the member to vacate his or her office. No member of the Board of Review may engage in the practice of law during his or her term of office.

(g) A vacancy occurring on the board other than by expiration of a term shall be filled in the manner original appointments were made, for the unexpired portion of the term.

(h) The board shall designate one of its members in rotation to be chair of the board for as long as the board may determine by order made and entered of record. In the absence of the chair, any other member designated by the members present shall act as chair.

(i) The Board of Review shall meet as often as necessary to conduct the board's administrative business and make rules of practice and procedure, at such times and places as the chair may determine. Two members shall be present in order to conduct administrative business and make rules of practice and procedure. All decisions of the board upon administrative matters, pursuant to this section, shall be determined by a majority of the members of the board.

(j) The Board of Review shall, from time to time, promulgate rules of practice and procedure for the review and determination of all objections filed with the board. The board does not have the power to initiate or to promulgate legislative rules as that phrase is defined in §29A-3-1 *et seq.* of this code. Any rules adopted pursuant to this section which are applicable to the provisions of this article are not subject to §29A-3-9 through §29A-3-16 of this code. The board shall follow the remaining provisions of chapter

29A of this code for giving notice to the public of its actions and the holding of hearings or receiving of comments on the rules.

(k) The Board of Review may hire a clerk, hearing examiners, and other professional and clerical staff necessary to carry out the requirements of this article. It is the duty of the clerk of the Board of Review to attend in person, or by deputy, all the sessions of the board, to obey its orders and directions, to take care of and preserve in an office, kept for the purpose, all records and papers of the board and to perform other duties as prescribed by law or required of him or her by the board. All employees of the board serve at the will and pleasure of the board. The board's employees are exempt from the salary schedule or pay plan adopted by the Division of Personnel: *Provided,* That for the purpose of any applicable Division of Personnel Class Specifications, hearing examiners must be classified under a class with "attorney" in the class title. All personnel of the Board of Review are under the supervision of the chair of the Board of Review.

(l) The administrative expenses of the Board of Review shall be included within the annual budget of the Insurance Commissioner, and the Insurance Commissioner shall have administrative authority and oversight over the Board of Review.

(m) The amendments to this section made during the 2021 Regular Session of the Legislature shall become effective on July 1, 2022: *Provided,* That the board is authorized to promulgate rules and hire staff, pursuant to subsection (k) and (l) of this section respectively, prior to July 1, 2022, to the extent necessary to comply with the requirements of this article that shall become effective on that date.

§23-5-12. Appeal to board; procedure; remand and supplemental hearing; effective until June 30, 2022.

(a) Any employer, employee, claimant, or dependent who shall feel aggrieved at any final action of the administrative law judge taken after a hearing held in accordance with the provisions of §23-5-9 of this code shall have the right to appeal to the board created in §23-11-1 of this code for a review of such action. The Workers'

Compensation Commission, the successor to the commission, other private insurance carriers and self-insured employers, whichever is applicable, shall likewise have the right to appeal to the board any final action taken by the administrative law judge. The aggrieved party shall file a written notice of appeal with the Board of Review, with a copy to the Office of Judges, within 30 days after receipt of notice of the action complained of or, in any event, regardless of notice, within 60 days after the date of the action complained of, and unless the notice of appeal is filed within the time specified, no appeal shall be allowed, the time limitation is a condition of the right to appeal and hence jurisdictional. The board shall notify the other parties immediately upon the filing of a notice of appeal. The notice of appeal shall state the ground for review and whether oral argument is requested. The Office of Judges, after receiving a copy of the notice of appeal, shall forthwith make up a transcript of the proceedings before the Office of Judges and certify and transmit it to the board. The certificate shall incorporate a brief recital of the proceedings in the case and recite each order entered and the date thereof.

(b) The board shall set a time and place for the hearing of arguments on each claim and shall notify the interested parties thereof. The review by the board shall be based upon the record submitted to it and such oral argument as may be requested and received. The board may affirm, reverse, modify, or supplement the decision of the administrative law judge and make such disposition of the case as it determines to be appropriate. Briefs may be filed by the interested parties in accordance with the rules of procedure prescribed by the board. The board may affirm the order or decision of the administrative law judge or remand the case for further proceedings. It shall reverse, vacate, or modify the order or decision of the administrative law judge if the substantial rights of the petitioner or petitioners have been prejudiced because the administrative law judge's findings are:

(1) In violation of statutory provisions; or

(2) In excess of the statutory authority or jurisdiction of the administrative law judge; or

(3) Made upon unlawful procedures; or

(4) Affected by other error of law; or

(5) Clearly wrong in view of the reliable, probative, and substantial evidence on the whole record; or

(6) Arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

(c) After a review of the case, the board shall issue a written decision and send a copy by mail to the parties.

(1) All decisions, findings of fact and conclusions of law of the Board of Review shall be in writing and state with specificity the laws and facts relied upon to sustain, reverse, or modify the administrative law judge's decision.

(2) Decisions of the Board of Review shall be made by a majority vote of the Board of Review.

(3) A decision of the Board of Review is binding upon the executive director and the commission and the successor to the commission, other private insurance carriers, and self-insured employers, whichever is applicable, with respect to the parties involved in the particular appeal. The executive director, the successor to the commission, other private insurance carriers, and self-insured employers, whichever is applicable, shall have the right to seek judicial review of a board of review decision irrespective of whether or not he or she appeared or participated in the appeal to the Board of Review.

(d) Instead of affirming, reversing, or modifying the decision of the administrative law judge, the board may, upon motion of any party or upon its own motion, for good cause shown, to be set forth in the order of the board, remand the case to the chief administrative law judge for the taking of such new, additional, or further evidence as in the opinion of the board may be necessary for a full and complete development of the facts of the case. In the event the board shall remand the case to the chief administrative law judge for the taking of further evidence, the administrative law

judge shall proceed to take new, additional, or further evidence in accordance with any instruction given by the board within 30 days after receipt of the order remanding the case. The chief administrative law judge shall give to the interested parties at least 10 days' written notice of the supplemental hearing, unless the taking of evidence is postponed by agreement of parties, or by the administrative law judge for good cause. After the completion of a supplemental hearing, the administrative law judge shall, within 60 days, render his or her decision affirming, reversing, or modifying the former action of the administrative law judge. The decision shall be appealable to and proceeded with by the Board of Review in the same manner as other appeals. In addition, upon a finding of good cause, the board may remand the case to the Workers' Compensation Commission, the successor to the commission, other private insurance carriers, and self-insured employers, whichever is applicable, for further development. Any decision made by the commission, the successor to the commission, other private insurance carriers, and self-insured employers, whichever is applicable, following a remand shall be subject to objection to the Office of Judges and not to the board. The board may remand any case as often as in its opinion is necessary for a full development and just decision of the case.

(e) All appeals from the action of the administrative law judge shall be decided by the board at the same session at which they are heard, unless good cause for delay thereof be shown and entered of record.

(f) In all proceedings before the board, any party may be represented by counsel.

(g) This section is of no force and effect after June 30, 2022.

§23-5-12a. Appeal of board decisions to the Intermediate Court of Appeals; procedure; remand and supplemental hearing; effective July 1, 2022.

(a) Any employer, employee, claimant, or dependent who shall feel aggrieved by a decision of the Workers' Compensation Board of Review shall have the right to appeal to the West Virginia

Intermediate Court of Appeals, created by §51-11-1 *et seq.* of this code, for a review of such action. The Insurance Commissioner, other private insurance carriers, and self-insured employers, whichever is applicable, shall likewise have the right to appeal to the Intermediate Court of Appeals any final action taken by the Workers' Compensation Board of Review. The aggrieved party shall file a written notice of appeal with the Intermediate Court of Appeals, with a copy to the Workers' Compensation Board of Review, within 30 days after receipt of notice of the action complained of or, in any event, regardless of notice, within 60 days after the date of the action complained of: *Provided,* That unless the notice of appeal is filed within the time specified, no appeal shall be allowed: *Provided, however,* That the time limitation is a condition of the right to appeal and hence jurisdictional. The board shall notify the other parties immediately upon the filing of a notice of appeal. The notice of appeal shall state the grounds for review and whether oral argument is requested. The Workers' Compensation Board of Review, after receiving a copy of the notice of appeal, shall forthwith make up a transcript of any proceedings before the board of review and certify and transmit it to the Intermediate Court of Appeals. The certificate shall incorporate a brief recital of the proceedings in the matter and recite each order entered or decision issued and the date thereof.

(b) The Intermediate Court of Appeals shall set a time and place for the hearing of arguments on each claim and shall notify the interested parties thereof. The review by the court shall be based upon the record submitted to it and such oral argument as may be requested and received. The Intermediate Court of Appeals may affirm, reverse, modify, or supplement the decision of the Workers' Compensation Board of Review and make such disposition of the case as it determines to be appropriate. Briefs may be filed by the interested parties in accordance with the rules of procedure prescribed by the court. The Intermediate Court of Appeals may affirm the order or decision of the Workers' Compensation Board of Review or remand the case for further proceedings. It shall reverse, vacate, or modify the order or decision of the Workers' Compensation Board of Review, if the

substantial rights of the petitioner or petitioners have been prejudiced because the Board of Review's findings are:

(1) In violation of statutory provisions;

(2) In excess of the statutory authority or jurisdiction of the Board of Review;

(3) Made upon unlawful procedures;

(4) Affected by other error of law;

(5) Clearly wrong in view of the reliable, probative, and substantial evidence on the whole record; or

(6) Arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

(c) After a review of the case, the Intermediate Court of Appeals shall issue a written decision and send a copy by mail to the parties.

(1) All decisions, findings of fact, and conclusions of law of the Intermediate Court of Appeals shall be in writing and state with specificity the laws and facts relied upon to sustain, reverse, or modify the Board of Review's decision.

(2) A decision of the Intermediate Court of Appeals is binding upon the Insurance Commissioner, other private insurance carriers, and self-insured employers, whichever is applicable, with respect to the parties involved in the particular appeal. The Insurance Commissioner, other private insurance carriers, and self-insured employers, whichever is applicable, shall have the right to seek judicial review of a final decision of the Intermediate Court of Appeals, pursuant to §51-11-13 of this code, irrespective of whether the party appeared or participated in the appeal to the Intermediate Court of Appeals.

(d) Instead of affirming, reversing, or modifying the decision of the Workers' Compensation Board of Review, the Intermediate Court of Appeals may, upon motion of any party or upon its own motion, for good cause shown, to be set forth in the order of the

court, remand the case to the Board of Review for the taking of such new, additional, or further evidence as in the opinion of the court considers necessary for a full and complete development of the facts of the case. In the event the Intermediate Court of Appeals shall remand the case to the Board of Review for the taking of further evidence, the Board of Review shall proceed to take new, additional, or further evidence in accordance with any instruction given by the court within 30 days after receipt of the order remanding the case. The Workers' Compensation Board of Review shall give to the interested parties at least 10 days' written notice of the supplemental hearing, unless the taking of evidence is postponed by agreement of parties, or by the Board of Review for good cause. After the completion of a supplemental hearing, the Workers' Compensation Board of Review shall, within 60 days, render its decision affirming, reversing, or modifying the former action of the Workers' Compensation Board of Review. The decision shall be appealable to, and proceeded with, by the Intermediate Court of Appeals in the same manner as other appeals. In addition, upon a finding of good cause, the court may remand the case to the Insurance Commissioner, other private insurance carriers, or self-insured employers, whichever is applicable, for further development. Any decision made by the Insurance Commissioner, other private insurance carriers, or self-insured employers, whichever is applicable, following a remand, shall be subject to objection to the Workers' Compensation Board of Review and not to the Intermediate Court of Appeals. The Intermediate Court of Appeals may remand any case as often as, in its opinion, is necessary for a full development and just decision of the case.

(e) In all proceedings before the Intermediate Court of Appeals, any party may be represented by counsel.

(f) This section becomes effective on July 1, 2022.

§23-5-13. Continuances and supplemental hearings; claims not to be denied on technicalities; effective until June 30, 2022.

(a) It is the policy of this chapter that the rights of claimants for workers' compensation be determined as speedily and expeditiously as possible to the end that those incapacitated by injuries and the dependents of deceased workers may receive

benefits as quickly as possible in view of the severe economic hardships which immediately befall the families of injured or deceased workers. Therefore, the criteria for continuances and supplemental hearings "for good cause shown" are to be strictly construed by the chief administrative law judge and his or her authorized representatives to prevent delay when granting or denying continuances and supplemental hearings. It is also the policy of this chapter to prohibit the denial of just claims of injured or deceased workers or their dependents on technicalities.

(b) This section is of no force and effect after June 30, 2022.

§23-5-13a. Continuances and supplemental hearings; claims not to be denied on technicalities; effective July 1, 2022.

(a) It is the policy of this chapter that the rights of claimants for workers' compensation be determined as speedily and expeditiously as possible to the end that those incapacitated by injuries and the dependents of deceased workers may receive benefits as quickly as possible in view of the severe economic hardships which immediately befall the families of injured or deceased workers. Therefore, the criteria for continuances and supplemental hearings "for good cause shown" are to be strictly construed by the Workers' Compensation Board of Review and its authorized representatives to prevent delay when granting or denying continuances and supplemental hearings. It is also the policy of this chapter to prohibit the denial of just claims of injured or deceased workers or their dependents on technicalities.

(b) This section becomes effective on July 1, 2022.

§23-5-15. Appeals from final decisions of board to Supreme Court of Appeals of West Virginia prior to July 1, 2022; procedure; costs.

(a) As provided in §23-5-8b of this code, the provisions of this section do not apply to any decision issued by the Workers' Compensation Board of Review after June 30, 2022.

(b) Review of any final decision of the board, including any order of remand, may be prosecuted by either party or by the

Insurance Commissioner, other private insurance carriers, and self-insured employers, whichever is applicable, to the Supreme Court of Appeals within 30 days from the date of the final order by filing a petition therefor with the court against the board and the adverse party or parties as respondents. Unless the petition for review is filed within the 30-day period, no appeal or review shall be allowed, such time limitation is a condition of the right to such appeal or review and hence jurisdictional. The clerk of the Supreme Court of Appeals shall notify each of the respondents and the Insurance Commissioner, other private insurance carriers, and self-insured employers, whichever is applicable, of the filing of such petition. The board shall, within 10 days after receipt of the notice, file with the clerk of the court the record of the proceedings had before it, including all the evidence. The court or any judge thereof in vacation may thereupon determine whether or not a review shall be granted. If review is granted to a nonresident of this state, he or she shall be required to execute and file with the clerk before an order or review shall become effective, a bond, with security to be approved by the clerk, conditioned to perform any judgment which may be awarded against him or her. The board may certify to the court and request its decision of any question of law arising upon the record, and withhold its further proceeding in the case, pending the decision of court on the certified question, or until notice that the court has declined to docket the same. If a review is granted or the certified question is docketed for hearing, the clerk shall notify the board and the parties litigant or their attorneys and the Insurance Commissioner, other private insurance carriers, and self-insured employers, whichever is applicable, of that fact by mail. If a review is granted or the certified question docketed, the case shall be heard by the court in the same manner as in other cases, except that neither the record nor briefs need be printed. Every review granted or certified question docketed prior to 30 days before the beginning of the term, shall be placed upon the docket for that term. The Attorney General shall, without extra compensation, represent the board in such cases. The court shall determine the matter brought before it and certify its decision to the board and to the commission. The cost of the proceedings on petition, including a reasonable attorney's fee, not exceeding $30 to the claimant's attorney, shall be fixed by the court and taxed

against the employer if the latter is unsuccessful. If the claimant, or the commission (in case the latter is the applicant for review) is unsuccessful, the costs, not including attorney's fees, shall be taxed against the commission, payable out of the Workers' Compensation Fund, or shall be taxed against the claimant, in the discretion of the court: But there shall be no cost taxed upon a certified question.

(c) In reviewing a decision of the Board of Review, the Supreme Court of Appeals shall consider the record provided by the board and give deference to the board's findings, reasoning, and conclusions, in accordance with subsections (d) and (e) of this section.

(d) If the decision of the board represents an affirmation of a prior ruling by both the commission and the Office of Judges that was entered on the same issue in the same claim, the decision of the board may be reversed or modified by the Supreme Court of Appeals only if the decision is in clear violation of constitutional or statutory provision, is clearly the result of erroneous conclusions of law, or is based upon the board's material misstatement or mischaracterization of particular components of the evidentiary record. The court may not conduct a de novo reweighing of the evidentiary record. If the court reverses or modifies a decision of the board pursuant to this subsection, it shall state with specificity the basis for the reversal or modification and the manner in which the decision of the board clearly violated constitutional or statutory provisions, resulted from erroneous conclusions of law, or was based upon the board's material misstatement or mischaracterization of particular components of the evidentiary record.

(e) If the decision of the board effectively represents a reversal of a prior ruling of either the commission or the Office of Judges that was entered on the same issue in the same claim, the decision of the board may be reversed or modified by the Supreme Court of Appeals only if the decision is in clear violation of constitutional or statutory provisions, is clearly the result of erroneous conclusions of law, or is so clearly wrong based upon the evidentiary record that even when all inferences are resolved in

favor of the board's findings, reasoning, and conclusions, there is insufficient support to sustain the decision. The court may not conduct a de novo reweighing of the evidentiary record. If the court reverses or modifies a decision of the board pursuant to this subsection, it shall state with specificity the basis for the reversal or modification and the manner in which the decision of the board clearly violated constitutional or statutory provisions, resulted from erroneous conclusions of law, or was so clearly wrong based upon the evidentiary record that even when all inferences are resolved in favor of the board's findings, reasoning, and conclusions, there is insufficient support to sustain the decision.

§23-5-16. Fees of attorney for claimant; unlawful charging or receiving of attorney fees; effective until June 30, 2022.

(a) An attorney's fee in excess of 20 percent of any award granted may not be charged or received by an attorney for a claimant or dependent. In no case may the fee received by the attorney of the claimant or dependent be in excess of 20 percent of the benefits to be paid during a period of 208 weeks. The interest on disability or dependent benefits as provided in this chapter may not be considered as part of the award in determining the attorney's fee. However, any contract entered into in excess of 20 percent of the benefits to be paid during a period of 208 weeks, as herein provided, is unlawful and unenforceable as contrary to the public policy of this state and any fee charged or received by an attorney in violation thereof is an unlawful practice and renders the attorney subject to disciplinary action.

(b) On a final settlement an attorney may charge a fee not to exceed 20 percent of the total value of the medical and indemnity benefits: *Provided,* That this attorney's fee, when combined with any fees previously charged or received by the attorney for permanent partial disability or permanent total disability benefits may not exceed 20 percent of an award of benefits to be paid during a period of 208 weeks.

(c) Except attorney's fees and costs recoverable pursuant to §23-2C-21(c) of this code, an attorney's fee for successful recovery of denied medical benefits may be charged or received by an

attorney, and paid by the private carrier or self-insured employer, for a claimant or dependent under this section. In no event may attorney's fees and costs be awarded pursuant to both this section and §23-2C-21(c) of this code.

(1) If a claimant successfully prevails in a proceeding relating to a denial of medical benefits brought before the commission, successor to the commission, other private carrier, or self-insured employer, whichever is applicable, as a result of utilization review, arbitration, mediation, or other proceedings, or a combination thereof, relating to denial of medical benefits before the Office of Judges, Board of Review, or court, there shall additionally be charged against the private carriers or self-insured employers, whichever is applicable, the reasonable costs and reasonable hourly attorney fees of the claimant. Following the successful resolution of the denial in favor of the claimant, a fee petition shall be submitted by the claimant's attorney to the Insurance Commissioner or his or her successors, arbitrators, mediator, the Office of Judges, the Board of Review, or court, whichever enters a final decision on the issue. An attorney representing a claimant must submit a claim for attorney fees and costs within 30 days following a decision in which the claimant prevails and the order becomes final.

(2) The Insurance Commissioner or his or her successors, arbitrators, mediator, the Office of Judges, the Board of Review, or court shall enter an order within 30 days awarding reasonable attorney fees not to exceed $125 per hour and reasonable costs of the claimant to be paid by the private carriers or self-insured employers, whichever is applicable, which shall be paid as directed. In no event may an award of the claimant's attorney's fees under this subsection exceed $500 per litigated medical issue, not to exceed $2,500 in a claim.

(3) In determining the reasonableness of the attorney fees to be awarded, the Insurance Commission, arbitrator, mediator, Office of Judges, Board of Review, or court shall consider the experience of the attorney, the complexity of the issue, the hours expended, and the contingent nature of the fee.

(d) This section is of no force and effect after June 30, 2022.

§23-5-16a. Fees of attorney for claimant; unlawful charging or receiving of attorney fees.

(a) An attorney's fee in excess of 20 percent of any award granted may not be charged or received by an attorney for a claimant or dependent. In no case may the fee received by the attorney of the claimant or dependent be in excess of 20 percent of the benefits, to be paid during a period of 208 weeks. The interest on disability or dependent benefits, as provided in this chapter, may not be considered as part of the award in determining the attorney's fee. However, any contract entered into in excess of 20 percent of the benefits to be paid during a period of 208 weeks, as herein provided, is unlawful and unenforceable as contrary to the public policy of this state and any fee charged or received by an attorney in violation thereof is an unlawful practice and renders the attorney subject to disciplinary action.

(b) On a final settlement an attorney may charge a fee not to exceed 20 percent of the total value of the medical and indemnity benefits: *Provided,* That this attorney's fee, when combined with any fees previously charged or received by the attorney for permanent partial disability or permanent total disability benefits may not exceed 20 percent of an award of benefits to be paid during a period of 208 weeks.

(c) Except attorney's fees and costs recoverable pursuant to §23-2C-21(c) of this code, an attorney's fee for successful recovery of denied medical benefits may be charged or received by an attorney and paid by the private carrier or self-insured employer, for a claimant or dependent under this section. In no event may attorney's fees and costs be awarded pursuant to both this section and §23-2C-21(c) of this code.

(1) If a claimant successfully prevails in a proceeding relating to a denial of medical benefits brought before the Insurance Commissioner, other private carrier, or self-insured employer, whichever is applicable, as a result of utilization review, arbitration, mediation, or other proceedings, or a combination

thereof, relating to denial of medical benefits before the Workers' Compensation Board of Review, or a court, there shall additionally be charged against the private carriers or self-insured employers, whichever is applicable, the reasonable costs and reasonable hourly attorney's fees of the claimant. Following the successful resolution of the denial in favor of the claimant, a fee petition shall be submitted by the claimant's attorney to the Insurance Commissioner or his or her successors, arbitrators, mediator, the Workers' Compensation Board of Review, or a court, whichever enters a final decision on the issue. An attorney representing a claimant must submit a claim for attorney's fees and costs within 30 days following a decision in which the claimant prevails and the order becomes final.

(2) The Insurance Commissioner or his or her successors, arbitrators, mediators, the Workers' Compensation Board of Review, or a court shall enter an order within 30 days awarding reasonable attorney's fees not to exceed $125 per hour and reasonable costs of the claimant to be paid by the private carriers or self-insured employers, whichever is applicable, which shall be paid as directed. In no event may an award of the claimant's attorney's fees under this subsection exceed $500 per litigated medical issue, not to exceed $2,500 in a claim.

(3) In determining the reasonableness of the attorney's fees to be awarded, the Insurance Commissioner, arbitrator, mediator, Workers' Compensation Board of Review, or court shall consider the experience of the attorney, the complexity of the issue, the hours expended, and the contingent nature of the fee.

(d) This section becomes effective on July 1, 2022.

CHAPTER 29A. STATE ADMINISTRATIVE PROCEDURES ACT.

ARTICLE 5. CONTESTED CASES.

§29A-5-4. Judicial review of contested cases.

(a) Any party adversely affected by a final order or decision in a contested case is entitled to judicial review thereof under this

chapter, but nothing in this chapter shall be deemed to prevent other means of review, redress, or relief provided by law.

(b) Proceedings for review of any final order or decision issued on or before June 30, 2022, shall be instituted by filing a petition, at the election of the petitioner, in either the Circuit Court of Kanawha County, West Virginia, or in the circuit court of the county in which the petitioner or any one of the petitioners resides or does business, or with the judge thereof in vacation, within 30 days after the date upon which such party received notice of the final order or decision of the agency. Notwithstanding any provision of this code to the contrary, proceedings for judicial review of any final order or decision issued after June 30, 2022, must be instituted by filing an appeal to the Intermediate Court of Appeals as provided in §51-11-1 *et seq.* of this code. A copy of the petition shall be served upon the agency and all other parties of record by registered or certified mail. The petition shall state whether the appeal is taken on questions of law or questions of fact, or both. No appeal bond shall be required to affect any such appeal.

(c) The filing of the petition shall not stay enforcement of the agency order or decision or act as a supersedeas thereto, but the agency may stay such enforcement, and the appellant, at any time after the filing of his or her petition, may apply to such court for a stay of or supersedeas to such final order or decision. Pending the appeal, the court may grant a stay or supersedeas upon such terms as it deems proper.

(d) Within 15 days after receipt of a copy of the petition by the agency, or within such further time as the court may allow, the agency shall transmit to such court the original or a certified copy of the entire record of the proceeding under review, including a transcript of all testimony and all papers, motions, documents, evidence, and records as were before the agency, all agency staff memoranda submitted in connection with the case, and a statement of matters officially noted; but, by stipulation of all parties to the review proceeding, the record may be shortened. The expense of preparing such record shall be taxed as a part of the costs of the appeal. The appellant shall provide security for costs satisfactory to the court. Any party unreasonably refusing to stipulate to limit

the record may be taxed by the court for the additional costs involved. Upon demand by any party to the appeal, the agency shall furnish, at the cost of the party requesting same, a copy of such record. In the event the complete record is not filed with the court within the time provided for in this section, the appellant may apply to the court to have the case docketed, and the court shall order such record filed.

(e) Appeals taken on questions of law, fact, or both, shall be heard upon assignments of error filed in the cause or set out in the briefs of the appellant. Errors not argued by brief may be disregarded, but the court may consider and decide errors which are not assigned or argued. The court or judge shall fix a date and time for the hearing on the petition, but such hearing, unless by agreement of the parties, shall not be held sooner than 10 days after the filing of the petition, and notice of such date and time shall be forthwith given to the agency.

(f) The review shall be conducted by the court without a jury and shall be upon the record made before the agency, except that in cases of alleged irregularities in procedure before the agency, not shown in the record, testimony thereon may be taken before the court. The court may hear oral arguments and require written briefs.

(g) The court may affirm the order or decision of the agency or remand the case for further proceedings. It shall reverse, vacate, or modify the order or decision of the agency if the substantial rights of the petitioner or petitioners have been prejudiced because the administrative findings, inferences, conclusions, decision, or order are:

(1) In violation of constitutional or statutory provisions;

(2) In excess of the statutory authority or jurisdiction of the agency;

(3) Made upon unlawful procedures;

(4) Affected by other error of law;

(5) Clearly wrong in view of the reliable, probative, and substantial evidence on the whole record; or

(6) Arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

(h) The judgment of the circuit court or the Intermediate Court of Appeals, whichever is applicable, shall be final unless reversed, vacated, or modified on appeal to the Supreme Court of Appeals of this state in accordance with the provisions of §29A-6-1 of this code.

ARTICLE 6. APPEALS.

§29A-6-1. Supreme Court of Appeals.

(a) Any party adversely affected by the final judgment of the circuit court under this chapter may seek review thereof by appeal to the Supreme Court of Appeals of this state, and jurisdiction is hereby conferred upon such court to hear and entertain such appeals upon application made therefor in the manner and within the time provided by law for civil appeals generally: *Provided*, That a circuit court has no jurisdiction to review a final order or decision in a contested case issued after June 30, 2022.

(b) Any party adversely affected by the final order, decision, or judgment of the Intermediate Court of Appeals under this chapter may seek review thereof by petition to the Supreme Court of Appeals, pursuant to the requirements of §51-11-1 *et seq.* of this code.

CHAPTER 51. COURTS AND THEIR OFFICERS.

ARTICLE 2A. FAMILY COURTS.

§51-2A-24. Review by Intermediate Court of Appeals; transfer of jurisdiction from circuit court.

a) Notwithstanding any provision of this code to the contrary, an appeal of a final order or decision entered by a family court after

June 30, 2022, must be made to the Intermediate Court of Appeals, as provided in §51-11-1 *et seq.* of this code.

(b) Notwithstanding any provision of this code to the contrary, a circuit court has no jurisdiction to review a final order or decision entered by a family court after June 30, 2022, if review of the final order or decision is within the jurisdiction of the Intermediate Court of Appeals, as provided in §51-11-5 of this code.

ARTICLE 9. RETIREMENT SYSTEM FOR JUDGES OF COURTS OF RECORD.

§51-9-1a. Definitions.

(a) As used in this article, the term "judge", "judge of any court of record", or "judge of any court of record of this state" means, refers to, and includes judges of the several circuit courts, judges of the Intermediate Court of Appeals, and justices of the Supreme Court of Appeals. For purposes of this article, the terms do not mean, refer to, or include family court judges.

(b) "Actuarially equivalent" or "of equal actuarial value" means a benefit of equal value computed upon the basis of the mortality table and interest rates as set and adopted by the retirement board in accordance with the provisions of this article: *Provided,* That when used in the context of compliance with the federal maximum benefit requirements of Section 415 of the Internal Revenue Code, "actuarially equivalent" shall be computed using the mortality tables and interest rates required to comply with those requirements.

(c) "Beneficiary" means any person, except a member, who is entitled to an annuity or other benefit payable by the retirement system.

(d) "Board" means the Consolidated Public Retirement Board created pursuant to §5-10D-1 *et seq.* of this code.

(e) "Final average salary" means the average of the highest 36 consecutive months' compensation received by the member as a judge of any court of record of this state.

(f) "Internal Revenue Code" means the Internal Revenue Code of 1986, as it has been amended.

(g) "Member" means a judge participating in this system.

(h) "Plan year" means the 12-month period commencing on July 1 of any designated year and ending the following June 30.

(i) "Required beginning date" means April 1 of the calendar year following the later of: (1) The calendar year in which the member attains age 70 and one-half; or (2) the calendar year in which the member retires or otherwise separates from covered employment.

(j) "Retirement system" or "system" means the Judges' Retirement System created and established by this article. Notwithstanding any other provision of law to the contrary, the provisions of this article are applicable only to circuit judges, judges of the Intermediate Court of Appeals, and justices of the Supreme Court of Appeals in the manner specified in this article. No service as a family court judge may be construed to qualify a person to participate in the Judges' Retirement System or used in any manner as credit toward eligibility for retirement benefits under the Judges' Retirement System.

ARTICLE 11. THE WEST VIRGINIA APPELLATE REORGANIZATION ACT.

§51-11-1. Short title.

This article is known and may be cited as the West Virginia Appellate Reorganization Act of 2021.

§51-11-2. Definitions.

For the purpose of this article:

"Circuit court" means a circuit court of this state, as provided in §51-2-1 of this code.

"Clerk" means the Clerk of the Supreme Court of Appeals of West Virginia.

"Intermediate Court of Appeals" means the Intermediate Court of Appeals of West Virginia created by this article.

"Judge" means a person appointed or elected to serve as a Judge for the Intermediate Court of Appeals, pursuant to this article.

"Supreme Court of Appeals" means the Supreme Court of Appeals of West Virginia.

§51-11-3. West Virginia Intermediate Court of Appeals; constitutional authority; court created; judges; qualifications of judges; location; clerk.

(a) The Legislature finds that:

(1) Section one, article VIII of the Constitution of West Virginia explicitly recognizes the power of the Legislature to establish an intermediate court of appeals.

(2) Section six, article VIII of the Constitution of West Virginia acknowledges that appellate jurisdiction "may be conferred by law exclusively upon an intermediate appellate court" and numerous additional references to the potential creation of an intermediate appellate court by the Legislature appear throughout the Constitution.

(b) In accordance with section one, Article VIII of the West Virginia Constitution, the West Virginia Intermediate Court of Appeals is created. The Intermediate Court is a court of record and shall issue, as appropriate in each appeal, written opinions, orders, and decisions. The court shall be established and operable on or before July 1, 2022.

(c) The Intermediate Court of Appeals shall convene, conduct proceedings, and issue decisions, rulings, and opinions of the court.

(d) The Intermediate Court of Appeals shall consist of three judges, initially appointed by the Governor in accordance with §51-11-6 of this code.

(1) An Intermediate Court of Appeals Judge must be a member in good standing of the West Virginia State Bar and admitted to practice law in this state for at least 10 years prior to appointment or election to the Intermediate Court of Appeals.

(2) An Intermediate Court of Appeals Judge must have been a resident of the State of West Virginia for five years prior to election to the Intermediate Court of Appeals.

(3) An Intermediate Court of Appeals Judge may not engage in any other business, occupation, or employment inconsistent with the expeditious, proper and impartial performance of his or her duties as a judicial officer. An Intermediate Court of Appeals Judge is not permitted to engage in the outside practice of law and shall devote full time to his or her duties as a judicial officer.

(4) A person sitting as an Intermediate Court of Appeals Judge may not retain his or her position as judge upon becoming a pre-candidate or candidate for any other elected public office, judicial or nonjudicial.

(e) The Intermediate Court of Appeals may be located in any seat of county government within the state, or in any other place which is convenient to litigants designated by the Intermediate Court of Appeals for the purpose of hearing oral argument, or may be located in a fixed location, in a facility provided by the Clerk pursuant to §51-11-8 of this code.

(f) The Clerk of the Supreme Court shall act as clerk of the Intermediate Court of Appeals. The Clerk shall keep a complete record of the cases and proceedings of the Intermediate Court of Appeals. The Clerk, subject to the approval of the Supreme Court, may employ additional staff for the performance of duties relating to the court of appeals and designate a deputy clerk to oversee the administration of the Intermediate Court of Appeals.

§51-11-4. Jurisdiction; limitations.

(a) The Intermediate Court of Appeals has no original jurisdiction.

(b) Unless specifically provided otherwise in this article, appeals of the following matters shall be made to the Intermediate Court of Appeals, which has appellate jurisdiction over such matters:

(1) Final judgments or orders of a circuit court in civil cases, entered after June 30, 2022; *Provided*, that the Supreme Court of Appeals may, on its own accord, obtain jurisdiction over any civil case filed in the Intermediate Court;

(2) Final judgments or orders of a family court, entered after June 30, 2022;

(3) Final judgments or orders of a circuit court concerning guardianship or conservatorship matters, entered after June 30, 2022, pursuant to §44A-1-1 *et seq.* of this code;

(4) Final judgments, orders, or decisions of an agency or an administrative law judge entered after June 30, 2022, heretofore appealable to the Circuit Court of Kanawha County pursuant to §29A-5-4 or any other provision of this code;

(5) Final orders or decisions of the Health Care Authority issued prior to June 30, 2022, in a certificate of need review, but transferred to the jurisdiction of the Intermediate Court of Appeals upon termination of the Office of Judges pursuant to §16-2D-16a of this code;

(6) Final orders or decisions issued by the Office of Judges after June 30, 2022, and prior to its termination, as provided in §16-2D-16 and §23-5-8a of this code; and

(7) Final orders or decisions of the Workers' Compensation Board of Review pursuant to §23-5-1 *et seq.* of this code, entered after June 30, 2022.

(c) In appeals properly filed pursuant to subsection (b) of this section, the parties shall be afforded a full and meaningful review on the record of the lower tribunal and an opportunity to be heard.

(d) The Intermediate Court of Appeals does not have appellate jurisdiction over the following matters:

(1) Judgments or final orders issued in any criminal proceeding in this state: *Provided*, that if the West Virginia Supreme Court of Appeals should adopt a policy of discretionary review of criminal appeals then the Intermediate Court of Appeals shall have appellate jurisdiction of such judgments or final orders;

(2) Judgments or final orders issued in any juvenile proceeding pursuant to §49-4-701 *et seq.* of this code;

(3) Judgments or final orders issued in child abuse and neglect proceedings pursuant to §49-4-601 *et seq.* of this code;

(4) Orders of commitment, issued pursuant to §27-5-1 *et seq.* of this code;

(5) Any proceedings of the Lawyer Disciplinary Board;

(6) Any proceedings of the Judicial Investigation Commission;

(7) Final decisions of the Public Service Commission, issued pursuant to §24-5-1 of this code;

(8) Interlocutory appeals;

(9) Certified questions of law; and

(10) Extraordinary remedies, as provided in §53-1-1 *et seq.* of this code, and any appeal of a decision or order of another court regarding an extraordinary remedy.

§51-11-5. Motion for direct review by Supreme Court of Appeals.

(a) Within 20 days after a petition for appeal is filed in the Intermediate Court of Appeals, a party may file a motion in the Supreme Court of Appeals for direct review of a final judgment or order that is otherwise within the appellate jurisdiction of the Intermediate Court of Appeals pursuant to §51-11-5 of this code.

(b) The Supreme Court of Appeals may grant a motion filed pursuant to this section if both of the following extraordinary circumstances exist:

(1) The appeal involves a question of fundamental public importance; and

(2) The appeal involves exigencies, in which time is of the essence, necessitating direct review of the appeal by the Supreme Court of Appeals.

(c) Notwithstanding any other provision of this code, if the Supreme Court of Appeals grants a motion filed pursuant to this section within 20 days after such motion is filed, jurisdiction over the appeal is transferred to the Supreme Court of Appeals according to all applicable rules of the court:

§51-11-6. Election of judges; initial appointment and election; vacancies; length and conditions of judicial terms.

(a) The three Judges of the Intermediate Court of Appeals shall be elected on a nonpartisan basis to serve 10-year terms, subject to the exceptions for initial appointments and elections contained in subsection (b) and subsection (c) of this section.

(b) *Nomination and election to fill initial vacancies*. — The Judges shall be nominated and appointed according to the following procedure:

(1) (A) On or before January 1, 2022, the Judicial Vacancy Advisory Commission, established pursuant to §3-10-3a of this code, shall publish notice of the judicial vacancies for the Intermediate Court of Appeals and begin accepting applications from qualified individuals for the position of Judge of the Intermediate Court of Appeals. The commission is responsible for reviewing and evaluating candidates for possible appointment to the Intermediate Court of Appeals by the Governor. In reviewing candidates, the commission may accept applications from any attorney who believes he or she to be qualified for the judgeships. The commission may accept comments from and request information from any person or source.

(B) The commission shall recommend three qualified nominees for each position for Intermediate Court of Appeals Judge: *Provided*, That each person on the list must meet the requirements of §51-11-3(d) of this code at the time such person will begin his or her term on the court.

(2) The Governor shall review the list certified by the Judicial Vacancy Advisory Commission and nominate three qualified candidates to serve as judge. The Governor shall make his or her nominations without regard to political partisanship or affiliation. If the Governor does not select a nominee for the position of judge from the names provided by the commission, he or she shall notify the committee of that circumstance and the Commission shall provide additional names for consideration by the Governor.

(3) The initial appointment term for each of the judges, at the discretion of the Governor, shall be as follows: one judge shall be selected to serve a two and one-half year term set to expire on December 31, 2024, one judge shall be selected to serve a four and one-half year term set to expire on December 31, 2026, and one judge shall be elected to serve a six and one-half year term set to expire on December 31, 2028.

(4) Upon confirmation by the West Virginia Senate, an individual appointed to serve as a Judge of the Intermediate Court of Appeals pursuant to this subsection shall take an oath of office and commence his or her duties on July 1, 2022.

(c) After the initial appointment, the Judges of the Intermediate Court of Appeals shall be elected on a nonpartisan basis by division during the primary election in every year during which a sitting judge's term will expire for a 10 year term of office, and the judge's term shall commence on January 1 of the year following, as set forth in §3-5-1 *et seq.* of this code.

(d) If a vacancy occurs in the office of Intermediate Court Judge, the Governor shall fill the vacancy by appointment as provided in §3-10-3 and §3-10-3a of this code.

(e) No person sitting as a judge of the Intermediate Court of Appeals may retain his or her position as judge upon becoming a candidate for any elected public office, judicial or nonjudicial.

(f) The Legislature recognizes that the Chief Justice of the West Virginia Supreme Court of Appeals has authority to temporarily assign judges to the Intermediate Court of Appeals pursuant to section eight, article VIII of the Constitution of West Virginia, in the event that a judge is temporarily unable to serve on the court.

§51-11-7. Rules of practice and procedure; fees; deadlines.

(a) Section three, article VIII of the Constitution of West Virginia grants the Supreme Court of Appeals of West Virginia supervisory control over all intermediate appellate courts in the state, including the power to promulgate rules for the procedures of an intermediate appellate court created by statute. In accordance with those provisions, the Intermediate Court of Appeals is therefore subject to the administrative control, supervision, and oversight of the Supreme Court of Appeals and unless specifically provided otherwise in this article, the pleadings, practice, and procedure in all matters before the Intermediate Court of Appeals are governed by rules promulgated by the Supreme Court of Appeals.

(b) *Filing; records.* — All notices of appeals, petitions, documents, and records in connection with an appeal to the Intermediate Court of Appeals shall be filed in accordance with rules promulgated by the Supreme Court of Appeals. Appeals to the Intermediate Court of Appeals shall be filed with the Clerk of the Supreme Court of Appeals. All appeals and other related documents shall be filed by electronic means, when available.

(c) *Fees*. —

(1) The Clerk of the Supreme Court of Appeals may charge a party appealing to the Intermediate Court of Appeals a filing fee in the amount of $200.

(2) All moneys collected pursuant to this subsection shall be deposited in the Ryan Brown Addiction Prevention and Recovery

Fund, created by §16-53-2 of this code, and all expenditures from the fund shall comply with the requirements of that section.

(d) *Appeal bonds.* — The court may order the payment of an appeal bond before an appeal to the Intermediate Court of Appeals may commence, pursuant to rules promulgated by the Supreme Court of Appeals, and when applicable, the requirements of §58-5-14 of this code.

(e) *Oral argument*. — The Intermediate Court of Appeals has discretion to determine whether appellate review of a case before the court requires oral argument.

§51-11-8. Administration of court.

(a) In accordance with section three, article VIII of the Constitution of West Virginia, the Intermediate Court of Appeals is subject to the administrative control, supervision, and oversight of the Supreme Court of Appeals. Under that same provisions, the Chief Justice of the Supreme Court of Appeals is the "administrative head" of all West Virginia courts, empowering the chief justice to exercise supervisory control over an intermediate court of appeals.

(b) The Administrative Director of the Supreme Court shall provide for the requisite physical facilities, furniture, fixtures, and equipment necessary for the efficient operation of the Intermediate Court of Appeals.

(c) (1) In order to minimize any costs associated with the necessary facilities for the Intermediate Court of Appeals, the Administrative Director of the Supreme Court shall make existing courtrooms throughout the state, including the courtroom of the Supreme Court of Appeals, available for use by the Intermediate Court of Appeals at times convenient both to the Intermediate Court of Appeals and the local court.

(2) The Administrative Director of the Supreme Court may also contract with the Department of Administration, county commissions, and private parties to provide for space that is suitable for the Intermediate Court of Appeals. Facilities may

include, but are not limited to, courtrooms in county courthouses, courtrooms in federal courthouses, county commission rooms in county courthouses, rooms or facilities at institutions of higher education, and other suitable spaces in federal, state, county, or municipal buildings throughout the state.

(d) *Chief Judge.* — One Judge of the Intermediate Court of Appeals shall be chosen Chief Judge. The manner of choosing the Chief Judge and providing for periodic rotation of the position of Chief Judge shall be determined by rules to be established by the Supreme Court.

(e) *Staff.* — The Administrative Director of the Supreme Court of Appeals shall provide administrative support and may employ additional staff, as necessary, for the efficient operation of the Intermediate Court of Appeals. The budget for the payment of compensation and expenses of the Intermediate Court of Appeals staff shall be included in the appropriation to the Supreme Court of Appeals.

(f) The budget for the payment of the salaries and benefits for the Intermediate Court of Appeals Judges and staff, facilities, furniture, fixtures, and equipment shall be included in the appropriation for the Supreme Court. To the extent possible, the Supreme Court shall designate existing facilities and existing staff members for use by the Intermediate Court of Appeals to minimize the costs for establishing and operating the Intermediate Court of Appeals.

§51-11-9. Written opinions; precedential effect.

(a) The Intermediate Court of Appeals shall issue, as appropriate in each appeal, written opinions, orders, and decisions: *Provided,* That a written decision on the merits shall be issued as a matter of right in each appeal that is properly filed and within the jurisdiction of the Intermediate Court of Appeals.

(b) A written opinion, order, or decision of the Intermediate Court of Appeals is binding precedent for the decisions of all circuit courts, family courts, magistrate courts, and agencies unless

the opinion, order, or decision is overruled or modified by the Supreme Court of Appeals.

§51-11-10. Discretionary review by Supreme Court of Appeals by petition.

(a) A party in interest may petition the Supreme Court of Appeals for appeal of a final order or judgment of the Intermediate Court of Appeals in accordance with rules promulgated by the Supreme Court of Appeals.

(b) Upon the proper filing of a notice of appeal in the Supreme Court of Appeals, the order or judgment of the Intermediate Court of Appeals may be stayed pending the appeal, in accordance with rules promulgated by the Supreme Court of Appeals.

(c) The Supreme Court of Appeals has discretion to grant or deny the petition for appeal or certiorari of a decision by the Intermediate Court of Appeals.

§51-11-11. Judicial compensation and benefits; expenses.

(a) The annual salary of a Judge of the Intermediate Court of Appeals is $142,500. The budget for the payment of compensation and expenses of Intermediate Court of Appeals judges shall be included in the appropriation for the Supreme Court of Appeals.

(b) Judges of the Intermediate Court of Appeals and staff shall be reimbursed for their actual and necessary expenses incurred in the performance of their duties under the guidelines prescribed by the Administrative Director of the Supreme Court of Appeals.

§51-11-12. Attorney General as counsel for state.

The Attorney General shall appear as counsel for the state in all cases pending in the Intermediate Court of Appeals, subject to the same requirements and restrictions provided in §5-3-2 of this code that apply to the Attorney General's representation of the state in cases pending in the Supreme Court of Appeals.

§51-11-13. Severability.

The provisions of this article are severable. If any portion of this article is declared unconstitutional or the application of any part of this article is held invalid, the remaining portions of this article and their applicability shall remain valid and enforceable.

CHAPTER 58. APPEAL AND ERROR.

ARTICLE 5. APPELLATE RELIEF IN THE INTERMEDIATE COURT OF APPEALS AND THE SUPREME COURT OF APPEALS.

§58-5-1. When appeal lies.

(a) A party to a civil action may appeal to the Supreme Court of Appeals from a final judgment of any circuit court or from an order of any circuit court constituting a final judgment as to one or more but fewer than all claims or parties upon an express determination by the circuit court that there is no just reason for delay and upon an express direction for the entry of judgment as to such claims or parties: *Provided*, That an appeal of a final order or judgment of a circuit court entered after June 30, 2022, shall be to the Intermediate Court of Appeals, as required by §51-11-1 *et seq.* of this code.

(b) As provided in §51-11-13 of this code, a party in interest may petition the Supreme Court of Appeals for appeal of a final order or judgment of the Intermediate Court of Appeals in accordance with rules promulgated by the Supreme Court of Appeals.

(c) The defendant in a criminal action may appeal to the Supreme Court of Appeals from a final judgment of any circuit court in which there has been a conviction, or which affirms a conviction obtained in an inferior court.

CHAPTER 81

(S. B. 674 - By Senators Weld, Woelfel, and Lindsay)

[Passed April 9, 2021; in effect 90 days from passage (July 8, 2021)]
[Approved by the Governor on April 26, 2021.]

AN ACT to amend and reenact §8-10-2a and §8-10-2b of the Code of West Virginia, 1931, as amended; to amend and reenact §50-3-2a of said code; and to amend and reenact §62-4-17 of said code, all relating generally to court-ordered costs, fines, forfeitures, restitution, and penalties; clarifying that unpaid restitution need not preclude a person from obtaining a valid driver's license; establishing procedures to obtain a lien against a person who owes restitution; and providing procedures for removing a lien.

Be it enacted by the Legislature of West Virginia:

CHAPTER 8. MUNICIPAL CORPORATIONS.

ARTICLE 10. POWERS AND DUTIES OF CERTAIN OFFICERS.

§8-10-2a. Payment of fines by electronic payments, credit cards, cash, money orders, or certified checks.

A municipal court may accept electronic payments, credit cards, cash, money order, or certified checks for all costs, fines, forfeitures, restitution, or penalties electronically, by mail, or in person. Any charges made by the credit company shall be paid by the person responsible for paying the cost, fine, fee, restitution, or penalty.

§8-10-2b. Payment plan; failure to pay will result in late fee and judgment lien; suspension of licenses for failure to pay fines and costs or failure to appear in court.

(a) Upon request and subject to the following requirements, the municipal court clerk or, upon a judgment rendered on appeal, the clerk shall establish a payment plan for a person owing costs, fines, forfeitures, restitution, or penalties imposed by the court for a motor vehicle violation as defined in §17B-3-3a of this code, a criminal offense as defined in §17B-3-3c of this code, or other applicable municipal ordinances, so long as the person signs and files with the clerk an affidavit stating that he or she is financially unable to pay the costs, fines, forfeitures, restitution, or penalties imposed:

(1) A $25 administrative processing fee shall be paid at the time the payment form is filed or, in the alternative, the fee may be paid in no more than five equal monthly payments;

(2) Unless incarcerated, a person must enroll in a payment plan no later than 90 calendar days after the date the court enters the order assessing the costs, fines, forfeitures, restitution, or penalties; and

(3) If the person is incarcerated, he or she may enroll in a payment plan within 90 calendar days after release.

(b) The West Virginia Supreme Court of Appeals shall develop a uniform payment plan form and financial affidavit for requests for the establishment of a payment plan pursuant to subsection (a) of this section. The forms shall be made available for distribution to the offices of municipal clerks, and municipal clerks shall use the payment plan form and affidavit form developed by the West Virginia Supreme Court of Appeals when establishing payment plans.

(c)(1) The payment plan shall specify: (A) The number of payments to be made; (B) the dates on which such payments are due; (C) the amount due for each payment; (D) all acceptable payment methods; and (E) the circumstances under which the

person may receive a late fee, have a judgment lien recorded against him or her, or have the debt sent to collections for nonpayment;

(2) The monthly payment under the payment plan shall be calculated based upon all costs, fines, forfeitures, restitution, or penalties owed within the court, and shall be two percent of the person's annual net income divided by 12, or $10, whichever is greater;

(3) The court may review the reasonableness of the payment plan, and may on its own motion or by petition, waive, modify, or convert the outstanding costs, fines, forfeitures, restitution, or penalties to community service if the court determines that the individual has had a change in circumstances and is unable to comply with the terms of the payment plan.

(d) (1) The clerk may assess a $10 late fee each month if a person fails to comply with the terms of a payment plan and if any payment due is not received within 30 days after the due date, and the person:

(A) Is not incarcerated;

(B) Has not brought the account current;

(C) Has not made alternative payment arrangements with the court; or

(D) Has not entered into a revised payment plan with the clerk before the due date.

(2) If after 90 days, a payment has not been received, the clerk may do one or both of the following: (A) Record a judgment lien as described in subsection (f) of this section; or (B) consign the delinquent costs, fines, forfeitures, restitution, or penalties to a debt collection agency contained on the State Tax Commissioner's list of eligible debt collection agencies established and maintained pursuant to §14-1-18c of this code, an internal collection division, or both: *Provided,* That the entire amount of all delinquent payments collected shall be remitted to the court and may not be

reduced by any collection costs or fees: *Provided, however,* That the collection fee may not exceed 25 percent of the delinquent payment amount. The clerk may send notices, electronically or by U.S. mail, to remind the person of an upcoming or missed payment.

(e)(1) If after 90 days of a judgment a person fails to enroll in a payment plan and fails to pay their costs, fines, forfeitures, restitution, or penalties, the clerk may assess a $10 late fee and shall notify the person of the following:

(A) That he or she is 90 days past due in the payment of costs, fines, forfeitures, restitution, or penalties imposed pursuant to a judgment of the court;

(B) That he or she has failed to enroll in a payment plan;

(C) Whether a $10 late fee has been assessed; and

(D) That he or she may be the subject of a judgment lien or have his or her debt sent to a collection agency if the overdue payment of costs, fines, forfeitures, restitution, or penalties is not resolved within 30 days of the date of the notice issued pursuant to this subsection.

(2) If after 30 days from the issuance of a notice pursuant to subdivision (1) of this subsection, a payment has not been received, the clerk may do one or both of the following:

(A) Record a judgment lien as described in subsection (f) of this section; or

(B) Consign the delinquent costs, fines, forfeitures, restitution, or penalties to a debt collection agency contained on the State Tax Commissioner's list of eligible debt collection agencies established and maintained pursuant to §14-1-18c of this code, an internal collection division, or both: *Provided,* That the entire amount of all delinquent payments collected shall be remitted to the court and may not be reduced by any collection costs or fees: *Provided, however,* That the collection fee may not exceed 25 percent of the delinquent payment amount.

(f) To record a judgment lien, the clerk shall notify the prosecuting attorney of the county of nonpayment and shall provide the prosecuting attorney with an abstract of judgment. The prosecuting attorney shall file the abstract of judgment in the office of the clerk of the county commission in the county where the defendant was convicted and in any county in which the defendant resides or owns property. The clerk of the county commission shall record and index these abstracts of judgment without charge or fee to the prosecuting attorney and when recorded, the amount stated to be owed in the abstract constitutes a lien against all property of the defendant: *Provided,* That when all the costs, fines, fees, forfeitures, restitution, or penalties for which an abstract of judgment has been recorded are paid in full, the clerk of the municipal court shall notify the prosecuting attorney of the county of payment and provide the prosecuting attorney with a release of judgment, prepared in accordance with the provisions of §38-12-1 of this code, for filing and recordation pursuant to the provisions of this subdivision. Upon receipt from the clerk, the prosecuting attorney shall file the release of judgment in the office of the clerk of the county commission in each county where an abstract of the judgment was recorded. The clerk of the county commission shall record and index the release of judgment without charge or fee to the prosecuting attorney.

(g) A person whose driver's license was suspended prior to July 1, 2020, solely for the nonpayment of costs, fines, forfeitures, restitution, or penalties, if otherwise eligible, shall have his or her license reinstated:

(1) Upon payment in full of all outstanding costs, fines, forfeitures, restitution, or penalties and a $25 reinstatement fee paid to the Division of Motor Vehicles; or

(2) Upon establishing a payment plan pursuant to subsection (a) of this section and the payment of a $25 administrative fee. The clerk shall notify the Division of Motor Vehicles that a payment plan is in effect, and upon receipt of the notification, the division shall waive the reinstatement fee.

(h) If a person charged with a motor vehicle violation as defined in §17B-3-3a of this code or criminal offense fails to appear or otherwise respond in court, the municipal court clerk shall notify the Division of Motor Vehicles of the failure to appear: *Provided*, That notwithstanding any other provision of this code to the contrary, for residents of this state, the municipal court clerk shall wait at least 90 days from the date of the person's failure to appear or otherwise respond before notifying the Division of Motor Vehicles thereof. Upon notice, the Division of Motor Vehicles shall suspend the person's driver's license or privilege to operate a motor vehicle in this state until such time that the person appears as required.

CHAPTER 50. MAGISTRATE COURTS.

ARTICLE 3. COSTS, FINES, AND RECORDS.

§50-3-2a. Payment by electronic payments, credit card payments, cash, money orders, or certified checks; payment plan; failure to pay fines results in a late fee and judgment lien.

(a) A magistrate court may accept electronic payments, credit cards, cash, money order, or certified check for payment of all costs, fines, fees, forfeitures, restitution, or penalties in accordance with rules promulgated by the Supreme Court of Appeals. Any charges made by the credit company shall be paid by the person responsible for paying the cost, fine, forfeiture, restitution, or penalty.

(b) Upon request and subject to the following requirements, the magistrate clerk shall establish a payment plan for a person owing costs, fines, forfeitures, restitution, or penalties imposed by the court, so long as the person signs and files with the clerk, an affidavit stating that he or she is financially unable to pay the costs, fines, forfeitures, restitution, or penalties imposed:

(1) A $25 administrative processing fee shall be paid at the time the payment form is filed or, in the alternative, the fee may be paid in no more than five equal monthly payments;

(2) Unless incarcerated, a person must enroll in a payment plan no later than 180 calendar days after the date the court enters the order assessing the costs, fines, forfeitures, restitution, or penalties; and

(3) If the person is incarcerated, he or she may enroll in a payment plan within 180 calendar days after release.

(c) The West Virginia Supreme Court of Appeals shall develop a uniform payment plan form and financial affidavit for requests for the establishment of payment plan pursuant to subsection (a) of this section. The forms shall be made available for distribution to the offices of magistrate clerks, and magistrate clerks shall use the payment plan form and affidavit form developed by the West Virginia Supreme Court of Appeals when establishing payment plans.

(d)(1) The payment plan shall specify: (A) The number of payments to be made; (B) the dates on which the payments are due; (C) the amount due for each payment; (D) all acceptable payment methods; and (E) the circumstances under which the person may receive a late fee, have a judgment lien recorded against him or her, or have the debt sent to collections for nonpayment.

(2) The monthly payment under the payment plan shall be calculated based upon all costs, fines, forfeitures, restitution, or penalties owed within the court, and shall be two percent of the person's annual net income divided by 12 or $10, whichever is greater.

(3) The court may review the reasonableness of the payment plan, and may on its own motion or by petition, waive, modify, or convert the outstanding costs, fines, forfeitures, restitution, or penalties to community service if the court determines that the individual has had a change in circumstances and is unable to comply with the terms of the payment plan.

(e) (1) The clerk may assess a $10 late fee each month if a person fails to comply with the terms of a payment plan, and if any

payment due is not received within 30 days after the due date, and the person:

(A) Is not incarcerated;

(B) Has not brought the account current;

(C) Has not made alternative payment arrangements with the court; or

(D) Has not entered into a revised payment plan with the clerk before the due date.

(2) If, after 90 days, a payment has not been received, the clerk may do one or both of the following: (A) Record a judgment lien as described in subsection (f) of this section; or (B) consign the delinquent costs, fines, forfeitures, restitution, or penalties to a debt collection agency contained on the State Tax Commissioner's list of eligible debt collection agencies established and maintained pursuant to §14-1-18c of this code, an internal collection division, or both: *Provided,* That the entire amount of all delinquent payments collected shall be remitted to the court and may not be reduced by any collection costs or fees: *Provided, however,* That the collection fee may not exceed 25 percent of the delinquent payment amount. The clerk may send notices, electronically or by U.S. mail, to remind the person of an upcoming or missed payment.

(f)(1) If after 180 days of a judgment a person fails to enroll in a payment plan and fails to pay his or her costs, fines, forfeitures, restitution, or penalties, the clerk may assess a $10 late fee and shall notify the person of the following:

(A) That he or she is 180 days past due in the payment of costs, fines, forfeitures, restitution, or penalties imposed pursuant to a judgment of the court;

(B) That he or she has failed to enroll in a payment plan;

(C) Whether a $10 late fee has been assessed; and

(D) That he or she may be the subject of a judgment lien or have his or her debt sent to a collection agency if the overdue payment of costs, fines, forfeitures, restitution, or penalties is not resolved within 30 days of the date of the notice issued pursuant to this subsection.

(2) If after 30 days from the issuance of a notice pursuant to subdivision (1) of this subsection, a payment has not been received, the clerk may do one or both of the following:

(A) Record a judgment lien as described in subsection (f) of this section; or

(B) Consign the delinquent costs, fines, forfeitures, restitution, or penalties to a debt collection agency contained on the State Tax Commissioner's list of eligible debt collection agencies established and maintained pursuant to §14-1-18c of this code, an internal collection division, or both: *Provided,* That the entire amount of all delinquent payments collected shall be remitted to the court and may not be reduced by any collection costs or fees: *Provided, however,* That the collection fee may not exceed 25 percent of the delinquent payment amount.

(g) To record a judgment lien, the clerk shall notify the prosecuting attorney of the county of nonpayment and shall provide the prosecuting attorney with an abstract of judgment. The prosecuting attorney shall file the abstract of judgment in the office of the clerk of the county commission in the county where the defendant was convicted and in any county wherein the defendant resides or owns property. The clerk of the county commission shall record and index these abstracts of judgment without charge or fee to the prosecuting attorney and when recorded, the amount stated to be owed in the abstract constitutes a lien against all property of the defendant: *Provided,* That when all the costs, fines, fees, forfeitures, restitution, or penalties for which an abstract of judgment has been recorded are paid in full, the clerk of the municipal court shall notify the prosecuting attorney of the county of payment and provide the prosecuting attorney with a release of judgment, prepared in accordance with the provisions of §38-12-1 of this code, for filing and recordation pursuant to the provisions

of this subdivision. Upon receipt from the clerk, the prosecuting attorney shall file the release of judgment in the office of the clerk of the county commission in each county where an abstract of the judgment was recorded. The clerk of the county commission shall record and index the release of judgment without charge or fee to the prosecuting attorney.

(h) A person whose driver's license was suspended before July 1, 2020, solely for the nonpayment of costs, fines, forfeitures, restitution, or penalties, if otherwise eligible, shall have his or her license reinstated:

(1) Upon payment in full of all outstanding costs, fines, forfeitures, restitution, or penalties and a $25 reinstatement fee paid to the Division of Motor Vehicles; or

(2) Upon establishing a payment plan pursuant to subsection (a) of this section and the payment of a $25 administrative fee. The clerk shall notify the Division of Motor Vehicles that a payment plan is in effect, and upon receipt of the notification, the division shall waive the reinstatement fee.

(i)(1) If any costs, fines, fees, forfeitures, restitution, or penalties imposed or ordered by the magistrate court for a hunting violation described in chapter 20 of this code are not paid within 180 days from the date of judgment and the expiration of any stay of execution, the magistrate court clerk or, upon a judgment rendered on appeal, the circuit clerk shall notify the Director of the Division of Natural Resources of the failure to pay. Upon notice, the Director of the Division of Natural Resources shall suspend any privilege the person failing to appear or otherwise respond may have to hunt in this state, including any hunting license issued to the person by the Division of Natural Resources, until all the costs, fines, fees, forfeitures, restitution, or penalties are paid in full.

(2) If any costs, fines, fees, forfeitures, restitution, or penalties imposed or ordered by the magistrate court for a fishing violation described in chapter 20 of this code are not paid within 180 days from the date of judgment and the expiration of any stay of execution, the magistrate court clerk or, upon a judgment rendered

on appeal, the circuit clerk shall notify the Director of the Division of Natural Resources of the failure to pay. Upon notice, the Director of the Division of Natural Resources shall suspend any privilege the person failing to appear or otherwise respond may have to fish in this state, including any fishing license issued to the person by the Division of Natural Resources, until all the costs, fines, fees, forfeitures, restitution, or penalties are paid in full.

(j)(1) If a person charged with any criminal violation of this code fails to appear or otherwise respond in court, the magistrate court shall notify the Commissioner of the Division of Motor Vehicles thereof within 90 days of the scheduled date to appear unless the person sooner appears or otherwise responds in court to the satisfaction of the magistrate. Upon notice, the Division of Motor Vehicles shall suspend any privilege the person failing to appear or otherwise respond may have to operate a motor vehicle in this state, including any driver's license issued to the person by the Division of Motor Vehicles, until final judgment in the case and, if a judgment of guilty, until all costs, fines, fees, forfeitures, restitution, or penalties imposed are paid in full. The suspension shall be imposed in accordance with the provisions of §17B-3-6 of this code.

(2) In addition to the provisions of subdivision (1) of this subsection, if a person charged with any hunting violation described in chapter 20 of this code fails to appear or otherwise respond in court, the magistrate court shall notify the Director of the Division of Natural Resources of the failure thereof within 15 days of the scheduled date to appear unless the person sooner appears or otherwise responds in court to the satisfaction of the magistrate. Upon notice, the Director of the Division of Natural Resources shall suspend any privilege the person failing to appear or otherwise respond may have to hunt in this state, including any hunting license issued to the person by the Division of Natural Resources, until final judgment in the case and, if a judgment of guilty, until all costs, fines, fees, forfeitures, restitution, or penalties imposed are paid in full.

(3) In addition to the provisions of subdivision (1) of this subsection, if a person charged with any fishing violation described

in chapter 20 of this code fails to appear or otherwise respond in court, the magistrate court shall notify the Director of the Division of Natural Resources of the failure thereof within 15 days of the scheduled date to appear unless the person sooner appears or otherwise responds in court to the satisfaction of the magistrate. Upon notice, the Director of the Division of Natural Resources shall suspend any privilege the person failing to appear or otherwise respond may have to fish in this state, including any fishing license issued to the person by the Division of Natural Resources, until final judgment in the case and, if a judgment of guilty, until all costs, fines, fees, forfeitures, restitution, or penalties imposed are paid in full.

(k) In every criminal case which involves a misdemeanor violation, a magistrate may order restitution where appropriate when rendering judgment.

(l) Notwithstanding any provision of this code to the contrary, except as authorized by this section, payments of all costs, fines, fees, forfeitures, restitution, or penalties imposed by the magistrate court in civil or criminal matters shall be made in full. Partial payments of costs, fines, fees, forfeitures, restitution, or penalties made pursuant to this section shall be credited to amounts due in the following order:

(1) Regional Jail Fund;

(2) Worthless check payee;

(3) Restitution;

(4) Magistrate Court Fund;

(5) Worthless Check Fund;

(6) Per diem regional jail fee;

(7) Community Corrections Fund;

(8) Regional Jail Operational Fund;

(9) Law-Enforcement Training Fund;

(10) Crime Victims Compensation Fund;

(11) Court Security Fund;

(12) Courthouse Improvement Fund;

(13) Litter Control Fund;

(14) Sheriff arrest fee;

(15) Teen Court Fund;

(16) Other costs, if any;

(17) Fine.

CHAPTER 62. CRIMINAL PROCEDURE.

ARTICLE 4. RECOVERY OF FINES IN CRIMINAL CASES.

§62-4-17. Suspension of licenses for failure to appear in court; payment plan; failure to pay fines will result in late fee and judgment lien.

(a) Upon request and subject to the following requirements, the circuit clerk shall establish a payment plan for a person owing costs, fines, forfeitures, restitution, or penalties imposed by the court, so long as the person signs and files with the clerk, an affidavit, stating that he or she is financially unable to pay the costs, fines, forfeitures, restitution, or penalties imposed:

(1) A $25 administrative processing fee shall be paid at the time the payment form is filed or, in the alternative, the fee may be paid in no more than five equal monthly payments;

(2) Unless incarcerated, a person must enroll in a payment plan no later than 180 calendar days after the date the court enters the order assessing the costs, fines, forfeitures, restitution, or penalties; and

(3) If the person is incarcerated, he or she enroll in a payment plan within 180 calendar days after release.

(b) The West Virginia Supreme Court of Appeals shall develop a uniform payment plan form and financial affidavit for requests for the establishment of payment plan pursuant to subsection (a) of this section. The forms shall be made available for distribution to the offices of circuit clerks and circuit clerks shall use the payment plan form and affidavit form developed by the West Virginia Supreme Court of Appeals when establishing payment plans.

(c)(1) The payment plan shall specify: (A) The number of payments to be made; (B) the dates on which such payments are due; (C) the amount due for each payment; (D) all acceptable payment methods; and (E) the circumstances under which the person may receive a late fee, have a judgment lien recorded against them, or have the debt sent to collections for nonpayment.

(2) The monthly payment under the payment plan shall be calculated based upon all costs, fines, forfeitures, restitution, or penalties owed within the court, and shall be two percent of the person's annual net income divided by 12, or $10, whichever is greater.

(3) The court may review the reasonableness of the payment plan, and may on its own motion or by petition, waive, modify, or convert the outstanding costs, fines, forfeitures, restitution, or penalties to community service if the court determines that the individual has had a change in circumstances and is unable to comply with the terms of the payment plan.

(d) (1) The clerk may assess a $10 late fee each month if a person fails to comply with the terms of a payment plan, and if any payment due is not received within 30 days after the due date, and the person:

(A) Is not incarcerated;

(B) Has not brought the account current;

(C) Has not made alternative payment arrangements with the court; or

(D) Has not entered into a revised payment plan with the clerk before the due date.

(2) If, after 90 days, a payment has not been received, the clerk may do one or both of the following: (A) Record a judgment lien as described in subsection (f) of this section; or (B) consign the delinquent costs, fines, forfeitures, restitution, or penalties to a debt collection agency contained on the State Tax Commissioner's list of eligible debt collection agencies established and maintained pursuant to §14-1-18c of this code, an internal collection division, or both: *Provided,* That the entire amount of all delinquent payments collected shall be remitted to the court and may not be reduced by any collection costs or fees: *Provided, however,* That the collection fee may not exceed 25 percent of the delinquent payment amount. The clerk may send notices, electronically or by U.S. mail, to remind the person of an upcoming or missed payment.

(e)(1) If after 180 days of a judgment a person fails to enroll in a payment plan and fails to pay his or her costs, fines, forfeitures, restitution, or penalties, the clerk may assess a $10 late fee and shall notify the person of the following:

(A) That he or she is 180 days past due in the payment of costs, fines, forfeitures, restitution, or penalties imposed pursuant to a judgment of the court;

(B) That he or she has failed to enroll in a payment plan;

(C) Whether a $10 late fee has been assessed; and

(D) That he or she may be the subject of a judgment lien or have his or her debt sent to a collection agency if the overdue payment of costs, fines, forfeitures, restitution, or penalties is not resolved within 30 days of the date of the notice issued pursuant to this subsection.

(2) If after 30 days from the issuance of a notice pursuant to subdivision (1) of this subsection, a payment has not been received, the clerk may do one or both of the following:

(A) Record a judgment lien as described in subsection (f) of this section; or

(B) Consign the delinquent costs, fines, forfeitures, restitution, or penalties to a debt collection agency contained on the State Tax Commissioner's list of eligible debt collection agencies established and maintained pursuant to §14-1-18c of this code, an internal collection division, or both: *Provided,* That the entire amount of all delinquent payments collected shall be remitted to the court and may not be reduced by any collection costs or fees: *Provided, however,* That the collection fee may not exceed 25 percent of the delinquent payment amount.

(f) To record a judgment lien, the clerk shall notify the prosecuting attorney of the county of nonpayment and shall provide the prosecuting attorney with an abstract of judgment. The prosecuting attorney shall file the abstract of judgment in the office of the clerk of the county commission in the county where the defendant was convicted and in any county wherein the defendant resides or owns property. The clerk of the county commission shall record and index these abstracts of judgment without charge or fee to the prosecuting attorney, and when recorded, the amount stated to be owed in the abstract constitutes a lien against all property of the defendant: *Provided,* That when all the costs, fines, fees, forfeitures, restitution, or penalties for which an abstract of judgment has been recorded are paid in full, the clerk of the municipal court shall notify the prosecuting attorney of the county of payment and provide the prosecuting attorney with a release of judgment, prepared in accordance with the provisions of §38-12-1 of this code, for filing and recordation pursuant to the provisions of this subdivision. Upon receipt from the clerk, the prosecuting attorney shall file the release of judgment in the office of the clerk of the county commission in each county where an abstract of the judgment was recorded. The clerk of the county commission shall record and index the release of judgment without charge or fee to the prosecuting attorney.

(g) A person whose driver's license was suspended prior to July 1, 2020, solely for the nonpayment of costs, fines, forfeitures,

restitution, or penalties, if otherwise eligible, shall have his or her license reinstated:

(1) Upon payment in full of all outstanding costs, fines, forfeitures, restitution, or penalties and a $25 reinstatement fee paid to the Division of Motor Vehicles; or

(2) Upon establishing a payment plan pursuant to subsection (a) of this section and the payment of a $25 administrative fee. The clerk shall notify the Division of Motor Vehicles that a payment plan is in effect, and upon receipt of the notification, the division shall waive the reinstatement fee.

(h) If a person charged with a criminal offense fails to appear or otherwise respond in court after having received notice to do so, the court shall notify the Division of Motor Vehicles thereof within 15 days of the scheduled date to appear unless such person sooner appears or otherwise responds in court to the satisfaction of the court. Upon such notice, the Division of Motor Vehicles shall suspend the person's driver's license or privilege to operate a motor vehicle in this state until such time that the person appears as required.

CHAPTER 82

(H. B. 2918 - By Delegates D. Kelly, Hanna, Walker, Pushkin, Ellington, Holstein, Kessinger, Mandt, Reed, Rohrbach and L. Pack)

[Passed April 8, 2021; in effect ninety days from passage.]
[Approved by the Governor on April 26, 2021.]

AN ACT to amend and reenact §62-15B-1 and §61-15B-2 of the Code of West Virginia, 1931, relating to family drug treatment court; making permanent the pilot program; eliminating a report to the Legislative Oversight Commission on Health and Human Resources Accountability; and eliminating the ineligibility barrier for parents with a prior involuntary termination of parental rights of another child.

Be it enacted by the Legislature of West Virginia:

ARTICLE 15B. FAMILY DRUG TREATMENT COURT ACT.

§62-15B-1. Oversight and implementation of family drug treatment courts.

(a) The Supreme Court of Appeals of West Virginia may implement a Family Drug Treatment Court program.

(b) Family drug treatment courts are specialized court dockets within the existing structure of West Virginia's court system offering judicial monitoring of intensive treatment and strict supervision of individuals with substance use disorder involved in a child abuse and neglect case pursuant to §49-4-601*, et. seq*.

(c) The Supreme Court of Appeals of West Virginia may:

(1) Provide oversight for the distribution of funds for family drug treatment courts;

(2) Provide technical assistance to family drug treatment courts;

(3) Provide training for judges who preside over family drug treatment courts;

(4) Provide training to the providers of administrative, case management, and treatment services to family drug treatment courts; and

(5) Monitor the completion of evaluations of the effectiveness and efficiency of family drug treatment courts in the state.

(d) A state family drug treatment court advisory committee shall be established to:

(1) Evaluate and recommend standards for the planning and implementation of family drug treatment courts;

(2) Assist in the evaluation of their effectiveness and efficiency; and

(3) Encourage and enhance cooperation among agencies that participate in their planning and implementation.

(e) The committee shall be chaired by the Chief Justice of the Supreme Court of Appeals of West Virginia or his or her designee and shall include a circuit court judge who presides over a family drug treatment court; the Director of the Office of Drug Control Policy or the executive assistant to the director; Cabinet Secretary of the Department of Health and Human Resources or his or her designee; the commissioners or their designee of the following bureaus: the Bureau for Children and Families; the Bureau for Public Health; and the Bureau for Behavioral Health; the Executive Director of the West Virginia Prosecuting Attorneys Institute or his or her designee; the Executive Director of the West Virginia Public Defender Services or his or her designee; and the Executive

Director of West Virginia CASA Association or his or her designee.

(f) Each circuit selected to establish a family drug treatment court shall establish and maintain a local family drug treatment court advisory committee. Each advisory committee shall ensure quality, efficiency, and fairness in the planning, implementation, and operation of the family drug treatment court or courts that serve the jurisdiction or combination of jurisdictions. Advisory committee membership shall include, but shall not be limited to the following people or their designees:

(1) The family drug treatment court judge;

(2) The prosecuting attorney of the county;

(3) The public defender or a member of the county bar who represents individuals in child abuse and neglect cases;

(4) The Community Service Manager of the Bureau of Children and Families of the Department of Health and Human Resources;

(5) A court appointed special advocate, as applicable; and

(6) Any other individuals selected by the family drug treatment court advisory committee.

§62-15B-2. Establish eligibility and policies procedures.

(a) Each local family drug treatment court advisory committee shall establish criteria for the eligibility and participation of adult respondents who have been adjudicated an abusing or neglecting parent pursuant to §49-4-601(i) and who have been granted a post-adjudicatory improvement period pursuant to §49-4-610(2) and who have a substance use disorder. Adult respondents who have been adjudicated for such abuse that the department is not required to make reasonable efforts to preserve the family as defined in §49-4-604(c)(7) shall not be eligible for participation in any family drug treatment court: *Provided*, That if the court determines that the parental rights of the parent to another child have been terminated

involuntarily, the court, in its sole discretion and subject to other eligibility criteria as established by the local family drug treatment court advisory committee, may admit the parent to family drug treatment court.

(b) Participation by an adult respondent in a family drug treatment court shall be voluntary and made pursuant only to a written agreement into by and between the adult respondent and the department with concurrence of the court.

CHAPTER 83

(Com. Sub. for S. B. 392 - By Senators Hamilton, Lindsay, Baldwin, and Romano)

[Passed April 8, 2021; in effect 90 days from passage (July 7, 2021)]
[Approved by the Governor on April 19, 2021.]

AN ACT to amend §61-1-9 of the Code of West Virginia, 1931, as amended, relating to modifying the penalty for impersonation of a law-enforcement officer or official by adding a period of possible incarceration as a criminal penalty.

Be it enacted by the Legislature of West Virginia:

ARTICLE 1. CRIMES AGAINST THE GOVERNMENT.

§61-1-9. Impersonation of law-enforcement officer or official; penalty.

Any person who shall falsely represent himself or herself to be a law-enforcement officer or law-enforcement official or to be under the order or direction of any such person, or any person not a law-enforcement officer or law-enforcement official who shall wear the uniform prescribed for such persons, or the badge or other insignia adopted for use by such persons with the intent to deceive another person, is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than $100 nor more than $1,000, or confined in jail for not more than six months, or both fined and confined.

For purposes of this section, the terms law-enforcement officer and law-enforcement official shall be defined in §30-29-1 of this code, except that such terms shall not include members of the Department of Homeland Security and shall not include individuals hired by nonpublic entities for the provision of security services.

CHAPTER 84

(S. B. 496 - By Senator Weld)

[Passed April 7, 2021; in effect 90 days from passage (July 6, 2021)]
[Approved by the Governor on April 19, 2021.]

AN ACT to amend and reenact §61-11-18 of the Code of West Virginia, 1931, as amended, relating to punishment for second or third offense felony; and authorizing the use of a conviction under any law of the United States or any other state for an offense that has substantially similar elements of a qualifying offense.

Be it enacted by the Legislature of West Virginia:

ARTICLE 11. GENERAL PROVISIONS CONCERNING CRIMES.

§61-11-18. Punishment for second or third offense of felony.

(a) For purposes of this section, "qualifying offense" means any offenses or an attempt or conspiracy to commit any of the offenses in the following provisions of this code:

(1) §60A-4-401(i) and §60A-4-401(ii);

(2) §60A-4-406;

(3) §60A-4-409(b)(1), §60A-4-409(2), and §60A-4-409(3);

(4) §60A-4-411;

(5) §60A-4-414;

(6) §60A-4-415;

(7) §60A-4-416(a);

(8) §61-2-1;

(9) §61-2-4;

(10) §61-2-7;

(11) §61-2-9(a);

(12) §61-2-9a(d) and §61-2-9a(e);

(13) §61-2-9b;

(14) §61-2-9d;

(15) §61-2-10;

(16) §61-2-10b(b) and §61-2-10b(c);

(17) Felony provisions of §61-2-10b(d);

(18) §61-2-12;

(19) Felony provisions of §61-2-13;

(20) §61-2-14;

(21) §61-2-14a(a) and §61-2-14a(d);

(22) §61-2-14c;

(23) §61-2-14d(a) and §61-2-14d(b);

(24) §61-2-14f;

(25) §61-2-14h(a), §61-2-14h(b), and §61-2-14h(c);

(26) §61-2-16a(a) and §61-2-16a(b);

(27) Felony provisions of §61-2-16a(c);

(28) §61-2-28(d);

(29) §61-2-29(d) and §61-2-29(e);

(30) §61-2-29a;

(31) §61-3-1;

(32) §61-3-2;

(33) §61-3-3;

(34) §61-3-4;

(35) §61-3-5;

(36) §61-3-6;

(37) §61-3-7;

(38) §61-3-11;

(39) §61-3-13(a);

(40) §61-3-27;

(41) §61-3C-14b;

(42) §61-3E-5;

(43) §61-5-17(b), §61-5-17(f), §61-5-17(h), and §61-5-17(i);

(44) §61-5-27;

(45) §61-6-24;

(46) Felony provisions of §61-7-7;

(47) §61-7-12;

(48) §61-7-15;

(49) §61-7-15a;

(50) §61-8-12;

(51) §61-8-19(b);

(52) §61-8B-3;

(53) §61-8B-4;

(54) §61-8B-5;

(55) §61-8B-7;

(56) §61-8B-10;

(57) §61-8C-2;

(58) §61-8C-3;

(59) §61-8C-3a;

(60) §61-8D-2;

(61) §61-8D-2a;

(62) §61-8D-3;

(63) §61-8D-3a;

(64) §61-8D-4;

(65) §61-8D-4a;

(66) §61-8D-5;

(67) §61-8D-6;

(68) §61-10-31;

(69) §61-11-8;

(70) §61-11-8a;

(71) §61-14-2; and

(72) §17C-5-2(b), driving under the influence causing death.

(b) Except as provided by subsection (c) of this section, when any person is convicted of a qualifying offense and is subject to imprisonment in a state correctional facility therefor, and it is determined, as provided in §61-11-19 of this code, that such person had been before convicted in the United States of a crime punishable by imprisonment in state correctional facility, the court shall, if the sentence to be imposed is for a definite term of years, add five years to the time for which the person is or would be otherwise sentenced. Whenever in such case the court imposes an indeterminate sentence, the minimum term shall be twice the term of years otherwise provided for under such sentence.

(c) Notwithstanding any provision of this code to the contrary, when any person is convicted of first degree murder or second degree murder or a violation of §61-8B-3 of this code and it is determined, as provided in §61-11-19 of this code, that such person had been before convicted in this state of first degree murder, second degree murder, or a violation of §61-8B-3 of this code or has been so convicted under any law of the United States or any other state for an offense which has the same or substantially similar elements as any offense described in this subsection, such person shall be punished by imprisonment in a state correctional facility for life and is not eligible for parole.

(d) When it is determined, as provided in §61-11-19 of this code, that such person shall have been twice before convicted in the United States of a crime punishable by imprisonment in a state correctional facility which has the same or substantially similar elements as a qualifying offense, the person shall be sentenced to imprisonment in a state correctional facility for life: *Provided,* That prior convictions arising from the same transaction or series of transactions shall be considered a single offense for purposes of this section: *Provided, however*, That an offense which would otherwise constitute a qualifying offense for purposes of this subsection and subsection (b) of this section shall not be considered if more than 20 years have elapsed between that offense and the conduct underlying the current charge.

CHAPTER 85

(S. B. 537 - By Senators Azinger, Beach, Caputo, Grady, Karnes, Lindsay, Maynard, Phillips, Romano, Rucker, Smith, Weld, Woelfel, Woodrum, and Trump)

[Passed April 9, 2021; in effect 90 days from passage (July 8, 2021)]
[Approved by the Governor on April 26, 2021.]

AN ACT to amend and reenact §61-2-14a of the Code of West Virginia, 1931, as amended, relating to the offense of kidnapping generally; and clarifying elements of the offense.

Be it enacted by the Legislature of West Virginia:

ARTICLE 2. CRIMES AGAINST THE PERSON.

§61-2-14a. Kidnapping; penalty.

(a) Any person who unlawfully takes custody of, conceals, confines, transports, or restrains another person against his or her will by means of force, threat of force, duress, fraud, deceit, inveiglement, misrepresentation, or enticement with the intent to:

(1) Hold another person for ransom, reward, or concession;

(2) Inflict bodily injury;

(3) Terrorize the victim or another person; or

(4) Use another person as a shield or hostage, is guilty of a felony and, upon conviction thereof, shall be punished by imprisonment by the Division of Corrections and Rehabilitation for life, and, notwithstanding the provisions of §62-12-1 *et seq.* of this code, is not eligible for parole.

(b) The following exceptions apply to the penalty contained in subsection (a) of this section:

(1) A jury may, in their discretion, recommend mercy, and if the recommendation is added to their verdict, the person is eligible for parole in accordance with the provisions of §62-12-1 *et seq.* of this code;

(2) If the person pleads guilty, the court may, in its discretion, provide that the person is eligible for parole in accordance with the provisions of §62-12-1 *et seq.* of this code and, if the court so provides, the person is eligible for parole in accordance with the provisions of said article, in the same manner and with like effect as if the person had been found guilty by the verdict of a jury and the jury had recommended mercy;

(3) In all cases where the person against whom the offense is committed is returned, or is permitted to return, alive, without bodily harm having been inflicted upon him or her, but after ransom, money, or other thing, or any concession or advantage of any sort has been paid or yielded, the punishment shall be imprisonment by the Division of Corrections and Rehabilitation for a definite term of years not less than 20 nor more than 50; or

(4) In all cases where the person against whom the offense is committed is returned, or is permitted to return, alive, without bodily harm having been inflicted upon him or her, but without ransom, money, or other thing, or any concession or advantage of any sort having been paid or yielded, the punishment shall be imprisoned by the Division of Corrections and Rehabilitation for a definite term of years not less than 10 nor more than 30.

(c) For purposes of this section, "to use another as a hostage" means to seize or detain and threaten to kill or injure another in order to compel a third person or a governmental organization to do, or abstain from doing, any legal act as an explicit or implicit condition for the release of the person detained.

(d) Notwithstanding any other provision of this section, if a violation of this section is committed by a family member of a

minor abducted or held hostage and he or she is not motivated by monetary purposes, but rather intends to conceal, take, remove the child, or refuse to return the child to his or her lawful guardian in the belief, mistaken or not, that it is in the child's interest to do so, he or she is guilty of a felony and, upon conviction thereof, shall be imprisoned in a correctional facility for not less than one nor more than five years or fined not more than $1,000, or both imprisoned and fined.

(e) Notwithstanding any provision of this code to the contrary, where a law-enforcement agency of this state or a political subdivision thereof receives a complaint that a violation of the provisions of this section has occurred, the receiving law-enforcement agency shall notify any other law-enforcement agency with jurisdiction over the offense, including, but not limited to, the State Police and each agency so notified, shall cooperate in the investigation immediately.

(f) It is a defense to a violation of subsection (d) of this section, that the accused's action was necessary to preserve the welfare of the minor child and the accused promptly reported his or her actions to a person with lawful custody of the minor, to law enforcement, or to the Child Protective Services Division of the Department of Health and Human Resources.

CHAPTER 86

(Com. Sub. for S. B. 626 - By Senators Trump, Weld, Woelfel, Phillips, Romano, Baldwin, and Lindsay)

[Passed April 8, 2021; in effect 90 days from passage (July 7, 2021)]
[Approved by the Governor on April 19, 2021.]

AN ACT to amend and reenact §61-3-49 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §61-3-49c, all relating to the purchase and possession of certain scrap metal; updating the regulation of the purchase of automobile catalytic converters; requiring certain evidence and documentation from a seller of an automobile catalytic converter; placing restrictions on the payment for automobile catalytic converters; placing restrictions on the sale or transfer of an automobile catalytic converter by a scrap metal dealer; requiring scrap metal dealer to make a good faith effort to record identifying information on a catalytic convertor; creating the criminal offense of possession of a catalytic converter without proof of ownership or authority to possess; requiring that persons charged with possession of a single catalytic convertor are to be charged by citation and not be subject to arrest; establishing an absolute defense to the criminal action; creating the criminal offense of a person making an Internet-based ad soliciting the sale or purchase of a catalytic converter under certain conditions; and establishing criminal penalties.

Be it enacted by the Legislature of West Virginia:

ARTICLE 3. CRIMES AGAINST PROPERTY.

§61-3-49. Purchase of scrap metal by scrap metal purchasing businesses, salvage yards, or recycling facilities;

certificates, records, and reports of such purchases; criminal penalties.

(a) For the purposes of this section, the following terms have the following meanings:

(1) "Business registration certificate" has the same meaning ascribed to it in §11-12-2 of this code.

(2) "Purchaser" means any person in the business of purchasing scrap metal or used auto parts, any salvage yard owner or operator, or any public or commercial recycling facility owner or operator, or any agent or employee thereof, who purchases any form of scrap metal or used auto parts.

(3) "Scrap metal" means any form of copper, aluminum, brass, lead, or other nonferrous metal of any kind, a catalytic converter, or any materials derived from a catalytic converter, or steel railroad track and track material.

(b) In addition to any requirement necessary to do business in this state, a scrap metal dealer shall:

(1) Have a current valid business registration certificate from the Tax Commissioner;

(2) Register any scales used for weighing scrap metal with the Division of Labor Weights and Measures;

(3) Provide a notice of recycling activity to the Department of Environmental Protection; and

(4) Register as a scrap metal dealer with the Secretary of State, who shall maintain a list of scrap metal dealers and make it publicly available. The list shall include the dealer's business address, hours of operation, physical address, phone number, facsimile number, if any, and the name of the owners or principal officers of the business.

(c) Any purchaser of scrap metal shall make a record of such purchase that shall contain the following information for each transaction:

(1) The full name, permanent home and business addresses, and telephone number, if available, of the seller;

(2) A description and the motor vehicle license number of any vehicle used to transport the purchased scrap metal to the place of purchase;

(3) The time and date of the transaction;

(4) A complete description of the kind, character, and weight of the scrap metal purchased; and

(5) A statement of whether the scrap metal was purchased, taken as collateral for a loan, or taken on consignment.

(d) A purchaser also shall require and retain from the seller of the scrap metal the following:

(1) A signed certificate of ownership of the scrap metal being sold or a signed authorization from the owner of the scrap metal to sell the scrap metal; and

(2) A photocopy of a valid driver's license or identification card issued by the West Virginia Division of Motor Vehicles of the person delivering the scrap metal, or in lieu thereof, any other valid photo identification of the seller issued by any other state or the federal government: *Provided*, That, if the purchaser has a copy of the seller's valid photo identification on file, the purchaser may reference the identification that is on file, without making a separate photocopy for each transaction.

(e) It is unlawful for any purchaser to purchase any scrap metal without obtaining and recording the information required under subsections (c) and (d) of this section. The provisions of this subsection do not apply to purchases made at wholesale under contract or as a result of a bidding process: *Provided*, That the purchaser retains and makes available for review consistent with

subsection (g) of this section the contract, bill of sale, or similar documentation of the purchase made at wholesale under contract or as a result of a bidding process: *Provided, however*, That the purchaser may redact any pricing or other commercially sensitive information from the contract, bill of sale, or similar documentation before making it available for inspection.

(f) A purchaser of scrap metal may not knowingly purchase or possess a stainless steel or aluminum beer keg, whether damaged or undamaged, or any reasonably recognizable part thereof, for the intended purpose of reselling as scrap metal unless the purchaser receives the keg or keg parts from the beer manufacturer or its authorized representative.

(g) Using a form provided by the West Virginia State Police, or his or her own form, a purchaser of scrap metal shall retain the records required by this section at his or her place of business for not less than three years after the date of the purchase. Upon completion of a purchase, the records required to be retained at a purchaser's place of business shall be available for inspection by any law-enforcement officer or, upon written request and during the purchaser's regular business hours, by any investigator employed by a public utility or railroad to investigate the theft of public utility or railroad property: *Provided*, That in lieu of the purchaser keeping the records at his or her place of business, the purchaser shall file the records with the local detachment of the State Police and with the chief of police of the municipality or the sheriff of the county he or she is transacting business within 72 hours of completion of the purchase. The records shall be retained by the State Police and the chief of police of the municipality or the sheriff for a period of not less than three years.

(h) To the extent otherwise permitted by law, any investigator employed by a public utility or railroad to investigate the theft of public utility or railroad property may accompany a law-enforcement officer upon the premises of a purchaser in the execution of a valid warrant or assist law enforcement in the review of records required to be retained pursuant to this section.

(i) Upon the entry of a final determination and order by a court of competent jurisdiction, scrap metal found to have been misappropriated, stolen, or taken under false pretenses may be returned to the proper owner of the material.

(j) Nothing in this section applies to scrap purchases by manufacturing facilities that melt, or otherwise alter, the form of scrap metal and transform it into a new product or to the purchase or transportation of food and beverage containers or other nonindustrial materials having a marginal value per individual unit.

(k)(1) Nothing in this section applies to a purchaser of a motor vehicle on which a catalytic converter is installed, a scrap metal dealer purchasing a detached catalytic converter or converters accompanying the motor vehicle or motor vehicles from which it or they were removed, a purchaser of a catalytic converter intended for installation on a vehicle owned or leased by the purchaser, or any person who purchases, other than for purposes of resale, a catalytic converter, or a motor vehicle on which a catalytic converter is installed, for personal, family, household, or business use.

(2) In transactions not exempted by subdivision (1) of this subsection, any person delivering one or more automobile catalytic converters to a scrap metal dealer shall, in addition to the requirements set forth in subsection (c) of this section, execute a document containing the name of the person or entity from whom or which the catalytic converter or converters being delivered was received and affirming that he or she is the lawful owner of the catalytic converters or is authorized by the lawful owner to sell the catalytic converters. Next to his or her signature the person delivering the catalytic converter or converters shall place a clear impression of his or her index finger or thumb that is in ink and free of smearing, or the scrap metal dealer may elect to obtain the fingerprint electronically. This documentation shall be maintained consistent with subsection (c) of this section. Payment shall be made by check payable to the seller. No scrap metal dealer may process, sell, or remove a catalytic converter from its premises for at least 14 days after its acquisition: *Provided,* That the 14-day retention requirement may be reduced to five days if, within the

first consecutive five-day period, the scrap dealer provides all documentation required under this section to the local detachment of the State Police and: (A) The chief of police of the municipality; or (B) the sheriff of the county in which he or she is transacting business. A scrap metal dealer shall make a good faith effort to record any identifying information on a catalytic converter received or purchased and shall not purchase or take possession of a catalytic converter if the identifying information on it has been manually altered.

(l) Any person who knowingly or with fraudulent intent violates any provision of this section for which no penalty is specifically set forth, including the knowing failure to make a report or the knowing falsification of any required information, is guilty of a misdemeanor and, upon conviction of a first offense, shall be fined not less than $1,000 nor more than $3,000; upon conviction of a second offense, shall be fined not less than $2,000 and not more than $4,000 and, notwithstanding the provisions of §11-12-5 of this code, the court in which the conviction occurred shall issue an order directing the Tax Commissioner to suspend for a period of six months any business registration certificate held by that person; and upon conviction of a third or subsequent offense, shall be fined not less than $3,000 and not more than $5,000 and, notwithstanding the provisions of §11-12-5 of this code, the court in which the conviction occurred shall issue an order directing the Tax Commissioner to cancel any business registration certificate held by that person and state the date the cancellation takes effect.

(m) A person may not have or take possession of any scrap metal that he or she knows, or has reason to know, has been stolen or unlawfully obtained. Any person violating this subsection is guilty of larceny.

(n) A scrap metal dealer may not purchase, possess, or receive scrap metal that the scrap metal dealer knows, or has reason to know, has been stolen or unlawfully obtained by the seller. Any person violating this subsection is guilty of larceny.

(o) A scrap metal dealer may not purchase, possess, or receive any of the following items of scrap metal, or any reasonably

recognizable part thereof, without obtaining written documentation which reflects that the seller is authorized to possess and sell the item or items and that the seller is in lawful possession of the item of scrap metal:

(1) Utility access covers;

(2) Street light poles or fixtures;

(3) Road or bridge guard rails;

(4) Water meter covers;

(5) Highway or street signs;

(6) Traffic directional or traffic control signs;

(7) Traffic light signals;

(8) Any metal marked with any form of the name or initials of a governmental entity;

(9) Property marked as or readily identifiable as owned by a telephone, cable, electric, water, or other utility provider;

(10) Property owned and marked by a railroad;

(11) Cemetery markers or vases;

(12) Historical markers;

(13) Utility manhole covers and storm water grates;

(14) Fire hydrant or fire hydrant caps; or

(15) Twisted pair copper telecommunications wiring of 25 pair or greater in 19, 22, 24, or 26 gauge.

(p) Nothing in this section prohibits a scrap dealer from purchasing or taking possession of scrap metal knowing or having reason to know, that it is stolen or obtained illegally if it is done pursuant to a written agreement with law-enforcement officials.

§61-3-49c. Possession of a catalytic converter without documentation of ownership or authority to possess; advertising the sale or purchase of a catalytic converter.

(a) As used in this section, catalytic converter means a motor vehicle exhaust emission control that reduces toxic gases and pollutants from an internal combustion engine.

(b) Any person in possession of a catalytic converter which had previously been installed on a motor vehicle, or parts thereof, shall have in his or her possession written documentation of ownership or authorization to possess the catalytic converter. Any person who violates this subsection is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than $1,000 or confined in jail not more than one year, or both fined and confined.

(1) Each catalytic converter possessed in violation of this subsection shall constitute a separate offense.

(2) Any catalytic converter possessed in violation of this subsection is subject to seizure at the time of arrest.

(3) A person possessing a single catalytic converter in violation of this subsection shall for the offense be charged by citation and not subject to arrest for that offense.

(4) Notwithstanding the provisions of this subsection, presentation to the court in which charges alleging a violation of said subsection are pending sufficient evidence to show lawful ownership or authority to possess constitutes an absolute defense to the charge or charges.

(c) Any person placing an advertisement on an Internet-based platform, including, but not limited to, Facebook or Twitter, soliciting the sale or purchase of a catalytic converter in this state must have completed the requirements to be a scrap metal recycler in §61-3-49(b) of this code, including any other business requirements. Any person who violates this subsection shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than $1,000 or confined in jail not more than one year, or both fined and confined.

(1) Each catalytic converter possessed in violation of this subsection shall constitute a separate offense.

(2) Any catalytic converter possessed in violation of this subsection is subject to seizure at the time of arrest.

(3) Notwithstanding the provisions of this subsection, presentation to the court in which charges alleging a violation of said subsection are pending sufficient evidence to show lawful ownership or authority to possess constitutes an absolute defense to the charge or charges.

CHAPTER 87

(H. B. 2253 - By Delegate Steele)

[Passed April 5, 2021; in effect ninety days from passage.]
[Approved by the Governor on April 15, 2021.]

AN ACT to amend and reenact §29-22-12 of the Code of West Virginia, 1931, as amended, relating to forgery and other crimes concerning lottery tickets; requiring any sentencing be by determinate sentence.

Be it enacted by the Legislature of West Virginia:

ARTICLE 22. STATE LOTTERY ACT.

§29-22-12. Crimes; forgery, counterfeiting, etc. of lottery tickets; penalties.

Any person who, with intent to defraud, falsely makes, alters, forges, utters, passes, or counterfeits a lottery ticket is guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than $1,000, or be confined in a state correctional facility for not more than one year, or both fined and confined.

CHAPTER 88

(Com. Sub. for S. B. 702 - By Senators Trump and Romano)

[Passed April 10, 2021; in effect 90 days from passage (July 9, 2021)]
[Approved by the Governor on April 28, 2021.]

AN ACT to repeal §27-6A-12 of the Code of West Virginia, 1931, as amended; to amend and reenact §27-6A-1, §27-6A-2, §27-6A-3, §27-6A-4, §27-6A-5, §27-6A-6, §27-6A-8, and §27-6A-10 of said code; and to amend said code by adding thereto a new section, designated §27-6A-13, all relating generally to criminal competency and criminal responsibility of persons charged with, or found not guilty of, a crime by reason of mental illness; defining terms; allowing initial forensic evaluation of a defendant at a state mental health facility or state hospital under certain circumstances; adding criteria for evaluation or report by a qualified forensic evaluator; use of outpatient competency restoration services or inpatient management to attain competency; providing for records to be made available to chief medical officer; modifying the time for the completion of proceedings; updating outdated language in the code; creating criteria for competency restoration treatment; establishing maximum time periods for competency restoration treatment of persons charged with crimes involving nonviolent misdemeanors, nonviolent felonies, and violent misdemeanors and violent felonies; providing procedure for a court to review commitment status of persons committed to an inpatient mental health facility or state hospital prior to effective date of current amendments; providing for evaluation and disposition of a person found not guilty by reason of mental illness; providing for conditional release; providing procedures relating to an acquittee who violates terms of conditional release; repealing section requiring study and reporting; requiring Department of Health and Human Resources to pay

for competency restoration in certain circumstances; establishing the Dangerousness Assessment Review Board; specifying membership and duties of board; establishing internal effective dates; and authorizing the West Virginia Department of Health and Human Resources to propose legislative rules and emergency rules.

Be it enacted by the Legislature of West Virginia:

ARTICLE 6A. COMPETENCY AND CRIMINAL RESPONSIBILITY OF PERSONS CHARGED OR CONVICTED OF A CRIME.

§27-6A-1. Qualified forensic evaluator; qualified forensic psychiatrist; qualified forensic psychologist; definitions and requirements.

(a) For purposes of this article:

(1) "Competency restoration" means the treatment or education process for attempting to restore a criminal defendant's ability to consult with his or her attorney with a reasonable degree of rational understanding, including a rational and factual understanding of the court proceedings and charges against the person. Competency restoration services may be provided in a jail-based, outpatient, or inpatient setting as may be ordered by the court.

(2) "Competency to stand trial" means the ability of a criminal defendant to consult with his or her attorney with a reasonable degree of rational understanding, including a rational and factual understanding of the procedure and charges against him or her.

(3) "Court" or "court of record" means the circuit court with jurisdiction over the charge or charges against the defendant or acquittee.

(4) "Department" means the Department of Health and Human Resources.

(5) A "qualified forensic evaluator" is either a qualified forensic psychiatrist or a qualified forensic psychologist as defined in this section.

(6) A "qualified forensic psychiatrist" is:

(A) A psychiatrist licensed under the laws in this state to practice medicine who has completed post-graduate education in psychiatry in a program accredited by the Accreditation Council of Graduate Medical Education; and

(B) Board-eligible or board-certified in forensic psychiatry by the American Board of Psychiatry and Neurology or actively enrolled in good standing in a West Virginia training program accredited by the Accreditation Council of Graduate Medical Education to make the evaluator eligible for board certification by the American Board of Psychiatry and Neurology in forensic psychiatry or has two years of experience in completing court-ordered forensic criminal evaluations, including having been qualified as an expert witness by a West Virginia circuit court.

(7) A "qualified forensic psychologist" is:

(A) A licensed psychologist licensed under the laws of this state to practice psychology; and

(B) Board-eligible or board-certified in forensic psychology by the American Board of Professional Psychology or actively enrolled in good standing in a West Virginia training program approved by the American Board of Forensic Psychology to make the evaluator eligible for board certification in forensic psychology or has at least two years of experience in performing court-ordered forensic criminal evaluations, including having been qualified as an expert witness by a West Virginia circuit court.

(b) (A) qualified forensic evaluator may not perform a forensic evaluation on an individual under §27-1-1 *et seq.* of this code if the qualified forensic evaluator has been the individual's treating psychologist or psychiatrist within one year prior to any evaluation order.

§27-6A-2. Competency of defendant to stand trial; cause for appointment of qualified forensic evaluator; written report; observation period; rules.

(a) Whenever a court of record has reasonable cause to believe that a defendant in a criminal matter in which an indictment has been returned, or a warrant or summons issued, may be incompetent to stand trial, it shall, sua sponte, or upon motion filed by the state or by or on behalf of the defendant, order a forensic evaluation of the defendant's competency to stand trial to be conducted by a qualified forensic evaluator. If a court of record orders both a competency evaluation and a criminal responsibility or diminished capacity evaluation, the competency evaluation shall be performed first, and if the qualified forensic evaluator is of the opinion that the defendant is not competent to stand trial, no criminal responsibility or diminished capacity evaluation may be conducted absent further order of the court. The initial forensic evaluation may not be conducted at a state inpatient mental health facility unless the defendant is a current patient there or the court of record has found that the initial forensic evaluation cannot be performed at a community mental health center consistent with §27-2A-1(b)(4) of this code, at an outpatient facility, at a Division of Corrections and Rehabilitation Facility by a qualified forensic evaluator or at the office of the qualified forensic evaluator.

(b) The court shall require the party making the motion for the evaluation, and other parties as the court considers appropriate, to provide to the qualified forensic evaluator appointed under subsection (a) of this section any information relevant to the evaluations within 10 business days of its evaluation order. The information shall include, but not be limited to:

(1) A copy of the warrant or indictment;

(2) Information pertaining to the alleged crime, including statements by the defendant made to the police, investigative reports, and transcripts of preliminary hearings, if any;

(3) Any available psychiatric, psychological, medical, or social records that are considered relevant;

(4) A copy of the defendant's criminal record; and

(5) If the evaluations are to include a diminished capacity assessment, the nature of any lesser included criminal offenses.

(c) A qualified forensic evaluator shall schedule and arrange for the prompt completion of any court-ordered evaluation which may include record review and a defendant interview and shall, within 10 business days of the date of the completion of any evaluation, provide to the court of record a written, signed report of his or her opinion on the issue of competency to stand trial. If it is the qualified forensic evaluator's opinion that the defendant is not competent to stand trial, the report shall state whether the defendant is substantially likely to attain competency within the next 90 days and, as provided in this section, and, whether the defendant may attain competency by receiving competency restoration services at an outpatient mental health facility, outpatient mental health practice, or a jail-based competency restoration program, if available. If the qualified forensic evaluator determines that a defendant is likely to attain competency, but that competency restoration can only be attained by inpatient management in a mental health facility or state hospital, the qualified forensic evaluator shall set forth in his or her report the reasons why competency restoration is not viable in a less restrictive environment or a jail-based competency restoration program.

(d) The report of a qualified forensic evaluator as to a defendant's competency shall be performed with standards and requirements established by the department consistent with best medical practices. The report shall address:

(1) The forensic evaluator's opinion on the defendant's competency to stand trial;

(2) A diagnosis, if any;

(3) A proposed plan for competency attainment if appropriate; and

(4) An opinion as to whether the individual is dangerous to himself, herself, or others.

(5) The court may extend the 10-day period for filing the report if a qualified forensic evaluator shows good cause to extend the period, but in no event may the period exceed 30 days.

(e) If the court determines that the defendant has been uncooperative during the forensic evaluation ordered pursuant to subsection (a) of this section, or there have been one or more inadequate or conflicting forensic evaluations performed pursuant to subsection (a) of this section and the court has reason to believe that an observation period is necessary in order to determine if a person is competent to stand trial, the court may order the defendant be committed to a mental health facility designated by the department for a period not to exceed 15 days and an additional evaluation be conducted in accordance with subsection (a) of this section by a qualified forensic evaluator. The court shall order that at the conclusion of the 15-day observation period the sheriff of the county where the defendant was charged shall take immediate custody of the defendant for transportation and disposition as ordered by the court.

(f) A mental health facility not operated by the state has no obligation to admit and treat a defendant under this section if the facility has no outpatient competency restoration program established and recognized by the department, notwithstanding the provisions of §27-2A-1(b)(4) and §27-5-9 of this code: *Provided,* That medication administration and medication management for stabilization on an outpatient basis shall be provided by the mental health facility.

(g) A mental health facility not operated by the state that constitutes a charitable or public service organization as defined by §29-12-5(b)(1)(B) of this code, and provides competency restoration services pursuant to a court order may purchase liability coverage for injury or civil damages related to the provision of the services from the Board of Risk and Insurance Management.

(h) In consultation with the Supreme Court of Appeals, the secretary may propose rules for legislative approval in accordance with the provisions of §29A-3-1 *et seq.* of this code to implement the provisions of this article. The secretary may promulgate emergency rules, pursuant to §29A-3-15 of this code, as may be required.

§27-6A-3. Competency of defendant to stand trial determination; preliminary finding; hearing; evidence; disposition.

(a) Within five days of the receipt of the qualified forensic evaluator's report and opinion on the issue of competency to stand trial, the court of record shall make a preliminary determination on the issue of whether the defendant is competent to stand trial. If the court of record finds that the defendant is not competent, the court shall make a further finding as to whether there is a substantial likelihood that the defendant can attain competency within 90 days, and whether competency can be attained by receiving competency restoration services at an outpatient mental health facility, outpatient mental health practice, or a jail-based competency restoration program. If the court of record orders, or if the state or defendant or defendant's counsel within 20 days of receipt of the preliminary findings makes a motion for a hearing, then a hearing shall be held by the court of record within 15 days of the date of the motion for a hearing, absent good cause being shown for a continuance. If a hearing order or motion is not filed within 20 days, the findings of the court become the final order.

(b) At a hearing to determine a defendant's competency to stand trial, the defendant has the right to be present and he or she has the right to be represented by counsel and introduce evidence and cross-examine witnesses. The defendant shall be afforded timely and adequate notice of the issues at the hearing and shall have access to all forensic evaluator's opinions. All rights generally afforded to a defendant in criminal proceedings shall be afforded to a defendant in the competency proceedings, except trial by jury.

(c) The court of record pursuant to a preliminary finding or hearing on the issue of a defendant's competency to stand trial and

with due consideration of any forensic evaluation conducted pursuant to §27-6A-2 and §27-6A-3 of this code, shall make findings of fact upon a preponderance of the evidence as to the defendant's competency to stand trial based on whether or not the defendant has sufficient present ability to consult with his or her lawyer with a reasonable degree of rational understanding and whether he or she has a rational as well as a factual understanding of the proceedings against him or her.

(d) If at any point in the proceedings the defendant is found not competent to stand trial and substantially likely to attain competency, the court of record shall in the same order, upon the evidence, make further findings as to whether the defendant, in order to attain competency, should receive outpatient competency restoration services or if the attainment of competency requires inpatient management in a mental health facility or state hospital. If inpatient management is required, the court shall order the defendant be committed to an inpatient mental health facility or state hospital designated by the department to attain competency to stand trial and for a competency evaluation. The information and documents obtained as required by §27-6A-2(b) of this code, shall be provided to the chief medical officer of the mental health facility or state hospital within two days of entry of the court order. The term of this commitment under this subsection may not exceed 90 days from the time of entry into the facility except as otherwise provided by subsection (g) of this section.

(e) If at any point in the proceedings the defendant who has been indicted or charged with a misdemeanor or felony which does not involve an act of violence against a person is found not competent to stand trial and is found not substantially likely to attain competency after having received competency restoration services for the lesser of 180 days or the maximum sentence he or she would serve, if convicted of the offense, the defendant shall be released upon any conditions that the court determines to be appropriate and shall have the criminal charges dismissed without prejudice. The discharge order may, however, be stayed for 20 days to allow civil commitment proceedings to be instituted by the prosecutor pursuant to §27-5-1 *et seq.* of this code. The defendant

shall be immediately released from any inpatient facility unless civilly committed.

(f) Subject to subsection (i) of this section, if at any point in the proceedings a defendant who has been indicted or charged with a misdemeanor or felony involving an act of violence against a person is found not competent to stand trial and is found not substantially likely to attain competency after having received competency restoration services for 180 days, he or she shall be placed in the least restrictive setting and shall remain under the jurisdiction of the court upon any conditions that the court considers appropriate and the charges against him or her shall be held in abeyance. Release of the defendant may be stayed by the court for up to 30 days or longer for good cause shown, upon the filing of a motion to challenge the individual's release to a less restrictive setting. The circuit court may, sua sponte or upon motion, order that a dangerousness evaluation be performed by a qualified forensic evaluator to aid in its consideration of the proposed placement and supervision of the defendant. The dangerousness evaluation shall be paid for by the department and completed within 30 days. The defendant shall be immediately released from any inpatient facility to the least restrictive setting necessary under §27-5-1 *et seq.* of this code, unless civilly committed.

(g)(1) If it is determined that a defendant indicted or charged as provided under subsection (f) of this section has a substantial probability of regaining competency, then the defendant may be ordered to remain in a mental health facility or state hospital for an additional reasonable time until he or she attains competency, or the pending charges are disposed of according to law, whichever is earlier in time: *Provided,* That a defendant may not be held in the mental health facility or state hospital for a period longer than 240 days for competency restoration treatment.

(2) If, at the end of the maximum period for inpatient competency restoration treatment as provided in this subsection, the court finds that the defendant has not attained competency and is not substantially likely to attain competency in the foreseeable future, the defendant shall be released to the least restrictive setting

upon any conditions the court determines to be appropriate and the charges against him or her held in abeyance for the maximum sentence he or she could have received for the offense and the defendant released unless civil commitment proceedings have been initiated pursuant to §27-5-1 *et seq.* of this code. Notwithstanding anything in this article to the contrary, the court, in its discretion, may continue its oversight of the individual and the court's jurisdiction over the individual: *Provided,* That notwithstanding any provision of this article to the contrary, an individual may not be released as provided in this subsection until the court reviews and approves a recent dangerousness risk assessment of the individual and the chief medical officer's recommended release plan for the individual based on the needs of the individual and the public. The court shall order the discharge of the individual if it finds by a preponderance of the evidence that the individual has recovered from his or her mental illness and that he or she no longer creates a substantial risk of bodily injury to another person.

(3) When a defendant is released upon a condition the court determines to be appropriate and the charges against him or her are held in abeyance, the circuit court shall, no less frequently than every six months, review the defendant's circumstances to determine if his or her condition has deteriorated to the extent that requires civil commitment. Upon notice from the treatment provider that a defendant who is released on the condition that he or she continues treatment does not continue his or her treatment, the prosecuting attorney shall, by motion, cause the court to reconsider the defendant's release. Upon a showing that the defendant is in violation of the conditions of his or her release, the court may reorder the defendant to a mental health facility under the authority of the department which is the least restrictive setting that will allow for the protection of the public.

(h) The prosecuting attorney may, by motion, cause the competency to stand trial of a defendant subject to the court's jurisdiction pursuant to subsection (f) of this section or released pursuant to subsection (g) of this section to be determined by the court of record while the defendant remains under the jurisdiction of the court. The court may order a forensic evaluation of

competency to stand trial be conducted by a qualified forensic evaluator and a report rendered to the court in like manner as pursuant to §27-6A-2(a) and §27-6A-2(b) of this code.

(i) Any defendant found not competent to stand trial may at any time petition the court of record for a hearing on his or her competency but may do so not more than every six months.

(j) Notice of court findings of a defendant's competency to stand trial, of commitment for inpatient management to attain competency, of dismissal of charges, of order for inpatient management to protect the public, of release or conditional release, or any hearings to be conducted pursuant to this section shall be sent to the prosecuting attorney, the defendant, and his or her counsel, and the mental health facility or state hospital. Notice of a court release hearing or order for release or conditional release pursuant to subsection (e) of this section shall be provided to the victim or next of kin of the victim of the offense for which the defendant was charged by U.S. mail to such person's last known address. The burden is on the victim or next of kin of the victim to keep the court apprised of his or her current mailing address.

(k) A mental health facility not operated by the state is not obligated to admit or treat a defendant under this section except as otherwise provided by §27-2A-1(b)(4) and §27-5-9 of this code.

(l) Notwithstanding anything in this article to the contrary, for each individual who is committed to a state hospital, or committed to a state hospital and diverted to a licensed hospital prior to the effective date of the amendments to this section enacted during the regular session of the Legislature, 2021, who has received or will receive the maximum amount of competency restoration treatment authorized under this section prior to January 1, 2022, and who the medical director of the hospital and the court have determined is not restorable, the medical director shall inform the court and prosecutor of record for each such individual as soon as practicable but no later than March 31, 2022. The medical director shall immediately provide a recommendation to the court and prosecutor for the clinical disposition, placement, or treatment of each individual. The state hospital or prosecutor shall thereafter file a

civil commitment proceeding, if warranted, as provided under §27-5-1 *et seq.* of this code for each individual or make other appropriate recommendations to the court of record. The court shall hold any hearing for each individual as soon as practicable, but no later than June 30, 2022.

§27-6A-4. Criminal responsibility or diminished capacity evaluation; court jurisdiction over persons found not guilty by reason of mental illness.

(a) If the court of record finds, upon hearing evidence or representations of counsel for the defendant, that there is probable cause to believe that the defendant's criminal responsibility or diminished capacity will be a significant factor in his or her defense, the court shall appoint a qualified forensic evaluator to conduct a forensic evaluation of the defendant's state of mind at the time of the alleged offense. However, if a qualified forensic evaluator is of the opinion that the defendant is not competent to stand trial then no criminal responsibility or diminished capacity evaluation may be conducted. The forensic evaluation may not be conducted at a state inpatient mental health facility unless the defendant has been ordered to a mental health facility or state hospital in accordance with §27-6A-2(c) or §27-6A-3(f) or §27-6A-3(h) of this code. To the extent possible, qualified forensic evaluators who have conducted evaluations of competency under §27-6A-2(a) of this code, shall be used to evaluate criminal responsibility or diminished capacity under this subsection and all evaluations shall be performed consistent with the department's program standards and requirements for the reports.

(b) The court shall require the party making the motion for the evaluations, and other parties as the court considers appropriate, to provide to the qualified forensic evaluator appointed under subsection (a) of this section any information relevant to the evaluation within 10 business days of its evaluation order. The information shall include, but not be limited to:

(1) A copy of the warrant or indictment;

(2) Information pertaining to the alleged crime, including statements by the defendant made to the police, investigative reports, and transcripts of preliminary hearings, if any;

(3) Any available psychiatric, psychological, medical, or social records that are considered relevant;

(4) A copy of the defendant's criminal record; and

(5) If the evaluation is to include a diminished capacity assessment, the nature of any lesser criminal offenses.

(c) A qualified forensic evaluator shall schedule and arrange within 15 days of the receipt of appropriate documents the completion of any court-ordered evaluation which may include record review and defendant interview and shall, within 10 business days of the date of the completion of any evaluation, provide to the court of record a written, signed report of his or her opinion on the issue of criminal responsibility, and if ordered, on diminished capacity. The court may extend the 10-day period for filing the report if a qualified forensic evaluator shows good cause to extend the period, but in no event may the period exceed 30 days. If there are no objections by the state or defense counsel, the court may, by order, dismiss the requirement for a written report if the qualified forensic evaluator's opinion may otherwise be made known to the court and interested parties.

(d) If the court determines that the defendant has been uncooperative during a forensic evaluation ordered pursuant to subsection (a) of this section or there are inadequate or conflicting forensic evaluations performed pursuant to subsection (a) of this section, and the court has reason to believe that an observation period and additional forensic evaluation or evaluations are necessary in order to determine if a defendant was criminally responsible or with diminished capacity, the court may order the defendant be admitted to a mental health facility or state hospital designated by the department for a period not to exceed 15 days and an additional evaluation be conducted and a report rendered in like manner as subsections (a) and (b) of this section by a qualified forensic evaluator. At the conclusion of the observation period, the

court shall enter a disposition order and the sheriff of the county where the defendant was charged shall take immediate custody of the defendant for transportation and disposition as ordered by the court.

(e) If the verdict in a criminal trial is a judgment of not guilty by reason of mental illness, the court shall determine on the record the offense or offenses of which the acquittee could have otherwise been convicted, and the maximum sentence he or she could have received. The acquittee shall remain under the court's jurisdiction until the expiration of the maximum sentence or until discharged by the court. The court shall order a qualified forensic evaluator to conduct a dangerousness evaluation to include dangerousness risk factors to be completed within 30 days of admission to the mental health facility and a report rendered to the court within 10 business days of the completion of the evaluation. The dangerousness evaluation shall be performed consistent with the department's program standards and requirements for such evaluations. The medical director of the mental health facility shall provide the court a written clinical summary report of the defendant's condition at least annually during the time of the court's jurisdiction. The court's jurisdiction continues an additional 10 days beyond any expiration to allow civil commitment proceedings to be instituted by the prosecutor pursuant to §27-5-1 *et seq.* of this code. The defendant shall then be immediately released from the facility unless civilly committed.

(f) In addition to any court-ordered evaluations completed pursuant to §27-6A-2, §27-6A-3, and §27-6A-4 of this code, the defendant or the state has the right to an evaluation or evaluations by a forensic evaluator or evaluators of his or her choice and at his or her expense.

(g) The court shall place persons acquitted under subsection (e) of this section in the temporary custody of the department for evaluation to determine if the acquittee may be released with or without conditions or if the acquittee requires commitment. The court may authorize that the evaluation be conducted on an outpatient basis. If the court authorizes an outpatient evaluation, the department shall determine, on the basis of all information

available, whether the evaluation shall be conducted on an outpatient basis or whether the acquittee shall be confined in a hospital for evaluation. If the court does not authorize an outpatient evaluation, the acquittee shall be confined in a hospital for evaluation. If an acquittee who is being evaluated on an outpatient basis fails to comply with the evaluation, the department shall petition the court for an order to confine the acquittee in a hospital for the evaluation. A copy of the petition shall be sent to the acquittee's attorney and the prosecutor of the acquittee's case. The evaluation shall be conducted by a qualified clinical evaluator skilled in the diagnosis of mental illness and intellectual disability and qualified by training and experience to perform the evaluations. The evaluator shall determine whether the acquittee currently has mental illness or intellectual disability and shall assess the acquittee and report on his or her condition and need for hospitalization with respect to the factors set forth in §27-6A-5(b) of this code. The evaluator shall conduct an examination and report his or her findings separately within 30 days of the department's assumption of custody of the acquittee. Copies of the report shall be sent to the acquittee's attorney, the prosecuting attorney for the jurisdiction where the person was acquitted, and the comprehensive community mental health center designated by the department. If the evaluator recommends conditional release or release without conditions, the court shall extend the evaluation period to permit the department and the comprehensive community mental health center or licensed behavioral health provider to jointly prepare a conditional release or discharge plan, as applicable, prior to the hearing.

(h) A mental health facility not operated by the state is not required to admit or treat a defendant or acquittee under this section except as otherwise provided by §27-2A-1(b)(4) and §27-5-9 of this code.

§27-6A-5. Release of acquittee to less restrictive environment; discharge from jurisdiction of the court; conditional release; and commitment.

(a) Upon receipt of the evaluation report as provided in §27-6A-4(e) of this code, and, if applicable, a conditional release or

discharge plan, the court shall schedule the matter for hearing to determine the appropriate disposition of the acquittee. The hearing shall be conducted within 30 days receipt of the evaluation report. The circuit court may, sua sponte or upon motion, order that an independent dangerousness evaluation by an independent qualified forensic evaluator be performed to aid in its consideration of the proposed placement and supervision of the acquittee. The dangerousness evaluation shall be paid for by the department and shall be performed consistent with the department's program standards and requirements for the evaluations. As an alternative to ordering an independent dangerousness assessment, the court may avail itself of the services of the Dangerousness Assessment Review Board established in §27-6A-12 of this code. Except as otherwise ordered by the court, the attorney who represented the defendant at the criminal proceedings shall represent the acquittee through the proceedings pursuant to this section. The matter may be continued on motion of either party for good cause shown. The acquittee shall be provided with adequate notice of the hearing, of the right to be present at the hearing, of the right to assistance of counsel in preparation for and during the hearing, and the right to introduce evidence and cross-examine witnesses at the hearing. The hearing is a civil proceeding.

(b) At the conclusion of the hearing, the court cannot commit the acquittee to a mental health facility or state hospital unless it finds by clear and convincing evidence that the acquittee has a mental illness or an intellectual disability, and that because of the nature or severity of acquittee's condition, the acquittee cannot be treated on an outpatient basis and requires inpatient management. The decision of the court shall be based upon consideration of the following factors:

(1) To what extent the acquittee has mental illness or an intellectual disability;

(2) The likelihood that the acquittee will engage in conduct presenting a substantial risk of bodily harm to other persons or to himself or herself in the foreseeable future;

(3) The likelihood that the acquittee can be adequately controlled with supervision and treatment on an outpatient basis; and

(4) Any other factors reflected in §27-5-4 of this code.

(c) If inpatient hospitalization is ordered by the court, the mental health facility or state hospital shall periodically provide written clinical reports to the court regarding the continued need for hospitalization as provided by this subsection. A report shall be sent to the court after the initial six months of treatment and every two years after the initial report is made. The court shall provide copies of the reports to the prosecutor and attorney for the acquittee. Within 30 days after receipt of the report, the court shall hold a hearing to consider the issue of the continued commitment of the acquittee. The acquittee may request a change in the conditions of confinement, and the trial court shall conduct a hearing on that request if six months or more have elapsed since the most recent hearing was conducted under this section.

(d) Notwithstanding anything in this section to the contrary, the court shall order the acquittee released if the court finds that the acquittee meets the criteria for conditional release as set forth in subsection (f) of this section. The court may order any other conditions it determines to be necessary in accordance with subsection (c) of this section. If the court finds that the acquittee does not need inpatient hospitalization nor does the acquittee meet the criteria for conditional release, the court shall release the acquittee without conditions, provided the court has approved a discharge plan prepared by the appropriate comprehensive community mental health center or licensed behavioral health provider in consultation with the department.

(e) The court shall order that any person, acquitted by reason of mental illness and committed pursuant to this section, who is sentenced to a term of incarceration for any other offense in the same proceeding or in any proceeding conducted prior to the proceeding in which the person is acquitted by reason of mental illness, complete any sentence imposed for the other offense prior to being placed in the custody of the department until released from

commitment pursuant to §27-1-1 *et seq.* of this code. The court shall order that any acquittee by reason of mental illness and committed pursuant to this section who is sentenced to a term of incarceration in any proceeding conducted during the period of commitment be transferred to the custody of the correctional facility where he or she is to serve his or her sentence, and, upon completion of his or her sentence, that person shall be placed in the custody of the department until released from commitment pursuant to §27-1-1 *et seq* of this code.

(f) At any time the court considers the acquittee's need for inpatient hospitalization pursuant to this section, the court shall place the acquittee on conditional release if it finds that: (1) Based on consideration of the factors which the court must consider in its commitment decision as provided in subsection (b) of this section, the acquittee does not need inpatient hospitalization but may require outpatient treatment or monitoring to prevent his or her condition from deteriorating to a degree that he or she would become likely to cause serious harm to self or others; (2) appropriate outpatient supervision and treatment are reasonably available; (3) the acquittee is not mentally ill or does not have significant dangerousness risk factors associated with mental illness; (4) there is significant reason to believe that the acquittee, if conditionally released, would comply with the conditions specified; and (5) conditional release will not present an undue risk to public safety. The court shall subject a conditionally released acquittee to any orders and conditions it determines will best meet the acquittee's need for treatment and supervision and best serve the interests of justice and society.

(g) The comprehensive community mental health center or licensed behavioral health provider designated by the department shall implement the court's conditional release orders and shall submit written reports to the court on the acquittee's progress and adjustment in the community no less frequently than every six months. An acquittee's conditional release shall not be revoked solely because of his or her voluntary admission to a state hospital.

(h) If at any time the court that conditionally released an acquittee pursuant to subsection (f) of this section finds reasonable

cause exists to believe that an acquittee on conditional release has violated the conditions of his or her release or is no longer a proper subject for conditional release based on application of the criteria for conditional release and requires inpatient hospitalization, it may order an evaluation of the acquittee by a qualified forensic evaluator. If the court, based on the evaluation and after hearing evidence on the issue, finds by a preponderance of the evidence that an acquittee on conditional release has violated the conditions of his or her release or is no longer a proper subject for conditional release based on application of the criteria for conditional release and has a mental illness or an intellectual disability and requires inpatient hospitalization, the court may revoke the acquittee's conditional release and order him or her returned to the custody of the department.

(i) At any hearing pursuant to this section, the acquittee shall be provided with adequate notice of the hearing, of the right to be present at the hearing, of the right to the assistance of counsel in preparation for and during the hearing, and of the right to introduce evidence and cross-examine witnesses at the hearing. The hearing shall be scheduled on an expedited basis. Written notice of the hearing shall be provided to the prosecuting attorney for the committing jurisdiction. The hearing is a civil proceeding.

(j) If during the term of the acquittee's conditional release the court finds that the acquittee has violated the conditions of his or her release, but does not require inpatient hospitalization, the court may hold the acquittee in contempt of court for violation of the conditional release order.

(k) The court may modify the conditions of release or remove the conditions placed on release pursuant to subsection (f) of this section upon petition by the comprehensive community mental health center or licensed behavioral health provider, the prosecuting attorney, the acquittee, or upon its own motion based upon the report of the comprehensive community mental health center or behavioral health provider: *Provided*, That the acquittee may petition no more frequently than annually and only six months after the conditional release order is entered. Upon petition, the

court shall require the comprehensive community mental health center or behavioral health provider to provide a report on the acquittee's progress while on conditional release.

(l) As it considers appropriate and based on the report from the comprehensive community mental health center or behavioral health provider and any other evidence provided to it, the court may issue a proposed order for modification or removal of conditions. The court shall provide notice of the order, and their right to object to it, within 10 days of its issuance, to the acquittee, the comprehensive community mental health center or behavioral health provider, and the prosecuting attorney for the committing jurisdiction and for the jurisdiction where the acquittee is residing on conditional release. The proposed order shall become final if no objection is filed within 10 days of its issuance. If an objection is filed, the court shall conduct a hearing at which the acquittee, the prosecuting attorney, and the comprehensive community mental health center or behavioral health provider have an opportunity to present evidence challenging the proposed order. At the conclusion of the hearing, the court shall issue an order specifying conditions of release or removing existing conditions of release, as the court considers appropriate.

§27-6A-6. Judicial hearing of defendant's defense other than not guilty by reason of mental illness.

If a defendant who has been found to be not competent to stand trial believes that he or she can establish a defense of not guilty to the charges pending against him or her, other than the defense of not guilty by reason of mental illness, the defendant may request an opportunity to offer a defense thereto on the merits before the court which has criminal jurisdiction. If the defendant is unable to obtain legal counsel, the court of record shall appoint counsel for the defendant to assist him or her in supporting the request by affidavit or other evidence. If the court of record in its discretion grants the request, the evidence of the defendant and of the state shall be heard by the court of record sitting without a jury. If after hearing the petition the court of record finds insufficient evidence

to support a conviction, it shall dismiss the indictment and order the release of the defendant from criminal custody. The release order, however, may be stayed for 10 days to allow civil commitment proceedings to be instituted by the prosecutor pursuant to §27-5-1 *et seq.* of this code: *Provided,* That a defendant committed to a mental health facility or state hospital pursuant to §27-6A-3 (d) or §27-6A-3 (f) shall be immediately released from the facility unless civilly committed.

§27-6A-8. Credit for time; expenses.

(a) If a person is convicted of a crime, any time spent in involuntary confinement in a mental health facility or state hospital as a result of being charged with the crime shall be credited to the sentence.

(b) All inpatient care and treatment shall be paid by the department.

(c) All competency restoration services not covered by other government, third-party funding sources, or other grant agreements shall be paid by the department.

§27-6A-10. Medications and management of court-ordered individuals.

(a) At any time pursuant to §27-6A-2, §27-6A-3, or §27-6A-4 of this code, an individual is court ordered to a mental health facility or state hospital, the individual has the right to receive treatment under the standards of medical management.

(b) An individual with health care decision-making capacity may refuse medications or other management unless court-ordered to be treated, or unless a treating clinician determines that medication or other management is necessary in emergencies or to prevent danger to the individual or others: *Provided,* That medication management intended to treat an individual's condition that causes or contributes to incompetency shall constitute treatment.

§27-6A-12. Study of adult criminal competency and responsibility issues; requiring and requesting report and proposed legislation; submission to legislature.

[Repealed.]

§27-6A-13. Dangerousness Assessment Review Board.

(a) There is hereby created the Dangerousness Assessment Advisory Board. The board shall consist of the following persons:

(1) The Commissioner of the Bureau of Behavioral Health and Health Facilities, or a designee of the commissioner who was not involved in the decision under review;

(2) The forensic coordinator of the state;

(3) A representative of the protection and advocacy system for the state as defined by 29 U.S.C. § 794e, 42 U.S.C. §15041 *et seq,*; and 42 U.S.C. § 10801 *et seq*.;

(4) An employee of the Division of Corrections and Rehabilitation designated by the commissioner with experience in inmate classification;

(5) An employee of the Division of Rehabilitation Services with experience in independent living programs;

(6) Two board-certified forensic psychiatrists appointed by the Governor with the advice and consent of the Senate; and

(7) Two psychologists who are West Virginia qualified forensic evaluators with at least five years demonstrated experience in state and federal courts, appointed by the Governor with the advice and consent of the Senate.

(b) The purpose of the board is to provide opinion, guidance, and informed objective expertise to circuit courts as to the appropriate level of custody or supervision necessary to ensure that persons who have been judicially determined to be incompetent to stand trial and not restorable or not guilty by reason of mental

illness are in the least restrictive environment available to protect the person, other persons, and the public generally.

(c) A circuit court when reviewing a proposed less restrictive placement for a person found incompetent to stand trial and not restorable or not guilty by reason of mental illness may request the assistance of the board in considering the proposed placement plan. The circuit court may request that the medical director convene the board to seek its opinion or opinions on the appropriateness of the proposed placement. The secretary shall provide necessary suggestions, space, and support staff to the board to conduct its activities.

(d) The provisions of §6-9A-1 *et seq.* and §29B-1-1 *et seq.* of this code are inapplicable to the operation of the board.

(e) In performing its duties under this section, the board shall have access to all court records, and medical and mental health records available to the court and all documents of any type used by the medical director in developing the proposed placement plan.

(f) Each member of the board whose regular salary is not paid by the State of West Virginia shall be paid the same compensation and expense reimbursement that is paid to members of the Legislature for their interim duties as recommended by the Citizens Legislative Compensation Commission and authorized by law for each day or portion thereof engaged in the discharge of official duties. Reimbursement for expenses shall not be made, except upon an itemized account, properly certified by the members of the board. All reimbursement for expenses shall be paid out of the State Treasury upon a requisition upon the State Auditor.

(g) A board member shall recuse himself or herself if the board member has previously evaluated a person whose classification or placement is under review.

(h) The members of the board shall be immune from suit and liability, either personally or in their official capacity, for any claim for damage to or loss of property or personal injury or other civil liability caused or arising out of any actual or alleged act, error, or

omission that occurred within the scope of their board, duties, or responsibilities: *Provided,* That nothing in this subsection shall be construed to protect any person from suit and/or liability for any damage, loss, injury, or liability caused by the intentional or willful and wanton misconduct of that person.

CHAPTER 89

(H. B. 2888 - By Delegate Higginbotham)

[Passed April 2, 2021; in effect ninety days from passage.]
[Approved by the Governor on April 19, 2021.]

AN ACT to amend and reenact §53-4A-1 of the West Virginia Code, 1931, as amended, relating to clarifying when a contention is adjudicated; defining forensic scientific evidence; and providing that no additional liabilities are created.

Be it enacted by the Legislature of West Virginia:

ARTICLE 4A. POST-CONVICTION HABEAS CORPUS.

§53-4A-1. Right to habeas corpus for post-conviction review; jurisdiction; when contention deemed finally adjudicated or waived; effect upon other remedies.

(a) Any person convicted of a crime and incarcerated under sentence of imprisonment therefor who contends that there was such a denial or infringement of his or her rights as to render the conviction or sentence void under the Constitution of the United States or the Constitution of this state, or both, or that the court was without jurisdiction to impose the sentence, or that the sentence exceeds the maximum authorized by law, or that the conviction or sentence is otherwise subject to collateral attack upon any ground of alleged error heretofore available under the common law or any statutory provision of this state, may, without paying a filing fee, file a petition for a writ of habeas corpus ad subjiciendum, and prosecute the same, seeking release from such illegal imprisonment, correction of the sentence, the setting aside of the plea, conviction and sentence, or other relief, if and only if such contention or contentions and the grounds in fact or law relied upon in support thereof have not been previously and finally adjudicated

or waived in the proceedings which resulted in the conviction and sentence, or in a proceeding or proceedings on a prior petition or petitions filed under the provisions of this article, or in any other proceeding or proceedings which the petitioner has instituted to secure relief from such conviction or sentence. Any such petition shall be filed with the clerk of the Supreme Court of Appeals, or the clerk of any circuit court, said Supreme Court of Appeals and all circuit courts of this state having been granted original jurisdiction in habeas corpus cases by the Constitution of this state, or with the clerk of any court of record of limited jurisdiction having criminal jurisdiction in this state. Jurisdiction is hereby conferred upon each and every such court of record of limited jurisdiction having criminal jurisdiction (hereinafter for convenience of reference referred to simply as a "statutory court") to refuse or grant writs of habeas corpus ad subjiciendum in accordance with the provisions of this article and to hear and determine any contention or contentions and to pass upon all grounds in fact or law relied upon in support thereof in any proceeding on any such writ made returnable thereto in accordance with the provisions of this article. All proceedings in accordance with this article shall be civil in character and shall under no circumstances be regarded as criminal proceedings or a criminal case.

(b) For the purposes of this article, a contention or contentions and the grounds in fact or law relied upon in support thereof shall be deemed to have been previously and finally adjudicated only when at some point in the proceedings which resulted in the conviction and sentence, or in a proceeding or proceedings on a prior petition or petitions filed under the provisions of this article, or in any other proceeding or proceedings instituted by the petitioner to secure relief from his or her conviction or sentence, there was a decision on the merits thereof after a full and fair hearing thereon and the time for the taking of an appeal with respect to such decision has not expired or has expired, as the case may be, or the right of appeal with respect to such decision has been exhausted, unless said decision upon the merits is clearly wrong.

(1) For purposes of this article, and notwithstanding any other provisions of this article, a contention or contentions shall not be deemed to be previously and finally adjudicated when either relevant forensic scientific evidence exists that was not available to be offered by a petitioner at the time of the petitioner's conviction or which undermines forensic scientific evidence relied on by the state at trial; and there is a reasonable probability there would be a different outcome at trial.

(2) For purposes of this section:

(A) "Forensic science" is the application of scientific or technical practices to the recognition, collection, analysis, and interpretation of evidence for criminal and civil law or regulatory issues.

(B) "Forensic scientific evidence" shall include scientific or technical knowledge; a testifying forensic analyst's or expert's scientific or technical knowledge or opinion; reports and/or testimony offered by experts or forensic analysts; scientific standards; or a scientific method or technique upon which the relevant forensic scientific evidence is based.

(C) "Scientific knowledge" shall be defined broadly to include the knowledge of the general scientific community and all fields of scientific knowledge on which those fields or disciplines rely and shall not be limited to practitioners or proponents of a particular scientific or technical field or discipline.

(c) For the purposes of this article, a contention or contentions and the grounds in fact or law relied upon in support thereof shall be deemed to have been waived when the petitioner could have advanced, but intelligently and knowingly failed to advance, such contention or contentions and grounds before trial, at trial, or on direct appeal (whether or not said petitioner actually took an appeal), or in a proceeding or proceedings on a prior petition or petitions filed under the provisions of this article, or in any other proceeding or proceedings instituted by the petitioner to secure relief from his or her conviction or sentence, unless such contention or contentions and grounds are such that, under the Constitution of

the United States or the Constitution of this state, they cannot be waived under the circumstances giving rise to the alleged waiver. When any such contention or contentions and grounds could have been advanced by the petitioner before trial, at trial, or on direct appeal (whether or not said petitioner actually took an appeal), or in a proceeding or proceedings on a prior petition or petitions filed under the provisions of this article, or in any other proceeding or proceedings instituted by the petitioner to secure relief from his or her conviction or sentence, but were not in fact so advanced, there shall be a rebuttable presumption that the petitioner intelligently and knowingly failed to advance such contention or contentions and grounds. For the purposes of this article, and notwithstanding any other provisions of this article, a contention or contentions shall not be deemed to have been waived when either relevant forensic scientific evidence exists that was not available to be offered by a petitioner at the time of the petitioner's conviction or which undermines forensic scientific evidence relied on by the state at trial; and there is a reasonable probability there would be a different outcome at trial.

(d) This section does not create additional liabilities, beyond those already recognized, for an expert who repudiates his or her original opinion provided at a hearing or trial or whose opinion has been undermined by later scientific research or technological advancements.

(e) For the purposes of this article, and notwithstanding any other provisions of this article, no such contention or contentions and grounds shall be deemed to have been previously and finally adjudicated or to have been waived where, subsequent to any decision upon the merits thereof or subsequent to any proceeding or proceedings in which said question otherwise may have been waived, any court whose decisions are binding upon the Supreme Court of Appeals of this state or any court whose decisions are binding upon the lower courts of this state holds that the Constitution of the United States or the Constitution of West Virginia, or both, impose upon state criminal proceedings a procedural or substantive standard not theretofore recognized, if and only if such standard is intended to be applied retroactively and

would thereby affect the validity of the petitioner's conviction or sentence.

(f) The writ of habeas corpus ad subjiciendum provided for in this article is not a substitute for nor does it affect any remedies which are incident to the criminal proceedings in the trial court or any remedy of direct review of the conviction or sentence, but such writ comprehends and takes the place of all other common law and statutory remedies, including, but not limited to, the writ of habeas corpus ad subjiciendum provided for in §53-4-1 of this code, which have heretofore been available for challenging the validity of a conviction or sentence and shall be used exclusively in lieu thereof: *Provided,* That nothing contained in this article shall operate to bar any proceeding or proceedings in which a writ of habeas corpus ad subjiciendum is sought for any purpose other than to challenge the legality of a criminal conviction or sentence of imprisonment therefor. A petition for a writ of habeas corpus ad subjiciendum in accordance with the provisions of this article may be filed at any time after the conviction and sentence in the criminal proceedings have been rendered and imposed and the time for the taking of an appeal with respect thereto has expired or the right of appeal with respect thereto has been exhausted.

CHAPTER 90

(H. B. 3078 - By Delegates Capito, Lovejoy, Fast, Pushkin, Brown, Fluharty, Queen, Pinson, L. Pack, Bruce and Zukoff)

[Passed April 10, 2021; in effect ninety days from passage.]
[Approved by the Governor on April 28, 2021.]

AN ACT to amend and reenact §62-12-13 of the Code of West Virginia, 1931, as amended, relating to the powers and duties of the parole board; providing as a new parole eligibility requirement the successful completion of certain rehabilitative and educational programs during incarceration; providing that an inmate who is unable, through no fault of the inmate, to complete the required rehabilitative and educational programs, but who has completed all other parole eligibility requirements, may be granted parole under certain conditions; authorizing completion of specified rehabilitative and educational programs outside of a correctional institution as a special condition of a person's parole term; authorizing the Parole Board to consider whether completion of the outstanding amount of rehabilitative and educational programming would interfere with an inmate's successful reintegration into society; and requiring the Commissioner of Corrections and Rehabilitation to develop, maintain, and make publicly available a list of certain rehabilitative and educational programs outside of the correctional institution which an inmate may be required to complete as a special condition of parole, and the manner and method for an inmate to complete such programs.

Be it enacted by the Legislature of West Virginia:

ARTICLE 12. PROBATION AND PAROLE.

§62-12-13. Powers and duties of board; eligibility for parole; procedure for granting parole.

(a) The Parole Board, whenever it is of the opinion that the best interests of the state and of the inmate will be served, and subject to the limitations provided in this section, shall release any inmate on parole for terms and upon conditions provided by this article.

(b) Any inmate of a state correctional institution is eligible for parole if he or she:

(1) (A) Has served the minimum term of his or her indeterminate sentence or has served one fourth of his or her definite term sentence, as the case may be; or

(B) He or she has applied for and been accepted by the Commissioner of Corrections and Rehabilitation into an accelerated parole program. To be eligible to participate in an accelerated parole program, the commissioner must determine that the inmate:

(i) Does not have a prior criminal conviction for a felony crime of violence against the person, a felony offense involving the use of a firearm, or a felony offense where the victim was a minor child;

(ii) Is not serving a sentence for a crime of violence against the person, or more than one felony for a controlled substance offense for which the inmate is serving a consecutive sentence, a felony offense involving the use of a firearm, or a felony offense where the victim was a minor child; and

(iii) Has successfully completed a rehabilitation treatment program created with the assistance of a standardized risk and needs assessment.

(C) Notwithstanding any provision of this code to the contrary, any inmate who committed, or attempted to commit, a felony with the use, presentment, or brandishing of a firearm is not eligible for parole prior to serving a minimum of three years of his or her sentence or the maximum sentence imposed by the court, whichever is less: *Provided,* That any inmate who committed, or attempted to commit, any violation of §61-2-12 of this code, with the use, presentment, or brandishing of a firearm, is not eligible for

parole prior to serving a minimum of five years of his or her sentence or one third of his or her definite term sentence, whichever is greater. Nothing in this paragraph applies to an accessory before the fact or a principal in the second degree who has been convicted as if he or she were a principal in the first degree if, in the commission of or in the attempted commission of the felony, only the principal in the first degree used, presented, or brandished a firearm. An inmate is not ineligible for parole under the provisions of this paragraph because of the commission or attempted commission of a felony with the use, presentment, or brandishing of a firearm unless that fact is clearly stated and included in the indictment or presentment by which the person was charged and was either: (i) Found guilty by the court at the time of trial upon a plea of guilty or nolo contendere; (ii) found guilty by the jury upon submitting to the jury a special interrogatory for such purpose if the matter was tried before a jury; or (iii) found guilty by the court if the matter was tried by the court without a jury.

(D) The amendments to this subsection adopted in the year 1981:

(i) Apply to all applicable offenses occurring on or after August 1 of that year;

(ii) Apply with respect to the contents of any indictment or presentment returned on or after August 1 of that year irrespective of when the offense occurred;

(iii) Apply with respect to the submission of a special interrogatory to the jury and the finding to be made thereon in any case submitted to the jury on or after August 1 of that year or to the requisite findings of the court upon a plea of guilty or in any case tried without a jury: *Provided,* That the state gives notice in writing of its intent to seek such finding by the jury or court, as the case may be. The notice shall state with particularity the grounds upon which the finding will be sought as fully as the grounds are otherwise required to be stated in an indictment, unless the grounds upon which the finding will be sought are alleged in the indictment or presentment upon which the matter is being tried;

(iv) Does not apply with respect to cases not affected by the amendments and in those cases the prior provisions of this section apply and are construed without reference to the amendments; and

(v) Insofar as the amendments relate to mandatory sentences restricting the eligibility for parole, all matters requiring a mandatory sentence shall be proved beyond a reasonable doubt in all cases tried by the jury or the court.

(E) As used in this section, "felony crime of violence against the person" means felony offenses set forth in §61-2-1 *et seq*., §61-3E-1 *et seq*., §61-8B-1 *et seq*., or §61-8D-1 *et seq.* of this code.

(F) As used in this section, "felony offense where the victim was a minor child" means any felony crime of violence against the person and any felony violation set forth in §61-8-1 *et seq*., §61-8A-1 *et seq*., §61-8C-1 *et seq*., or §61-8D-1 *et seq.* of this code.

(G) For the purpose of this section, the term "firearm" means any instrument which will, or is designed to, or may readily be converted to, expel a projectile by the action of an explosive, gunpowder, or any other similar means;

(2) Is not in punitive segregation or administrative segregation as a result of disciplinary action;

(3) Has prepared and submitted to the Parole Board a written parole release plan setting forth proposed plans for his or her place of residence, employment and, if appropriate, his or her plans regarding education and post-release counseling and treatment which has been approved by the Division of Corrections and Rehabilitation: *Provided,* That an inmate's application for parole may be considered by the board without the prior submission of a home plan, but the inmate shall have a home plan approved by the division prior to his or her release on parole. The Commissioner of the Division of Corrections and Rehabilitation, or his or her designee, shall review and investigate the plan and provide findings to the board as to the suitability of the plan: *Provided, however,* That in cases in which there is a mandatory 30-day notification period required prior to the release of the inmate, pursuant to §62-

12-23 of this code, the board may conduct an initial interview and deny parole without requiring the development of a plan. In the event the board believes parole should be granted, it may defer a final decision pending completion of an investigation and receipt of the commissioner's findings. Upon receipt of the plan, together with the investigation and findings, the board, through a panel, shall make a final decision regarding the granting or denial of parole;

(4) Has satisfied the board that if released on parole he or she will not constitute a danger to the community; and

(5) Has successfully completed any individually required rehabilitative and educational programs, as determined by the division, while incarcerated: *Provided*, That, effective September 1, 2021, any inmate who satisfies all other parole eligibility requirements but is unable, through no fault of the inmate, to complete his or her required rehabilitative and educational programs while incarcerated, which are eligible to be taken while on parole, may be granted parole with the completion of such specified programs outside of the correctional institutions being a special condition of that person's parole term: *Provided, however,* That the Parole Board may consider whether completion of the inmate's outstanding amount of such programming would interfere with his or her successful reintegration into society.

(c) Except in the case of an inmate serving a life sentence, a person who has been previously twice convicted of a felony may not be released on parole until he or she has served the minimum term provided by law for the crime for which he or she was convicted. An inmate sentenced for life may not be paroled until he or she has served 10 years, and an inmate sentenced for life who has been previously twice convicted of a felony may not be paroled until he or she has served 15 years: *Provided,* That an inmate convicted of first degree murder for an offense committed on or after June 10, 1994, is not eligible for parole until he or she has served 15 years.

(d) In the case of an inmate sentenced to a state correctional facility regardless of the inmate's place of detention or

incarceration, the Parole Board, as soon as that inmate becomes eligible, shall consider the advisability of his or her release on parole.

(e) If, upon consideration, parole is denied, the board shall promptly notify the inmate of the denial. The board shall, at the time of denial, notify the inmate of the month and year he or she may apply for reconsideration and review. The board shall at least once a year reconsider and review the case of every inmate who was denied parole and who is still eligible: *Provided,* That the board may reconsider and review parole eligibility any time within three years following the denial of parole of an inmate serving a life sentence with the possibility of parole.

(f) Any inmate in the custody of the commissioner for service of a sentence who reaches parole eligibility is entitled to a timely parole hearing without regard to the location in which he or she is housed.

(g) The board shall, with the approval of the Governor, adopt rules governing the procedure in the granting of parole. No provision of this article and none of the rules adopted under this article are intended or may be construed to contravene, limit, or otherwise interfere with or affect the authority of the Governor to grant pardons and reprieves, commute sentences, remit fines, or otherwise exercise his or her constitutional powers of executive clemency.

(h) (1) The Division of Corrections and Rehabilitation shall promulgate policies and procedures for developing a rehabilitation treatment plan created with the assistance of a standardized risk and needs assessment. The policies and procedures shall provide for, at a minimum, screening and selecting inmates for rehabilitation treatment and development, using standardized risk and needs assessment and substance abuse assessment tools, and prioritizing the use of residential substance abuse treatment resources based on the results of the standardized risk and needs assessment and a substance abuse assessment. The results of all standardized risk and needs assessments and substance abuse assessments are confidential.

(2) An inmate shall not be paroled under paragraph (B), subdivision (1), subsection (b) of this section solely due to having successfully completed a rehabilitation treatment plan, but completion of all the requirements of a rehabilitation treatment plan along with compliance with the requirements of subsection (b) of this section creates a rebuttable presumption that parole is appropriate. The presumption created by this subdivision may be rebutted by a Parole Board finding that, according to the standardized risk and needs assessment, at the time parole release is sought the inmate still constitutes a reasonable risk to the safety or property of other persons if released. Nothing in subsection (b) of this section or in this subsection may be construed to create a right to parole.

(i) Notwithstanding the provisions of subsection (b) of this section, the Parole Board may grant or deny parole to an inmate against whom a detainer is lodged by a jurisdiction other than West Virginia for service of a sentence of incarceration, upon a written request for parole from the inmate. A denial of parole under this subsection precludes consideration for parole for a period of one year or until the provisions of subsection (b) of this section are applicable.

(j) If an inmate is otherwise eligible for parole pursuant to subsection (b) of this section, and has completed the rehabilitation treatment program required under subdivision (1), subsection (h) of this section, the Parole Board may not require the inmate to participate in an additional program, but may determine that the inmate must complete an assigned task or tasks prior to actual release on parole. The board may grant parole contingently, effective upon successful completion of the assigned task or tasks, without the need for a further hearing.

(k) (1) The Division of Corrections and Rehabilitation shall supervise all probationers and parolees whose supervision may have been undertaken by this state by reason of any interstate compact entered into pursuant to the Uniform Act for Out-of-State Parolee Supervision.

(2) The Division of Corrections and Rehabilitation shall provide supervision, treatment/recovery, and support services for all persons released to mandatory supervision under §15A-4-17 of this code.

(l) (1) When considering an inmate of a state correctional facility for release on parole, the Parole Board panel considering the parole shall have before it an authentic copy of, or report on, the inmate's current criminal record as provided through the West Virginia State Police, the United States Department of Justice, or any other reliable criminal information sources and written reports of the superintendent of the state correctional institution to which the inmate is sentenced:

(A) On the inmate's conduct record while in custody, including a detailed statement showing any and all infractions of disciplinary rules by the inmate and the nature and extent of discipline administered for the infractions;

(B) On the inmate's industrial record while in custody which shall include: The nature of his or her work, occupation or education, the average number of hours per day he or she has been employed or in class while in custody and a recommendation as to the nature and kinds of employment which he or she is best fitted to perform and in which the inmate is most likely to succeed when he or she leaves the state correctional institution; and

(C) On any physical, mental, psychological, or psychiatric examinations of the inmate.

(2) The Parole Board panel considering the parole may waive the requirement of any report when not available or not applicable as to any inmate considered for parole but, in every case, shall enter in its record its reason for the waiver: *Provided,* That in the case of an inmate who is incarcerated because the inmate has been found guilty of, or has pleaded guilty to, a felony under the provisions of §61-8-12 of this code or under the provisions of §61-8B-1 *et seq.* or §61-8C-1 *et seq.* of this code, the Parole Board panel may not waive the report required by this subsection. The report shall include a study and diagnosis of the inmate, including an on-going

treatment plan requiring active participation in sexual abuse counseling at an approved mental health facility or through some other approved program: *Provided, however,* That nothing disclosed by the inmate during the study or diagnosis may be made available to any law-enforcement agency, or other party without that inmate's consent, or admissible in any court of this state, unless the information disclosed indicates the intention or plans of the parolee to do harm to any person, animal, institution, or to property. Progress reports of outpatient treatment are to be made at least every six months to the parole officer supervising the parolee. In addition, in such cases, the Parole Board shall inform the prosecuting attorney of the county in which the person was convicted of the parole hearing and shall request that the prosecuting attorney inform the Parole Board of the circumstances surrounding a conviction or plea of guilty, plea bargaining, and other background information that might be useful in its deliberations.

(m) Before releasing any inmate on parole, the Parole Board shall arrange for the inmate to appear in person before a Parole Board panel and the panel may examine and interrogate him or her on any matters pertaining to his or her parole, including reports before the Parole Board made pursuant to the provisions of this section: *Provided,* That an inmate may appear by video teleconference if the members of the Parole Board panel conducting the examination are able to contemporaneously see the inmate and hear all of his or her remarks and if the inmate is able to contemporaneously see each of the members of the panel conducting the examination and hear all of the members' remarks: *Provided, however,* That the requirement that an inmate personally appear may be waived where a physician authorized to do so by the Commissioner of the Division of Corrections and Rehabilitation certifies that the inmate, due to a medical condition or disease, is too debilitated, either physically or cognitively, to appear. The panel shall reach its own written conclusions as to the desirability of releasing the inmate on parole and the majority of the panel considering the release must concur in the decision. The superintendent shall furnish all necessary assistance and cooperate to the fullest extent with the Parole Board. All information, records,

and reports received by the Parole Board shall be kept on permanent file.

(n) The Parole Board and its designated agents are at all times to have access to inmates imprisoned in any state correctional facility or in any jail in this state and may obtain any information or aid necessary to the performance of its duties from other departments and agencies of the state or from any political subdivision of the state.

(o) The Parole Board shall, if requested by the Governor, investigate and consider all applications for pardon, reprieve, or commutation and shall make recommendation on the applications to the Governor.

(p) Prior to making a recommendation for pardon, reprieve or commutation, the board shall notify the sentencing judge and prosecuting attorney at least 10 days before the recommendation.

(q) A parolee shall participate as a condition of parole in the litter control program of the county to which he or she is released to the extent directed by the Parole Board, unless the board specifically finds that this alternative service would be inappropriate.

(r) The commissioner shall develop, maintain, and make publicly available a general list of rehabilitative and educational programs available outside of the correctional institutions which an inmate may be required to complete as a special condition of parole pursuant to subdivision (5) of subsection (b) of this section, and the manner and method in which such programs shall be completed by the parolee.

CHAPTER 91

(Com. Sub. for H. B. 3106 - By Delegates Barrett, Steele, Fast and Fleischauer)

[Passed April 10, 2021; in effect ninety days from passage.]
[Approved by the Governor on April 26, 2021.]

AN ACT to amend and reenact §62-1C-1a of the Code of West Virginia, 1931, as amended, relating to bail; increasing the time for a secured bond hearing to 5 days; allowing a bond hearing to be held by any magistrate or judge; and clarifying the bond hearing procedure applies only to misdemeanors.

Be it enacted by the Legislature of West Virginia:

ARTICLE 1C. BAIL.

§62-1C-1a. Pretrial release; types of release; conditions for release; considerations as to conditions of release.

(a) Subject to the provisions of §62-1C-1 of this code, when a person charged with a violation or violations of the criminal laws of this state first appears before a judicial officer:

(1) Except for good cause shown, a judicial officer shall release a person charged with a misdemeanor offense on his or her own recognizance unless that person is charged with:

(A) A misdemeanor offense of actual violence or threat of violence against a person;

(B) A misdemeanor offense where the victim was a minor, as defined in §61-8C-1 of this code;

(C) A misdemeanor offense involving the use of a deadly weapon, as defined in §61-7-2 of this code;

(D) A misdemeanor offense of the Uniform Controlled Substances Act as set forth in chapter 60A of this code;

(E) Misdemeanor offenses of sexual abuse;

(F) A serious misdemeanor traffic offense set forth in §17C-5-1 or §17C-5-2 of this code; or

(G) A misdemeanor offense involving auto tampering, petit larceny or possession, transfer or receiving of stolen property when alleged value on the property involved exceeds $250.

(2) For the misdemeanor offenses specified in subsection (a) of this section and all other offenses which carry a penalty of incarceration, the arrested person is entitled to be admitted to bail subject to the least restrictive condition or combination of conditions that the judicial officer determines reasonably necessary to assure that person will appear as required, and which will not jeopardize the safety of the arrested person, victims, witnesses, or other persons in the community or the safety and maintenance of evidence. Further conditions may include that the person charged shall:

(A) Not violate any criminal law of this state, another state, or the United States;

(B) Remain in the custody of a person designated by the judicial officer, who agrees to assume supervision and to report any violation of a release condition to the court, if the designated person is reasonably able to assure the judicial officer that the person will appear as required and will not pose a danger to himself or herself or to the safety of any other person or the community;

(C) Participate in home incarceration pursuant to §62-11B-1 *et seq.* of this code*;*

(D) Participate in an electronic monitoring program if one is available where the person is charged or will reside.

(E) Maintain employment, or, if unemployed, actively seek employment;

(F) Avoid all contact with an alleged victim of the alleged offense and with potential witnesses and other persons as directed by the court;

(G) Refrain from the use or excessive use of alcohol, or any use of a narcotic drug or other controlled substance, as defined in §60A-1-1 *et seq.* of this code without a prescription from a licensed medical practitioner;

(H) Execute an agreement to forfeit, upon failing to appear as required, property of a sufficient unencumbered value, including money, as is reasonably necessary to assure the appearance of the person as required. The person charged shall provide the court with proof of ownership, the value of the property, and information regarding existing encumbrances of the property as, in the discretion of the judicial officer, is reasonable and necessary collateral to ensure the subsequent appearance of the person as required;

(I) Post a cash bond, or execute a bail bond with solvent sureties who will execute an agreement to forfeit an amount reasonably necessary to assure appearance of the person as required. If other than an approved surety, the surety shall provide the court with information regarding the value of its assets and liabilities and the nature and extent of encumbrances against the surety's property. The surety shall have a net worth of sufficiently unencumbered value to pay the amount of the bail bond; or

(J) Satisfy any other condition that is reasonably necessary to assure the appearance of the person as required and to assure the safety of the arrested person, victims, witnesses, other persons in the community, or the safety and maintenance of evidence.

(3) Proper considerations in determining whether to release the arrested person on an unsecured bond, fixing a reasonable amount of bail, or imposing other reasonable conditions of release are:

(A) The ability of the arrested person to give bail;

(B) The nature, number, and gravity of the offenses;

(C) The potential penalty the arrested person faces;

(D) Whether the alleged acts were violent in nature;

(E) The arrested person's prior record of criminal convictions and delinquency adjudications, if any;

(F) The character, health, residence, and reputation of the arrested person;

(G) The character and strength of the evidence which has been presented to the judicial officer:

(H) Whether the arrested person is currently on probation, extended supervision, or parole;

(I) Whether the arrested person is already on bail or subject to other release conditions in other pending cases;

(J) Whether the arrested person has been bound over for trial after a preliminary examination;

(K) Whether the arrested person has in the past forfeited bail or violated a condition of release or was ever a fugitive from justice; and

(L) The policy against unnecessary incarceration of arrested persons pending trial set forth in this section.

(b) In all misdemeanors, cash bail may not exceed three times the maximum fine provided for the offense. If the person is charged with more than one misdemeanor, cash bail may not exceed three times the highest maximum fine of the charged offenses.

(c) Notwithstanding any provisions of this article to the contrary, whenever a person not subject to the provisions of §62-1C-1 of this code remains incarcerated after his or her initial appearance, relating to a misdemeanor, due to the inability to meet the requirements of a secured bond, a magistrate or judge shall hold a hearing within 5 days of setting the initial bail to determine if there is a condition or combination of conditions which can meet the considerations set forth in §62-1C-1a(a)(2) of this code.

(d) A judicial officer may upon notice and hearing modify the conditions of release at any time by imposing additional or different conditions.

(e) A prosecuting attorney and defense counsel, unless expressly waived by the defendant, shall appear at all hearings in which bail or bond conditions are at issue other than the proceeding at which the conditions of release are initially set.

(f) No judicial officer may recommend the services of a surety who is his or her relative as that term is defined in §6B-1-3 of this code.

CHAPTER 92

(S. B. 78 - By Senator Trump)

[Passed April 5, 2021; in effect 90 days from passage (July 4, 2021)]
[Approved by the Governor on April 15, 2021.]

AN ACT to amend and reenact §48-8-105 of the Code of West Virginia, 1931, as amended, relating to correcting erroneous cross-references within this section regarding factors considered in awarding spousal support and separate maintenance.

Be it enacted by the Legislature of West Virginia:

ARTICLE 8. SPOUSAL SUPPORT.

§48-8-105. Rehabilitative spousal support.

(a) The court may award rehabilitative spousal support for a limited period of time to allow the recipient spouse, through reasonable efforts, to become gainfully employed. When awarding rehabilitative spousal support, the court shall make specific findings of fact to explain the basis for the award, giving due consideration to the factors set forth in §48-6-301 of this code. An award of rehabilitative spousal support is appropriate when the dependent spouse evidences a potential for self-support that could be developed through rehabilitation, training, or academic study.

(b) The court may modify an award of rehabilitative spousal support if a substantial change in the circumstances under which rehabilitative spousal support was granted warrants terminating, extending, or modifying the award or replacing it with an award of permanent spousal support. In determining whether a substantial change of circumstances exists which would warrant a modification of a rehabilitative spousal support award, the court

may consider a reassessment of the dependent spouse's potential work skills and the availability of a relevant job market, the dependent spouse's age, health and skills, the dependent spouse's ability or inability to meet the terms of the rehabilitative plan and other relevant factors as provided for in §48-6-301 of this code.

CHAPTER 93

(Com. Sub. for H. B. 2363 - By Delegates Foster, Summers, Storch, Phillips, Steele, Sypolt, Pinson, McGeehan, J. Jeffries, D. Jeffries and Rowan)

[Passed April 10, 2021; in effect ninety days from passage.]
[Approved by the Governor on April 28, 2021.]

AN ACT to amend the Code of West Virginia, 1931, as amended by adding thereto five new sections, designated §48-1-239a, §48-1-239b, §48-1-241a, §48-1-241b, and §48-9-105; to amend and reenact §48-1-220, §48-1-239, §48-9-102, §48-9-203, §48-9-204, §48-9-206, §48-9-207, §48-9-209, §48-9-301, §48-9-403, §48-9-601, §48-9-603 of said code, all relating to domestic relations and child custody allocation; providing definitions; amending definitions; clarifying the authority of parents to make emergency and non-elective healthcare decisions; requiring the court to consider parenting functions in determining best interests of the child; adding meaningful contact between a child and his or her siblings, including half-siblings, as an objective of the best interests of the child; providing for venue of custody actions outside of divorce proceedings; requiring the court to consider parenting functions in temporary parenting plans and allocation of custody; adding a preference time allocated to the parent resulting in the child being under the care of that parent is preferred to the parent resulting in time allocated to the parent resulting in the child being under the care of a third party as an objective in allocation determinations; adding an objective for reasonable access to the child by telephone or other electronic contact as an objective in allocation determinations; requiring that, in the absence of agreement of the parents, a final allocation determination must be made pursuant to hearing which cannot be conducted exclusively by presentation of evidence by proffer; adding neglect and abandonment as

criteria that may overcome presumption that joint decision-making responsibility is in the best interests of the child; clarifying criteria of interference with the other parent's relationship with the child; providing notice requirements during a court-ordered investigation; requires that a hearing cannot take place until after the investigation report is provided to the parties and completion of any requested discovery; allowing for continuance of a hearing following an investigation; providing a mechanism for the adjudication of requests for relocation of a parent with a child; providing circumstances for which relocation of a parent constitutes a substantial change in the circumstances of the child; requiring the relocating parent to file a verified petition for the court for modification of the parenting plan; identifying consequences of failure to comply with the requirements of this section; requiring a copy of the petition to be served on the other parent and all other persons allocated custodial time with the child; establishing requirements for the petition for modification of the parenting plan; requiring a hearing to be held on the petition at least 30 days in advance of the proposed date of relocation; providing for an expedited hearing; authorizing the court to revise the parenting plan; authorizing the court to allocate costs between the parties; establishing the burden of proof for the relocating parent; defines when a relocation is for a legitimate purpose; establishing a move with a legitimate purpose is unreasonable unless the relocating parent proves that the purpose is not substantially achievable without moving and that moving to a location that is substantially less disruptive of the other parent's relationship to the child is not feasible; requiring the court to consider the best interests of the child when modifying the parenting plan; requiring the court to minimize impairment to a parent-child relationship caused by a parent's relocation through alternative arrangements; setting forth the opportunity for parties to file a modified parenting plan signed by all parties; conditionally requiring an initial permanent parenting plan to be established before a relocation is considered; requiring interviewing or questioning of the child to be conducted in accordance with Rule 17 of the Rules of Practice and Procedure for Family Court; providing for

parental access to a child's vital records; requiring notice to the other party if the child is a victim of a crime unless the other party is the perpetrator; providing an effective date; and providing that existing orders remain in effect unless modified by a court of competent jurisdiction.

Be it enacted by the Legislature of West Virginia:

CHAPTER 48. DOMESTIC RELATIONS.

ARTICLE 1. GENERAL PROVISIONS, DEFINITIONS.

§48-1-220. Decision-making responsibility defined.

"Decision-making responsibility" refers to authority for making significant life decisions on behalf of a child, including, but not limited to, the child's education, spiritual guidance and health care: *Provided*, That with regard to healthcare, both parents in any shared parenting plan, regardless of the relative ratio of parenting time allocated between the parents, shall have the authority to make emergency or other non-elective healthcare decisions concerning their child necessary for the child's health or welfare during such parent's parenting time.

§48-1-239. Shared parenting defined.

(a) "Shared parenting" means either basic shared parenting or extended shared parenting.

(b) "Basic shared parenting" means an arrangement under which one parent keeps a child or children overnight for less than 35 percent of the year and under which both parents contribute to the expenses of the child or children in addition to the payment of child support.

(c) "Extended shared parenting" means an arrangement under which each parent keeps a child or children overnight for more than 35 percent of the year and under which both parents contribute to the expenses of the child or children in addition to the payment of child support.

(d) In any case where, in the absence of an agreement between the parents, a court orders shared parenting; the order shall be in writing and include specific findings of fact supporting the Court's determination.

§48-1-239a. Shared legal custody defined.

"Shared legal custody" means a continued mutual responsibility and involvement by both parents in major decisions regarding the child's welfare including matters of education, medical care, and emotional, moral, and religious development consistent with the provisions of §48-9-207 of this code.

§48-1-239b. Sole legal custody defined.

"Sole legal custody" means that one parent has the right and responsibility to make major decisions regarding the child's welfare including matters of education, non-emergency medical care, and emotional, moral, and religious development.

§48-1-241a. Shared physical custody defined.

"Shared physical custody" means a child has periods of residing with, and being under the supervision of, each parent consistent with the provisions of §48-9-206 of this code: *Provided,* That physical custody shall be shared by the parents in such a way as to assure a child has frequent and continuing contact with both parents. Such frequent and continuing contact with both parents is rebuttably presumed to be in the best interests of the child unless the evidence shows otherwise.

§48-1-241b. Sole physical custody defined.

"Sole physical custody" means a child resides with and is under the supervision of one parent, subject to reasonable visitation by the other parent, unless the court determines that the visitation would not be in the best interests of the child.

ARTICLE 9. ALLOCATION OF CUSTODIAL RESPONSIBILITY AND DECISION-MAKING RESPONSIBILITY OF CHILDREN.

§48-9-102. Objectives; best interests of the child.

(a) The primary objective of this article is to serve the child's best interests, by facilitating:

(1) Stability of the child;

(2) Parental planning and agreement about the child's custodial arrangements and upbringing;

(3) Continuity of existing parent-child attachments;

(4) Meaningful contact between a child and each parent;

(5) Caretaking and parenting relationships by adults who love the child, know how to provide for the child's needs, and who place a high priority on doing so;

(6) Security from exposure to physical or emotional harm;

(7) Expeditious, predictable decision-making and avoidance of prolonged uncertainty respecting arrangements for the child's care and control; and

(8) Meaningful contact between a child and his or her siblings, including half-siblings.

(b) A secondary objective of article is to achieve fairness between the parents.

§48-9-105. Venue for custodial allocation actions independent of divorce.

(a) Venue for the initial determination of custodial allocation or child custody determination within a divorce action shall be governed by §48-5-106 or §48-20-101 *et seq.* of this code, or both.

(b) Venue for the initial determination of custodial allocation or child custody determination as between parties who reside in separate states shall be governed by §48-20-101 *et seq.* of this code.

(c) Venue for modification of custodial allocation or modification of child custody determination which was previously determined in a tribunal of a state other than West Virginia shall be governed by §48-20-101 *et seq.* of this code.

§48-9-203. Proposed temporary parenting plan; temporary order; amendment; vacation of order.

(a) A parent seeking a temporary order relating to parenting shall file and serve a proposed temporary parenting plan by motion. The other parent, if contesting the proposed temporary parenting plan, shall file and serve a responsive proposed parenting plan. Either parent may move to have a proposed temporary parenting plan entered as part of a temporary order. The parents may enter an agreed temporary parenting plan at any time as part of a temporary order. The proposed temporary parenting plan may be supported by relevant evidence and shall be verified and shall state at a minimum the following:

(1) The name, address and length of residence with the person or persons with whom the child has lived for the preceding twelve months;

(2) The performance by each parent during the last 12 months of the parenting functions relating to the daily needs of the child;

(3) The parents' work and child-care schedules for the preceding twelve months;

(4) The parents' current work and child-care schedules; and

(5) Any of the circumstances set forth in §48-9-209 of this code that are likely to pose a serious risk to the child and that warrant limitation on the award to a parent of temporary residence or time with the child pending entry of a permanent parenting plan.

(b) At the hearing, the court shall enter a temporary parenting order incorporating a temporary parenting plan which includes:

(1) A schedule for the child's time with each parent when appropriate;

(2) Designation of a temporary residence for the child;

(3) Allocation of decision-making authority, if any. Absent allocation of decision-making authority consistent with §48-9-207 of this code, neither party shall make any decision for the child other than those relating to day-to-day or emergency care of the child, which shall be made by the party who is present with the child;

(4) Provisions for temporary support for the child;

(5) Restraining orders, if applicable; and

(6) Specific findings of fact upon which the court bases its determinations.

(c) A parent may make a motion for an order to show cause and the court may enter a temporary order, including a temporary parenting plan, upon a showing of necessity.

(d) A parent may move for amendment of a temporary parenting plan, and the court may order amendment to the temporary parenting plan, if the amendment conforms to the limitations of §48-9-209 of this code and is in the best interest of the child. The court's order modifying the plan shall be in writing and contain specific findings of fact upon which the court bases its determinations.

§48-9-204. Criteria for temporary parenting plan.

(a) After considering the proposed temporary parenting plan filed pursuant to §48-9-203 of this code and other relevant evidence presented, the court shall make a temporary parenting plan that is in the best interest of the child, which shall be in writing and contain specific findings of fact upon which the court bases its determinations. In making this determination, the court shall give particular consideration to:

(1) Which parent has taken greater responsibility during the last 12 months for performing caretaking and/or parenting functions relating to the daily needs of the child; and

(2) Which parenting arrangements will cause the least disruption to the child's emotional stability while the action is pending.

(b) The court shall also consider the factors used to determine residential provisions in the permanent parenting plan.

(c) Upon credible evidence of one or more of the circumstances set forth in §48-9-209(a) of this code, the court shall issue a temporary order limiting or denying access to the child as required by that section, in order to protect the child or the other party, pending adjudication of the underlying facts. The temporary order shall be in writing and include specific findings of fact supporting the court's determination.

(d) Expedited procedures shall be instituted to facilitate the prompt issuance of a parenting plan.

§48-9-206. Allocation of custodial responsibility.

(a) Unless otherwise resolved by agreement of the parents under §48-9-201 of this code or unless harmful to the child, the court shall allocate custodial responsibility so that, except to the extent required under §48-9-209 of this code, the custodial time the child spends with each parent may be expected to achieve any of the following objectives:

(1) To permit the child to have a meaningful relationship with each parent who has performed a reasonable share of parenting functions;

(2) To accommodate, if the court determines it is in the best interests of the child, the firm and reasonable preferences of a child who is 14 years of age or older; and to accommodate, if the court determines it is in the best interests of the child, the firm and reasonable preferences of a child under 14 years of age, but sufficiently matured that he or she can intelligently express a voluntary preference for one parent;

(3) To keep siblings together when the court finds that doing so is necessary to their welfare;

(4) To protect the child's welfare when, under an otherwise appropriate allocation, the child would be harmed because of a gross disparity in the quality of the emotional attachments between each parent and the child, or in each parent's demonstrated ability or availability to meet a child's needs;

(5) To take into account any prior agreement of the parents that, under the circumstances as a whole, including the reasonable expectations of the parents in the interest of the child, would be appropriate to consider;

(6) To avoid an allocation of custodial responsibility that would be extremely impractical or that would interfere substantially with the child's need for stability in light of economic, physical, or other circumstances, including the distance between the parents' residences, the cost and difficulty of transporting the child, the parents' and child's daily schedules, and the ability of the parents to cooperate in the arrangement;

(7) To apply the principles set forth in §48-9-403(d) of this code if one parent relocates or proposes to relocate at a distance that will impair the ability of a parent to exercise the amount of custodial responsibility that would otherwise be ordered under this section;

(8) To consider the stage of a child's development;

(9) To consider which parent will encourage and accept a positive relationship between the child and the other parent, including which parent is more likely to keep the other parent involved in the child's life and activities;

(10) To take into account the preference that time allocated to the parent resulting in the child being under the care and custody of that parent is preferred to time allocated to the parent resulting in the child being under the care or custody of a family member of that parent or a third party; and

(11) To allow reasonable access to the child by telephone or other electronic contact, which shall be defined in the parenting plan.

(b) The court may consider the allocation of custodial responsibility arising from temporary agreements made by the parties after separation if the court finds, by a preponderance of the evidence, that such agreements were consensual. The court shall afford those temporary consensual agreements the weight the court believes the agreements are entitled to receive, based upon the evidence. The court may not consider the temporary allocation of custodial responsibility imposed by a court order on the parties.

(c) If the court is unable to allocate custodial responsibility under §48-9-206(a) of this code because the allocation under §48-9-206(a) of this code would be harmful to the child, or because there is no history of past performance of caretaking functions, as in the case of a newborn, or because the history does not establish a pattern of caretaking sufficiently dispositive of the issues of the case, the court shall allocate custodial responsibility based on the child's best interest, taking into account the factors in considerations that are set forth in this section and in §48-9-209 and §48-9-403(d) of this code and preserving to the extent possible this section's priority on the share of past caretaking functions each parent performed: *Provided*, That if either parent or both has demonstrated reasonable participation in parenting functions as defined in §48-1-235.2 of this code, the court cannot rely solely on caretaking functions, and shall consider the parents' participation in parenting functions.

(d) In determining how to schedule the custodial time allocated to each parent, the court shall take account of the economic, physical, and other practical circumstances such as those listed in §48-9-206(a)(6) of this code.

(e) In the absence of an agreement of the parents, the court's determination of allocation of custodial responsibility under this section shall be made pursuant to a hearing, which shall not be conducted exclusively by the presentation of evidence by proffer. The court's order determining allocation of custodial responsibility shall be in writing, and include specific findings of fact supporting the determination.

§48-9-207. Allocation of significant decision-making responsibility.

(a) Unless otherwise resolved by agreement of the parents under §48-9-201 of this code, the court shall allocate responsibility for making significant life decisions on behalf of the child, including the child's education and health care, to one parent or to two parents jointly, in accordance with the child's best interest, in light of:

(1) The allocation of custodial responsibility under §48-9-206 of this code;

(2) The level of each parent's participation in past decision-making on behalf of the child;

(3) The wishes of the parents;

(4) The level of ability and cooperation the parents have demonstrated in decision-making on behalf of the child;

(5) Prior agreements of the parties; and

(6) The existence of any limiting factors, as set forth in section 9-209 of this article.

(b) If each of the child's legal parents has been exercising a reasonable share of parenting functions for the child, the court shall presume that an allocation of decision-making responsibility to both parents jointly is in the child's best interests. The presumption is overcome if there is a history of domestic abuse, neglect, or abandonment, or by a showing that joint allocation of decision-making responsibility is not in the child's best interest: *Provided*, That the court's determination shall be in writing and include specific findings of fact supporting any determination that joint allocation of decision-making responsibility is not in the child's best interest.

(c) Unless otherwise provided or agreed by the parents, each parent who is exercising custodial responsibility shall be given sole responsibility for day-to-day decisions for the child, while the child

is in that parent's care and control, including emergency decisions affecting the health and safety of the child.

Part 2 – Parenting Plans

§48-9-209. Parenting plan; limiting factors.

(a) If either of the parents so requests, or upon receipt of credible information thereof, the court shall determine whether a parent who would otherwise be allocated responsibility under a parenting plan:

(1) Has abused, neglected or abandoned a child, as defined by state law;

(2) Has sexually assaulted or sexually abused a child as those terms are defined in §61-8B-1 *et seq.* and §61-8D-1 *et seq.* of this code;

(3) Has committed domestic violence, as defined in §48-27-202 of this code;

(4) Has overtly or covertly, persistently violated, interfered with, impaired, or impeded the rights of a parent or a child with respect to the exercise of shared authority, residence, visitation, or other contact with the child, except in the case of actions taken for the purpose of protecting the safety of the child or the interfering parent or another family member, pending adjudication of the facts underlying that belief; or

(5) Has made one or more fraudulent reports of domestic violence or child abuse: *Provided*, That a person's withdrawal of or failure to pursue a report of domestic violence or child support shall not alone be sufficient to consider that report fraudulent.

(b) If a parent is found to have engaged in any activity specified by subsection (a) of this section, the court shall impose limits that are reasonably calculated to protect the child or child's parent from harm. The limitations that the court shall consider include, but are not limited to:

(1) An adjustment of the custodial responsibility of the parents, including but not limited to:

(A) Increased parenting time with the child to make up for any parenting time the other parent lost as a result of the proscribed activity;

(B) An additional allocation of parenting time in order to repair any adverse effect upon the relationship between the child and the other parent resulting from the proscribed activity; or

(C) The allocation of exclusive custodial responsibility to one of them;

(2) Supervision of the custodial time between a parent and the child;

(3) Exchange of the child between parents through an intermediary, or in a protected setting;

(4) Restraints on the parent from communication with or proximity to the other parent or the child;

(5) A requirement that the parent abstain from possession or consumption of alcohol or nonprescribed drugs while exercising custodial responsibility and in the twenty-four hour period immediately preceding such exercise;

(6) Denial of overnight custodial responsibility;

(7) Restrictions on the presence of specific persons while the parent is with the child;

(8) A requirement that the parent post a bond to secure return of the child following a period in which the parent is exercising custodial responsibility or to secure other performance required by the court;

(9) A requirement that the parent complete a program of intervention for perpetrators of domestic violence, for drug or alcohol abuse, or a program designed to correct another factor; or

(10) Any other constraints or conditions that the court deems necessary to provide for the safety of the child, a child's parent or any person whose safety immediately affects the child's welfare.

(c) If a parent is found to have engaged in any activity specified in subsection (a) of this section, the court may not allocate custodial responsibility or decision-making responsibility to that parent without making special written findings that the child and other parent can be adequately protected from harm by such limits as it may impose under subsection (b) of this section. The parent found to have engaged in the behavior specified in subsection (a) of this section has the burden of proving that an allocation of custodial responsibility or decision-making responsibility to that parent will not endanger the child or the other parent.

(d) If the court determines, based on the investigation described in part three of this article or other evidence presented to it, that an accusation of child abuse or neglect, or domestic violence made during a child custody proceeding is false and the parent making the accusation knew it to be false at the time the accusation was made, the court may order reimbursement to be paid by the person making the accusations of costs resulting from defending against the accusations. Such reimbursement may not exceed the actual reasonable costs incurred by the accused party as a result of defending against the accusation and reasonable attorney's fees incurred.

(e) (1) A parent who believes he or she is the subject of activities by the other parent described in subdivision (5) of subsection (a), may move the court pursuant to subdivision (4), subsection (b), section one hundred and one, article five, chapter forty-nine of this code for the Department of Health and Human Resources to disclose whether the other parent was the source of the allegation and, if so, whether the department found the report to be:

(A) Substantiated;

(B) Unsubstantiated;

(C) Inconclusive; or

(D) Still under investigation.

(2) If the court grants a motion pursuant to this subsection, disclosure by the Department of Health and Human Resources shall be in camera. The court may disclose to the parties information received from the department only if it has reason to believe a parent knowingly made a false report.

PART 3. FACT FINDING.

§48-9-301. Court-ordered investigation.

(a) In its discretion, the court may order a written investigation and report to assist it in determining any issue relevant to proceedings under this article: *Provided*, That the court must serve notice to all parties of the court's order. The investigation and report may be made by the guardian ad litem, the staff of the court, or other professional social service organization experienced in counseling children and families: *Provided*, That the court shall identify to all parties the identity of the assigned investigator, and the investigator shall be a compulsory witness and subject to full examination and cross-examination by both parties. The court shall specify the scope and objective of the investigation or evaluation and the authority of the investigator.

(b) In preparing the report concerning a child, the investigator may consult any person who may have information about the child and the potential parenting or custodian arrangements: *Provided*, That the person(s) consulted by the investigator shall be identified to the parties and shall be subject to complete discovery including but not limited to pre-hearing deposition. Upon order of the court, the investigator may refer the child to professional personnel for diagnosis. The investigator may consult with and obtain information from medical, psychiatric or other expert persons who have served the child in the past without obtaining the consent of the parent or the child's custodian; but the child's consent must be obtained if the child has reached the age of twelve, unless the court finds that the child lacks mental capacity to consent. If the

requirements of subsection (c) of this section are fulfilled, the investigator's report may be received in evidence at the hearing.

(c) The investigator shall deliver the investigator's report to counsel and to any party not represented by counsel at least 10 days prior to the hearing unless a shorter time is ordered by the court for good cause shown: *Provided*, That in no event shall the hearing take place until after the report has been provided to the parties and the completion of any discovery requested thereupon. The court may grant a continuance, upon motion by a party showing good cause that discovery cannot be adequately completed within 10 days. The investigator shall make available to counsel and to any party not represented by counsel the investigator's file of underlying data and reports, records or documents reviewed or relied upon by the investigator, complete texts of diagnostic reports made to the investigator pursuant to the provisions of subsection (b) of this section, and the names and addresses of all persons whom the investigator has consulted. Any party to the proceeding may call as a hearing witness the investigator and any person whom the investigator has consulted for cross-examination. A party may not waive the right of cross-examination prior to the hearing.

(d) Services and tests ordered under this section shall be ordered only if at no cost to the individuals involved, or at a cost that is reasonable in light of the available financial resources.

PART 4. MODIFICATION OF PARENTING PLAN.

§48-9-403. Relocation of a parent.

(a) The relocation of a parent constitutes a substantial change in the circumstances of the child under §48-9-401(a) of this code when it impairs either parent's ability to exercise responsibilities that the parent has been exercising, or when it impairs the schedule of custodial allocation that has been ordered by the court for a parent or any other person.

(b) A parent who has responsibility under a parenting plan who changes, or intends to change, residences must file a verified petition with the court for modification of the parenting plan, and

cause a copy of the same to be served upon the other parent and upon all other persons who, pursuant to the court's order in effect at the time of the petition, have been allocated custodial time with the child. The petition shall be filed at least 90 days prior to any relocation, and the summons must be served at least 60 days in advance of any relocation, unless the relocating parent establishes that it was impracticable under the circumstances to provide such notice 90 days in advance. The verified petition shall include:

(1) The proposed relocation date;

(2) The address of the intended new residence;

(3) The specific reasons for the proposed relocation;

(4) A proposal for how custodial responsibility shall be modified, in light of the intended move; and

(5) A request for a hearing.

Failure to comply with the requirements of this section may be a factor in the determination of whether the relocation is in good faith under subsection (d) of this section, and may also be a basis for reallocation of the primary residence and custodial responsibility for the child and for an award of reasonable expenses and reasonable attorney's fees to another parent or another person exercising custodial responsibility for the child pursuant to an order of the court that are attributable to such failure.

(c) A hearing on the petition shall be held by the court at least 30 days in advance of the proposed date of relocation. A parent proposing to relocate may move for an expedited hearing upon the petition in circumstances under which the parent needs an answer expeditiously. If the hearing is held fewer than 30 days in advance of the proposed date of relocation, the court's order shall include findings of fact as to why the hearing was not held at least 30 days prior to the petition's proposed date of relocation. After a hearing upon a petition filed under this section, the court shall, if practical, revise the parenting plan so as to both accommodate the relocation and maintain the same proportion of custodial responsibility being exercised by each of the parents and all such other persons

exercising custodial responsibility for the child pursuant to the order of the court. In making such revision, the court may consider the additional costs that a relocation imposes upon the respective parties for transportation and communication, and may equitably allocate such costs between the parties and may consider §48-13-702 of this code authorizing the court to disregard the child support formula relating to long distance visitation costs.

(d) (1) At the hearing held pursuant to this section, the relocating parent has the burden of proving that: (A) The reasons for the proposed relocation are legitimate and made in good faith; (B) that allowing relocation of the relocating parent with the child is in the best interests of the child as defined in §48-9-102 of this code; and (C) that there is no reasonable alternative, other than the proposed relocation, available to the relocating parent that would be in the child's best interests and less disruptive to the child.

(2) A relocation is for a legitimate purpose if it is to be close to immediate family members, for substantial health reasons, to protect the safety of the child or another member of the child's household from significant risk of harm, to pursue a significant employment or educational opportunity, or to be with one's spouse or significant other with whom the relocating parent has cohabitated for at least a year, who is established, or who is pursuing a significant employment or educational opportunity, in another location.

(3) The relocating parent has the burden of proving the proposed relocation is for one of these legitimate purposes. The relocating parent has the burden of proving the legitimacy of any other purpose. A move with a legitimate purpose is unreasonable unless the relocating parent proves that the purpose is not substantially achievable without moving, and that moving to a location that is substantially less disruptive of the other parent's relationship to the child is not feasible.

(4) When the relocation is for a legitimate purpose, in good faith, and renders it impractical to maintain the same proportion of custodial responsibility as that being exercised by each parent and all other persons exercising custodial responsibility for the child

pursuant to an order of the court, the court shall modify the parenting plan in accordance with the child's best interests.

(5) If the relocating parent does not establish that the purpose for that parent's relocation is made in good faith for a legitimate purpose to a location that is reasonable in light of the purpose, the court may modify the parenting plan in accordance with the child's best interests and the effects of the relocation on the child. Among the modifications the court may consider is a reallocation of primary custodial responsibility, to become effective if and when the parent's relocation occurs.

(6) The court shall attempt to minimize impairment to a parent-child relationship caused by a parent's relocation through alternative arrangements for the exercise of custodial responsibility appropriate to the parents' resources and circumstances and the developmental level of the child.

(e) If the parties file with the court a modified parenting plan signed by all the parties the court may enter an order modifying custodial responsibility in accordance with the parenting plan if the court determines that the parenting plan is in the best interest of the child to do so.

(f) Except in extraordinary circumstance articulated in the court's order, a relocation may not be considered until an initial permanent parenting plan is established.

(g) In determining the effect of the relocation or proposed relocation on a child, any interviewing or questioning of the child shall be conducted in accordance with the provisions of Rule 17 of the Rules of Practice and Procedure for Family Court as promulgated by the Supreme Court of Appeals.

PART 6. MISCELLANEOUS PROVISIONS.

§48-9-601. Access to a child's records.

(a)(1) Each parent has full and equal access to a child's educational records absent a court order to the contrary. Neither parent may veto the access requested by the other parent.

Educational records are academic, attendance and disciplinary records of public and private schools in all grades pre-kindergarten through 12 and any form of alternative school. Educational records are any and all school records concerning the child that would otherwise be properly released to the primary custodial parent, including, but not limited to, report cards and progress reports, attendance records, disciplinary reports, results of the child's performance on standardized tests and statewide tests and information on the performance of the school that the child attends on standardized statewide tests; curriculum materials of the class or classes in which the child is enrolled; names of the appropriate school personnel to contact if problems arise with the child; information concerning the academic performance standards, proficiencies, or skills the child is expected to accomplish; school rules, attendance policies, dress codes and procedures for visiting the school; and information about any psychological testing the school does involving the child.

(2) In addition to the right to receive school records, the nonresidential parent has the right to participate as a member of a parent advisory committee or any other organization comprised of parents of children at the school that the child attends.

(3) The nonresidential parent or noncustodial parent has the right to question anything in the child's record that the parent feels is inaccurate or misleading or is an invasion of privacy and to receive a response from the school.

(4) Each parent has a right to arrange appointments for parent-teacher conferences absent a court order to the contrary. Neither parent can be compelled against their will to exercise this right by attending conferences jointly with the other parent.

(b)(1) Each parent has full and equal access to a child's medical records and vital records absent a court order to the contrary. Neither parent may veto the access requested by the other parent. If necessary, either parent is required to authorize medical providers to release to the other parent copies of any and all information concerning medical care provided to the child which would otherwise be properly released to either parent.

(2) If the child is in the actual physical custody of one parent, that parent is required to promptly inform the other parent of any illness of the child which requires medical attention.

(3) Each parent is required to consult with the other parent prior to any elective surgery being performed on the child, and in the event emergency medical procedures are undertaken for the child which require the parental consent of either parent, if time permits, the other parent shall be consulted, or if time does not permit such consultation, the other parent shall be promptly informed of the emergency medical procedures: *Provided,* That nothing contained herein alters or amends the law of this state as it otherwise pertains to physicians or health care facilities obtaining parental consent prior to providing medical care or performing medical procedures.

(c)(1) Each parent has full and equal access to a child's juvenile court records, process and pleadings, absent a court order to the contrary. Neither parent may veto any access requested by the other parent. Juvenile court records are limited to those records which are normally available to a parent of a child who is a subject of the juvenile justice system.

(2) Each parent has the right to be notified by the other party if the minor child is the victim of an alleged crime, including the name of the investigating law-enforcement officer or agency, if known. There is no duty to notify if the party to be notified is the alleged perpetrator.

§48-9-603. Effect of enactment; operative dates.

(a) The enactment of this article, formerly enacted as article eleven of this chapter during the second extraordinary session of the 1999 Legislature, is prospective in operation unless otherwise expressly indicated.

(b) The provisions of §48-9-202 of this code, insofar as they provide for parent education and mediation, became operative on January 1, 2000. Until that date, parent education and mediation with regard to custody issues were discretionary unless made

mandatory under a particular program or pilot project by rule or direction of the Supreme Court of Appeals or a circuit court.

(c) The provisions of this article that authorize the court, in the absence of an agreement of the parents, to order an allocation of custodial responsibility and an allocation of significant decision-making responsibility became operative on January 1, 2000, at which time the primary caretaker doctrine was replaced with a system that allocates custodial and decision-making responsibility to the parents in accordance with this article. Any order entered prior to January 1, 2000, based on the primary caretaker doctrine remains in full force and effect until modified by a court of competent jurisdiction.

(d) The amendments to this chapter made during the 2021 session of the Legislature shall become applicable upon the effective date of those amendments. Any order entered prior to the effective date of those amendments remains in full force and effect until modified by a court of competent jurisdiction.

CHAPTER 94

(Com. Sub. for S. B. 534 - By Senators Tarr, Plymale, Nelson, and Stollings)

[Passed April 9, 2021; in effect 90 days from passage (July 8, 2021)]
[Approved by the Governor on April 26, 2021.]

AN ACT to amend and reenact §12-6C-11 of the Code of West Virginia, 1931, as amended; and to amend and reenact §31-15-5 and §31-15-6 of said code, all relating generally to the Economic Development Authority; increasing the revolving loan capacity from the Board of Treasury Investments to the Economic Development Authority to an amount not to exceed $200 million; establishing the interest rate by which the revolving loan will be secured; providing that the State Treasurer shall be a member of the Economic Development Authority Board; authorizing the Economic Development Authority to make working capital loans from a revolving loan fund capitalized with federal grant funds including those federal grant funds received from the United States Economic Development Administration; and clarifying that the authority is not authorized to enter into contracts or agreements with financial institutions for banking goods or services without the approval of the State Treasurer.

Be it enacted by the Legislature of West Virginia:

CHAPTER 12. PUBLIC MONEYS AND SECURITIES.

ARTICLE 6C. WEST VIRGINIA BOARD OF TREASURY INVESTMENTS.

*§12-6C-11. Legislative findings; loans for industrial development; availability of funds and interest rates.

(a) The Legislature finds and declares that the citizens of the state benefit from the creation of jobs and businesses within the state;

***NOTE:** This section was also amended by S. B. 295 (Chapter 47), which passed prior to this act.

that business and industrial development loan programs provide for economic growth and stimulation within the state; that loans from pools established in the Consolidated Fund will assist in providing the needed capital to assist business and industrial development; and that time constraints relating to business and industrial development projects prohibit duplicative review by both the board and West Virginia Economic Development Authority Board.

(b) Subject to a liquidity determination, the West Virginia Board of Treasury Investments shall make a revolving loan available to the West Virginia Economic Development Authority in an amount of up to $200 million. The revolving loan shall be used for business or industrial development projects authorized by §31-15-7 of this code and to consolidate existing loans authorized to be made to the West Virginia Economic Development Authority pursuant to this section and pursuant to §31-15-20 of this code which authorizes a $150 million revolving loan and §31-18B-1 *et seq.* of this code which authorizes a $50 million investment pool: *Provided,* That the West Virginia Economic Development Authority may not loan more than $15 million for any one business or industrial development project. The revolving loan authorized by this subsection shall be secured by one note at a variable interest rate equal to 50% of the West Virginia Economic Development Authority's weighted average interest rate for outstanding loans in the Business and Industrial Development Loan Program authorized by §31-15-7 of this code. The rate may not be lower than 1.50% and must be reset on July 1 of each year. Monthly payments made by the West Virginia Economic Development Authority to the board shall be calculated on a 120-month amortization. The revolving loan is secured by a security interest that pledges and assigns the cash proceeds of collateral from all loans under this revolving loan pool. The West Virginia Economic Development Authority may also pledge as collateral certain revenue streams from other revolving loan pools which source of funds does not originate from federal sources or from the board.

(c) The outstanding principal balance of the revolving loan from the board to the West Virginia Economic Development Authority may at no time exceed 103 percent of the aggregate outstanding principal balance of the business and industrial loans

from the West Virginia Economic Development Authority to economic development projects funded from this revolving loan pool. The independent audit of the West Virginia Economic Development Authority financial records shall annually certify that 103 percent requirement.

(d) The interest rates and maturity dates on the loans made by the West Virginia Economic Development Authority for business and industrial development projects authorized by §31-15-7 of this code shall be at competitive rates and maturities as determined by the West Virginia Economic Development Authority Board.

(e) Any and all outstanding loans made by the West Virginia Board of Treasury Investments, or any predecessor entity, to the West Virginia Economic Development Authority are refundable by proceeds of the revolving loan contained in this section and the board shall make no loans to the West Virginia Economic Development Authority pursuant to §31-15-20 of this code or §31-18B-1 *et seq.* of this code.

(f) The directors of the West Virginia Board of Treasury Investments shall bear no fiduciary responsibility with regard to any of the loans contemplated in this section.

(g) *Inspection of records.* – Within 30 days of receiving a written request from the board, the authority shall provide the board with the opportunity to inspect and copy any records in the custody of the authority related to any loan issued by the board to the authority or any loan from the authority to a third party funded by a loan issued by the board. Records to be made available pursuant to this subsection include, but are not limited to, accounting records, loan applications, loan agreements, board minutes, audit reports, and transaction records. Records of the authority held, from time to time, by the board pursuant to this subsection that are exempt from disclosure pursuant to the provisions of §31-15-22 of this code or §29B-1-1 *et seq.* of this code shall remain so while held by the board.

CHAPTER 31. CORPORATIONS.

ARTICLE 15. WEST VIRGINIA ECONOMIC DEVELOPMENT AUTHORITY.

§31-15-5. West Virginia economic development authority; composition; appointment; terms; delegation of authority by chairman; voting; compensation and expenses.

(a) The West Virginia Economic Development Authority is continued as a body corporate and politic, constituting a public corporation and government instrumentality.

(b) The authority shall be composed of a board of members consisting of a chairperson, who shall be the Governor, or his or her designated representative, the State Treasurer, or his or her designated representative, the Tax Commissioner, and seven members who shall be appointed by the Governor, by and with the advice and consent of the Senate, and who shall be broadly representative of the geographic regions of the state. One member of the House of Delegates to be appointed by the Speaker and one member of the Senate to be appointed by the President shall serve on the board in an advisory capacity as ex officio, nonvoting members. The board shall direct the exercise of all the powers given to the authority in this article. The Governor shall also be the chief executive officer of the authority, and shall designate the treasurer and the secretary of the board.

(c) As appointments expire, each subsequent appointment shall be for a full four-year term. Any member whose term has expired shall serve until his or her successor has been duly appointed and qualified. Any person appointed to fill a vacancy shall serve only for the unexpired term. Any member is eligible for reappointment.

(d) The Governor may, by written notice filed with the secretary of the authority, from time to time, delegate to any subordinate the power to represent him or her at any meeting of the authority. In that case, the subordinate has the same power and privileges as the Governor and may vote on any question.

(e) Members of the authority are not entitled to compensation for services performed as members, but are entitled to reimbursement for all reasonable and necessary expenses actually incurred in the performance of their duties.

(f) A majority of the members constitutes a quorum for the purpose of conducting business. Except in the case of a loan or insurance application or unless the bylaws require a larger number, action may be taken by majority vote of the members present. Approval or rejection of a loan or insurance application shall be made by majority vote of the full membership of the board.

(g) The board shall manage the property and business of the authority and may prescribe, amend, adopt, and repeal bylaws and rules and regulations governing the manner in which the business of the authority is conducted.

(h) The board shall, without regard to the provisions of civil service laws applicable to officers and employees of the State of West Virginia, appoint any necessary managers, assistant managers, officers, employees, attorneys, and agents for the transaction of its business, fix their compensation, define their duties, and provide a system of organization to fix responsibility and promote efficiency. Any appointee of the board may be removed at the discretion of the board. The authority may reimburse any state spending unit for any special expense actually incurred in providing any service or the use of any facility to the authority.

(i) The board may delegate to the executive director the authority to make and execute all contracts and other agreements or instruments necessary to carry out the duties and powers of the authority, as provided in this article: *Provided,* That nothing in this article authorizes the authority to enter into contracts or agreements with financial institutions, as that term is defined in §31A-1-2 of this code, for banking goods or services without approval of the State Treasurer, in accordance with §12-1-1 *et seq.* of this code.

(j) In cases of any vacancy in the office of a voting member, the vacancy shall be filled by the Governor. Any member

appointed to fill a vacancy in the board occurring prior to the expiration of the term for which his or her predecessor was appointed shall be appointed for the remainder of the term.

(k) The Governor may remove a member in the case of incompetence, neglect of duty, gross immorality, or malfeasance in office, and may declare the member's office vacant and appoint a person for the vacancy as provided in other cases of vacancy.

(l) The secretary of the board shall keep a record of the proceedings of the board and perform any other duties determined appropriate by the board. The treasurer shall be custodian of all funds of the authority and shall be bonded in the amount designated by other members of the board.

§31-15-6. General powers of authority.

The authority, as a public corporation and governmental instrumentality exercising public powers of the state, shall have and may exercise all powers necessary or appropriate to carry out the purposes of this article, including the power:

(a) To cooperate with industrial development agencies in efforts to promote the expansion of industrial, commercial, manufacturing, and tourist activity in this state.

(b) To determine, upon the proper application of an industrial development agency or an enterprise, whether the declared public purposes of this article have been or will be accomplished by the establishment by such agency or enterprise of a project in this state.

(c) To conduct examinations and investigations and to hear testimony and take proof, under oath or affirmation, at public or private hearings, on any matter relevant to this article and necessary for information on the establishment of any project.

(d) To issue subpoenas requiring the attendance of witnesses and the production of books and papers relevant to any hearing before such authority or one or more members appointed by it to conduct any hearing.

(e) To apply to the circuit court having venue of such offense to have punished for contempt any witness who refuses to obey a subpoena, to be sworn or affirmed or to testify or who commits any contempt after being summoned to appear.

(f) To authorize any member of the authority to conduct hearings, administer oaths, take affidavits, and issue subpoenas.

(g) To financially assist projects by insuring obligations in the manner provided in this article through the use of the insurance fund.

(h) To finance any projects by making loans to industrial development agencies or enterprises upon such terms as the authority shall deem appropriate: *Provided*, That nothing contained in this subsection or under any other provision in this article shall be construed as permitting the authority to make loans for working capital: *Provided, however*, That nothing contained in this article shall be construed as prohibiting the authority from insuring loans for working capital made to industrial development agencies or to enterprises by financial institutions: *Provided further*, That nothing contained in this subsection or any other provision of this article shall be construed as permitting the authority to refinance existing debt except when such refinancing will result in the expansion of the enterprise whose debt is to be refinanced or in the creation of new jobs: *And provided further,* That nothing contained in this subsection or any other provision of this article shall be construed as prohibiting the authority from making working capital loans from a revolving loan fund capitalized with federal grant funds including, but not limited to, federal grant funds received from the United States Economic Development Administration.

(i) To issue revenue bonds or notes to fulfill the purposes of this article, and to secure the payment of such bonds or notes, all as hereinafter provided.

(j) To issue and deliver revenue bonds or notes in exchange for a project.

(k) To borrow money for its purposes and issue bonds or notes for the money and provide for the rights of the holders of the bonds or notes or other negotiable instruments, to secure the bonds or notes by a deed of trust on, or an assignment or pledge of, any or all of its property and property of the project, including any part of the security for loans, and the authority may issue and sell its bonds and notes, by public or private sale, in such principal amounts as it shall deem necessary to provide funds for any purposes under this article, including the making of loans for the purposes set forth in this article.

(l) To maintain such sinking funds and reserves as the board shall determine appropriate for the purposes of meeting future monetary obligations and needs of the authority.

(m) To sue and be sued, implead and be impleaded, and complain and defend in any court.

(n) To adopt, use, and alter at will a corporate seal.

(o) To make, amend, repeal, and adopt both bylaws and rules and regulations for the management and regulation of its affairs.

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

(q) To make contracts and to execute all instruments necessary to carry out the powers and duties of the authority, as provided in this article: *Provided*, That the provisions of §5A-3-3 of this code do not apply to contracts made pursuant to this subdivision: *Provided, however,* That nothing in this article authorizes the authority to enter into contracts or agreements with financial institutions, as that term is defined in §31A-1-2 of this code, for banking goods and services without approval of the State Treasurer, in accordance with §12-1-1 *et seq.* of this code.

(r) To accept grants and loans from and enter into contracts and other transactions with any federal agency.

(s) To take title by conveyance or foreclosure to any project where acquisition is necessary to protect any loan previously made

by the authority and to sell, by public or private sale, transfer, lease, or convey such project to any enterprise.

(t) To participate in any reorganization proceeding pending pursuant to the United States Code (being the act of Congress establishing a uniform system of bankruptcy throughout the United States, as amended) or in any receivership proceeding in a state or federal court for the reorganization or liquidation of an enterprise. The authority may file its claim against any such enterprise in any of the foregoing proceedings, vote upon any questions pending therein which requires the approval of the creditors participating in any reorganization proceeding or receivership, exchange any evidence of such indebtedness for any property, security, or evidence of indebtedness offered as a part of the reorganization of such enterprise or of any other entity formed to acquire the assets thereof and may compromise or reduce the amount of any indebtedness owing to it as a part of any such reorganization.

(u) To acquire, construct, maintain, improve, repair, replace, and operate projects within this state, as well as streets, roads, alleys, sidewalks, crosswalks, and other means of ingress and egress to and from projects located within this state.

(v) To acquire, construct, maintain, improve, repair, and replace and operate pipelines, electric transmission lines, waterlines, sewer lines, electric power substations, waterworks systems, sewage treatment and disposal facilities and any combinations thereof for the use and benefit of any enterprise located within this state.

(w) To acquire watersheds, water and riparian rights, rights-of-way, easements, licenses, and any and all other property, property rights, and appurtenances for the use and benefit of any enterprise located within this state.

(x) To acquire, by purchase, lease, donation, or eminent domain, any real or personal property, or any right or interest therein, as may be necessary or convenient to carry out the purposes of the authority. Title to all property, property rights, and

interests acquired by the authority shall be taken in the name of the authority.

(y) To issue renewal notes, or security interests, to issue bonds to pay notes or security interests and, whenever it deems refunding expedient, to refund any bonds or notes by the issuance of new bonds or notes, whether the bonds or notes to be refunded have or have not matured and whether or not the authority originally issued the bonds or notes to be refunded.

(z) To apply the proceeds from the sale of renewal notes, security interests, or refunding bonds or notes to the purchase, redemption or payment of the notes, security interests, or bonds or notes to be refunded.

(aa) To accept gifts or grants of property, funds, security interests, money, materials, labor, supplies, or services from the United States of America or from any governmental unit or any person, firm, or corporation, and to carry out the terms or provisions of, or make agreements with respect to, or pledge, any gifts or grants, and to do any and all things necessary, useful, desirable, or convenient in connection with the procuring, acceptance, or disposition of gifts or grants.

(bb) To the extent permitted under its contracts with the holders of bonds, security interests, or notes of the authority, to consent to any modification of the rate of interest, time of payment of any installment of principal or interest, security or any other term of any bond, security interests, note or contract or agreement of any kind to which the authority is a party.

(cc) To sell loans, security interests, or other obligations in the loan portfolio of the authority. Such security interests shall be evidenced by instruments issued by the authority. Proceeds from the sale of loans, security interests, or other obligations may be used in the same manner and for the same purposes as bond and note revenues.

(dd) To procure insurance against any losses in connection with its property, operations, or assets in such amounts and from such insurers as the authority deems desirable.

(ee) To sell, license, lease, mortgage, assign, pledge, or donate its property, both real and personal, or any right or interest therein to another or authorize the possession, occupancy or use of such property or any right or interest therein by another, in such manner and upon such terms as it deems appropriate.

(ff) To participate with the state and federal agencies in efforts to promote the expansion of commercial and industrial development in this state.

(gg) To finance, organize, conduct, sponsor, participate, and assist in the conduct of special institutes, conferences, demonstrations, and studies relating to the stimulation and formation of business, industry, and trade endeavors.

(hh) To conduct, finance, and participate in technological, business, financial, and other studies related to business and economic development.

(ii) To conduct, sponsor, finance, participate, and assist in the preparation of business plans, financing plans, and other proposals of new or established businesses suitable for support by the authority.

(jj) To prepare, publish, and distribute, with or without charge as the authority may determine, such technical studies, reports, bulletins, and other materials as it deems appropriate, subject only to the maintenance and respect for confidentiality of client proprietary information.

(kk) To exercise such other and additional powers as may be necessary or appropriate for the exercise of the powers herein conferred.

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

(mm) To contract for the provision of legal services by private counsel and, notwithstanding the provisions of §5-3-1 *et seq.* of this code, such counsel may, but is not limited to, represent the authority in court, negotiate contracts and other agreements on behalf of the authority, render advice to the authority on any matter relating thereto, prepare contracts and other agreements, and provide such other legal services as may be requested by the authority.

(nn) To develop, maintain, operate, and apply for the establishment of foreign trade zones pursuant to and in accordance with all applicable provisions of federal law.

(oo) To exercise the powers and responsibilities previously vested in the State Building Commission by §5-6-11a of this code, including, but not limited to, the authority to refund bonds issued in accordance with said section.

CHAPTER 95

(Com. Sub. for S. B. 375 - By Senators Rucker and Maroney)

[Passed April 7, 2021; in effect 90 days from passage (July 6, 2021)]
[Approved by the Governor on April 19, 2021.]

AN ACT to amend and reenact §18-5-16 of the Code of West Virginia, 1931, as amended, relating to county board of education open enrollment; amending provisions pertaining to the contents of county board of education policies for open enrollment; prohibiting transfer refusal by virtue of student transferring from approved exemption (k) school; setting forth reasons for which an open enrollment application may be denied and the process for application denial; and amending provisions pertaining to funding in certain instances of a student transfer.

Be it enacted by the Legislature of West Virginia:

ARTICLE 5. COUNTY BOARD OF EDUCATION.

§18-5-16. Student transfers; definitions; appeals; calculating net enrollment; fees for transfer.

(a) *Establishment of attendance zones within counties*. — The county board may establish attendance zones within the county to designate the schools that its resident students shall attend. Upon the written request of any parent or guardian, or person legally responsible for any student, or for reasons affecting the best interests of the schools, the superintendent may transfer students from one school to another within the county. Any aggrieved person may appeal the decision of the county superintendent to the county board, and the decision of the county board is final.

(b) *Definitions*. — For the purposes of this section, unless a different meaning clearly appears from the context:

(1) "Nonresident student" means a student who resides in this state and who is enrolled in or is seeking enrollment in a county school district other than the county school district in which the student resides.

(2) "Open enrollment" means a policy adopted and implemented by a county board to allow nonresident students to enroll in any school within the district. Open enrollment is distinct from a mutual agreement of two county boards regarding mass transfer of students, as contemplated in §18-5-13(f)(1)(C) of this code.

(c) *Enrollment policies.* — County boards shall establish and implement an open enrollment policy without charging tuition and without obtaining approval from the board of the county in which a student resides and transfers. This policy shall clearly outline the application process nonresident students are to follow. Enrollment policies are subject to the following:

(1) A county board may give enrollment preference to:

(A) Siblings of students already enrolled through the open enrollment policy;

(B) Secondary students who have completed 10th grade and, due to family relocation, become nonresident students, but express the desire to remain in a specific school to complete their education;

(C) Students who are children, grandchildren, or legal wards of employees;

(D) Students whose legal residences, though geographically within another county, are more proximate to a school within the receiving county, whether calculated by miles or transportation time;

(E) Students who reside in a portion of a county where topography, impassable roads, long bus rides, or other conditions prevent the practicable transportation of the student to a school within the county, and a school within a contiguous county is more easily accessible; and

(F) The county board to which the student wishes to be transferred may not refuse a transfer by virtue of the student transferring from a private, parochial, church, or religious school holding an exemption approved pursuant to §18-8-1(k) of this code: *Provided*, That nothing in this paragraph shall be construed to allow a county board to give an enrollment preference to a student transferring from a private, parochial, church, or religious school holding an exemption approved pursuant to §18-8-1(k) of this code.

(2) A county must comply with all enrollment requirements for children who are in foster care or who meet the definition of unaccompanied youth prescribed in the McKinney-Vento Homeless Assistance Act (42 U.S.C. § 11434a(6)).

(3) The county board for the county educating the nonresident student may provide an adequate means of transportation to nonresident students when students have complied with the procedure for obtaining authorization to attend school outside their county of residence, subject to the following:

(A) County boards of education are not required to uniformly provide nonresident student transportation, and may consider whether a nonresident student meets the eligibility criteria for free or reduced price lunch and milk established within the Richard B. Russell National School Lunch Act (42 U.S.C. § 1758); and

(B) The county board for the county educating the nonresident student shall provide transportation to and from the school of attendance, or to and from an agreed pickup point on a regular transportation route, or for the total miles traveled each day for the nonresident student to reach the school of enrollment if the nonresident student is a student with disabilities and has an

individualized education program that specifies that transportation is necessary for fulfillment of the program.

(4) An application may only be denied by a county board of education due to lack of grade level capacity or if the nonresident student failed to fill out or submit the application correctly. The denial shall be in writing, sent to the parent or guardian of the nonresident student and the West Virginia Department of Education within three business days of the decision, and include the reason and explanation for the denial and information on appealing the denial of the application.

(d) *Appeal*. — The State Board of Education shall establish a process whereby a parent or guardian of a student may appeal to the State Superintendent the refusal of a county board to accept the transfer of the student. If during the appeal process, the State Superintendent discovers that the education and the welfare of the student could be enhanced, the State Superintendent may direct that the student may be permitted to attend a school in the receiving county.

(e) *Net enrollment*. — For purposes of net enrollment as defined in §18-9A-2 of this code, whenever a student is transferred on a full-time basis from one school district to another district pursuant to the provisions of this section, the county to which the student is transferred shall include the student in its net enrollment, subject to the following:

(1) If a student transfers after the second month of any school year, the county to which the student transferred may issue, in the following fiscal year, an invoice to the county from which the student transferred for the amount, determined on a pro rata basis, that the county now responsible for educating the student otherwise would have received under the state basic foundation program established in §18-9A-1 *et seq.* of this code had such student been included in the county's prior year's net enrollment;

(2) If a student in grades kindergarten through 12 transfers after the second month of any school year, the county to which the student transferred may issue, in the following fiscal year, an

invoice to the county from which the student transferred for the amount the county now responsible for educating the student otherwise would have received under aid to exceptional students had such student been included in the county's prior year's child count enrollment;

(3) If a student in prekindergarten transfers after the child count of exceptional students is certified for any school year, the county to which the student transferred may issue, in the following fiscal year, an invoice to the county from which the student transferred for the amount the county now responsible for educating the student otherwise would have received under aid to exceptional students had such student been included in the county's prior year's child count enrollment; and

(4) The county from which the student transferred shall reimburse the county to which the student transferred for the amount of the invoice.

(f) *Transfers between states.* — Transfer of students from this state to another state shall be upon such terms, including payment of tuition, as shall be mutually agreed upon by the board of the receiving county and the authorities of the school or district from which the transfer is made.

(g) No parent, guardian, or person acting as parent or guardian is required to pay for the transfer of a student or for the tuition of the student after the transfer when the transfer is carried out under the terms of this section.

(h) Nothing in this section supersedes the eligibility requirements for participation in extra-curricular activities established by the Secondary School Activities Commission.

(i) The amendments to this section during the 2019 First Extraordinary Session of the Legislature shall be effective for school years beginning on or after July 1, 2020, and the provisions of this section existing immediately prior to the 2019 First Extraordinary Session of the Legislature remain in effect for school years beginning prior to July 1, 2020.

CHAPTER 96

(Com. Sub. for S. B. 636 - By Senators Rucker, Phillips, Smith, Roberts, Karnes, and Stollings)

[Passed April 10, 2021; in effect 90 days from passage (July 9, 2021)]
[Approved by the Governor on April 26, 2021.]

AN ACT to amend and reenact §18-2-9 of the Code of West Virginia, 1931, as amended, relating to imposing additional requirements for the courses required for all public, private, parochial, and denominational schools in the history of the State of West Virginia, the history of the United States, in civics, in the Constitution of the United States, and in the government of West Virginia; requiring the State Board of Education to consult with certain other entities in prescribing the courses of study; requiring the State Board of Education to include the basic course requirements for middle school and high school and the academic standards when prescribing the courses of study; requiring the State Board of Education to publish an approved list of instructional resources; requiring the State Board of Education to provide testing or assessment instruments for the history and civics courses of instruction; and expanding amendments to the Constitution of the United States to be emphasized as a part of the instruction in each social studies class required during Celebrate Freedom Week.

Be it enacted by the Legislature of West Virginia:

ARTICLE 2. STATE BOARD OF EDUCATION.

§18-2-9. Required courses of instruction.

(a) (1) In all public, private, parochial, and denominational schools located within this state there shall be given prior to the completion of the eighth grade at least one year of instruction in

the history of the State of West Virginia. The schools shall require regular courses of instruction by the completion of the 12th grade in the history of the United States, in civics, in the Constitution of the United States, and in the government of the State of West Virginia for the purpose of teaching, fostering, and perpetuating the ideals, principles, and spirit of political and economic democracy in America, and increasing the knowledge of the organization and machinery of the government of the United States and of the State of West Virginia. The required courses shall include instruction on the institutions and structure of American government, such as the separation of powers, the Electoral College, and federalism. The required courses shall include instruction that provides students an understanding of American political philosophy and history, utilizing writings from prominent figures in Western civilization, such as Aristotle, Thomas Hobbes, John Locke, and Thomas Jefferson. The courses of instruction shall offer an objective and critical analysis of ideologies throughout history including, but not limited to, capitalism, republicanism, democracy, socialism, communism, and fascism. The required courses shall emphasize the use of primary sources and interactive learning techniques, such as mock scenarios, debates, and open and impartial discussions.

(2) The state board shall, with the advice of the state superintendent, and after consultation with other entities, prescribe the courses of study, including the basic course requirements for middle school and high school, and the academic standards listed in subdivision (1) of this subsection for these courses of study covering these subjects for the public schools, and publish an approved list of instructional resources pursuant to §18-2A-1 *et seq.* of this code. The curriculum used in the delivery of instruction shall cover the standards adopted for such courses. The other entities for consultation may include such organizations as the Florida Joint Center for Citizenship, the College Board, the Bill of Rights Institute, Hillsdale College, the Gilder Lehrman Institute of American History, the Constitutional Sources Project, educators, school administrators, postsecondary education representatives, elected officials, business and industry leaders, parents, and the public. Officials or boards having authority over the respective private, parochial, and denominational schools shall prescribe

courses of study for the schools under their control and supervision similar to those required for the public schools.

(3) The state board shall provide testing or assessment instruments for the history and civics courses of instruction required by this section. These testing instruments shall:

(A) Be aligned with the academic standards required by this section;

(B) Be mandatory for students enrolled in those courses of instruction;

(C) Be cumulative by including questions about knowledge learned in prior history and civics courses; and

(D) Measure students' factual and conceptual knowledge including how the facts interrelate and the reasons behind historical documents and events.

(4) To further this study, every high school student eligible by age for voter registration shall be afforded the opportunity to register to vote pursuant to §3-2-22 of this code.

(b) The state board shall cause to be taught in all public schools of this state the subject of health education, including instruction in any of the grades six through 12 as considered appropriate by the county board, on: (1) The prevention, transmission, and spread of acquired immune deficiency syndrome and other sexually transmitted diseases; (2) substance abuse, including the nature of alcoholic drinks and narcotics, tobacco products, and other potentially harmful drugs, with special instruction as to their effect upon the human system and upon society in general; (3) the importance of healthy eating and physical activity in maintaining healthy weight; and (4) education concerning cardiopulmonary resuscitation and first aid, including instruction in the care for conscious choking, and recognition of symptoms of drug or alcohol overdose. The course curriculum requirements and materials for the instruction shall be adopted by the state board by rule in consultation with the Department of Health and Human Resources. The state board shall prescribe a standardized health education

assessment to be administered within health education classes to measure student health knowledge and program effectiveness.

(c) An opportunity shall be afforded to the parent or guardian of a child subject to instruction in the prevention, transmission, and spread of acquired immune deficiency syndrome and other sexually transmitted diseases to examine the course curriculum requirements and materials to be used in the instruction. The parent or guardian may exempt the child from participation in the instruction by giving notice to that effect in writing to the school principal.

(d) After July 1, 2015, the required instruction in cardiopulmonary resuscitation in subsection (b) of this section shall include at least 30 minutes of instruction for each student prior to graduation on the proper administration of cardiopulmonary resuscitation (CPR) and the psychomotor skills necessary to perform cardiopulmonary resuscitation. The term "psychomotor skills" means the use of hands-on practicing to support cognitive learning. Cognitive-only training does not qualify as "psychomotor skills". The CPR instruction shall be based on an instructional program established by the American Heart Association or the American Red Cross, or another program which is nationally recognized and uses the most current national evidence-based emergency cardiovascular care guidelines and incorporates psychomotor skills development into the instruction. A licensed teacher is not required to be a certified trainer of cardiopulmonary resuscitation to facilitate, provide, or oversee such instruction. The instruction may be given by community members, such as emergency medical technicians, paramedics, police officers, firefighters, licensed nurses, and representatives of the American Heart Association or the American Red Cross. These community members are encouraged to provide necessary training and instructional resources such as cardiopulmonary resuscitation kits and other material at no cost to the schools. The requirements of this subsection are minimum requirements. A local school district may offer CPR instruction for longer periods of time and may enhance the curriculum and training components, including, but not limited to, incorporating into the instruction the use of an

automated external defibrillator (AED): *Provided*, That any instruction that results in a certification being earned shall be taught by an authorized CPR/AED instructor.

(e) A full week of classes during the week selected by the county board of education shall be recognized as Celebrate Freedom Week. The purpose of Celebrate Freedom Week is to educate students about the sacrifices made for freedom in the founding of this country and the values on which this country was founded.

Celebrate Freedom Week shall include appropriate instruction in each social studies class which:

(1) Includes an in-depth study of the intent, meaning, and importance of the Declaration of Independence, the Emancipation Proclamation, and the Constitution of the United States with an emphasis on the amendments that are crucial to the survival of democracy and freedom, such as the Bill of Rights and the thirteenth, fourteenth, fifteenth, and nineteenth amendments;

(2) Uses the historical, political, and social environments surrounding each document at the time of its initial passage or ratification; and

(3) Includes the study of historical documents to firmly establish the historical background leading to the establishment of the provisions of the constitution and Bill of Rights by the founding fathers for the purposes of safeguarding our constitutional republic.

The requirements of this subsection are applicable to all public, private, parochial, and denominational schools located within this state. Nothing in this subsection creates a standard or requirement subject to state accountability measures.

(f) Beginning the 2018-2019 school year, students in public schools shall be administered a test the same as or substantially similar to the civics portion of the naturalization test used by the United States Citizenship and Immigration Services between their ninth and 12th grade years as an indicator of student achievement in the area of civics education. The test results may be reported in

the aggregate to the county board for evaluation by the board's curriculum director and reported to the board members. Nothing in this subsection creates a standard or requirement subject to state accountability measures.

CHAPTER 97

(S. B. 651 - By Senators Rucker, Roberts, and Karnes)

[Passed April 7, 2021; in effect 90 days from passage (July 6, 2021)]
[Approved by the Governor on April 19, 2021.]

AN ACT to amend and reenact §18-9-3a of the Code of West Virginia, 1931, as amended, relating to giving county boards of education the option of publishing their financial statements on their websites rather than publishing as a Class I-0 legal advertisement; increasing the number of days for preparation for publication; requiring county boards to hold a public hearing before publishing on their websites; requiring county boards to provide public notice of the availability of such website posting; requiring county boards to include certain additional information if they publish their financial statements on their websites; providing maximum time period for filing statement with State Auditor and superintendent; providing that the changes made by amendments to this section become effective for the fiscal year commencing on July 1, 2023; and making technical updates.

Be it enacted by the Legislature of West Virginia:

ARTICLE 9. SCHOOL FINANCES.

§18-9-3a. Preparation, publication, and disposition of financial statements by county boards of education.

(a) The county board of every county, within 120 days after the beginning of each fiscal year, shall prepare on a form to be prescribed by the State Auditor and the state superintendent of free schools, and cause to be published, a statement providing the following information:

(1) The receipts and expenditures of the board during the previous fiscal year arranged under descriptive headings;

(2) The name of each firm, corporation, and person who received more than $250 in the aggregate from all funds during the previous fiscal year, together with the aggregate amount received from all funds and the purpose for which paid; and

(3) All debts of the board, the purpose for which each debt was contracted, its due date, and to what date the interest thereon has been paid.

(b) The financial statement shall be published either:

(1) As a Class I-0 legal advertisement in compliance with the provisions of §59-3-1 *et seq.* of this code, and the publication area for such publication shall be the county; or

(2) On the county board's website: *Provided,* That the county board shall, prior to publishing a financial statement on the county board's website for the first time after the effective date of the changes made by the amendments to this section enacted during the regular session of the Legislature, 2021, hold a public hearing at which interested persons may express their views on whether the county board should publish the statement as a Class I-0 legal advertisement or on the county board's website: *Provided, however,* That upon publishing a financial statement on the county board's website for the first time after the effective date of the changes made by the amendments to this section enacted during the 2021 regular session of the Legislature, public notice of the availability of such website posting shall be published once a week in a qualified newspaper of general circulation for two successive weeks.

(c) The financial statement, if published as a Class I-0 legal advertisement, shall not include the name of any person who has entered into a contract with the county board pursuant to the provisions of §18A-2-2, §18A-2-3, §18A-2-4, and §18A-2-5 of this code.

(d) The financial statement, if published on the county board's website, shall remain posted on the county board's website at least until publication of the next annual statement, and shall, in addition to the information required in subsection (a) of this section, include:

(1) The name of every person who has entered into a contract with the county board pursuant to the provisions of §18A-2-2, §18A-2-3, §18A-2-4, and §18A-2-5 of this code, and amounts paid to each;

(2) Budget estimates; and

(3) A list of the names of each firm, corporation, and person who received less than $250 from any fund during such fiscal year showing the amount paid to each and the purpose for which paid.

(e) The county board shall pay the cost of publishing the financial statement, if published as a Class I-0 legal advertisement, from the maintenance fund of the board.

(f) As soon as is practicable following the close of the fiscal year, but no later than 90 days after the end of the fiscal year, a copy of the published statement herein required shall be filed by the county board with the State Auditor and with the state superintendent of free schools.

(g) The county board shall transmit to any resident of the county requesting the same a copy of the published statement for the fiscal year designated, supplemented by a list of the names of all school personnel employed by the board during such fiscal year showing the amount paid to each, and a list of the names of each firm, corporation, and person who received less than $250 from any fund during such fiscal year showing the amount paid to each and the purpose for which paid.

(h) The changes made by the amendments to this section enacted during the regular session of the Legislature, 2021, shall be effective for financial statements for the fiscal year commencing on July 1, 2023.

CHAPTER 98

(Com. Sub. for H. B. 2012 - By Delegates Smith, Clark, Kimble, Higginbotham, Wamsley and Espinosa)

[Passed March 3, 2021; in effect ninety days from passage.]
[Approved by the Governor on March 11, 2021.]

AN ACT to amend and reenact §18-5G-1, §18-5G-2, §18-5G-4, §18-5G-5, §18-5G-6, §18-5G-9, §18-5G-10, and §18-5G-11 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto three new sections, designated §18-5G-13, §18-5G-14, and §18-5G-15, all relating to public charter schools; amending provisions pertaining to the number of public charter schools that may be authorized; requiring the Legislative Auditor to conduct an audit of the public charter school program two years after the first public charter school commences operations; amending process applicable when an applicant applies to two or more county boards to authorize a public charter school; allowing the West Virginia Professional Charter School Board to authorize public charter schools; clarifying that an education service provider can be public or private and nonprofit or for-profit; defining "full-time virtual public charter school" and "West Virginia Professional Charter School Board"; amending provisions pertaining to revocation of a charter contract; amending timeline for charter school application and beginning operations; requiring public charter schools to be treated and act as their own local education agency for all purposes; specifying exception; prohibiting anything in certain State Board of Education rule from conflicting with code; setting deadline for certain State Board of Education rules; amending provisions pertaining to the charter contract; amending provisions pertaining to the renewal of a charter contract; creating a process by which to appeal certain authorizer decisions to the West Virginia Board of Education; setting forth parameters under which the

Professional Charter School board and county boards may authorize a limited number of virtual public charter schools; addressing virtual public charter school enrollment limits, charter term, funding, enrollment of students who may require special education services, governing body training, student absence, instructional time requirements, requirements that are applicable to the traditional deliver of instruction, student orientation, data demonstrating progress toward graduation, requirements relating to student engagement and teacher responsiveness, a policy regarding failure to participate in instructional activities, educational placement upon student transfer, virtual charter schools enrolling students in grades six and below, and application of requirements to certain other virtual instructional program; establishing the West Virginia Professional Charter School Board; providing for members, appointments, removal, immunity from civil liability in certain instances, appointment of executive director, employment of staff, and reimbursement of certain expenses; limiting how official actions of nonvoting ex officio members may be construed; requiring the Professional Charter School Board to investigate certain complaints and allowing it to conduct or cause to be conducted certain audits; and making technical improvements and corrections.

Be it enacted by the Legislature of West Virginia:

ARTICLE 5G. PUBLIC CHARTER SCHOOLS.

§18-5G-1. Legislative purpose and intent; liberal interpretation; prohibiting conversion of private schools; prohibiting profit or monetary consideration by elected officials; limiting authorization of public charter schools; legislative auditor report.

(a) The purpose of this article is to establish a process for the creation, governance and oversight accountability of public charter schools with a renewed commitment to the mission, goals, and diversity of public education that benefits students, parents, teachers, and community members.

(b) Public charter schools are intended to empower new, innovative, and more flexible ways of educating all children within the public school system to:

(1) Improve student learning by creating more diverse public schools with high standards for student performance;

(2) Allow innovative educational methods, practices and programs that engage students in the learning process, thus resulting in higher student achievement;

(3) Enable schools to establish a distinctive school curriculum, a specialized academic or technical theme, or method of instruction;

(4) Provide expanded opportunities within the public schools for parents to choose among the school curricula, specialized academic or technical themes, and methods of instruction that best serve the interests or needs of their child;

(5) Provide students, parents, community members, and local entities with expanded opportunities for involvement in the public school system;

(6) Allow authorized public schools and programs within public schools exceptional levels of self-direction and flexibility in exchange for exceptional levels of results-driven accountability for student learning; and

(7) Encourage the replication of successful strategies for improving student learning.

(c) All public charter schools established under this article are public schools and are part of the state's public education system.

(d) The provisions of this article shall be interpreted liberally to support the purpose and intent of this section and to advance a renewed commitment by the state to the mission, goals and diversity of public education.

(e) No provision of this article may be interpreted to allow the conversion of private schools into public charter schools.

(f) An elected official may not profit or receive any monetary consideration from a charter school: *Provided,* That this prohibition does not apply with respect to the continued employment of an elected official who was employed by a public school prior to its conversion to a public charter school.

(g) The total number of public charter schools authorized and in operation under an approved contract in this state shall be limited to 10 pilot public charter schools until July 1, 2023. The State Board shall report to the Legislative Oversight Commission on Education Accountability by November 1, 2022, and every 3 years thereafter, on the status of the state's public charter schools. LOCEA shall report its findings and recommendations, if any, to the Legislature during its next Regular Session. Beginning July 1, 2023, and every 3 years thereafter, an additional 10 public charter schools may be authorized and in operation under an approved contract in this state. The Mountaineer Challenge Academy, if converted to a public charter school, shall not count towards the limitation established by this subsection.

(h) Two years after the first public charter school commences operations under the provisions of this article, the Legislative Auditor shall conduct an audit of the public charter school program and report the findings to the Legislative Oversight Commission on Education Accountability.

§18-5G-2. Definitions.

The following words used in this article and any proceedings pursuant thereto have the following meanings unless the context clearly indicates a different meaning:

(1) "Applicant" means any one or more in combination of parents, community members, teachers, school administrators, or institutions of higher education in this state who are interested in organizing a public charter school and:

(A) Have obtained 501(c)(3) tax-exempt status or have submitted an application for 501(c)(3) tax-exempt status; and

(B) Have developed and submitted an application to an authorizer to establish a public charter school;

(2) "Authorizer" means the entity empowered under this article to review applications, decide whether to approve or reject applications, enter into charter contracts with applicants, oversee public charter schools, and decide whether to renew or not renew charter contracts. Authorizers include:

(A) A county school board when the charter school or application to form a charter school includes a primary recruitment area that is wholly within the county over which the board has jurisdiction;

(B) Two or more county school boards who must act together and function as a single authorizer in all respects under the law when the public charter school or application to form a public charter school includes a primary recruitment area that encompasses territory in the two or more counties over which the respective boards have jurisdiction: *Provided*, That if such two or more school boards functioning together as authorizer reject the application, then one or more of the individual county boards may approve the application, but in such instance the charter school site must be located in one of the counties where the application was approved.

(C) The West Virginia Professional Charter School Board created pursuant to §18-5G-15 of this code; or

(D) The West Virginia Board of Education in the following instances:

(i) The charter school or application to form a charter school or to renew a charter contract is in a county where the state board has intervened in the operation of the school system and limited the authority of the county board to act pursuant to §18-2E-5 of this code; and

(ii) The application to form a public charter school or to renew a charter contract is approved by the affected county board or boards and is forwarded it to the West Virginia Board of Education with a request that it perform to the authorizer function.

(3) "Charter application" means a proposal from an applicant to an authorizer to enter into a charter contract whereby the proposed school obtains public charter school status;

(4) "Charter contract" or "contract" means a fixed-term, renewable contract between a public charter school's governing board and an authorizer that identifies the roles, powers, responsibilities, operational duties, accountability, and performance expectations for each party to the contract, consistent with the requirements of this article;

(5) "Conversion public charter school" means a public charter school that existed as a noncharter public school before becoming a public charter school;

(6) "County board" means a board exercising management and control of a school district. A county board's management and control of a public charter school is limited to only that granted under this article. In the case of a school district in which the state board has intervened and limited the authority of the county board to act pursuant to §18-2E-5 of this code, "county board" means the state board. In the case of a multicounty vocational or technical center, "county board" means the administrative council of the multicounty center;

(7) "Education service provider" means a public or private nonprofit or for-profit education management organization, school design provider, or any other partner entity with which a public charter school contracts for educational design, implementation, or comprehensive management;

(8) A "full-time virtual public charter school" means a public charter school that offers educational services predominantly through an online program.

(9) "Governing board" means a public charter school governing board that meets the requirements §18-5G-3 and §18-5G-7 of this code and is party to the charter contract with the authorizer;

(10) "Noncharter public school" means a public school or multicounty vocational center other than a public charter school established pursuant to this article;

(11) "Parent" means a parent, guardian, or other person or entity having legal custody over a child;

(12) "Public charter school" means a public school or program within a public school that is authorized in accordance with the provisions of this article and meets the general criteria, governance structure and statutory compliance requirements described in §18-5G-3 of this code, and other provisions of this article;

(13) "Program conversion public charter school" means a program within an existing noncharter public school that is either preexisting and converted or newly created to become a separate and discreet program governed and operated in accordance with this article within the noncharter public school;

(14) "Start-up public charter school" means a public charter school that did not exist as a noncharter public school prior to becoming a public charter school.

(15) "State board" means the West Virginia Board of Education;

(16) "Student" means any person that is eligible for attendance in a public school in West Virginia; and

(17) "West Virginia Professional Charter School Board" means the board created pursuant to §18-5G-15 of this code.

§18-5G-4. West Virginia Board of Education; powers and duties for implementation, general supervision and support of public charter schools.

(a) The state board shall consult with nationally recognized charter school organizations and establish and maintain a catalogue

of best practices for public charter schools applicable for all applicants, authorizers, governing board members, and administrators that are consistent with this article and nationally recognized principles and professional standards for quality public charter school authorizing and governance in all major areas of authorizing and governance responsibility in the following areas:

(1) Organizational capacity and infrastructure;

(2) Solicitation and evaluation of charter applications;

(3) A framework to guide the development of charter contracts;

(4) Performance contracting including a performance framework;

(5) Providing transparency and avoiding all conflicts of interest;

(6) Ongoing public charter school oversight and evaluation; and

(7) Charter approval and renewal decision-making;

(b) The state board is responsible for exercising, in accordance with this article, the following powers and duties with respect to the oversight and authorization of public charter schools:

(1) Provide forms to promote the quality and ease of use for authorizers to solicit applications for public charter schools, for applicants to complete applications, and for establishing quality charter contracts that include a framework for performance standards. The forms shall be available for use and solicitations made not later than the beginning of February, 2020. The forms shall include an application deadline of August 31st of the year prior to the beginning of operations for the proposed school year. No public charter school may begin operation prior to the beginning of the proposed school year following the previous year August application;

(2) Provide training programs for public charter school applicants, administrators and governing board members, as applicable, that include, but are not limited to:

(i) Pre-application training programs and forms to assist in the development of high quality public charter school applications;

(ii) The required components and the necessary information of the public charter school application and the charter contract as set forth in this article;

(iii) The public charter school board's statutory role and responsibilities;

(iv) Public charter school employment policies and practices; and

(v) Authorizer responsibilities for public charter school contract oversight and performance evaluation;

(3) Receive and expend appropriate gifts, grants and donations of any kind from any public or private entity to carry out the purposes of this act, subject to all lawful terms and conditions under which the gifts, grants or donations are given;

(4) Apply for any federal funds that may be available for the implementation of public charter school programs;

(5) Establish reporting requirements that enable the state board to monitor the performance and legal compliance of authorizers and public charter schools; and

(6) Submit to the Governor and the Legislature an annual report within 60 days of the end of each school year summarizing:

(A) The student performance of all operating public charter schools; and

(B) The authorization status of all public charter schools within the last school year, identifying all public charter schools as:

(i) Application pending;

(ii) Application denied and reasons for denial;

(iii) Application approved, but not yet operating;

(iv) Operating and years of operation;

(v) Renewed and years of operation;

(vi) Terminated;

(vii) Closed;

(viii) Never opened; and

(ix) Any successful innovations applied in authorized public charter schools which may be replicated in other schools. The report shall provide information about how noncharter public schools may implement these innovations.

(c) The state board shall be the authorizer of a public charter school when a county board or boards approve the application for a public charter school and requests the state board to perform the authorizer duties and responsibilities or when an application to form a public charter school or to renew a charter contract is submitted from an applicant within a county in which the state board has intervened and limited the power of the county board to act pursuant to §18-2E-5 of this code.

§18-5G-5. State board rule relating to funding for public charter school enrollment and other necessary provisions; local education agency status; authorizer oversight fee.

(a) The state board shall promulgate a rule pursuant to the provisions of §29A-3B-1 *et seq.* of this code setting forth requirements for public charter school funding. The rule shall include a requirement that 90 percent of the per pupil total basic foundation allowance follow the student to the public charter school, subject to the following:

(1) Notwithstanding §18-9A-1 *et seq.* of this code, the rule may provide for modifications to the calculations set forth in §18-9A-7 of this code regarding the allowance for student transportation and

in §18-9A-9(1) of this code regarding the allowance for current expense for the purpose of making appropriate adjustments to those allowances to account for student transportation and current expense related funding a school district loses in situations where it pays money to a public charter school pursuant to this subsection without a corresponding decrease in the county's transportation and current expense related expenditures;

(2) The rule shall designate which county school district is required to pay for a student attending a public charter school, and notwithstanding the terms in the definition of "net enrollment" in §18-9A-2 of this code, shall provide that the county school district paying for the student attending a public charter school have that student included in its net enrollment for the purposes of §18-9A-1 *et seq.* of this code; and

(3) The rule shall require the Department of Education to follow federal requirements in ensuring that federal funding follows the student to a public charter school.

(b) The state board may promulgate a rule in accordance with §29A-3B-1 *et seq.* of this code, if necessary, for ensuring the accountability of public charter schools for meeting the standards for student performance required of other public school students under §18-2E-5 of this code and the accountability of authorizers for ensuring that those standards are met in the schools authorized by it. If an authorizer fails to close a public charter school that does not meet the standards, the authorizer shall appear before the state board to justify its decision. The state board may uphold or overturn the authorizer's decision and may revoke the authority of the authorizer to authorize public charter schools.

(c) Any public charter school authorized pursuant to this article shall be treated and act as its own local education agency for all purposes except as needed under the provisions of the Public School Support Plan for funding purposes.

(d) To cover authorizer costs for overseeing public charter schools, the state board shall establish a statewide formula for authorizer oversight funding, which shall apply uniformly to every

authorizer in the state. Each public charter school shall remit to its respective authorizer an oversight fee. The oversight fee shall be drawn from and calculated as a uniform percentage of the per pupil basic foundation allowance as provided pursuant to state board rule promulgated in accordance with this section, not to exceed one percent of each public charter school's per-student funding in a single school year. The state board may establish a sliding scale for authorizing funding, with the funding percentage decreasing after the authorizer has achieved a certain threshold, such as after a certain number of schools have been authorized or after a certain number of students are enrolled in the authorizer's public charter schools. The state board shall establish a cap on the total amount of funding that an authorizer may withhold from a full-time public charter school. The state board shall annually review the effectiveness of the state formula for authorizer funding and shall adjust the formula if necessary to maximize public benefit and strengthen the implementation of this act.

(e) The state board shall promulgate a rule in accordance with §29A-3B-1 *et seq.* of this code to clarify, if necessary, the requirements of this article and address any unforeseen issues that might arise relating to the implementation of the requirements of this article: *Provided*, That nothing in this rule may conflict with this code. The rule also shall include a provision prohibiting a county board from discrimination against any district employee involved directly or indirectly with an application to establish a public charter school under this article.

(f) All state board rules required to be promulgated by this article shall be promulgated on or before July 1, 2021. The state board may file emergency rules if necessary to meet the July 1, 2021 deadline.

§18-5G-6. Authorizer powers and duties.

(a) Each authorizing authority is responsible for exercising in accordance with this article the following powers and duties with respect to the oversight and authorization of public charter schools:

(1) Demonstrate public accountability and transparency in all matters concerning its charter-authorizing practices, decisions, and expenditures;

(2) Establish and maintain policies and practices consistent with the principles and professional standards for authorizers of public charter schools, including standards relating to:

(A) Organizational capacity and infrastructure;

(B) Evaluating applications;

(C) Ongoing public charter school oversight and evaluation; and

(D) Charter approval, renewal, and revocation decision-making.

(3) Solicit applications and guide the development of high-quality public charter school applications;

(4) Approve new charter applications that meet the requirements of this article and on the basis of their application satisfying all requirements of §18-5G-8 of this code, that demonstrate the ability to operate the school in an educationally and fiscally sound manner, and that are likely to improve student achievement through the program detailed in the charter application;

(5) Decline to approve charter applications that fail to meet the requirements of §18-5G-8 of this code;

(6) Negotiate and execute in good faith a charter contract with each public charter school it authorizes;

(7) Monitor the performance and compliance of public charter schools according to the terms of the charter contract; and

(8) Determine whether each charter contract it authorizes merits renewal or revocation.

(b) After an applicant submits a written application to establish a public charter school, the authorizer shall:

(1) Complete a thorough review process;

(2) Conduct an in-person interview with the applicant;

(3) Provide an opportunity in a public forum for local residents to provide input and learn about the charter application;

(4) Provide a detailed analysis of the application to the applicant or applicants;

(5) Allow an applicant a reasonable time to provide additional materials and amendments to its application to address any identified deficiencies; and

(6) Approve or deny a charter application based on established objective criteria or request additional information.

(c) In deciding to approve a charter application, the authorizer shall:

(1) Approve charter applications only to applicants that possess competence in all elements of the application requirements identified in this section and §18-5G-8 of this code;

(2) Base decisions on documented evidence collected through the application review process; and

(3) Follow charter-granting policies and practices that are transparent, based on merit, and avoid conflicts of interest.

(d) No later than 90 days following the filing of the charter application, the authorizer shall approve or deny the charter application. The authorizer shall provide its decision in writing, including an explanation stating the reasons for approval or denial of its decision during an open meeting. Any failure to act on a charter application within the time specified shall be deemed an approval by the authorizer.

(e) An authorizer's charter application approval shall be submitted to the West Virginia Department of Education.

(f) An authorizer shall conduct or require oversight activities that enable it to fulfill its responsibilities under this article, including conducting appropriate inquiries and investigations, so long as those activities are consistent with the intent of this article, adhere to the terms of the charter contract and do not unduly inhibit the autonomy granted to charter schools. In the event that a public charter school's performance or legal compliance appears unsatisfactory, the authorizer shall promptly notify in writing the public charter school governing board of perceived problems and provide reasonable opportunity for the school to remedy the problems.

(g) An authorizer shall take appropriate corrective actions or exercise sanctions in response to apparent deficiencies in a charter school's performance or legal compliance. If warranted, the actions or sanctions may include requiring a charter school to develop and execute a corrective action plan within a specified time frame;

(h) An authorizer shall require each charter school it oversees to submit an annual report to assist the authorizer in gathering complete information about each school, consistent with the statutory requirements of this act and the charter contract.

(i) To cover authorizer costs for overseeing public charter schools, each public charter school shall remit to its respective authorizer an oversight fee drawn from and calculated as a uniform percentage of the per student operational funding allocated to each public charter school as established by the state board by rule pursuant to §18-5G-5 of this code.

(j) An authorizer may receive and expend appropriate gifts, grants and donations of any kind from any public or private entity to carry out the purposes of this act, subject to all lawful terms and conditions under which the gifts, grants or donations are given, and may apply for any federal funds that may be available for the implementation of public charter school programs;

(k) Notwithstanding any provision of this code to the contrary, no civil liability shall attach to an authorizer or to any of its members or employees for any acts or omissions of the public charter school. Neither the county board of education nor the State of West Virginia shall be liable for the debts or financial obligations of a public charter school or any person or entity that operates a public charter school.

(l) Regulation of public charter schools by the state board and a county board shall be limited to those powers and duties of authorizers prescribed in this article and general supervision consistent with the spirit and intent of this article.

§18-5G-9. Charter contract requirements; term of contract.

(a) Within 90 days of the approval of a charter application, the governing board and the authorizer shall negotiate and enter into a charter contract, which may incorporate and be consistent with the approved application. Alternatively, the parties may agree to also have part or all of the charter application be a part of the charter contract as long as it contains all of the requirements below.

(b) The charter contract shall address, in detail, the following items:

(1) The term of the contract: *Provided,* That the contract term shall be no longer than five years;

(2) The agreements relating to each item required in the charter application and, if applicable, the agreement with an education service provider that the governing boards intends to contract with for educational program implementation or comprehensive management;

(3) The rights and duties of the authorizer and the public charter school;

(4) The administrative relationship between the authorizer and the public charter school;

(5) The process the authorizer will use to provide ongoing oversight;

(6) The process and criteria the authorizer will use to annually monitor and evaluate the overall academic, operating, and fiscal conditions of the public charter school, including the process the authorizer will use to oversee the correction of any deficiencies found;

(7) The process for revision or amendment to the terms of the charter contract agreed to by the authorizer and the governing board;

(8) The process agreed to by the authorizer and the governing board that identifies how disputes between the authorizer and the board will be handled; and

(9) Any other terms and conditions agreed to by the authorizer and the governing board, including preopening conditions.

(c) The charter contract shall include provisions relating to the performance of the public charter school which will include the academic, and operational performance indicators, measures, and metrics to be used by the authorizer to evaluate the public charter school. At a minimum, the performance provisions shall include indicators, measures, and metrics for:

(1) Student academic proficiency;

(2) Student academic growth;

(3) Achievement gaps in both student proficiency and student growth between student subgroups, including race, sex, socioeconomic status, and areas of exceptionality;

(4) Student attendance;

(5) Student suspensions;

(6) Student withdrawals;

(7) Recurrent enrollment from year to year;

(8) Governing board's performance and stewardship, including compliance with all applicable statutes and terms of charter contract; and

(9) Additional valid and reliable indicators requested by the public charter school.

(d) A charter contract shall include provisions consistent with this Act and setting forth under what conditions a charter contract may be non-renewed and the process by which a non-renewal may occur. At a minimum, these provisions shall include:

(1) The amount of time before non-renewal in which the authorizer shall notify the public charter school of the prospect that the charter contract may be non-renewed and the reasons for the potential non-renewal;

(2) The right to be represented by counsel at all meetings, hearings, and interactions between the governing board and the authorizer;

(3) A reasonable opportunity and timeframe of not less than 60 days for the governing board to provide a response to the proposed non-renewal;

(4) An opportunity for the governing board to submit documentation and provide testimony as to setting forth why the charter contract should be renewed;

(5) An opportunity for a recorded public hearing, at the request of the governing board;

(6) That the authorizer shall consider the governing board's response, testimony, and documentation, as well as the recorded public hearing, prior to rendering a final decision on the nonrenewal of the charter contract;

(7) The information that must be included in the authorizer's final decision if it determines not to renew the charter contract;

(8) A timeline for an authorizer to render a final decision on whether or not to renew a charter contract;

(9) Rendering of the authorizer's decision shall be adopted as a resolution during an open meeting; and

(10) A provision that the failure of the authorizer to act on a renewal application within the designated timeframes shall be deemed approval of the application.

(e) The authorizer shall be responsible for collecting and reporting to the state board all state-required assessment and achievement data for the public charter school.

(f) The charter contract shall be signed by the chair of the governing board and the president of the county board, presidents of the county boards, the president of the state board or the chairman of the West Virginia Professional Charter School Board, as applicable. A copy of the executed charter contract shall be provided to the State Superintendent of Schools.

(g) No public charter school may commence operations without a charter contract that meets the requirements of this section, has been properly executed, and has been approved by, as applicable, a county board, county boards, or the state board, or the West Virginia Professional Charter School Board.

§18-5G-10. Charter contract renewal; performance report by authorizer and renewal guidance; renewal application; renewal term; nonrenewal; closure and dissolution.

(a) No later than June 30 of a public charter school's fourth year of operation under each five-year term of a charter contract, the authorizer shall issue a performance report on the public charter school. The performance report shall summarize the public charter school's performance record to date, based on the data collected under the statutory requirements of this act and the charter contract, and shall provide notice of any weaknesses or concerns perceived by the authorizer concerning the school that may jeopardize its position in seeking renewal if not timely rectified. The school and the authorizer shall mutually agree to a reasonable time period for

the public charter school to respond to the performance report and submit any corrections for the report.

(b) No later than June 30 of the school year before a public charter school's final year of operation under terms of a charter contract, the authorizer shall issue contract renewal application guidance to the school. The renewal application guidance required by this subsection shall include or refer explicitly to the criteria and standards that will guide the authorizer's renewal decisions as it pertains to the named public charter school. These criteria and standards shall be based on the statutory requirements of this act and the charter contract. The renewal application guidance shall, at a minimum, require and provide an opportunity for the public charter school to:

(1) Present additional evidence, beyond the data contained in the performance report, supporting its case for charter renewal;

(2) Describe improvements undertaken or planned for the school; and

(3) Detail the school's plans for the next charter term.

(c) No later than September 30 of a public charter school's final authorized year of operation under a term of a charter contract, the governing board of the public charter school seeking renewal shall submit a renewal application to the authorizer pursuant to the renewal application guidance offered by the authorizer under subsection (b) of this section. The authorizer shall rule in a public meeting and by resolution on the renewal application no later than 45 days after the filing of the renewal application. In making charter renewal decisions, the authorizer shall:

(1) Ground its decisions on a thorough analysis of evidence of the school's performance over the term of the charter contract in accordance with the terms set forth in the charter contract, annual performance reports and any required financial audits;

(2) Ensure that data used in making renewal decisions are available to the public charter school and the public;

(3) Provide a public report summarizing the evidence basis for each decision; and

(4) Include one of the following rulings:

(A) Renew the charter contract for another term of up to five years based on the school's performance data and demonstrated capacities of the public charter school; or

(B) Decline to renew the charter contract. The authorizer shall clearly state in a resolution the reasons for the nonrenewal. The governing board of the school shall be granted 30 days to respond in writing to the decision and public report before that decision becomes final. The governing board shall be allowed to provide the authorizer with such arguments and supporting information as it sees fit and also shall be granted an opportunity for a recorded public hearing, at the request of the governing board. The governing board may be represented by counsel at the hearing and may call witnesses to testify. The authorizer shall consider the governing board's response, testimony, and documentation, as well as the recorded public hearing, prior to rendering a final decision on the renewal of the charter contract. The authorizer shall render its final determination within 10 days of the close of the 30-day period. Any nonrenewal of a charter contract may be appealed to the state board pursuant to §18-5G-13 of this code.

(d) The failure of the authorizer to act on a renewal application within the designated timeframes shall be deemed an approval of the renewal application.

(e) Within 10 days of taking final action to renew or not renew a charter under this section, the authorizer shall report the action taken and reasons for the decision to the school's governing board and the state board or affected county board, as applicable. A copy of the report shall be submitted at the same time to the state superintendent.

(f) A charter contract may be not renewed if the authorizer determines that the health and safety of students attending the

public charter school is threatened or at such time following the process set forth in this section if the public charter school has:

(A) Failed to substantially comply with the provisions of this article:

(B) Committed a material violation of any of the terms, conditions, standards or procedures required under this chapter or the charter contract;

(C) Failed to substantially meet the performance expectations set forth in the charter contract;

(D) Failed to substantially meet generally accepted standards of fiscal management; or

(E) Violated any provision of law from which the school was not exempted.

(g) If an authorizer revokes or does not renew a charter contract, the authorizer shall close the school: *Provided,* That when the charter is revoked or not renewed for a school that began as a conversion public charter school or program conversion public charter school, the county board of the district in which the school is located may return it to noncharter public school status.

(h) A charter contract may be revoked at any time if the authorizer determines that the health and safety of students attending the public charter school is threatened, an administrator employed by or member of the governing board over the charter school is convicted of fraud or misappropriation of funds, there is a failure to meet generally accepted standards of financial management, there is a material breach of the charter contract, there is a substantial violation of any provision of law from which the public charter school is not exempted, or there are dire and chronic academic deficiencies.

(i) In the event of a public charter school closure for any reason, the authorizer shall oversee and work with the closing school to ensure a smooth and orderly closure and transition for students and

parents, as guided by the closure protocol established by the state board including, but not limited to, the following:

(1) Overseeing and working with the closing public charter school to ensure timely notification to parents, orderly transition of students and student records to new schools and proper disposition of school funds, property and assets in accordance with the requirements of this chapter; and

(2) Distributing the assets of the public charter school first to satisfy outstanding payroll obligations for employees of the public charter school and then to creditors of the public charter school. Any remaining funds shall be paid to the county board. If the assets of the public charter school are insufficient to pay all parties to whom the public charter school owes compensation, the prioritization of distribution of assets may be determined by decree of a court of law.

(j) If a public charter school is subject to closure or transition, following exhaustion of any appeal allowed under §18-5G-13 of this code, an authorizer may remove at will at any time any or all of the members of the board of directors of the public charter school in connection with ensuring a smooth and orderly closure or transition. If the authorizer removes members of the board of directors such that the board of directors can no longer function, the authorizer shall be empowered to take any further necessary and proper acts connected with closure or transition of the public charter school in the name and interest of the public charter school.

§18-5G-11. Public charter school students; enrollment and eligibility; enrollment preferences; random selection lottery; enrollment discrimination prohibited; credit transfers; participation in interscholastic sports.

(a) Public charter schools are open for enrollment to all students of appropriate grade level age and all students shall be enrolled in accordance with the following:

(1) A public charter school shall provide or publicize to parents and the general public information about the public charter school

as an enrollment option for students and the process for application and enrollment, including dates and timelines. If the public charter school includes in its mission a specific focus on students with special needs, including, but not limited to, at-risk students, English language learners, students with severe disciplinary problems at a noncharter public school or students involved with the juvenile justice system, it shall include the information in such publication. A public charter school's recruitment effort shall include all segments of the student populations served by noncharter public schools of comparable grade levels;

(2) A county board shall provide or publicize to parents and the general public information about public charter schools within the county as an enrollment option to the same extent and through the same means that the county provides and publicizes information about noncharter public schools in the county;

(3) A county board may not require any student residing in the county to enroll in a public charter school, nor may it prohibit any public charter school student from returning to a noncharter public school;

(4) A public charter school shall designate its primary recruitment area in its charter application and charter contract. The establishment of a primary recruitment area by a public charter school does not negate any overlapping attendance area or areas established by a county board or boards for noncharter public schools. A primary recruitment area may include territory in more than one county;

(5) The primary recruitment area shall be based on the public charter school's estimated facility and program capacity. The capacity of the public charter school shall be determined annually by the governing board of the public charter school in conjunction with its authorizer and in consideration of the public charter school's ability to facilitate the academic success of its students, to achieve the other objectives specified in the charter contract, and to ensure that the student enrollment does not exceed the capacity of its facility, site and programs. An authorizer may not restrict the number of students a public charter school may enroll;

(6) Public charter schools may not discriminate against any person on any basis which would be unlawful for noncharter public schools in the school district. A public charter school may not establish admission policies or limit student admissions in any manner in which a public school is not permitted to establish admission policies or limit student admissions: *Provided,* That this subdivision may not be construed to limit the formation of a public charter school that is dedicated to focusing its education program and services on students with special needs, including, but not limited to, at-risk students, English language learners, students with severe disciplinary problems at a noncharter public school, or students involved with the juvenile justice system;

(7) A public charter school may establish any one or more of the following enrollment preferences for:

(A) Children who reside within the school's primary recruitment area;

(B) Students enrolled in the public charter school the previous school year and siblings of students already enrolled in the public charter school;

(C) Children with special needs, including, but not limited to, at-risk students, English language learners, students with severe disciplinary problems at a noncharter public school, or students involved with the juvenile justice system; and

(D) Children of governing board members and full-time employees of the school as long as the number of students enrolled under this preference constitute no more than five percent of the school's total student enrollment;

(8) A start-up public charter school shall enroll all students who apply and to whom an enrollment preference has been established. If the school has excess capacity after enrolling these students, the school shall enroll all other students who apply: *Provided,* That if the remaining applicants exceed the enrollment capacity of the program, class, grade level or building of the public charter school, the public charter school shall select students for enrollment from

among all remaining applicants by a random selection lottery. The school's lottery procedures and timelines support equal and open access for all students and take place in an open meeting;

(9) A conversion public charter school shall guarantee enrollment to all students who were previously enrolled in the noncharter public school and shall adopt and maintain a policy that gives enrollment preference to students who reside within the attendance area as established prior to the conversion of the school. If the school has excess capacity after enrolling these students and all others to whom an enrollment preference has been given, the school shall enroll all other students who apply: *Provided,* That if the remaining applicants exceed the enrollment capacity of the program, class, grade level or building of a public charter school, the public charter school shall select students for enrollment from among all remaining applicants by a random selection lottery. The school's lottery procedures and timelines support equal and open access for all students and take place in an open meeting; and

(10) A program conversion public charter school shall enroll all students who apply for enrollment in the program who, at the time of authorization, are enrolled in the noncharter public school at which the program is operated. A program conversion public charter school shall adopt and maintain a policy that gives enrollment preference to students who are enrolled in the noncharter public school at which the program is operated. If the school has excess capacity after enrolling these students, the school shall enroll all other students who apply: *Provided,* That if the remaining applicants exceed the enrollment capacity of the program, class, grade level or building of a public charter school, the public charter school shall select students for enrollment from among all remaining applicants by a random selection lottery. The school's lottery procedures and timelines support equal and open access for all students and take place in an open meeting.

(b) If a student who was previously enrolled in a public charter school transfers enrollment to a noncharter public school in this state, the school to which the student transfers shall accept credits earned by the student in courses or instructional programs at the public charter school in a uniform and consistent manner and

according to the same criteria that are used to accept academic credits from other noncharter public schools or that consider content competency when appropriate due to differences in curriculum delivery, instructional methods and strategies, or course designations and sequence.

(c) Each public charter school shall be given access to and shall utilize the electronic education information system established by the West Virginia Department of Education, is subject to the Student Data Accessibility, Transparency and Accountability Act pursuant to section §18-2-5h of this code, and shall report information on student and school performance to parents, policy-makers and the general public in the same manner as noncharter public schools utilizing the electronic format established by the West Virginia Department of Education.

(d) Each public charter school shall certify annually to the State Department of Education and to the county board of the school district in which the public charter school is located its student enrollment, average daily attendance and student participation in the national school lunch program, special education, vocational education, gifted education, advanced placement and dual credit courses, and federal programs in the same manner as school districts.

§18-5G-13. Appeal of authorizer's decision to West Virginia Board of Education.

(a) A charter applicant or governing board of an existing public charter school may appeal a decision of an authorizer concerning the denial of a charter application or the nonrenewal of a charter contract to the state board within 30 days of the authorizer's decision: *Provided,* That the authority to appeal an authorizer's decision pursuant to this subsection does not apply to instances where the state board is the authorizer that denies the charter application or fails to renew a charter contract.

(b) The state board shall promulgate a rule pursuant to §29A-3B-1 *et seq.* establishing the process and timeline for appeals filed pursuant to this section.

(c) The state board shall remand the authorizer's decision back to the authorizer for further proceedings if the substantive rights of the applicant have been prejudiced because the authorizer's findings, inferences, conclusions, or decisions are:

(1) In violation of constitutional or statutory provisions or state board policy;

(2) In excess of the statutory authority or jurisdiction of the authorizer;

(3) Made upon unlawful procedures;

(4) Affected by other error of law;

(5) Clearly wrong in view of the reliable, probative, and substantial evidence on the whole record; or

(6) Arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

§18-5G-14. Virtual public charter schools.

(a) Virtual public charter schools may be authorized pursuant to this article. To the extent they do not conflict with the following provisions, virtual public charter schools are subject to the same requirements as non-virtual public charter schools:

(1) The Professional Charter School Board may authorize two statewide virtual public charter school which shall not count against the limit in §18-5G-1 of this code. A statewide virtual public charter school shall enroll no more than five percent of the headcount enrollment per year;

(2) County boards may authorize virtual public charter schools for students in an identified primary recruitment area within the state that is set forth in the charter application. Each county board may authorize no more than one virtual public charter school. Attendance to a virtual public charter school authorized by a county board is limited to students within the primary recruitment area identified in the application. Applications to establish a virtual

public charter school shall not include within its primary recruitment area a location that is included in the primary recruitment area of another virtual public schools that has already been authorized. A county virtual public charter school shall enroll no more than 10 percent of a county's headcount enrollment;

(3) The charter for a virtual public charter school is for a term of five years; and virtual public charter school renewals are also for a term of five years;

(4) Virtual public charter school funding shall be consistent with other public charter school funding as set forth in §18-5G-5 of this code;

(5) When enrolling a student who may require special education services, the same obligations apply to a virtual public charter school as applies to all other public charter schools. Enrollment shall not be denied or delayed on the basis of a disability and the charter school shall convene an Individualized Education Program (IEP) meeting after admission to ensure that the school develops an appropriate IEP in accordance with all of the requirements set forth in the Individuals with Disabilities Education Act (IDEA);

(6) The governing body of a virtual public charter school shall undergo at least one training per year related to appropriate oversight of the virtual public charter school;

(7) A virtual public charter school student, to the extent the charter contract allows or requires instruction to occur outside of a school building, is not required to be physically present in a school building or classroom;

(8) Neither the virtual public charter school governing board, virtual public charter school personnel, the virtual public charter school student nor the parents or guardian of the virtual public charter school student, to the extent the program as delineated in the charter contract allows or requires instruction to occur outside of a school building, may incur any penalty or be held accountable for the absence of the student from the school building;

(9) For a virtual public charter school student, neither the school district nor the student, to the extent the program as delineated in the charter contract is a learn at your own pace program, as defined in the contract, is required to comply with the instructional term requirement set forth in section forty-five, article five of this chapter or any other law or state board rule requiring a student to be receiving instruction for any set time;

(10) A virtual public charter school is exempt from any provision of law or state board rule that applies to the traditional delivery of instruction such as requirements relating to the physical presence of a student, student monitoring and security, the maximum teacher-pupil ratio set forth in section eighteen-a, article five of this chapter, instructional time requirements and physical education requirements to the extent any of the foregoing conflict with the delivery of the virtual instruction program;

(11) Each virtual charter school in the state shall offer a student orientation, notify the parents and guardians and each student who enrolls in that school of the requirement to participate in the student orientation, and require all students enrolled to complete the student orientation prior to completing any other instructional activity;

(12) Virtual charter schools must provide, in a manner agreed to in the charter contract, data demonstrating student progress toward graduation. Measurement of such progress shall account for specific characteristics of each enrolled student, including but not limited to age and course credit accrued prior to enrollment in educational instruction and course content that are delivered primarily over the internet pursuant to enrollment, and shall be consistent with evidence-based best practices. Virtual charter schools shall also maintain clear requirements relating to student engagement and teacher responsiveness for virtual charter school students and teachers;

(13) (A) For the purposes of this section, "instructional activities" means the following classroom-based or nonclassroom-based activities that a student is expected to complete, participate in, or attend during any given school day:

(i) Online logins to curriculum or programs;

(ii) Offline activities;

(iii) Completed assignments within a particular program, curriculum, or class;

(iv) Testing;

(v) Face-to-face communications or meetings with school staff or service providers;

(vi) Telephone or video conferences with school staff or service providers; or

(vii) Other documented communication with school staff or service providers related to school curriculum or programs.

(B) Each virtual charter school shall develop and adopt a policy regarding failure to participate in instructional activities. The policy shall state that a student shall become subject to certain consequences, including disenrollment from the school, if both the following conditions are satisfied: (i) After the student's parent, guardian, or custodian receives a written report, the student fails to comply with the policy adopted under the paragraph within a reasonable period of time specified by the school; and (ii) Other intervention strategies contained in the policy adopted under this paragraph fail to cause a student to consistently participate in instructional activities. If a virtual charter school disenrolls a student pursuant to a policy adopted under this paragraph, the student shall be transferred to the district of residence and shall not be eligible to enroll in that virtual charter school or another virtual charter school for one school year from the date of the student's disenrollment.

(C) If a student is transferred under this section, the virtual charter school shall coordinate directly with the school district of residence on the appropriate educational placement for the student in the district. The appropriate educational placement shall be based on assessments of the student's abilities; and

(14) The authorizer may establish additional requirements for virtual charter schools enrolling students in grades six and below to ensure they are developmentally appropriate for students. Virtual charter schools enrolling any student in grades six and below shall meet any requirements established and agreed upon by the authorizer and applicant in the contract, and shall develop a mechanism to ensure that these requirements, if any, are met.

(b) None of the requirements of this section applies to virtual instruction programs created pursuant to §18-5F-1 *et seq.* of this code.

§18-5G-15. West Virginia Professional Charter School Board; members; appointments; meetings.

(a) There is hereby created the West Virginia Professional Charter School Board which shall report directly to and be responsible to the state board, separate from the Department of Education, for carrying out its duties in accordance with this article. The mission of the board is to authorize high-quality public charter schools throughout the state that provide more options for students to attain a thorough and efficient education, particularly through schools designed to expand the opportunities for at-risk students. The Professional Charter School Board and public charter schools authorized in accordance with this article are subject to the general supervision of the state board solely for the purposes of accountability for meeting the standards for student performance required of other public school students under §18-2E-5 of this code.

(b) The Professional Charter School Board shall consist of five voting members, appointed by the Governor, with the advice and consent of the Senate.

(c) The chair of the House Committee on Education and the chair of the Senate Committee on Education shall serve as nonvoting ex officio members of the Professional Charter School Board.

(d) Each appointed member shall represent the public interest and must satisfy the following requirements:

(1) Be a citizen of the state;

(2) Possess experience and expertise in public or nonprofit governance, management and finance, public school leadership, assessment, curriculum or instruction, or public education law; and

(3) Have demonstrated an understanding of, and commitment to, charter schooling as a strategy for strengthening public education.

(e) No more than three of the appointed members of the Professional Charter School Board may be of the same political party. The members shall reside in geographically diverse areas of the state, with no more than two members residing in the same county. No person may be appointed who holds any other public office or public employment under the government of this state or any of its political subdivisions, or who is an appointee or employee of any charter school governing board or an immediate family member of an employee under the jurisdiction of the Professional Charter School Board or any charter school governing board. No person may be appointed who is engaged in or employed by a person or company whose primary function involves, the sale of services and activities to public charter schools or charter school governing boards.

(f) The initial appointments made pursuant to this section shall be for staggered one- and two-year terms. Three of the initial members appointed by the Governor shall serve two-year terms; and two of the initial members appointed by the Governor shall serve one-year terms. Thereafter, all appointments shall be for a term of two years. The initial appointments shall be made before August 1, 2021. The Professional Charter School Board shall meet as soon as practical after August 1, 2021, upon the call of the Governor, and shall organize for business by selecting a chairman and adopting bylaws. Subsequent meetings shall be called by the chairman.

(g) An appointed member of the Professional Charter School Board may be removed from office by the Governor for official misconduct, incompetence, neglect of duty, or gross immorality. A member may also be removed if the member's personal incapacity renders the member incapable or unfit to discharge the duties of the office or if the member is absent from a number of meetings of the Professional Charter School Board as determined and specified by the commission in its bylaws. Whenever an appointed member vacancy on the Professional Charter School Board exists, the Governor shall appoint a qualified person for the remainder of the vacated term.

(h) Except in the case of gross negligence or reckless disregard of the safety and well-being of another person, the Professional Charter School Board and members of that board in their official capacity are immune from civil liability with respect to all activities related to a public charter school approved by the Public Charter School Board. The official actions of the members of the Professional Charter School Board who are serving in a nonvoting ex officio capacity by virtue of their designation as chair of the House Committee on Education or chair of the Senate Committee on Education are Professional Charter School Board member actions only, and may not be construed as official actions or positions of such member's committee or legislative body.

(i) The Professional Charter School Board may appoint an executive director and may employ such additional staff as may be necessary. The executive director shall serve at the will and pleasure of the Professional Charter School Board. The executive director must demonstrate an understanding of and commitment to charter schooling as a strategy for strengthening public education and must possess an understanding of state and federal education law.

(j) The Professional Charter School Board shall meet as needed, but at least bi-annually. From funds appropriated or otherwise made available for such purpose, its members shall be reimbursed for reasonable and necessary expenses actually incurred in the performance of official duties upon submission of

an itemized statement in a manner consistent with guidelines of the Travel Management Office of the Department of Administration.

(k) The Professional Charter School Board shall investigate official complaints submitted to it that allege serious impairments in the quality of education in a public charter school or virtual public charter school it has authorized pursuant to this article, or that allege such schools are in violation of the policies or laws applicable to them. The Professional Charter School Board also may at its own discretion conduct or cause to be conducted audits of the education and operation of public charter schools or virtual public charter schools it has authorized pursuant to this article that it determines necessary to achieve its mission of authorizing high-quality public charter schools. Upon a determination that serious impairments or violations exist, the Professional Charter School Board shall promptly notify in writing the public charter school governing board of the perceived serious impairments or violations and provide reasonable opportunity for the school to remedy the serious impairments or violations. The Professional Charter School Board shall take corrective actions or exercise sanctions in response to apparent serious impairments or violations. If warranted, the actions or sanctions may include requiring a charter school to develop and execute a corrective action plan within a specified time frame.

CHAPTER 99

(Com. Sub. for H. B. 2013 - By Delegates Ellington, Higginbotham, Summers, Hanna, Pinson, Wamsley, Kimble, D. Jeffries, Espinosa, Clark and Horst)

[Passed March 17, 2021; in effect ninety days from passage.]
[Approved by the Governor on March 27, 2021.]

AN ACT to amend and reenact §18-8-1 and §18-8-1a of the Code of West Virginia, 1931, as amended; to amend said code by adding thereto a new section, designated §18-9A-25; and to amend said code by adding thereto a new article, designated §18-31-1, §18-31-2, §18-31-3, §18-31-4, §18-31-5, §18-31-6, §18-31-7, §18-31-8, §18-31-9, §18-31-10, §18-31-11, §18-31-12 and §18-31-13, all relating to establishing the Hope Scholarship Program; creating exemptions from compulsory school attendance requirements under certain conditions; providing a parent of a prospective kindergarten student the option of applying to the program on his or her child's behalf; providing funding for the program and the parameters thereof; providing a title for the act and the program; providing definitions; creating the West Virginia Hope Scholarship Board and providing for membership qualifications therein; establishing powers of the board; establishing the application process for the award of Hope Scholarships; creating the West Virginia Hope Scholarship Program Fund and the West Virginia Hope Scholarship Program Expense Fund and the funding mechanisms and parameters therefore; establishing qualifying expenses for Hope Scholarship Accounts; creating a renewal process for accounts; providing for a Hope Scholarship student's participation in the public school system; providing for administration of accounts; providing for the auditing of the program, suspension of accounts and providers under certain circumstances, and creating a right of appeal; establishing requirements for and rights of education service

providers; establishing responsibilities of resident school districts; and providing for legal proceedings and severability.

Be it enacted by the Legislature of West Virginia:

ARTICLE 8. COMPULSORY SCHOOL ATTENDANCE.

§18-8-1. Compulsory school attendance; exemptions.

(a) Exemption from the requirements of compulsory public school attendance established in §18-8-1a of this code shall be made on behalf of any child for the causes or conditions set forth in this section. Each cause or condition set forth in this section is subject to confirmation by the attendance authority of the county. A child who is exempt from compulsory school attendance under this section is not subject to prosecution under §18-8-2 of this code, nor is such a child a status offender as defined by §49-1-202 of this code.

(b) A child is exempt from the compulsory school attendance requirement set forth in §18-8-1a of this code if the requirements of this subsection, relating to instruction in a private, parochial or other approved school, are met. The instruction shall be in a school approved by the county board and for a time equal to the instructional term set forth in §18-5-45 of this code. In all private, parochial or other schools approved pursuant to this subsection, it is the duty of the principal or other person in control, upon the request of the county superintendent, to furnish to the county board such information and records as may be required with respect to attendance, instruction and progress of students enrolled.

(c) A child is exempt from the compulsory school attendance requirement set forth in §18-8-1a of this code if the requirements of either subdivision (1) or subdivision (2) of this subsection, both relating to home instruction, are met.

(1) The instruction shall be in the home of the child or children or at some other place approved by the county board and for a time equal to the instructional term set forth in §18-5-45 of this code. If the request for home instruction is denied by the county board,

good and reasonable justification for the denial shall be furnished in writing to the applicant by the county board. The instruction shall be conducted by a person or persons who, in the judgment of the county superintendent and county board, are qualified to give instruction in subjects required to be taught in public elementary schools in the state. The person or persons providing the instruction, upon request of the county superintendent, shall furnish to the county board information and records as may be required periodically with respect to attendance, instruction and progress of students receiving the instruction. The state board shall develop guidelines for the home schooling of special education students including alternative assessment measures to assure that satisfactory academic progress is achieved.

(2) The child meets the requirements set forth in this subdivision: *Provided,* That the county superintendent may, after a showing of probable cause, seek from the circuit court of the county an order denying home instruction of the child. The order may be granted upon a showing of clear and convincing evidence that the child will suffer neglect in his or her education or that there are other compelling reasons to deny home instruction.

(A) Upon commencing home instruction under this section the parent of a child receiving home instruction shall present to the county superintendent or county board a notice of intent to provide home instruction that includes the name, address, and age of any child of compulsory school age to be instructed and assurance that the child shall receive instruction in reading, language, mathematics, science and social studies and that the child shall be assessed annually in accordance with this subdivision. The person providing home instruction shall notify the county superintendent upon termination of home instruction for a child who is of compulsory attendance age. Upon establishing residence in a new county, the person providing home instruction shall notify the previous county superintendent and submit a new notice of intent to the superintendent of the new county of residence: *Provided,* That if a child is enrolled in a public school, notice of intent to provide home instruction shall be given on or before the date home instruction is to begin.

(B) The person or persons providing home instruction shall submit satisfactory evidence of a high school diploma or equivalent, or a post-secondary degree or certificate from a regionally accredited institution or from an institution of higher education that has been authorized to confer a post-secondary degree or certificate in West Virginia by the West Virginia Council for Community and Technical College Education or by the West Virginia Higher Education Policy Commission.

(C) Annually, the person or persons providing home instruction shall obtain an academic assessment of the child for the previous school year in one of the following ways:

(i) The child receiving home instruction takes a nationally normed standardized achievement test published or normed not more than 10 years from the date of administration and administered under the conditions as set forth by the published instructions of the selected test and by a person qualified in accordance with the test's published guidelines in the subjects of reading, language, mathematics, science and social studies. The child is considered to have made acceptable progress when the mean of the child's test results in the required subject areas for any single year is within or above the fourth stanine or, if below the fourth stanine, shows improvement from the previous year's results;

(ii) The child participates in the testing program currently in use in the state's public schools. The test shall be administered to the child at a public school in the county of residence. Determination of acceptable progress shall be based on current guidelines of the state testing program;

(iii) A portfolio of samples of the child's work is reviewed by a certified teacher who determines whether the child's academic progress for the year is in accordance with the child's abilities. The teacher shall provide a written narrative about the child's progress in the areas of reading, language, mathematics, science and social studies and shall note any areas which, in the professional opinion of the reviewer, show need for improvement or remediation. If the narrative indicates that the child's academic progress for the year

is in accordance with the child's abilities, the child is considered to have made acceptable progress; or

(iv) The child completes an alternative academic assessment of proficiency that is mutually agreed upon by the parent or legal guardian and the county superintendent.

(D) A parent or legal guardian shall maintain copies of each student's Academic Assessment for three years. When the annual assessment fails to show acceptable progress, the person or persons providing home instruction shall initiate a remedial program to foster acceptable progress. The county board upon request shall notify the parents or legal guardian of the child, in writing, of the services available to assist in the assessment of the child's eligibility for special education services. Identification of a disability does not preclude the continuation of home schooling. In the event that the child does not achieve acceptable progress for a second consecutive year, the person or persons providing instruction shall submit to the county superintendent additional evidence that appropriate instruction is being provided.

(E) The parent or legal guardian shall submit to the county superintendent the results of the academic assessment of the child at grade levels three, five, eight and 11, as applicable, by June 30 of the year in which the assessment was administered.

(3) This subdivision applies to both home instruction exemptions set forth in subdivisions (1) and (2) of this subsection. The county superintendent or a designee shall offer such assistance, including textbooks, other teaching materials and available resources, all subject to availability, as may assist the person or persons providing home instruction. Any child receiving home instruction may upon approval of the county board exercise the option to attend any class offered by the county board as the person or persons providing home instruction may consider appropriate subject to normal registration and attendance requirements.

(d) A child is exempt from the compulsory school attendance requirement set forth in §18-8-1a of this code if the requirements of this subsection, relating to physical or mental incapacity, are

met. Physical or mental incapacity consists of incapacity for school attendance and the performance of school work. In all cases of prolonged absence from school due to incapacity of the child to attend, the written statement of a licensed physician or authorized school nurse is required. Incapacity shall be narrowly defined and in any case the provisions of this article may not allow for the exclusion of the mentally, physically, emotionally or behaviorally handicapped child otherwise entitled to a free appropriate education.

(e) A child is exempt from the compulsory school attendance requirement set forth in §18-8-1a of this code if conditions rendering school attendance impossible or hazardous to the life, health or safety of the child exist.

(f) A child is exempt from the compulsory school attendance requirement set forth in §18-8-1a of this code upon regular graduation from a standard senior high school or alternate secondary program completion as determined by the state board.

(g) A child is exempt from the compulsory school attendance requirement set forth in §18-8-1a of this code if the child is granted a work permit pursuant to the subsection. After due investigation the county superintendent may grant work permits to youths under the termination age designated in §18-8-1a of this code, subject to state and federal labor laws and regulations. A work permit may not be granted on behalf of any youth who has not completed the eighth grade of school.

(h) A child is exempt from the compulsory school attendance requirement set forth in §18-8-1a of this code if a serious illness or death in the immediate family of the child has occurred. It is expected that the county attendance director will ascertain the facts in all cases of such absences about which information is inadequate and report the facts to the county superintendent.

(i) A child is exempt from the compulsory school attendance requirement set forth in §18-8-1a of this code if the requirements of this subsection, relating to destitution in the home, are met. Exemption based on a condition of extreme destitution in the home

may be granted only upon the written recommendation of the county attendance director to the county superintendent following careful investigation of the case. A copy of the report confirming the condition and school exemption shall be placed with the county director of public assistance. This enactment contemplates every reasonable effort that may properly be taken on the part of both school and public assistance authorities for the relief of home conditions officially recognized as being so destitute as to deprive children of the privilege of school attendance. Exemption for this cause is not allowed when the destitution is relieved through public or private means.

(j) A child is exempt from the compulsory school attendance requirement set forth in §18-8-1a of this code if the requirements of this subsection, relating to church ordinances and observances of regular church ordinances, are met. The county board may approve exemption for religious instruction upon written request of the person having legal or actual charge of a child or children. This exemption is subject to the rules prescribed by the county superintendent and approved by the county board.

(k) A child is exempt from the compulsory school attendance requirement set forth in §18-8-1a of this code if the requirements of this subsection, relating to alternative private, parochial, church or religious school instruction, are met. Exemption shall be made for any child attending any private school, parochial school, church school, school operated by a religious order or other nonpublic school which elects to comply with the provisions of §18-28-1 *et seq.* of this code.

(l) Completion of the eighth grade does not exempt any child under the termination age designated in §18-8-1a of this code from the compulsory attendance provision of this article.

(m) A child is exempt from the compulsory school attendance requirements set forth in §18-8-1a of this code if the child is an eligible recipient participating in the Hope Scholarship Program, as provided for in §18-31-1 *et seq.* of this code and provides a notice of intent to participate in the Hope Scholarship Program to the county superintendent. The county superintendent shall enter

the following into the West Virginia Education Information System (WVEIS):

(1) The filing of the notice of intent pursuant to this subsection;

(2) In the case of a Hope Scholarship recipient who chooses an individualized instructional program, annually, the child's test results or determination that a student is making academic progress commensurate with his or her age and ability, as applicable, pursuant to §18-31-8(a)(4) of this code; and

(3) In the case of an eligible recipient enrolling in a participating school, annually, the filing of a notice of enrollment pursuant to §18-31-11(a)(6) of this code.

***§18-8-1a. Commencement and termination of compulsory school attendance; public school entrance requirements; exceptions.**

(a) Notwithstanding the provisions of section one of this article, compulsory school attendance begins with the school year in which the sixth birthday is reached prior to September 1 of such year or upon enrolling in a publicly supported kindergarten program and, subject to subdivision (3) of this subsection, continues to the sixteenth birthday or for as long as the student continues to be enrolled in a school system after the sixteenth birthday.

(1) A child may be removed from such kindergarten program when the principal, teacher and parent or guardian concur that the best interest of the child would not be served by requiring further attendance: *Provided,* That the principal shall make the final determination with regard to compulsory school attendance in a publicly supported kindergarten program.

(2) The compulsory school attendance provision of this article shall be enforced against a person eighteen years of age or older for as long as the person continues to be enrolled in a school system and may not be enforced against the parent, guardian or custodian of the person.

***NOTE:** This section was also amended by H. B. 2785 (Chapter 100), which passed subsequent to this act.

(3) Notwithstanding the provisions of section one of this article, compulsory school attendance begins with the school year in which the sixth birthday is reached prior to September 1 of such year or upon enrolling in a publicly supported kindergarten program and continues to the seventeenth birthday or for as long as the student continues to be enrolled in a school system after the seventeenth birthday: *Provided,* That beginning in the school year 2019-2020, compulsory school attendance begins with the school year in which the sixth birthday is reached prior to July 1 of such year or upon enrolling in a publicly supported kindergarten program.

(b) A parent, as defined in §18-31-2 of this code, shall have the option, prior to enrolling in a publicly supported kindergarten program, to apply for a Hope Scholarship on behalf of his or her child as set forth in §18-31-1 *et seq.* of this code. Every year thereafter, a parent shall have the option to renew his or her child's enrollment in the Hope Scholarship Program pursuant to §18-31-8 of this code.

(c) Attendance at a state-approved or Montessori kindergarten, as provided in section eighteen, article five of this chapter, is deemed school attendance for purposes of this section. Prior to entrance into the first grade in accordance with section five, article two of this chapter, each child must have either:

(1) Successfully completed such publicly or privately supported, state-approved kindergarten program or Montessori kindergarten program; or

(2) Successfully completed an entrance test of basic readiness skills approved by the county in which the school is located. The test may be administered in lieu of kindergarten attendance only under extraordinary circumstances to be determined by the county board.

(d) Notwithstanding the provisions of this section, section five, article two of this chapter and section eighteen, article five of this chapter, a county board may provide for advanced entrance or placement under policies adopted by said board for any child who

has demonstrated sufficient mental and physical competency for such entrance or placement.

(e) This section does not prevent a student from another state from enrolling in the same grade in a public school in West Virginia as the student was enrolled at the school from which the student transferred.

ARTICLE 9A. PUBLIC SCHOOL SUPPORT.

§18-9A-25. Funding for Hope Scholarship Program.

(a) Notwithstanding any other provision of this article to the contrary, for fiscal year 2023 and each fiscal year thereafter, in addition to all other amounts required by this article, the Department of Education shall include in its budget request, and the Governor shall include in each budget bill submitted to the Legislature, an appropriation to the Department of Education for the greater of an amount not less than two percent of net public school enrollment adjusted for state aid purposes or the total number of eligible Hope Scholarship applications received by the Hope Scholarship Board, if available, multiplied by the prior year's statewide average net state aid allotted per pupil. The amount appropriated shall be transferred by the Department of Education to the Hope Scholarship Board to be used solely to meet the Hope Scholarship Program obligations set forth in §18-31-1 *et seq.* of this code except as otherwise provided in this section. The Governor shall also provide in each budget for the reappropriation for expenditure during the ensuing fiscal year the balance to the Department of Education that was not transferred to the Hope Scholarship Board due to an accumulated balance from prior years as provided under subsection (b) of this section.

(b) Each fiscal year, the amount required to be requested and included in the budget bill for appropriation under subsection (a) of this section shall be reduced by the sum of:

(1) Any unused accumulated amounts transferred to the Hope Scholarship Board for these purposes from previous years; and

(2) Any unused appropriations made to the Department of Education for these purposes that were not transferred to the Hope Scholarship Board due to an accumulated balance from prior years.

ARTICLE 31. HOPE SCHOLARSHIP PROGRAM.

§18-31-1. Short title.

This article shall be known as the "Hope Scholarship Act." The program created by this act shall be known as the "Hope Scholarship Program."

§18-31-2. Definitions.

The following words have the meanings ascribed to them unless the context clearly indicates a different meaning:

(1) "Account" or "scholarship" means a Hope Scholarship account, awarded pursuant to this article, to which funds are allocated by the board to the parent or parents of an eligible Hope Scholarship student in order to pay qualifying education expenses to educate the student pursuant to the requirements and conditions of this article;

(2) "Board" means the Hope Scholarship Board created pursuant to §18-31-3 of this code;

(3) "Curriculum" means a complete course of study for a particular content area or grade level, including any supplemental materials required by the curriculum;

(4) "Education service provider" means a person or organization that receives payments from Hope Scholarship accounts to provide educational goods and services to Hope Scholarship students;

(5) "Eligible recipient" means a child who:

(A) Is a resident of this state; and

(B) Is enrolled full-time and attending a public elementary or secondary school program in this state for at least 45 calendar

days during an instructional term at the time of application and until an award letter is issued by the board under §18-31-5(c) of this code, or enrolled full-time in a public elementary or secondary school program in this state for the entire instructional term the previous year, or is eligible at the time of application to enroll in a kindergarten program in this state pursuant to §18-8-1a of this code, except that if on July 1, 2024, the participation rate of the combined number of students in the Hope Scholarship Program and students eligible who have applied to participate in the Hope Scholarship program during the previous school year is less than five percent of net public school enrollment adjusted for state aid purposes for the previous school year, then, effective July 1, 2026, a child is considered to meet the requirements of this paragraph if he or she is enrolled, eligible to be enrolled, or required to be enrolled in a kindergarten program or public elementary or secondary school program in this state at the time of application;

(6) "Hope scholarship funds" means the moneys deposited in a Hope Scholarship student's account in accordance with the requirements of this article.

(7) "Hope scholarship student" means a student who receives a scholarship pursuant to this article;

(8) "Parent" means a biological parent, legal guardian, custodian, or other person with legal authority to act on behalf of an eligible recipient or Hope Scholarship student;

(9) "Participating school" means any private school that provides education to elementary and/or secondary students and has notified the board of its intention to participate in the program and comply with the program's requirements;

(10) "Resident school district" means the county school district in which the student resides; and

(11) "Treasurer" means the West Virginia State Treasurer.

§18-31-3. West Virginia Hope Scholarship board; members; terms; compensation; proceedings generally.

(a) The West Virginia Hope Scholarship Program shall be administered by the West Virginia Hope Scholarship Board.

(b) The board shall consist of nine members and include the following:

(1) The State Treasurer;

(2) The State Auditor, or his or her designee;

(3) The State Attorney General, or his or her designee;

(4) The State Superintendent of Schools, or his or her designee;

(5) The Chancellor of Higher Education, or his or her designee;

(6) The Director of the Herbert Henderson Office of Minority Affairs, or his or her designee; and

(7) Three members appointed by the Governor with the advice and consent of the Senate who are parents of Hope Scholarship students, or for the initial appointments of board members following the effective date of this article, parents who intend to apply for the Hope Scholarship on behalf of eligible recipients, to be appointed as follows:

(A) Only state residents are eligible for appointment to the board;

(B) The members shall reside in geographically diverse areas of the state;

(C) Members shall be initially appointed to staggered terms as follows:

(i) One member appointed by the Governor to a one-year term;

(ii) One member appointed by the Governor to a two-year term; and

(iii) One member each appointed by the Governor to a three-year term.

After the initial staggering of terms, appointed board members shall serve for three-year terms and are eligible for reappointment at the expiration of their terms; and

(D) If there is a vacancy among appointed members, the vacancy shall be filled by appointment to the unexpired term of a person meeting the requirements of this section by the Governor with the advice and consent of the Senate. Members of the board shall serve until the later of the expiration of the term for which the member was appointed or the appointment of his or her successor.

(c) Members of the board shall serve without compensation. The board may reimburse members for all reasonable and necessary expenses, including travel expenses, actually incurred by board members in the conduct of their official duties. Any expense reimbursements shall be made from the West Virginia Hope Scholarship Program Expense Fund at the same rate paid to state employees.

(d) The Treasurer is the chairman and presiding officer of the board. The Treasurer may provide office space and staff to the board upon request of the board.

(e) The State Superintendent of Schools may provide staff to the board, upon request of the board.

(f) A majority of the members of the board constitutes a quorum for the transaction of the business of the board.

(g) Members of the board are subject to the ethical standards and financial disclosure requirements of the West Virginia Governmental Ethics Act in Chapter 6B of this code.

§18-31-4. Powers of the board.

The board is authorized to take any action necessary to effectuate the provisions of this article and to successfully

administer the Hope Scholarship Program, subject to applicable state and federal law, including, but not limited to the following:

(1) Adopt and amend bylaws;

(2) Execute contracts and other instruments for necessary goods and services, employ necessary personnel and engage the services of private consultants, actuaries, auditors, counsel, managers, trustees, and any other contractor or professional needed for rendering professional and technical assistance and advice: *Provided,* That election of these services is not subject to the provisions of §5A-3-1 *et seq.* of this code;

(3) Implement the program through the use of financial organizations as account depositories and managers;

(4) Develop and impose requirements, policies, procedures, and guidelines to implement and manage the program;

(5) Determine whether an expenditure of Hope Scholarship funds is or was a qualifying expense to educate a Hope Scholarship student pursuant to §18-31-7 of this code. The board may approve or deny expenditures by a majority vote;

(6) Review any appeals made pursuant to §18-31-10(b) and §18-31-10(d) of this code;

(7) Establish the method by which moneys in the Hope Scholarship Expense Fund shall be allocated to pay for administrative costs and assess, collect and expend administrative fees, charges, and penalties;

(8) Authorize the assessment, collection and retention of fees and charges against the amounts paid into and the earnings on the Hope Scholarship funds by a financial institution, investment manager, fund manager, West Virginia Investment Management Board, West Virginia Board of Treasury Investments, or other professional managing or investing the Hope Scholarship funds and accounts;

(9) Invest and reinvest any of the funds and accounts under the board's control with a financial institution, an investment manager, a fund manager, the West Virginia Investment Management Board, West Virginia Board of Treasury Investments, or other professionals investing the funds and accounts: *Provided,* That investments made under this article shall be made in accordance with the provisions of §44-6C-1 *et seq.* of this code; and

(10) Solicit and accept gifts, including bequests and other testamentary gifts made by will, trust, or other disposition; grants; loans; aid; and property, real or personal of any nature and from any source, or to participate in any other way in any federal, state, or local governmental programs in carrying out the purposes of this article: *Provided,* That the board shall use the property received to effectuate the desires of the donor, and shall convert the property received into cash within 180 days of receipt.

§18-31-5. Award of Hope Scholarships.

(a) The Hope Scholarship Program is established to provide the option for a parent to better meet the individual education needs of his or her eligible child. The program shall be operational no later than July 1, 2022.

(b) The board shall create a standard application form that a parent can submit to establish his or her student's eligibility for the award of Hope Scholarship funds, to be placed in a personal education savings account to be used for qualifying education expenses on behalf of the eligible recipient as provided for in §18-31-7 of this code. Information about scholarship funds and the application process shall be made available on the board's website.

(c) The board shall make such applications available no later than March 1, 2022 and shall begin accepting applications immediately thereafter. The board may update the application as needed. The board shall issue an award letter to eligible recipients within 45 days of receipt of a completed application and all required documentation.

(d) The board shall approve an application for a Hope Scholarship if all of the following circumstances are met:

(1) A parent submits an application for a Hope Scholarship in accordance with the legislative rules promulgated by the board;

(2) A student on whose behalf the parent is applying is an eligible recipient, as provided for in §18-31-2(5) of this code;

(3) The parent signs an agreement with the board, promising to do all of the following:

(A) To provide an education for the eligible recipient in at least the subjects of reading, language, mathematics, science, and social studies;

(B) To use the Hope Scholarship funds exclusively for qualifying expenses as provided for in §18-31-7 of this code;

(C) To comply with the rules and requirements of the Hope Scholarship program; and

(D) To afford the Hope Scholarship student opportunities for educational enrichment such as organized athletics, art, music, or literature; and

(4) The board confirms with the West Virginia Department of Education that the student satisfies §18-31-2(5)(B) of this code: *Provided*, That if the department does not reply within 30 days, this criteria is considered satisfied.

(e) An application for a Hope Scholarship is confidential and not a public record subject to release pursuant to the West Virginia Freedom of Information Act, as codified in §29B-1-1 *et seq.* of this code.

§18-31-6. Funding of Hope Scholarships; program and expense funds.

(a) There is hereby created in the State Treasury a special revenue fund designated and known as the West Virginia Hope Scholarship Program Fund. The fund shall be administered by the

Treasurer and shall consist of funds transferred by the Department of Education in accordance with §18-9A-25 of this code. All interest and other returns derived from the deposit and investment of moneys in the Hope Scholarship Fund shall be credited to the fund. Any balance, including accrued interest and other returns, remaining in the fund at the end of each fiscal year shall not revert to the General Revenue Fund but shall remain in the fund and be expended as provided by this section.

(b) The amount of Hope Scholarship funds made available to an eligible recipient on a yearly basis shall be equal to 100 percent of the prior year's statewide average net state aid share allotted per pupil based on net enrollment adjusted for state aid purposes, subject to the provisions of subsection (c) of this section: *Provided*, That the amount of the funding to an eligible recipient who is awarded a Hope Scholarship account for less than a full fiscal year shall be prorated based on the portion of the fiscal year the eligible recipient is awarded the Hope Scholarship account. On or prior to the submission of the Department of Education's budget request each year, the board shall notify the Department of Education of the total number of eligible Hope Scholarship applications received by the board, for purposes of facilitating the necessary transfer of moneys pursuant to §18-9A-25 of this code.

(c) Expenditures from the Hope Scholarship Fund shall be limited to the purposes set forth in this article: *Provided,* That an amount not to exceed five percent of the fund shall be transferred annually to the West Virginia Hope Scholarship Program Expense Fund established in subsection (h) of this section to cover the annual administrative costs of the Hope Scholarship Program. If the number of Hope Scholarship accounts increases significantly after any fiscal year, the Treasurer may request an appropriation by the Legislature to the West Virginia Hope Scholarship Program Expense Fund in an amount equal to the administrative costs associated with the increase in Hope Scholarship accounts.

(d) The first deposit of Hope Scholarship funds into an eligible recipient account shall be subject to the execution of the parental agreement required by §18-31-5 of this code. Upon execution of the required parental agreement, and subject to the provisions of

§18-31-9(e) of this code, one half of the total annually required deposit shall be made no later than August 15 of every year into an eligible recipient's Hope Scholarship account, and one half of the total annually required deposit shall be made no later than January 15 of every year. Any funds remaining in a Hope Scholarship account at the end of the fiscal year may be carried over to the next fiscal year upon successful renewal of the account.

(e) Funds deposited in a student's Hope Scholarship account, other than those funds expended on transportation services pursuant to §18-31-7(11) of this code, do not constitute taxable income to the parent or the Hope Scholarship student.

(f) The board shall continue to make deposits into an eligible recipient's Hope Scholarship account in accordance with the provisions of this section unless any of the following conditions have occurred:

(1) A parent of an eligible recipient fails to renew a Hope Scholarship account or withdraws from the Hope Scholarship Program;

(2) The board determines that a student is no longer eligible for a Hope Scholarship;

(3) The board suspends or revokes participation in the Hope Scholarship Program for failure to comply with the requirements of this article;

(4) The Hope Scholarship student successfully completes a secondary education program; or

(5) The Hope Scholarship student reaches 21 years of age.

(g) If any of the conditions in subsection (f) of this section occur, the board shall notify the parent that the eligible recipient's account will be closed in 45 calendar days. If a parent fails to adequately address the condition or conditions upon which closure is based or does not respond within 30 calendar days of receipt of notice, the board shall close the account and any remaining moneys shall be returned to the state.

(h)(1) There is hereby created in the State Treasury a special revenue fund designated and known as the West Virginia Hope Scholarship Program Expense Fund. The account shall consist of moneys received pursuant to this section; moneys, if any, transferred from special revenue funds administered by the Treasurer; or any governmental or private grants and any state general fund appropriations, if any, for the Hope Scholarship Program. All interest and other returns derived from the deposit and investment of moneys in the Hope Scholarship Program Expense Fund shall be credited to the fund. Any balance, including accrued interest and other returns, remaining in the fund at the end of each fiscal year shall not revert to the General Revenue Fund but shall remain in the fund and be expended as provided by this section.

(2) All expenses incurred by the Treasurer or the board in developing and administering the Hope Scholarship Program shall be payable from the West Virginia Hope Scholarship Expense Fund.

§18-31-7. Qualifying expenses for Hope Scholarship accounts.

(a) Parents of a Hope Scholarship student shall agree to use the funds deposited in their student's Hope Scholarship account only for the following qualifying expenses to educate the student:

(1) Ongoing services provided by a public school district pursuant to §18-31-8(f) of this code, including without limitation, individual classes and extracurricular activities and programs;

(2) Tuition and fees at a participating school;

(3) Tutoring services provided by an individual or a tutoring facility: *Provided*, That such tutoring services are not provided by a member of the Hope Scholarship student's immediate family;

(4) Fees for nationally standardized assessments, advanced placement examinations, any examinations related to college or university admission, and tuition and/or fees for preparatory courses for the aforementioned exams;

(5) Tuition and fees for programs of study or the curriculum of courses that lead to an industry-recognized credential that satisfies a workforce need;

(6) Tuition and fees for nonpublic online learning programs;

(7) Tuition and fees for alternative education programs;

(8) Fees for after-school or summer education programs;

(9) Educational services and therapies, including, but not limited to, occupational, behavioral, physical, speech-language, and audiology therapies;

(10) Curriculum as defined in §18-31-2 of this code;

(11) Fees for transportation paid to a fee-for-service transportation provider for the student to travel to and from an education service provider; and

(12) Any other qualified expenses as approved by the board established pursuant to §18-31-3 of this code.

(b) Hope Scholarship funds may only be used for educational purposes in accordance with subsection (a) of this section. Nothing in this section requires that a Hope Scholarship student be enrolled, full- or part-time, in either a private school or nonpublic online school.

(c) Hope Scholarship funds may not be refunded, rebated, or shared with a parent or student in any manner. Any refund or rebate for goods or services purchased with Hope Scholarship funds shall be credited directly to a student's Hope Scholarship account.

(d) Nothing in this section prohibits the parents of a Hope Scholarship student from making payments for the costs of educational goods and services not covered by the funds in their student's Hope Scholarship account. However, personal deposits into a Hope Scholarship account are not permitted.

§18-31-8. Renewal of Hope Scholarship accounts; participation in public school system.

(a) A parent must renew an eligible recipient's Hope Scholarship on an annual basis. Notwithstanding any changes in eligibility, a Hope Scholarship student who has previously qualified for a Hope Scholarship account remains eligible to apply for renewal until one of the conditions set forth in §18-31-6(f) occurs: *Provided,* That the board shall verify with the Department of Education the following information by July 1 of every year:

(1) A list of all active Hope Scholarship Accounts;

(2) The resident school district of each Hope Scholarship student;

(3) For a Hope Scholarship student who chooses to attend a participating school, annual confirmation of his or her continued attendance at a nonpublic school that complies with all requirements that other nonpublic school students must comply with; and

(4) For a Hope Scholarship student who chooses an individualized instructional program:

(A) (i) He or she has annually taken a nationally normed standardized achievement test of academic achievement;

(ii) The mean of the child's test results in the subject areas of reading, language, mathematics, science and social studies for any single year is within or above the fourth stanine or, if below the fourth stanine, show improvement from the previous year's results; and

(iii) The child's test results are reported to the county superintendent; or

(B) (i) A certified teacher conducts a review of the student's academic work annually;

(ii) The certified teacher determines that the student is making academic progress commensurate with his or her age and ability; and

(iii) The certified teacher's determination is reported to the county superintendent.

(b) Each county superintendent shall submit the test results and determinations reported to him or her pursuant to subsection (a) of this section to the Department of Education each year on or before June 15.

(c) If a parent fails to renew an eligible recipient's Hope Scholarship, the board shall notify the parent that the eligible recipient's account will be closed in 45 calendar days. If a parent chooses not to renew or does not respond within 30 calendar days of receipt of notice, the board shall close the account and any remaining moneys shall be returned to the state.

(d) If an eligible recipient decides to return to the Hope Scholarship Program after failing to renew, they must reapply.

(e) The board, in consultation with the Department of Education, may adopt rules and policies to provide the least disruptive process for Hope Scholarship students who desire to stop receiving Hope Scholarship payments and return full-time to a public school.

(f) The board, in consultation with the Department of Education, may adopt rules and policies for Hope Scholarship students who want to continue to receive services provided by a public school or district, including individual classes and extracurricular programs, in combination with an individualized instructional program. The board, in consultation with the Department of Education, shall ensure that any public school or school district providing such services receives the appropriate pro rata share of a student's Hope Scholarship funds based on the percentage of total instruction provided to the student by the public school or school district. County boards shall charge tuition to Hope Scholarship students who enroll for services in a public

school within the county. Hope Scholarship students who enroll for services part-time in public school shall not be included in net enrollment for state aid funding purposes under §18-9A-2 of this code. Nothing in this subsection prohibits a Hope Scholarship student from using the funds deposited in his or her account on both services provided by a public school or district and other qualifying expenses as provided for in §18-31-7 of this code.

§18-31-9. Administration of Hope Scholarship accounts.

(a) In addition to the duties, obligations, and authority stated in this section and in other parts of this article, the board has the following duties, obligations, and authority with respect to the administration of Hope Scholarship accounts:

(1) To maintain an updated list of participating schools and shall ensure that the list is publicly available through various sources, including the internet;

(2) To provide parents with a written explanation of the allowable uses of Hope Scholarship funds, the responsibilities of parents, the duties of the board and the role of any private financial management firms or other private organizations that the board may contract with to administer the Hope Scholarship Program or any aspect of the program; and

(3) To ensure that parents of students with a disability receive notice that participation in the Hope Scholarship Program is a parental placement under 20 U.S.C. §1412 of the Individuals with Disabilities Education Act (IDEA) along with an explanation of the rights that parentally placed students possess under (IDEA) and any applicable state laws and regulations.

(b) The board may contract with private organizations to administer the Hope Scholarship Program. This includes, but is not limited to, private financial management firms to manage Hope Scholarship accounts.

(c) The board shall implement, or contract with a private organization to implement, a commercially viable, cost effective, and parent-friendly system for payment for services from Hope

Scholarship accounts to participating schools or education service providers, including, but not limited to, the use of debit cards or other electronic or online fund transfers: *Provided,* That a Hope Scholarship account may not be reduced for debit card or electronic payment fees.

(d) The board shall also seek to implement a commercially viable, cost-effective, and parent-friendly system for publicly rating, reviewing, and sharing information about participating schools and education service providers, ideally as part of the same system that facilitates the electronic or online funds transfers so as to create a one-stop-shop for parents and Hope Scholarship students.

(e) If an education service provider requires partial payment of tuition or fees prior to the start of the academic year to reserve space for a Hope Scholarship student admitted to the education service provider, such partial payment may be paid prior to the start of the school year in which the Hope Scholarship is awarded, and deducted in an equitable manner from subsequent Hope Scholarship deposits to ensure adequate funds remain available throughout the school year; but if a Hope Scholarship student decides not to use the education service provider, the partial reservation payment must be returned to the board by such education service provider and credited to the student's Hope Scholarship account.

(f) The board may accept gifts and grants from any source to cover administrative costs, to inform the public about the Hope Scholarship Program, or to provide additional funding for Hope Scholarship Accounts.

(g) The board may propose legislative rules for legislative approval pursuant to §29A-3-1 *et seq.* of this code, including emergency rules, if necessary, to meet timelines set forth in this article, that are not inconsistent with this article and that are necessary for the administration of this article, including:

(1) Establishing or contracting for the establishment of a fraud reporting system;

(2) Policies that require a surety bond for education service providers receiving more than $100,000 in Hope Scholarship funds;

(3) Procedures for refunding payments from education service providers back to Hope Scholarship accounts; and

(4) Procedures for entering into reciprocal agreements with other state education savings account agencies or entities, whether public or private, to recognize and allow education service providers approved in other states to receive payments from Hope Scholarship accounts under this article.

(h) The rules or policies adopted by the board should avoid excessive bureaucracy and overly prescriptive mandates and instead shall focus on encouraging participation in the program and encouraging education service providers to provide parents and Hope Scholarship students with a broad array of educational options.

§18-31-10. Auditing of Hope Scholarship Program; suspension of accounts and providers.

(a) The board may propose legislative rules for legislative approval pursuant to §29A-3-1 *et seq.* of this code for the auditing of individual Hope Scholarship accounts and shall conduct or contract for the random auditing of individual Hope Scholarship accounts as needed to ensure compliance with the requirements of this article and rules promulgated pursuant to this article.

(b) As part of the auditing process, the board may remove a parent or eligible recipient from the Hope Scholarship program and close a Hope Scholarship account for failure to comply with the terms of the parental agreement required by §18-31-5 of this code, failure to comply with the applicable laws, failure of the student to remain eligible, or intentional and fraudulent misuse of Hope Scholarship funds: *Provided,* That the board shall create procedures to ensure that a fair process exists to determine the removal of a parent or eligible recipient from the Hope Scholarship

program and a parent or Hope Scholarship student may appeal the decision to make the student ineligible for funds to the board.

(c) The board may conduct or contract for the audit of education service providers accepting payments from Hope Scholarship accounts if it determines that the education service provider has:

(1) Intentionally and substantially misrepresented information or failed to refund any overpayments in a timely manner; or

(2) Routinely failed to provide students with promised educational goods or services.

(d) If the board determines that an education service provider has intentionally and substantially misused Hope Scholarship funds, the board may bar the education service provider from continuing to receive payments. The board shall create procedures to ensure that a fair process exists to determine whether an education service provider may be barred from receiving payment from Hope Scholarship accounts and an education service provider may appeal a decision to bar it from receiving payments to the board. If the board bars an education service provider from receiving payments from Hope Scholarship accounts, it shall notify parents and students of its decision as quickly as possible.

(e) If the board obtains evidence of potential fraudulent use of Hope Scholarship funds, it may refer suspected cases to the State Auditor for purposes of investigation, collection and potential criminal investigation.

§18-31-11. Requirements for and rights of education service providers.

(a) To be eligible to accept payments from a Hope Scholarship account, an education service provider shall:

(1) Submit notice to the board that they wish to participate in the Hope Scholarship Program;

(2) Provide participating parents with a receipt for all qualifying educational expenses for the Hope Scholarship student;

(3) Agree not to refund, rebate, or share Hope Scholarship funds with parents or students in any manner, except that funds may be remitted or refunded to a Hope Scholarship account in accordance with §18-31-7(c) of this code;

(4) Certify that it will not discriminate on any basis prohibited by 42 U.S.C. 1981;

(5) Agree to submit any employee who will have contact with Hope Scholarship students to a criminal background check; and

(6) In the case of a participating school, provide notice of enrollment annually to the county superintendent of any student for which a student's tuition is being paid through the Hope Scholarship Program.

(b) This article does not limit the independence or autonomy of an education service provider or make the actions of an education service provider the actions of the state government.

(c) Education service providers shall be given maximum freedom to provide for the educational needs of Hope Scholarship students without governmental control.

(d) A participating school or education service provider is not required to alter its creed, practices, admission policy, hiring policy or curriculum in order to accept eligible recipients whose parents pay tuition or fees from a Hope Scholarship account pursuant to this article.

(e) This article does not expand the regulatory authority of the state, its officers, or any school district to impose any additional regulation of education service providers beyond those necessary to enforce the requirements of the program.

§18-31-12. Responsibilities of resident school districts.

The resident school district or school district in which a Hope Scholarship student was last enrolled, as applicable, shall provide an education service provider that has enrolled the student with a

complete copy of the student's school records, while complying with the Family Educational Rights and Privacy Act of 1974 (20 U.S.C. §1232 g).

§18-31-13. Legal proceedings; severability.

(a) No liability arises on the part of the board or the state or of any county school district based on the award or use of a Hope Scholarship awarded pursuant to this article.

(b) It is the intention of the Legislature in the enactment of this article that if any part of this article is challenged in court as violating either the state or federal constitution, the parents of eligible Hope Scholarship students should be deemed to have standing to be parties to such litigation, and should be permitted by the court to intervene if they are not already parties to such litigation.

(c) If any provision of this article or the application of any such provision of this article to any person or circumstance is held invalid by a court of competent jurisdiction, the remainder of this article or the application of its provisions to persons or circumstances other than those to which it is held invalid is not affected thereby.

CHAPTER 100

(Com. Sub. for H. B. 2785 - By Delegates Worrell, D. Jeffries, Burkhammer, Fast, Pinson, Ellington and Kimble)

[Passed April 7, 2021; in effect ninety days from passage.]
[Approved by the Governor on April 21, 2021.]

AN ACT to amend and reenact §18-8-1a of the Code of West Virginia, 1931, as amended, relating to requirements for compulsory school attendance; providing that parent and guardian make determination to remove child from kindergarten program; updating references and removing outdated language; providing option to parent to apply for Hope Scholarship for child prior to enrollment in kindergarten and every year thereafter; allowing students who successfully complete publicly or privately supported, state-approved kindergarten program, Montessori kindergarten program, homeschool kindergarten program, Hope Scholarship Program, or private, parochial, or church kindergarten program recognized under subsection (k) of §18-8-1 of this code to be placed into the developmentally and academically appropriate grade level; requiring enrollment in same grade level as state or program from which student transferred; and requiring certain transcripts or credentials to be accepted as record of student's previous performance for placement and credit assignment.

Be it enacted by the Legislature of West Virginia:

ARTICLE 8. COMPULSORY SCHOOL ATTENDANCE.

*§18-8-1a. Commencement and termination of compulsory school attendance; public school entrance requirements; exceptions.

(a) Compulsory school attendance begins with the school year in which the sixth birthday is reached prior to July 1 of such year

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***NOTE:** This section was also amended by H. B. 2013 (Chapter 99), which passed prior to this act.

or upon enrolling in a full-time publicly funded kindergarten program, and continues to the 17th birthday or for as long as the student continues to be enrolled in a school system after the 17th birthday.

(1) A child may be removed from such kindergarten program when the parent or guardian determines that the best interest of the child would not be served by requiring further attendance.

(2) The compulsory school attendance provision of this article shall be enforced against a person 18 years of age or older for as long as the person continues to be enrolled in a school system and may not be enforced against the parent, guardian, or custodian of the person.

(b) A parent, as defined in §18-31-2 of this code, shall have the option, prior to enrolling in a publicly supported kindergarten program, to apply for a Hope Scholarship on behalf of his or her child as set forth in §18-31-1 *et seq.* of this code. Every year thereafter, a parent shall have the option to renew his or her child's enrollment in the Hope Scholarship Program pursuant to §18-31-8 of this code.

(c) Attendance at a state-approved, nonpublic kindergarten program, including a Montessori kindergarten program as provided in §18-5-18 of this code, homeschool kindergarten program, Hope Scholarship kindergarten program, or private, parochial, or church kindergarten program recognized under §18-8-1(k) of this code is deemed school attendance for the purposes of this section. Students entering the public school system after such kindergarten program shall be placed in the developmentally and academically appropriate grade level.

(d) Notwithstanding the provisions of this section and §18-5-18 of this code, a county board may provide for advanced entrance or placement under policies adopted by said board for any child who has demonstrated sufficient mental and physical competency for such entrance or placement.

(e) A student from another state, or who is eligible to enroll in a public school in this state, shall be enrolled in the same grade in

a public school in West Virginia as the student was enrolled at the school or program from which the student transferred. A transcript or other credential provided by a public school program, private school program, homeschool program or HOPE scholarship program shall be accepted by a public school in this state as a record of a student's previous academic performance for the purposes of placement and credit assignment.

CHAPTER 101

(H. B. 2791 - By Delegates Kessinger, Higginbotham, J. Kelly, Wamsley, Longanacre, Horst, Clark, Griffith, Kimble and Tully)

[Passed April 5, 2021; in effect ninety days from passage.]
[Approved by the Governor on April 15, 2021.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §18-5-15g, relating to requiring county boards of education to permit students who are homeschooled or attend private schools to enroll and take classes at the county's vocational school at no additional cost beyond any costs charged to public school students.

Be it enacted by the Legislature of West Virginia:

ARTICLE 5. COUNTY BOARD OF EDUCATION.

§18-5-15g. Vocational education classes for homeschooled and private schooled students.

County boards of education shall permit students who are homeschooled or attend private schools to enroll and take classes at the county's vocational schools, if any are provided and as capacity allows, at no expense or cost greater than expenses or costs normally charged to public school students: *Provided*, That if a homeschool or private school student is not permitted to enroll in a county vocational school, the county shall notify the parent or guardian of the student in writing and a copy of the written notification shall also be sent to the West Virginia Department of Education.

CHAPTER 102

(H. B. 2852 - By Delegates Ellington, Toney, Conley, J. Kelly, Kimes, Thompson, Griffith and Evans)

[Passed April 1, 2021; in effect ninety days from passage.]
[Approved by the Governor on April 15, 2021.]

AN ACT to amend and reenact §18-9A-15 of the Code of West Virginia, 1931, as amended, relating to distribution of the allowance for increased enrollment; removing mandated distribution of 60 percent of allowance based on projected increased enrollment prior to September 1; authorizing advance at district request prior to availability of actual increased enrollment of partial distribution of up to 60 percent of school districts estimated share; providing for refund of excess distribution; and requiring notification of the Joint Committee on Government and Finance and the Legislative Oversight Commission on Education Accountability whenever an advanced partial distribution is made.

Be it enacted by the Legislature of West Virginia:

ARTICLE 9A. PUBLIC SCHOOL SUPPORT.

§18-9A-15. Allowance for increased enrollment; extraordinary sustained increased enrollment impact supplement.

(a) To provide for the support of increased net enrollments in the counties in a school year over the net enrollments used in the computation of total state aid for that year, there shall be appropriated for that purpose from the General Revenue Fund an amount to be determined as follows:

(1) The state board shall promulgate a rule pursuant to §29A-3B-1 *et seq.* of this code that establishes an objective method for projecting the increase in net enrollment for each school district.

The state superintendent shall use the method prescribed by the rule to project the increase in net enrollment for each school district.

(2) The state superintendent shall multiply the average total state aid per net pupil by the sum of the projected increases in net enrollment for all school districts and report this amount to the Governor for inclusion in his or her proposed budget to the Legislature. The Legislature shall appropriate to the West Virginia Department of Education the amount calculated by the state superintendent and proposed by the Governor.

(3) The state superintendent shall calculate each school district's share of the appropriation by multiplying the increase in net enrollment for the school district by the average total state aid per net pupil and shall distribute each school district's share to the school district on or before December 31, of each year.

Nothing in this subsection prohibits, however, the state superintendent, at the request of a school district, before the actual increase in net enrollment is available, from advancing a partial distribution to the school district of up to 60 percent of its estimated share based on its projected increased enrollment, subject to the following:

(A) If the amount of the advanced partial distribution to a school district is greater than the total amount to which a district is entitled to receive for the year, the district shall refund the difference to the Department of Education prior to June 30 of the fiscal year in which the excess distribution is made; and

(B) The Department of Education shall notify the Joint Committee on Government and Finance and the Legislative Oversight Commission on Education Accountability whenever an advanced partial distribution is made.

(4) If the amount of the appropriation for increased enrollment is not sufficient to provide payment in full for the total of these allocations, each county allocation shall be reduced to an amount which is proportionate to the appropriation compared to the total of the allocations and the allocations as thus adjusted shall be

distributed to the counties as provided in this section: *Provided,* That the Governor shall request a supplemental appropriation at the next legislative session for the reduced amount.

(b) To help offset the budgetary impact of extraordinary and sustained increases in net enrollment in a county, there shall be included in the basic state aid of any county whose most recent three-year average growth in second month net enrollment is two percent or more, an amount equal to one fourth of the state average per pupil state aid multiplied by the increase in the county's second month net enrollment in the latest year.

(c) No provision of this section shall be construed to in any way affect the allocation of moneys for educational purposes to a county under other provisions of law.

CHAPTER 103

(H. B. 2906 - By Delegates Higginbotham and Griffith)

[Passed April 6, 2021; in effect ninety days from passage.]
[Approved by the Governor on April 26, 2021.]

AN ACT to amend and reenact §18-9D-15 of the Code of West Virginia, 1931, as amended, relating to the allocation of money among categories of projects; and providing that the School Building Authority's discretion be increased to allow them to allocate up to ten percent of their funds available for distribution, except funds from the School Major Improvement fund and the School Access Safety Fund, for projects that service the educational community statewide, for school facilities under the direct supervision of the state board or an administrative council of an area vocational educational center, and for other purposes.

Be it enacted by the Legislature of West Virginia:

§18-9D-15. Legislative intent; allocation of money among categories of projects; lease-purchase options; limitation on time period for expenditure of project allocation; county maintenance budget requirements; project disbursements over period of years; preference for multicounty arrangements; submission of project designs; set-aside to encourage local participation.

(a) It is the intent of the Legislature to empower the School Building Authority to facilitate and provide state funds and to administer all federal funds provided for the construction and major improvement of school facilities so as to meet the educational needs of the people of this state in an efficient and economical manner. The authority shall make funding

determinations in accordance with the provisions of this article and shall assess existing school facilities and each facility's school major improvement plan in relation to the needs of the individual student, the general school population, the communities served by the facilities and facility needs statewide.

(b) An amount that is not more than ten percent of the sum of moneys that are determined by the authority to be available for distribution during the then current fiscal year from:

(1) Moneys paid into the School Building Capital Improvements Fund pursuant to section ten, article nine-a of this chapter;

(2) The issuance of revenue bonds for which moneys in the School Building Debt Service Fund or the Excess Lottery School Building Debt Service Fund are pledged as security;

(3) Moneys paid into the School Construction Fund pursuant to section six of this article; and

(4) Any other moneys received by the authority, except moneys paid into the School Major Improvement Fund pursuant to section six of this article and moneys deposited into the School Access Safety Fund pursuant to section five, article nine-f of this chapter, may be allocated and may be expended by the authority for projects authorized in accordance with the provisions of section sixteen of this article that service the educational community statewide or, upon application by the state board, for educational programs that are under the jurisdiction of the state board. In addition, upon application by the state board or the administrative council of an area vocational educational center established pursuant to article two-b of this chapter, the authority may allocate and expend under this subsection moneys for school major improvement projects authorized in accordance with the provisions of section sixteen of this article proposed by the state board or an administrative council for school facilities under the direct supervision of the state board or an administrative council, respectively. Furthermore, upon application by a county board, the authority may allocate and expend under this subsection moneys for school major

improvement projects for vocational programs at comprehensive high schools, vocational programs at comprehensive middle schools, vocational schools cooperating with community and technical college programs, or any combination of the three. Each county board is encouraged to cooperate with community and technical colleges in the use of existing or development of new vocational technical facilities. All projects eligible for funds from this subsection shall be submitted directly to the authority which shall be solely responsible for the project's evaluation, subject to the following:

(A) The authority may not expend any moneys for a school major improvement project proposed by the state board or the administrative council of an area vocational educational center unless the state board or an administrative council has submitted a ten-year facilities plan; and

(B) The authority shall, before allocating any moneys to the state board or the administrative council of an area vocational educational center for a school improvement project, consider all other funding sources available for the project.

(c) An amount that is not more than two percent of the moneys that are determined by the authority to be available for distribution during the current fiscal year from:

(1) Moneys paid into the School Building Capital Improvements Fund pursuant to section ten, article nine-a of this chapter;

(2) The issuance of revenue bonds for which moneys in the School Building Debt Service Fund or the Excess Lottery School Building Debt Service Fund are pledged as security;

(3) Moneys paid into the School Construction Fund pursuant to section six of this article; and

(4) Any other moneys received by the authority, except moneys deposited into the School Major Improvement Fund and moneys deposited into the School Access Safety Fund pursuant to section five, article nine-f of this chapter, shall be set aside by the authority

as an emergency fund to be distributed in accordance with the guidelines adopted by the authority.

(d) An amount that is not more than five percent of the moneys that are determined by the authority to be available for distribution during the current fiscal year from:

(1) Moneys paid into the School Building Capital Improvements Fund pursuant to section ten, article nine-a of this chapter;

(2) The issuance of revenue bonds for which moneys in the School Building Debt Service Fund or the Excess Lottery School Building Debt Service Fund are pledged as security;

(3) Moneys paid into the School Construction Fund pursuant to section six of this article; and

(4) Any other moneys received by the authority, except moneys deposited into the School Major Improvement Fund and moneys deposited into the School Access Safety Fund pursuant to section five, article nine-f of this chapter, may be reserved by the authority for multiuse vocational-technical education facilities projects that may include post-secondary programs as a first priority use. The authority may allocate and expend under this subsection moneys for any purposes authorized in this article on multiuse vocational-technical education facilities projects, including equipment and equipment updates at the facilities, authorized in accordance with the provisions of section sixteen of this article. If the projects approved under this subsection do not require the full amount of moneys reserved, moneys above the amount required may be allocated and expended in accordance with other provisions of this article. A county board, the state board, an administrative council or the joint administrative board of a vocational-technical education facility which includes post-secondary programs may propose projects for facilities or equipment, or both, which are under the direct supervision of the respective body: *Provided,* That the authority shall, before allocating any moneys for a project under this subsection, consider all other funding sources available for the project.

(e) The remaining moneys determined by the authority to be available for distribution during the then current fiscal year from:

(1) Moneys paid into the School Building Capital Improvements Fund pursuant to section ten, article nine-a of this chapter;

(2) The issuance of revenue bonds for which moneys in the School Building Debt Service Fund or the Excess Lottery School Building Debt Service Fund are pledged as security;

(3) Moneys paid into the School Construction Fund pursuant to section six of this article; and

(4) Any other moneys received by the authority, except moneys deposited into the School Major Improvement Fund and moneys deposited into the School Access Safety Fund pursuant to section five, article nine-f of this chapter, shall be allocated and expended on the basis of need and efficient use of resources for projects funded in accordance with the provisions of section sixteen of this article.

(f) If a county board proposes to finance a project that is authorized in accordance with section sixteen of this article through a lease with an option to purchase leased premises upon the expiration of the total lease period pursuant to an investment contract, the authority may not allocate moneys to the county board in connection with the project: *Provided,* That the authority may transfer moneys to the state board which, with the authority, shall lend the amount transferred to the county board to be used only for a one-time payment due at the beginning of the lease term, made for the purpose of reducing annual lease payments under the investment contract, subject to the following conditions:

(1) The loan shall be secured in the manner required by the authority, in consultation with the state board, and shall be repaid in a period and bear interest at a rate as determined by the state board and the authority and shall have any terms and conditions that are required by the authority, all of which shall be set forth in

a loan agreement among the authority, the state board and the county board;

(2) The loan agreement shall provide for the state board and the authority to defer the payment of principal and interest upon any loan made to the county board during the term of the investment contract, and annual renewals of the investment contract, among the state board, the authority, the county board and a lessor, subject to the following:

(A) In the event a county board which has received a loan from the authority for a one-time payment at the beginning of the lease term does not renew the lease annually until performance of the investment contract in its entirety is completed, the county board is in default and the principal of the loan, together with all unpaid interest accrued to the date of the default, shall, at the option of the authority, in consultation with the state board, become due and payable immediately or subject to renegotiation among the state board, the authority and the county board;

(B) If a county board renews the lease annually through the performance of the investment contract in its entirety, the county board shall exercise its option to purchase the leased premises;

(C) The failure of the county board to make a scheduled payment pursuant to the investment contract constitutes an event of default under the loan agreement;

(D) Upon a default by a county board, the principal of the loan, together with all unpaid interest accrued to the date of the default, shall, at the option of the authority, in consultation with the state board, become due and payable immediately or subject to renegotiation among the state board, the authority and the county board; and

(E) If the loan becomes due and payable immediately, the authority, in consultation with the state board, shall use all means available under the loan agreement and law to collect the outstanding principal balance of the loan, together with all unpaid

interest accrued to the date of payment of the outstanding principal balance; and

(3) The loan agreement shall provide for the state board and the authority to forgive all principal and interest of the loan upon the county board purchasing the leased premises pursuant to the investment contract and performance of the investment contract in its entirety.

(g) To encourage county boards to proceed promptly with facilities planning and to prepare for the expenditure of any state moneys derived from the sources described in this section, any county board or other entity to whom moneys are allocated by the authority that fails to expend the money within three years of the allocation shall forfeit the allocation and thereafter is ineligible for further allocations pursuant to this section until it is ready to expend funds in accordance with an approved facilities plan: *Provided,* That the authority may authorize an extension beyond the three-year forfeiture period not to exceed an additional two years. Any amount forfeited shall be added to the total funds available in the School Construction Fund of the authority for future allocation and distribution. Funds may not be distributed for any project under this article unless the responsible entity has a facilities plan approved by the state board and the School Building Authority and is prepared to commence expenditure of the funds during the fiscal year in which the moneys are distributed.

(h) The remaining moneys that are determined by the authority to be available for distribution during the then current fiscal year from moneys paid into the School Major Improvement Fund pursuant to section six of this article shall be allocated and distributed on the basis of need and efficient use of resources for projects authorized in accordance with the provisions of section sixteen of this article, subject to the following:

(1) The moneys may not be distributed for any project under this section unless the responsible entity has a facilities plan approved by the state board and the authority and is to commence expenditures of the funds during the fiscal year in which the moneys are distributed;

(2) Any moneys allocated to a project and not distributed for that project shall be deposited in an account to the credit of the project, the principal amount to remain to the credit of and available to the project for a period of two years; and

(3) Any moneys which are unexpended after a two-year period shall be redistributed on the basis of need from the School Major Improvement Fund in that fiscal year.

(i) Local matching funds may not be required under the provisions of this section. However, this article does not negate the responsibilities of the county boards to maintain school facilities. Therefore, as a prerequisite for eligibility to receive an allocation of school major improvement funds from the authority, a county board must provide annual school facility maintenance expenditure data to the authority which shall be jointly reviewed by the authority and the state Department of Education Office of School Facilities and Transportation to assist the authority in its determination of the most meritorious projects to be funded through the School Major Improvement Fund. The state board shall promulgate rules relating to county boards' school facility maintenance budgets, including items which shall be included in these budgets.

(j) Any county board may use moneys provided by the authority under this article in conjunction with local funds derived from bonding, special levy or other sources. Distribution to a county board, or to the state board or the administrative council of an area vocational educational center pursuant to subsection (b) of this section, may be in a lump sum or in accordance with a schedule of payments adopted by the authority pursuant to guidelines adopted by the authority.

(k) Funds in the School Construction Fund shall first be transferred and expended as follows:

(1) Any funds deposited in the School Construction Fund shall be expended first in accordance with an appropriation by the Legislature.

(2) To the extent that funds are available in the School Construction Fund in excess of that amount appropriated in any fiscal year, the excess funds may be expended for projects authorized in accordance with the provisions of section sixteen of this article.

(l) It is the intent of the Legislature to encourage county boards to explore and consider arrangements with other counties that may facilitate the highest and best use of all available funds, which may result in improved transportation arrangements for students or which otherwise may create efficiencies for county boards and the students. In order to address the intent of the Legislature contained in this subsection, the authority shall grant preference to those projects which involve multicounty arrangements as the authority shall determine reasonable and proper.

(m) County boards shall submit all designs for construction of new school buildings to the School Building Authority for review and approval prior to preparation of final bid documents. A vendor who has been debarred pursuant to the provisions of sections thirty-three-a through thirty-three-f, inclusive, article three, chapter five-a of this code may not bid on or be awarded a contract under this section.

(n) The authority may elect to disburse funds for approved construction projects over a period of more than one year subject to the following:

(1) The authority may not approve the funding of a school construction project over a period of more than three years;

(2) The authority may not approve the use of more than fifty percent of the revenue available for distribution in any given fiscal year for projects that are to be funded over a period of more than one year; and

(3) In order to encourage local participation in funding school construction projects, the authority may set aside limited funding, not to exceed $500,000, in reserve for one additional year to provide a county the opportunity to complete financial planning for

a project prior to the allocation of construction funds. Any funding shall be on a reserve basis and converted to a part of the construction grant only after all project budget funds have been secured and all county commitments have been fulfilled. Failure of the county to solidify the project budget and meet its obligations to the state within eighteen months of the date the funding is set aside by the authority will result in expiration of the reserve and the funds shall be reallocated by the authority in the succeeding funding cycle.

CHAPTER 104

(H. B. 3177 - By Delegates Ellington, Hanna, Higginbotham, Hamrick, Kessinger, Smith, Toney, Mazzocchi, Horst, Holstein and Mandt)

[Passed April 10, 2021; in effect ninety days from passage.]
[Approved by the Governor on April 26, 2021.]

AN ACT to repeal §18-2-5d, §18-2-13b, §18-2-24, §18-2-29, and §18-2-35 of the Code of West Virginia, 1931, as amended; to repeal §18-2E-4a of said code; to repeal §18-3-9b of said code; to repeal §18-4-12 of said code; to repeal §18-5-18e, and §18-5-43 of said code; to repeal §18-7A-36 of said code; to repeal §18-9A-8a of said code; to repeal §18-9B-11a of said code; to repeal §18-10H-4 of said code; to amend and reenact §18-9A-6a, §18-9A-7, and §18-9A-16 of said code; and to amend and reenact §18-9B-1, §18-9B-2, §18-9B-3, §18-9B-4, §18-9B-5, §18-9B-6, §18-9B-6a, §18-9B-7, §18-9B-8, §18-9B-9, §18-9B-10, §18-9B-12, §18-9B-13, §18-9B-14, §18-9B-15, §18-9B-17, §18-9B-18, §18-9B-19, §18-9B-20 and §18-9B-21 of said code, all relating to removing expired, outdated, inoperative and antiquated provisions and report requirements in education code; updating references; repealing expired report requirement related to productive and safe schools; repealing authorization of state board respecting use of revenues from dormitories, home or refectories; repealing outdated structure for collaboration on professional development delivery among state universities, regional education service agencies and center for professional development; repealing unused competitive grant program for selected schools and school districts; repealing unused requirement for state board rule on school uniforms for students; repealing outdated exception to mailing school report cards; repealing outdated mandated reduction in budgeted amount for personal services in certain fiscal year; repealing

outdated exception for county board meeting related to fixing salaries of county superintendent; repealing expired study and report on pupils per teacher; repealing expired report requirement relating to county-wide council on productive and safe schools; repealing expired report requirement relating to joint study of retirement systems; removing reference to repealed allocation to teachers retirement fund; removing expired provisions related to additional funding bus system using bio-diesel alternative fuel; repealing expired allowance for regional education service agencies; replacing reference to state board of school finance with state superintendent; removing expired provision prohibiting salary reduction of certain persons due to passage of school finance article; correcting references to tax commissioner for functions previously transferred to state auditor; deleting outdated references to employment term and instructional term; and removing outdated provisions creating state board of school finance and requiring state superintendent to exercise powers and perform duties; repealing outdated authorization for adjustments to average daily attendance; and repealing mandate for establishment of certain interdisciplinary doctoral program.

Be it enacted by the Legislature of West Virginia:

CHAPTER 18. EDUCATION.

ARTICLE 2. STATE BOARD OF EDUCATION.

§18-2-5d. Duty of board to report guidelines for productive and safe schools.

[Repealed.]

§18-2-13b. Additional authority of state Board of Education concerning revenue bonds for dormitories, homes or refectories.

[Repealed.]

§18-2-24. Collaboration of state institutions of higher education having a teacher preparation program with the Center for Professional Development, state board and the regional education service agencies.

[Repealed]

§18-2-29. Competitive grant program for selected schools and school districts.

[Repealed.]

§18-2-35. Dress codes requiring school uniforms for students.

[Repealed.]

ARTICLE 2E. HIGH QUALITY EDUCATIONAL PROGRAMS.

§18-2E-4a. Exception to requirement of mailing school report cards.

[Repealed.]

ARTICLE 3. STATE SUPERINTENDENT OF SCHOOLS.

§18-3-9b. Reduction in amount budgeted for personal services.

[Repealed.]

ARTICLE 4. COUNTY SUPERINTENDENT OF SCHOOLS.

§18-4-12. Exception to §18-4-4.

[Repealed.]

ARTICLE 5. COUNTY BOARD OF EDUCATION.

§18-5-18e. Study of limits on the number of pupils per teacher in a classroom in elementary and middle schools.

[Repealed.]

§18-5-43. Duty of the county board of education to report the county-wide productive and safe school plans to the West Virginia Board of Education.

[Repealed.]

ARTICLE 7A. STATE TEACHERS RETIREMENT SYSTEM.

§18-7A-36. Joint study of state retirement systems; report to Joint Committee on Government and Finance by specified date of study conclusions.

[Repealed.]

ARTICLE 9A. PUBLIC SCHOOL SUPPORT.

§18-9A-6a. Teachers retirement fund allowance; unfunded liability allowance.

(a) The total teachers retirement fund allowance is the sum of the basic foundation allowance for professional educators, the basic foundation allowance for professional student support personnel and the basic foundation allowance for service personnel, as provided in §18-9A-4, §18-9A-5 and §18-9A-8 of this code; all salary equity appropriations authorized in §18A-4-5 of this code; and such amounts as are to be paid by the counties pursuant to §18A-4-5a and §18A-4-5b of this code to the extent such county salary supplements are equal to the amount distributed for salary equity among the counties, multiplied by the average retirement contribution rate for each county board. The average contribution rate for each county board is based on the required employer contributions for state aid eligible employees participating in the retirement plans pursuant to §18-7A-1 *et seq.* and §18-7B-1 *et seq.* of this code.

(b) The teachers retirement fund allowance amounts provided for in subsection (a) of this section shall be accumulated in the employers accumulation fund of the State Teachers Retirement System Fund pursuant to §18-7A-18 of this code and shall be in lieu of the contribution required of employers pursuant to §18-7A-

18(b) of this code as to all personnel included in the allowance for state aid in accordance with §18-9A-4, §18-9A-5 and §18-9A-8 of this code.

(c) In addition to the teachers retirement fund allowance provided for in subsection (a) of this section, there shall be an allowance for the reduction of any unfunded liability of the teachers retirement fund in accordance with the following provisions of this subsection. On or before December 31, of each year, the actuary or actuarial firm employed in accordance with the provisions of §5-10D-4 of this code shall submit a report to the President of the Senate and the Speaker of the House of Delegates which sets forth an actuarial valuation of the teachers retirement fund as of the preceding June 31. Each annual report shall recommend the actuary's best estimate, at that time, of the funding necessary to both eliminate the unfunded liability over a 40-year period beginning on July 1, 1994, and to meet the cash flow requirements of the fund in fulfilling its future anticipated obligations to its members. In determining the amount of funding required, the actuary shall take into consideration all funding otherwise available to the fund for that year from any source. In any year in which the actuary determines that the teachers retirement fund is not being funded in such a manner, the allowance made for the unfunded liability for the next fiscal year shall be not less than the amount of the actuary's best estimate of the amount necessary to conform to the funding requirements set forth in this subsection.

§18-9A-7. Foundation allowance for transportation cost.

(a) The allowance in the foundation school program for each county for transportation is the sum of the following computations:

(1) A percentage of the transportation costs incurred by the county for maintenance, operation and related costs exclusive of all salaries, including the costs incurred for contracted transportation services and public utility transportation, as follows:

(A) For each high-density county, 87.5 percent;

(B) For each medium-density county, 90 percent;

(C) For each low-density county, 92.5 percent;

(D) For each sparse-density county, 95 percent;

(E) For any county for the transportation cost for maintenance, operation and related costs, exclusive of all salaries, for transporting students to and from classes at a multicounty vocational center, the percentage provided in paragraphs (A) through (D) of this subdivision as applicable for the county plus an additional 10 percent; and

(F) For any county for that portion of its school bus system that uses as an alternative fuel compressed natural gas or propane, the percentage provided in paragraphs (A) through (D) of this subdivision as applicable for the county plus an additional 10 percent: *Provided,* That any county using an alternative fuel and qualifying for the additional allowance under this subdivision shall submit a plan regarding the intended future use of alternatively fueled school buses;

(2) The total cost, within each county, of insurance premiums on buses, buildings and equipment used in transportation;

(3) An amount equal to 8.33 percent of the current replacement value of the bus fleet within each county as determined by the state board. The amount shall only be used for the replacement of buses except as provided in subdivision (4) of this subsection. Buses purchased after July 1, 1999 that are driven 180,000 miles, regardless of year model, are subject to the replacement value of 8.33 percent as determined by the state board. In addition, in any school year in which its net enrollment increases when compared to the net enrollment the year immediately preceding, a school district may apply to the state superintendent for funding for an additional bus or buses. The state superintendent shall make a decision regarding each application based upon an analysis of the individual school district's net enrollment history and transportation needs: *Provided,* That the superintendent may not consider any application which fails to document that the county

has applied for federal funding for additional buses. If the state superintendent finds that a need exists, a request for funding shall be included in the budget request submitted by the state board for the upcoming fiscal year;

(4) Notwithstanding the restriction on the use of funds for the replacement of buses pursuant to subdivision (3) of this subsection, up to $200,000 of these funds in any school year may be used by a county for school facility and equipment repair, maintenance and improvement or replacement or other current expense priorities if a request by the county superintendent listing the amount, the intended use of the funds and the serviceability of the bus fleet is approved by the state superintendent. Before approving the request, the state superintendent shall verify the serviceability of the county's bus fleet based upon the state school bus inspection defect rate of the county over the two prior years; and

(5) Aid in lieu of transportation equal to the state average amount per pupil for each pupil receiving the aid within each county.

(b) The total state share for this purpose is the sum of the county shares: *Provided,* That a county may not receive an allowance which is greater than one-third above the computed state average allowance per transportation mile multiplied by the total transportation mileage in the county exclusive of the allowance for the purchase of additional buses.

(c) One half of one percent of the transportation allowance distributed to each county is for the purpose of trips related to academic classroom curriculum and not related to any extracurricular activity. Any remaining funds credited to a county for the purpose of trips related to academic classroom curriculum during the fiscal year shall be carried over for use in the same manner the next fiscal year and shall be separate and apart from, and in addition to, the appropriation for the next fiscal year. The state board may request a county to document the use of funds for trips related to academic classroom curriculum if the board determines that it is necessary.

§18-9A-8a. Foundation allowance for regional education service agencies.

[Repealed.]

§18-9A-16. General school fund and its use.

There is continued a separate school fund to be known as the "general school fund" which shall be administered by the state superintendent. The proceeds from the income of this school fund, and the interest thereon, as provided for under the irreducible school fund amendment to the Constitution shall accrue to the General School Fund which, with moneys appropriated by the Legislature, shall be used to support the public schools of the state. All other State funds and taxes formerly dedicated to the General School Fund shall hereafter be paid into the State General Fund.

ARTICLE 9B. COUNTY SCHOOL BOARD BUDGETS AND AUDITS.

§18-9B-1. Purpose and construction of article.

Because of the adoption of the "Tax Limitation Amendment," it has become necessary for the state to participate, to an increasing degree, in the financing of the free public schools. In the fiscal year 1938-1939, this participation aggregated 55 percent of the total expended by county boards of education for the operation of the schools of the state, and in 17 counties state aid represented in excess of 70 percent of the total amounts spent for public education in those counties. In consequence of this state investment in local education, the state has acquired a paramount interest in the sound and stable management of the financial affairs of county school districts so that the maximum effectiveness of education may be obtained from the expenditure of the limited funds available.

With the foregoing purposes in view, this article is enacted to develop improved methods of financial administration and to bring increased financial guidance and assistance to the management of county school affairs.

The provisions of this article shall be construed to be in addition to the authority now exercised by the State Auditor as chief inspector and supervisor of public offices under §6-9-1 *et seq.* of the code for the purposes of fidelity accounting and auditing. The intent of the Legislature is that the powers granted by this article to the State Superintendent of Schools over financial management shall in administration be fully coordinated with those of the State Auditor over the legality and fidelity of public expenditures.

The provisions of this article shall be liberally construed to give effect to the purposes stated.

§18-9B-2. Definitions.

For the purposes of this article:

"State superintendent" means the State Superintendent of Schools.

"Budget" means the annual budget of school revenues and expenditures prepared and adopted by a county board of education in accordance with this article.

"Levy estimate" means the summary statement of the total budgeted school requirements prepared and adopted by a county board of education in accordance with law, in justification of the amount levied upon taxable property within the county for the support of the local schools.

"Appropriation" means an item, or the amount of an item, budgeted by a county board of education for expenditure during the fiscal year.

"Expenditure schedule" means a schedule for the expenditure of amounts budgeted throughout the fiscal year and adopted in conjunction with the annual budget.

"County board" means a county board of education.

§18-9B-3. State Superintendent of Schools.

The State Superintendent of Schools shall exercise the powers and perform the duties conferred upon him or her by this article.

§18-9B-4. Powers and duties of State Superintendent of Schools.

The State Superintendent of Schools, in addition to the specific powers and duties conferred upon him or her, shall advise and assist county boards of education and county superintendents in the planning and management of school finances to the end that the most effective program of public education be realized from the funds available for expenditure by the several counties.

In the exercise of the powers granted under this article, the state superintendent shall not substitute his or her discretion and judgment for that of a county board of education with respect to the desirability or reasonability of a lawful school expenditure if the provisions of law and the orders of the state superintendent are complied with by the county board. If, however, a county board fails or refuses to provide for the support of the standard school term, to adhere to the budget and the expenditure schedule, or to comply with other provisions of this article, the state superintendent may require such action on the part of the county board, not in violation of law, as the state superintendent may find to be best calculated to restore the financial affairs of the county board to a proper and lawful basis.

§18-9B-5. School district budgeting.

The state superintendent shall formulate and prescribe a uniform system of school district budgeting for the use of all county school districts to include, at least:

(1) Itemization schedules for estimating anticipated revenues and receipts of all kinds;

(2) Itemization schedules for estimating anticipated requirements for expenditure during the fiscal year;

(3) The form, classification and itemization of budget items for appropriation purposes;

(4) Expenditure schedules for the allotment of amounts of proposed expenditures throughout the fiscal year;

(5) A budget calendar fixing the dates by or upon which schedules shall be prepared, budgets adopted, and reports made to the state superintendent;

(6) Methods and procedures of budgeting to be followed in the use of the uniform system.

§18-9B-6. Submission and approval of budget.

A county board of education shall, on or before the day fixed by the budget calendar, submit its proposed budget to the state superintendent together with such supporting schedules as the state superintendent may require.

A county board shall not finally adopt its budget until after the written approval of the state superintendent has been received, and the levy estimate has been approved by the State Auditor as required by law. If the State Auditor finds that the levy estimate, based upon the budget, does not conform to the requirements of law, the board shall authorize and require such further revision of the budget as may be necessary for the correction of the levy estimate as required by the State Auditor.

A county board of education shall submit a preliminary budget upon requirement of the state superintendent, which approved budget shall be considered by the State Auditor when approving levy estimates.

§18-9B-6a. Delaying submission of budget.

Notwithstanding any other provisions of the code to the contrary, the county board shall not be required to submit its budget for approval by the state superintendent as provided by §18-9B-6 and §18-9B-7 of this code, until the 10th day next following the state superintendent's transmittal of final state aid computations following the adoption of the state budget, but no later than May 30: *Provided,* That, in any year in which the state budget is not adopted on or before May 1, the state superintendent may require the county board to adopt a preliminary budget and to submit it to the state superintendent no later than May 30, and when final computations of state aid are transmitted to the county board, the

county board shall make such adjustments as are necessary prior to final adoption of the budget.

§18-9B-7. Determination by the state superintendent before final approval of budget; length of term.

The state superintendent, before giving his or her final approval to a proposed budget, shall require that:

(1) Estimates of revenue and receipts are reasonable and accurate;

(2) Amounts are budgeted so as to cover actual requirements of school operation; and

(3) Amounts are budgeted so as to maintain the schools of the county for the employment term and the instructional term as provided by §18-5-45 of this code.

§18-9B-8. Projected expenditures order of revision in budget.

If the state superintendent finds that the proposed budget for a county will not maintain the proposed educational program as well as other financial obligations of their county board of education, he or she may require that the budget be revised, but in no case shall he or she permit the reduction of the instructional term pursuant to the provisions contained in §18-5-45 of this code nor the employment term below 200 days. Any required revision in the budget for this purpose may be made in the following order:

(1) Postpone expenditures for permanent improvements and capital outlays except from the permanent improvement fund;

(2) Reduce the amount budgeted for maintenance exclusive of service personnel so as to guarantee the payment of salaries for the employment term; or

(3) Adjust amounts budgeted in any other way so as to assure the required employment term of 200 days and the required instructional term of 180 days under the applicable provisions of law.

§18-9B-9. Uniform accounting systems for school districts.

The state superintendent shall formulate the requirements of a uniform system of management accounting for the use of county school districts. The requirements shall include at least:

(1) The accrual accounting of all revenues and other receipts from whatever source;

(2) The accounting of expenditures under the several items of appropriation in accordance with the expenditure schedule;

(3) Monthly and quarterly reports of rate of expenditure, encumbrances, and free balances under the several items of appropriation;

(4) Methods of accounting practice and procedures to be followed in the use of the uniform system.

The accounting requirements so formulated shall be certified to the State Auditor. The State Auditor shall then incorporate the requirements into a uniform system of school district accounting and as chief inspector and supervisor of local government offices, shall prescribe the use of the uniform system by all county school districts by virtue of the authority vested in him or her by §6-9-2 of this code.

§18-9B-10. Restrictions on county boards.

County boards of education shall:

(1) Authorize the expenditure of funds and incur obligations only in accordance with the budget and the expenditure schedule;

(2) Make transfers between items of appropriation only with the prior written approval of the state superintendent.

§18-9B-11a. Adjustments in average daily attendance to assure equitable allocation of aid.

[Repealed.]

§18-9B-12. Practices of fiscal administration.

The state superintendent may formulate the requirements of adequate practices of fiscal administration to be followed by county school districts. Such requirements may include:

(1) Procedures for the receipts, control and disbursement of county school funds;

(2) Forms for requisitions, purchase orders, disbursements, and other necessary documents;

(3) Regulations for the performance of the powers and duties pertaining to school finance;

(4) Regulations for the exercise of the comptroller function;

(5) Other instructions and regulations for the proper procedures and practices of fiscal administration in the county schools.

The requirements formulated by the state superintendent shall be certified by the state superintendent to the State Auditor. The State Auditor as chief inspector and supervisor of local government offices shall incorporate the requirements so certified in his or her instructions with respect to fiscal administration and shall prescribe their use by all county school districts by virtue of the authority vested in him or her by §6-9-2 of this code.

§18-9B-13. Inspection and audit of school finance administration.

The state superintendent may, through his or her duly authorized representatives, make inspections and examinations of the fiscal administration of a county school district. The inspection and examination may extend to any matter or practice subject to regulation by the state superintendent. Regular and special examinations may be made by a certified public accountant approved pursuant to §6-9-7 of this code selected by the county board in accordance with nonemergency regulations submitted by the chief inspector, or by the chief inspector himself or herself. All examinations shall be made as provided in §6-9-7 of this code. The state superintendent may make selective audits to determine the

accuracy of statements and reports made by a county board or superintendent.

The report of the examination shall be certified to the county board, which should include the identification of procedures and practices found to not be in accordance with the requirements of the state superintendent. The county board shall comply with the instructions forthwith.

The state superintendent, through his or her duly authorized representatives, shall have full access to all books, records, papers, and documents of the county board.

§18-9B-14. Establishment of permanent improvement fund; contents and use of fund.

A county board of education may establish a special fund for county school purposes to be known as the "permanent improvement fund." The fund shall consist of:

(1) The proceeds of the levy allocated to that purpose by §11-8-6c, §11-8-12 and §11-8-12a of this code;

(2) Unexpended balances of other funds transferred to the fund, with the approval of the state superintendent, at the end of the fiscal year; and

(3) Any other moneys authorized by law to be used for the purposes of the fund.

The proceeds of the fund shall be used only for the support of building and permanent improvement projects. The fund may be accumulated from year to year but moneys shall not be paid into the fund so as to increase the assets of the fund to a total amount in excess of 25 percent of the amount of the foundation school program for that county for the same school year.

§18-9B-15. Permanent improvement fund — To be treated as separate fund; expenditures; limitation on accumulations and assets of fund.

A county board shall treat the permanent improvement fund as a separate fund in the annual budget for county school

purposes. Expenditures shall be made from the fund only in accordance with an appropriation made pursuant to the annual budget, or made otherwise in accordance with this article. If the state superintendent finds, in his or her examination of the budget of a county school district, that a county board has accumulated, or with proposed additions to the fund in the fiscal year will accumulate, the fund of the county to an amount in excess of 25 percent of the amount of the foundation school program of the county for the same fiscal year, the state superintendent shall order that no moneys in excess of the limitation be appropriated for or paid into the fund. If the state superintendent finds that the assets of the fund of a county exceed 25 percent of the amount of the foundation school program for the county for the same year, the state superintendent may require that building and permanent improvement projects included in the annual budget, be paid for out of the fund.

The state superintendent shall administer this section so as to keep the accumulated assets of the fund, as near as may be, within the limitation of 25 percent of the amount of the foundation school program.

§18-9B-17. Duties of county board and county superintendent.

A county board of education and a county superintendent shall comply with the instructions of the state superintendent and shall perform the duties required of them in accordance with the provisions of this article.

§18-9B-18. Issuance and enforcement of orders.

The state superintendent shall enforce the requirements of and his or her regulations issued under this article. The state superintendent may issue orders to county boards of education requiring specific compliance with his or her instructions. If a county board fails or refuses to comply, the state superintendent may proceed to enforce his or her order by any appropriate remedy in any court of competent jurisdiction.

§18-9B-19. Withholding of state aid for noncompliance by county board.

The state superintendent may withhold payment of state aid from a county board that fails or refuses to comply with the provisions of this article or the requirements of the state superintendent made in accordance therewith.

§18-9B-20. Fiscal reports to state superintendent.

The state superintendent may require, and prescribe the form of, fiscal reports to be made to the state superintendent at such times and to contain such information as the state superintendent may determine.

§18-9B-21. Reports by state superintendent.

The state superintendent shall make an annual report to the Governor and to the Legislature pertaining to the work of the state superintendent and the finances of school districts. The state superintendent shall make such special reports as the Governor or the Legislature may request.

ARTICLE 10H. ALBERT YANNI PROGRAMS OF EXCELLENCE IN VOCATIONAL-TECHNICAL EDUCATION.

§18-10H-4. Interdisciplinary doctoral program in vocational-technical education.

[Repealed.]

CHAPTER 105

(Com. Sub. for H. B. 3293 - By Delegates Hanna, Bridges, Clark, Ellington, Horst, Jennings, Longanacre, Mazzocchi, Tully, Phillips and Burkhammer)

[Passed April 9, 2021; in effect ninety days from passage.]
[Approved by the Governor on April 28, 2021.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §18-2-25d, relating to designation of athletic teams or sports sponsored by any public secondary school or state institution of higher education according to biological sex; providing legislative findings; defining "biological sex", "female", and "male"; providing for designation of athletic teams as "males, men, or boys", "females, women, or girls", or "coed or mixed"; prohibiting biological males from participating on athletic teams or sports designated for biological females where competitive skill or contact is involved; clarifying that eligibility of any student to participate on athletic teams or sports designated for biological males is not restricted; providing cause of action for student aggrieved by violation of this section; requiring identity of minor student related to such action to remain anonymous; requiring promulgation of rules by the State Board of Education; and requiring proposal of legislative rules by the Higher Education Policy Commission and Council for Community and Technical College Education.

Be it enacted by the Legislature of West Virginia:

ARTICLE 2. STATE BOARD OF EDUCATION.

§18-2-25d. Clarifying participation for sports events to be based on biological sex of the athlete at birth.

(a) The Legislature hereby finds:

(1) There are inherent differences between biological males and biological females, and that these differences are cause for celebration, as determined by the Supreme Court of the United States in *United States v. Virginia* (1996);

(2) These inherent differences are not a valid justification for sex-based classifications that make overbroad generalizations or perpetuate the legal, social, and economic inferiority of either sex. Rather, these inherent differences are a valid justification for sex-based classifications when they realistically reflect the fact that the sexes are not similarly situated in certain circumstances, as recognized by the Supreme Court of the United States in *Michael M. v. Sonoma County, Superior Court* (1981) and the Supreme Court of Appeals of West Virginia in *Israel v. Secondary Schools Act. Com'n* (1989);

(3) In the context of sports involving competitive skill or contact, biological males and biological females are not in fact similarly situated. Biological males would displace females to a substantial extent if permitted to compete on teams designated for biological females, as recognized in *Clark v. Ariz. Interscholastic Ass'n* (9th Cir. 1982);

(4) Although necessarily related, as concluded by the United States Supreme Court in *Bostock v. Clayton County* (2020), gender identity is separate and distinct from biological sex to the extent that an individual's biological sex is not determinative or indicative of the individual's gender identity. Classifications based on gender identity serve no legitimate relationship to the State of West Virginia's interest in promoting equal athletic opportunities for the female sex; and

(5) Classification of teams according to biological sex is necessary to promote equal athletic opportunities for the female sex.

(b) Definitions. - As used in this section, the following words have the meanings ascribed to them unless the context clearly implies a different meaning:

(1) "Biological sex" means an individual's physical form as a male or female based solely on the individual's reproductive biology and genetics at birth.

(2) "Female" means an individual whose biological sex determined at birth is female. As used in this section, "women" or "girls" refers to biological females.

(3) "Male" means an individual whose biological sex determined at birth is male. As used in this section, "men" or "boys" refers to biological males.

(c) Designation of Athletic Teams. —

(1) Interscholastic, intercollegiate, intramural, or club athletic teams or sports that are sponsored by any public secondary school or a state institution of higher education, including a state institution that is a member of the National Collegiate Athletic Association (NCAA), National Association of Intercollegiate Athletics (NAIA), or National Junior College Athletic Association (NJCAA), shall be expressly designated as one of the following based on biological sex:

(A) Males, men, or boys;

(B) Females, women, or girls; or

(C) Coed or mixed.

(2) Athletic teams or sports designated for females, women, or girls shall not be open to students of the male sex where selection for such teams is based upon competitive skill or the activity involved is a contact sport.

(3) Nothing in this section shall be construed to restrict the eligibility of any student to participate in any interscholastic, intercollegiate, or intramural athletic teams or sports designated as "males," "men," or "boys" or designated as "coed" or "mixed": *Provided,* That selection for a team may still be based on those who try out and possess the requisite skill to make the team.

(d) Cause of Action. —

(1) Any student aggrieved by a violation of this section may bring an action against a county board of education or state institution of higher education alleged to be responsible for the alleged violation. The aggrieved student may seek injunctive relief and actual damages, as well as reasonable attorney's fee and court costs, if the student substantially prevails.

(2) In any private action brought pursuant to this section, the identity of a minor student shall remain private and anonymous.

(e) The State Board of Education shall promulgate rules, including emergency rules, pursuant to §29A-3B-1 *et. seq.* of this code to implement the provisions of this section. The Higher Education Policy Commission and the Council for Community and Technical College Education shall promulgate emergency rules and propose rules for legislative approval pursuant to §29A-3A-1 *et. seq*. of this code to implement the provisions of this section.

CHAPTER 106

(Com. Sub. for H. B. 2372 - By Delegates Howell, B. Ward, Paynter, Barrett, Martin, Phillips, Mandt, Statler, J. Pack, Graves and Pinson)

[Passed March 19, 2021; in effect ninety days from passage.]
[Approved by the Governor on March 30, 2021.]

AN ACT to amend and reenact §3-8-5e of the Code of West Virginia, 1931, as amended, relating to modifying the date to file pre-candidacy registration papers, receive contributions, and make expenditures for persons undertaking to determine the advisability of becoming or preparing to be a candidate for a public office or position.

Be it enacted by the Legislature of West Virginia:

CHAPTER 3. ELECTIONS.

ARTICLE 8. REGULATION AND CONTROL OF ELECTIONS.

§3-8-5e. Pre-candidacy financing and expenditures.

(a) Notwithstanding any other provisions of this code, it is lawful for a person, otherwise qualified to be a candidate for any public office or position to be determined by public election, to receive contributions or make expenditures, or both personally or by another individual acting as a treasurer, to determine the advisability of becoming such a candidate or preparing to be such a candidate: *Provided*, That an individual may file his or her pre-candidacy papers, and may receive contributions and make expenditures related thereto, beginning on the day after the general election is held for the term of office immediately preceding the term of office for which the person may become a candidate, if such term of office is four years or less: *Provided, however,* That such pre-candidacy papers may be filed, such contributions may be

received, and such expenditures may be made only during the four years immediately preceding the term of office for which such person may be a candidate, if such term of office is more than four years: *Provided further,* That no person is disqualified from receiving contributions or making expenditures as permitted under the provisions of this section solely because such person then holds a public office or position.

(b) Any person undertaking to determine the advisability of becoming or preparing to be a candidate, who desires to receive contributions before filing a certificate of candidacy, shall designate himself or another individual to act as a treasurer and shall file a designation of treasurer in the manner provided in §3-8-4 of this code before receiving any contributions permitted by this section. Any expenditures made before the filing of a designation of treasurer shall be reported in accordance with the provisions of §3-8-5 of this code regardless of the source of funds used for such expenditures.

(c) A person who receives a contribution who is acting for and by himself or herself or as treasurer or agent for another pursuant to the provisions of this section shall keep detailed accounts of every sum of money or other thing of value received by him or her, and of all expenditures and disbursements made, and liabilities incurred, in the same manner as such accounts are required by §3-8-5 of this code.

(d) Regardless of whether such person becomes a candidate as originally intended, becomes a candidate for some office other than the office or position originally intended, or does not become a candidate, all limits on campaign contributions and campaign expenditures applicable to the candidacy of or advocacy of the candidacy of such person for the office he or she actually seeks shall be applicable to and inclusive of the receipts had and expenditures made during such pre-candidacy period as well as after the person becomes a candidate.

CHAPTER 107

(Com. Sub. for H. B. 2688 - By Delegates Higginbotham and L. Pack)

[Passed April 10, 2021; in effect ninety days from passage.]
[Approved by the Governor on April 26, 2021.]

AN ACT to amend and reenact §3-8-2c of the Code of West Virginia, 1931, as amended, relating to party headquarters committees; defining terms; authorizing a county executive committee of a political party to establish a party headquarters committee for a certain exclusive purpose relating to county executive committee headquarters; and imposing $1 million cap on receipt of contributions or making expenditures for a certain purpose relating to county executive committee headquarters.

Be it enacted by the Legislature of West Virginia:

ARTICLE 8. REGULATION AND CONTROL OF ELECTIONS.

§3-8-2c. Party headquarters committee; detailed accounts and verified financial statements; funding for headquarters; limitations; reporting requirements.

(a) Notwithstanding the definitions contained in section one-a of this article, for purposes of this section:

(1) "Contribution" means a gift, subscription, loan, assessment, payment for services, dues, advance, donation, pledge, contract, agreement, forbearance or promise of money or other tangible thing of value, whether conditional or legally enforceable, or, a transfer of money or other tangible thing of value to a person, made for the purpose of funding the rental, purchase, construction or financing of the lease, purchase or construction of a party headquarters, and for the utilities, maintenance, furniture, fixtures,

and equipment for the party headquarters. An offer or tender of a contribution is not a contribution if expressly and unconditionally rejected or returned. A contribution does not include volunteer personal services provided without compensation: *Provided*, That a nonmonetary contribution is to be considered at fair market value for reporting requirements and contribution limitations.

(2) "Party headquarters" means a physical structure or structures that is the physical location of the office of a state executive committee of a political party.

(3) "Party headquarters committee" includes any person, organization or group of persons soliciting or receiving contributions for the purpose of funding the lease, purchase, construction or financing of the lease, purchase, or construction of a party headquarters, including utilities, maintenance, furniture, fixtures, and equipment for the party headquarters, or for a county executive committee's headquarters.

(4) "County executive committee" means the executive committee of a political party, as defined by §3-1-8 of this code, which is situate in, and responsible for, the conduct of that party's business in one of the constituent counties of the state.

(b) A political party, or a county executive committee of a political party, may establish a party headquarters committee to solicit and receive contributions for the exclusive purpose of the purchase, construction or lease of an office building or financing of the lease, purchase, or construction of a party headquarters, including utilities, maintenance, furniture, fixtures, and equipment, to be used as a state political party's headquarters, or, as a county executive committee's headquarters.

(c) Contributions received pursuant to this section may not be expended for:

(1) The purchase, construction or lease of satellite offices or other facilities;

(2) Utilities, maintenance, furniture, fixtures, equipment or signage for satellite offices or other facilities; or

(3) Political purposes.

(d) A party headquarters committee may not accept contributions in excess of $10,000, in the aggregate, from any person for the purposes of this section.

(e) A party headquarters committee may not receive contributions or make expenditures for the purpose of funding the rental, purchase, construction, or financing of a state executive committee headquarters, or a county executive committee's headquarters, which are in excess of $1 million.

(f) (1) A party headquarters committee, financial agent, or any person or officer acting on behalf of the committee, that is subject to the provisions of this section, shall file a verified financial statement with the Secretary of State, on a form prescribed by the secretary, within 90 days of any contribution or expenditure in excess of $250.

(2) Each financial statement shall contain, but is not limited to, the following information:

(A) The name, residence and mailing address and telephone number of the party headquarters committee, financial agent, or any person or officer acting on behalf of the committee, who is filing the financial statement.

(B) The balance of cash, and any other sum of money, on hand at the beginning and the end of the period covered by the financial statement.

(C) The name of any person making a contribution, the amount of the contribution, and the residence and mailing address of the contributor.

(D) The total amount of contributions received during the period covered by the financial statement.

(E) The name, residence and mailing address of any individual or the name and mailing address of each lending institution making a loan, the amount of any loan received, the date and terms of the

loan, including the interest and repayment schedule, and a copy of the loan agreement.

(F) The name, residence, and mailing address of any individual, or the name and mailing address of each partnership, firm, association, committee, organization, or group having previously made or cosigned a loan for which payment is made or a balance is outstanding at the end of the period, together with the amount of repayment on the loan made during the period and the balance at the end of the period.

(G) The total outstanding balance of all loans at the end of the period.

(H) The name, residence, and mailing address of any person to whom each expenditure was made, or liability incurred, together with the amount and purpose of each expenditure or liability incurred, and the date of each transaction.

(I) The total amount of expenditures made during the period covered by the financial statement.

(3) The Secretary of State shall file and retain the statements as public records for not less than six years.

(g) Contributions received by a party headquarters committee may be contributed to any educational, cultural, or charitable organization.

(h) The Secretary of State shall propose rules for legislative approval in accordance with §29A-3-1 *et seq.* of this code to effectuate the provisions of this section.

CHAPTER 108

(Com. Sub. for H. B. 2927 - By Delegates Young, Walker, Statler, Worrell, Skaff, Lovejoy, Barach, Fleischauer and L. Pack)

[Passed April 10, 2021; in effect ninety days from passage.]
[Approved by the Governor on April 28, 2021.]

AN ACT to amend and reenact §3-8-1a and §3-8-9 of the Code of West Virginia, 1931, as amended, relating to campaign finance expenses; adding caregiving services as a defined term; and adding caregiving services as a lawful campaign expense.

Be it enacted by the Legislature of West Virginia:

ARTICLE 8. REGULATION AND CONTROL OF ELECTIONS.

§3-8-1a. Definitions.

As used in this article, the following terms have the following definitions:

(1) "Ballot issue" means a constitutional amendment, special levy, bond issue, local option referendum, municipal charter or revision, an increase or decrease of corporate limits, or any other question that is placed before the voters for a binding decision.

(2) "Billboard advertisement" means a commercially available outdoor advertisement, sign, or similar display regularly available for lease or rental to advertise a person, place, or product.

(3) "Broadcast, cable, or satellite communication" means a communication that is publicly distributed by a television station, radio station, cable television system, or satellite system.

(4) "Candidate" means an individual who:

(A) Has filed a certificate of announcement under §3-5-7 of this code or a municipal charter;

(B) Has filed a declaration of candidacy under §3-5-23 of this code;

(C) Has been named to fill a vacancy on a ballot; or

(D) Has declared a write-in candidacy or otherwise publicly declared his or her intention to seek nomination or election for any state, district, county, municipal, or party office to be filled at any primary, general, or special election.

(5) "Candidate's committee" means a political committee established with the approval of or in cooperation with a candidate or a prospective candidate to explore the possibilities of seeking a particular office or to support or aid his or her nomination or election to an office in an election cycle. If a candidate directs or influences the activities of more than one active committee in a current campaign, those committees shall be considered one committee for the purpose of contribution limits.

(6) "Caregiving services" means direct care, protection, and supervision of a child, or other person with a disability or a medical condition, for which a candidate has direct caregiving responsibility. For the purposes of this article, the caregiving service expense incurred shall be in direct connection with the candidate's campaign activities during the current election cycle.

(7) "Caucus campaign committee" means a West Virginia House of Delegates or Senate political party caucus campaign committee that receives contributions and makes expenditures to support or oppose one or more specific candidates or slates of candidates for nomination, election, or committee membership.

(8) "Clearly identified" means that the name, nickname, photograph, drawing, or other depiction of the candidate appears, or the identity of the candidate is otherwise apparent through an unambiguous reference, such as "the Governor", "your Senator", or "the incumbent", or through an unambiguous reference to his or her status as a candidate, such as "the Democratic candidate for

Governor" or "the Republican candidate for Supreme Court of Appeals".

(9) "Contribution" means a gift, subscription, loan, assessment, payment for services, dues, advance, donation, pledge, contract, agreement, forbearance, promise of money, or other tangible thing of value, whether conditional or legally enforceable, or a transfer of money or other tangible thing of value to a person, made for the purpose of influencing the nomination, election, or defeat of a candidate.

(A) A coordinated expenditure is a contribution for the purposes of this article.

(B) An offer or tender of a contribution is not a contribution if expressly and unconditionally rejected or returned. A contribution does not include volunteer personal services provided without compensation: *Provided*, That a nonmonetary contribution is to be considered at fair market value for reporting requirements and contribution limitations.

(10) "Coordinated expenditure" is an expenditure made in concert with, in cooperation with, or at the request or suggestion of a candidate or candidate's committee and meeting the criteria provided in §3-8-9a of this code.

(11) "Corporate political action committee" means a political action committee that is a separate segregated fund of a corporation that may only accept contributions from its restricted group as outlined by the rules of the State Election Commission.

(12) "Direct costs of purchasing, producing, or disseminating electioneering communications" means:

(A) Costs charged by a vendor, including, but not limited to, studio rental time, compensation of staff and employees, costs of video or audio recording media and talent, material and printing costs, and postage; or

(B) The cost of air time on broadcast, cable, or satellite radio and television stations, the costs of disseminating printed materials,

studio time, use of facilities, and the charges for a broker to purchase air time.

(13) "Disclosure date" means either of the following:

(A) The first date during any calendar year on which any electioneering communication is disseminated after the person paying for the communication has spent a total of $5,000 or more for the direct costs of purchasing, producing, or disseminating electioneering communications; or

(B) Any other date during that calendar year after any previous disclosure date on which the person has made additional expenditures totaling $5,000 or more for the direct costs of purchasing, producing, or disseminating electioneering communications.

(14) "Election" means any primary, general, or special election conducted under the provisions of this code or under the charter of any municipality at which the voters nominate or elect candidates for public office. For purposes of this article, each primary, general, special, or local election constitutes a separate election. This definition is not intended to modify or abrogate the definition of the term "nomination" as used in this article.

(15) (A) "Electioneering communication" means any paid communication made by broadcast, cable or satellite signal, mass mailing, telephone bank, billboard advertisement, or publication in any newspaper, magazine, or other periodical that:

(i) Refers to a clearly identified candidate for Governor, Secretary of State, Attorney General, Treasurer, Auditor, Commissioner of Agriculture, Supreme Court of Appeals, or the Legislature;

(ii) Is publicly disseminated within:

(I) Thirty days before a primary election in which the nomination for office sought by the candidate is to be determined; or

(II) Sixty days before a general or special election in which the office sought by the candidate is to be filled; and

(iii) Is targeted to the relevant electorate.

(B) "Electioneering communication" does not include:

(i) A news story, commentary, or editorial disseminated through the facilities of any broadcast, cable or satellite television, radio station, newspaper, magazine, or other periodical publication not owned or controlled by a political party, political committee, or candidate: *Provided*, That a news story disseminated through a medium owned or controlled by a political party, political committee, or candidate is nevertheless exempt if the news is:

(I) A bona fide news account communicated in a publication of general circulation or through a licensed broadcasting facility; and

(II) Is part of a general pattern of campaign-related news that gives reasonably equal coverage to all opposing candidates in the circulation, viewing, or listening area;

(ii) Activity by a candidate committee, party executive committee, a caucus campaign committee, or a political action committee that is required to be reported to the State Election Commission or the Secretary of State as an expenditure pursuant to §3-8-5 of this code or the rules of the State Election Commission or the Secretary of State promulgated pursuant to such provision: *Provided*, That independent expenditures by a party executive committee, caucus committee, or a political action committee required to be reported pursuant to §3-8-2 of this code are not exempt from the reporting requirements of this section;

(iii) A candidate debate or forum conducted pursuant to rules adopted by the State Election Commission or the Secretary of State or a communication promoting that debate or forum made by or on behalf of its sponsor;

(iv) A communication paid for by any organization operating under Section 501(c)(3) of the Internal Revenue Code of 1986;

(v) A communication made while the Legislature is in session which, incidental to promoting or opposing a specific piece of legislation pending before the Legislature, urges the audience to communicate with a member or members of the Legislature concerning that piece of legislation;

(vi) A statement or depiction by a membership organization in existence prior to the date on which the individual named or depicted became a candidate, made in a newsletter or other communication distributed only to bona fide members of that organization;

(vii) A communication made solely for the purpose of attracting public attention to a product or service offered for sale by a candidate or by a business owned or operated by a candidate which does not mention an election, the office sought by the candidate, or his or her status as a candidate; or

(viii) A communication, such as a voter's guide, which refers to all of the candidates for one or more offices, which contains no appearance of endorsement for or opposition to the nomination or election of any candidate and which is intended as nonpartisan public education focused on issues and voting history.

(16) "Expressly advocating" means any communication that:

(A) Uses phrases such as "vote for the Governor", "re-elect your Senator", "support the incumbent nominee for Supreme Court", "cast your ballot for the Republican challenger for House of Delegates", "Smith for House", "Bob Smith in '04", "vote Pro-Life", or "vote Pro-Choice" accompanied by a listing of clearly identified candidates described as Pro-Life or Pro-Choice, "vote against Old Hickory", "defeat" accompanied by a picture of one or more candidates, "reject the incumbent";

(B) Communicates campaign slogans or individual words that can have no other reasonable meaning than to urge the election or defeat of one or more clearly identified candidates, such as posters, bumper stickers, advertisements, etc., which say "Smith's the One", "Jones '06", "Baker", etc.; or

(C) Is susceptible of no reasonable interpretation other than as an appeal to vote for or against a specific candidate.

(17) "Financial agent" means any individual acting for and by himself or herself, or any two or more individuals acting together or cooperating in a financial way to aid or take part in the nomination or election of any candidate for public office, or to aid or promote the success or defeat of any political party at any election.

(18) "Financial transactions" means all contributions or loans received and all repayments of loans or expenditures made to promote the candidacy of any person by any candidate or any organization advocating or opposing the nomination, election, or defeat of any candidate to be voted on.

(19) "Firewall" means a policy designed and implemented to prohibit the flow of information between employees or consultants providing services for the person paying for a communication and those employees or consultants currently or previously providing services to a candidate, or to a committee supporting or opposing a candidate, clearly identified in the communication.

(20) "Foreign national" means the following:

(A) A foreign principal, as such term is defined in 22 U.S.C. §611(b), which includes:

(i) A government of a foreign country;

(ii) A foreign political party;

(iii) A person outside of the United States, unless it is established that such person:

(I) Is an individual and a citizen of the United States; or

(II) That such person is not an individual and is organized under or created by the laws of the United States or of any state or other place subject to the jurisdiction of the United States and has its principal place of business within the United States; and

(iv) A partnership, association, corporation, organization, or other combination of persons organized under the laws of, or having its principal place of business in, a foreign country.

(B) An individual who is not a citizen of the United States or a national of the United States, as defined in 8 U.S.C. §1101(a)(22), and who is not lawfully admitted for permanent residence, as defined by 8 U.S.C. §1101(a)(20).

(21) "Fund-raising event" or "fundraiser" means an event such as a dinner, reception, testimonial, cocktail party, auction, or similar affair through which contributions are solicited or received.

(22) "In concert or cooperation with or at the request or suggestion of" means that a candidate or his or her agent consulted with:

(A) The sender regarding the content, timing, place, nature, or volume of a particular communication or communication to be made; or

(B) A person making an expenditure that would otherwise offset the necessity for an expenditure of the candidate or candidate's committee.

(23) "Independent expenditure" means an expenditure by a person:

(A) Expressly advocating the election or defeat of a clearly identified candidate, including supporting or opposing the candidates of a political party; and

(B) That is not made in concert or cooperation with or at the request or suggestion of such candidate, his or her agents, the candidate's authorized political committee, or a political party committee or its agents.

An expenditure which does not meet the criteria for an independent expenditure is considered a contribution.

(24) "Local" refers to the election of candidates to a city, county, or municipal office and any issue to be voted on by only the residents of a particular political subdivision.

(25) "Mass mailing" means a mailing by United States mail, facsimile, or electronic mail of more than 500 pieces of mail matter of an identical or substantially similar nature within any 30-day period. For purposes of this subdivision, "substantially similar" includes communications that contain substantially the same template or language, but vary in nonmaterial respects such as communications customized by the recipient's name, occupation, or geographic location.

(26) "Membership organization" means a group that grants bona fide rights and privileges, such as the right to vote, to elect officers or directors, and the ability to hold office to its members and which uses a majority of its membership dues for purposes other than political purposes. "Membership organization" does not include organizations that grant membership upon receiving a contribution.

(27) "Name" means the full first name, middle name, or initial, if any, and full legal last name of an individual and the full name of any association, corporation, committee, or other organization of individuals, making the identity of any person who makes a contribution apparent by unambiguous reference.

(28) "Person" means an individual, corporation, partnership, committee, association, and any other organization or group of individuals.

(29) "Political action committee" means a committee organized by one or more persons, the primary purpose of which is to support or oppose the nomination or election of one or more candidates. The following are types of political action committees:

(A) A corporate political action committee, as that term is defined in this section;

(B) A membership organization, as that term is defined in this section; and

(C) An unaffiliated political action committee, as that term is defined in this section.

(30) "Political committee" means any candidate committee, political action committee, or political party committee.

(31) "Political party" means a political party as that term is defined by §3-1-8 of this code or any committee established, financed, maintained, or controlled by the party, including any subsidiary, branch, or local unit thereof and including national or regional affiliates of the party.

(32) "Political party committee" means a committee established by a political party or political party caucus for the purposes of engaging in the influencing of the election, nomination, or defeat of a candidate in any election.

(33) "Political purposes" means supporting or opposing the nomination, election, or defeat of one or more candidates or the passage or defeat of a ballot issue, supporting the retirement of the debt of a candidate or political committee or the administration or activities of an established political party or an organization which has declared itself a political party, and determining the advisability of becoming a candidate under the pre-candidacy financing provisions of this chapter.

(34) "Targeted to the relevant electorate" means a communication which refers to a clearly identified candidate for statewide office or the Legislature and which can be received by 140,000 or more individuals in the state in the case of a candidacy for statewide office, 8,220 or more individuals in the district in the case of a candidacy for the State Senate, and 2,410 or more individuals in the district in the case of a candidacy for the House of Delegates.

(35) "Telephone bank" means telephone calls that are targeted to the relevant electorate, other than telephone calls made by volunteer workers, regardless of whether paid professionals designed the telephone bank system, developed calling instructions, or trained volunteers.

(36) "Unaffiliated political action committee" means a political action committee that is not affiliated with a corporation or a membership organization.

§3-8-9. Lawful and unlawful election expenses; public opinion polls and limiting their purposes; limitation upon expenses; use of advertising agencies and reporting requirements; delegation of expenditures.

(a) No financial agent or treasurer of a political committee may pay, give, or lend, either directly or indirectly, any money or other thing of value for any election expenses, except for the following purposes:

(1) For rent, maintenance, office equipment, and other furnishing of offices to be used as political headquarters and for the payment of necessary employees;

(2) In the case of a candidate who does not maintain a headquarters, for reasonable office expenses, including, but not limited to, filing cabinets and other office equipment, and furnishings, computers, computer hardware and software, scanners, typewriters, calculators, audio visual equipment, the rental of the use of the same, or for the payment for the shared use of same with the candidate's business and for the payment of necessary employees;

(3) For printing and distributing books, pamphlets, circulars, and other printed matter, radio and television broadcasting, and painting, printing, and posting signs, banners, and other advertisements, including contributions to charitable, educational, or cultural events, for the promotion of the candidate or the candidate's name, or an issue on the ballot;

(4) For renting and decorating halls for public meetings and political conventions, for advertising public meetings, and for the payment of traveling expenses of speakers and musicians at such meetings;

(5) For the necessary traveling and hotel expenses of candidates, political agents, and committees and for stationery,

postage, telegrams, telephone, express, freight, and public messenger service;

(6) For preparing, circulating, and filing petitions for nomination of candidates;

(7) For examining the lists of registered voters, securing copies thereof, investigating the right to vote of the persons listed therein, and conducting proceedings to prevent unlawful registration or voting;

(8) For conveying voters to and from the polls;

(9) For securing publication in newspapers and by radio and television broadcasting of documents, articles, speeches, arguments, and any information relating to any political issue, candidate, or question or proposition submitted to a vote;

(10) For conducting public opinion poll or polls. For the purpose of this section, the phrase "conducting of public opinion poll or polls" shall mean and be limited to the gathering, collection, collation, and evaluation of information reflecting public opinion, needs, and preferences as to any candidate, group of candidates, party, issue, or issues. No such poll may be deceptively designed or intentionally conducted in a manner calculated to advocate the election or defeat of any candidate or group of candidates or calculated to influence any person or persons so polled to vote for or against any candidate, group of candidates, proposition, or other matter to be voted on by the public at any election: *Provided*, That nothing herein may prevent the use of the results of any such poll or polls to further, promote or enhance the election of any candidate or group of candidates or the approval or defeat of any proposition or other matter to be voted on by the public at any election;

(11) For legitimate advertising agency services, including commissions, in connection with any campaign activity for which payment is authorized by subdivisions (3), (4), (5), (6), (7), (9), and (10) of this subsection;

(12) For the purchase of memorials, flowers, or citations by political party executive committees or political action committees representing a political party;

(13) For the purchase of nominal noncash expressions of appreciation following the close of the polls of an election or within 30 days thereafter;

(14) For the payment of dues or subscriptions to any national, state, or local committee of any political party;

(15) For contributions to a county party executive committee, state party executive committee, or a caucus campaign committee;

(16) For transfers to any national, state, or local committee of any political party when that committee is acting in the role of a vendor: *Provided*, That no such transfer may involve any coordination between the candidate and the political party committee without being considered as a contribution;

(17) For payment for legal and accounting services rendered to a candidate or candidate committee if the services are solely related to the candidacy or campaign;

(18) For payment for food and drink for campaign-related purposes;

(19) For the payment of any required filing fees associated with the campaign, except that a candidate may not pay any fines assessed against the candidate or the candidate's committee pursuant to this article;

(20) For contributions to a candidate committee: *Provided*, That a candidate committee may not contribute to another candidate committee except as otherwise provided by §3-8-10 of this code; and

(21) For expenses related to caregiving services.

(b) A political action committee may not contribute to another political action committee or receive contributions from another

political action committee: *Provided*, That a political action committee may receive contributions from its national affiliate, if any.

(c) Every liability incurred, and payment made shall be for the fair market value of the services rendered.

(d) Every advertising agency subject to the provisions of this article shall file, in the manner and form required by §3-8-5a of this code, the financial statements required by §3-8-5 of this code at the times required therein and include therein, in itemized detail, all receipts from and expenditures made on behalf of a candidate, financial agent, or treasurer of a political party committee.

(e) Any candidate may designate a financial agent by a writing duly subscribed by the candidate which shall be in such form and filed in accordance with §3-8-4 of this code.

CHAPTER 109

(Com. Sub. for H. B. 3215 - By Delegates Brown and Pinson)

[Passed April 10, 2021; in effect ninety days from passage.]
[Approved by the Governor on April 26, 2021.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §7-4-1a, relating to eligibility of prosecuting attorneys; and requiring a person to be licensed as an attorney in the State of West Virginia at the time of filing for office as a candidate for the office of prosecuting attorney.

Be it enacted by the Legislature of West Virginia:

ARTICLE 4. PROSECUTING ATTORNEY, REWARDS, AND LEGAL ADVICE.

§7-4-1a. Eligibility of prosecuting attorneys.

To be eligible to be a candidate for the office of prosecuting attorney, a person shall be a duly licensed attorney in the State of West Virginia at the time of his or her filing for office.

CHAPTER 110

(Com. Sub. for Com. Sub. for S. B. 542 - By Senators Phillips, Caputo, and Woodrum)

[Passed April 10, 2021; in effect 90 days from passage (July 9, 2021)]
[Approved by the Governor on April 28, 2021.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated †§24-1-1c; and to amend said code by adding thereto two new sections, designated §24-2-1q and §24-2-21, all relating to the Public Service Commission; making legislative findings; requiring that all public electric utilities maintain a contract for a 30-day aggregate fuel supply for the remainder of the life of existing coal-fired plants; and requiring that public electric utilities provide advance notice of retirement, shutdown, or sale of electricity-generating units.

Be it enacted by the Legislature of West Virginia:

ARTICLE 1. GENERAL PROVISIONS.

†§24-1-1c. Additional Legislative findings related to the coal industry.

The Legislature finds that:

(1) Over 600 coal-fired electric units nationally have been forced to close;

(2) Eighteen coal-fired electric units within West Virginia's borders have been forced to close;

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†**NOTE:** H. B. 3310 (Chapter 111), which passed prior to this act, also created a new Section 1c. Therefore, this has been redesignated as Section 1d for the code.

(3) Markets for West Virginia coal have been severely diminished due to the closure of regional coal plants to the point that West Virginia coal shipments have been reduced from 162 coal plants a decade ago to only 43 plants today;

(4) West Virginia coal mines are forced to close, resulting in West Virginia coal miners being out of work, compromising homeland security and defense measures, and threatening grid stability and resiliency;

(5) It is imperative the State of West Virginia take immediate steps to reverse these undesirable trends to ensure that no more coal-fired plants close, no additional jobs are lost, and long-term state prosperity is maintained;

(6) Throughout the past decade, no group has been hit harder by the decline of coal than West Virginia's coal miners and their families. Many coal miners are struggling to make ends meet and provide for their families;

(7) In addition to working toward sustaining coal employment levels and coal-based, electric generation, the State of West Virginia should take immediate steps to provide education, training, and retraining opportunities for displaced coal miners and their families;

(8) West Virginia coal-fired power plants should continue to provide base load generation critical for maintaining slow, steady generation that produces power on a continuous cycle, ensures grid stability, and protects against overloads and power shortages;

(9) West Virginia coal and electricity generated in West Virginia are relied upon throughout a multi-state region, thus playing a vital role in regional homeland security;

(10) West Virginia's coal fleet, comprised of nine individual plants and 25 units, is fueled on average by a total of 25 million tons annually; accounts for over $2 billion of economic activity; and sustains approximately 3,500 mining jobs, 2,000 plant worker jobs, thousands of downstream and indirect local and surrounding

county jobs, and hundreds of millions of dollars of payroll and tax dollars;

(11) The role of West Virginia and West Virginia coal in regional homeland security is of paramount importance; thus, it is incumbent for our state to continue to provide leadership in this increasingly critical area in order to sustain and protect our regional electric supplies; and

(12) Public electric utilities in West Virginia should be encouraged to operate their coal-fired plants at maximum reasonable output and for the duration of the life of the plants.

ARTICLE 2. POWERS AND DUTIES OF PUBLIC SERVICE COMMISSION.

§24-2-1q. Base fuel supply requirements for electric grid resiliency.

Any coal-fired power plant owned by a public electric utility as of the effective date of this section shall, in order to ensure grid resiliency and homeland security, maintain a minimum 30-day aggregate coal supply under contract for the remainder of the life of those plants.

§24-2-21. Required notice for power plant closure or sale.

(a) The Legislature hereby finds that:

(1) Coal-fired power plants owned by public electric utilities in West Virginia provide electric utility customers in the state with reliable and affordable energy;

(2) West Virginia's access to coal reserves has provided the citizens of the state with access to an energy resource that is affordable and accessible to coal-fired power plants in West Virginia; and

(3) Matters generally related to homeland security and national defense are of paramount importance to West Virginia and its residents and coal-fired power plants provide optimal protection

and resiliency toward state security and uninterrupted power supplies for household, industrial, and military applications.

(b) It is the purpose of the Legislature to:

(1) Require the West Virginia Public Service Commission to consider all economics associated with its actions regarding the in-state plants operated by a public electric utility, including impacts on local communities and surrounding counties, and all impacts on employment; and

(2) Require public electric utilities to provide adequate notice before plant closure or permanently idling.

(c) Before any public electric utility announces the retirement of an electricity-generating unit, the proposed shutdown of an electricity-generating unit, or the proposed sale of and electricity-generating plant to another operator, the public electric utility shall give notice to the West Virginia Office of Homeland Security and Emergency Management, Public Service Commission of West Virginia, and the Legislature's Joint Committee on Government and Finance.

(d) Nothing in this section shall restrict or impede the commission's ability to act on future rate cases or other matters coming before the commission that ultimately affect electrical rates.

CHAPTER 111

(H. B. 3310 - By Delegates Capito, Queen, Lovejoy and Garcia)

[Passed April 9, 2021; in effect from passage.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §24-1-1c; to amend and reenact §24-1-2 of said code; and to amend and reenact §24-2-1 of said code; all generally relating to jurisdiction of the Public Service Commission; making legislative findings; defining terms; creating exception to the term public utility for certain solar photovoltaic energy facilities on the premises of a retail electric customer, the output of which is subject to solar power purchase agreements; providing for rulemaking; and limiting jurisdiction of the Public Service Commission.

Be it enacted by the Legislature of West Virginia:

ARTICLE 1. GENERAL PROVISIONS.

§24-1-1c. Legislative findings.

The Legislature finds:

(1) Helping retail electric customers invest in and install solar photovoltaic energy facilities of their choice on their properties is in the public interest;

(2) Free-market financing may provide more customers with opportunities to install solar photovoltaic energy facilities;

(3) Installation of solar photovoltaic energy facilities will stabilize long-term energy costs making the state more attractive for industry and commercial investment;

(4) Financing arrangements, including those in which payments are based on the performance and output of the solar photovoltaic energy facility installed on the property of a retail electric customer, will help reduce or eliminate upfront costs involved in the investments and installation by the customers; and

(5) Individuals and entities which offer or receive these types of financing arrangements should not be considered or treated as public utilities.

§24-1-2. Definitions.

Except where a different meaning clearly appears from the context, the following words when used in this chapter, shall mean:

"Commission" or "Public Service Commission" means the Public Service Commission of West Virginia.

"Customer" means any person, firm, corporation, municipality, public service district, or any other entity who purchases a product or services of any utility and shall include any person, firm, corporation, municipality, public service district, or any other entity who purchases the services or product for resale.

"Governing body" means the municipal body charged with the authority and responsibility of enacting ordinances of the municipality, as defined in §8-1-2 of this code, or a public service board of a public service district, as defined in §16-13A-3 of this code.

"Public utility" means any person or persons, or association of persons, however associated, whether incorporated or not, including municipalities, engaged in any business, whether herein enumerated or not, which is, or shall hereafter be held to be, a public service: *Provided*, That "public utility" does not include individuals or entities owning a solar photovoltaic energy facility located on and designed to meet only the electrical needs of the premises of a retail electric customer, the output of which is subject to a power purchase agreement with the retail electric customer, subject to §24-2-1(a) of this code.

ARTICLE 2. POWERS AND DUTIES OF PUBLIC SERVICE COMMISSION.

*§24-2-1. Jurisdiction of commission; waiver of jurisdiction.

(a) The jurisdiction of the commission extends to all public utilities in this state and includes any utility engaged in any of the following public services:

(1) Common carriage of passengers or goods, whether by air, railroad, street railroad, motor, or otherwise, by express or otherwise, by land, water, or air, whether wholly or partly by land, water, or air;

(2) Transportation of oil, gas, or water by pipeline;

(3) Transportation of coal and its derivatives and all mixtures and combinations thereof with other substances by pipeline;

(4) Sleeping car or parlor car services;

(5) Transmission of messages by telephone, telegraph, or radio;

(6) Generation and transmission of electrical energy by hydroelectric or other utilities for service to the public, whether directly or through a distributing utility;

(7) Supplying water, gas, or electricity by municipalities or others: (A) *Provided,* That natural gas producers who provide natural gas service to not more than 25 residential customers are exempt from the jurisdiction of the commission with regard to the provisions of the residential service; (B) *Provided however*, That upon request of any of the customers of the natural gas producers, the commission may, upon good cause being shown, exercise authority as the commission may consider appropriate over the operation, rates, and charges of the producer and for the length of time determined proper by the commission; (C) *Provided further*, That the provision of a solar photovoltaic energy facility located on and designed to meet only the electrical needs of the premises of a retail electric customer, the output of which is subject to a power

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***NOTE:** This section was also amended by H. B. 2969 (Chapter 238), which passed prior to this act.

purchase agreement (PPAs) with the retail electric customer, shall not constitute a public service, subject to the following conditions and limitations:

(i) PPAs must be 11 point font or larger.

(ii) The aggregate of all PPAs and net metering arrangements in the state for any utility shall not exceed three percent (3%) of the utility's aggregate customer peak demand in the state during the previous year;

(iii) There shall be individual customer on-site generator limits of designing the photovoltaic energy facility to meet only the electrical needs of the premises of the retail electric customer and which in no case shall exceed 25kW for residential customers, 500 kW for commercial customers, and 2,000 kW for industrial customers;

(iv) Customers who enter into PPAs relating to photovoltaic facilities are to notify the utility of its intent to enter into a transaction. In response, the utility shall notify within 30 days if any of the caps have been reached. If the utility does not respond within 30 days, the generator may proceed and the caps will be presumed not to have been reached; and

(v) The Public Service Commission may promulgate rules to govern and implement the provisions of interconnections for PPAs, except the PSC does not have authority over the power rates for the arrangements between the on-site generator and the customer;

(8) Sewer systems servicing 25 or more persons or firms other than the owner of the sewer systems; *Provided*, That if a public utility other than a political subdivision intends to provide sewer service by an innovative, alternative method, as defined by the federal Environmental Protection Agency, the innovative, alternative method is a public utility function and subject to the jurisdiction of the Public Service Commission, regardless of the number of customers served by the innovative, alternative method;

(9) Any public service district created under the provisions of §16-13A-1 *et seq.* of this code, except that the Public Service

Commission has no jurisdiction over the provision of stormwater services by a public service district;

(10) Toll bridges located more than five miles from a toll-free bridge which crosses the same body of water or obstacle, wharves, ferries; solid waste facilities; and

(11) Any other public service.

(b) The jurisdiction of the commission over political subdivisions of this state providing separate or combined water and/or sewer services and having at least 4,500 customers and annual combined gross revenues of $3 million or more that are political subdivisions of the state is limited to:

(1) General supervision of public utilities, as granted and described in §24-2-5 of this code;

(2) Regulation of measurements, practices, acts, or services, as granted and described in §24-2-7 of this code;

(3) Regulation of a system of accounts to be kept by a public utility that is a political subdivision of the state, as granted and described in §24-2-8 of this code;

(4) Submission of information to the commission regarding rates, tolls, charges, or practices, as granted and described in §24-2-9 of this code;

(5) Authority to subpoena witnesses, take testimony, and administer oaths to any witness in any proceeding before or conducted by the commission, as granted and described in §24-2-10 of this code; and

(6) Investigation and resolution of disputes between a political subdivision of the state providing wholesale water and/or wastewater treatment or other services, whether by contract or through a tariff, and its customer or customers, including, but not limited to, rates, fees, and charges, service areas and contested utility combinations: *Provided,* That any request for an investigation related to a dispute that is based on the act or omission

of the political subdivision shall be filed within 30 days of the act or omission of the political subdivision and the commission shall resolve the dispute within 120 days of filing. The 120-day period for resolution of the dispute may be tolled by the commission until the necessary information showing the basis of the rates, fees, and charges or other information required by the commission is filed: *Provided, however*, That the disputed rates, fees, and charges fixed by the political subdivision providing separate or combined water and/or sewer services shall remain in full force and effect until set aside, altered or, amended by the commission in an order to be followed in the future.

(7) Customers of water and sewer utilities operated by a political subdivision of the state may bring formal or informal complaints regarding the commission's exercise of the powers enumerated in this section and the commission shall resolve these complaints: *Provided,* That any formal complaint filed under this section that is based on the act or omission of the political subdivision shall be filed within 30 days of the act or omission complained of and the commission shall resolve the complaint within 180 days of filing. The 180-day period for resolution of the dispute may be tolled by the commission until the necessary information showing the basis of the matter complained of is filed by the political subdivision: *Provided, however*, That whenever the commission finds any regulations, measurements, practices, acts, or service to be unjust, unreasonable, insufficient, or unjustly discriminatory, or otherwise in violation of any provisions of this chapter, or finds that any service is inadequate, or that any service which is demanded cannot be reasonably obtained, the commission shall determine and declare, and by order fix reasonable measurement, regulations, acts, practices or services, to be furnished, imposed, observed, and followed in lieu of those found to be unjust, unreasonable, insufficient, or unjustly discriminatory, inadequate, or otherwise in violation of this chapter, and shall make an order that is just and reasonable: *Provided further*, That if the matter complained of would affect rates, fees, and charges fixed by the political subdivision providing separate or combined water and/or sewer services, the rates, fees, or charges shall remain in full

force and effect until set aside, altered, or amended by the commission in an order to be followed in the future.

(8) If a political subdivision has a deficiency in either its bond revenue or bond reserve accounts, or is otherwise in breach of a bond covenant, any bond holder may petition the Public Service Commission for any redress that will bring the accounts to current status or otherwise resolve the breached covenant. The commission has jurisdiction to fully resolve the alleged deficiency or breach.

(c) The commission may, upon application, waive its jurisdiction and allow a utility operating in an adjoining state to provide service in West Virginia when:

(1) An area of West Virginia cannot be practicably and economically served by a utility licensed to operate within the State of West Virginia;

(2) The area can be provided with utility service by a utility which operates in a state adjoining West Virginia;

(3) The utility operating in the adjoining state is regulated by a regulatory agency or commission of the adjoining state; and

(4) The number of customers to be served is not substantial. The rates the out-of-state utility charges West Virginia customers shall be the same as the rate the utility may charge in the adjoining jurisdiction. The commission, in the case of any such utility, may revoke its waiver of jurisdiction for good cause.

(d) Any other provisions of this chapter to the contrary notwithstanding:

(1) An owner or operator of an electric generating facility located or to be located in this state that has been designated as an exempt wholesale generator under applicable federal law, or will be so designated prior to commercial operation of the facility, for which the facility the owner or operator holds a certificate of public convenience and necessity issued by the commission on or before July 1, 2003, is subject to §24-2-11c(e) through §24-2-11c(j) of this code as if the certificate of public convenience and necessity for

the facility were a siting certificate issued under §24-2-11c of this code, and is not otherwise subject to the jurisdiction of the commission or to the provisions of this chapter with respect to the facility except for the making or constructing of a material modification thereof as provided in §24-2-1(d)(5) of this code.

(2) Any person, corporation, or other entity that intends to construct or construct and operate an electric generating facility to be located in this state that has been designated as an exempt wholesale generator under applicable federal law, or will be designated prior to commercial operation of the facility, for which facility the owner or operator does not hold a certificate of public convenience and necessity issued by the commission on or before July 1, 2003, shall, prior to commencement of construction of the facility, obtain a siting certificate from the commission pursuant to the provisions of §24-2-11c of this code in lieu of a certificate of public convenience and necessity pursuant to the provisions of §24-2-11 of this code. An owner or operator of an electric generating facility as is described in this subdivision for which a siting certificate has been issued by the commission is subject to §24-2-11c(e) through §24-2-11c(j) of this code and is not otherwise subject to the jurisdiction of the commission or to the provisions of this chapter with respect to the facility except for the making or constructing of a material modification thereof as provided in §24-2-1(d)(5) of this code.

(3) An owner or operator of an electric generating facility located in this state that had not been designated as an exempt wholesale generator under applicable federal law prior to commercial operation of the facility that generates electric energy solely for sale at retail outside this state or solely for sale at wholesale in accordance with any applicable federal law that preempts state law or solely for both sales at retail and sales at wholesale and that had been constructed and had engaged in commercial operation on or before July 1, 2003, is not subject to the jurisdiction of the commission or to the provisions of this chapter with respect to the facility, regardless of whether the facility subsequent to its construction has been or will be designated as an exempt wholesale generator under applicable

federal law: *Provided*, That the owner or operator is subject to §24-2-1(d)(5) of this code if a material modification of the facility is made or constructed.

(4) Any person, corporation, or other entity that intends to construct or construct and operate an electric generating facility to be located in this state that has not been or will not be designated as an exempt wholesale generator under applicable federal law prior to commercial operation of the facility that will generate electric energy solely for sale at retail outside this state or solely for sale at wholesale in accordance with any applicable federal law that preempts state law or solely for both sales at retail and sales at wholesale and that had not been constructed and had not been engaged in commercial operation on or before July 1, 2003, shall, prior to commencement of construction of the facility, obtain a siting certificate from the commission pursuant to the provisions of §24-2-11c of this code in lieu of a certificate of public convenience and necessity pursuant to the provisions of §24-2-11 of this code. An owner or operator of an electric generating facility as is described in this subdivision for which a siting certificate has been issued by the commission is subject to §24-2-11c(e) through §24-2-11c(j) of this code, and is not otherwise subject to the jurisdiction of the commission or to the provisions of this chapter with respect to the facility except for the making or constructing of a material modification thereof as provided in §24-2-1(d)(5) of this code.

(5) An owner or operator of an electric generating facility described in this subsection shall, before making or constructing a material modification of the facility that is not within the terms of any certificate of public convenience and necessity or siting certificate previously issued for the facility or an earlier material modification thereof, obtain a siting certificate for the modification from the commission pursuant to the provisions of §24-2-11c of this code, in lieu of a certificate of public convenience and necessity for the modification pursuant to the provisions of §24-2-11 of this code and, except for the provisions of §24-2-11c of this code, is not otherwise subject to the jurisdiction of the commission or to the provisions of this chapter with respect to the modification.

(6) The commission shall consider an application for a certificate of public convenience and necessity filed pursuant to §24-2-11 of this code, to construct an electric generating facility described in this subsection or to make or construct a material modification of the electric generating facility as an application for a siting certificate pursuant to §24-2-11c of this code if the application for the certificate of public convenience and necessity was filed with the commission prior to July 1, 2003, and if the commission has not issued a final order as of that date.

(7) The limitations on the jurisdiction of the commission over, and on the applicability of the provisions of this chapter to, the owner or operator of an electric generating facility as imposed by and described in this subsection do not affect or limit the commission's jurisdiction over contracts or arrangements between the owner or operator of the facility and any affiliated public utility subject to the provisions of this chapter.

(e) The commission does not have jurisdiction of Internet protocol-enabled service or voice-over Internet protocol-enabled service. As used in this subsection:

(1) "Internet protocol-enabled service" means any service, capability, functionality, or application provided using Internet protocol, or any successor protocol, that enables an end user to send or receive a communication in Internet protocol format, or any successor format, regardless of whether the communication is voice, data, or video.

(2) "Voice-over Internet protocol service" means any service that:

(i) Enables real-time, two-way voice communications that originate or terminate from the user's location using Internet protocol or a successor protocol; and

(ii) Uses a broadband connection from the user's location.

(3) The term "voice-over Internet protocol service" includes any service that permits users to receive calls that originate on the

public-switched telephone network and to terminate calls on the public-switched telephone network.

(f) Notwithstanding any other provisions of this article, the commission does not have jurisdiction to review or approve any transaction involving a telephone company otherwise subject to §24-2-12 and §24-2-12a of this code, if all entities involved in the transaction are under common ownership.

(g) The Legislature finds that the rates, fees, charges, and ratemaking of municipal power systems are most fairly and effectively regulated by the local governing body. Therefore, notwithstanding any other provisions of this article, the commission does not have jurisdiction over the setting or adjustment of rates, fees, and charges of municipal power systems. Further, the jurisdiction of the Public Service Commission over municipal power systems is limited to that granted specifically in this code.

CHAPTER 112

(Com. Sub. for S. B. 368 - By Senators Swope, Stollings, Plymale, Phillips, Woelfel, Smith, Baldwin, and Jeffries)

[Passed April 10, 2021; to take effect July 1, 2021]
[Approved by the Governor on April 28, 2021.]

AN ACT to amend and reenact §22-15-11 of the Code of West Virginia, 1931, as amended; to amend and reenact §22-15A-1 and §22-15A-19 of said code; to amend said code by adding thereto a new section, designated §22-15A-30; to amend and reenact §22-16-4 and §22-16-12 of said code; to amend and reenact §22C-4-30 of said code; and to amend and reenact §24-2-1m of said code, all relating to regulation of certain waste disposal and processing activities generally; authorizing certain additional solid waste assessment fees; providing for the distribution of the additional solid waste assessment fees; changing the location of certain public roads upon which the moneys of the Gas Field Highway Repair and Horizontal Drilling Waste Study Fund is to be expended for their improvement, maintenance, and repair from those public roads located in the watershed from which certain revenues are received to those public roads located in the county where the waste is generated; providing that those funds only be expended through the Division of Highways county office in that county; exempting certain mixed waste processing and resource recovery facilities from certain fees and assessments; providing legislative findings; authorizing the Department of Environmental Protection to develop the Reclamation of Abandoned and Dilapidated Properties Program to assist county commissions or municipalities in their efforts to remediate abandoned and dilapidated structures; creating a special revenue fund to be known as the Reclamation of Abandoned and Dilapidated Properties Program Fund;

permitting the payment of excess money from the Solid Waste Facility Closure Cost Assistance Fund into the Reclamation of Abandoned and Dilapidated Properties Program Fund; authorizing increases in certain solid waste assessment fees; providing that the jurisdiction of the West Virginia Public Service Commission does not extend to these mixed waste processing and resource recovery facilities; and providing effective date.

Be it enacted by the Legislature of West Virginia:

CHAPTER 22. ENVIRONMENTAL RESOURCES.

ARTICLE 15. SOLID WASTE MANAGEMENT ACT.

§22-15-11. Solid waste assessment fee; penalties.

(a) *Imposition.* —

(1) A solid waste assessment fee is hereby imposed upon the disposal of solid waste at any solid waste disposal facility in this state in the amount of $1.75 per ton or part thereof of solid waste. The fee imposed by this section is in addition to all other fees and taxes levied by law and shall be added to and constitute part of any other fee charged by the operator or owner of the solid waste disposal facility.

(2) Effective July 1, 2021, in addition to the fee set forth in subdivision (1) of this subsection, an additional solid waste assessment fee shall be levied and imposed upon the disposal of solid waste at any solid waste landfill disposal facility in this state. This additional fee shall be in the amount of 20 cents per ton beginning July 1, 2021, 40 cents per ton beginning July 1, 2022, 60 cents per ton beginning July 1, 2023, 80 cents per ton beginning July 1, 2024, and $1.00 per ton beginning July 1, 2025, thereafter or like ratio on any part of a ton of solid waste. The additional fee set forth in this subdivision shall be distributed as follows:

(A) Twenty-five percent of the additional fee shall be distributed equally to each county or regional solid waste authority; and

(B) Seventy-five percent of the additional fee shall be distributed on a per capita basis to each county or regional solid waste authority based on the most recent population projections from the United States Census Bureau.

The proceeds from this fee are to be expended for the reasonable costs of administration of the county or regional solid waste authority including the necessary and reasonable expenses of its members, and any other expenses incurred from refuse cleanup, recycling programs, litter control programs, or any other locally important solid waste programs deemed necessary to fulfill its duties. The Tax Commissioner may promulgate interpretive rules to provide for the distribution of funds as provided by this subdivision.

(b) *Collection, return, payment, and records.* — The person disposing of solid waste at the solid waste disposal facility shall pay the fees imposed by this section, whether or not such person owns the solid waste, and the fees shall be collected by the operator of the solid waste facility who shall remit it to the Tax Commissioner.

(1) The fees imposed by this section accrues at the time the solid waste is delivered to the solid waste disposal facility.

(2) The operator shall remit the fees imposed by this section to the Tax Commissioner on or before the 15th day of the month next succeeding the month in which the fees accrued. Upon remittance of the fees, the operator is required to file returns on forms and in the manner as prescribed by the Tax Commissioner.

(3) The operator shall account to the state for all fees collected under this section and shall hold them in trust for the state until remitted to the Tax Commissioner.

(4) If any operator fails to collect the fees imposed by this section, he or she is personally liable for such amount as he or she failed to collect, plus applicable additions to tax, penalties, and interest imposed by §11-10-1 *et seq.* of this code.

(5) Whenever any operator fails to collect, truthfully account for, remit the fees, or file returns with the fees as required in this section, the Tax Commissioner may serve written notice requiring such operator to collect the fees which become collectible after service of such notice, to deposit such fees in a bank approved by the Tax Commissioner, in a separate account, in trust for and payable to the Tax Commissioner and to keep the amount of such fees in such account until remitted to the Tax Commissioner. Such notice remains in effect until a notice of cancellation is served on the operator or owner by the Tax Commissioner.

(6) Whenever the owner of a solid waste disposal facility leases the solid waste facility to an operator, the operator is primarily liable for collection and remittance of the fees imposed by this section and the owner is secondarily liable for remittance of the fees imposed by this section. However, if the operator fails, in whole or in part, to discharge his or her obligations under this section, the owner and the operator of the solid waste facility are jointly and severally responsible and liable for compliance with the provisions of this section.

(7) If the operator or owner responsible for collecting the fees imposed by this section is an association or corporation, the officers thereof are liable, jointly and severally, for any default on the part of the association or corporation, and payment of the fees and any additions to tax, penalties, and interest imposed by §11-10-1 *et seq.* of this code may be enforced against them as against the association or corporation which they represent.

(8) Each person disposing of solid waste at a solid waste disposal facility and each person required to collect the fees imposed by this section shall keep complete and accurate records in such form as the Tax Commissioner may require in accordance with the rules of the Tax Commissioner.

(c) *Regulated motor carriers.* — The fees imposed by this section and §7-5-22 of this code is considered a necessary and reasonable cost for motor carriers of solid waste subject to the jurisdiction of the Public Service Commission under chapter 24A of this code. Notwithstanding any provision of law to the contrary,

upon the filing of a petition by an affected motor carrier, the Public Service Commission shall, within 14 days, reflect the cost of said fees in said motor carrier's rates for solid waste removal service. In calculating the amount of said fees to said motor carrier, the commission shall use the national average of pounds of waste generated per person per day as determined by the United States Environmental Protection Agency.

(d) *Definition of "solid waste disposal facility".* — For purposes of this section, the term "solid waste disposal facility" means any approved solid waste facility or open dump in this state, and includes a transfer station when the solid waste collected at the transfer station is not finally disposed of at a solid waste disposal facility within this state that collects the fees imposed by this section. Nothing herein authorizes in any way the creation or operation of or contribution to an open dump.

(e) *Exemptions.* — The following transactions are exempt from the fees imposed by this section:

(1) Disposal of solid waste at a solid waste facility: (A) By the person who owns, operates, or leases the solid waste disposal facility if it is used exclusively to dispose of waste originally produced by that person in his or her regular business or personal activities; (B) by persons utilizing the facility on a cost-sharing or nonprofit basis; or (C) by a mixed waste processing and resource recovery facility as those facilities are defined in code or rule and which processes a minimum of 70 percent of the material brought to the facility on any given day on a 30-day aggregate basis;

(2) Reuse or recycling of any solid waste;

(3) Disposal of residential solid waste by an individual not in the business of hauling or disposing of solid waste on such days and times as designated by the secretary is exempt from the solid waste assessment fees; and

(4) Disposal of solid waste at a solid waste disposal facility by a commercial recycler which disposes of 30 percent or less of the total waste it processes for recycling. In order to qualify for this

exemption each commercial recycler must keep accurate records of incoming and outgoing waste by weight. Such records must be made available to the appropriate inspectors from the division, upon request.

(f) *Procedure and administration.* — Notwithstanding §11-10-3 of this code, each and every provision of the West Virginia Tax Procedure and Administration Act set forth in §11-10-1 *et seq.* of this code shall apply to the imposed by this section with like effect as if said act were applicable only to the fees imposed by this section and were set forth in extenso herein.

(g) *Criminal penalties.* — Notwithstanding §11-9-2 of this code, sections three through seventeen, article nine, chapter eleven of this code shall apply to the fees imposed by this section with like effect as if said sections were applicable only to the fees imposed by this section and were set forth in extenso herein.

(h) *Dedication of proceeds.* – Except as provided in subdivision (2), subsection (a) of this section, the net proceeds of the fees collected by the Tax Commissioner pursuant to this section shall be deposited at least monthly in an account designated by the secretary. The secretary shall allocate 25 cents for each ton of solid waste disposed of in this state upon which the fees imposed by this section is collected and shall deposit the total amount so allocated into the Solid Waste Reclamation and Environmental Response Fund to be expended for the purposes hereinafter specified. The first $1 million of the net proceeds of the fees imposed by this section collected in each fiscal year shall be deposited in the Solid Waste Enforcement Fund and expended for the purposes hereinafter specified. The next $250,000 of the net proceeds of the fees imposed by this section collected in each fiscal year shall be deposited in the Solid Waste Management Board Reserve Fund, and expended for the purposes hereinafter specified: *Provided,* That in any year in which the Water Development Authority determines that the Solid Waste Management Board Reserve Fund is adequate to defer any contingent liability of the fund, the Water Development Authority shall so certify to the secretary and the secretary shall then cause no less than $50,000 nor more than $250,000 to be deposited to the fund: *Provided, however,* That in

any year in which the Water Development Authority determines that the Solid Waste Management Board Reserve Fund is inadequate to defer any contingent liability of the fund, the Water Development Authority shall so certify to the secretary and the secretary shall then cause not less than $250,000 nor more than $500,000 to be deposited in the fund: *Provided further*, That if a facility owned or operated by the State of West Virginia is denied site approval by a county or regional solid waste authority, and if such denial contributes, in whole or in part, to a default, or drawing upon a reserve fund, on any indebtedness issued or approved by the Solid Waste Management Board, then in that event the Solid Waste Management Board or its fiscal agent may withhold all or any part of any funds which would otherwise be directed to such county or regional authority and shall deposit such withheld funds in the appropriate reserve fund. The secretary shall allocate the remainder, if any, of said net proceeds among the following three special revenue accounts for the purpose of maintaining a reasonable balance in each special revenue account, which are hereby continued in the State Treasury:

(1) The Solid Waste Enforcement Fund which shall be expended by the secretary for administration, inspection, enforcement, and permitting activities established pursuant to this article;

(2) The Solid Waste Management Board Reserve Fund which shall be exclusively dedicated to providing a reserve fund for the issuance and security of solid waste disposal revenue bonds issued by the solid waste management board pursuant to §22C-3-1 *et seq.* of this code;

(3) The Solid Waste Reclamation and Environmental Response Fund which may be expended by the secretary for the purposes of reclamation, cleanup, and remedial actions intended to minimize or mitigate damage to the environment, natural resources, public water supplies, water resources and the public health, safety, and welfare which may result from open dumps or solid waste not disposed of in a proper or lawful manner.

(i) *Findings.* — In addition to the purposes and legislative findings set forth in §22-15-1 of this code, the Legislature finds as follows:

(1) In-state and out-of-state locations producing solid waste should bear the responsibility of disposing of said solid waste or compensate other localities for costs associated with accepting such solid waste;

(2) The costs of maintaining and policing the streets and highways of the state and its communities are increased by long distance transportation of large volumes of solid waste; and

(3) Local approved solid waste facilities are being prematurely depleted by solid waste originating from other locations.

(j) The Gas Field Highway Repair and Horizontal Drilling Waste Study Fund is hereby created as a special revenue fund in the State Treasury to be administered by the West Virginia Division of Highways and to be expended only on the improvement, maintenance, and repair of public roads of three lanes or less located in the county where the waste is generated through the Division of Highways county office in that county that are identified by the Commissioner of the Division of Highways as having been damaged by trucks and other traffic associated with horizontal well drilling sites or the disposal of waste generated by such sites, and that experience congestion caused, in whole or in part, by such trucks and traffic that interferes with the use of said roads by residents in the vicinity of such roads: *Provided,* That up to $750,000 from such fund shall be made available to the Department of Environmental Protection from the same fund to offset contracted costs incurred by the Department of Environmental Protection while undertaking the horizontal drilling waste disposal studies mandated by the provisions of §22-15-8(j) of this code. Any balance remaining in the special revenue account at the end of any fiscal year shall not revert to the General Revenue Fund but shall remain in the special revenue account and shall be used solely in a manner consistent with this section. The fund shall consist of the fee provided for in subsection (k) of this section.

(k) *Horizontal drilling waste assessment fee*. — An additional solid waste assessment fee is hereby imposed upon the disposal of drill cuttings and drilling waste generated by horizontal well sites in the amount of $1 per ton, which fee is in addition to all other fees and taxes levied by this section or otherwise and shall be added to and constitute part of any other fee charged by the operator or owner of the solid waste disposal facility: *Provided,* That the horizontal drilling waste assessment fee shall be collected and administered in the same manner as the solid waste assessment fee imposed by this section, but shall be imposed only upon the disposal of drill cuttings and drilling waste generated by horizontal well sites.

ARTICLE 15A. THE A. JAMES MANCHIN REHABILITATION ENVIRONMENTAL ACTION PLAN.

§22-15A-1. Legislative findings and purpose.

(a) The Legislature finds that litter is a public nuisance and distracts from the beauty of the state and its natural resources. It is therefore necessary to establish and implement a litter control program to coordinate public and private litter control efforts; to establish penalties for littering; to provide for litter pickup programs; to create education programs; and to provide assistance to local solid waste authority litter control efforts.

(b) The Legislature further finds that the improper management of commercial and residential solid waste and the unlawful disposal of such waste create open dumps that adversely impact the state's natural resources, public water supplies, and the public health, safety, and welfare of the citizens of the state. It is therefore necessary to establish a program to promote pollution prevention and to eliminate and remediate open dumps.

(c) The Legislature further finds that waste tire piles are a direct product of state citizens' use and enjoyment of state roads and highways, and proper tire waste disposal is a necessary component of maintenance of the transportation system. The accumulation of waste tires has also become a significant environmental and public health hazard to the state, and the location and number of waste

tires are directly related to the efficiency of travel, by citizens, visitors, and commerce, along public highways in West Virginia. In particular, the Legislature recognizes that waste tires are widespread in location and in number throughout the state; waste tires physically touch and concern public highways, including, but not limited to, state roads, county roads, park roads, secondary routes, and orphan roads, all of which interferes with the efficiency of public highways; and further that the existence of waste tires along and near public highways is sometimes accompanied by other hazards and, in turn, adversely impacts the proper maintenance and efficiency of public highways for citizens.

(d) The Legislature also recognizes and declares that waste tires are a public nuisance and hazard; that waste tires serve as harborage and breeding places for rodents, mosquitoes, fleas, ticks, and other insects and pests injurious to the public health, safety, and general welfare; that waste tires collected in large piles pose an excessive risk to public health, safety, and welfare from disease or fire; that the environmental, economic, and societal damage resulting from fires in waste tire piles can be avoided by removing the piles; and that tire pile fires cause extensive pollution of the air and surface and groundwater for miles downwind and downstream from the fire.

(e) Therefore, in view of the findings relating to waste tires, the Legislature declares it to be the public policy of the State of West Virginia to eliminate the present danger resulting from discarded or abandoned waste tires and to eliminate the visual pollution resulting from waste tire piles and that in order to provide for the public health, safety, welfare, and quality of life, and to reverse the adverse impacts to the proper maintenance and efficiency of public highways, it is necessary to enact legislation to those ends by providing expeditious means and methods for effecting the disposal of waste tires.

(f) The Legislature further finds that abandoned and dilapidated structures statewide have become a significant hazard and can result in the formation of open dumps or solid waste not disposed of in a proper or lawful manner. In particular, the Legislature recognizes that damage to the environment, natural

resources, and the public health, safety, and welfare may result from abandoned and dilapidated structures. Abandoned and dilapidated structures are widespread in location and in number throughout the state; and further, that the existence of abandoned and dilapidated structures along and near public highways is sometimes accompanied by other hazards and, in turn, adversely impacts the proper maintenance and efficiency of public highways for citizens.

(g) In view of the findings relating to abandoned and dilapidated structures, the Legislature declares it to be the public policy of the State of West Virginia to establish a program to eliminate and remediate abandoned and dilapidated structures.

(h) The Legislature finds that many citizens desire a recycling program in order to conserve limited natural resources, reduce litter, recycle valuable materials, extend the useful life of solid waste landfills, reduce the need for new landfills, and create markets for recyclable materials. It is therefore necessary to establish goals for recycling solid waste; to require certain municipalities to implement recycling programs; to authorize counties to adopt comprehensive recycling programs; to encourage source separation of solid waste; to increase the purchase of recycled products by the various agencies and instrumentalities of government; and to educate the public concerning the benefits of recycling.

(i) The Legislature finds that the effectiveness of litter control, open dump, tire cleanup programs and recycling programs have been made less efficient by fragmented implementation of the various programs by different agencies. It is therefore necessary to coordinate all such programs under one program managed by the department to ensure that all current and future litter, open dump, waste tire, and recycling issues are managed and addressed efficiently and effectively.

(j) This article implements the A. James Manchin Rehabilitation Environmental Action Plan, a coordinated effort to address litter, waste, open dump, tire cleanup, and recycling programs.

§22-15A-19. Recycling assessment fee; regulated motor carriers; dedication of proceeds; criminal penalties.

(a) *Imposition.* — A recycling assessment fee is hereby levied and imposed upon the disposal of solid waste at all solid waste disposal facilities in this state, to be collected at the rate of $2 per ton or part of a ton of solid waste. The fee imposed by this section is in addition to all other fees levied by law.

(b) *Collection, return, payment, and records.* — The person disposing of solid waste at the solid waste disposal facility shall pay the fee imposed by this section, whether or not that person owns the solid waste, and the fee shall be collected by the operator of the solid waste facility who shall remit it to the Tax Commissioner:

(1) The fee imposed by this section accrues at the time the solid waste is delivered to the solid waste disposal facility;

(2) The operator shall remit the fee imposed by this section to the Tax Commissioner on or before the 15th day of the month next succeeding the month in which the fee accrued. Upon remittance of the fee, the operator shall file returns on forms and in the manner as prescribed by the Tax Commissioner;

(3) The operator shall account to the state for all fees collected under this section and shall hold them in trust for the state until they are remitted to the Tax Commissioner;

(4) If any operator fails to collect the fee imposed by this section, he or she is personally liable for the amount that he or she failed to collect, plus applicable additions to tax, penalties and interest imposed by §11-10-1 *et seq.* of this code;

(5) Whenever any operator fails to collect, truthfully account for, remit the fee or file returns with the fee as required in this section, the Tax Commissioner may serve written notice requiring the operator to collect the fees which become collectible after service of the notice, to deposit the fees in a bank approved by the Tax Commissioner, in a separate account, in trust for and payable to the Tax Commissioner, and to keep the amount of the fees in the

account until remitted to the Tax Commissioner. The notice remains in effect until a notice of cancellation is served on the operator or owner by the Tax Commissioner;

(6) Whenever the owner of a solid waste disposal facility leases the solid waste facility to an operator, the operator is primarily liable for collection and remittance of the fee imposed by this section and the owner is secondarily liable for remittance of the fee imposed by this section. However, if the operator fails, in whole or in part, to discharge his or her obligations under this section, the owner and the operator of the solid waste facility are jointly and severally responsible and liable for compliance with the provisions of this section;

(7) If the operator or owner responsible for collecting the fee imposed by this section is an association or corporation, the officers of the association or corporation are liable, jointly and severally, for any default on the part of the association or corporation, and payment of the fee and any additions to tax, penalties and interest imposed by §11-10-1 *et seq.* of this code may be enforced against them and against the association or corporation which they represent; and

(8) Each person disposing of solid waste at a solid waste disposal facility and each person required to collect the fee imposed by this section shall keep complete and accurate records in the form required by the Tax Commissioner in accordance with the rules of the Tax Commissioner.

(c) *Regulated motor carriers.* — The fee imposed by this section is a necessary and reasonable cost for motor carriers of solid waste subject to the jurisdiction of the Public Service Commission under §24A-1-1 *et seq.* of this code. Notwithstanding any provision of law to the contrary, upon the filing of a petition by an affected motor carrier, the Public Service Commission shall, within 14 days, reflect the cost of the fee in the motor carrier's rates for solid waste removal service. In calculating the amount of the fee to the motor carrier, the commission shall use the national average of pounds of waste generated per person per day as

determined by the United States Environmental Protection Agency.

(d) *Definition.* — For purposes of this section, "solid waste disposal facility" means any approved solid waste facility or open dump in this state and includes a transfer station when the solid waste collected at the transfer station is not finally disposed of at a solid waste facility within this state that collects the fee imposed by this section.

Nothing in this section authorizes in any way the creation or operation of or contribution to an open dump.

(e) *Exemptions.* — The following transactions are exempt from the fee imposed by this section:

(1) Disposal of solid waste at a solid waste facility: (A) By the person who owns, operates, or leases the solid waste disposal facility if it is used exclusively to dispose of waste originally produced by that person in his or her regular business or personal activities; (B) by persons utilizing the facility on a cost-sharing or nonprofit basis; or (C) by a mixed waste processing and resource recovery facility as those facilities are defined in code or rule and which processes a minimum of 70 percent of the material brought to the facility on any given day on a 30-day aggregate basis;

(2) Reuse or recycling of any solid waste; and

(3) Disposal of residential solid waste by an individual not in the business of hauling or disposing of solid waste on the days and times designated by the secretary by rule as exempt from the fee imposed pursuant to §22-15-11 of this code.

(f) *Procedure and administration.* — Notwithstanding the provisions of §11-10-3 of this code, each and every provision of the West Virginia Tax Procedure and Administration Act set forth in §11-10-1 *et seq.* of this code applies to the fee imposed by this section with like effect as if the act were applicable only to the fee imposed by this section and were set forth in extenso in this section.

(g) *Criminal penalties.* — Notwithstanding §11-9-2 and §11-9-3 through §11-9-17, inclusive, of this code apply to the fee imposed by this section with like effect as if the sections were the only fee imposed by this section and were set forth in extenso in this section.

(h) *Dedication of proceeds.* — The proceeds of the fee collected pursuant to this section shall be deposited by the Tax Commissioner, at least monthly, in a special revenue account designated as the Recycling Assistance Fund which is hereby continued and transferred to the Department of Environmental Protection. The secretary shall allocate the proceeds of the fund as follows:

(1) Fifty percent of the total proceeds shall be provided in grants to assist municipalities, counties, and other interested parties in the planning and implementation of recycling programs, public education programs and recycling market procurement efforts, established pursuant to this article. The secretary shall promulgate rules, in accordance with. §29A-3-1 *et seq.* of this code, containing application procedures, guidelines for eligibility, reporting requirements, and other matters considered appropriate: *Provided,* That persons responsible for collecting, hauling, or disposing of solid waste who do not participate in the collection and payment of the solid waste assessment fee imposed by this section in addition to all other fees and taxes levied by law for solid waste generated in this state which is destined for disposal, are not eligible to receive grants under the provisions of this article;

(2) Twelve and one-half percent of the total proceeds shall be expended for personal services and benefit expenses of full-time salaried natural resources police officers;

(3) Twelve and one-half percent of the total proceeds shall be directly allocated to the solid waste planning fund;

(4) Twelve and one-half percent of the total proceeds shall be transferred to the Solid Waste Reclamation and Environmental Response Fund, established pursuant to §22-15-11 of this code, to be expended by the Department of Environmental Protection to

assist in the funding of the pollution prevention and open dumps program which encourages recycling, reuse, waste reduction, and clean-up activities; and

(5) Twelve and one-half percent of the total proceeds shall be deposited in the Hazardous Waste Emergency Response Fund established in §22-19-1 *et seq.* of this code.

§22-15A-30. Reclamation of Abandoned and Dilapidated Properties Program.

(a) To assist county commissions or municipalities in their efforts to remediate abandoned and dilapidated structures as provided by §7-1-3ff and §8-38-5 of this code, the Department of Environmental Protection may develop a program called the Reclamation of Abandoned and Dilapidated Properties Program. Using the fund established in subsection (b) of this section, the Department of Environmental Protection may work with county commissions or municipalities and implement redevelopment plans which will, at a minimum, establish prioritized inventories of structures eligible to participate in the program, offer reuse options for high-priority sites, and recommend actions county commissions or municipalities may take to remediate abandoned and dilapidated structures in their communities.

(b) There is created in the State Treasury a special revenue fund known as the Reclamation of Abandoned and Dilapidated Properties Program Fund. The fund shall be comprised of any money granted by charitable foundations, allocated by the Legislature, allocated from federal agencies, and earned from the investment of money held in the fund, and all other money designated for deposit to the fund from any source, public or private. The fund shall operate as a special revenue fund and all deposits and payments into the fund do not expire to the General Revenue Fund but shall remain in the account and be available for expenditure in succeeding fiscal years.

(c) The fund, to the extent that money is available, may be used solely to assist county commissions or municipalities in remediating abandoned and dilapidated structures in their

communities by demolishing or deconstructing them and other activities as authorized by a charitable grant or legislative appropriation. The fund may also be used to defray costs incurred by the Department of Environmental Protection in administering the provisions of this section. However, no more than five percent of money transferred from the Solid Waste Facility Closure Cost Assistance Fund may be used for administrative purposes.

(d) The Department of Environmental Protection may promulgate rules, in accordance with the provisions of §29A-3-1 *et seq.* of this code, to govern the disbursement of money from the fund, establish the Reclamation of Abandoned and Dilapidated Properties Program, direct the distribution of money from the fund, and establish criteria for eligibility to receive money from the fund.

(e) Nothing in this section shall be construed to limit, restrain, or otherwise discourage this state and its political subdivisions from disposing of abandoned and dilapidated structures in any other manner provided by the laws of this state.

ARTICLE 16. SOLID WASTE LANDFILL CLOSURE ASSISTANCE PROGRAM.

§22-16-4. Solid waste assessment fee; penalties.

(a) *Imposition.* — A solid waste assessment fee is levied and imposed upon the disposal of solid waste at any solid waste disposal facility in this state in the amount of $3.30 per ton beginning July 1, 2021, $3.10 per ton beginning July 1, 2022, $2.90 per ton beginning July 1, 2023, $2.70 per ton beginning July 1, 2024, and $2.50 per ton beginning July 1, 2025, and thereafter or like ratio on any part of a ton of solid waste, except as provided in subsection (e) of this section: *Provided,* That any solid waste disposal facility may deduct from this assessment fee an amount, not to exceed the fee, equal to the amount that the facility is required by the Public Service Commission to set aside for the purpose of closure of that portion of the facility required to close by article fifteen of this chapter. The fee imposed by this section is in addition to all other fees and taxes levied by law and shall be

added to and constitute part of any other fee charged by the operator or owner of the solid waste disposal facility.

(b) *Collection, return, payment, and records.* — The person disposing of solid waste at the solid waste disposal facility shall pay the fee imposed by this section, whether or not that person owns the solid waste, and the fee shall be collected by the operator of the solid waste facility who shall remit it to the Tax Commissioner:

(1) The fee imposed by this section accrues at the time the solid waste is delivered to the solid waste disposal facility;

(2) The operator shall remit the fee imposed by this section to the Tax Commissioner on or before the 15th day of the month next succeeding the month in which the fee accrued. Upon remittance of the fee, the operator shall file returns on forms and in the manner prescribed by the Tax Commissioner;

(3) The operator shall account to the state for all fees collected under this section and shall hold them in trust for the state until they are remitted to the Tax Commissioner;

(4) If any operator fails to collect the fee imposed by this section, he or she is personally liable for the amount he or she failed to collect, plus applicable additions to tax, penalties, and interest imposed by §11-10-1 *et seq.* of this code;

(5) Whenever any operator fails to collect, truthfully account for, remit the fee, or file returns with the fee as required in this section, the Tax Commissioner may serve written notice requiring the operator to collect the fees which become collectible after service of the notice, to deposit the fees in a bank approved by the Tax Commissioner, in a separate account, in trust for and payable to the Tax Commissioner, and to keep the amount of the fees in the account until remitted to the Tax Commissioner. The notice shall remain in effect until a notice of cancellation is served on the operator or owner by the Tax Commissioner;

(6) Whenever the owner of a solid waste disposal facility leases the solid waste facility to an operator, the operator is primarily

liable for collection and remittance of the fee imposed by this section and the owner is secondarily liable for remittance of the fee imposed by this section. However, if the operator fails, in whole or in part, to discharge his or her obligations under this section, the owner and the operator of the solid waste facility are jointly and severally responsible and liable for compliance with the provisions of this section;

(7) If the operator or owner responsible for collecting the fee imposed by this section is an association or corporation, the officers of the association or corporation are liable, jointly and severally, for any default on the part of the association or corporation, and payment of the fee and any additions to tax, penalties and interest imposed by §11-10-1 *et seq.* of this code may be enforced against them as against the association or corporation which they represent; and

(8) Each person disposing of solid waste at a solid waste disposal facility and each person required to collect the fee imposed by this section shall keep complete and accurate records in the form required by the Tax Commissioner in accordance with the rules of the Tax Commissioner.

(c) *Regulated motor carriers.* — The fee imposed by this section is a necessary and reasonable cost for motor carriers of solid waste subject to the jurisdiction of the Public Service Commission under chapter 24A of this code. Notwithstanding any provision of law to the contrary, upon the filing of a petition by an affected motor carrier, the Public Service Commission shall, within 14 days, reflect the cost of the fee in the motor carrier's rates for solid waste removal service. In calculating the amount of the fee to the motor carrier, the commission shall use the national average of pounds of waste generated per person per day as determined by the United States Environmental Protection Agency.

(d) *Definitions.* — For purposes of this section, the term "solid waste disposal facility" means any approved solid waste facility or open dump in this state, and includes a transfer station when the solid waste collected at the transfer station is not finally disposed of at a solid waste facility within this state that collects the fee

imposed by this section. Nothing in this section authorizes in any way the creation or operation of or contribution to an open dump.

(e) *Exemptions.* — The following transactions are exempt from the fee imposed by this section:

(1) Disposal of solid waste at a solid waste facility: (A) By the person who owns, operates, or leases the solid waste disposal facility if it is used exclusively to dispose of waste originally produced by that person in his or her regular business or personal activities; (B) by persons utilizing the facility on a cost-sharing or nonprofit basis; or (C) by a mixed waste processing and resource recovery facility as those facilities are defined in code or rule and which processes a minimum of 70 percent of the material brought to the facility on any given day on a 30-day aggregate basis;

(2) Reuse or recycling of any solid waste;

(3) Disposal of residential solid waste by an individual not in the business of hauling or disposing of solid waste on the days and times designated by the director as exempt from the solid waste assessment fee; and

(4) Disposal of solid waste at a solid waste disposal facility by a commercial recycler which disposes of 30 percent or less of the total waste it processes for recycling. In order to qualify for this exemption each commercial recycler shall keep accurate records of incoming and outgoing waste by weight. The records shall be made available to the appropriate inspectors from the division, upon request.

(f) *Procedure and administration.* — Notwithstanding §11-10-3 of this code, each and every provision of the West Virginia Tax Procedure and Administration Act set forth in §11-10-1 *et seq.* of this code applies to the fee imposed by this section with like effect as if the act were applicable only to the fee imposed by this section and were set forth in extenso in this section.

(g) *Criminal penalties.* — Notwithstanding §11-9-2 and §11-9-3 through §11-9-17 of this code apply to the fee imposed by this section with like effect as if the sections were applicable only to

the fee imposed by this section and were set forth in extenso in this section.

(h) *Dedication of proceeds.* — (1) The proceeds of the fee collected pursuant to this section shall be deposited in the closure cost assistance fund established pursuant to §22-16-12 of this code: *Provided,* That the director may transfer up to 50 cents for each ton of solid waste disposed of in this state upon which the fee imposed by this section is collected on or after July 1, 1998, to the solid waste enforcement fund established pursuant to §22-15-11 of this code.

(2) Fifty percent of the proceeds of the fee collected pursuant to this article in excess of 30,000 tons per month from any landfill which is permitted to accept in excess of 30,000 tons per month pursuant to §22-15-9 of this code shall be remitted, at least monthly, to the county commission in the county in which the landfill is located. The remainder of the proceeds of the fee collected pursuant to this section shall be deposited in the closure cost assistance fund established pursuant to §22-16-12 of this code.

§22-16-12. Solid Waste Facility Closure Cost Assistance Fund; closure extension; reporting requirements.

(a) The Solid Waste Facility Closure Cost Assistance Fund continues as a special revenue account in the State Treasury. The fund operates as a special fund in which all deposits and payments do not expire to the General Revenue Fund, but remain in the account and are available for expenditure in the succeeding fiscal year. Separate subaccounts may be established within the special account for the purpose of identification of various revenue resources and payment of specific obligations.

(b) Interest earned on any money in the fund shall be deposited to the credit of the fund.

(c) The fund consists of the following:

(1) Moneys collected and deposited in the State Treasury which are specifically designated by Acts of the Legislature for inclusion

in the fund, including moneys collected and deposited into the fund pursuant to §22-16-4 of this code;

(2) Contributions, grants, and gifts from any source, both public and private, which may be used by the secretary for any project or projects;

(3) Amounts repaid by permittees pursuant to §22-15-18 of this code; and

(4) All interest earned on investments made by the state from moneys deposited in this fund.

(d) The Solid Waste Management Board, upon written approval of the secretary, has the authority to pledge all or part of the revenues paid into the Solid Waste Facility Closure Cost Assistance Fund as needed to meet the requirements of any revenue bond issue or issues of the Solid Waste Management Board authorized by this article, including the payment of principal of, interest and redemption premium, if any, on the revenue bonds and the establishing and maintaining of a reserve fund or funds for the payment of the principal of, interest and redemption premium, if any, on the revenue bond issue or issues where other moneys pledged may be insufficient. Any pledge of moneys in the Solid Waste Facility Closure Cost Assistance Fund for revenue bonds is a prior and superior charge on the fund over the use of any of the moneys in the fund to pay for the cost of any project on a cash basis. Expenditures from the fund, other than for the retirement of revenue bonds, may only be made in accordance with this article.

(e) The amounts deposited in the fund may be expended only on the cost of projects as provided in §22-16-3 and §22-16-15 of this code, as provided in subsection (f) of this section, and for payment of bonds and notes issued pursuant to §22-16-5 of this code. No more than two percent of the annual deposits to the fund may be used for administrative purposes.

(f) Notwithstanding any provision of this article, upon request of the Solid Waste Management Board, and with the approval of the projects by the Secretary of the Department of Environmental

Protection, the secretary may pledge and place into escrow accounts up to an aggregate of $2 million of the fund to satisfy two years debt service requirement that permittees of publicly owned landfills and transfer stations are required to meet in order to obtain loans. Pledges shall be made on a project-by-project basis, may not exceed $500,000 for a project, and are made available after loan commitments are received. The secretary may pledge funds for a loan only when the following conditions are met:

(1) The proceeds of the loan are used only to perform construction of a transfer station or a composite liner system that is required to meet Title 47, Series 38, Solid Waste Management Rules;

(2) The permittee dedicates all yearly debt service revenue, as determined by the Public Service Commission, to meet the repayment schedule of the loan, before it uses available revenue for any other purpose; and

(3) That any funds pledged may only be paid to the lender if the permittee is in default on the loan.

(g) Notwithstanding any provision of this code to the contrary, the Elkins-Randolph County Landfill, located in Randolph County, and the Webster County Landfill, located in Webster County, are eligible for funds from the Solid Waste Facility Closure Cost Assistance Fund necessary to complete their closure upon the filing of appropriate application. Upon the filing of an appropriate application, the Department of Environmental Protection shall work with the applicant to ensure the application meets the department's requirements.

(h) The Department of Environmental Protection is required to file, by January 1 of each year, an annual report with the Joint Committee on Government and Finance providing details on the manner in which the landfill closure assistance funds were expended for the prior fiscal year.

(i) The Prichard Landfill in Wayne County is eligible for funds from the Solid Waste Facility Closure Cost Assistance Fund

necessary to complete post-closure maintenance and monitoring upon the filing of an appropriate application. In the event of a permit transfer, neither the state nor the Wayne County Economic Development Authority or entity may assume any liability from the private landfill other than post-closure maintenance and monitoring costs.

(j)(1) Notwithstanding any other provision of this code, upon completion of the landfill closure-related services at all eligible landfills pursuant to §22-16-3 of this code, the secretary may transfer excess money from the Solid Waste Facility Closure Cost Assistance Fund to the Reclamation of Abandoned and Dilapidated Properties Program Fund created by §22-15A-30 of this code. However, the secretary may not transfer moneys from the Solid Waste Facility Closure Cost Assistance Fund that are required to be maintained so that the department can conduct post-closure activities authorized by this article and the legislative rules promulgated thereunder. The department shall maintain in the Solid Waste Facility Closure Cost Assistance Fund a minimum balance of twice the total cost of post-closure expenses projected for the fiscal year as a buffer for unanticipated necessary post-closure activities.

(2) Contingent upon the Department of Environmental Protection securing private foundation funding to establish the Reclamation of Abandoned and Dilapidated Properties Program, and prior to the completion of the landfill closure-related services at all eligible landfills, the secretary may expend money from the Solid Waste Facility Closure Cost Assistance Fund for pilot projects conducted by the Department of Environmental Protection demonstrating the function of the Reclamation of Abandoned and Dilapidated Properties Program.

CHAPTER 22C. ENVIRONMENTAL RESOURCES; BOARDS, AUTHORITIES, COMMISSIONS, AND COMPACTS.

ARTICLE 4. COUNTY AND REGIONAL SOLID WASTE AUTHORITIES.

§22C-4-30. Solid waste assessment interim fee; regulated motor carriers; dedication of proceeds; criminal penalties.

(a) *Imposition.* — Effective July 1, 1989, a solid waste assessment fee is hereby levied and imposed upon the disposal of solid waste at any solid waste disposal facility in this state to be collected at the rate of $1 per ton or part thereof of solid waste. The fee imposed by this section is in addition to all other fees levied by law.

(b) *Collection, return, payment, and record.* — The person disposing of solid waste at the solid waste disposal facility shall pay the fee imposed by this section, whether or not such person owns the solid waste, and the fee shall be collected by the operator of the solid waste facility who shall remit it to the Tax Commissioner.

(1) The fee imposed by this section accrues at the time the solid waste is delivered to the solid waste disposal facility.

(2) The operator shall remit the fee imposed by this section to the Tax Commissioner on or before the 15th day of the month next succeeding the month in which the fee accrued. Upon remittance of the fee, the operator is required to file returns on forms and in the manner as prescribed by the Tax Commissioner.

(3) The operator shall account to the state for all fees collected under this section and shall hold them in trust for the state until they are remitted to the Tax Commissioner.

(4) If any operator fails to collect the fee imposed by this section, he or she is personally liable for such amount as he or she failed to collect, plus applicable additions to tax, penalties and interest imposed by §11-10-1 *et seq.* of this code.

(5) Whenever any operator fails to collect, truthfully account for, remit the fee, or file returns with the fee as required in this section, the Tax Commissioner may serve written notice requiring such operator to collect the fees which become collectible after service of such notice, to deposit such fees in a bank approved by the Tax Commissioner, in a separate account, in trust for and

payable to the Tax Commissioner, and to keep the amount of such fees in such account until remitted to the Tax Commissioner. Such notice remains in effect until a notice of cancellation is served on the operator or owner by the Tax Commissioner.

(6) Whenever the owner of a solid waste disposal facility leases the solid waste facility to an operator, the operator is primarily liable for collection and remittance of the fee imposed by this section and the owner is secondarily liable for remittance of the fee imposed by this section. However, if the operator fails, in whole or in part, to discharge his or her obligations under this section, the owner and the operator of the solid waste facility are jointly and severally responsible and liable for compliance with the provisions of this section.

(7) If the operator or owner responsible for collecting the fee imposed by this section is an association or corporation, the officers thereof are liable, jointly and severally, for any default on the part of the association or corporation, and payment of the fee and any additions to tax, penalties and interest imposed by §11-10-1 *et seq.* of this code may be enforced against them as against the association or corporation which they represent.

(8) Each person disposing of solid waste at a solid waste disposal facility and each person required to collect the fee imposed by this section shall keep complete and accurate records in such form as the Tax Commissioner may require in accordance with the rules of the Tax Commissioner.

(c) *Regulated motor carriers.* — The fee imposed by this section and §7-5-22 of this code is a necessary and reasonable cost for motor carriers of solid waste subject to the jurisdiction of the Public Service Commission under §24A-1-1 *et seq.* of this code. Notwithstanding any provision of law to the contrary, upon the filing of a petition by an affected motor carrier, the Public Service Commission shall, within 14 days, reflect the cost of said fee in said motor carrier's rates for solid waste removal service. In calculating the amount of said fee to said motor carrier, the commission shall use the national average of pounds of waste

generated per person per day as determined by the United States Environmental Protection Agency.

(d) *Definition of solid waste disposal facility.* — For purposes of this section, the term "solid waste disposal facility" means any approved solid waste facility or open dump in this state and includes a transfer station when the solid waste collected at the transfer station is not finally disposed of at a solid waste facility within this state that collects the fee imposed by this section. Nothing herein authorizes in any way the creation or operation of or contribution to an open dump.

(e) *Exemptions.* — The following transactions are exempt from the fee imposed by this section:

(1) Disposal of solid waste at a solid waste facility: (A) By the person who owns, operates, or leases the solid waste disposal facility if it is used exclusively to dispose of waste originally produced by that person in his or her regular business or personal activities; (B) by persons utilizing the facility on a cost-sharing or nonprofit basis; or (C) by a mixed waste processing and resource recovery facility as those facilities are defined in code or rule and which processes a minimum of 70 percent of the material brought to the facility on any given day on a 30-day aggregate basis;

(2) Reuse or recycling of any solid waste;

(3) Disposal of residential solid waste by an individual not in the business of hauling or disposing of solid waste on such days and times as designated by the director of the Division of Environmental Protection as exempt from the fee imposed pursuant to §22-15-11 of this code; and

(4) Disposal of solid waste at a solid waste disposal facility by a commercial recycler which disposes of 30 percent or less of the total waste it processes for recycling. In order to qualify for this exemption each commercial recycler must keep accurate records of incoming and outgoing waste by weight. Such records must be made available to the appropriate inspectors from the Division of Environmental Protection of solid waste authority, upon request.

(f) *Procedure and administration.* — Notwithstanding §11-10-3 of this code, each and every provision of the West Virginia Tax Procedure and Administration Act set forth in §11-10-1 *et seq.* of this code applies to the fee imposed by this section with like effect as if said act were applicable only to the fee imposed by this section and were set forth in extenso herein.

(g) *Criminal penalties.* — Notwithstanding §11-9-2 and §11-9-3 through §11-9-17, inclusive, of this code apply to the fee imposed by this section with like effect as if said sections were the only fee imposed by this section and were set forth in extenso herein.

(h) *Dedication of proceeds.* — The net proceeds of the fee collected by the Tax Commissioner pursuant to this section shall be deposited, at least monthly, in a special revenue account known as the Solid Waste Planning Fund which is hereby continued. The solid waste management board shall allocate the proceeds of the said fund as follows:

(1) Fifty percent of the total proceeds shall be divided equally among, and paid over, to, each county solid waste authority to be expended for the purposes of this article: *Provided,* That where a regional solid waste authority exists, such funds shall be paid over to the regional solid waste authority to be expended for the purposes of this article in an amount equal to the total share of all counties within the jurisdiction of said regional solid waste authority; and

(2) Fifty percent of the total proceeds shall be expended by the solid waste management board for:

(A) Grants to the county or regional solid waste authorities for the purposes of this article; and

(B) Administration, technical assistance, or other costs of the solid waste management board necessary to implement the purposes of this article and §22C-3-1 *et seq.* of this code.

(i) *Effective date.* — This section is effective on July 1, 1990. The amendment and reenactment of this section in 2021 is effective on July 1, 2021.

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 certain mixed waste processing and resource recovery facilities.

Notwithstanding any other provision of this code, the jurisdiction of the commission does not extend to materials recovery facilities or mixed waste processing facilities as defined by §22-15-2 of this code, except within a 35-mile radius of a facility sited in a county that is, in whole or in part, within a karst region as determined by the West Virginia Geologic and Economic Survey that has been permitted and classified by the West Virginia Department of Environmental Protection as a mixed waste processing resource recovery facility and has received a certificate of need by July 1, 2016: *Provided*, That nothing in this section shall affect the requirements of §24A-2-5 and §24A-3-3 of this code: *Provided, however*, That the jurisdiction of the commission does not extend to any mixed waste processing and resource recovery facility that processes a minimum of 70 percent of the material brought to the facility on any given day on a 30-day aggregate basis.

CHAPTER 113

(S. B. 404 - By Senators Smith, Ihlenfeld, Lindsay, Jeffries, and Hamilton)

[Passed March 18, 2021; in effect 90 days from passage (June 16, 2021)]
[Approved by the Governor on March 27, 2021.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §22-6A-7a, relating to applications for modifications of well permits under the Natural Gas Horizontal Well Control Act; providing for an application fee of $2,500 to modify an existing permit issued by the Department of Environmental Protection's Office of Oil and Gas; and providing that the secretary may allow and deny said modification applications and may create forms.

Be it enacted by the Legislature of West Virginia:

ARTICLE 6A. NATURAL GAS HORIZONTAL WELL CONTROL ACT.

§22-6A-7a. Modifications of permits.

A permit issued pursuant to this article may be modified to address changes to the permit if the secretary determines that the modification fully meets all applicable requirements and is consistent with the issuance of the original permit.

The secretary may deny the application for a permit modification as outlined for new permits under this article.

A request to modify a permit issued pursuant to this article shall be on forms prescribed by the secretary and accompanied by a fee of $2,500.

CHAPTER 114

(Com. Sub. for Com. Sub. for S. B. 464 - By Senators Plymale, Beach, Woelfel, Stollings, and Baldwin)

[Passed April 9, 2021; in effect 90 days from passage (July 8, 2021)]
[Approved by the Governor on April 26, 2021.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §22-15-24, relating to composting; clarifying that the composting of all organic materials, including food waste, is permissible; and requiring compost products sold to comply with the West Virginia Fertilizer Law.

Be it enacted by the Legislature of West Virginia:

ARTICLE 15. SOLID WASTE MANAGEMENT ACT.

§22-15-24. Composting authorized.

(a) Notwithstanding any provision of this code to the contrary, composting of organic materials, including, but not limited to, yard waste, food scraps, food-processing residue, soiled or unrecyclable paper, animal carcasses, and agricultural waste may be disposed of by composting in this state.

(b) Any products sold as a result of composting are required to comply with the provisions of §19-15-1 *et seq.* of this code.

CHAPTER 115

(Com. Sub. for S. B. 492 - By Senators Smith and Phillips)

[Passed April 10, 2021; in effect 90 days from passage (July 9, 2021)]
[Approved by the Governor on April 26, 2021.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §22-32-1, §22-32-2, §22-32-3, §22-32-4, §22-32-5, §22-32-6, §22-32-7, and §22-32-8, all relating generally to establishing and implementing a program to decommission and reclaim wind and solar electrical generation facilities upon closure; making legislative findings; stating legislative purpose; providing a short title; defining terms including bond; requiring the owners of wind generation facilities and solar generation facilities to notify and provide certain information to the Department of Environmental Protection (DEP), including dates when operations began and plans with certified cost and salvage estimates for decommissioning facilities; establishing fees for new and modified applications; requiring DEP to determine and assess a reclamation bond based on applicant's filings and a facility's total disturbed acreage, less salvage value; establishing a maximum bond value limit; requiring the owners of said facilities to submit bonds payable to the state in a form and in a sum determined by the DEP, conditioned on the satisfactory decommissioning; providing that owners of said facilities may enter into alternative reclamation agreements after approval by the DEP; providing that the DEP may modify said plans after proper notification and appeals; providing exemptions from bond requirements for certain facilities including those with nameplate capacities of less than 1.0 megawatts, those facilities operated by regulated public utilities who can demonstrate financial integrity and stability, and those facilities with qualifying pre-existing agreements or siting certificates from

the PSC within specified limitations; providing for administrative penalties for failure to submit decommissioning bonds and agreements; providing appellate rights to the Environmental Quality Board; providing transfer of ownership provisions; providing for amended plans for allowing reductions in bond amounts; providing that bond submission does not absolve owners from complying with other applicable regulations and requirements; providing that the PSC must condition siting certificates on compliance as determined by the DEP; providing a liability shield for entities in compliance to avoid double bonding; requiring the DEP to decide on submissions within 90 days; establishing a Wind and Solar Decommissioning Account within the State Treasury in to which fees, assessed penalties, and accrued interest must be paid and held; providing that the account may only be used by the DEP to implement this article and adopted rules; providing that DEP shall administer this act using existing resources and the account; requiring the DEP to maintain and hold bonds or other surety received; providing for the release of bonds after the DEP is satisfied property has been properly decommissioned in accordance with the plan; providing for bond forfeiture when a facility is not properly decommissioned, if the deficiencies are not rectified; providing that the Office of Environmental Remediation or a private entity by contract may decommission facilities; providing that DEP may file suit to enforce permit and plan conditions and to recoup costs of reclamation; authorizing rulemaking and standardized model agreements; and providing effective dates.

Be it enacted by the Legislature of West Virginia:

ARTICLE 32. THE WEST VIRGINIA WIND AND SOLAR ENERGY FACILITY RECLAMATION ACT.

§22-32-1. Legislative findings and purpose.

(a) The Legislature finds that the State of West Virginia has an interest in assuring that wind generation facilities and solar generation facilities are properly decommissioned and reclaimed once the facility has been permanently closed.

(b) The Legislature further finds that the most efficient manner by which to protect the citizens of the State of West Virginia is to require that wind generation facilities and solar generation facilities secure bonding sufficient to pay for all decommissioning and reclamation costs of the property on which wind generation facilities and solar generation facilities are operated.

(c) Therefore, in view of the findings relating to the decommissioning and reclamation of wind generation facilities and solar generation facilities, the Legislature declares it to be the public policy of the State of West Virginia to eliminate the present danger resulting from abandoned wind generation facilities and solar generation facilities and that in order to provide for the public health, safety, and welfare, it is necessary to enact legislation to those ends by requiring companies that construct and operate wind generation facilities and solar generation facilities to post bonds and execute agreements sufficient to cover the costs of decommissioning and reclamation in the event they are abandoned after closure.

§22-32-2. Short title.

This article shall be known and cited as The West Virginia Wind and Solar Energy Facility Reclamation Act.

§22-32-3. Definitions.

As used in this article, unless the context requires otherwise, the following definitions apply:

(a) "Board" means the Environmental Quality Board provided for in §22B-1-7 of this code.

(b) "Decommission" or "decommissioning" means:

(1) The removal and proper disposal of the solar generation facility and its foundation after the end of the facility's useful life or abandonment; or

(2) The removal and proper disposal of an aboveground wind turbine tower and its foundation after the end of a wind generation facility's useful life or abandonment; and

(3) Except as otherwise provided in §22-32-4 of this code, the removal and proper disposal of buildings, equipment, cabling, electrical components, roads, or any other facilities associated with a wind generation or solar generation facility; and

(4) Except as otherwise provided in §22-32-4 of this code, the reclamation of the surface lands upon which buildings, equipment, and equipment foundations using backfill and compacting of soil in order to return the surface to beneficial use and to prevent adverse hydrologic effects.

(c) "Department", "agency", and "DEP" mean the West Virginia Department of Environmental Protection.

(d) "Owner" means a person who owns a wind generation or solar generation facility operated in West Virginia for the generation of electricity.

(e) "Person" means any individual, firm, partnership, company, association, corporation, limited liability company, city, town, or local governmental entity or any other state, federal, or private entity, whether organized for profit or not.

(f) "Solar generation facility" means an installation or combination of solar panels or plates, including a canopy or array, and other associated property, including appurtenant land, improvements, and personal property, that are normally operated together to capture and convert solar radiation to produce electricity, including flat plate, focusing solar collectors, or photovoltaic solar cells, and that has a nameplate capacity, singularly or in the aggregate, greater than or equal to 1.0 megawatts.

(g) "Wind generation facility" means any combination of a physically connected wind turbine or turbines, associated prime movers, and other associated property, including appurtenant land, improvements, and personal property, that are normally operated

together to produce electric power from wind and that have a nameplate capacity, singularly or in the aggregate, greater than or equal to 1.0 megawatts.

(h) "Bond" means a surety bond or any other arrangement, including but not limited to letters of credit and escrow accounts, that represent a financial guarantee from the owner of a wind generation facility or solar generation facility to meet decommissioning requirements as established in this Act.

§22-32-4. Bonding required.

(a) Within 12 months of a wind generation facility or solar generation facility commencing commercial operation, except as provided in subsections (b) and (c) of this section, the owner of a wind generation facility or solar generation facility operating in West Virginia shall:

(1) Notify the Department of Environmental Protection (DEP) in writing of the date that the facility began commercial operation;

(2)(A) Submit a plan, certified by a qualified independent licensed professional engineer, for decommissioning the facility to the DEP in compliance with DEP standards and technical specifications including a scope of work to be completed and cost estimates for completion and salvage estimates, taking into account local siting conditions; or (B) if exempt hereunder, submit a copy of a properly executed and legally binding decommissioning agreement with all attachments, schedules, and addendums thereto;

(3) Provide the DEP with any other necessary information in accordance with this article and rules adopted pursuant to this article in order for the department to determine bond requirements in accordance with this section; and

(4) Submit a fee for a new application of $100 per megawatt of nameplate generation capacity or a fee for any modification of $50 per megawatt of nameplate generation capacity to be deposited into the Wind and Solar Decommissioning Account and utilized for implementing this article and its rules.

(b) If a wind generation facility or solar generation facility commenced commercial operation before July 1, 2021, the owner of the facility shall submit to the department the information required in subsection (a) of this section on or before July 1, 2022.

(c) If a wind generation facility or solar generation facility commenced commercial operation before July 1, 2021, and the owner of the facility submitted information required by subsection (a) of this section on or before July 1, 2021, the owner is not required to resubmit the information.

(d) If a property owner and the owner of a wind generation facility or solar generation facility and to the extent necessary any local governing body reach an agreement concerning: (1) Alternative restoration of buildings, equipment, other associated property (including appurtenant land, improvements, and personal property), cabling, electrical components, roads, or any other associated facilities (instead of removal); or (2) alternative plans for reclamation of surface lands; or (3) both, the agreement must be provided to the DEP for review and approval by the Cabinet Secretary or his assigns. The DEP must approve or deny the alternative plan submission within 90 days of receipt. Decommissioning agreements which legally bind exempt parties are not subject to approval or modification by DEP but are subject to review and comment by DEP.

(e)(1) Upon application by the wind generation facility or solar generation facility, the DEP may modify a plan for decommissioning and adjust bond requirements in accordance with this article.

(2) The DEP shall notify the owner of the facility of any modification. The owner of the wind generation facility or solar generation facility may appeal a modification by the DEP of a plan for decommissioning to the Environmental Quality Board within 30 days of receiving notice of the modification to the plan.

(f) To determine the amount of a bond required in accordance with this act, the DEP shall take into account the report submitted with an application and assess a bond value based upon the total

disturbed acreage of land upon which the wind generation or solar generation facility is operated, less salvage value: *Provided,* That the amount of the bond required shall not exceed the total projected future cost of decommissioning, less salvage value.

(g) Except as provided in subsection (i) of this section, the owner of a wind generation facility or solar generation facility shall submit to the DEP a bond payable to the State of West Virginia in a form acceptable by the DEP and in the sum determined by the DEP, conditioned on the faithful decommissioning of the wind generation facility or solar generation facility.

(h)(1) Except as provided in subsection (i) of this section, if a wind generation facility or solar generation facility commenced commercial operation on or before July 1, 2021, the operator shall submit the decommissioning bond to the DEP on or before July 1, 2022.

(2) Except as provided in subsection (i) of this section, if a wind generation facility or solar generation facility commenced commercial operation after July 1, 2021, the operator shall submit the decommissioning bond to the DEP within one year of the date on which the wind generation facility or solar generation facility first produces electricity for consumer or industrial use.

(i) An owner of a wind generation facility or solar generation facility is exempt from the requirements of this section if:

(1) The facility has less than 1.0 megawatts in nameplate capacity;

(2) The facility is operated by a regulated public utility who can successfully demonstrate to the Public Service Commission and the DEP an acceptable showing of financial integrity and long-term viability; or

(3) The facility is legally bound by a decommissioning agreement, based upon a qualified independent party and executed before the effective date of this article; or is or was granted a siting certificate or other authorization to construct by the Public Service Commission, conditioned upon the execution of such agreement

before the effective date of this article: Such facilities are exempt, unless or until the facility, is (A) found to be in breach of such agreement or such agreement is found to be unenforceable, (B) sold or transferred to a party or parties not bound under such agreement, or (C) substantially expanded in total disturbed acreage.

(j)(1) If the owner of the wind generation facility or solar generation facility fails to submit a decommissioning bond acceptable to the DEP or the properly executed and legally binding decommissioning agreement within the time frame required by this section, the DEP shall provide notice to the facility owner. If, after 30 days, the owner of a wind generation facility or solar generation facility has not submitted a decommissioning bond or such agreement, the DEP may assess an administrative penalty of not more than $10,000 for the first day of violation and may assess an additional administrative penalty of not more than $500 for each day the failure to submit the decommissioning bond continues.

(2) The owner of the wind generation facility or solar generation facility may appeal a penalty assessment to the Environmental Quality Board within 30 days after receipt of written notice of the penalty. The provisions of §22B-1-1 *et seq.* of this code shall apply to such appeals.

(k) If the owner of a bonded wind generation facility or solar generation facility transfers ownership of the facility to a successor owner, the first owner's bond must be released after 90 days. The new owner of a bonded facility shall submit any necessary bond within 90 days after transfer of ownership or be subject to penalties in accordance with this section. The new owner of an unbonded facility shall submit any necessary bond within 90 days after transfer of ownership or be subject to penalties in accordance with this section.

(l) Once every five years, the owner of a wind generation facility or solar generation facility may submit an amended plan for the DEP's approval. As part of the submission, the owner of a wind generation facility or solar generation facility may also apply to the DEP for a reduction in the amount of the decommissioning bond applicable to the wind energy facility or solar generation facility.

The owner's application to the DEP must include written evidence of a reduction in the total disturbed acreage upon which the facility is sited and a modification fee of $50 per megawatt of nameplate generation capacity.

(m) Submitting a bond or a properly executed and legally binding decommissioning agreement in accordance with this section does not absolve the owner of a wind generation facility or solar generation facility from complying with all other applicable laws, rules, regulations, and requirements applicable to a wind generation facility or solar generation facility.

(n) The Public Service Commission of West Virginia shall condition all siting certificates issued on full compliance, as determined by the DEP, with the provisions of this article and the rules promulgated hereunder and shall not require further decommission bonding. Entities subject to and in compliance with this article shall not be subjected to any municipal, county, or local political subdivision's code, ordinances, rules, or regulations including additional decommission bonding.

(o) DEP shall issue a decision approving, approving with modifications, or denying an application, plan, amended plan, modification, or bond within 90 days of receipt.

(p) Any person adversely affected by a decision of DEP to approve or deny a decommissioning plan; establish the amount of a decommissioning bond; approve or deny an application to modify a decommissioning plan or bond; grant or release a decommissioning bond; or to forfeit a decommissioning bond may appeal that decision to the Environmental Quality Board and thereafter to the appropriate court in accordance with the provisions of §22B-1-1, *et seq* of this code.

§22-32-5. Wind and solar decommissioning account, bonds to be held.

(a) This article establishes a Wind and Solar Decommissioning Account within the State Treasury. There must be paid into the account:

(1) Fees and penalties collected in accordance with the article; and

(2) Interest income earned on the account.

(b)(1) Money in the account may only be used by the Department of Environmental Protection (DEP) in implementing this article and rules adopted pursuant to this article.

(2) The DEP shall administer this program using existing resources and money in the account.

(c) The DEP shall maintain and hold bonds or other surety received by the DEP as authorized by this article for use in accordance with this article.

§22-32-6. Bond release.

(a)(1) Subject to subdivision (2) of this subsection, the Department of Environmental Protection (DEP) shall release the bond if it is satisfied that an owner has properly decommissioned a wind generation facility or solar generation facility in accordance with the plan required by this article.

(2) At any time, an owner of a wind generation facility or solar generation facility may petition the DEP for release of the bond, and the DEP shall reply with a determination within 90 days.

(b) If the owner of a wind generation facility or solar generation facility fails to properly decommission a wind generation facility or solar generation facility and has not commenced action to rectify deficiencies within 90 days after notification by the DEP, the DEP shall cause the bond to be forfeited. The DEP, through its Office of Environmental Remediation or by contract with a private entity, may take any necessary actions to decommission the wind generation facility or solar generation facility. Upon completion, the DEP may file suit to enforce the permit conditions, plans, and agreements to recoup the cost of decommissioning and reclamation in the circuit court of Kanawha County or in the circuit court of the county in which the wind generation facility or solar generation facility is located.

§22-32-7. Rulemaking.

The Department of Environmental Protection (DEP) may promulgate such emergency, interpretive, legislative, and procedural rules as the secretary deems to be useful or necessary to carry out the purpose of this article and to implement the intent of the Legislature in accordance with the provisions of §29A-3-1 *et seq.* of this code, prescribing:

(a) Standards and procedures for reclamation, submission of applications and agreements, and reasonable bonds with good and sufficient surety by the owners of wind generation facilities and solar generation facilities;

(b) The collection of fees and penalties in accordance with this article;

(c) Criteria and the process for releasing a bond in accordance with this article;

(d) The DEP's use of a bond in the event that the owner of a wind generation facility or solar generation facility fails to decommission a wind generation facility or solar generation facility;

(e) Information required by the department to determine bond requirements in accordance with this article; and

(f) Any additional requirements to ensure compliance with this article.

§22-32-8. Decommissioning agreements.

Decommissioning agreements entered by wind and solar facilities not exempted from this Act shall address, at a minimum:

(a) The term and scope of the agreement, including access and easement rights for decommissioning activities thereunder;

(b) The establishment of a bond or fund for decommissioning activities; provisions governing the same; initial balances; and whether an escrow agreement is required for the fund;

(c) The requirement to review, amend, and restate the decommissioning agreement every five years and adjust the required balance of the bond or fund for decommissioning activities;

(d) The Department of Environmental Protection's right to review, modify, and approve the independent third-party's plan: *Provided*, that the Department of Environmental Protection's approval of an qualified independent third-party evaluation shall not be unreasonably withheld;

(e) Industry standards or citations to the same to be met for decommissioning wind and solar facilities, including a statement of the restoration goal and the treatment of abandoned equipment on owned or leased property;

(f) The process for making claims and disbursements under the agreement's decommissioning fund;

(g) The termination of the decommissioning agreement following the completion of decommissioning activities;

(h) Required notices;

(i) The assignment of rights and obligations under the agreement; and

(j) Force majeure provisions excusing performance or delays in performance due to fire, earthquake, flood, tornado, disasters, or act of God, terrorism, pandemic, change of law, or any other cause beyond a party's control.

The secretary of the Department of Environmental Protection may propose rules for legislative approval in accordance with the provisions of chapter 29A of this code establishing a model decommissioning agreement for wind and solar facilities governed under this act.

CHAPTER 116

(Com. Sub. for S. B. 80 - By Senators Trump and Swope)

[Passed April 2, 2021; in effect 90 days from passage (July 1, 2021)]
[Approved by the Governor on April 15, 2021.]

AN ACT to amend and reenact §44-1-28 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new article, designated §44-1A-1, §44-1A-2, §44-1A-3, §44-1A-4, and §44-1A-5, all relating to payment of small sums to spouse or distributees of decedents upon whose estates there have been no qualifications; allowing the administration of small estates containing under $50,000 in personal property and under $100,000 in real property by affidavit and without appointment of a personal representative; providing for a short title; providing for definitions; identifying affidavit contents and form; establishing duties of fiduciary supervisor and clerk of the county commission; setting forth requirements for death certificate, proof of residence, and bond; setting forth form of affidavit; providing for issuance of certificates and authorization of small estates; setting forth requirements for objections by interested parties and revocation of certificate and authorization; rescinding of certificates and authorization when determination is made that estate does not qualify; detailing methods for payment or delivery of small assets to authorized successors; discharging and releasing payors; setting forth fiduciary duty of authorized successor; detailing treatment of real estate in a small estate; and providing for applicability.

Be it enacted by the Legislature of West Virginia:

ARTICLE 1. PERSONAL REPRESENTATIVES.

§44-1-28. Payment of small sums due employees to distributees of decedents upon whose estates there have been no qualifications.

(a) When the State of West Virginia, any of its political subdivisions, the United States, or any employer owes wages, salary, pension payments, or money allowed for burial expenses to a decedent who died domiciled in this state, upon whose estate there has been no qualification, and the amount owed does not exceed $5,000, the State of West Virginia, any of its political subdivisions, the United States, or the decedent's employer, after 120 days from the death of the decedent, may pay the amount owed to the decedent's surviving spouse, if any; and if no spouse survived the decedent, then to the distributees of the decedent under the laws of the State of West Virginia, as established by an affidavit to that effect.

(b) When the Treasurer holds property in accordance with §36-8-1 *et seq.* of this code on behalf of a decedent upon whose estate there has been no qualification, and the amount of the property is $5,000 or less, the Treasurer may remit the property to the surviving spouse of the decedent, if any; and if no spouse survives the decedent, then to the distributees of the decedent under the laws of the State of West Virginia. When the Treasurer holds property in accordance with §36-8-1 *et seq.* of this code on behalf of a decedent whose estate is closed or has no present qualification and a valid will or an affidavit naming the decedent's distributees has been filed with the appropriate probate jurisdiction, the Treasurer may remit the property to the distributees as reflected in the will, or in the absence of a will, as established by the affidavit, in accordance with the laws of intestate descent and distribution.

(c) When any person holds an asset or property on behalf of or owed to a decedent who died domiciled in this state, upon whose estate there has been no qualification, and the value of that asset or property of the decedent does not exceed $5,000, including a bank account, a savings institution account, a credit union account, a certificate of deposit, a brokerage account, stock, a mutual fund, a security, a bond, a note, a promissory note, an obligation, an instrument evidencing a debt, indebtedness owed to the decedent,

proceeds of life insurance payable to the estate, a deposit, a refund, a tax refund, an overpayment, a chose in action, or an item of tangible personal property including a motor vehicle, after 120 days from the death of the decedent, that person may pay the amount owed to or transfer the asset or property to the decedent's surviving spouse, if any; and if no spouse survived the decedent, then to the distributees of the decedent under the laws of the State of West Virginia, as established by an affidavit to that effect. As used in this section, "person" includes a bank, banking institution, credit union, or West Virginia Division of Motor Vehicles.

(d) Payment in accordance with this section is in full discharge and acquittance to all persons whomsoever on the account of the property to the same extent as if that person dealt with a personal representative of the decedent. That person is not required to see the application of the asset or proceeds or to inquire into the truth of any statement in the affidavit.

ARTICLE 1A. WEST VIRGINIA SMALL ESTATE ACT.

§44-1A-1. Short title; definitions.

(a) This article may be cited as the West Virginia Small Estate Act.

(b) For the purposes of this article, the following definitions apply:

(1) "Authorized successor" means the successor of a decedent who files an affidavit and is certified and authorized by the clerk of the county commission or the fiduciary supervisor thereof, pursuant to the provisions of this article.

(2) "Person" means any individual, corporation, business trust, fiduciary, estate, trust, partnership, limited liability company, association, joint venture, government, governmental subdivision, agency, instrumentality, public corporation, or any other legal or commercial entity.

(3) "Small asset" means any probate personal property or asset belonging or presently distributable to the decedent having a fair market value on the decedent's date of death of not more than

$50,000. A small asset includes, but is not limited to, cash, a bank account, a savings institution account, a credit union account, a certificate of deposit, a brokerage account, stock, a mutual fund, a security, a bond, a note, a promissory note, an obligation, an instrument evidencing a debt, indebtedness owed to the decedent, proceeds of life insurance payable to the estate, a deposit, a refund, a tax refund, an overpayment, a chose in action, or an item of tangible personal property including a motor vehicle. A small asset does not include real estate or an interest in real property. A small asset does not include a nonprobate asset of the decedent which would not be subject to administration in the decedent's probate estate.

(4) "Small estate" means a probate estate of a decedent who died domiciled in this state in which: (A) The total aggregate fair market value, on the decedent's date of death, of small assets does not exceed $50,000; and (B) the total aggregate fair market value on the decedent's date of death of all real estate or interests in real property situate in this state of which the decedent owned or was seized or possessed does not exceed $100,000, excluding any real estate of the decedent which was held in any nonprobate form. For the purposes of this article, the fair market value of real estate shall be presumed to be 167 percent of the current assessed value of the real estate on the land books as reported by the assessor of the county in which the real estate is situate.

(5) "Successor" means any person, other than a creditor, who is nominated as a personal representative or executor under the provisions of the will of the decedent, or who is entitled under the provisions of the decedent's will or the laws of intestate descent and distribution of this state to a part or all of a small asset of the decedent.

§44-1A-2. Administration of a small estate upon affidavit and without appointment.

(a) Notwithstanding any provisions of this code to the contrary, the small estate of a decedent who dies domiciled in this state may be administered upon affidavit and without the appointment of a personal representative, and the small assets of the decedent may

be paid or delivered to the authorized successor as provided in this article.

(b) Any successor of a decedent who dies domiciled in this state may execute and tender for recording to the clerk of the county commission, or the fiduciary supervisor of the clerk of the county commission, of the county in this state which would have jurisdiction over the probate concerning the estate and assets of the decedent an affidavit made upon oath and under penalty of perjury concerning the small estate setting forth in substance:

(1) The name and current address of the affiant;

(2) The name of the decedent, the date of death of the decedent, and the address and residence of the decedent at his or her death;

(3) Whether the decedent had any known will, with the original of the known will to be attached to the affidavit and tendered for recording in the county as long as the will is in due and proper form for probate as a will in this state, or whether the decedent died intestate with no known will;

(4) A listing of the names, current addresses, and relationship to the decedent of any person nominated as a personal representative under the known will, together with a listing of the names, current addresses, and relationship to the decedent of the beneficiaries under the known will entitled to the estate or assets of the decedent. If there is no known will of the decedent, a listing of the names, current addresses, and relationship to the decedent of all of the intestate heirs-at-law and distributees of the decedent determined under the laws of intestate descent and distribution of this state;

(5) That the decedent's entire personal probate estate as of the date of the decedent's death, wherever located, consists only of small assets and the aggregate fair market value of all of the small assets does not exceed $50,000, together with a description or itemization of the small assets with an estimate of value, if known or ascertainable;

(6) Whether the decedent died seized and possessed of any probate real estate or interests in probate real property situate in this state and if so, that the aggregate fair market value of all of the real estate or interests in real property situate in this state does not exceed $100,000, together with a description of the real estate, the county in which it is situate, its assessed value for tax purposes, and its fair market value at the decedent's date of death;

(7) That if the successor is nominated as a personal representative or executor under the provisions of the will of the decedent, at least 30 days have elapsed since the decedent's date of death and no application for the appointment of a personal representative for the decedent is pending or has been granted in any jurisdiction. If the successor is not nominated as a personal representative or executor under the provisions of the will of the decedent, at least 60 days have elapsed since the decedent's date of death, no application for the appointment of a personal representative for the decedent is pending or has been granted in any jurisdiction, and no affidavit of small estate has been filed by a successor nominated as a personal representative or executor under the provisions of the will of the decedent; and

(8) That the affiant will faithfully administer the small assets of the decedent in accordance with the law and pay or deliver the small assets to the successor or successors so entitled, after paying any known or ascertainable creditors of the decedent.

(c) The clerk of the county commission, or the fiduciary supervisor of the clerk of the county commission, shall upon receipt of the affidavit review and inspect the affidavit, and if the county clerk or fiduciary supervisor determines the affidavit to be in completed form, the county clerk or fiduciary supervisor shall record and index the affidavit, together with the original of any will tendered with the affidavit, in the same manner and upon the same fees as wills and affidavits of beneficiaries or heirs are recorded and indexed in case of probate administration with appointment of a personal representative. The clerk of the county commission, or the fiduciary supervisor of the clerk of the county commission, may require a certified copy of the decedent's death certificate or other

proof of death and residence prior to fulfilling the responsibilities under this article.

(d) A bond, security, or oath is not required when an appointment of a personal representative is not made for a small estate under the provisions of this article.

(e) A document substantially in the following form may be used as the affidavit provided in subsection (b) of this section with the effect as prescribed in this article:

IN THE COUNTY COMMISSION OF _____ COUNTY, WEST VIRGINIA

RE: THE ESTATE OF _____

DOD: _____

AFFIDAVIT FOR SMALL ESTATE

STATE OF _____,

COUNTY OF _____, to-wit:

I, _____, being a Successor of the Decedent identified below, being first duly sworn, upon oath and under penalty of perjury, do depose and say to the best of my knowledge and belief as follows:

1. My name is _____, and my current address is _____.

2. The Decedent, _____, died on _____ (date of death), a resident of _____ County, State of West Virginia, with his/her usual residence being _____. A certified death certificate has been furnished herewith for filing in this County. I am a Successor of the decedent as _____ (state relationship).

3. TESTACY ( ) [Check if applies] or ( ) [Check if Not Applicable]

At the date of death, the Decedent died with an original Last Will and Testament of the Decedent dated _____, without any codicil thereto ( ) or with codicil(s) thereto dated _____ ( ) [Check if applies]. The aforesaid original Last Will and Testament of the decedent, together with any codicil(s), is furnished herewith for recording in this County as permitted by West Virginia Code § 44-1A-2(b).

Under the Last Will and Testament of the Decedent, the following person(s) is/are nominated to be the personal representative(s) of the Estate:

a. Name:_____

Address: _____

_____

b. Name:_____

Address: _____

_____

Pursuant to the provisions of the above referenced Will of the Decedent, the following persons are the named beneficiaries of the estate of the Decedent:

a. Name: _____

Address: _____

_____

Relationship to Decedent: _____

Share or percentage or particular item: _____

b. Name: _____

Address: _____

_____

Relationship to Decedent: _____

Share or percentage or particular item:_____

c. Name:_____

Address:_____

_____

Relationship to Decedent:_____

Share or percentage or particular item:_____

d. Name:_____

Address: _____

_____

Relationship to Decedent: _____

Share or percentage or particular item: _____

e. Name: _____

Address: _____

_____

Relationship to Decedent: _____

Share or percentage or particular item: _____

(If more space is needed, attach additional page(s) to affidavit)

4. INTESTACY ( ) [Check if applies] or ( ) [Check if Not Applicable]

At the date of death, the Decedent died intestate with no known will. The Decedent left as his/her heirs-at-law and distributees in accordance with the laws of intestate descent and distribution of the State of West Virginia the following persons:

a. Name: _____

Address: _____

Relationship to Decedent: _____

Share or percentage: _____

b. Name: _____

Address: _____

Relationship to Decedent:_____

Share or percentage:_____

c. Name: _____

Address: _____

Relationship to Decedent:_____

Share or percentage: _____

d. Name: _____

Address: _____

Relationship to Decedent: _____

Share or percentage: _____

e. Name: _____

Address: _____

Relationship to Decedent: _____

Share or percentage: _____

(If more space is needed, attach additional page(s) to affidavit)

5. The Decedent's entire personal probate estate, as of the date of the Decedent's death, wherever located, consists only of small assets and the aggregate fair market value of the small assets does not exceed $50,000. The small assets of the Decedent are described and itemized as follows:

	Description	Fair Market value
.		
.		
.		
.		
.		
.		
	Total	

(If more space is needed, attach additional page(s) to affidavit)

6. The Decedent did ( ) / did not ( ) [Check one which applies] die seized and possessed of any probate real estate or interests in probate real estate in the state of West Virginia. If the Decedent died seized and possessed of any probate real estate or interest in real estate in the state of West Virginia, the aggregate fair market value of all of the real estate or interests in real property situate in this state does not exceed $100,000 and the real estate of the Decedent in West Virginia is as follows:

	Description	County	Assessed Value	Fair Market value
	Total			

(If more space is needed, attach additional page(s) to affidavit)

7. ( ) [Check if applies] or ( ) [Check if Not Applicable] If the affiant is a Successor who was nominated as a personal representative or executor under the provisions of the above Will of the Decedent, at least 30 days have elapsed since the Decedent's date of death and no application for the appointment of a personal representative for the Decedent is pending or has been granted in any jurisdiction;

or

( ) [Check if applies] or ( ) [Check if Not Applicable] If the affiant is a Successor who was NOT nominated as a personal representative or executor under the provisions of the above Will of the Decedent or if the Decedent died intestate without a will, at least 60 days have elapsed since the Decedent's date of death and no application for the appointment of a personal representative for the Decedent is pending or has been granted in any jurisdiction, and no affidavit of Small Estate has been filed by a Successor nominated as a personal representative or executor under the provisions of the Will of the Decedent.

8. The undersigned Affiant will faithfully administer the small assets of the Decedent in accordance with the law and pay or deliver the same to the Successor or Successors so entitled.

Witness my hand and seal this ____ day of _____, 20___.

_____

Signature of Affiant/Successor

Taken, subscribed, and sworn to before me the undersigned authority by _____, this ____ day of _____, 20___.

{seal}

My Commission expires:_____

_____

Notary Public

(f) Upon acceptance and recording of the affidavit provided in this section, the county clerk or fiduciary supervisor shall mail a copy of the affidavit to the personal representative, if any is nominated in an attached will, and the beneficiaries under the will when the decedent dies with a will or the heirs-at-law when the decedent dies without a will, all of whom are listed on the affidavit, and shall issue a certificate and authorization of a small estate to the authorized successor who completed the affidavit, authorizing the successor to be paid, transferred, and delivered the small assets of the decedent with authority to pay, transfer, and deliver the small assets to the successor or successors of the decedent entitled pursuant to the provisions of this article and the other laws of the State of West Virginia and with authority to faithfully perform the duties of the office necessary to collect and administer the small assets of the decedent including, but not limited to, making application for and executing receipts, assignments, transfers, releases, waivers, applications, claims, claims for refunds, and federal, state, or local tax returns of the decedent concerning the small assets, pursuing litigation for or against the decedent or the

decedent's estate, and paying or settling the funeral expenses or the claims of creditors of the decedent.

(g) If within 30 days after the mailing of a copy of the affidavit by the county clerk or fiduciary supervisor any party interested in the estate of the decedent files a written objection with the county clerk or fiduciary supervisor upon good and proper grounds, the county clerk or fiduciary supervisor shall refer the objection to a fiduciary commissioner for determination, report, and recommendation which may, among other things, revoke the certificate and authorization of small estate and require full and complete probate administration of the estate of the decedent in accordance with the other applicable provisions of this article. Upon any revocation of the certificate and authorization of small estate, the authorized successor shall provide an accounting and report of all payments or deliveries made of the small assets of the decedent.

(h) The authorized successor may act under the certificate and authorization of small estate issued under the provisions of this article for a period of six months from the date of the original issuance of the certificate and authorization but may, upon a showing of good cause in an application made to the county clerk or fiduciary supervisor, be granted an extension of an additional time period not to exceed six months upon issuance of an extended certificate and authorization of small estate to be issued by the county clerk or fiduciary supervisor.

(i) If at any time after the original issuance of the certificate and authorization by the county clerk or fiduciary supervisor, the authorized successor or an interested person determines that the probate estate of the decedent does not qualify as a small estate because the aggregate values of all of the small assets or the real estate of the decedent exceed the values provided in this article, upon application by an interested party the county clerk or fiduciary supervisor shall rescind the certificate and authorization of the small estate and shall mail a written order of rescission to the authorized successor and other interested parties, and a probate under the other provisions of this article shall be commenced by an interested party.

§44-1A-3. Payment or delivery of small assets to authorized successor.

(a) Any person having possession of a small asset of the decedent shall pay or deliver the small asset to the authorized successor of the decedent upon being presented the certificate and authorization of a small estate of the county clerk or fiduciary supervisor.

(b) The authorized successor has a fiduciary duty to safeguard and promptly pay or deliver the small asset or assets to the successor or successors of the decedent entitled to the small asset as required by the laws of the State of West Virginia.

(c) The authorized successor may discharge his or her fiduciary duty concerning the payment or delivery of the small asset or assets by:

(1) Applying the small asset in payment of the administrative costs of obtaining the certificate and authorization of a small estate under this article, the funeral expenses of the decedent, or the claims of any known or ascertainable creditors of the decedent as provided by the laws of the State of West Virginia;

(2) Paying or delivering the small asset to a successor entitled to the small asset who is sui juris; or

(3) For any successor entitled to the small asset who is, or is reasonably believed to be, incapacitated or under a legal disability, by paying or delivering the small asset to the successor's conservator or, if no conservator exists, guardian; to any custodian of an account for the successor under §36-7-1 *et seq.* of this code (the West Virginia Uniform Transfers to Minors Act); or to an adult relative or other person having legal or physical care or custody of the successor to be expended on the successor's behalf directly to the incapacitated or disabled successor or applying it for the successor's benefit. Any successor may be represented and bound under the provisions of virtual representation set forth in §44D-3-1 *et seq.* of this code with respect to affidavits required and

designations of persons to receive payment or delivery of a small asset under this article.

(d) Upon the presentation of the certificate and authorization of a small estate, the authorized successor may endorse or negotiate any small asset that is a check, draft, or other negotiable instrument that is payable to the decedent or the decedent's estate.

(e) A transfer agent of any security, upon the surrender of any certificate evidencing the security, shall change the registered ownership on the books of a corporation from the decedent to the successor entitled to the small asset upon the presentation of the certificate and authorization of small estate.

(f) The payment or delivery of a small asset made in good faith to, or by the authorized successor, and upon an affidavit filed in good faith and upon reasonable premises by the authorized successor, may not be ineffective, void, or voidable, if the aggregate value of all of the small assets constituting the small estate of the decedent is subsequently found to exceed $50,000.

(g) The authorized successor is liable to the successors of the decedent, including any personal representative subsequently appointed for the decedent's estate, for any breach of fiduciary duty committed by the authorized successor in failing to pay, deliver, or administer a small asset and causing injury to the entitled successor for a period of three years after the date of the issuance of the certificate and authorization of small estate by the county clerk or fiduciary supervisor.

§44-1A-4. Discharge and release of payor; treatment of real estate in a small estate.

(a) Any person paying or delivering a small asset pursuant to the provisions of this article is discharged and released to the same extent as if that person dealt with the personal representative of the decedent. That person is not required to see the application of the small asset or to inquire into the truth of any statement in the affidavit or the certificate and authorization of a small estate presented under this article.

(b) If any person to whom the certificate and authorization of small estate is presented refuses to pay or deliver any small asset to the authorized successor, the small asset may be recovered, or its payment or delivery compelled, and damages may be recovered, on proof of rightful claim in a proceeding brought for that purpose by or on behalf of the person entitled to the small asset in the magistrate court or circuit court of this state having jurisdiction.

(c) For any real estate or interest in real property of the decedent which is reported on the recorded affidavit provided in this article, the provisions of §41-5-19 and §41-5-20 of this code shall apply, and any will attached to and tendered with the affidavit shall be deemed to be duly admitted to probate.

(d) Nothing in this article releases or discharges any claim which a creditor may have against the decedent, the decedent's estate, or the assets of the decedent, and creditors of a small estate has the same rights provided under the provisions of §44-2-27 and §44-3A-33 of this code as against distributees and legatees.

§44-1A-5. Construction of article.

(a) The remedies provided by this article are in addition to, and not in exclusion of, any other remedies provided by the laws of this state.

(b) For any will attached to and tendered with the affidavit provided in this article, the provisions of §41-5-11 of this code apply in like manner as if the will had been probated by an order of the county commission entered on the date of the issuance of the certificate and authorization of a small estate by the county clerk or fiduciary supervisor.

(c) Nothing in this article may be construed to affect or limit the right of a surviving spouse of a decedent who dies domiciled in this state to his or her elective share as provided in §42-3-1 *et seq.* of this code.

CHAPTER 117

(Com. Sub. for S. B. 81 - By Senator Trump)

[Passed April 2, 2021; in effect from passage]
[Approved by the Governor on April 15, 2021.]

AN ACT to amend and reenact §44D-1-105 of the Code of West Virginia, 1931, as amended; to amend and reenact §44D-8A-809 of said code; and to amend and reenact §44D-10-1008 of said code, all relating generally to the West Virginia Uniform Trust Code; correcting certain internal code references; adding certain cross references within the trust code; and modifying standard for trustee liability from "willful misconduct" to breach of fiduciary duty for consistency with similar trust law provisions.

Be it enacted by the Legislature of West Virginia:

ARTICLE 1. GENERAL PROVISIONS AND DEFINITIONS.

§44D-1-105. Default and mandatory rules.

(a) Except as otherwise provided in the terms of the trust instrument, this chapter governs the duties and powers of a trustee, relations among trustees, and the rights and interests of a beneficiary.

(b) The terms of a trust prevail over any provision of this chapter except:

(1) The requirements for creating a trust;

(2) The duty of a trustee to act in good faith and in accordance with the terms and purposes of the trust but subject to the

provisions of §44D-8A-809, §44D-8A-811, and §44D-8A-812 of this code;

(3) The requirement that a trust and its terms have a purpose that is lawful, not contrary to public policy, and possible to achieve;

(4) The power of the court to modify or terminate a trust under §44D-4-410 through §44D-4-416, inclusive, of this code;

(5) The effect of a spendthrift provision and the rights of certain creditors and assignees to reach a trust as provided in §44D-5-501 *et seq.* of this code;

(6) The power of the court under §44D-7-702 of this code to require, dispense with, or modify or terminate a bond;

(7) The power of the court under §44D-7-708(b) of this code to adjust a trustee's compensation specified in the terms of the trust instrument which is unreasonably low or high;

(8) The effect of an exculpatory term under §44D-10-1008 of this code;

(9) The rights under §44D-10-1010 through §44D-10-1013, inclusive, of this code of a person other than a trustee or beneficiary;

(10) Periods of limitation for commencing a judicial proceeding;

(11) The power of the court to take action and exercise jurisdiction as may be necessary in the interests of justice; and

(12) The subject-matter jurisdiction of the court and venue for commencing a proceeding as provided in §44D-2-203 and §44D-2-204 of this code.

ARTICLE 8A. WEST VIRGINIA UNIFORM DIRECTED TRUST ACT.

§44D-8A-809. Duty and liability of directed trustee.

(a) Subject to subsection (b) of this section, a directed trustee shall take reasonable action to comply with a trust director's exercise or nonexercise of a power of direction or further power under §44D-8A-806(b)(1) of this code, and the trustee is not liable for the action.

(b) A directed trustee must not comply with a trust director's exercise or nonexercise of a power of direction or further power under §44D-8A-806(b)(1) of this code to the extent that the directed trustee is thereby directed knowingly to violate the laws or regulations of any jurisdiction applicable to the trust. The directed trustee may reasonably rely upon the advice of legal counsel to determine what actions would be consistent with, or contrary to, applicable law. Reasonable expenses incurred by the directed trustee in good faith for legal advice concerning an instruction from a trust director or a petition to the court for instructions shall be proper expenses of the trust.

(c) An exercise of a power of direction under which a trust director may release a trustee or another trust director from liability for breach of trust is not effective if:

(1) The breach involved the trustee's or other director's breach of fiduciary duty as set forth in subsection (b) of this section;

(2) The release was induced by improper conduct of the trustee or other director in procuring the release; or

(3) At the time of the release, the director did not know the material facts relating to the breach.

(d) A directed trustee that has reasonable doubt about its duty under this section may petition the court for instructions.

(e) The terms of a trust may impose a duty or liability on a directed trustee in addition to the duties and liabilities under this section.

ARTICLE 10. LIABILITY OF TRUSTEES AND RIGHTS OF PERSONS DEALING WITH TRUSTEE.

§44D-10-1008. Exculpation of trustee.

(a) A term of a trust instrument relieving a trustee of liability for breach of trust is unenforceable to the extent that it:

(1) Relieves the trustee of liability for breach of trust committed in bad faith or with reckless indifference to the purposes of the trust or the interests of the beneficiaries, subject to §44D-1-105 and §44D-8A-809 of this code; or

(2) Was inserted as the result of an abuse by the trustee of a fiduciary or confidential relationship to the grantor.

(b) An exculpatory term drafted or caused to be drafted by the trustee is invalid as an abuse of a fiduciary or confidential relationship unless:

(1) The trustee proves that the exculpatory term is fair under the circumstances and that its existence and contents were adequately communicated to the grantor; or

(2) The grantor was represented by an attorney not employed by the trustee with respect to the trust and the attorney provided independent legal advice.

CHAPTER 118

(Com. Sub. for Com. Sub. for S. B. 318 - By Senators Karnes, Takubo, and Roberts)

[Passed April 10, 2021; in effect 90 days from passage (July 9, 2021)]
[Approved by the Governor on April 28, 2021.]

AN ACT to amend and reenact §36-8-9 of the Code of West Virginia, 1931, as amended, relating generally to requirements for public notice of unclaimed property held by the State Treasurer; eliminating the requirement that the Treasurer annually publish a list of all unclaimed properties received the previous year in newspapers; requiring the Treasurer to annually publish a newspaper bulletin in each county of the state listing apparent owners of up to 15,000 recently received unclaimed properties; providing that the Treasurer is not required to publish said bulletin in a county if the Treasurer makes a determination that the bulletin is not a cost-effective method of promoting awareness of unclaimed property in that county; providing criteria for making a determination of cost-effectiveness; requiring the Treasurer to annually publish an advertisement regarding unclaimed property in a newspaper in each county in which the bulletin is not published; setting forth required content for said advertisement; and requiring the Treasurer to maintain a searchable online database of persons appearing to be the owners of unclaimed property.

Be it enacted by the Legislature of West Virginia:

ARTICLE 8. UNIFORM UNCLAIMED PROPERTY ACT.

§36-8-9. Notice and publication of lists of abandoned property.

(a) *Publication of bulletin.* —

(1) The administrator shall publish a bulletin no later than November 30 of each year, listing the names of the apparent owners of up to 15,000 properties recently paid or delivered to the administrator. The bulletin must be published in a newspaper of general circulation in each county of this state. The bulletin must be in a form that, in the judgment of the administrator, is likely to attract the attention of the apparent owner of the unclaimed property. The bulletin must contain:

(A) The name of each person appearing to be the owner of the property listed, as set forth in the report filed by the holder;

(B) The municipality in which the last known address or location of each person appearing to be the owner of the listed property is located, if an address or location is set forth in the report filed by the holder;

(C) A statement explaining that property of the owner is presumed to be abandoned and has been taken into the protective custody of the administrator; and

(D) A statement that information about unclaimed property and its return to the owner is available to a person having a legal or beneficial interest in the property, upon request to the administrator.

(2) The administrator is not required to include any property in the bulletin described in this subsection that has a total value of less than $50 or any property that is a traveler's check, money order, or similar instrument.

(b) *Exception to bulletin requirement.* —

(1) The administrator is not required to publish the bulletin described in subsection (a) of this section in a county if the administrator makes a determination that the bulletin is not a cost-effective method of promoting awareness of unclaimed property in that county. The determination shall be based on the cost to publish the bulletin in the county and the following criteria:

(A) The population of the county;

(B) Relevant geographic or demographic characteristics of the county;

(C) Residents' access to Internet within the county;

(D) Available data on the circulation and readership of newspapers within the county;

(E) The existence of alternative media outlets to newspapers in the county, through which the administrator may more effectively promote awareness of unclaimed property; and

(F) County-specific data collected by the administrator in previous years concerning the most effective methods of promoting awareness of unclaimed property within the county.

(2) During each year in which the administrator does not publish the bulletin described in subsection (a) of this subsection in a county, pursuant to subdivision (1) of this subsection, the administrator shall publish an advertisement in a newspaper of general circulation in the county by November 30 of that year. The advertisement must be in a form that, in the judgment of the administrator, is likely to attract the attention of the apparent owner of the unclaimed property and must contain:

(A) A statement notifying the reader that the administrator holds unclaimed property and that the reader might be entitled to claim unclaimed property in the administrator's custody;

(B) A brief description of the types of property that are commonly held by the administrator;

(C) Instructions for accessing the searchable database of unclaimed property on the administrator's website; and

(D) Instructions for requesting information regarding unclaimed property from the administrator by telephone or by mail.

(c) *Online database.* — The administrator shall maintain a database on the administrator's website that is accessible by the public and electronically searchable which contains the names

reported to the administrator of all apparent owners for whom property is being held by the administrator: *Provided*, That the administrator is not required to include in the database the name or location of an owner of property having a total value less than $50 or information concerning a traveler's check, money order, or similar instrument.

CHAPTER 119

(Com. Sub. for S. B. 483 - By Senator Weld)

[Passed April 7, 2021; in effect 90 days from passage (July 6, 2021)]
[Approved by the Governor on April 19, 2021.]

AN ACT to amend and reenact §44-1-1, §44-1-3, and §44-1-6 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §44-1-31, all relating to allowing an oath to be taken before any person authorized to administer oaths under the laws of this state or any other state; and allowing a bond to be executed before any person authorized to administer oaths under the law of this state or any other state.

Be it enacted by the Legislature of West Virginia:

ARTICLE 1. PERSONAL REPRESENTATIVES.

§44-1-1. Executor has no powers before qualifying.

A person appointed to be the executor of a will shall not have the powers of executor until he or she qualifies by taking an oath and giving bond, unless not required to post bond by §44-1-8 of this code, which shall then be admitted to the records of the clerk of the county in which the will, or an authenticated copy thereof, is admitted to record, except that he or she may provide for the burial of the testator, pay reasonable funeral expenses, and preserve the estate from waste.

§44-1-3. Oath of executor or administrator with will annexed.

The oath of an executor, or of an administrator with the will annexed, shall be in substantially the following form: The writing admitted to record contains the true last will and testament of the

deceased, as far as he or she knows or believes, and that he or she will faithfully perform the duties of his or her office to the best of his or her skill and judgment.

§44-1-6. Bond and oath; termination of grant in certain cases.

At the time of the grant of administration upon the estate of any intestate, the person to whom it is granted shall, in the county commission or before the clerk granting it, give bond, unless not required to post bond by §44-1-8 of this code, and take an oath in substantially the following form: The deceased has left no will so far as he or she knows, and that he or she will faithfully perform the duties of the office to the best of his or her judgment. If a will of the deceased be afterwards admitted to record, or if, after administration is granted to a creditor or other person than a distributee, any distributee who shall not have before refused shall apply for administration, there may be a grant of probate or administration, after reasonable notice to such creditor or other person theretofore appointed, in like manner as if the former grant had not been made, and such former grant shall thereupon cease.

§44-1-31. Administration of oath; execution of bond.

An oath required in this chapter may be taken before any person authorized to administer oaths under the laws of this state or any other state. A bond may be executed, if not in person before the county clerk, before any person authorized to administer oaths under the laws of this state or any other state.

CHAPTER 120

(H. B. 2874 - By Delegates Young, Wamsley, Cooper, Doyle, Longanacre, Steele, J. Kelly, McGeehan, Worrell, Kimble and Zukoff)

[Passed April 7, 2021; in effect ninety days from passage.]
[Approved by the Governor on April 28, 2021.]

AN ACT to amend and reenact §59-1-2 and §59-1-2a of the Code of West Virginia, 1931, as amended, relating to providing waiver of initial business registration fees and certain annual business fees to businesses owned by active-duty military members and the spouses of active-duty military members or veterans.

Be it enacted by the Legislature of West Virginia:

ARTICLE 1. FEES AND ALLOWANCES.

§59-1-2. Fees to be charged by Secretary of State.

(a) Except as may be otherwise provided in this code, the Secretary of State shall charge for services rendered in his or her office the following fees to be paid by the person to whom the service is rendered at the time it is done:

(1) For filing, recording, indexing, preserving a record of, and issuing a certificate relating to, the formation, amendment, change of name, registration of trade name, merger, consolidation, conversion, renewal, dissolution, termination, cancellation, withdrawal, revocation, and reinstatement of business entities organized within the state, as follows:

(A) Articles of incorporation of for-profit corporation, $100;

(B) Articles of incorporation of nonprofit corporation, $25;

(C) Articles of organization of limited liability company, $100;

(D) Agreement of a general partnership, $50;

(E) Certificate of a limited partnership, $100;

(F) Agreement of a voluntary association, $50;

(G) Articles of organization of a business trust, $50;

(H) Amendment or correction of articles of incorporation, including change of name or increase of capital stock, in addition to any applicable license tax, $25;

(I) Amendment or correction, including change of name, of articles of organization of business trust, limited liability partnership, limited liability company, or professional limited liability company; or of certificate of limited partnership; or of agreement of voluntary association, $25;

(J) Amendment and restatement of articles of incorporation, certificate of limited partnership, agreement of voluntary association or articles of organization of limited liability partnership, limited liability company or professional limited liability company or business trust, $25;

(K) Registration of trade name, otherwise designated as a true name, fictitious name or D. B. A. (doing business as) name for any domestic business entity as permitted by law, $25;

(L) Articles of merger of two corporations, limited partnerships, limited liability partnerships, limited liability companies or professional limited liability companies, voluntary associations or business trusts, $25;

(M) Plus for each additional party to the merger in excess of two, $15;

(N) Statement of conversion, when permitted, from one business entity into another business entity, in addition to the cost of filing the appropriate documents to organize the surviving entity, $25;

(O) Articles of dissolution of a corporation, voluntary association or business trust, or statement of dissolution of a general partnership, $25;

(P) Revocation of voluntary dissolution of a corporation, voluntary association or business trust, $15;

(Q) Articles of termination of a limited liability company, cancellation of a limited partnership or statement of withdrawal of limited liability partnership, $25;

(R) Reinstatement of a limited liability company or professional limited liability company after administrative dissolution, $25.

(2) For filing, recording, indexing, preserving a record of and issuing a certificate relating to the registration, amendment, change of name, merger, consolidation, conversion, renewal, withdrawal or termination within this state of business entities organized in other states or countries, as follows:

(A) Certificate of authority of for-profit corporation, $100;

(B) Certificate of authority of nonprofit corporation, $50;

(C) Certificate of authority of foreign limited liability companies, $150;

(D) Certificate of exemption from certificate of authority, $25;

(E) Registration of a general partnership, $50;

(F) Registration of a limited partnership, $150;

(G) Registration of a limited liability partnership for two-year term, $500;

(H) Registration of a voluntary association, $50;

(I) Registration of a trust or business trust, $50;

(J) Amendment or correction of certificate of authority of a foreign corporation, including change of name or increase of capital stock, in addition to any applicable license tax, $25;

(K) Amendment or correction of certificate of limited partnership, limited liability partnership, limited liability company or professional limited liability company, voluntary association or business trust, $25;

(L) Registration of trade name, otherwise designated as a true name, fictitious name or D. B. A. (doing business as) name for any foreign business entity as permitted by law, $25;

(M) Amendment and restatement of certificate of authority or of registration of a corporation, limited partnership, limited liability partnership, limited liability company or professional limited liability company, voluntary association or business trust, $25;

(N) Articles of merger of two corporations, limited partnerships, limited liability partnerships, limited liability companies or professional limited liability companies, voluntary associations or business trusts, $25;

(O) Plus, for each additional party to the merger in excess of two, $5;

(P) Statement of conversion, when permitted, from one business entity into another business entity, in addition to the cost of filing the appropriate articles or certificate to organize the surviving entity, $25;

(Q) Certificate of withdrawal or cancellation of a corporation, limited partnership, limited liability partnership, limited liability company, voluntary association or business, trust $25;

Notwithstanding any other provision of this section to the contrary, after June 30, 2008, the fees described in this subdivision that are collected for the issuance of a certificate relating to the initial registration of a corporation, limited partnership, domestic limited liability company or foreign limited liability company shall

be deposited in the general administrative fees account established by this section.

(3) For receiving, filing and recording a change of the principal or designated office, change of the agent of process and/or change of officers, directors, partners, members or managers, as the case may be, of a corporation, limited partnership, limited liability partnership, limited liability company or other business entity as provided by law, $15.

(4) For receiving, filing and preserving a reservation of a name for each 120 days or for any other period in excess of seven days prescribed by law for a corporation, limited partnership, limited liability partnership or limited liability company, $15;

(5) For issuing a certificate relating to a corporation or other business entity, as follows:

(A) Certificate of good standing of a domestic or foreign corporation, $10;

(B) Certificate of existence of a domestic limited liability company and certificate of authorization foreign limited liability company, $10;

(C) Certificate of existence of any business entity, trademark or service mark registered with the Secretary of State, $10;

(D) Certified copy of corporate charter or comparable organizing documents for other business entities, $15;

(E) Plus, for each additional amendment, restatement or other additional document, $5;

(F) Certificate of registration of the name of a foreign corporation, limited liability company, limited partnership or limited liability partnership, $25;

(G) And for the annual renewal of the name registration, $10;

(H) Any other certificate not specified in this subdivision, $10.

(6) For issuing a certificate other than those relating to business entities, as provided in this subsection, as follows:

(A) Certificate or apostille relating to the authority of certain public officers, including the membership of boards and commissions, $10;

(B) Plus, for each additional certificate pertaining to the same transaction, $5;

(C) Any other certificate not specified in this subdivision, $10;

(D) For acceptance, indexing and recordation of service of process for any corporation, limited partnership, limited liability partnership, limited liability company, voluntary association, business trust, insurance company, person or other entity as permitted by law, $15;

(E) For shipping and handling expenses for execution of service of process by certified mail upon any defendant within the United States, which fee is to be deposited to the special revenue account established in this section for the operation of the office of the Secretary of State, $5;

(F) For shipping and handling expenses for execution of service of process upon any defendant outside the United States by registered mail, which fee is to be deposited to the special revenue account established in this section for the operation of the office of the Secretary of State, $15;

(7) For a search of records of the office conducted by employees of or at the expense of the Secretary of State upon request, as follows:

(A) For any search of archival records maintained at sites other than the office of the Secretary of State no less than, $10;

(B) For searches of archival records maintained at sites other than the office of the Secretary of State which require more than one hour, for each hour or fraction of an hour consumed in making a search, $10;

(C) For any search of records maintained on site for the purpose of obtaining copies of documents or printouts of data, $5;

(D) For any search of records maintained in electronic format which requires special programming to be performed by the state information services agency or other vendor any actual cost, but not less than, $25;

(E) The cost of the search is in addition to the cost of any copies or printouts prepared or any certificate issued pursuant to or based on the search.

(F) For recording any paper for which no specific fee is prescribed, $5.

(8) For producing and providing photocopies or printouts of electronic data of specific records upon request, as follows:

(A) For a copy of any paper or printout of electronic data, if one sheet, $1;

(B) For each sheet after the first, 50 cents;

(C) For sending the copies or lists by fax transmission, $5;

(D) For producing and providing photocopies of lists, reports, guidelines and other documents produced in multiple copies for general public use, a publication price to be established by the Secretary of State at a rate approximating $2 plus 10 cents per page and rounded to the nearest dollar;

(E) For electronic copies of records obtained in data format on disk, the cost of the record in the least expensive available printed format, plus, for each required disk, which shall be provided by the Secretary of State, $5.

(b) The Secretary of State may propose rules for legislative approval, in accordance with the provisions of §29A-3-1 *et seq.* of this code, for charges for online electronic access to database information or other information maintained by the Secretary of State.

(c) For any other work or service not enumerated in this section, the fee prescribed elsewhere in this code or a rule promulgated under the authority of this code.

(d) The records maintained by the Secretary of State are prepared and indexed at the expense of the state and those records shall not be obtained for commercial resale without the written agreement of the state to a contract including reimbursement to the state for each instance of resale.

(e) The Secretary of State may provide printed or electronic information free of charge as he or she considers necessary and efficient for the purpose of informing the general public or the news media.

(f) There is hereby continued in the State Treasury a special revenue account to be known as the Service Fees and Collections Account. Expenditures from the account shall be used for the operation of the office of the Secretary of State and are not authorized from collections, but are to be made only in accordance with appropriation by the Legislature and in accordance with the provisions of §12-3-1 *et seq.* of this code and upon the fulfillment of the provisions set forth in §5A-2-1 *et seq.* of this code. Notwithstanding any other provision of this code to the contrary, except as provided in subsection (h) of this section and §59-1-2a of this code, one half of all the fees and service charges established in the following sections and for the following purposes shall be deposited by the Secretary of State or other collecting agency to that special revenue account and used for the operation of the office of the Secretary of State:

(1) The annual attorney-in-fact fee for corporations and limited partnerships established in §11-12C-5 of this code;

(2) The fees received for the sale of the State Register, Code of State Rules and other copies established by rule and authorized by §29A-2-7 of this code;

(3) The registration fees, late fees and legal settlements charged for registration and enforcement of the charitable organizations and

professional solicitations established in §29-19-5, §29-19-9, and §29-19-15b this code;

(4) The annual attorney-in-fact fee for limited liability companies as designated in §31B-1-108 of this code and the annual report fee established in §31B-2-211 of this code: *Provided,* That after June 30, 2008, the annual report fees designated in §31B-1-108 of this code shall upon collection, be deposited in the General Administrative Fees Account described in subsection (h) of this section;

(5) The filing fees and search and copying fees for uniform commercial code transactions established by §46-9-525 of this code;

(6) The annual attorney-in-fact fee for licensed insurers established in §33-4-12 of this code;

(7) The fees for the application and record maintenance of all notaries public established by §39-4-20 of this code;

(8) The fees for registering credit service organizations as established by §46A-6C-5 of this code;

(9) The fees for registering and renewing a West Virginia limited liability partnership as established by §47B-10-1 of this code;

(10) The filing fees for the registration and renewal of trademarks and service marks established in §47-2-17 of this code;

(11) All fees for services, the sale of photocopies and data maintained at the expense of the Secretary of State as provided in this section; and

(12) All registration, license and other fees collected by the Secretary of State not specified in this section.

(g) Any balance in the service fees and collections account established by this section which exceeds $500,000 as of June 30,

2003, and each year thereafter, shall be expired to the state fund, General Revenue Fund

(h)(1) Effective July 1, 2008, there is hereby created in the State Treasury a special revenue account to be known as the General Administrative Fees Account. Expenditures from the account shall be used for the operation of the office of the Secretary of State and are not authorized from collections, but are to be made only in accordance with appropriation by the Legislature and in accordance with the provisions of §12-3-1 *et seq.* of this code and upon the fulfillment of the provisions set forth in §11B-2-1 *et seq.* of this code: *Provided,* That for the fiscal year ending June 30, 2009, expenditures are authorized from collections rather than pursuant to an appropriation by the Legislature. Any balance in the account at the end of each fiscal year shall not revert to the General Revenue Fund, but shall remain in the fund and be expended as provided by this subsection.

(2) After June 30, 2008, all the fees and service charges established in §59-1-2a of this code for the following purposes shall be collected and deposited by the Secretary of State or other collecting agency in the general administrative fees account and used for the operation of the office of the Secretary of State:

(A) The annual report fees paid to the Secretary of State by corporations, limited partnerships, domestic limited liability companies and foreign limited liability companies;

(B) The fees for the issuance of a certificate relating to the initial registration of a corporation, limited partnership, domestic limited liability company or foreign limited liability company described in subdivision (a)(2) of this section; and

(C) The fees for the purchase of data and updates related to the state's Business Organizations Database described in §59-1-2a of this code.

(i) There is continued in the office of the Secretary of State a noninterest-bearing, escrow account to be known as the Prepaid Fees and Services Account. This account shall be for the purpose

of allowing customers of the Secretary of State to prepay for services, with payment to be held in escrow until services are rendered. Payments deposited in the account shall remain in the account until services are rendered by the Secretary of State and at that time the fees will be reallocated to the appropriate general or special revenue accounts. There shall be no fee charged by the Secretary of State to the customer for the use of this account and the customer may request the return of any moneys maintained in the account at any time without penalty. The assets of the prepaid fees and services account do not constitute public funds of the state and are available solely for carrying out the purposes of this section.

(j) A veteran-owned business, as defined in §59-1-2a(a)(13), commenced on or after July 1, 2015, or an active-duty member business, as defined in §59-1-2a(a)(13), commenced on or after July 1, 2021, is exempt from paying the fees prescribed in paragraphs (a)(1)(A), (a)(1)(B), (a)(1)(C), (a)(1)(D), (a)(1)(E), (a)(1)(F), and(a)(1)(G) of this section.

(k) Notwithstanding any other provisions of this article, after July 1, 2017, the Secretary of State may offer a fee for expedited services which shall not exceed, $500.

(l) The fees provided for in this section shall remain in effect until such time as the Legislature has approved rules promulgated by the Secretary of State, in accordance with the provisions of §29A-3-1 *et seq.* of this code, establishing a schedule of fees for services.

§59-1-2a. Annual business fees to be paid to the Secretary of State; filing of annual reports; purchase of data.

(a) *Definitions*. — As used in this section:

(1) "Annual report fee" means the fee described in subsection (c) of this section that is to be paid to the Secretary of State each year by corporations, limited partnerships, domestic limited liability companies, and foreign limited liability companies. After June 30, 2008, any reference in this code to a fee paid to the

Secretary of State for services as a statutory attorney in fact shall mean the annual report fee described in this section.

(2) "Business activity" means all activities engaged in or caused to be engaged in with the object of gain or economic benefit, direct or indirect, but does not mean any of the activities of foreign corporations enumerated in §31D-15-1501(b) of this code, except for the activity of conducting affairs in interstate commerce when activity occurs in this state, nor does it mean any of the activities of foreign limited liability companies enumerated in §31B-10-1003(a) of this code, except for the activity of conducting affairs in interstate commerce when activity occurs in this state.

(3) "Corporation" means a "domestic corporation", a "foreign corporation", or a "nonprofit corporation".

(4) "Deliver or delivery" means any method of delivery used in conventional commercial practice, including, but not limited to, delivery by hand, mail, commercial delivery, and electronic transmission.

(5) "Domestic corporation" means a corporation for profit, which is not a foreign corporation, incorporated under or subject to Chapter 31D of this code.

(6) "Domestic limited liability company" means a limited liability company, which is not a foreign limited liability company, under or subject to chapter 31B of this code.

(7) "Foreign corporation" means a for-profit corporation incorporated under a law other than the laws of this state.

(8) "Foreign limited liability company" means a limited liability company organized under a law other than the laws of this state.

(9) "Limited partnership" means a partnership as defined by §47-9-1 of this code.

(10) "Nonprofit corporation" means a nonprofit corporation as defined by §31E-1-150 of this code.

(11) "Registration fee" means the fee for the issuance of a certificate relating to the initial registration of a corporation, limited partnership, domestic limited liability company or foreign limited liability company described in §59-1-2(a)(2) of this code. The term "initial registration" also means the date upon which the registration fee is paid.

(12) "Veteran" means any person who has served as an active member of the armed forces of the United States, the National Guard, or a reserve component as described in 38 U. S. C. §101. Notwithstanding any provision in this code to the contrary, a veteran must be honorably discharged or under honorable conditions as described in 38 U. S. C. §101.

(13) "Veteran-owned business" or "Active-duty member-owned business" mean a business that meets the following criteria:

(A) Is at least 51 percent unconditionally owned by one or more veterans, active-duty members of any branch of the United States military or their respective spouses; or

(B) In the case of a publicly owned business, at least 51 percent of the stock is unconditionally owned by one or more veterans, active-duty members of any branch of the United States military or their respective spouses.

(b) *Required payment of annual report fee and filing of annual report.* — After June 30, 2008, no corporation, limited partnership, domestic limited liability company, or foreign limited liability company may engage in any business activity in this state without paying the annual report fee and filing the annual report as required by this section.

(c) *Annual report fee.* — After June 30, 2008, each corporation, limited partnership, domestic limited liability company, and foreign limited liability company engaged in or authorized to do business in this state shall pay an annual report fee of $25 for the services of the Secretary of State as attorney-in-fact for the corporation, limited partnership, domestic limited liability company, or foreign limited liability company and for such other

administrative services as may be imposed by law upon the Secretary of State. The fee is due and payable each year after the initial registration of the corporation, limited partnership, domestic limited liability company, or foreign limited liability company with the annual report described in subsection (d) of this section on or before the dates specified in subsection (e) of this section. The fee is due and payable each year with the annual report from corporations, limited partnerships, domestic limited liability companies, and foreign limited liability companies that paid the registration fee prior to July 1, 2008, on or before the dates specified in subsection (e) of this section. The annual report fees received by the Secretary of State pursuant to this subsection shall be deposited by the Secretary of State in the general administrative fees account established by §59-1-2 of this code.

(d) *Annual report*. —

(1) After June 30, 2008, each corporation, limited partnership, domestic limited liability company, and foreign limited liability company engaged in or authorized to do business in this state shall file an annual report. The report is due each year after the initial registration of the corporation, limited partnership, domestic limited liability company, or foreign limited liability company with the annual report fee described in subsection (c) of this section on or before the dates specified in subsection (e) of this section. The report is due each year from corporations, limited partnerships, domestic limited liability companies, and foreign limited liability companies that paid the registration fee prior to July 1, 2008, on or before the dates specified in subsection (e) of this section.

(2)(A) The annual report shall be filed with the Secretary of State on forms provided by the Secretary of State for that purpose. The annual report shall, in the case of corporations, contain: (i) The address of the corporation's principal office; (ii) the names and mailing addresses of its officers and directors; (iii) the name and mailing address of the person on whom notice of process may be served; (iv) the name and address of the corporation's parent corporation and of each subsidiary of the corporation licensed to do business in this state; (v) in the case of limited partnerships, domestic limited liability companies, and foreign limited liability

companies, similar information with respect to their principal or controlling interests as determined by the Secretary of State or otherwise required by law to be reported to the Secretary of State; (vi) the county or county code in which the principal office address or mailing address of the company is located; (vii) business class code; and (viii) any other information the Secretary of State considers appropriate.

(B) Notwithstanding any other provision of law to the contrary, the Secretary of State shall, upon request of any person, disclose, with respect to corporations: (i) The address of the corporation's principal office; (ii) the names and addresses of its officers and directors; (iii) the name and mailing address of the person on whom notice of process may be served; (iv) the name and address of each subsidiary of the corporation and the corporation's parent corporation; (v) the county or county code in which the principal office address or mailing address of the company is located; and (vi) the business class code. The Secretary of State shall provide similar information with respect to information in its possession relating to limited partnerships, domestic limited liability companies, and foreign limited liability companies, similar information with respect to their principal or controlling interests.

(e) *Annual reports and fees due July 1*. — Each domestic and foreign corporation, limited partnership, limited liability company, and foreign limited liability company shall file with the Secretary of State the annual report and pay the annual report fee by July 1 of each year.

(f) *Deposit of fees*. — The annual report fees received by the Secretary of State pursuant to this section shall be deposited by the Secretary of State in the general administrative fees account established by §59-1-2 of this code.

(g)(1) *Duty to pay*. — It shall be the duty of each corporation, limited partnership, limited liability company, and foreign limited liability company required to pay the annual report fees imposed under this article to remit them with a properly completed annual report to the Secretary of State, and if it fails to do so it shall be subject to the late fees prescribed in subsection (h) of this section

and dissolution or revocation, pursuant to this code: *Provided*, That before dissolution or revocation for failure to pay fees may occur, the Secretary of State shall notify the entity by certified mail, return receipt requested, of its failure to pay, all late fees or bad check fees associated with the failure to pay, and the date upon which dissolution or revocation will occur if all fees are not paid in full. The certified mail required by this subdivision shall be postmarked at least 30 days before the dissolution or revocation date listed in the notice.

(2) *Bad check fee*. — If any corporation, limited partnership, limited liability company, or foreign limited liability company submits payment by check or money order for the annual report fee imposed under this article and the check or money order is rejected because there are insufficient funds in the account or the account is closed, the Secretary of State shall assess a bad check fee to the corporation, limited partnership, limited liability company, or foreign limited liability company that is equivalent to the service charge paid by the Secretary of State due to the rejected check or money order. The bad check fee assessed under this subdivision shall be deposited into the account or accounts from which the Secretary of State paid the service charge.

(h) *Late fees*. —

(1) The following late fees shall be in addition to any other penalties and remedies available elsewhere in this code:

(A) *Administrative late fee*. — The Secretary of State shall assess upon each corporation, limited partnership, limited liability company, and foreign limited liability company delinquent in the payment of an annual report fee or the filing of an annual report an administrative late fee in the amount of $50.

(B) *Administrative late fees for nonprofit corporations*. — The Secretary of State shall assess each nonprofit corporation delinquent in the payment of an annual report fee or the filing of an annual report an administrative late fee in the amount of $25.

(2) The Secretary of State shall deposit the first $25,000 of fees collected under this subsection into the General Administrative Fees Account established in §59-1-2(h) of this code and shall deposit any additional fees collected under this section into the General Revenue Fund of the state.

(i) *Reports to Tax Commissioner; suspension, cancellation or withholding of business registration certificate*. —

(1) The Secretary of State shall, within 20 days after the close of each month, make a report to the Tax Commissioner for the preceding month, in which he or she shall set out the name of every business entity to which he or she issued a certificate to conduct business in the State of West Virginia during that month. The report shall set out the names and addresses of all corporations, limited partnerships, limited liability companies, and foreign limited liability companies to which he or she issued certificates of change of name or of change of location of principal office, dissolution, withdrawal, or merger. If the Secretary of State fails to make the report, it shall be the duty of the Tax Commissioner to report such failure to the Governor. A writ of mandamus shall lie for correction of such failure.

(2) Notwithstanding any other provisions of this code to the contrary, upon receipt of notice from the Secretary of State that a corporation, limited partnership, limited liability company, and foreign limited liability company is more than 30 days delinquent in the payment of annual report fees or in the filing of an annual report required by this section, the Tax Commissioner may suspend, cancel or withhold a business registration certificate issued to or applied for by the delinquent corporation, limited partnership, limited liability company, or foreign limited liability company until the same is paid and filed in the manner provided for the suspension, cancellation or withholding of business registration certificates for other reasons under §11-12-1 *et seq.* of this code.

(j) *Purchase of data*. — The Secretary of State will provide electronically, for purchase, any data maintained in the Secretary of State's Business Organizations Database. For the electronic

purchase of the entire Business Organizations Database, the cost is $12,000. For the purchase of the monthly updates of the Business Organizations Database, the cost is $1,000 per month. The fees received by the Secretary of State pursuant to this subsection shall be deposited by the Secretary of State in the general administrative fees account established by §59-1-2 of this code.

(k) The Secretary of State is authorized to collect the service fee per transaction, if any, charged for an online service from any customer who purchases data or conducts transactions through an online service.

(l) *Rules*. — The Secretary of State may propose rules for legislative approval, in accordance with the provisions of §29A-3-1 *et seq.* of this code, to implement this article.

(m) A veteran-owned business, as defined in subdivision (a)(13) of this section, commenced on or after July 1, 2015, or an active-duty member-owned business, as defined in subdivision (a)(13) of this section, commenced on or after July 1, 2021, is exempt from paying the annual report fee, required by this section, for the first four years after its initial registration: *Provided*, That a veteran-owned business or an active-duty member-owned business is not exempt from any filing deadlines or other fees required by this section.

CHAPTER 121

(Com. Sub. for H. B. 2884 - By Delegates Conley, J. Kelly, Mallow, Miller and Barnhart)

[Passed April 9, 2021; in effect ninety days from passage.]
[Approved by the Governor on April 26, 2021.]

AN ACT to amend and reenact §29B-1-2 and §29B-1-4 of the Code of West Virginia, 1931, as amended, all relating to exempting customer records of publicly-administered utility enterprises from production under the Freedom of Information Act; defining "publicly-administered utility enterprise"; establishing exemption from production; and allowing certain uses and disclosures of information under certain circumstances.

Be it enacted by the Legislature of West Virginia:

ARTICLE 1. PUBLIC RECORDS.

§29B-1-2. Definitions.

As used in this article:

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

(2) "Law-enforcement officer" shall have the same definition as this term is defined in W.Va. Code §30-29-1: *Provided,* That for purposes of this article, "law-enforcement officer" shall additionally include those individuals defined as "chief executive" in W.Va. Code §30-29-1.

(3) "Person" includes any natural person, corporation, partnership, firm or association.

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

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

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

(7) "Publicly-administered utility enterprise" includes electric power generation, transmission, and distribution systems; water supply and distribution systems; wastewater including stormwater collection, treatment, and disposal systems of all types; public transportation systems; solid waste collection and disposal systems and facilities; or other public entity providing utility services, excluding airports, which are owned or administered by a governmental entity.

§29B-1-4. Exemptions.

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

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

and which gives its users an opportunity to obtain business advantage over competitors;

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

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

(4)(A) Records of law-enforcement agencies that deal with the detection and investigation of crime and the internal records and notations of such law-enforcement agencies which are maintained for internal use in matters relating to law enforcement;

(B) Records identifying motor vehicles used, and the agencies using them, for undercover investigation activities conducted by state law-enforcement agencies or other agencies that are authorized by this code to use undercover or unmarked vehicles;

(5) Information specifically exempted from disclosure by statute;

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

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

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

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

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

(11) Specific intelligence information and specific investigative records dealing with terrorist acts or the threat of a terrorist act shared by and between federal and international law-enforcement agencies, state and local law-enforcement, and other agencies within the Department of Homeland Security;

(12) National security records classified under federal executive order and not subject to public disclosure under federal law that are shared by federal agencies and other records related to national security briefings to assist state and local government with domestic preparedness for acts of terrorism;

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

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

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

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

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

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

(19) Records of the Division of Corrections, Regional Jail and Correctional Facility Authority and the Division of Juvenile Services relating to design of corrections, jail and detention facilities owned or operated by the agency, and the policy directives and operational procedures of personnel relating to the safe and secure management of inmates or residents, that if released, could be used by an inmate or resident to escape a facility, or to cause injury to another inmate, resident, or to facility personnel;

(20) Information related to applications under §61-7-4 of this code, including applications, supporting documents, permits, renewals, or any other information that would identify an applicant for or holder of a concealed weapon permit: *Provided,* That information in the aggregate that does not identify any permit holder other than by county or municipality is not exempted: *Provided, however, That* information or other records exempted under this subdivision may be disclosed to a law-enforcement agency or officer: (i) To determine the validity of a permit, (ii) to assist in a criminal investigation or prosecution, or (iii) for other lawful law-enforcement purposes;

(21) Personal information of law-enforcement officers maintained by the public body in the ordinary course of the employer-employee relationship. As used in this paragraph, "personal information" means a law-enforcement officer's Social Security number, health information, home address, personal address, personal telephone numbers, and personal email addresses and those of his or her spouse, parents, and children as well as the

names of the law-enforcement officer's spouse, parents, and children;

(22) Information provided by a person when he or she elects to remain anonymous after winning a draw game prize, pursuant to §29-22-15a of this code; and

(23) Individually identifiable customer information created or maintained by a city or county or other public entity providing utility services in connection with the ownership or operation of a publicly-administered utility enterprise, including, but not limited to, customer names, addresses, and billing and usage records. Nothing contained herein is intended to limit public disclosure by a city or county of billing information:

(A) That the city or county determines will be useful or necessary to assist bond counsel, bond underwriters, underwriters' counsel, rating agencies or investors or potential investors in making informed decisions regarding bonds or other obligations incurred or to be incurred with respect to the publicly-administered utility enterprise;

(B) That is necessary to assist the city, county, state, or public enterprise to maintain the integrity and quality of services it provides; or

(C) That is necessary to assist law enforcement, public safety, fire protection, rescue, emergency management, or judicial officers in the performance of their duties.

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

(1) Intimidate or coerce the civilian population;

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

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

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

(c) The provisions of subdivisions (9) through (16), inclusive, subsection (a) of this section do not make subject to the provisions of this chapter any evidence of an immediate threat to public health or safety unrelated to a terrorist act or the threat of a terrorist act which comes to the attention of a public entity in the course of conducting a vulnerability assessment response or similar activity.