ACTS

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OF

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Regular Session, 2021
Constitutional Amendments, 2021
First Extraordinary Session, 2021
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WEST VIRGINIA HOUSE OF DELEGATES

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SPEAKER OF THE HOUSE

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(Com. Sub. for S. B. 9 - By Senators Tarr, Weld, Jeffries, Phillips, Nelson, Takubo, Maroney, and Woodrum)

[Passed March 24, 2021; in effect 90 days from passage (June 22, 2021)]
[Approved by the Governor on April 2, 2021.]

AN ACT to amend and reenact §29-22A-10 of the Code of West Virginia, 1931, as amended, relating to continuation of Licensed Racetrack Modernization Fund; and making technical corrections.

Be it enacted by the Legislature of West Virginia:

ARTICLE 22A. RACETRACK VIDEO LOTTERY.

§29-22A-10. Accounting and reporting; commission to provide communications protocol data; distribution of net terminal income; remittance through electronic transfer of funds; establishment of accounts and nonpayment penalties; commission control of accounting for net terminal income; settlement of accounts; manual reporting and payment may be required; request for reports; examination of accounts and records.

(a) The commission shall provide to manufacturers, or applicants applying for a manufacturer's permit, the protocol documentation data necessary to enable the respective manufacturer's video lottery terminals to communicate with the commission's central computer for transmitting auditing program information and for activation and disabling of video lottery terminals.

(b) The gross terminal income of a licensed racetrack shall be remitted to the commission through the electronic transfer of funds.

Licensed racetracks shall furnish to the commission all information and bank authorizations required to facilitate the timely transfer of moneys to the commission. Licensed racetracks must provide the commission 30 days' advance notice of any proposed account changes in order to assure the uninterrupted electronic transfer of funds. From the gross terminal income remitted by the licensee to the commission:

(1) The commission shall deduct an amount sufficient to reimburse the commission for its actual costs and expenses incurred in administering racetrack video lottery at the licensed racetrack and the resulting amount after the deduction is the net terminal income. The amount deducted for administrative costs and expenses of the commission may not exceed four percent of gross terminal income: *Provided,* That any amounts deducted by the commission for its actual costs and expenses that exceeds its actual costs and expenses shall be deposited into the State Lottery Fund. For the fiscal years ending June 30, 2011 through June 30, 2030, the term "actual costs and expenses" may include transfers of up to $9 million in surplus allocations for each fiscal year, as calculated by the commission when it has closed its books for the fiscal year, to the Licensed Racetrack Modernization Fund created by subdivision (2), of this subsection. For all fiscal years beginning on or after July 1, 2001, the commission shall not receive an amount of gross terminal income in excess of the amount of gross terminal income received during the fiscal year ending on June 30, 2001, but four percent of any amount of gross terminal income received in excess of the amount of gross terminal income received during the fiscal year ending on June 30, 2001, shall be deposited into the fund established in §29-22-18a of this code; and

(2) A Licensed Racetrack Modernization Fund is created within the lottery fund. For all fiscal years beginning on or after July 1, 2011, and ending with the fiscal year beginning July 1, 2030, the commission shall deposit such amounts as are available according to subdivision (1) of this subsection into a separate facility modernization account maintained within the Licensed Racetrack Modernization Fund for each racetrack. Each racetrack's share of each year's deposit shall be calculated in the same ratio as

each racetrack's apportioned contribution to the four percent administrative costs and expenses allowance provided for in subdivision (1) of this subsection for that year. For each $2 expended by a licensed racetrack for facility modernization improvements at the racetrack, having a useful life of three or more years and placed in service after July 1, 2011, the licensed racetrack shall receive $1 in recoupment from its facility modernization account. If the licensed racetrack's facility modernization account contains a balance in any fiscal year, the unexpended balance from that fiscal year will be available for matching for one additional fiscal year, after which time, the remaining unused balance carried forward shall revert to the lottery fund. For purposes of this section, the term "facility modernization improvements" includes acquisitions of new and unused video lottery terminals and related equipment. Video lottery terminals financed through the recoupment provided in this subdivision must be retained by the licensee in its West Virginia licensed location for a period of not less than five years from the date of initial installation.

(c) The amount resulting after the deductions required by subsection (b) of this section constitutes net terminal income that shall be divided as set out in this subsection. For all fiscal years beginning on or after July 1, 2001, any amount of net terminal income received in excess of the amount of net terminal income received during the fiscal year ending on June 30, 2001, shall be divided as set out in §29-22A-10b of this code. The licensed racetrack's share is in lieu of all lottery agent commissions and is considered to cover all costs and expenses required to be expended by the licensed racetrack in connection with video lottery operations. The division shall be made as follows:

(1) The commission shall receive 30 percent of net terminal income, which shall be paid into the State Lottery Fund as provided in §29-22A-10a of this code;

(2) Until July 1, 2005, 14 percent of net terminal income at a licensed racetrack shall be deposited in the special fund established by the licensee, and used for payment of regular purses in addition to other amounts provided for in §19-23-1 *et seq.* of this code, on

and after July 1, 2005, the rate shall be seven percent of net terminal income;

(3) The county where the video lottery terminals are located shall receive two percent of the net terminal income: *Provided,* That:

(A) Beginning July 1, 1999, and thereafter, any amount in excess of the two percent received during the fiscal year 1999 by a county in which a racetrack is located that has participated in the West Virginia Thoroughbred Development Fund since on or before January 1, 1999, shall be divided as follows:

(i) The county shall receive 50 percent of the excess amount; and

(ii) The municipalities of the county shall receive 50 percent of the excess amount, said 50 percent to be divided among the municipalities on a per capita basis as determined by the most recent decennial United States census of population; and

(B) Beginning July 1, 1999, and thereafter, any amount in excess of the two percent received during the fiscal year 1999 by a county in which a racetrack other than a racetrack described in paragraph (A) of this subdivision is located and where the racetrack has been located in a municipality within the county since on or before January 1, 1999, shall be divided, if applicable, as follows:

(i) The county shall receive 50 percent of the excess amount; and

(ii) The municipality shall receive 50 percent of the excess amount; and

(C) This proviso shall not affect the amount to be received under this subdivision by any other county other than a county described in paragraph (A) or (B) of this subdivision;

(4) One percent of net terminal income shall be paid for and on behalf of all employees of the licensed racing association by making a deposit into a special fund to be established by the Racing

Commission to be used for payment into the pension plan for all employees of the licensed racing association;

(5) The West Virginia Thoroughbred Development Fund created pursuant to §19-23-13b of this code and the West Virginia Greyhound Breeding Development Fund created pursuant to §19-23-10 of this code shall receive an equal share of a total of not less than one and one-half percent of the net terminal income;

(6) The West Virginia Racing Commission shall receive one percent of the net terminal income which shall be deposited and used as provided in §19-23-13c of this code;

(7) A licensee shall receive 46 and one-half percent of net terminal income;

(8)(A) The Tourism Promotion Fund established in §5B-2-12 of this code shall receive three percent of the net terminal income: *Provided,* That for the fiscal year beginning July 1, 2003, the tourism commission shall transfer from the Tourism Promotion Fund $5 million of the three percent of the net terminal income described in this section and §29-22A-10b of this code into the fund administered by the West Virginia Economic Development Authority pursuant to §31-15-7 of this code, $5 million into the Capitol Renovation and Improvement Fund administered by the Department of Administration pursuant to §5A-4-6 of this code, and $5 million into the Tax Reduction and Federal Funding Increased Compliance Fund; and

(B) Notwithstanding any provision of paragraph (A) of this subdivision to the contrary, for each fiscal year beginning after June 30, 2004, this three percent of net terminal income and the three percent of net terminal income described in §29-22a-10b(a)(8)(B) of this code shall be distributed as provided in this paragraph as follows:

(i) 1.375 percent of the total amount of net terminal income described in this section and §29-22A-10b of this code shall be deposited into the Tourism Promotion Fund created pursuant to §5B-2-12 of this code;

(ii) 0.375 percent of the total amount of net terminal income described in this section and in §29-22A-10b of this code shall be deposited into the Development Office Promotion Fund created pursuant to §5B-2-3b of this code;

(iii) 0.5 percent of the total amount of net terminal income described in this section and in §29-22A-10b of this code shall be deposited into the Research Challenge Fund created pursuant to §18B-1B-10 of this code;

(iv) 0.6875 percent of the total amount of net terminal income described in this section and in §29-22A-10b of this code shall be deposited into the Capitol Renovation and Improvement Fund administered by the Department of Administration pursuant to §5A-4-6 of this code; and

(v) 0.0625 percent of the total amount of net terminal income described in this section and in §29-22A-10b of this code shall be deposited into the 2004 Capitol Complex Parking Garage Fund administered by the Department of Administration pursuant to §5A-4-5a of this code;

(9)(A) On and after July 1, 2005, seven percent of net terminal income shall be deposited into the Workers' Compensation Debt Reduction Fund created in §23-2d-5 of this code: *Provided,* That in any fiscal year when the amount of money generated by this subdivision totals $11 million, all subsequent distributions pursuant to this subdivision shall be deposited in the special fund established by the licensee and used for the payment of regular purses in addition to the other amounts provided in §19-23-1 *et seq.* of this code;

(B) The deposit of the seven percent of net terminal income into the Workers' Compensation Debt Reduction Fund pursuant to this subdivision shall expire and not be imposed with respect to these funds and shall be deposited in the special fund established by the licensee and used for payment of regular purses in addition to the other amounts provided in §19-23-1 *et seq.* of this code on and after the first day of the month following the month in which the Governor certifies to the Legislature that: (i) The revenue bonds

issued pursuant to §23-2D-1 *et seq.* of this code have been retired or payment of the debt service provided for; and (ii) that an independent certified actuary has determined that the unfunded liability of the old fund, as defined in chapter 23 of this code, has been paid or provided for in its entirety; and

(10) The remaining one percent of net terminal income shall be deposited as follows:

(A) For the fiscal year beginning July 1, 2003, the veterans memorial program shall receive one percent of the net terminal income until sufficient moneys have been received to complete the veterans memorial on the grounds of the State Capitol Complex in Charleston, West Virginia. The moneys shall be deposited in the State Treasury in the Division of Culture and History special fund created pursuant to §29-1I-3 of this code: *Provided,* That only after sufficient moneys have been deposited in the fund to complete the veterans memorial and to pay in full the annual bonded indebtedness on the veterans memorial, not more than $20,000 of the one percent of net terminal income provided in this subdivision shall be deposited into a special revenue fund in the State Treasury, to be known as the John F. 'Jack' Bennett Fund. The moneys in this fund shall be expended by the Division of Veterans Affairs to provide for the placement of markers for the graves of veterans in perpetual cemeteries in this state. The Division of Veterans Affairs shall promulgate legislative rules pursuant to the provisions of §29-3-1 *et seq.* of this code specifying the manner in which the funds are spent, determine the ability of the surviving spouse to pay for the placement of the marker and setting forth the standards to be used to determine the priority in which the veterans' grave markers will be placed in the event that there are not sufficient funds to complete the placement of veterans' grave markers in any one year, or at all. Upon payment in full of the bonded indebtedness on the veterans memorial, $100,000 of the one percent of net terminal income provided in this subdivision shall be deposited in the special fund in the Division of Culture and History created pursuant to §29-1I-3 of this code and be expended by the Division of Culture and History to establish a West Virginia veterans memorial archives within the Cultural Center to serve as a repository for the

documents and records pertaining to the veterans memorial, to restore and maintain the monuments and memorial on the capitol grounds: *Provided, however,* That $500,000 of the one percent of net terminal income shall be deposited in the State Treasury in a special fund of the Department of Administration, created pursuant to §5A-4-5 of this code, to be used for construction and maintenance of a parking garage on the State Capitol Complex; and the remainder of the one percent of net terminal income shall be deposited in equal amounts in the Capitol Dome and Improvements Fund created pursuant to §5A-4-2 of this code and Cultural Facilities and Capitol Resources Matching Grant Program Fund created pursuant to §29-1-3 of this code.

(B) For each fiscal year beginning after June 30, 2004:

(i) Five hundred thousand dollars of the one percent of net terminal income shall be deposited in the State Treasury in a special fund of the Department of Administration, created pursuant to §5A-4-5 of this code, to be used for construction and maintenance of a parking garage on the State Capitol Complex; and

(ii) The remainder of the one percent of net terminal income and all of the one percent of net terminal income described in §29-22A-10b(a)(9)(B) of this code shall be distributed as follows: The net terminal income shall be deposited in equal amounts into the Capitol Dome and Capitol Improvements Fund created pursuant to §5A-4-2 of this code and the Cultural Facilities and Capitol Resources Matching Grant Program Fund created pursuant to §29-1-3 of this code until a total of $1,500,000 is deposited into the Cultural Facilities and Capitol Resources Matching Grant Program Fund; thereafter, the remainder shall be deposited into the Capitol Dome and Capitol Improvements Fund.

(d) Each licensed racetrack shall maintain in its account an amount equal to or greater than the gross terminal income from its operation of video lottery machines, to be electronically transferred by the commission on dates established by the commission. Upon a licensed racetrack's failure to maintain this balance, the commission may disable all of a licensed racetrack's video lottery terminals until full payment of all amounts due is made. Interest

shall accrue on any unpaid balance at a rate consistent with the amount charged for state income tax delinquency pursuant to chapter 11 of this code. The interest shall begin to accrue on the date payment is due to the commission.

(e) The commission's central control computer shall keep accurate records of all income generated by each video lottery terminal. The commission shall prepare and mail to the licensed racetrack a statement reflecting the gross terminal income generated by the licensee's video lottery terminals. Each licensed racetrack shall report to the commission any discrepancies between the commission's statement and each terminal's mechanical and electronic meter readings. The licensed racetrack is solely responsible for resolving income discrepancies between actual money collected and the amount shown on the accounting meters or on the commission's billing statement.

(f) Until an accounting discrepancy is resolved in favor of the licensed racetrack, the commission may make no credit adjustments. For any video lottery terminal reflecting a discrepancy, the licensed racetrack shall submit to the commission the maintenance log which includes current mechanical meter readings and the audit ticket which contains electronic meter readings generated by the terminal's software. If the meter readings and the commission's records cannot be reconciled, final disposition of the matter shall be determined by the commission. Any accounting discrepancies which cannot be otherwise resolved shall be resolved in favor of the commission.

(g) Licensed racetracks shall remit payment by mail if the electronic transfer of funds is not operational or the commission notifies licensed racetracks that remittance by this method is required. The licensed racetracks shall report an amount equal to the total amount of cash inserted into each video lottery terminal operated by a licensee, minus the total value of game credits which are cleared from the video lottery terminal in exchange for winning redemption tickets, and remit the amount as generated from its terminals during the reporting period. The remittance shall be sealed in a properly addressed and stamped envelope and deposited in the United States mail no later than noon on the day when the

payment would otherwise be completed through electronic funds transfer.

(h) Licensed racetracks may, upon request, receive additional reports of play transactions for their respective video lottery terminals and other marketing information not considered confidential by the commission. The commission may charge a reasonable fee for the cost of producing and mailing any report other than the billing statements.

(i) The commission has the right to examine all accounts, bank accounts, financial statements, and records in a licensed racetrack's possession, under its control or in which it has an interest and the licensed racetrack shall authorize all third parties in possession or in control of the accounts or records to allow examination of any of those accounts or records by the commission.

(j) If a court of competent jurisdiction finds that the provisions of this section as amended and reenacted in 2021 and the provisions of §29-22A-10d of this code conflict and cannot be harmonized, the provisions of §29-22A-10d of this code shall control.

CHAPTER 123

(S. B. 10 - By Senators Tarr, Weld, Jeffries, Phillips, Nelson, Takubo, Maroney, and Woodrum)

[Passed March 23, 2021; in effect 90 days from passage (June 21, 2021)]
[Approved by the Governor on April 2, 2021.]

AN ACT to amend and reenact §29-22C-8 of the Code of West Virginia, 1931, as amended, relating to changing date the annual racetrack table games license renewal fee is due to October 1 annually; and making technical corrections.

Be it enacted by the Legislature of West Virginia:

ARTICLE 22C. WEST VIRGINIA LOTTERY RACETRACK TABLE GAMES ACT.

§29-22C-8. License to operate a racetrack with West Virginia Lottery table games.

(a) *Racetrack table games licenses*. — The commission may issue up to four racetrack table games licenses to operate West Virginia Lottery table games in accordance with the provisions of this article. The Legislature intends that no more than four licenses to operate a racetrack with West Virginia Lottery table games in this state shall be permitted in any event.

(b) *Grant of license*. — Upon the passage of a local option election in a county in accordance with the provisions of §29-22C-7 of this code, the commission shall immediately grant a West Virginia Lottery table games license, and a license for the right to conduct West Virginia Lottery table games as assignee to the intellectual property rights of the state, to allow the licensee to conduct West Virginia Lottery table games at the licensed pari-mutuel racetrack identified on the local option election ballot,

provided that racetrack holds a valid racetrack video lottery license issued by the commission pursuant to §29-22A-1 *et seq.* of this code and a valid racing license granted by the West Virginia Racing Commission pursuant to the provisions of §19-23-1 *et seq.* of this code and has otherwise met the requirements for licensure under the provisions of this article and the rules of the commission.

(c) *Location*. — A racetrack table games license authorizes the operation of West Virginia Lottery table games on the grounds of the particular licensed facility identified in the racetrack video lottery license issued pursuant to §29-22A-1 *et seq.* of this code and the license to conduct horse or dog racing issued pursuant to §19-23-1 *et seq.* of this code.

(d) *Floor plan submission requirement*. — Prior to commencing the operation of any table games in a designated gaming area, a racetrack table games licensee shall submit to the commission for its approval a detailed floor plan depicting the location of the designated gaming area in which table games gaming equipment will be located and its proposed arrangement of the table games gaming equipment. Any floor plan submission that satisfies the requirements of the rules promulgated by the commission shall be considered approved by the commission unless the racetrack table games licensee is notified in writing to the contrary within one month of filing a detailed floor plan.

(e) *Management service contracts.* —

(1) *Approval.* — A racetrack table games licensee may not enter into any management service contract that would permit any person other than the licensee to act as the commission's agent in operating West Virginia Lottery table games unless the management service contract is: (A) With a person licensed under this article to provide management services; (B) is in writing; and (C) the contract has been approved by the commission.

(2) *Material change*. — The licensed racetrack table games licensee shall submit any material change in a management service contract previously approved by the commission to the

commission for its approval or rejection before the material change may take effect.

(3) *Prohibition on assignment or transfer*. — A management services contract may not be assigned or transferred to a third party.

(4) *Other commission approvals and licenses*. — The duties and responsibilities of a management services provider under a management services contract may not be assigned, delegated, subcontracted, or transferred to a third party to perform without the prior approval of the commission. Third parties must be licensed under this article before providing service. The commission may by rule clarify application of this subdivision and provide exceptions to its application. The commission shall license and require the display of West Virginia Lottery game logos on appropriate game surfaces and other gaming items and locations as the commission considers appropriate.

(f) *Coordination of licensed activities*. — In order to coordinate various licensed activities within racetrack facilities, the following provisions apply to licensed racetrack facilities:

(1) The provisions of this article and of §29-22A-1 *et seq.* of this code shall be interpreted to allow West Virginia Lottery table games and racetrack video lottery operations under those articles to be harmoniously conducted in the same designated gaming area.

(2) On the effective date of this article, the provisions of §29-22C-23 of this code apply to all video lottery games conducted within a racetrack facility, notwithstanding any inconsistent provisions contained in §29-22A-1 *et seq.* of this code to the contrary.

(3) On and after the effective date of this article, vacation of the premises after service of beverages ceases is not required, notwithstanding to the contrary any inconsistent provisions of this code or inconsistent rules promulgated by the Alcohol Beverage Control Commissioner with respect to hours of sale of those beverages, or required vacation of the premises.

(g) *Fees, expiration date, and renewal*. —

(1) An initial racetrack table games license fee of $1,500,000 shall be paid to the commission at the time of issuance of the racetrack table games license, regardless of the number of months remaining in the license year for which it is issued. All licenses expire at the end of the day on September 30 each year.

(2) The commission shall annually renew a racetrack table games license as of October 1 of each year, provided the licensee:

(A) Successfully renews its racetrack video lottery license under §29-22A-1 *et seq.* of this code before October 1;

(B) Pays to the commission the annual license renewal fee of $2,500,000 required by this section at the time it files its application for renewal of its license under §29-22A-1 *et seq.* of this code; and

(C) During the current license year, the licensee complied with all provisions of this article, all rules adopted by the commission, and all final orders of the commission applicable to the licensee.

(3) *Annual license surcharge for failure to construct hotel on premises*. — It is the intent of the Legislature that each racetrack for which a racetrack table games license has been issued be or become a destination tourism resort facility. To that end, it is important that each racetrack for which a racetrack table games license has been issued operate a hotel with significant amenities. Therefore, in addition to all other taxes and fees required by the provisions of this article, there is hereby imposed, upon each racetrack for which a racetrack table games license has been issued an annual license surcharge, payable to the commission in the amount of $2,500,000 if that racetrack does not operate a hotel on its racing property that contains at least 150 guest rooms with significant amenities within three years of the passage of the local option election in its county authorizing table games at the racetrack, provided the time for completion of the hotel shall be extended by the same number of days as the completion of the hotel is delayed by force majeure events or conditions beyond the reasonable control of the racetrack licensee. The surcharge shall be paid upon each renewal of its racetrack table games license made

after the expiration of the three year period, and may be extended by the above force majeure events or conditions, until the racetrack opens a qualifying hotel.

(4) If the licensee fails to apply to renew its license under §19-23-1 *et seq.* and §29-22A-1 *et seq.* of this code until after the license expires, the commission shall renew its license under this article at the time it renews its license under §29-22A-1 *et seq.* of this code, provided the licensee has paid the annual license fee required by this section and during the preceding license year the licensee complied with all provisions of this article, all rules adopted by the commission and all final orders of the commission applicable to the licensee.

(h) *Facility qualifications*. — A racetrack table games licensee shall demonstrate that the racetrack with West Virginia Lottery table games will: (1) Be accessible to disabled individuals in accordance with applicable federal and state laws; (2) be licensed in accordance with this article, and all other applicable federal, state, and local laws; and (3) meet any other qualifications specified in rules adopted by the commission.

(i) *Surety bond*. — A racetrack table games licensee shall execute a surety bond to be given to the state to guarantee the licensee faithfully makes all payments in accordance with the provisions of this article and rules promulgated by the commission. The surety bond shall be:

(1) In the amount determined by the commission to be adequate to protect the state against nonpayment by the licensee of amounts due the state under this article;

(2) In a form approved by the commission; and

(3) With a surety approved by the commission who is licensed to write surety insurance in this state. The bond shall remain in effect during the term of the license and may not be canceled by a surety on less than 30 days' notice in writing to the commission. The total and aggregate liability of the surety on the bond is limited to the amount specified in the bond.

(j) *Authorization*. — A racetrack table games license authorizes the licensee act as an agent of the commission in operating an unlimited amount of West Virginia Lottery table games while the license is active, subject to subsection (d) of this section. A racetrack table games license is not transferable or assignable and cannot be sold or pledged as collateral.

(k) *Audits*. — When applying for a license and annually thereafter prior to license renewal, a racetrack table games licensee shall submit to the commission an annual audit, by a certified public accountant, of the financial transactions and condition of the licensee's total operations. The audit shall be made in accordance with generally accepted accounting principles and applicable federal and state laws.

(l) *Commission office space*. — A racetrack table games licensee shall provide to the commission, at no cost to the commission, suitable office space at the racetrack facility for the commission to perform the duties required of it by this article and the rules of the commission.

CHAPTER 124

(Com. Sub. for S. B. 263 - By Senators Hamilton, Phillips, Romano, Woodrum, Caputo, and Lindsay)

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

AN ACT to amend and reenact §47-20-2 of the Code of West Virginia, 1931, as amended; to amend and reenact §47-20-15 of said code; to amend and reenact §47-21-2 of said code; and to amend and reenact §47-21-15 of said code, all relating to charitable bingo and chartable raffles generally; authorizing charitable and public service organizations to raise funds by conducting raffles and bingo virtually over the Internet and authorizing reasonable, necessary, and actual expenses in operating charitable bingo and lottery occasions to not exceed 40 percent of gross proceeds; and defining terms.

Be it enacted by the Legislature of West Virginia:

ARTICLE 20. CHARITIBLE BINGO.

§47-20-2. Definitions.

For purposes of this article, unless specified otherwise:

(a) "Bingo" means the game wherein participants pay consideration for the use of one or more paper or virtual cards bearing several rows of numbers in which no two cards played in any one game contain the same sequence or pattern. When the game commences, numbers are selected by chance, one by one, and announced. The players cover or mark those numbers announced as they appear on the card or cards which they are using. The player who first announces that he or she has covered a predetermined sequence or pattern which had been preannounced for that game is,

upon verification that he or she has covered the predetermined sequence or pattern, declared the winner of that game. Bingo, as authorized by this article, may be operated and played virtually over the Internet using an online bingo software system or web application.

(b) "Bingo occasion" or "occasion" means a single gathering or session at which a series of one or more successive bingo games is conducted by a single licensee.

(c) "Charitable or public service activity or endeavor" means any bona fide activity or endeavor which directly benefits a number of people by:

(1) Assisting them to establish themselves in life as contributing members of society through education or religion;

(2) Relieving them from disease, distress, suffering, constraint, or the effects of poverty;

(3) Increasing their comprehension of, and devotion to, the principles upon which this nation was founded and to the principles of good citizenship;

(4) Making them aware of, or educating them about, issues of public concern so long as the activity or endeavor is not aimed at influencing legislation or supporting or participating in the campaign of any candidate for public office;

(5) By lessening the burdens borne by government or voluntarily supporting, augmenting, or supplementing services which government would normally render to the people;

(6) Providing or supporting nonprofit community activities for youth, senior citizens, or the disabled; or

(7) Providing or supporting nonprofit cultural or artistic activities.

(d) "Charitable or public service organization" means a bona fide, not-for-profit, tax-exempt, benevolent, educational,

philanthropic, humane, patriotic, civic, religious, fraternal, or eleemosynary incorporated or unincorporated association or organization; or a volunteer fire department, rescue unit, or other similar volunteer community service organization or association; but does not include any nonprofit association or organization, whether incorporated or not, which is organized primarily for the purposes of influencing legislation or supporting or promoting the campaign of any candidate for public office.

An organization or association is tax-exempt if it is, and has received from the Internal Revenue Service a determination letter that is currently in effect stating that the organization is, exempt from federal income taxation under subsection 501(a) and described in subsection 501(c)(3), 501(c)(4), 501(c)(8), 501(c)(10), 501(c)(19), or 501(d) of the Internal Revenue Code.

(e) "Commissioner" means the State Tax Commissioner.

(f) "Concession" means any stand, booth, cart, counter, or other facility, whether stationary or movable, where beverages, both alcoholic and nonalcoholic, food, snacks, cigarettes or other tobacco products, newspapers, souvenirs, or any other items are sold to patrons by an individual operating the facility. Notwithstanding anything contained in §60-7-12(a)(2) of this code to the contrary, "concession" includes beverages which are regulated by, and are subject to, the provisions of chapter 60 of this code: *Provided,* That in no case may the sale or the consumption of alcoholic beverages or nonintoxicating beer be permitted in any area where bingo is conducted.

(g) "Conduct" means to direct the actual playing of a bingo game by activities including, but not limited to, handing out bingo cards, collecting fees, drawing the numbers, announcing the numbers, posting the numbers, verifying winners, and awarding prizes.

(h) "Expend net proceeds for charitable or public service purposes" means to devote the net proceeds of a bingo occasion or occasions to a qualified recipient organization or as otherwise

provided by this article and approved by the commissioner pursuant to §47-20-15 of this code.

(i) "Gross proceeds" means all moneys collected or received from the conduct of bingo at all bingo occasions held by a licensee during a license period; this term shall not be considered to include any moneys collected or received from the sale of concessions at bingo occasions.

(j) "Joint bingo occasion" means a single gathering or session at which a series of one or more successive bingo games is conducted by two or more licensees.

(k) "Licensee" means any organization or association granted an annual, limited occasion, or state fair bingo license pursuant to the provisions of this article.

(l) "Net proceeds" means all moneys collected or received from all the conduct of bingo at bingo occasions held by a licensee during a license period after payment of expenses authorized by §47-20-10, §47-20-13, §47-20-15, and §47-20-22 of this code; this term shall not be considered to include moneys collected or received from the sale of concessions at bingo occasions.

(m) "Person" means any individual, association, society, incorporated or unincorporated organization, firm, partnership, or other nongovernmental entity or institution.

(n) "Patron" means any individual who attends a bingo occasion other than an individual who is participating in the conduct of the occasion or in the operation of any concession, whether or not the individual is charged an entrance fee or plays any bingo games.

(o) "Qualified recipient organization" means any bona fide, not-for-profit, tax-exempt, as defined in subdivision (d) of this subsection, incorporated or unincorporated association or organization which is organized and functions exclusively to directly benefit a number of people as provided in paragraphs (1) through (7), inclusive, subdivision (c) of this subsection. "Qualified recipient organization" includes without limitation any

licensee which is organized and functions exclusively as provided in this subdivision.

(p) "Venue" means the location in which bingo occasions are held.

§47-20-15. Payment of reasonable expenses from proceeds; net proceeds disbursement.

(a) The reasonable, necessary and actual expenses incurred in connection with the conduct of bingo occasions, not to exceed 40 percent of the gross proceeds collected during a license period, may be paid out of the gross proceeds of the conduct of bingo, including, but not limited to:

(1) Rent paid for the use of the premises: *Provided,* That a copy of the rental agreement was filed with the bingo license application and any changes to the rental agreement were filed within 10 days of being made: *Provided, however,* That in no event may the rent paid for the use of any premises exceed the fair market value of rent for the premises;

(2) The cost of custodial services;

(3) The cost to the licensee organization for equipment and supplies used to conduct the bingo occasion;

(4) The cost to the licensee organization for advertising the bingo occasion;

(5) The cost of hiring security personnel, licensed pursuant to the provisions of article eighteen, chapter thirty of this code; and

(6) The cost of providing child care services to the raffle patrons: *Provided,* That any proceeds received from the provision of child care services shall be handled the same as raffle proceeds.

(b) The actual cost to the licensee for prizes, not to exceed the amounts as specified in section ten of this article, may be paid out of the gross proceeds of the conduct of bingo.

(c) The cost of any refreshments, souvenirs or any other item sold or otherwise provided through any concession to the patrons may not be paid for out of the gross proceeds from the bingo occasion. The licensee shall expend all net bingo proceeds and any interest earned on the proceeds for the charitable or public service purposes stated in the application within one year after the expiration of the license under which the bingo occasions were conducted. A licensee which does not qualify as a qualified recipient organization may apply to the commissioner at the time it applies for a bingo license or as provided in subsection (e) of this section for permission to apply any or all of its net proceeds to directly support a charitable or public service activity or endeavor which it sponsors.

(d) No gross proceeds from any bingo operation may be devoted or in any manner used by any licensee or qualified recipient organization for the construction or acquisition of real or personal property except that which is used exclusively for one or more charitable or public service purposes or as provided in subdivision (3), subsection (a) of this section.

(e) The Tax Commissioner has the authority to disapprove any contract for sale of goods or services to any charitable bingo licensee for use in or with relation to any charitable bingo operation or occasion, or any lease of real or tangible personal property to any charitable bingo licensee for use in or with relation to any charitable bingo operation or occasion, if the contract or lease is unreasonable or not representative of fair market value. Contracts or leases which are disapproved shall be considered to be in contravention of this article, and are void. Any attempt by any charitable bingo licensee to engage in transactions under the terms of any lease or contract that has been disapproved is grounds for revocation or suspension of the charitable bingo license and for refusal by the Tax Commissioner to renew the charitable bingo license.

(f) If a property owner or lessee, including his or her agent, has entered into a rental contract to hold super bingo occasions on his or her premises, the premises shall be rented, for super bingo occasions, to not more than four super bingo licensees during any

period of four consecutive calendar weeks: *Provided,* That each of the charitable or public service organizations desiring to hold a super bingo occasion must possess its own super bingo license. Subject to this limitation, the premises may be used for super bingo occasions during two consecutive days during a conventional weekend. For purposes of this subsection, the term "conventional weekend" means Saturday and Sunday: *Provided, however,* That the super bingo occasions may occur at the same facility no more often than alternating weekends during a calendar month.

(g) Any licensee which, in good faith, finds itself unable to comply with the requirements of this provision shall apply to the commissioner for permission to expend its net proceeds for one or more charitable or public service purposes other than that stated in its license application or for permission to expend its net proceeds later than the one-year time period specified in this section. The application shall be on a form furnished by the commissioner and shall include the particulars of the requested changes and the reasons for the changes. The application shall be filed no later than 60 days before the end of the one-year period specified in this section. In the case of an application to extend the time in which the net proceeds are to be expended for a charitable or public service purpose, the licensee shall file such periodic reports with the commissioner as the commissioner directs until the proceeds are expended.

ARTICLE 21. CHARITABLE RAFFLES.

§47-21-2. Definitions.

For purposes of this article, unless specified otherwise:

(a) "Charitable or public service activity or endeavor" means any bona fide activity or endeavor which directly benefits a number of people by:

(1) Contributing to educational or religious purposes;

(2) Relieving them from disease, distress, suffering, constraint, or the effects of poverty;

(3) Increasing their comprehension of, and devotion to, the principles upon which this nation was founded and to the principles of good citizenship;

(4) Making them aware of, or educating them about, issues of public concern so long as the activity or endeavor is not aimed at supporting or participating in the campaign of any candidate for public office;

(5) Lessening the burdens borne by government or voluntarily supporting, augmenting, or supplementing services which government would normally render to the people;

(6) Providing or supporting nonprofit community activities for youth, senior citizens, or the disabled;

(7) Providing or supporting nonprofit cultural or artistic activities; or

(8) Providing or supporting any political party executive committee.

(b) "Charitable or public service organization" means a bona fide, not-for-profit, tax-exempt, benevolent, educational, philanthropic, humane, patriotic, civic, religious, fraternal, or eleemosynary, incorporated or unincorporated association, or organization; or a volunteer fire department, rescue unit, or other similar volunteer community service organization or association; but does not include any nonprofit association or organization, whether incorporated or not, which is organized primarily for the purposes of influencing legislation or supporting or promoting the campaign of any single candidate for public office.

(c) "Commissioner" means the State Tax Commissioner.

(d) "Concession" means any stand, booth, cart, counter, or other facility, whether stationary or movable, where beverages, both alcoholic and nonalcoholic, food, snacks, cigarettes or other tobacco products, newspapers, souvenirs, or any other items are sold to patrons by an individual operating the facility. Notwithstanding anything contained in §60-7-12(a)(2) of this code

to the contrary, "concession" includes beverages which are regulated by and are subject to the provisions of chapter 60 of this code.

(e) "Conduct" means to direct the actual holding of a raffle by activities including, but not limited to, handing out tickets, collecting money, drawing the winning numbers or names, announcing the winning numbers or names, posting the winning numbers or names, verifying winners, and awarding prizes.

(f) "Expend net proceeds for charitable or public service purposes" means to devote the net proceeds of a raffle occasion or occasions to a qualified recipient organization or as otherwise provided by this article and approved by the commissioner pursuant to §47-21-15 of this code.

(g) "Gross proceeds" means all moneys collected or received from the conduct of a raffle or raffles at all raffle occasions held by a licensee during a license period; this term shall not be determined to include any moneys collected or received from the sale of concessions at raffle occasions.

(h) "Joint raffle occasion" means a single gathering or session at which a series of one or more successive raffles is conducted by two or more licensees.

(i) "Licensee" means any organization or association granted an annual or limited occasion license pursuant to the provisions of this article.

(j) "Net proceeds" means all moneys collected or received from the conduct of raffle or raffles at occasions held by a licensee during a license period after payment of the raffle expenses authorized by §47-21-11, §47-21-13, and §47-21-15 of this code; this term shall not be determined to include moneys collected or received from the sale of concessions at raffle occasions.

(k) "Person" means any individual, association, society, incorporated or unincorporated organization, firm, partnership, or other nongovernmental entity or institution.

(l) "Patron" means any individual who attends a raffle occasion other than an individual who is participating in the conduct of the occasion or in the operation of any concession, whether or not the individual is charged an entrance fee or participates in any raffle.

(m) "Qualified recipient organization" means any bona fide, not-for-profit, tax-exempt, as defined in subdivision (p) of this subsection, incorporated or unincorporated association or organization which is organized and functions exclusively to directly benefit a number of people as provided in paragraphs (1) through (7), inclusive, subdivision (a) of this subsection. "Qualified recipient organization" includes, without limitation, any licensee which is organized and functions exclusively as provided in this subdivision.

(n) "Raffle" means a game involving the selling or distribution of paper or virtual tickets, entitling the holder or holders to participate in a raffle game for a chance on a prize or prizes: *Provided*, That any mechanical or electronic raffle ticket system of whatever design or function is prohibited except as provided in paragraph (2) of this subdivision. This subdivision shall not be interpreted to prevent the use of:

(1) Hand-cranked or motorized drum mixers which randomly mix tickets or other indicia together for the purpose of allowing the hand drawing of a ticket or winning indicia;

(2) Mechanical or electronic ticket dispenser systems that produce paper tickets with randomly generated indicia that cannot be redeemed electronically, cannot be used for any other purpose than a one-time raffle, and are limited as follows:

(A) No more than three electronic ticket dispensing units in facilities with a capacity of fewer than 3,000 people; or

(B) No more than one electronic ticket dispensing unit for every 1,000 persons permitted in facilities with a maximum occupancy greater than 3,000 people, not to exceed a total of 10 dispensing units;

(3) A cash register for handling proceeds of sales and other ordinary cash-handling and record-keeping functions of a raffle licensee;

(4) Accounting and record-keeping software for the purpose of maintaining accounting and reporting records of the licensee, and the computer for running those applications; or

(5) An online raffle software system, web application, method, or process for the purpose of conducting online raffles over the Internet.

(o) "Raffle occasion" or "occasion" means a single gathering or session at which a series of one or more successive raffles is conducted by a single licensee.

(p) "Tax-exempt association or organization" means an association or organization which is, and has received from the Internal Revenue Service a determination letter that is currently in effect stating that the organization is, exempt from federal income taxation under subsection 501(a) and described in subsection 501(c)(3), 501(c)(4), 501(c)(8), 501(c)(10), 501(c)(19), or 501(d) of the Internal Revenue Code of 1986, as amended; or is exempt from income taxes under subsection 527(a) of that code.

§47-21-15. Payment of reasonable expenses from proceeds; net proceeds disbursement.

(a) The reasonable, necessary and actual expenses incurred in connection with the conduct of raffle occasions, not to exceed 40 percent of the gross proceeds collected during a license period, may be paid out of the gross proceeds of the conduct of the raffle, including, but not limited to:

(1) Rent paid for the use of the premises: *Provided*, That a copy of the rental agreement was filed with the raffle license application with any modifications to the rental agreement to be filed within 10 days of being made: *Provided, however*, That in no event may the rent paid for the use of any premises exceed the fair market value of rent for the premises;

(2) The cost of custodial services;

(3) The cost to the licensee organization for equipment and supplies used to conduct the raffle occasion;

(4) The cost to the licensee organization for advertising the raffle occasion;

(5) The cost of hiring security personnel, licensed pursuant to the provisions of article eighteen, chapter thirty of this code; and

(6) The cost of providing child care services to the raffle patrons: *Provided*, That any proceeds received from the provision of child care services shall be handled the same as raffle proceeds.

(b) The actual cost to the licensee for prizes, not to exceed the amounts as specified in section eleven of this article, may be paid out of the gross proceeds of the conduct of raffle.

(c) The cost of any refreshments, souvenirs or any other item sold or otherwise provided through any concession to the patrons may not be paid for out of the gross proceeds from the raffle occasion. The licensee shall expend all net raffle proceeds and any interest earned on the net raffle proceeds for the charitable or public service purposes stated in the application within one year after the expiration of the license under which the raffle occasions were conducted. A licensee which does not qualify as a qualified recipient organization may apply to the commissioner at the time it applies for a raffle license or as provided in subsection (e) of this section for permission to apply any or all of its net proceeds to directly support a charitable or public service activity or endeavor which it sponsors.

(d) No gross proceeds from any raffle operation may be devoted or in any manner used by any licensee or qualified recipient organization for the construction, acquisition, or improvement, of real or personal property except that which is used exclusively for one or more charitable or public service purposes or as provided in subdivision (3), subsection (a) of this section.

(e) The Tax Commissioner has the authority to disapprove any contract for sale of goods or services to any charitable raffle licensee for use in or with relation to any charitable raffle operation or occasion, or any lease of real or tangible personal property to any charitable raffle licensee for use in or with relation to any charitable raffle operation or occasion, if the contract or lease is unreasonable or not representative of fair market value. Disapproved contracts or leases shall be considered to be in contravention of this article, and are void. Any attempt by any charitable raffle licensee to engage in transactions under the terms of any disapproved lease or contract is grounds for revocation or suspension of the charitable raffle license and for refusal by the Tax Commissioner to renew the charitable raffle license.

(f) Any licensee which, in good faith, finds itself unable to comply with the requirements of the subsections (a) through (e) of this section shall apply to the commissioner for permission to expend its net proceeds for one or more charitable or public service purposes other than that stated in its license application or for permission to expend its net proceeds later than the one-year time period specified in this section. The application shall be on a form furnished by the commissioner and shall include the particulars of the requested changes and the reasons for the changes. The application shall be filed no later than 60 days before the end of the one-year period specified in this section. In the case of an application to extend the time in which the net proceeds are to be expended for a charitable or public service purpose, the licensee shall file such periodic reports with the commissioner as the commissioner directs until the proceeds are expended.

CHAPTER 125

(S. B. 358 - By Senators Tarr and Nelson)

[Passed March 5, 2021; in effect 90 days from passage (June 3, 2021)]
[Approved by the Governor on March 16, 2021.]

AN ACT to amend and reenact §29-22A-9 of the Code of West Virginia, 1931, as amended, relating to removing the prohibition on having automated teller machines in the area where racetrack video lottery machines are located; and making technical corrections.

Be it enacted by the Legislature of West Virginia:

ARTICLE 22A. RACETRACK VIDEO LOTTERY.

§29-22A-9. General duties of all video lottery license and permit holders; duties of permitted manufacturers; duties of permitted service technicians; duties of permitted validation managers; duties of floor attendants; duties of licensed racetracks.

(a) All video lottery license and permit holders shall:

(1) Promptly report to the commission any facts or circumstances related to video lottery operations which constitute a violation of state or federal law;

(2) Conduct all video lottery activities and functions in a manner which does not pose a threat to the public health, safety, or welfare of the citizens of this state, and which does not adversely affect the security or integrity of the lottery;

(3) Hold the commission and this state harmless from and defend and pay for the defense of any and all claims which may be

asserted against a license or permit holder, the commission, the state or the employees thereof, arising from the license or permit holder's participation in the video lottery system authorized by this article;

(4) Assist the commission in maximizing video lottery revenues;

(5) Maintain all records required by the commission;

(6) Upon request by the commission, provide the commission access to all records and the physical premises of the business or businesses where the license or permit holder's video lottery activities occur, for the purpose of monitoring or inspecting the license or permit holder's activities and the video lottery games, video lottery terminals, and associated equipment; and

(7) Keep current in all payments and obligations to the commission.

(b) Manufacturers shall:

(1) Manufacture terminals and associated equipment for placement in this state in accordance with the specifications and procedures specified in §29-22A-5 and §29-22A-6 of this code;

(2) Manufacture terminals and associated equipment to ensure timely delivery to licensed racetracks;

(3) Maintain and provide an inventory of spare parts to assure the timely repair and continuous operation of licensed video lottery terminals intended for placement in this state;

(4) Provide to licensed racetracks and permitted service technicians technical assistance and training in the service and repair of video lottery terminals and associated equipment so as to assure the continuous authorized operation and play of the video lottery terminals; and

(5) Obtain certification of compliance under the provisions of part 15 of the Federal Communication Commission rules for all video lottery terminals placed in this state.

(c) Service technicians shall:

(1) Maintain all skills necessary for the timely repair and service of licensed video lottery terminals and associated equipment so as to ensure the continued, approved operation of those terminals;

(2) Attend all commission mandated meetings, seminars, and training sessions concerning the repair and maintenance of licensed video lottery terminals and associated equipment; and

(3) Promptly notify the commission of any electronic or mechanical video lottery terminal malfunctions.

(d) Validation managers shall:

(1) Attend all commission mandated meetings, seminars, and training sessions concerning the validation and redemption of video lottery winning tickets and the operation of all ticket validation terminals and equipment;

(2) Maintain all skills necessary for the accurate validation of video lottery tickets; and

(3) Supervise video lottery ticket validation procedures at the applicable licensed racetrack.

(e) Floor attendants shall:

(1) Provide change and assistance to persons playing video lottery games in a licensed racetrack video lottery gaming area;

(2) Open video lottery terminal access doors to clear ticket paper jams and to insert new paper ticket tapes into the video lottery terminals; and

(3) Open video lottery terminal access doors to clear bill jams from the bill acceptors in video lottery terminals.

(f) The specific duties required of all licensed racetracks are as follows:

(1) Acquire video lottery terminals by purchase, lease, or other assignment and provide a secure location for the placement, operation, and play of the video lottery terminals;

(2) Pay for the installation and operation of commission-approved telephone lines to provide direct dial-up or on-line communication between each video lottery terminal and the commission's central control computer;

(3) Permit no person to tamper with or interfere with the operation of any video lottery terminal;

(4) Ensure that telephone lines from the commission's central control computer to the video lottery terminals located at the licensed racetrack are at all times connected and prevent any person from tampering or interfering with the operation of the telephone lines;

(5) Ensure that video lottery terminals are within the sight and control of designated employees of the licensed racetrack;

(6) Ensure that video lottery terminals are placed and remain placed in the specific locations within the licensed racetrack which have been approved by the commission. No video lottery terminal or terminals at a racetrack shall be relocated without the prior approval of the commission;

(7) Monitor video lottery terminals to prevent access to or play by persons who are under the age of 18 years or who are visibly intoxicated;

(8) Maintain at all times sufficient change and cash in the denominations accepted by the video lottery terminals;

(9) Accept no credit card or debit card from a player for the exchange or purchase of video lottery game credits or for an advance of coins or currency to be utilized by a player to play video

lottery games, and extend no credit, in any manner, to a player so as to enable the player to play a video lottery game;

(10) Pay for all credits won upon presentment of a valid winning video lottery ticket;

(11) Report promptly to the manufacturer and the commission all video lottery terminal malfunctions and notify the commission of the failure of a manufacturer or service technician to provide prompt service and repair of such terminals and associated equipment;

(12) Conduct no video lottery advertising and promotional activities without the prior written approval of the director;

(13) Install, post, and display prominently at locations within or about the licensed racetrack, signs, redemption information, and other promotional material as required by the commission;

(14) Permit video lottery to be played only during those hours established and approved by the commission;

(15) Maintain general liability insurance coverage for all video lottery terminals in an amount of at least $2 million per claim;

(16) Promptly notify the commission in writing of any breaks or tears to any logic unit seals;

(17) Assume liability for lost or stolen money from any video lottery terminal; and

(18) Submit an audited financial statement, which has been approved by the commission, to the commission when applying for a license or permit and annually thereafter prior to the time a license or permit may be renewed.

CHAPTER 126

(Com. Sub. for H. B. 2507 - By Delegates Gearheart, Storch, Howell, Smith, Paynter, Bridges, Maynard, J. Jeffries, Ellington, Criss and Householder)

[Passed April 8, 2021; in effect July 1, 2021.]
[Approved by the Governor on April 26, 2021.]

AN ACT to amend and reenact §29-22B-404, §29-22B-702, §29-22B-706, and §29-22B-1201 of the Code of West Virginia, 1931, as amended, all relating to limited video lottery advertising and promotional activities; authorizing the Lottery Commission and its Director to conduct video lottery advertising for a certain limited purpose; authorizing certain video lottery advertising and promotional activities by licensed limited video lottery retailers; authorizing rulemaking by the Lottery Commission with respect to limited video lottery advertising and promotional activities by licensed limited video lottery retailers; removing restriction on use of certain words by licensed limited video lottery retailers; authorizing certain video lottery advertising and promotional activities by licensed limited video lottery operators; authorizing rulemaking by the Lottery Commission with respect to limited video lottery advertising and promotional activities by licensed limited video lottery operators; removing requirements for notice and public hearing prior to approval by Lottery Commission of placement of a video lottery terminal; and removing required reduction on licensed limited video lottery locations.

Be it enacted by the Legislature of West Virginia:

ARTICLE 22B. LIMITED VIDEO LOTTERY.

§29-22B-404. Advertising by commission or director.

The commission and the director may conduct video lottery advertising only for the purpose of advising the public as to the use of the revenues generated by video lottery operations authorized by this article.

§29-22B-702. Additional duties of limited video lottery retailers.

In addition to the general duties imposed on all licensees in §29-22B-701 of this code, a limited video lottery retailer shall:

(1) Attend all commission mandated meetings, seminars, and training sessions concerning operation of video lottery terminals, the validation and redemption of video lottery winning tickets, and the operation of all ticket validation terminals and equipment;

(2) Maintain all skills necessary for the accurate validation of video lottery tickets;

(3) Supervise video lottery operations and ticket validation procedures at the applicable location;

(4) Permit no person to tamper with or interfere with the operation of any video lottery terminal;

(5) Ensure that telephone lines from the commission's central control computer to the video lottery terminals located at the approved location are at all times connected, and prevent any person from tampering or interfering with the operation of the telephone lines;

(6) Ensure that video lottery terminals are within the sight and control of designated employees of the limited video lottery retailer;

(7) Ensure that video lottery terminals are placed and remain placed in the specific locations which have been approved by the commission. A video lottery terminal in a restricted access adult-only facility may not be relocated within the facility without the prior written approval of the commission;

(8) Monitor video lottery terminals to prevent access to or play by persons who are under the age of 21 years or who are visibly intoxicated;

(9) Maintain at all times sufficient change and cash in the denominations accepted by the video lottery terminals;

(10) Provide no access by a player to an automated teller machine (ATM) in the restricted access adult-only facility where video lottery games are played, accept no credit card or debit card from a player for the exchange or purchase of video lottery game credits or for an advance of coins or currency to be utilized by a player to play video lottery games, and extend no credit, in any manner, to a player so as to enable the player to play a video lottery game;

(11) Pay for all credits won upon presentment of a valid winning video lottery ticket;

(12) Report promptly in writing to the operator and the commission all video lottery terminal malfunctions and notify the commission in writing of the failure of an operator or service technician to provide prompt service and repair of the terminals and associated equipment;

(13) Conduct any video lottery advertising or promotional activities only in accordance with legislative rules promulgated pursuant to §29A-3-1 *et seq.* of this code;

(14) Install, post, and display prominently within or about the approved location signs, redemption information and other promotional material as required by the commission;

(15) Permit video lottery to be played only during those hours established and approved by the commission: *Provided,* That the limited video lottery retailer shall not permit video lottery to be played beyond the hour during which liquor may be served;

(16) Contract with no more than one licensed operator for the placement of video lottery terminals at the licensed location;

(17) Maintain insurance covering all losses as the result of fire, theft, or vandalism to video lottery terminals and associated equipment; and

(18) Comply with all applicable provisions of this article and rules and orders of the commission.

§29-22B-706. Additional duties of operators.

In addition to the general duties imposed on all licensees in §29-22B-701 of this code, an operator shall:

(1) Acquire video lottery terminals by purchase, lease, or other assignment only from licensed manufacturers;

(2) Acquire no video lottery terminals in excess of the number they are authorized to operate in this state as stated in the permit issued under part 11 of this article;

(3) Contract with limited video lottery retailers for a secure location for the placement, operation, and play of the video lottery terminals;

(4) Pay no compensation of any kind to any limited video lottery retailer or give or transfer anything of value to any limited video lottery retailer, that is in addition to the consideration stated in the written agreement between the operator and the limited video lottery retailer, which may be not less than 40 percent nor more than 50 percent of the amount of net terminal income received by the operator in connection with the video lottery terminals at that location;

(5) Pay for the installation and operation of commission approved telephone lines to provide direct dial-up or on-line communication between each video lottery terminal and the commission's central control computer;

(6) Purchase or lease and install computer controller units and other associated equipment required by the commission for video lottery terminals owned or leased by the permittee;

(7) Permit no person to tamper with or interfere with the operation of any video lottery terminal;

(8) Ensure that telephone lines from the commission's central control computer to the video lottery terminals located at the approved location are at all times connected, and prevent any person from tampering or interfering with the operation of the telephone lines;

(9) Ensure that video lottery terminals are placed and remain placed in the specific places within the approved restricted access adult-only facility that have been approved by the commission. No video lottery terminal in a restricted access adult-only facility may be relocated within the restricted access adult-only facility without the prior written approval of the commission;

(10) Assume financial responsibility for proper and timely payments by limited video lottery retailers of all credits awarded to players in accordance with legislative rules promulgated by the commission;

(11) Enter into contracts with limited video lottery retailers to provide for the maintenance and repair of video lottery terminals and associated equipment only by licensed service technicians, and to provide for the placement of video lottery terminals pursuant to the provisions of this article;

(12) Conduct any video lottery advertising and promotional activities only in accordance with legislative rules promulgated pursuant to §29A-3-1 *et seq.* of this code;

(13) Install, post, and display prominently within or about the approved location signs, redemption information and other material as required by the commission;

(14) Maintain general liability insurance coverage for all video lottery terminals in an amount of at least $1 million per claim;

(15) Promptly notify the commission in writing of any breaks or tears to any logic unit seals;

(16) Assume liability for all amounts due to the commission in connection with any money lost or stolen from any video lottery terminal;

(17) Comply with all applicable provisions of this article and rules and orders of the commission; and

(18) Maintain a separate bank account into which the operator shall deposit the gross terminal income from all of the operator's video lottery terminals.

PART 12. PLACEMENT AND TRANSPORTATION OF VIDEO LOTTERY TERMINALS.

§29-22B-1201. Placement of video lottery terminals.

(a) Video lottery terminals allowed by this article may be placed only in licensed limited video lottery locations approved by the commission.

(b) All video lottery terminals in approved locations shall be physically located as follows:

(1) The video lottery terminals shall be continuously monitored through the use of a closed circuit television system capable of identifying players and terminal faces and of recording activity for a continuous 24 hour period. All video tapes or other recording medium approved in writing by the commission shall be retained for a period of at least 60 days and be available for viewing by an authorized representative of the commission or the commissioner of alcohol beverage control. The cost of monitoring shall be paid by the limited video lottery retailer;

(2) Access to video lottery terminal locations shall be restricted to persons legally entitled by age to play video lottery games;

(3) The permittee shall submit for commission approval a floor plan of the area or areas where video lottery terminals are to be operated showing terminal locations and security camera mount location; and

(4) No video lottery terminal or video lottery camera may be relocated without prior written approval from the commission.

(c) Personnel of the limited video lottery retailer shall be present during all hours of operation at each video lottery terminal location. These personnel shall make periodic inspections of the restricted access adult-only facility in order to provide for the safe and approved operation of the video lottery terminals and the safety and well-being of the players.

(d) Security personnel of the commission and investigators of the Alcohol Beverage Control Commissioner shall have unrestricted access to video lottery terminal locations.

(e) Notwithstanding any other provision of this article to the contrary, the commission may not approve the placement of a video lottery terminal in a state park.

CHAPTER 127

(H. B. 3308 - By Delegates Barrett, Storch, Hardy, Rowe, Williams, Pethtel, Howell and Criss)

[Passed April 9, 2021; in effect ninety days from passage.]
[Approved by the Governor on April 26, 2021.]

AN ACT to amend and reenact §29-22B-1101 of the Code of West Virginia, 1931, as amended, relating to increasing number of limited video lottery terminals allowed at certain licensed limited video lottery retailer locations; providing a bidding process for permits for additional terminals; and establishing an effective date.

Be it enacted by the Legislature of West Virginia:

ARTICLE 22B. LIMITED VIDEO LOTTERY.

§29-22B-1101. Limitation on number and location of video lottery terminals.

(a) The Lottery Commission may not authorize the placement of more than nine thousand video lottery terminals in restricted access adult-only facilities in this state.

(b) No person may directly or indirectly operate more than seven and one-half percent of the number of video lottery terminals authorized in this section, which may be located only in restricted access adult-only facilities.

(c) No licensed limited video lottery retailer may be authorized to have on the premises for which the license was issued more than seven video lottery terminals except that on and after July 1, 2021, the Commission, upon recommendation of the Director, may authorize one or more licensed limited video lottery retailers to

have on the premises for which the limited video lottery retailer's license was issued no more than ten video lottery terminals.

(2) Notwithstanding the limitation imposed by subdivision (1) of this subsection, a fraternal society or veterans' organization that is: (A) A fraternal beneficiary society that is exempt from federal income tax under section 501(c)(8) of the Internal Revenue Code of 1986, as amended; (B) a domestic fraternal society that is exempt from federal income tax under section 501(c)(10) of the Internal Revenue Code of 1986, as amended; or (C) a veterans' organization that is exempt from federal income tax under section 501(c)(19) of the Internal Revenue Code of 1986, as amended, may be authorized to have on the premises for which the license was issued not more than ten video lottery terminals.

(d) Pursuant to the increase of the number of video lottery terminals authorized in subsection (c) of this section, effective July 1, 2021, the commission shall conduct a bidding process no later than October 1, 2021, for permits for additional terminals. Any permits for which a successful bid is made shall expire June 30, 2031. The bidding process is open to current permit holders only and shall be conducted in accordance with §29-22B-1106, §29-22B-1107 and §29-22B-1109 of this article.

(e) The amendments to this section enacted in 2021 shall be effective on and after July 1, 2021.

CHAPTER 128

(Com. Sub. for Com. Sub. for S. B. 294 - By Senators Phillips, Jeffries, and Hamilton)

[Passed April 7, 2021; in effect from passage]
[Approved by the Governor on April 28, 2021.]

AN ACT to amend and reenact §18-30-3, §18-30-4, and §18-30-6 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §18-30-6a, all relating to savings and investment programs offered by the state; defining terms; reconciling definition of "qualified education expenses" with federal law for college savings program tax benefit purposes; increasing number of persons on the Board of Trustees of the College Prepaid Tuition and Savings Program; requiring that certain members appointed to the board have experience, knowledge, or skill in a financial field; providing that reasonable efforts shall be made to appoint one member to board with a CFA; authorizing early closure of Prepaid Tuition Trust Plan and fund upon depletion of fund and election of board; authorizing board to expend moneys in the Prepaid Tuition Trust Plan Escrow Fund to satisfy outstanding obligations of the Prepaid Tuition Trust Plan; specifying when Prepaid Tuition Plan account owner assets are presumed abandoned; providing for allocation of moneys remaining in escrow fund upon closure of the Prepaid Tuition Plan; permitting board to maintain a certain amount in the escrow fund for 10 years following closure of the Prepaid Tuition Trust Fund to satisfy potential claims; providing conditions for final closure of escrow fund; creating a nonappropriated special revenue account; transferring moneys from escrow fund to the special revenue account; authorizing receipts to, and expenditures from, the special revenue account for certain purposes related to new savings and investment programs;

providing for investment of moneys in special revenue account; removing obsolete language; and making technical corrections.

Be it enacted by the Legislature of West Virginia:

ARTICLE 30. WEST VIRGINIA COLLEGE PREPAID TUITION AND SAVINGS PROGRAM ACT.

§18-30-3. Definitions.

For the purposes of this article, the following terms have the meanings ascribed to them, unless the context clearly indicates otherwise or as otherwise provided in 26 U.S.C. §529:

"Account" means a prepaid tuition account or a savings plan account established in accordance with this article.

"Account owner" means the individual, corporation, association, partnership, trust, or other legal entity who enters into a prepaid tuition contract and is obligated to make payments in accordance with the prepaid tuition contract or who enters into a savings plan contract and invests money in a savings plan account.

"Beneficiary" means the individual designated as a beneficiary at the time an account is established, the individual designated as the beneficiary when beneficiaries are changed, the individual entitled to receive distributions from an account, and any individual designated by the account owner, his or her agent, or his or her estate in the event the beneficiary is unable or unwilling to receive distributions under the terms of the contract.

"Board" means the Board of Trustees of the College Prepaid Tuition and Savings Program, as provided in §18-30-4 of this code.

"Distribution" means any disbursement from an account in accordance with 26 U.S.C. §529.

"Eligible educational institution" means an institution of higher education or a private or religious primary, middle, or secondary

school that qualifies under 26 U.S.C. §529 as an eligible educational institution.

"Outstanding obligations of the Prepaid Tuition Plan" means the outstanding contract obligations of the board to persons owning Prepaid Tuition Plan accounts. The term also includes any fees, charges, expenses, penalties, or any other obligation or liability of the Prepaid Tuition Trust Fund or plan.

"Prepaid tuition account" means an account established by an account owner pursuant to this article, in order for the beneficiary to apply distributions in accordance with the Prepaid Tuition Plan.

"Prepaid tuition contract" means a contract entered into by the board and an account owner establishing a prepaid tuition account.

"Prepaid Tuition Plan" means the plan that contractually guarantees payment of tuition at an eligible educational institution.

"Program" means the West Virginia College Prepaid Tuition and Savings Program established pursuant to this article and as defined in §18-30-4(a) of this code.

"Qualified education expenses" means expenses treated as "qualified higher education expenses" under 26 U.S.C. §529.

"Savings plan" means the plan that allows account distributions for qualified higher educational expenses and tuition at private or religious primary, middle, and secondary schools.

"Savings plan account" means an account established by an account owner pursuant to this article, in order for the beneficiary to apply distributions toward qualified higher education expenses and tuition expenses at eligible educational institutions.

"Savings plan contract" means a contract entered into by the board or its agent, if any, and an account owner establishing a savings plan account.

"Treasurer" means the West Virginia State Treasurer.

"Tuition" means the quarter, semester, or term charges imposed by an eligible educational institution and all mandatory fees required as a condition of enrollment by all students for full-time attendance.

§18-30-4. Creation of program; board; members; terms; compensation; proceedings generally.

(a) The West Virginia College Prepaid Tuition and Savings Program is continued. The program consists of a savings plan and the outstanding obligations of the Prepaid Tuition Plan.

(b) The Board of the College Prepaid Tuition and Savings Program is continued, and all powers, rights, and responsibilities of the Board of Trustees of the Prepaid Tuition Trust Fund are vested in the Board of the College Prepaid Tuition and Savings Program.

(c) The board consists of nine members and includes the following:

(1) The State Treasurer, or his or her designee;

(2) The State Superintendent of Schools, or his or her designee;

(3) A representative of the Higher Education Policy Commission, who may or may not be a member of the Higher Education Policy Commission, appointed by the commission who serves as a voting member of the board;

(4) A representative of the Council for Community and Technical College Education, who may or may not be a member of the Council for Community and Technical College Education, appointed by the council who serves as a voting member of the board; and

(5) Five other members, appointed by the Governor, with the advice and consent of the Senate, as follows:

(A) Three private citizens with knowledge, skill, and experience in a financial field, who are not employed by, or an

officer of, the state or any political subdivision of the state: *Provided,* That reasonable efforts shall be made to appoint one such citizen to the board who holds a designation of Chartered Financial Analyst, offered by the CFA Institute; and

(B) Two members representing the interests of private institutions of higher education located in this state appointed from one or more nominees of the West Virginia Independent Colleges and Universities.

(d) Only state residents are eligible for appointment to the board.

(e) Members appointed by the Governor serve a term of five years and are eligible for reappointment at the expiration of their terms. If there is a vacancy among appointed members, the Governor shall appoint a person representing the same interests to fill the unexpired term.

(f) Members of the board serve until the later of the expiration of the term for which the member was appointed or the appointment of a successor. Members of the board serve without compensation. The Treasurer may pay all expenses, including travel expenses, actually incurred by board members in the conduct of their official duties. Expense payments are made from the College Prepaid Tuition and Savings Program Administrative Account and are made at the same rate paid to state employees.

(g) The Treasurer may provide support staff and office space for the board.

(h) The Treasurer is the chairperson and presiding officer of the board and may appoint the employees the board considers advisable or necessary. A majority of the members of the board constitutes a quorum for the transaction of the business of the board.

§18-30-6. West Virginia prepaid tuition trust.

(a) The Prepaid Tuition Trust Fund is continued within the accounts held by the State Treasurer for administration by the

board until such time as the moneys in the fund are depleted and the board elects to close the fund.

(b) Upon the closure of the Prepaid Tuition Trust Fund, the board is authorized to expend moneys from the Prepaid Tuition Trust Escrow Fund for the purpose of satisfying outstanding obligations of the Prepaid Tuition Trust Plan, according to the requirements of subsection (h) of this section.

(c) The corpus, assets, and earnings of the Prepaid Tuition Trust Fund and the Prepaid Tuition Trust Escrow Fund do not constitute public funds of the state and are available solely for carrying out the purposes of this article. Any contract entered into by or any obligation of the board on behalf of and for the benefit of the Prepaid Tuition Plan does not constitute a debt of the state but is solely an obligation of the Prepaid Tuition Trust Fund. The state has no obligation to any designated beneficiary or any other person as a result of the Prepaid Tuition Plan. All amounts payable from the Prepaid Tuition Trust Fund are limited to amounts available in the Prepaid Tuition Trust Fund.

(d) Nothing in this article or in any prepaid tuition contract is a promise or guarantee of admission to, continued enrollment in, or graduation from an eligible educational institution.

(e) Effective March 8, 2003, the Prepaid Tuition Plan is closed to new contracts. Closing the plan to new contracts does not affect any Prepaid Tuition Plan contracts in effect on March 8, 2003. All contract owners shall continue to pay any amounts due, including without limitation monthly installments, penalties, and fees. Earnings derived from the investment of moneys in the Prepaid Tuition Trust Fund shall continue to accrue to the fund until the fund is closed in accordance with this section. Upon a determination of the board that all outstanding contract obligations to persons owning Prepaid Tuition Plan accounts have been satisfied as provided in subsection (h) of this section, the plan shall be closed.

(f) The board shall continue to have the actuarial soundness of the Prepaid Tuition Trust Fund evaluated annually until the fund's closure.

(g) On or before December 1, 2003, and each year until the Prepaid Tuition Trust Fund's closure, the chairperson of the board shall submit to the Governor, the President of the Senate, the Speaker of the House of Delegates, the Joint Committee on Government and Finance, and the unclaimed property administrator a report certified by an actuary of the actuarial status of the Prepaid Tuition Trust Fund at the end of the fiscal year immediately preceding the date of the report.

(h) *Escrow fund; expenditures.* —

(1) The Prepaid Tuition Trust Escrow Fund is continued in the State Treasury to guarantee payment of outstanding obligations of the Prepaid Tuition Plan. The board shall invest the Prepaid Tuition Trust Escrow Fund in accordance with the provisions of this article in fixed income securities, and all earnings of the escrow fund shall accrue to the escrow fund and be available for expenditure in accordance with this section.

(2) In the event the money in the Prepaid Tuition Trust Fund is insufficient to cover the amount of money needed to meet the outstanding obligations of the Prepaid Tuition Trust Plan, the board may withdraw from the Prepaid Tuition Trust Escrow Fund the amount of money needed to meet outstanding obligations of the Prepaid Tuition Trust Plan.

(3) To the extent possible, the board shall satisfy outstanding contract obligations to persons owning Prepaid Tuition Plan accounts, on a pro rata basis as their interests may appear. Any account owner assets presumed abandoned shall be reported and remitted to the unclaimed property administrator in accordance with the Uniform Unclaimed Property Act in §36-8-1 *et seq.* of this code: *Provided,* That notwithstanding the requirements of said article, account owner assets are presumed abandoned 60 days after final payment checks for their remaining plan units are issued and said checks have not been presented for payment.

(i) After all outstanding obligations of the Prepaid Tuition Trust Plan have been satisfied in accordance with this section, any moneys remaining in the Prepaid Tuition Trust Fund and the Prepaid Tuition Trust Escrow Fund shall be allocated as follows:

(1) Five million dollars shall be transferred to the West Virginia Savings and Investment Program Fulfillment Fund, as set forth in §18-30-6a of this code.

(2) Up to $1,000,000 may be maintained in the Prepaid Tuition Trust Escrow Fund, at the election of the board, for a period not to exceed 10 years following the closure of the Fund for the purpose of satisfying any claims against the Prepaid Tuition Trust Plan arising after the plan's closure: *Provided,* That upon the expiration of 10 years following the date of closure of the Prepaid Tuition Trust Fund or when the balance of the Prepaid Tuition Trust Escrow Fund is zero, whichever occurs first, the account shall be closed and any moneys remaining in the Prepaid Tuition Trust Escrow Fund upon said fund's closure shall revert to the state's General Revenue Fund.

(3) All moneys remaining, after the allocations provided in subdivisions (1) and (2) of this subsection, shall revert to the General Revenue Fund.

(j) To fulfill the charitable and public purpose of this article, neither the earnings nor the corpus of the Prepaid Tuition Trust Fund or the Prepaid Tuition Trust Escrow Fund is subject to taxation by the state or any of its political subdivisions.

(k) Notwithstanding any provision of this code to the contrary, money in the Prepaid Tuition Trust Fund and the Prepaid Tuition Trust Escrow Fund is exempt from creditor process and not subject to attachment, garnishment, or other process; is not available as security or collateral for any loan, or otherwise subject to alienation, sale, transfer, assignment, pledge, encumbrance, or charge; and is not subject to seizure, taking, appropriation, or application by any legal or equitable process or operation of law to pay any debt or liability of any account owner, beneficiary, or successor in interest.

The provisions of this section may not be construed to interfere with the operation of the savings plan authorized under this article.

§18-30-6a. Special revenue account created for fulfillment of savings and investment programs.

(a) There is created in the State Treasury a special revenue account, designated the West Virginia Savings and Investment Program Fulfillment Fund to be administered by the State Treasurer for the purposes authorized by this section.

(b) The West Virginia Savings and Investment Program Fulfillment Fund shall consist of all moneys made available pursuant to §18-30-6(i) of this code; any moneys that may be appropriated to the fund by the Legislature; all interest or other return earned or received from investment of the fund; any moneys which the fund is authorized to receive under any provision of this code for the purposes of this article; and all gifts, grants, bequests, or transfers made to the fund from any source. 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 to be expended as authorized by this section.

(c) Moneys in the West Virginia Savings and Investment Program Fulfillment Fund may be used to pay any expenses incurred by the State Treasurer in implementing or administering any savings and investment program with an initial date of operation occurring on or after July 1, 2021. Pending the expenditure of any moneys in the fund, the State Treasurer is authorized to invest and reinvest said moneys, and all interest and earnings of the fund shall accrue to the fund and be available for expenditure in accordance with this section.

CHAPTER 129

(Com. Sub. for S. B. 297 - By Senators Woodrum, Plymale, and Hamilton)

[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 §12-6C-4 and §12-6C-9 of the Code of West Virginia, 1931, as amended, all relating generally to the Board of Treasury Investments; authorizing the board to provide compensation to appointed directors for each meeting attended and establishing the rate thereof; authorizing the board to invest in commercial paper with certain nationally recognized ratings and weighted maturity; authorizing the board to invest in corporate debt with certain nationally recognized ratings and weighted maturity; authorizing the board to invest in state and local government securities with certain nationally recognized ratings and weighted maturity; authorizing the board to invest in certain asset-backed securities with certain nationally recognized ratings; removing the limitation on the percentage of the Consolidated Fund that the board may invest in evidence of indebtedness of any private corporation or association; and eliminating the requirement that the board invest a certain percentage of the Consolidated Fund in obligations guaranteed by the United States.

Be it enacted by the Legislature of West Virginia:

ARTICLE 6C. WEST VIRGINIA BOARD OF TREASURY INVESTMENTS.

§12-6C-4. West Virginia Board of Treasury Investments created; body corporate; board; directors; nomination and appointment of directors, qualifications and terms of

appointment, advice and consent; annual and other meetings; committees; board approval of investment policies required; open meetings, qualifications.

(a) The West Virginia Board of Treasury Investments is created as a public body corporate and established to provide prudent fiscal administration, investment, and management for the Consolidated Fund.

(b) Any appointment to the board is effective immediately upon appointment by the Governor with respect to voting, constituting a quorum, receiving expenses, and all other rights and privileges of the director position. A trustee of the West Virginia Investment Management Board other than the Governor, State Treasurer, or State Auditor is not eligible to serve as a director of the board.

(c) The board shall consist of five directors, as follows:

(1) The Governor, the State Treasurer, and the State Auditor or their designees. They shall serve by virtue of their offices and are not entitled to compensation under the provisions of this article. The Governor, State Treasurer, and State Auditor or their designees are subject to all duties, responsibilities, and requirements of the provisions of this article; and

(2) Two persons appointed by the Governor subject to the advice and consent of the Senate.

(d) Of the two directors appointed by the Governor, one shall be a certified public accountant with experience in finance, investing, and management, and one shall be an attorney with experience in finance, investing, and management.

(e)(1) Initial appointment of the appointed directors shall be for the following terms:

(A) One director shall be appointed for a term ending June 30, 2007; and

(B) One director shall be appointed for a term ending June 30, 2009.

(2) Except for appointments to fill vacancies, each subsequent appointment shall be for the term ending June 30th of the fourth year following the year the preceding term expired. A director may be reappointed. In the event a vacancy occurs it shall be filled by appointment for the unexpired term. A director whose term has expired shall continue in office until a successor has been duly appointed and qualified. No appointed director of the board may be removed from office by the Governor except for official misconduct, incompetency, neglect of duty, gross negligence, misfeasance, or gross immorality.

(f) All directors shall receive reasonable and necessary expenses actually incurred in discharging director's duties pursuant to this article. The board is authorized to compensate the two directors appointed by the Governor pursuant to subdivision (2), subsection (c) of this section, in an amount of up to $500 for each board meeting that the directors attend in person.

(g) The board shall hold quarterly meetings. Board bylaws may provide for calling and holding additional meetings. Representatives of participants and members of the public may attend any meeting held by the board, except during those meetings or part of meetings closed by the board as permitted by law. Attendees shall observe standards of decorum established by board policy.

(h) The board shall annually adopt a fee schedule and a budget reflecting fee structures for the year.

(i) The board chair may appoint committees as needed, including, but not limited to, an investment policies committee to discuss drafting, reviewing, or modifying written investment policies. Each committee shall seek input from participants before reporting its recommendations to the board. The board may meet with any or all committees during any of its meetings.

(j) Any meeting of the board may be closed upon adoption of a motion by any director when necessary to preserve the attorney-client privilege, to protect the privacy interests of individuals, to review personnel matters, or to maintain confidentiality when confidentiality is in the best interest of the participants.

§12-6C-9. Asset allocation; investment policies, authorized investments; restrictions.

(a) The board shall develop, adopt, review, or modify an asset allocation plan for the Consolidated Fund at each annual board meeting.

(b) The board shall adopt, review, modify, or cancel the investment policy of each fund or pool created at each annual board meeting. For each participant directed account authorized by the State Treasurer, staff of the board shall develop an investment policy for the account and create the requested account. The board shall review all existing participant directed accounts and investment policies at its annual meeting for modification.

(c) The board shall consider the following when adopting, reviewing, modifying, or canceling investment policies:

(1) Preservation of capital;

(2) Risk tolerance;

(3) Credit standards;

(4) Diversification;

(5) Rate of return;

(6) Stability and turnover;

(7) Liquidity;

(8) Reasonable costs and fees;

(9) Permissible investments;

(10) Maturity ranges;

(11) Internal controls;

(12) Safekeeping and custody;

(13) Valuation methodologies;

(14) Calculation of earnings and yields;

(15) Performance benchmarks and evaluation; and

(16) Reporting.

(d) No security may be purchased by the board unless the type of security is on a list approved at a board meeting. The board shall review the list at its annual meeting.

(e) Notwithstanding the restrictions which are otherwise provided by law with respect to the investment of funds, the board and all participants, now and in the future, may invest funds in these securities:

(1) Obligations of, or obligations that are insured as to principal and interest by, the United States of America or any agency or corporation thereof and obligations and securities of the United States sponsored enterprises, including, without limitation:

(i) United States Treasury;

(ii) Export-Import Bank of the United States;

(iii) Farmers Home Administration;

(iv) Federal Farm Credit Banks;

(v) Federal Home Loan Banks;

(vi) Federal Home Loan Mortgage Corporation;

(vii) Federal Land Banks;

(viii) Government National Mortgage Association;

(ix) Merchant Marine bonds; and

(x) Tennessee Valley Authority Obligations;

(2) Obligations of the Federal National Mortgage Association;

(3) Commercial paper with a rating of A-1 or better as determined by a nationally recognized statistical rating organization;

(4) For pools with a weighted average maturity or duration not to exceed three years, commercial paper with an A-2 rating or better as determined by a nationally recognized statistical rating organization;

(5) Corporate debt with an A rating or better as determined by a nationally recognized statistical rating organization;

(6) For pools with a weighted average maturity or duration not to exceed three years, corporate debt with a BBB- rating or better as determined by a nationally recognized statistical rating organization;

(7) State and local government, or any instrumentality or agency thereof, securities with a weighted average maturity or duration not to exceed three years and an A rating or better as determined by a nationally recognized statistical rating organization;

(8) Repurchase agreements involving the purchase of United States Treasury securities and repurchase agreements fully collateralized by obligations of the United States government or its agencies or instrumentalities;

(9) Reverse repurchase agreements involving the purchase of United States Treasury securities and reverse repurchase agreements fully collateralized by obligations of the United States government or its agencies or instrumentalities;

(10) Asset-backed securities rated AAA or better as determined by a nationally recognized statistical rating organization;

(11) Certificates of deposit;

(12) Money market and other fixed income funds; and

(13) Investments in accordance with the Linked Deposit Program, a program using financial institutions in West Virginia to obtain certificates of deposit, loans approved by the Legislature and any other programs authorized by the Legislature.

(f) In addition to the restrictions and conditions contained in this section, at no time shall more than five percent of the Consolidated Fund be invested in securities issued by a single private corporation or association.

(g) Securities purchased in compliance with this article that become noncompliant may be retained upon recommendation of the investment manager of the security and the board investment consultant.

CHAPTER 130

(S. B. 338 - By Senators Maynard, Stollings, Jeffries, Caputo, and Phillips)

[Passed March 10, 2021; in effect from passage]
[Approved by the Governor on March 19, 2021.]

AN ACT to amend and reenact §15A-11-11 of the Code of West Virginia, 1931, as amended, relating to continuing the Fire Service Equipment and Training Fund; restricting use of grant funds to specified purposes; specifying disposition of grant funds remaining in fund at the end of the fiscal year; requiring Fire Commission to establish an equipment and training grant program for volunteer and part-volunteer companies based upon certain circumstances; specifying criteria State Fire Marshal shall consider when making grants; authorizing Fire Commission to propose emergency legislative rules and legislative rules; requiring Legislative Auditor notify State Fire Marshal of any volunteer or part-volunteer department that is ineligible to receive grant funds; and making volunteer or part-volunteer department or companies ineligible to receive grant funds until Legislative Auditor informs State Fire Marshal that the company or department has come into compliance.

Be it enacted by the Legislature of West Virginia:

ARTICLE 11. FIRE COMMISSION.

§15A-11-11. Fire Service Equipment and Training Fund; creation of fire service equipment and training grant; reports of ineligibility to State Fire Marshal.

(a) There is hereby continued in the Treasury a special revenue fund to be known as the Fire Service Equipment and Training Fund. Expenditures from the fund by the State Fire Commission

are authorized from collections. The fund may only be used for the purpose of providing grants to equip volunteer and part-volunteer fire companies and departments and their members, and to train volunteer and part-volunteer firefighters. Any balance remaining in the fund at the end of any fiscal year does not revert to the General Revenue Fund, but remains in the Special Revenue Fund.

(b) The State Fire Commission shall establish a grant program for equipment and training for volunteer and part-volunteer fire companies and departments. Such grant program shall be open to all volunteer and part-volunteer fire companies and departments. In making grants pursuant to this section, the State Fire Marshal shall consider:

(1) The number of emergency and nonemergency calls responded to by the company or department;

(2) The activities and responses of the company or department;

(3) The revenues received by the company or department from federal, state, county, municipal, local, and other sources; and

(4) The company's or department's assets, expenditures, and other liabilities, including whether the fire company or department has availed itself of available statewide contracts.

(c) The State Fire Commission may promulgate emergency rules and shall propose legislative rules for promulgation in accordance with §29A-3-1 *et seq*. of this code as may be necessary to implement and comply with the provisions of this section.

(d) The Legislative Auditor shall notify the State Fire Marshal of any volunteer or part-volunteer fire company or department that is ineligible to receive grant funds due to the company's or department's failure to file required bank statements or financial reports or failure to comply with an audit or review by the Legislative Auditor. A volunteer or part-volunteer fire company or department reported by the Legislative Auditor shall be ineligible to receive funds under this section until the Legislative Auditor notifies the State Fire Marshal that the company or department has come into compliance.

CHAPTER 131

(S. B. 374 - By Senator Maynard)

[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 §15A-3-14 of the Code of West Virginia, 1931, as amended, relating to increasing the amount of money for which a purchase may be made without obtaining three bids to $10,000.

Be it enacted by the Legislature of West Virginia:

ARTICLE 3. DIVISION OF CORRECTIONS AND REHABILITATION.

§15A-3-14. Exempt from Purchasing Division; purchasing procedures.

(a) The provisions established in §5A-3-1 *et seq.* of this code do not apply to the division or any institution under the control of the division.

(b) When the cost under any contract or agreement entered into by the division, other than compensation for personal services, involves an expenditure of more than $10,000 and less than $25,000, the division shall solicit at least three bids, if possible, from vendors and make a written contract, or agreement, with the lowest responsible bidder. When the cost under any contract or agreement entered into by the division, other than compensation for personal services, involves an expenditure of $25,000 or more, the division shall make a written contract with the lowest responsive, responsible bidder after public notice is published, which notice shall state the general character of the work and general character of the materials to be furnished, the place where

plans and specifications therefor may be examined, and the time and place of receiving bids. The notice may be published by an advertising medium the division deems advisable. The division may also solicit sealed bids by sending requests by mail or electronic transmission to prospective vendors. But a contract for lease of a correctional facility is not subject to the foregoing requirements and the division may enter into the contract for lease pursuant to negotiation upon the terms and conditions and for the period as it finds to be reasonable and proper under the circumstances and in the best interests of proper operation or efficient acquisition or construction of the projects. The division may reject any and all bids. A bond with good and sufficient surety, approved by the division, may be required by the division. The good and sufficient surety may be in the form of a bid bond, performance bond, payment bond, maintenance bond, labor and materials bond, or any other type of surety deemed necessary by the division.

(c) The division may use best value procurement to enter into a contract when the commissioner determines in writing that it is advantageous to the state.

(1) A solicitation for bids under best value procurement shall be made in the same manner as provided in this section.

(2) Best value procurement awards shall be based on criteria set forth in the solicitation and information contained in the proposals submitted in response to the solicitation. Those criteria include, but are not limited to, price and the total cost of acquiring, operating, maintaining, and supporting a commodity or service over its projected lifetime, as well as technical criteria. The technical criteria may include, but are not limited to, the evaluated technical merit of the bidder's bid or proposal, the bidder's past performance, the degree to which a proposal exceeds other proposals in technical merit, the utility of any novel or unrequested items in the proposal, and the evaluated probability of performing the requirements stated in the solicitation on time, with high quality, and in a manner that accomplishes the business objectives set forth in the solicitation.

(3) The award must be made to the highest scoring responsive and responsible bidder whose bid is determined, in writing, to be most advantageous to the state, taking into consideration all evaluation factors set forth in the best value solicitation.

(4) The division may not use best value procurement to enter into government construction contracts, including, but not limited to, those set forth in §5-22-1 *et seq.* of this code.

(d)(1) The division may make a direct award of a contract without competitive bidding if:

(A) The commissioner shall make a written determination that the direct award is in the best interest of the state;

(B) The division documents in writing that competition is not available because there is no other source for the commodity or service, or that no other source would be willing or able to replace the existing source without a detrimental effect on the division, the existence of a detrimental effect being determined by the commissioner in his or her sole discretion;

(C) The division publicly advertises a notice of intent to make a direct award without competition in the state's official bid notification system, as well as any other public advertisement that the division deems appropriate, for no less than 10 business days; and

(D) No other vendor expresses an interest in providing the commodity or service in question.

(2) If a vendor expresses an interest in providing the commodity or service described in the notice of intent to make a direct award, then the division must convert the direct award to a competitive bid, unless the commissioner determines that the interest expressed by a vendor is unreasonable. The competitive bid may, at the discretion of the commissioner, be either a request for quotation or request for proposal.

(3) The notice of intent to make a direct award shall contain the following information:

(A) A description of the commodity or service for which a direct award will be made;

(B) A time period by which delivery must be made or performance must occur;

(C) The price that will be paid for the commodity or service;

(D) Any limitations that a competing vendor would need to satisfy;

(E) An invitation to all vendors interested in providing the commodity or service to make that interest known; and

(F) Contact information for the commissioner or his or her designee, and instructions to submit a statement of interest to the commissioner or his or her designee.

(e) The commissioner, or division, shall not award a contract or renew a contract to any vendor or prospective vendor when the vendor or prospective vendor, or a related party to the vendor or prospective vendor, is a debtor and:

(1) The debt owed is an amount greater than $1,000 in the aggregate; or

(2) The debtor is in employer default.

(f) The division has the authority to run criminal background checks, financial background checks, a licensing check, and a credit check, and any vendor, or any and all principals in a company or corporation, must submit to said checks to be eligible to be awarded a contract for the division. The commissioner, or division, shall not award a contract to a vendor if any of the following are present:

(1) Conviction of an offense involving fraud or a felony offense in connection with obtaining or attempting to obtain a public contract or subcontract;

(2) Conviction of any federal or state antitrust statute relating to the submission of offers;

(3) Conviction of an offense involving embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property in connection with the performance of a contract;

(4) Conviction of a felony offense demonstrating a lack of business integrity or business honesty that affects the present responsibility of the vendor or subcontractor;

(5) Default on obligations owed to the state, including, but not limited to, obligations owed to the Workers' Compensation Fund, as defined in §23-2C-1 *et seq.* of this code, and obligations under the West Virginia Unemployment Compensation Act and West Virginia state tax and revenue laws. For purposes of this subsection, a vendor is in default when, after due notice, the vendor fails to submit a required payment, interest thereon, or penalty, and has not entered into a repayment agreement with the appropriate agency of the state or has entered into a repayment agreement but does not remain in compliance with its obligations under the repayment agreement. In the case of a vendor granted protection by order of a federal bankruptcy court or a vendor granted an exemption under any rule of the Bureau of Employment Programs or the Insurance Commissioner, the commissioner may award a contract: *Provided*, That in no event may the contract be awarded to any vendor who has not paid all current state obligations for at least the four most recent calendar quarters, excluding the current calendar quarter, or with respect to any vendor who is in default on a repayment agreement with an agency of the state;

(6) The vendor is not in good standing with a licensing board, in that the vendor is not licensed when licensure is required by the law of this state, or the vendor has been found to be in violation of an applicable licensing law after notice, opportunity to be heard, and other due process required by law;

(7) The vendor is an active and knowing participant in dividing or planning procurements to circumvent the $25,000 threshold requiring a sealed bid or otherwise avoid the use of a sealed bid; or

(8) Violation of the terms of public contracts or subcontracts for:

(A) Willful failure to substantially perform in accordance with the terms of one or more public contracts;

(B) Performance in violation of standards established by law or generally accepted standards of the trade or profession amounting to intentionally deficient or grossly negligent performance on one or more public contracts;

(C) Use of substandard materials on one or more public contracts or defects in construction in one or more public construction projects amounting to intentionally deficient or grossly negligent performance, even if discovery of the defect is subsequent to acceptance of a construction project and expiration of any warranty thereunder;

(D) A repeated pattern or practice of failure to perform so serious and compelling as to justify disqualification; or

(E) Any other cause of a serious and compelling nature amounting to knowing and willful misconduct of the vendor that demonstrates a wanton indifference to the interests of the public and that caused, or that had a substantial likelihood of causing, serious harm to the public.

(g) Unless the context clearly requires a different meaning, for the purposes of this section, the term:

(1) "Debt" means any assessment, premium, penalty, fine, tax, or other amount of money owed to the state or any of its political subdivisions because of a judgment, fine, permit violation, license assessment, amounts owed to the Workers' Compensation Fund as defined in §23-2C-1 *et seq.* of this code, penalty, or other assessment or surcharge presently delinquent or due and required to be paid to the state or any of its political subdivisions, including any interest or additional penalties accrued thereon;

(2) "Debtor" means any individual, corporation, partnership, association, limited liability company, or any other form of

business association owing a debt to the state or any of its political subdivisions, and includes any person or entity that is in employer default;

(3) "Employer default" means having an outstanding balance or liability to the Old Fund or to the Uninsured Employers' Fund or being in policy default, as defined in §23-2C-2 of this code, failure to maintain mandatory workers' compensation coverage, or failure to fully meet its obligations as a workers' compensation self-insured employer. An employer is not in employer default if it has entered into a repayment agreement with the Insurance Commissioner and remains in compliance with the obligations under the repayment agreement;

(4) "Political subdivision" means any county commission; municipality; county board of education; any instrumentality established by a county or municipality; any separate corporation or instrumentality established by one or more counties or municipalities, as permitted by law; or any public body charged by law with the performance of a government function and whose jurisdiction is coextensive with one or more counties or municipalities; and

(5) "Related party" means a party, whether an individual, corporation, partnership, association, limited liability company, or any other form of business association or other entity whatever, related to any vendor by blood, marriage, ownership, or contract through which the party has a relationship of ownership or other interest with the vendor so that the party will actually, or by effect, receive or control a portion of the benefit, profit, or other consideration from performance of a vendor contract with the party receiving an amount that meets or exceeds five percent of the total contract amount.

(h) The prohibitions of subdivision (5), subsection (f) of this section do not apply where a vendor has contested any tax administered pursuant to chapter 11 of this code, amount owed to the Workers' Compensation Fund as defined in §23-2C-1 *et seq.* of this code, permit fee, or environmental fee or assessment and the matter has not become final, or where the vendor has entered into

a payment plan or agreement and the vendor is not in default of any of the provisions of such plan or agreement.

(i) The division may disqualify a vendor if award to the vendor would jeopardize the safe, secure, and orderly operations of the division.

(j) All bids, contract proposals, or contracts with the state or any of its political subdivisions submitted or approved under the provisions of this code shall include an affidavit that the vendor, prospective vendor, or a related party to the vendor or prospective vendor is not in employer default and does not owe any debt in an amount in excess of $1,000 or, if a debt is owed, that the provisions of subsection (h) of this section apply.

(k) If the division has to make a purchase under emergency conditions, or an emergency situation, that jeopardizes the safe, secure, and orderly operations of the division, as deemed by the commissioner, and approved by the Secretary of the Department of Military Affairs and Public Safety, subsection (b) of this section shall not apply.

(l) The commissioner may enter into agreements with medical schools and institutions of higher education in this state to develop standards for appropriate and innovative medical programming and care for inmates: *Provided*, That the division will follow the procedures set forth in subsection (b) of this section for delivery of regular and normal medical care within the facilities.

(m) Notwithstanding any other provision of this code to the contrary, any records obtained in response to solicitations for bids from the division shall not be subject to disclosure pursuant to §29B-1-1 *et seq.* of this code, until and unless the time frame for submission of bids has closed: *Provided*, That once bids close, the records may be exempt from disclosure pursuant to §29B-1-4 of this code. Any record relating to any solicitation for, or purchase of, any item related to the safe and secure running of any facility under the jurisdiction of the Commissioner of the Division of Corrections and Rehabilitation is not subject to disclosure pursuant to §29B-1-1 *et seq.* of this code.

CHAPTER 132

(Com. Sub. for S. B. 389 - By Senator Swope)

[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 §29-31-2 of the Code of West Virginia, 1931, as amended, relating to clarifying that State Resiliency Office is responsible to plan for emergency and disaster response, recovery, and resiliency; clarifying that the State Resiliency Officer is a member of the State Resiliency Office Board; placing Secretary of the Department of Health and Human Resources on board; requiring that the President of the Senate appoint two nonvoting members, one from each party, to the board; requiring the Speaker of the House of Delegates appoint two nonvoting members, one from each party, to the board; requiring that State Resiliency Officer vote only in the event of a tie vote of board; requiring that board elect a vice chair from its membership; establishing duties and responsibilities of the vice chair; and eliminating notice requirement for board meetings.

Be it enacted by the Legislature of West Virginia:

ARTICLE 31. STATE RESILIENCY AND FLOOD PROTECTION PLAN ACT.

§29-31-2. State Resiliency Office.

(a) It is determined that a state authority is required to provide a coordinated effort and planning for emergency and disaster response, recovery, and resiliency between government agencies, first responders, and all other entities to reduce the loss of life and property, lessen the impact of future disasters, respond quickly to save lives, protect property and the environment, meet basic human

needs, and provide economic growth and resilience in the aftermath of an incident. Therefore, the State Resiliency Office is hereby created. The office shall be organized within the Office of the Governor. The office will serve as the recipient of disaster recovery and resiliency funds, excluding federal Stafford Act funds, and the coordinating agency of recovery and resiliency efforts, including matching funds for other disaster recovery programs, excluding those funds and efforts under the direct control of the State Resiliency Officer pursuant to §15-5-4b and §15-5-24 of this code for a particular event.

(b)(1) The State Resiliency Office Board is also established and shall consist of the following members: The State Resiliency Officer; the Secretary of the Department of Commerce or his or her designee; the Director of the Division of Natural Resources or his or her designee; the Secretary of the Department of Environmental Protection or his or her designee; the Executive Director of the State Conservation Agency or his or her designee; the President of the West Virginia Emergency Management Council or his or her designee; the Secretary of the Department of Health and Human Resources or his or her designee; the Secretary of the Department of Homeland Security or his or her designee; the Secretary of Transportation or his or her designee; the Adjutant General of the West Virginia National Guard or his or her designee; the Director of the Division of Emergency Management within the Department of Homeland Security or his or her designee; two nonvoting members of the West Virginia Senate, one from each party, to be appointed by the President of the Senate; and two nonvoting members of the West Virginia House of Delegates, one from each party, to be appointed by the Speaker of the House of Delegates.

(2) A member of the board holds office so long as he or she retains the office or position by virtue of which he or she is serving on the board. A majority of the board is a quorum and the concurrence of a board in any matter within their duties is required for its determination. The members of the board may not receive 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 board.

(3) The board shall:

(A) Provide for the keeping of a full and accurate record of all proceedings and of all resolutions, rules, and orders issued or adopted and of its other official actions;

(B) Shall adopt a seal, which shall be judicially noticed;

(C) Provide for an annual audit of the accounts of receipts and disbursements of the State Resiliency Office; and

(D) Perform those acts necessary for the execution of its functions under this article.

(c)(1) The State Resiliency Officer shall be the chair of the State Resiliency Office Board and shall be appointed by the Governor with the advice and consent of the Senate. The State Resiliency Officer may cast a vote only in the event of a tie vote. The board shall elect from its voting membership a vice chair. The vice chair shall preside over the meetings of the board in the absence of the chair. In the absence of both the chair and the vice chair any member designated by the members present may act as chair.

(2) The State Resiliency Officer shall be vested with the authority and duties prescribed to the office within this article.

(3) The State Resiliency Officer shall be a person who has:

(A) At least five years' managerial or strategic planning experience in matters relating to flood control and hazard mitigation or, alternatively, in disaster recovery, emergency management, or emergency response;

(B) At least a level IS-800 NIMS certification: *Provided*, That if the State Resiliency Officer does not have a level IS-800 NIMS certification when appointed, he or she shall become so certified within one year following appointment; and

(C) Be thoroughly knowledgeable in matters relating to flood control and hazard mitigation, or alternatively, in matters relating

to disaster recovery, emergency management, and emergency response.

(4) The State Resiliency Officer shall employ a deputy who shall assist the State Resiliency Officer in carrying out the duties of the office. The State Resiliency Office Board 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 in this deputy position. This deputy shall be appointed by the Governor with the advice and consent of the Senate. Applicants for the deputy position shall at a minimum:

(A) Have at least three years' managerial or strategic planning experience in matters relating to flood control and hazard mitigation or, alternatively, in disaster recovery, emergency management, or emergency response;

(B) Have at least a level E/L 950 NIMS certification: *Provided*, That if the deputy State Resiliency Officer does not have a level E/L 950 NIMS certification when appointed, he or she shall become so certified within one year following appointment; and

(C) Be thoroughly knowledgeable in matters relating to flood control and hazard mitigation, or alternatively, in matters relating to disaster recovery, emergency management, and emergency response; and

(D) If the State Resiliency Officer has his or her primary experience in flood control and hazard mitigation then his or her deputy must have experience in disaster recovery, emergency management, or emergency response; alternatively, if the State Resiliency Officer has his or her primary experience in disaster recovery, emergency management, or emergency response then his or her deputy must have experience in flood control and hazard mitigation.

(d) The board shall meet no less than once each calendar quarter at the time and place designated by the chair and the board shall work together with the State Resiliency Officer to fulfill the mission given to the State Resiliency Office to coordinate efforts

for emergency and disaster planning, response, recovery, and resiliency between government agencies, first responders and others.

The board will assist and advise the State Resiliency Officer in developing policies to accomplish, at a minimum, the following specific tasks in order to achieve these goals, and will assist the State Resiliency Officer in devising plans and developing procedures which will ensure that agencies and political subdivisions of the state carry out these following specific tasks:

(1) Establish mechanisms to coordinate resiliency-related programs and activities among state agencies and to encourage intergovernmental as well as cross-sector coordination and collaboration;

(2) Evaluate the state's role in construction permitting process and identify opportunities to expedite the permitting process post-disaster and for selected types of mitigation and adaptation actions;

(3) Conduct a review of laws and regulations to identify those that create or add to risk, or interfere with the ability to reduce risk or to improve resiliency;

(4) Conduct an inventory of relevant critical planned activity by state agencies to determine their proposed impact upon resiliency;

(5) Make recommendations regarding practical steps that can be taken to improve efficiencies, and to pool and leverage resources to improve resiliency;

(6) Identify, prioritize, and evaluate issues affecting implementation of mitigation and adaptation actions, including, but limited to, the effect of loss of land in context of zoning and other land use regulations, possible conflicts between public hazard mitigation/adaptation planning and private property interests (e.g. buy-out programs, projects to increase flood storage), develop guidance for cities and towns, real estate professionals, property owners under existing law and regulations; and develop proposals for changes in laws, policies, and regulations, as needed;

(7) Ensure all counties and municipalities have up to date Hazard Mitigation Plans and Local Comprehensive Disaster Plans that are consistent with and coordinated to the state's Hazard Mitigation Plans and Comprehensive Disaster Plans; including, but not limited to, assisting them in developing planning guidance for cities and towns to complete and/or update Hazard Mitigation Plans; providing technical assistance to help counties and municipalities meet these standards; and provide notice to counties and municipalities of funding opportunities to implement projects outlined in their Hazard Mitigation Plans;

(8) Conduct risk assessments, including, but not limited to, examining state highway corridors and associated drainage systems for stormwater inundation, impacts of downed trees, effects on utilities, etc.; assessment of known stormwater impacts between state highways and municipal drainage systems, options to eliminate or mitigate such impact; a housing vulnerability assessment for structures in riparian zones; and a vulnerability assessment of the state's historic and cultural resources;

(9) Establish working groups that will conduct assessments for varied sectors of the economy, such as small business, ports and river traffic, agriculture, manufacturing, and tourism; these assessments should address vulnerabilities and economic impacts, options to mitigate impacts, options to improve preparedness, response and recovery, and economic opportunities associated with design, engineering, technological and other skills and capabilities that can improve resilience;

(10) Establish emergency permitting procedures to expedite issuance of state permits following disasters, and develop guidance (model procedures) for political subdivisions to follow; and

(11) Establish a model long-term recovery plan that would be activated after catastrophic events.

All decisions of the board shall be decided by a majority vote of the members.

(e) The State Resiliency Office shall provide adequate staff from that office to ensure the meetings of the board are facilitated, board meeting minutes are taken, records and correspondence kept, and that reports of the board are produced in a timely manner.

(f) Notwithstanding any other provisions of this code:

(1) The meetings of the board are not subject to the provisions of §6-9A-1 *et seq.* of this code.

(2) The following are exempt from public disclosure under the provisions of chapter 29B of this code:

(A) All deliberations of the board;

(B) The materials, in any medium, including hard copy and electronic, placed in the custody of the board as a result of any of its duties; and

(C) All records of the board, in the possession of the board, and generated by the board, due to their falling under several exceptions to public disclosure including, but not limited to, that for security or disaster recovery plans and risk assessments.

CHAPTER 133

(S. B. 390 - By Senators Maroney and Stollings)

[Passed March 26, 2021; in effect from passage]
[Approved by the Governor on April 7, 2021.]

AN ACT to amend and reenact §33-4A-1, §33-4A-2, §33-4A-3, §33-4A-4, §33-4A-5, §33-4A-6, §33-4A-7, and §33-4A-8 of the Code of West Virginia, 1931, as amended, all relating to the all-payer claims database; reflecting that Health Care Authority is part of the organizational structure of the Department of Health and Human Resources and is no longer a separate governmental agency; and clarifying and accurately delineating the roles of the entities responsible for the all-payer claims database.

Be it enacted by the Legislature of West Virginia:

ARTICLE 4A. ALL-PAYER CLAIMS DATABASE.

§33-4A-1. Definitions.

(a) "All-payer claims database" or "APCD" means the program authorized by this article that collects, retains, uses, and discloses information concerning the claims and administrative expenses of health care payers.

(b) "Commissioner" means the West Virginia Insurance Commissioner.

(c) "Data" means the data elements from enrollment and eligibility files, specified types of claims, and reference files for data elements not maintained in formats consistent with national coding standards.

(d) "Health care payer" means any entity that pays or administers the payment of health insurance claims or medical claims under workers' compensation insurance to providers in this state, including workers' compensation insurers; accident and sickness insurers; nonprofit hospital service corporations, medical service corporations, and dental service organizations; nonprofit health service corporations; prepaid limited health service organizations; health maintenance organizations; and government payers, including, but not limited to, Medicaid, Medicare, and the Public Employees Insurance Agency; the term also includes any third-party administrator, including any pharmacy benefits manager, that administers a fully funded plan:

A "health insurance claim" does not include:

(1) Any claim paid under an individual or group policy providing coverage only for accident or disability income insurance or any combination thereof; coverage issued as a supplement to liability insurance; liability insurance, including general liability insurance and automobile liability; credit-only insurance; coverage for on-site medical clinics; other similar insurance coverage, which may be specified by rule, under which benefits for medical care are secondary or incidental to other insurance benefits; or

(2) Any of the following if provided under a separate policy, certificate, or contract of insurance: Limited scope dental or vision benefits; benefits for long-term care, nursing home care, home health care, community-based care, or any combination thereof; coverage for only a specified disease or illness; or hospital indemnity or other fixed indemnity insurance.

"Health insurance claims" shall only include information from Medicare supplemental policies if the same information is obtained with respect to Medicare.

(e) "Personal identifiers" means information relating to an individual member or insured that identifies, or can be used to identify, locate, or contact a particular individual member or insured, including, but not limited to, the individual's name, street

address, Social Security number, e-mail address, and telephone number.

(f) "Secretary" means the Secretary of the West Virginia Department of Health and Human Resources.

(g) "Third-party administrator" has the same meaning ascribed to it in §33-46-2 of this code.

§33-4A-2. Establishment and development of an all-payer claims database.

(a) The secretary shall have primary responsibility for the collection, retention, and dissemination of the data in an all-payer claims database (APCD). The commissioner shall have primary responsibility for enforcement of data collection.

(b) The secretary shall provide for the development of a plan for the financial stability of the APCD.

(c) The secretary shall provide for the use of the hospital uniform billing data collected by the West Virginia Department of Health and Human Resources as a tool in the validation of APCD reports.

§33-4A-3. Powers of the secretary; exemption from purchasing rules.

(a) The secretary may:

(1) Accept gifts, bequests, grants, or other funds dedicated to the furtherance of the goals of the all-payer claim database (APCD);

(2) Select a vendor to handle data collection and processing and such other tasks as deemed appropriate;

(3) Enter into agreements with other states to perform joint administrative operations, share information, and assist in the development of multistate efforts to further the goals of this article: *Provided,* That any such agreements must include adequate protections with respect to the confidentiality of the information to

be shared and comply with all state and federal laws and regulations;

(4) Enter into memoranda of understanding with other governmental agencies to carry out any of its functions, including contracts with other states to perform joint administrative functions;

(5) Attempt to ensure that the requirements with respect to the reporting of data be standardized;

(6) Enter into voluntary agreements to obtain data from payers not subject to mandatory reporting under this article; and

(7) Exempt a payer or class of payers from the requirements of this article for cause.

(b) Contracts for professional services for the development and operation of the APCD are not subject to the provisions of §5A-3-1 *et seq.* of this code relating to the Purchasing Division of the Department of Administration. The award of such contracts shall be subject to a competitive process established by the secretary.

(c) The secretary shall make an annual report to the Governor, which shall also be filed with the Joint Committee on Government and Finance, summarizing the activities of the APCD in the preceding calendar year.

§33-4A-4. Data subject to this article.

(a) All health care payers shall submit data to the secretary, or an entity designated by the secretary, at such times and in a form specified in rule. Any health care payer that the secretary or commissioner determines paid or administered the payment of health insurance claims in this state for policies on fewer than 500 covered lives in the previous calendar year is exempt from the requirements of this article.

(b) Data submitted in accordance with this article shall be considered confidential by law and privileged, are exempt from disclosure pursuant to §29B-1-1 *et seq.* of this code, are not open

to public inspection, are not subject to subpoena, are not subject to discovery or admissible in evidence in any criminal, private, civil, or administrative action, are not subject to production pursuant to court order, and shall only be used and disclosed pursuant to law and legislative rules promulgated pursuant to this article.

(c)(1) Data submitted to and retained by the all-payer claims database (APCD) shall be available as a resource for the secretary and commissioner to conduct public health analyses, conduct program analyses, review health care utilization, expenditures, and performance in West Virginia, conduct academic research, and to enhance the ability of consumers to make informed and cost-effective health care decisions.

(2) Data submitted to and retained by the APCD may, in accordance with this article and the legislative rules promulgated pursuant to this article, also be available as a resource for insurers, researchers, employers, providers, purchasers of health care, consumers, and state agencies. Any such use shall be limited to public health, research, consumer reporting, and program evaluation purposes.

(d) Notwithstanding any other provision of law to the contrary, the APCD may not disclose any data that contain personal identifiers. The secretary, in accordance with procedures and standards set forth in legislative rule, may approve access to data elements not prohibited from disclosure by the APCD, as well as synthetic or created unique identifiers, for use by researchers, including government agencies, with established protocols for safeguarding confidential or privileged information. Use of the data by the secretary and commissioner shall not constitute a disclosure.

§33-4A-5. User fees; waiver.

Reasonable user fees may be set by the secretary, in the manner established in legislative rule, for the right to access and use the data available from the all-payer claim database (APCD). The secretary may reduce or waive the fee if he or she determines that the user is unable to pay the scheduled fees and that the user has a

viable plan to use the data or information in research of general value to the public health.

§33-4A-6. Enforcement; injunctive relief.

If there is any violation of this article or any rule adopted thereunder, the commissioner or secretary may seek to enjoin a further violation in the circuit court of Kanawha County. Injunctive relief ordered pursuant to this section may be in addition to any other remedies and enforcement actions available to the secretary and commissioner under this chapter.

§33-4A-7. Special revenue account created.

(a) There is hereby created a special revenue account in the State Treasury, designated the West Virginia All-Payer Claims Database Fund, which shall be an interest-bearing account and may be invested in the manner permitted by §12-6-1 *et seq.* of this code, with the interest income a proper credit to the fund and which shall not revert to the general revenue, unless otherwise designated in law. The fund shall be overseen by the secretary and shall be used to pay all proper costs incurred in implementing the provisions of this article.

(b) The following funds shall be paid into this account:

(1) Penalties imposed on health care payers pursuant to this article and rules promulgated thereunder;

(2) Funds received from the federal government;

(3) Appropriations from the Legislature; and

(4) All other payments, gifts, grants, bequests, or income from any source.

§33-4A-8. Rule-making authority.

To effectuate the provisions of this article, the secretary and commissioner may propose joint rules for legislative approval in accordance with the provisions of §29A-3-1 *et seq.* of this code as

necessary to implement this article. Such rules may include, but are not limited to, the following:

(a) Procedures for the collection, retention, use, and disclosure of data from the all-payer claims database (APCD), including procedures and safeguards to protect the privacy, integrity, confidentiality, and availability of any data;

(b) Penalties against health care payers for violation of rules governing the submission of data, including a schedule of fines for failure to file data or to pay assessments;

(c) Fees payable by users of the data and the process for a waiver or reduction of user fees. Any such fees shall be established at a level that, when considered together with other available funding sources, is deemed necessary to sustain the operation of the APCD;

(d) A proposed time frame for the creation of the database;

(e) Criteria for determining whether data collected, beyond the listed personal identifiers, is confidential clinical data, confidential financial data, or privileged medical information, and procedures to give affected providers and health care payers notice and opportunity to comment in response to requests for information that may be considered confidential or privileged;

(f) Penalties, including fines and other administrative sanctions, that may be imposed by the commissioner for a health care payer's failure to comply with requirements of this article and rules adopted thereunder; and

(g) Establishment of advisory boards to provide advice to the secretary with respect to the various functions of the APCD.

CHAPTER 134

(Com. Sub. for S. B. 398 - By Senator Maroney)

[Passed April 10, 2021; in effect from passage]
[Approved by the Governor on April 21, 2021.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §5-16-29, relating to limiting employer eligibility for participation in plans by the Public Employees Insurance Agency.

Be it enacted by the Legislature of West Virginia:

ARTICLE 16. WEST VIRGINIA PUBLIC EMPLOYEES INSURANCE ACT.

§5-16-29. Limitation on PEIA participation.

Notwithstanding any other provision of this article to the contrary, the director may not consider any employer eligible for participation in a plan except for the following:

(1) All mandatory participants, including the State of West Virginia, its boards, agencies, commissions, departments, institutions, or spending units.

(2) Any county board of education or public charter school established pursuant to §18- 5G-1 *et seq.* of this code, if the charter school includes in its charter contract entered into pursuant to §18-5G-7 of this code a determination to participate in the Public Employees Insurance program: *Provided*, That as it relates to eligible public charter schools, only employees directly employed by a charter school that is exempt from the payment of taxes under the United States Internal Revenue Code, Title 26 U.S.C. §501(c)(3), may participate in a plan.

(3) Any employer participating in a plan as of the effective date of the enactment of this section in the regular session of the Legislature, 2021.

CHAPTER 135

(Com. Sub. for S. B. 421 - By Senators Tarr, Roberts, and Woodrum)

[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 §21A-2-6 of the Code of West Virginia, 1931, as amended, relating to the general powers and duties of the Commissioner of Workforce West Virginia; and authorizing the agency to hire additional employees to serve at the will and pleasure of the commissioner.

Be it enacted by the Legislature of West Virginia:

ARTICLE 2. THE COMMISSIONER OF WORKFORCE WEST VIRGINIA.

§ 21A-2-6 Powers and duties generally.

The commissioner is the executive and administrative head of Workforce West Virginia and has the power and duty to:

(1) Exercise general supervision for the governance of Workforce West Virginia and propose rules for promulgation in accordance with the provisions of §29A-3-1 *et seq.* of this code to implement the requirements of this chapter;

(2) Prescribe uniform rules pertaining to investigations and departmental hearings, and propose rules for promulgation;

(3) Supervise fiscal affairs and responsibilities of Workforce West Virginia;

(4) Prescribe the qualifications of, appoint, remove, and fix the compensation of, the officers and employees of Workforce West

Virginia, subject to the provisions of §21A-4-10 of this code, relating to the Board of Review;

(5) Organize and administer Workforce West Virginia so as to comply with the requirements of this chapter and to satisfy any conditions established in applicable federal law or regulation;

(6) Make reports in the form and containing information required by the United States Department of Labor and comply with any requirements that the United States Department of Labor finds necessary to assure the correctness and verification of the reports;

(7) Make available to any agency of the United States charged with the administration of public works or assistance through public employment, upon its request, the name, address, ordinary occupation, and employment status of each recipient of unemployment compensation and a statement of the recipient's rights to further compensation under this chapter;

(8) Keep an accurate and complete record of all Workforce West Virginia proceedings, record and file all bonds and contracts, and assume responsibility for the custody and preservation of all papers and documents of Workforce West Virginia;

(9) Sign and execute in the name of the state, by Workforce West Virginia, any contract or agreement with the federal government, its agencies, other states, their subdivisions, or private persons;

(10) Prescribe a salary scale to govern compensation of appointees and employees of Workforce West Virginia;

(11) Exempt up to 100 positions of the offices of WorkForce West Virginia from the classified service of the state, the employees of which positions shall serve at the will and pleasure of the commissioner: *Provided,* That such exempt positions shall be in addition to those positions in classified and classified-exempt service under the classification plan adopted by the Division of Personnel. The Commissioner of WorkForce West Virginia shall

report all exemptions made under this section to the Director of the Division of Personnel as the commissioner determines necessary;

(12) Make the original determination of right in claims for benefits;

(13) Make recommendations and an annual report to the Governor concerning the condition, operation, and functioning of Workforce West Virginia;

(14) Invoke any legal or special remedy for the enforcement of orders or the provisions of this chapter;

(15) Exercise any other power necessary to standardize administration, expedite Workforce West Virginia business, assure the establishment of fair rules, and promote the efficiency of the service;

(16) Keep an accurate and complete record and prepare a monthly report of the number of persons employed and unemployed in the state. The report shall be made available upon request to members of the public and press;

(17) Provide, at Workforce West Virginia expense, a program of continuing professional, technical, and specialized instruction for the personnel of Workforce West Virginia;

(18) (A) Propose rules for legislative approval in accordance with the provisions of §29A-3-1 *et seq.* of this code, under which agencies of this state shall revoke or not grant, issue, or renew any contract, license, permit, certificate, or other authority to conduct a trade, profession, or business to or with any employing unit whose account is in default with the commissioner with regard to the administration of this chapter. The term "agency" includes any unit of state government such as officers, agencies, divisions, departments, boards, commissions, authorities, or public corporations. An employing unit is not in default if it has entered into a repayment agreement with the Unemployment Compensation Division of Workforce West Virginia and remains in compliance with its obligations under the repayment agreement;

(B) The rules shall provide that, before revoking, granting, issuing, or renewing any contract, license, permit, certificate, or other authority to conduct a trade, profession, or business to or with any employing unit, the designated agencies shall review a list or lists provided by Workforce West Virginia that are in default. If the employing unit's name is not on the list, the agency, unless it has actual knowledge that the employing unit is in default with Workforce West Virginia, may grant, issue, or renew the contract, license, permit, certificate, or other authority to conduct a trade, profession, or business. The list may be provided to the agency in the form of a computerized database or databases that the agency can access. Any objections to the revocation or refusal to issue or renew shall be reviewed under the appropriate provisions of this chapter;

(C) The rules may be promulgated or implemented in phases so that specific agencies or specific types of contracts, licenses, permits, certificates, or other authority to conduct trades, professions, or businesses will be subject to the rules beginning on different dates. The presumptions of ownership or control contained in the Department of Environmental Protection's surface mining reclamation regulations promulgated under the provisions of §22-3-1 *et seq.* of this code are not applicable or controlling in determining the identity of employing units who are in default for the purposes of this subdivision. The rules shall also provide a procedure allowing any agency or interested person, after being covered under the rules for at least one year, to petition Workforce West Virginia to be exempt from the provisions of the rules;

(19) Deposit to the credit of the appropriate special revenue account or fund, notwithstanding any other provision of this code and to the extent allowed by federal law, all amounts of delinquent payments or overpayments, interest, and penalties thereon and attorney's fees and costs collected under the provisions of this chapter. The amounts collected shall not be treated by the Auditor or Treasurer as part of the general revenue of the state; and

(20) Enter into interagency agreements to assist in exchanging information and fulfilling the provisions of this article.

CHAPTER 136

(Com. Sub. for S. B. 429 - By Senators Weld, Stollings, Maroney, and Woodrum)

[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 §5A-3-3a of the Code of West Virginia, 1931, as amended, relating to Division of Emergency Management purchase and sale of commodities and services; exempting division from Purchasing Division requirements concerning contracts for purchase of commodities or services; providing exception; and authorizing Agency for Surplus Property to transfer funds generated from the sale of vehicles, other equipment, and commodities belonging to the Division of Emergency Management to the WV Interoperable Radio Project special revenue account.

Be it enacted by the Legislature of West Virginia:

ARTICLE 3. PURCHASING DIVISION.

§5A-3-3a. Additional exemptions from purchasing requirements.

(a) The provisions of §5A-3-3(9) of this code do not apply to the Division of Emergency Management created by §15-5-1 *et seq.* of this code: *Provided*, That if work on a purchase or contract has been started by the Purchasing Division, on behalf of the Division of Emergency Management, prior to the effective date of this section, the Purchasing Division shall continue to perform services for the Division of Emergency Management on that purchase or contract until the contract is awarded or the purchase is made, or the Division of Emergency Management decides not to make the purchase or award the contract.

(b) Notwithstanding any other provision of this code, the Agency for Surplus Property is hereby empowered to transfer funds generated from the sale of vehicles, other equipment, and commodities belonging to the West Virginia Division of Emergency Management to a special revenue account within the Division of Emergency Management entitled the West Virginia Division of Emergency Management, WV Interoperable Radio Project Account.

CHAPTER 137

(S. B. 486 - By Senators Swope, Roberts, Smith, Plymale, and Woodrum)

[Passed April 8, 2021; in effect 90 days from passage (July 7, 2021)]
[Approved by the Governor on April 15, 2021.]

AN ACT to amend and reenact §5A-6-2, §5A-6-3, §5A-6-4, §5A-6-4b, §5A-6-4c, §5A-6-5, §5A-6-6, §5A-6-7, and §5A-6-8 of the Code of West Virginia, 1931, as amended, all relating to the Office of Technology; renaming the Chief Technology Officer; updating definitions; updating authority of the Chief Technology Officer; continuing special fund; providing an information technology governance structure for executive agencies; authorizing the Chief Technology Officer to provide training; authorizing the Project Management Office to review agency proposals for technology investment; providing criteria to evaluate proposals; authorizing the Project Management Office to maintain an enterprise technology portfolio; authorizing the Project Management Office to collect necessary data to develop a technology portfolio; authorizing the Chief Technology Officer to establish an advisory committee; and authorizing the Chief Technology Officer to request resources and support from the federal government for cybersecurity and technology initiatives.

Be it enacted by the Legislature of West Virginia:

ARTICLE 6. OFFICE OF TECHNOLOGY.

§5A-6-2. Definitions.

As used in this article:

"Information systems" means a discrete set of information resources organized for the collection, processing, maintenance, use, sharing, dissemination, or disposition of information.

"Information technology" means any equipment or interconnected system or subsystem of equipment that is used in the automatic acquisition, storage, manipulation, management, movement, control, display, switching, interchange, transmission, or reception of data or information.

"Technology services" means professional services designed to provide functions, maintenance, and support of information technology devices, or services including, but not limited to, computer systems application development and maintenance; systems integration and interoperability; operating systems maintenance and design; computer systems programming; computer systems software support; planning and security relating to information technology devices; data management consultation; information technology education and consulting; information technology planning and standards; and establishment of local area network and workstation management standards.

"Telecommunications" means the preparation, transmission, communication, or related processing of information by electrical, electromagnetic, electromechanical, electro-optical, or electronic means.

"Chief Information Officer" means the person holding the position created in §5A-6-3 of this code and vested with authority to oversee state spending units in planning and coordinating information systems that serve the effectiveness and efficiency of the state and individual state spending units, and further the overall management goals and purposes of government: *Provided*, That reference to "Chief Technology Officer" in other articles of this code shall mean "Chief Information Officer".

"Technical infrastructure" means all information systems, information technology, information technology equipment, telecommunications, and technology services as defined in this section.

"Technology project" means a project where technology is a significant component and is either valued at $250,000 or more, or will involve sensitive or restricted data.

"Steering committee" means an internal agency oversight committee established jointly by the Chief Information Officer and the agency proposing the project, which shall include representatives from the Office of Technology and at least one representative from the agency proposing the project.

"Technology portfolio" means a strategic management process documenting relationships between agency missions and information technology and telecommunications investments.

§5A-6-3. Office of Technology; Chief Information Officer; appointment and qualifications; continuation of special fund.

(a) The Office of Technology is created within the Department of Administration, to be led by a Chief Information Officer, who shall be appointed by and serve at the will and pleasure of the Governor. The Chief Information Officer shall have knowledge in the field of information technology, experience in the design and management of information systems, and an understanding of the special demands upon government with respect to budgetary constraints, the protection of privacy interests, and federal and state standards of accountability.

(b) There is hereby continued in the State Treasury a special account to be known as the Chief Technology Officer Administration Fund. All fees collected by the Chief Information Officer pursuant to this article shall be deposited into the fund. Expenditures from the fund shall be made by the Chief Information Officer 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 the fulfillment of the provisions set forth in §11B-2-1 *et seq.* of this code: *Provided,* That the provisions of §11B-2-18 of this code do not

operate to permit expenditures in excess of the spending authority provided by the Legislature.

§5A-6-4. Powers and duties of the Chief Information Officer generally.

(a) With respect to all state spending units the Chief Information Officer may:

(1) Establish information technology governance to align technology management with departmental and agency business goals, including, but not limited to:

(A) Standards necessary to support a unified approach to information technology across the totality of state government, thereby assuring that the citizens and businesses of the state receive the greatest possible security, value, and user experience from investments made in technology;

(B) Standards relating to the exchange, acquisition, storage, use, sharing, and distribution of data;

(C) Standards for the connectivity, interoperability, and continuity of technology for government operations in times of disaster or emergency;

(2) Develop a mechanism for identifying those instances where information systems should be linked and information shared, while providing for appropriate limitations on access and the security of data;

(3) Create new technologies to be used in government, convene conferences, and develop incentive packages to encourage the utilization of technology;

(4) Charge a fee to the state spending units for services provided under the provisions of this article;

(5) Periodically evaluate the feasibility of subcontracting information technology resources and services, and to subcontract only those resources that are feasible and beneficial to the state;

(6) Develop job descriptions and qualifications necessary to perform duties related to information technology as outlined in this article;

(7) Provide information technology related training to facilitate efficient use of state technology resources;

(8) Submit resource and support requests to the federal government to support technology or cyber security initiatives or programs;

(9) Engage in any other activities as directed by the Governor; and

(10) Promulgate legislative rules, in accordance with the provisions of §29A-3-1 *et seq.* as may be necessary to standardize and make effective the administration of the provisions of this article.

(b) With respect to executive agencies, the Chief Information Officer may:

(1) Develop a unified and integrated structure for information systems for all executive agencies;

(2) Establish, based on need and opportunity, priorities and timelines for addressing the information technology requirements of executive agencies;

(3) Draw upon staff of other executive agencies for advice and assistance in the formulation and implementation of administrative and operational plans and policies;

(4) Recommend to the Governor transfers of equipment and human resources from any executive agency for the most effective and efficient uses of the fiscal resources of executive agencies to modernize information technology investments;

(5) Provide guidance and services where feasible to support proper cleansing of electronic data; and

(6) Develop an information technology recycling program to redistribute or reuse properly cleansed technology equipment. Transfers and disposal of information technology equipment are specifically exempt from the surplus property requirements enumerated in §5A-3-43, §5A-3-44, §5A-3-45, and §5A-3-46 of this code.

(c) The Chief Information Officer may employ the personnel necessary to carry out the work of the Office of Technology and may approve reimbursement of costs incurred by employees to obtain education and training.

(d) The Chief Information Officer may oversee telecommunications services used by state spending units for the purpose of maximizing efficiency to the fullest possible extent including auditing telecommunications services and usage and negotiation of telecommunications contracts.

(e) The Chief Information Officer may convene and chair an advisory committee made up of a representative from each of the departments as identified in §5F-1-2 of this code, and any other members deemed necessary by the Chief Information Officer to provide advice and recommendations on technology issues for state agencies.

§5A-6-4b. Project management duties of the Chief Information Officer; establishment of the Project Management Office and authority of the Project Management Office.

(a) The Chief Information Officer is authorized to:

(1) Implement an approval process for technology projects proposed by state agencies to ensure that all technology projects conform to the statewide strategic plan and the overall technology strategy of the agency;

(2) Establish a methodology for conceiving, planning, scheduling, and providing appropriate oversight for technology projects, including oversight for the projects and a process for approving the planning, development, and procurement of technology projects; and

(3) Establish steering committees as needed to oversee technology projects.

(b) The Chief Information Officer shall create a Project Management Office within the Office of Technology. The Project Management Office shall:

(1) Implement the approval process for technology projects;

(2) Review technology project proposals submitted by agencies and recommend to the Chief Information Officer the approval of the proposals and any amendments thereto pursuant to §5A-6-4c of this code;

(3) Monitor the implementation of technology projects and periodically report findings to the Chief Information Officer;

(4) Implement technology portfolio management to assist the Chief Information Officer with aligning investment in technology with strategic goals of the state. The standard by which the projects within the technology portfolio will be evaluated are:

(A) Total cost of the project;

(B) Public or citizen interface with the project or number of people affected by the project;

(C) Whether the project is operationally critical to the agency.

(5) Provide oversight for technology projects; and

(6) Establish minimum qualifications and training standards for project managers.

§5A-6-4c. Technology project proposals and the establishment of steering committees.

(a) Prior to proceeding with a technology project, a state agency shall submit a project proposal to the Project Management Office, outlining the business case, the proposed technology solution, if known, and an explanation of how the project will support the agency's business objective and the state's strategic

plan for information technology. The Project Management Office may require the submission of additional information as needed to adequately review any proposal.

(b) The Project Management Office shall make recommendations on proposed projects to the Chief Information Officer for final disposition: *Provided,* That the Chief Information Officer may delegate approval authority.

(c) If the Chief Information Officer deems necessary, a steering committee may be appointed to:

(1) Provide ongoing oversight for the technology project;

(2) Have the authority to approve or reject any changes to the project's scope, schedule, or budget;

(3) Develop any necessary solicitation for the technology project; and

(4) Finalize data necessary for inclusion of the project in the technology portfolio.

§5A-6-5. Notice of request for proposals by state spending units required to make purchases through the state Purchasing Division.

Any state spending unit that pursues an information technology purchase that does not meet the definition of "technology project" and that is required to submit a request for proposal to the state Purchasing Division prior to purchasing goods or services shall obtain the approval of the Chief Information Officer, in writing, of any proposed purchase of goods or services related to its information technology and telecommunication systems. The proposal shall contain a brief description of the goods and services to be purchased. The state spending unit shall provide the proposal to the Chief Information Officer prior to the time it submits its request for proposal to the state Purchasing Division.

§5A-6-6. Notice of request for proposals by state spending units exempted from submitting purchases to the state Purchasing Division.

(a) Any state spending unit that is not required to submit a request for proposal to the state Purchasing Division prior to purchasing goods or services shall notify the Chief Information Officer, in writing, of any proposed purchase of goods or services related to its information technology or telecommunication systems. The proposal shall contain a detailed description of the goods and services to be purchased. The state spending unit shall provide the proposal to the Chief Information Officer a minimum of 10 days prior to the time it requests bids on the provision of the goods or services.

(b) If the Chief Information Officer evaluates the suitability of the information technology and telecommunication equipment and related services under the provisions of §5A-6-4(a) of this code and determines that the goods or services to be purchased are not suitable, he or she shall, within 10 days of receiving the notice from the state spending unit, notify the state spending unit, in writing, of any recommendations he or she has regarding the proposed purchase of the goods or services. If the state spending unit receives a written notice from the Chief Information Officer within the time period required by this section, the state spending unit shall not put the goods or services out for bid less than 15 days following receipt of the notice from the Chief Information Officer.

§5A-6-7. Biannual report.

The Chief Information Officer shall report biannually to the Legislative Joint Committee on Government and Finance on the activities of his or her office.

§5A-6-8. Exemptions.

(a) The provisions of this article do not apply to the Legislature, the judiciary, or any state Constitutional Officer designated in §6-7-2 of this code.

(b) Notwithstanding any other provision of this article to the contrary, the provisions of this article do not apply to the West Virginia Board of Education, the West Virginia Department of Education, the county boards of education, the higher educational institutions, or the West Virginia Emergency Management Division of the Department of Homeland Security relating to the technology used with the Statewide Interoperable Radio Network, created by §15-14-1 *et seq.* of this code. However, the West Virginia Board of Education, the West Virginia Department of Education, the county boards of education, and the institutions of higher education shall cooperate and collaborate with the Chief Information Officer to the extent feasible.

(c) The Governor may by executive order exempt from the provisions of this article any entity created and organized to facilitate the public and private use of health care information and the use of electronic medical records throughout the state.

CHAPTER 138

(S. B. 494 - By Senator Azinger)

[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 §23-2C-16 of the Code of West Virginia, 1931, as amended, relating to authorizing the Insurance Commissioner to transfer moneys during specified fiscal years from the Insurance Commission Fund, also known as the commissioner's operating fund, into the Workers' Compensation Old Fund to reduce any deficit balance of the Old Fund.

Be it enacted by the Legislature of West Virginia:

ARTICLE 2C. EMPLOYERS' MUTUAL INSURANCE COMPANY.

§23-2C-16. Administration of Old Fund, Uninsured Employer Fund, Self-Insured Employer Guaranty Risk Pool, Self-Insured Employer Security Risk Pool, and Private Carrier Guaranty Fund.

(a) Notwithstanding any provision of this code to the contrary, the company shall be the initial third-party administrator of the Old Fund, Uninsured Employer Fund, Self-Insured Employer Guaranty Risk Pool, Self-Insured Employer Security Risk Pool, and Private Carrier Guaranty Fund from the termination of the commission and thereafter for a term of at least six months but not more than three years pursuant to an agreement to be entered into between the Insurance Commissioner and the company prior to the termination of the commission. The company shall be paid a reasonable fee for services provided. The company's administrative duties may include, but not be limited to, receipt of all claims, processing said

claims, providing for the payment of said claims through the State Treasurer's office or other applicable state agency and ensuring, through the selection and assignment of counsel, that claims decisions are properly defended. The administration of said funds thereafter shall be subject to the procedures set forth in §5A-3-1 *et seq.* of this code.

(b) The Insurance Commissioner shall review claims determined to be payable from said funds and may contest the determination pursuant to the provisions of §23-5-1 *et seq.* of this code.

(c) The Insurance Commissioner may conduct or cause to be conducted an annual audit to be performed on said funds.

(d) The Insurance Commissioner may contract or employ counsel to perform legal services related solely to the collection of moneys due the Old Fund, including the collection of moneys due the Old Fund and enforcement of repayment agreements entered into for the collection of moneys due on or before June 30, 2005, in any administrative proceeding and in any state or federal court.

(e) During the fiscal years beginning July 1, 2019, July 1, 2020, July 1, 2021, July 1, 2022, and July 1, 2023, the Insurance Commissioner may, in his or her discretion, transfer special revenue moneys contained in the Insurance Commission Fund to the Old Fund in any fiscal year in which the Insurance Commissioner has determined, and an independent auditor has attested thereto, that a deficit balance existed in the Old Fund for the prior fiscal year.

CHAPTER 139

(Com. Sub. for S. B. 514 - By Senators Smith, Takubo, Hamilton, Woelfel, and Jeffries)

[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 §20-1-16 of the Code of West Virginia, 1931, as amended, relating to the Natural Resources Commission; providing for the composition and membership of the commission; providing criteria and qualifications for the appointment of commissioners; and providing for reimbursement of expenses for commissioners.

Be it enacted by the Legislature of West Virginia:

ARTICLE 1. ORGANIZATION AND ADMINISTRATION.

§20-1-16. Natural Resources Commission - generally.

(a) The Natural Resources Commission, created and established by §20-1-3 of this code, shall be a public benefit corporation and as such may sue and be sued, plead and be impleaded, contract and be contracted with, and have and use a common seal. It shall be a commission advisory to the director and to the Division of Natural Resources. The commission shall be composed of seven members, known as commissioners, one from each division of natural resources district and the remainder from the state at large, and shall be appointed to provide the broadest geographic distribution possible so that each commissioner shall attend the division sectional meetings established in §20-1-7(6) of this code within his or her respective district.

(b) The Governor, with the advice and consent of the Senate, shall appoint the seven members for the following terms beginning July 1, 2021:

(1) Three for a term of four years;

(2) Two for a term of three years; and

(3) Two for a term of two years.

(4) Successors to appointed members whose terms expire shall be appointed for terms of four years. Any commissioner whose term has expired shall serve until his or her successor has been appointed. An appointed commissioner may not serve more than two consecutive terms. Vacancies shall be filled for any unexpired term. Appointment to fill a vacancy shall not be considered as one of two full terms. Any commissioner who has served two or more consecutive terms immediately preceding the effective date of this section shall not be excluded from consideration for initial appointment under this section.

(c) The members of the commission shall be citizens and residents of the state, and shall be selected with special emphasis on his or her interest in the conservation of the natural resources of the state. No member of the commission shall be a candidate for or hold any public office other than that of member of the commission; nor shall he or she be a member of any committee of a political party. In case a member becomes a candidate for or accepts appointment to any public office or political party committee, his or her position as member of the commission shall be immediately vacated. The Director of the Division of Natural Resources may submit recommendations to the Governor for the appointment of the commissioners.

(d) Commissioners are not entitled to compensation for services performed for the commission, but may be reimbursed by the Division of Natural Resources for actual and necessary expenses incurred for each day in which he or she is engaged in the discharge of official duties, the actual expenses not to exceed the amount paid similar reimbursement to members of the Legislature.

CHAPTER 140

(Com. Sub. for S. B. 517 - By Senators Sypolt and Roberts)

[Passed March 25, 2021; in effect from passage]
[Approved by the Governor on April 2, 2021.]

AN ACT to amend and reenact §29A-3-19 of the Code of West Virginia, 1931, as amended, relating to sunset provisions of legislative rules; requiring new legislative rules to contain a sunset provision terminating the legislative rule on August 1 of the fifth year following promulgation; removing the five-year sunset requirement for new legislative rules after initial five-year sunset provision; requiring all legislative rules to sunset on August 1 of the applicable year; authorizing an agency to file a technical amendment with the Secretary of State to correct sunset dates in accordance with this requirement; and requiring the Secretary of State to file a notice of sunset in the State Register upon the expiration of a legislative rule.

Be it enacted by the Legislature of West Virginia:

ARTICLE 3. RULEMAKING.

§29A-3-19. Sunset provision in rules.

(a) Any new legislative rule promulgated pursuant to this article after April 1, 2016, shall include a sunset provision terminating the rule on August 1 of the fifth year following its promulgation: *Provided,* That the rule may be renewed by the Legislature pursuant to the rule-making procedures and authority in this article: *Provided, however,* That if a different sunset or termination provision exists in the statute under which the proposed rule is promulgated, the enabling statute's provision shall control: *Provided further,* That this subsection shall not apply to rules promulgated by the Department of Environmental Protection

or emergency rules promulgated pursuant to §29A-3-15 of this code.

(b) Any legislative rule existing as of April 1, 2016, that is thereafter amended pursuant to this article, shall include a sunset provision terminating the rule on August 1 of the applicable year as part of the amendment: *Provided,* That the rule may be renewed by the Legislature pursuant to the rule-making procedures and authority in this article: *Provided, however,* That if a different sunset or termination provision exists in the statute under which the legislative rule is promulgated, the enabling statute's provision controls: *Provided further,* That this subsection shall not apply to legislative rules promulgated by the Department of Environmental Protection or emergency rules promulgated pursuant to §29A-3-15 of this code.

(c) The existence of a sunset provision terminating a legislative rule shall not preclude the repeal of the legislative rule by the Legislature prior to its termination.

(d) As part of its rule review under this article, the Legislative Rule-Making Review Committee may establish a procedure for timely review of a legislative rule prior to its termination for those agencies that have affirmatively sought renewal prior to expiration. The procedure may include a requirement that the agency show cause as to why the terminating legislative rule is required and necessary to be continued for another term of years.

(e) The Secretary of State shall provide notice to the promulgating agency and the Legislative Rule-Making Review Committee at least 18 months prior to every legislative rule's termination date. The promulgating agency has 60 days from receipt of the notice to file the legislative rule with the Secretary of State and the Legislative Rule-Making Review Committee affirmatively seeking renewal of the legislative rule: *Provided,* That, if the legislative rule that is scheduled to sunset is not being amended or changed, except for a new sunset date, the rule is not subject to the public comment period requirements contained in §29A-3-5 of this code. The Legislative Rule-Making Review

Committee, as part of its rule review under this article, may begin reviewing a legislative rule upon its filing.

(f) Any agency that has promulgated a legislative rule with a sunset date prior to May 1 of the applicable year, may file a technical amendment with the Secretary of State for the purposes of establishing a sunset date of August 1 of the applicable year.

(g) The Secretary of State shall file a notice of sunset in the State Register within 30 days following the expiration of a legislative rule.

CHAPTER 141

(Com. Sub. for S. B. 587 - By Senators Swope and Woodrum)

[Passed April 2, 2021; in effect 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 §5A-3-62, relating to contract terms and conditions and the inability of government officials to agree with certain contract terms.

Be it enacted by the Legislature of West Virginia:

ARTICLE 3. PURCHASING DIVISION.

§5A-3-62. Prohibited contract clauses.

(a) Any term or condition in any contract entered into by the state shall be void ab initio to the extent that it requires the state to:

(1) Indemnify or hold harmless any entity;

(2) Agree to binding arbitration or any other binding extra-judicial dispute resolution process;

(3) Limit liability for direct damages for bodily injury, death, or damage to property (tangible or intangible) caused by the negligence or willful misconduct of such person's employees or agents;

(4) Agree to shorten statutes of limitation established by this code;

(5) Allow automatic renewal of contracts without express written consent of the state;

(6) Agree to payment in advance (unless specifically authorized by statute or the policy of the West Virginia State Auditor);

(7) Agree to jurisdiction anywhere other than a court authorized by the West Virginia Legislature to hear the dispute;

(8) Be governed by any law other than the laws of the State of West Virginia or required federal law;

(9) Pay court costs;

(10) Pay taxes;

(11) Waive defenses;

(12) Permit assignment of contracts without express written consent from the state;

(13) Treat information as confidential contrary to the state's disclosure responsibilities under any applicable bid disclosure laws and the Freedom of Information Act;

(14) Agree to unsigned third-party terms and conditions;

(15) Limit the state's ability to cancel a contract for convenience with 30 days' notice;

(16) Give up its ownership rights or interest in any information or data, including confidential information, provided to, or collected by, a vendor on behalf of the state;

(17) Maintain any type of insurance; or

(18) Permit modification of contract terms without prior approval from the state.

(b) No official, employee, agent, or representative of the state has the authority to contravene this section, and no oral or written expression of consent to any term or condition declared void ab initio by this section, or signature on a contract, may be deemed as such. Any contract that contains a term or condition declared void

ab initio by this section shall otherwise be enforceable as if it did not contain such term or condition. All contracts entered into by the state, except for contracts with another government, shall be governed by West Virginia law notwithstanding any term or condition to the contrary.

CHAPTER 142

(Com. Sub. for S. B. 642 - By Senators Rucker and Karnes)

[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 §59-3-2 of the Code of West Virginia, 1931, as amended, relating to publication of legal notices of the state and its agencies; requiring State Auditor to establish public notice database on website centralizing access to all state and state agency postings of legal advertisements required by law; mandating state and its agencies publish all required legal advertisements on database in addition to newspaper publication after certain date; requiring State Auditor propose rules and emergency rules relating to database; and mandating State Auditor annually report to Joint Committee on Government and Finance.

Be it enacted by the Legislature of West Virginia:

ARTICLE 3. NEWSPAPERS AND LEGAL ADVERTISEMENTS.

§59-3-2. Classification of legal advertisements; designation of newspapers; frequency of publication; posting; manner of publishing; publication of notices for the state and its agencies.

(a) A Class I legal advertisement shall be published one time, a Class II legal advertisement shall be published once a week for two successive weeks, and a Class III legal advertisement shall be published once a week for three successive weeks in a qualified newspaper published in the publication area; or if there is no qualified newspaper published in the publication area or if no qualified newspaper published in the publication area will publish the legal advertisement at the rates specified in §59-3-3 of this

code, the legal advertisement shall be published in a qualified newspaper published outside the publication area; or if no qualified newspaper is published outside the publication area or if no qualified newspaper published outside the publication area will publish the legal advertisement at the rates specified in §59-3-3 of this code, the legal advertisement shall be posted in at least three public places in the publication area, one of which postings shall be in the county courthouse, at or near the front door of the county courthouse, if a county courthouse is located in the publication area and one of which postings shall be in the municipal office building or municipal office or offices, at or near the front door thereof, if the publication area is a municipality.

(b) A Class I-0 legal advertisement shall be published one time, a Class II-0 legal advertisement shall be published once a week for two successive weeks, and a Class III-0 legal advertisement shall be published once a week for three successive weeks, in two qualified newspapers of opposite politics published in the publication area; or if two qualified newspapers of opposite politics are not published in the publication area or if two qualified newspapers of opposite politics published in the publication area will not publish the legal advertisement at the rates specified in §59-3-3 of this code, the legal advertisement shall be published in one qualified newspaper published in the publication area; or if there is no qualified newspaper published in the publication area or if no qualified newspaper published in the publication area will publish the legal advertisement at the rates specified in §59-3-3 of this code, the legal advertisement shall be published in one qualified newspaper published outside the publication area; or if no qualified newspaper is published outside the publication area or if no qualified newspaper published outside the publication area will publish the legal advertisement at the rates specified in §59-3-3 of this code, the legal advertisement shall be posted in at least three public places in the publication area, one of which postings shall be in the county courthouse, at or near the front door thereof, if a county courthouse is located in the publication area and one of which postings shall be in the municipal office building or municipal office or offices, at or near the front door thereof, if the publication area is a municipality.

(c) A legal advertisement may be published in a qualified newspaper published on any day of the week except Sunday.

(d) All legal advertisements shall be published together in continuous columns on one page of the newspaper publishing them under a general heading styled "Legal Advertisements", unless the number or size of the legal advertisements requires the use of more than one page, in which event the legal advertisements shall be published as near as practicable in continuous columns on as many pages as necessary under the same heading as above required.

(e) Beginning July 1, 2022, any and all legal notices, advertisements, publications, statements, or whatever kind or character required to be published by the State of West Virginia, or its agencies, shall be made at the frequency and in the manner prescribed by subsection (a) or (b) of this section, and shall also be published on a public notice database to be created and maintained by the State Auditor.

(f) Pursuant to subsection (e) of this section, the State Auditor shall propose rules and emergency rules for legislative approval in accordance with the provisions of §29A-3-1 *et seq.* of this code relating to the creation and maintenance of a public notice database available on the State Auditor's website, the establishment of forms and procedures for submission of information to the State Auditor by the State of West Virginia and its agencies, providing a method of verifying publication of the notice, and for other procedures and policies consistent with this section.

(g) The State Auditor shall report annually to the Joint Committee on Government and Finance regarding the public notice database established by this section, which report shall include information on the extent of the use of the public notice database on the State Auditor's website, the financial impact resulting from the use of the public notice database, and any recommendations for additional enabling legislation relating to the public notice database.

CHAPTER 143

(Com. Sub. for S. B. 684 - By Senator Woodrum)

[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 §10-1-12 of the Code of West Virginia, 1931, as amended, relating to the State Library Commission; adding the Curator of the West Virginia Department of Arts, Culture and History as an ex officio voting member; and updating other language.

Be it enacted by the Legislature of West Virginia:

ARTICLE 1. PUBLIC LIBRARIES.

§10-1-12. State Library Commission.

There shall be a state Library Commission, known as the West Virginia Library Commission, which shall consist of the Curator of the West Virginia Department of Arts, Culture and History as an ex officio voting member and eight members who shall be appointed by the Governor, by and with the advice and consent of the Senate, each for a term of four years. No more than three members may reside in the same congressional district. At least four members of the commission shall be women and at least four members shall be men. No member of the commission shall receive compensation for services rendered, nor be engaged or interested in the publishing business.

The members of the commission in office on the date this code takes effect shall, unless sooner removed, continue to serve until their respective terms expire and their successors have been appointed and have qualified. On or before the expiration of the terms for which the members are appointed, the Governor shall appoint their successors.

CHAPTER 144

(H. B. 2019 - By Delegates Hanshaw (Mr. Speaker) and Skaff)

(By Request of The Executive)

[Passed February 26, 2021; in effect ninety days from passage.]
[Approved by the Governor on March 8, 2021.]

AN ACT to amend and reenact §5B-1-2 of the Code of West Virginia, 1931, as amended; to amend and reenact §5B-2-1, §5B-2-2, §5B-2-3, §5B-2-3b, §5B-2-4, §5B-2-4a, §5B-2-5, §5B-2-6, §5B-2-6a, §5B-2-9a, §5B-2-10, §5B-2-14, §5B-2-15, §5B-2-16, and §5B-2-17 of said code; to amend and reenact §5B-2I-2, §5B-2I-3, §5B-2I-4, §5B-2I-5, §5B-2I-6, §5B-2I-7, and §5B-2I-8 of said code; to amend and reenact §5F-1-2 of said code; and to amend and reenact §5F-2-1 of said code, all relating to reorganizing and redesignating certain agencies of the Department of Commerce; clarifying the divisions that report to the cabinet secretary of the Department of Commerce; removing the West Virginia Development Office from the Department of Commerce and redesignating the West Virginia Development Office as the Department of Economic Development; removing reference to the Division of Energy under the Department of Commerce; removing the West Virginia Tourism Office from the Department of Commerce and redesignating the West Virginia Tourism Office as the Department of Tourism; removing the Tourism Commission from the Department of Commerce and redesignating the Tourism Commission as the Tourism Advisory Council; redesignating the executive director of the Development Office as the secretary of the Department of Economic Development and providing for his or her appointment and term of office; providing that the Department of Economic Development will utilize existing resources of the Department of Commerce to the fullest extent practicable and efficient; providing that the

Secretary of the Department of Economic Development may exempt employees from coverage under the state's classified service; providing that the Department of Economic Development is exempt from of §5A-3-1 *et seq.* of this code; redesignating the Development Office Promotion Fund as the Economic Development Promotion and Closing Fund and allowing further uses of such fund; redesignating the executive director of the Tourism Office as the secretary of the Department of Tourism and providing for his or her appointment and term of office; providing that the Department of Tourism will utilize existing resources of the Department of Commerce to the fullest extent practicable and efficient; providing that the Department of Tourism is exempt from §5A-3-1 *et seq.*; adding the Secretary of the Department of Economic Development to the membership of the Tourism Advisory Council; updating references to the secretary and Department of Economic Development; and updating references to the secretary and Department of Tourism.

Be it enacted by the Legislature of West Virginia:

CHAPTER 5B. ECONOMIC DEVELOPMENT ACT OF 1985.

ARTICLE 1. DEPARTMENT OF COMMERCE.

§5B-1-2. Agencies, boards, commissions, divisions, and offices comprising the Department of Commerce.

The Department of Commerce consists of the following agencies, boards, commissions, divisions, and offices, including all of the allied, advisory, affiliated, or related entities, which are incorporated in and administered as part of the Department of Commerce:

(1) Division of Labor provided in §21-1-1 *et seq.* of this code, which includes:

(A) Occupational Safety and Health Review Commission provided in §21-3A-1 *et seq.* of this code; and

(B) Board of Manufactured Housing Construction and Safety provided in §21-9-1 *et seq.* of this code;

(2) Office of Miners' Health, Safety and Training provided in §22A-1-1 *et seq.* of this code. The following boards are transferred to the Office of Miners' Health, Safety and Training for purposes of administrative support and liaison with the Office of the Governor:

(A) Board of Coal Mine Health and Safety and Coal Mine Safety and Technical Review Committee provided in §22A-6-1 *et seq.* of this code;

(B) Board of Miner Training, Education and Certification provided in §22A-7-1 *et seq.* of this code; and

(C) Mine Inspectors' Examining Board provided in §22A-9-1 *et seq.* of this code;

(3) Division of Natural Resources and Natural Resources Commission provided in §20-1-1 *et seq.* of this code;

(4) Division of Forestry provided in §19-1A-1 *et seq.* of this code;

(5) Geological and Economic Survey provided in §29-2-1 *et seq.* of this code; and

(6) Workforce West Virginia provided in Chapter 21 of this code, which includes:

(A) Division of Unemployment Compensation;

(B) Division of Employment Service;

(C) Division of Workforce Development; and

(D) Division of Research, Information and Analysis.

ARTICLE 2. DEPARTMENT OF ECONOMIC DEVELOPMENT.

§5B-2-1. West Virginia Department of Economic Development; confidentiality.

(a) The West Virginia Development Office, previously continued from the Governor's office of community and industrial development, is hereby continued but is hereafter raised to a separate and distinct department of the executive branch of state government and is designated and shall be known as the West Virginia Department of Economic Development. All references in this code to the West Virginia Development Office, the office of community and industrial development, or the Governor's office of community and industrial development shall be construed as references to the West Virginia Department of Economic Development. As used in this article, "Department" means the Department of Economic Development.

(b) Any documentary material, data or other writing made or received by the Department of Economic Development or other public body whose primary responsibility is economic development, for the purpose of furnishing assistance to a new or existing business shall be exempt from §29B-1-1 *et seq.* of this code: *Provided,* That any agreement entered into or signed by the Department of Economic Development or other public body which obligates public funds shall be subject to inspection and copying pursuant to §29B-1-1 *et seq.* of this code as of the date the agreement is entered into, signed or otherwise made public.

§5B-2-2. Office of Secretary of Department of Economic Development.

(a) The Secretary of the Department of Economic Development is the chief executive officer of the department. The Governor shall appoint the secretary, by and with the advice and consent of the Senate, for the term for which the Governor is elected, and the secretary shall serve at the will and pleasure of the Governor. Any reference in this code to the Executive Director of the West Virginia Development Office means the Secretary of the Department of Economic Development. As used in this article, "secretary" means the Secretary of the Department of Economic Development. Subject to the provisions of the contract provided in

§5B-2-4 of this code, the secretary may hire, and fire economic development representatives employed pursuant to §5B-2-5 of this code.

(b) The secretary may promulgate rules to carry out the purposes and programs of the Department of Economic Development to include generally the programs available and the procedure and eligibility of applications relating to assistance under the programs. These rules are not subject to Chapter 29A of this code, but shall be filed with the Secretary of State. The secretary may adopt any of the rules previously promulgated by the West Virginia Development Office or the council for community and economic development.

§5B-2-3. Powers and duties of the secretary.

(a) The secretary shall enhance economic growth and development through the development of a comprehensive economic development strategy for West Virginia. "Comprehensive economic development strategy" means a plan that outlines strategies and activities designed to continue, diversify or expand the economic base of the state as a whole; create jobs; develop a highly skilled workforce; facilitate business access to capital, including venture capital; advertise and market the resources offered by the state with respect to the needs of business and industry; facilitate cooperation among local, regional and private economic development enterprises; improve infrastructure on a state, regional and community level; improve the business climate generally; and leverage funding from sources other than the state, including federal and private sources.

(b) The Department of Economic Development shall utilize, to the fullest extent practicable and efficient, existing resources of the Department of Commerce for functions necessary for the operation of the department but which functions are not directly related to the purposes of the department listed in subsection (a) of this section. The Department of Economic Development may enter into such agreements with the Department of Commerce or other agencies of this state as may be necessary or advisable to utilize existing resources of this state.

(c) The Secretary of the Department of Economic Development may designate, in writing, a list of positions within the department that shall be exempt from coverage under the state's classified service.

(d) The Department of Economic Development shall be exempt from §5A-3-1 *et seq.* of this code.

§5B-2-3b. Economic development promotion and closing fund.

The previously created fund known as the "Development Office promotion fund" is hereby continued but shall hereafter be known as the "Economic Development Promotion and Closing Fund". Moneys deposited in this fund shall be administered by the Department of Economic Development and used solely to promote business formation, expansion, recruitment and retention through aggressive marketing and international development and export assistance, and to provide a fund from which moneys may be drawn to offer certain incentives for business formation or expansion, to provide assistance with respect to site development or other concerns identified by the secretary, and to further facilitate economic development in this state, all of which economic development efforts and initiatives lead to more and better jobs with higher wages for all geographic regions and communities of the state, including rural areas and urban core areas, and for all residents, including minorities.

§5B-2-4. Public-private partnerships.

The Department of Economic Development may enter into contractual or joint venture agreements with a nonprofit corporation organized pursuant to the corporate laws of the state, organized to permit qualification pursuant to section 501(c) of the Internal Revenue Code and for purposes of the economic development of West Virginia, and funded from sources other than the state. The contract shall include provisions relating to the employment of economic development representatives assigned to the Department of Economic Development to be paid a base salary by the state and performance-based economic incentives from private funds of the nonprofit corporation. Provisions relating to

hiring practices with respect to economic development representatives, job descriptions, accountability, public-private liaison, and performance standards may be the subject of contract negotiations. The contract may include provisions for continuing education and certification in the field of economic or industrial development for persons employed as economic development representatives. Agreements providing for the payment of performance-based incentives to the secretary are authorized. Agreements providing for the payment of travel and other expenses of or to the secretary or of or to economic development representatives from private funds by the nonprofit corporation are authorized. The prohibitions of §6B-2-5 (b) and §6B-2-5 (d) of this code are not applicable to the receipt by economic development representatives or by the secretary of performance-based incentives and other payments made by the nonprofit corporation and specifically authorized pursuant to this section.

From time to time the secretary may enter into joint ventures wherein the department and the nonprofit corporation share in the development and funding of economic development programs.

All contracts and joint venture agreements must be approved by the secretary. Contracts entered into pursuant to this section for longer than one fiscal year shall contain, in substance, a provision that the contract shall be considered cancelled without further obligation on the part of the state if the State Legislature or, where appropriate, the federal government, shall fail to appropriate sufficient funds therefor or shall act to impair the contract or cause it to be cancelled.

§5B-2-4a. State allocation to regional councils.

The Department of Economic Development may enter into contractual agreements with the regional councils formed under §8-25-5 of this code to provide funding to the regional councils to be used to obtain federal matching grants and for other purposes determined to be appropriate by the department. The maximum state allocation to each eligible regional council shall be $40,000: *Provided,* That the amount of the allocation shall be determined by dividing the number of eligible regional councils into the total

amount of funds made available for allocation by the Legislature. The Department of Economic Development shall develop criteria to determine a regional council's eligibility for the state allocation.

§5B-2-5. Economic development representatives.

(a) The secretary may employ economic development representatives to be paid a base salary within legislative appropriations to the department, subject to applicable contract provisions pursuant to §5B-2-4 of this code. Economic development representatives may receive performance-based incentives and expenses paid from private funds from a nonprofit corporation contracting with the department pursuant to §5B-2-4 of this code. The secretary shall establish job descriptions and responsibilities of economic development representatives, subject to the provisions of any contract with a nonprofit corporation entered into pursuant to §5B-2-4 of this code.

(b) Notwithstanding any provision of this code to the contrary, economic development representatives employed within the department are not subject to the procedures and protections provided by §29-6-1 *et seq.* and §29-6A-1 *et seq.* of this code. Any employee of the department on the effective date of this article who applies for employment as an economic development representative is not entitled to the protections of by §29-6-1 *et seq.* of this code with respect to hiring procedures and qualifications; and upon accepting employment as an economic development representative, the employee relinquishes the protections provided for in §6C-2-1 *et seq.* and §29-6-1 *et seq.* of this code.

(c) On the last Monday in January, in years 2017, 2019 and 2021, the secretary shall submit to the Legislature a written report. The secretary shall provide copies of his or her report to the President of the Senate, the Speaker of the House of Delegates, the chair of the Senate Committee on Economic Development and the chair of the House Committee on Small Business, Entrepreneurship and Economic Development. The secretary's report shall do the following:

(1) Identify and describe loans, grants or other funding sources that economic development representatives have assisted small businesses acquire during the immediately preceding reporting cycle;

(2) Identify and describe generally inquiries, requests for assistance or other matters that other state or federal agencies have presented to the department in the immediately preceding reporting cycle in connection with those agencies' efforts to regulate or assist small businesses;

(3) Identify and describe issues with formation, registration and licensure requirements that state law imposes on small businesses that small businesses have identified to the department in the immediately preceding reporting cycle as burdensome;

(4) Identify specific forms, processes or requirements imposed by state law that small businesses have identified to the department in the immediately preceding reporting cycle that may be streamlined, simplified, combined, or eliminated in order to reduce unnecessary costs, delays, or other burdens on small businesses;

(5) Propose and describe concrete and specific steps that any branch, agency or level of state government may take to streamline, simplify, combine, or eliminate the forms, processes or requirements identified in subdivision (4) of this subsection; and

(6) Provide the following information:

(A) The number of small businesses counseled by the department during the immediately preceding reporting cycle;

(B) The number of new businesses created while being counseled by the department during the immediately preceding reporting cycle;

(C) The number of jobs created by businesses counseled by the department during the immediately preceding reporting cycle; and

(D) Any other information that, in the opinion of the executive director, demonstrates the performance of the department or

economic development representatives during the immediately preceding reporting cycle.

§5B-2-6. Transition; savings provision.

All programs, orders, determinations, rules, permits, grants, contracts, certificates, bonds, authorizations and privileges which have been issued, made, granted or allowed to become effective pursuant to any prior enactments of this article or by the Governor, the Governor's Office of Community and Industrial Development or its director, or by a court of competent jurisdiction, and which are in effect on February 1, 1992, shall continue in effect according to their terms until modified, terminated, superseded, set aside or revoked by the Governor or the secretary of the department pursuant to this article, by a court of competent jurisdiction or by operation of law.

§5B-2-6a. Brownfield economic development districts; applications; fees; rules.

(a) Any property owner of a tract of land that is a brownfield or voluntary remediated site pursuant to §22-22-1 *et seq.* of this code may, if the site and surrounding area were involved in the extraction and processing of coal, limestone, or other natural resources, apply to the department to become a brownfield economic development district.

(1) Applicants for a brownfield economic development district must demonstrate that the district when designated will create significant economic development activity;

(2) Applicants shall submit a development plan that provides specific details on proposed financial investment, direct and indirect jobs to be created and the viability of the district;

(3) Brownfield economic development districts:

(A) May not contain single-family housing;

(B) Shall provide all the infrastructure within the district without cost to the state, county, public service district or local municipal government;

(4) Applicants shall demonstrate that were it not for this designation, the contemplated development would not be possible, and that the development is in the best interest of the state;

(5) The applicant shall own or control the property within the district;

(6) All costs for the application process shall be borne by the applicant;

(7) An applicant shall demonstrate that the applicant has attempted to work in good faith with local officials in regard to land-use issues;

(8) Beginning July 1, 2011, an application for a brownfield economic development district may not be approved unless the district conforms to a county's or municipality's planning and zoning laws established pursuant to §8A-7-1 *et seq.*, §8A-8-1 *et seq.,* and §8A-9-1 *et seq.* of this code.

(9) Prior to granting a designation of brownfield economic development district, the applicant shall provide documentation that the applicant has met all the requirements set forth in §22-22-1 *et seq.* of this code to be designated as a brownfield site or voluntary remediated site and is in compliance with the remediation plan;

(10) Nothing may be construed by this section to exempt brownfield economic districts from environmental regulation that would pertain to the development;

(11) The decision of the development office in regard to an application is final; and

(12) Once designated, the district shall work in conjunction with the regional brownfield assistance centers of Marshall

University and West Virginia University as specified in §18B-11-7 of this code.

(b) The department shall propose rules for legislative approval in accordance with §29-3-1 *et seq.* of this code to implement this section and the rules shall include, but not be limited to, the application and time line process, notice provisions, additional application consideration criteria and application fees sufficient to cover the costs of the consideration of an application.

§5B-2-9a. Powers and duties of Secretary of the Department of Tourism and Tourism Advisory Council for improving Cardinal Passenger Train Service; declaration of public policy and Legislative intent.

(a) It is hereby declared the public policy of the State of West Virginia and the intent of the Legislature to facilitate, advance and improve the availability of interstate passenger rail service to the state, the contributions of such service to local tourism development including the Boy Scouts of America Summit Bechtel Reserve in Fayette County, the marketing of such services for both interstate rail travel for the benefit of the state's citizens, businesses and local tourism and to improve the quality and frequency of such service, including the provision of a daily passenger train service at the earliest opportunity, of the Cardinal Passenger Train operated by the National Railroad Passenger Corporation, doing business as AMTRAK, on railroad lines crossing the south-central region of the state from Huntington eastward to White Sulphur Springs, being that same route historically and continuously used by the passenger train and its predecessors since the year 1871.

(b) Notwithstanding any other provision of this code to the contrary, the Secretary of the Department of Tourism, with the advice of the tourism advisory council, and in consultation with the Secretary of the West Virginia Department of Economic Development, is directed to coordinate and supervise the activities of the state, to coordinate and cooperate with the political subdivisions and municipalities of the state, to cooperate with the National Railroad Passenger Corporation and with the other states served by the Cardinal Passenger Train to achieve the public policy

set forth in subsection (a) of this section. The secretary may conduct such studies, and make such investigations, as may be reasonable and appropriate to advance the public policy set forth in subsection (a) of this section.

(c) The secretary may enter into contracts and memoranda of understanding with the National Railroad Passenger Corporation, with the other states served by the Cardinal Passenger Train, and with the political subdivisions and municipalities of this state, to achieve the public policy set forth in subsection (a) of this section. The secretary is further authorized to cooperate with the aforesaid other states and National Railroad Passenger Corporation in the formation of an interstate committee for the purpose of achieving the public policy set forth in subsection (a) of this section, to participate in said committee and appoint other designees thereto.

(d) In the exercise of their powers and duties under this section, the secretary and tourism advisory council shall consult with the West Virginia Department of Transportation and the West Virginia State Rail Authority. The West Virginia Department of Transportation and the West Virginia State Rail Authority shall cooperate with the secretary and the tourism advisory council, and shall provide the secretary and the tourism advisory council with such reasonable and necessary assistance as may be possible based on available staff and funds to achieve the public policy set forth in subsection (a) of this section.

(e) There is hereby created a special revenue account, designated the "Cardinal Passenger Train Enhancement Fund" into which all moneys intended to advance the purposes of this section shall be deposited. Moneys in this account shall be expended solely for the public policy and purposes set forth in this section. Funds paid into this account may also be derived from the following sources: (1) All interest or return on investment accruing to this account; (2) any gifts, grants, bequests, transfers, appropriations, or other donations which may be received from any governmental entity or unit or any person, firm, foundation, or corporation; and (3) any appropriations by the Legislature which may be made for the purposes of this section. Any balance including accrued interest and other earnings at the end of any fiscal year shall not revert to

the general fund but shall remain in the fund for the purposes set forth in this section. The moneys in the fund shall be paid out, at the sole discretion and direction of the secretary, to advance the purposes of this section.

§5B-2-10. Program and policy action statement; submission to joint committee on government and finance.

The tourism advisory council, the Department of Economic Development, and any other authorities, boards, commissions, corporations or other entities created or amended under this chapter and §18B-11-1 *et seq.* of this code, shall prepare and submit to the Joint Committee on Government and Finance on or before December 1, 1995, and each year thereafter, a program and policy action statement which shall outline in specific detail according to the purpose, powers and duties of the office or section, its procedure, plan and program to be used in accomplishing its goals and duties as required under this article.

§5B-2-14. Certified development community program.

The certified development community program is continued and is transferred to, incorporated in and administered as a program of the Department of Economic Development. The program shall provide funding assistance to the participating economic development corporations or authorities through a matching grant program. The department shall establish criteria for awarding matching grants to the corporations or authorities within the limits of funds appropriated by the Legislature for the program. The matching grants to eligible corporations or authorities are in the amount of $30,000 for each fiscal year, if sufficient funds are appropriated by the Legislature. The department shall recognize existing county, regional or multicounty corporations or authorities where appropriate.

In developing its plan, the department shall consider resources and technical support available through other agencies, both public and private, including, but not limited to, the state college and university systems; the West Virginia Housing Development Fund; the West Virginia Economic Development Authority; the West

Virginia Parkways, Economic Development and Tourism Authority; the West Virginia Round Table; the West Virginia Chamber of Commerce; Regional Planning and Development Councils; Regional Partnership for Progress Councils; and state appropriations.

§5B-2-15. Upper Kanawha Valley Resiliency and Revitalization Program.

(a) *Definitions*. —

(1) *General.* — Terms defined in this section have the meanings ascribed to them by this section, unless a different meaning is clearly required by either the context in which the term is used, or by specific definition in this section.

(2) *Terms Defined*. —

"Contributing partners" means those entities or their representatives described in subsection (f) of this section.

"Prioritize" means, with regard to resources, planning, and technical assistance, that the members of the revitalization council are required to waive their discretionary program guidelines to allow funding requests that may fall outside of the program's guidelines but address the Upper Kanawha Valley communities' goals for revitalization: *Provided*, That properly filed funding applications by Upper Kanawha Valley communities shall be given preferential treatment.

"Program" means the Upper Kanawha Valley Resiliency and Revitalization Program established in this section.

"Revitalization council" means those entities or their representatives described in subsection (d) of this section.

"Technical assistance" means resources provided by the state, revitalization council, contributing partners, or any other individuals or entities providing programming, funding, or other support to benefit the Upper Kanawha Valley under the program.

"Upper Kanawha Valley" means an area historically known as the Upper Kanawha Valley including municipalities and surrounding areas from the Charleston city limits to Gauley Bridge or other communities in the vicinity of the West Virginia University Institute of Technology.

"Upper Kanawha Valley Resiliency and Revitalization Program" means the entire process undertaken to further the goals of this section, including collaboration development and implementation between the members, contributors, and technical assistance resource providers.

(b) *Legislative purpose, findings, and intent.* —

(1) The decision to relocate the historic campus of the West Virginia University Institute of Technology from Montgomery, West Virginia, to Beckley, West Virginia, will have a dramatic economic impact on the Upper Kanawha Valley.

(2) The purpose of this section is to establish the Upper Kanawha Valley Resiliency and Revitalization Program. To further this purpose, this program creates a collaboration among state government, higher education, and private and nonprofit sectors to streamline technical assistance capacity, existing services, and other resources to facilitate community revitalization in the Upper Kanawha Valley.

(3) It is the intent of the Legislature to identify existing state resources that can be prioritized to support the Upper Kanawha Valley, generate thoughtful and responsible ideas to mitigate the negative effects of the departure of the West Virginia Institute of Technology from the Upper Kanawha Valley, and help chart a new course and prosperous future for the Upper Kanawha Valley.

(c) *Upper Kanawha Valley Resiliency and Revitalization Program established; duration of program.* —

(1) The Development Office shall establish the Upper Kanawha Valley Resiliency and Revitalization Program in accordance with the provisions of this section. The program shall inventory existing assets and resources, prioritize planning and

technical assistance, and determine such other assistance as might be available to revitalize communities in the Upper Kanawha Valley.

(2) The program shall remain active until it concludes its work on June 30, 2024, and delivers a final report to the Joint Committee on Government and Finance no later than October 1, 2024.

(d) *Revitalization council created*. — There is hereby created a revitalization council to fulfill the purposes of this section. The revitalization council shall be coordinated by the Development Office in the Department of Commerce and be subject to oversight by the secretary of the department. The following entities shall serve as members of the revitalization council:

(1) The Secretary of the Department of Economic Development or their designee, who shall serve as chairperson of the council;

(2) The Secretary of the Department of Health and Human Resources or their designee;

(3) The Commissioner of the Department of Agriculture or their designee;

(4) The Executive Director of the West Virginia Housing Development Fund or their designee;

(5) A representative from the Kanawha County Commission;

(6) A representative from the Fayette County Commission;

(7) The mayor, or their designee, from the municipalities of Montgomery, Smithers, Pratt, and Gauley Bridge;

(8) A representative from Bridge Valley Community and Technical College; and

(9) A representative from West Virginia University.

(e) *Duties of the revitalization council*. —

(1) The council shall identify existing state resources that can be prioritized to support economic development efforts in the Upper Kanawha Valley.

(2) The council shall direct existing resources in a unified effort and in conjunction with contributing partners, as applicable, to support the Upper Kanawha Valley.

(3) The council shall develop a rapid response strategy to attract or develop new enterprises and job-creating opportunities in the Upper Kanawha Valley.

(4) The council shall conduct or commission a comprehensive assessment of assets available at the campus of the West Virginia Institute of Technology and determine how those assets will be preserved and repurposed.

(5) The council shall assist communities in the Upper Kanawha Valley by developing an economic plan to diversify and advance the community.

(6) Members of the council shall support both the planning and implementation for the program and shall give priority wherever possible to programmatic activity and discretionary, noncompetitive funding during the period the program remains in effect.

(7) Members of the council shall work together to leverage funding or other agency resources to benefit efforts to revitalize the Upper Kanawha Valley.

(f) *Contributing partners*. — To the extent possible, the revitalization council shall incorporate the resources and expertise of additional providers of technical assistance to support the program, which shall include but not be limited to:

(1) The West Virginia Small Business Development Center;

(2) The Center for Rural Health Development;

(3) The West Virginia University Brickstreet Center for Entrepreneurship;

(4) The West Virginia University Land Use and Sustainability Law Clinic;

(5) The West Virginia University Center for Big Ideas;

(6) The New River Gorge Regional Development Authority;

(7) The Appalachian Transportation Institute;

(8) The Marshall University Center for Business and Economic Research;

(9) TechConnect;

(10) The West Virginia Community Development Hub;

(11) The West Virginia University Northern Brownfields Assistance Center;

(12) West Virginia State University Extension Service; and

(13) West Virginia University Extension Service, Community, Economic and Workforce Development.

(g) *Reporting and agency accountability*. — The revitalization council, in coordination with its contributing partners, as applicable, shall report annually to the Governor and the Legislature detailing the progress of the technical assistance support provided by the program, the strategic plan for the Upper Kanawha Valley, and the results of these efforts. The annual report to the Legislature shall be made to the Joint Committee on Government and Finance regarding the previous fiscal year no later than October 1 of each year. Copies of the annual report to the Legislature shall be provided to the county commissions and the mayors of the Upper Kanawha Valley.

(h) *Economic incentives for businesses investing in the Upper Kanawha Valley*. — The Department of Economic Development and the revitalization council, as applicable, shall work to educate

businesses investing, or interested in investing, in the Upper Kanawha Valley, about the availability of, and access to, economic development assistance, including but not limited to, the economic opportunity tax credit provided in §11-13Q-19 of this code; the manufacturing investment tax credit provided under §11-13S-1 *et seq.* of this code; and any other applicable tax credit or development assistance.

(i) *Use of state property and equipment; faculty*. — The Department of Economic Development or other owner of state property and equipment in the Upper Kanawha Valley is authorized to provide for the low cost and economical use and sharing of state property and equipment, including computers, research labs, and other scientific and necessary equipment to assist any business within the Upper Kanawha Valley at a nominal or reduced-cost reimbursements to the state for that use.

§5B-2-16. Entrepreneurship and Innovation Investment Fund.

(a) The Entrepreneurship and Innovation Investment Fund is hereby created. The fund shall be administered by the Department of Economic Development and shall consist of all moneys made available for the purposes and from the sources set forth in this section of the code.

(b) The fund consists of moneys received from the following sources:

(1) All appropriations provided by the Legislature;

(2) Any moneys available from external sources; and

(3) All interest and other income earned from investment of moneys in the fund.

(c) The Department of Economic Development shall use moneys in the fund to support entrepreneurship, creation of business startups, improvements in workforce participation, and attracting individuals to relocate to West Virginia.

(d) Any balance, including accrued interest and any other returns, in the Entrepreneurship and Innovation Investment Fund at the end of each fiscal year may not expire to the General Revenue Fund but remain in the fund and be expended for the purposes provided by this section.

(e) Fund balances may be invested with the state's Consolidated Investment Fund. Earnings on the investments shall be used solely for the purposes defined in §5B-2-16(c) of this code.

§5B-2-17. West Virginia Motorsport Committee.

(a) The West Virginia Motorsport Committee is hereby created.

(b) The committee consists of five members, including its chairperson, appointed by the Governor to serve at his or her will and pleasure.

(c) The Secretary of the Department of Tourism and the Secretary of the Department of Economic Development shall also serve on the committee, ex officio.

(d) The committee shall:

(1) Work with the existing facilities within the state to enhance existing racing;

(2) Develop a strategy that creates further opportunities, such as encouraging racing training schools, conducting special events, and encouraging special events and the construction of larger in-state racing facilities; and

(3) Seek opportunities to promote economic growth and manufacturing jobs related to motorsports.

(e) The committee shall hold regular meetings, at least quarterly, and conduct public hearings as it considers necessary.

(f) Members of the committee will receive no compensation but are entitled to reimbursement for mileage expenses while

attending meetings of the committee to the extent that funds are available through the Department of Economic Development.

(g) The committee shall report on the status of its duties, goals, accomplishments, and recommendations to the Legislature on at least an annual basis.

ARTICLE 2I. DEPARTMENT OF TOURISM.

§5B-2I-2. West Virginia Department of Tourism.

The West Virginia Tourism Office, previously continued from the Division of Tourism, is continued but is hereafter raised to a separate and distinct department of the executive branch of state government and is designated and shall be known as the West Virginia Department of Tourism. All references in this code to the Division of Tourism or to the West Virginia Tourism Office shall be construed as references to the West Virginia Department of Tourism. As used in this article, "department" means the Department of Tourism.

§5B-2I-3. Office of Secretary of Department of Tourism.

(a) The Secretary of the Department of Tourism is the chief executive officer of the department. The Governor shall appoint the secretary, by and with the advice and consent of the Senate, for the term for which the Governor is elected, and the secretary shall serve at the will and pleasure of the Governor. Any reference in this code to the "Executive Director" or "Commissioner" of the West Virginia Tourism Office means the Secretary of the Department of Tourism. As used in this article, "secretary" means the Secretary of the Department of Tourism.

§5B-2I-4. Powers and duties of the Department of Tourism.

(a) The Department of Tourism, under the direction and charge of the secretary, shall develop and implement a comprehensive tourism advertising, promotion, and development strategy for West Virginia. "Comprehensive tourism advertising, promotion and development strategy" means a plan that outlines strategies and activities designed to continue, diversify and expand the tourism

base of the state as a whole; create tourism jobs; develop a highly skilled tourism workforce; facilitate business access to capital for tourism; advertise and market the resources offered by the state with respect to tourism advertising, promotion and development; facilitate cooperation among local, regional and private tourism enterprises; improve infrastructure on a state, regional and community level in order to facilitate tourism development; improve the tourism business climate generally; and leverage funding from sources other than the state, including local, federal and private sources. In addition to all other power and duties of the department by other provisions of this code, the department shall:

(1) Coordinate media events to promote a positive image of West Virginia and new investment in the state;

(2) Provide comprehensive strategic planning services to existing tourism enterprises;

(3) Promote attractions of West Virginia in other states;

(4) Provide advertising, marketing and communications goods and services, including, without limitation, a cooperative advertising program to facilitate and allow participation in the department's advertising and marketing campaigns and activities, to state agencies, departments, units of state or local government, private tourism enterprises and other persons, entities, or private enterprises, including, without limitation, convention and visitors' bureaus; and

(5) Distribute West Virginia informational publications and manage the West Virginia Welcome Centers; and

(6) Coordinate programs, initiatives, and production of materials relating to the branding and marketing of the state, and its departments and agencies, and to provide greater coherence in such programs, initiatives, and materials across the departments and agencies of the state.

(b) In developing its strategies, plans and campaigns, the department shall consider the following:

(1) Improvement and expansion of existing tourism marketing and promotion activities;

(2) Promotion of cooperation among municipalities, counties and the West Virginia Infrastructure and Jobs Development Council in funding physical infrastructure to enhance the potential for tourism development.

(c) The Department of Tourism shall have the following powers and duties:

(1) To acquire for the state in the name of the department by purchase, lease, or agreement, or to accept or reject for the state, in the name of the department, gifts, donations, contributions, bequests or devises of money, security or property, both real and personal, and any interest in such property, to effectuate or support the purposes of this article;

(2) To make recommendations to the Governor and the Legislature of any legislation deemed necessary to facilitate the carrying out of any of the foregoing powers and duties and to exercise any other power that may be necessary or proper for the orderly conduct of the business of the department and the effective discharge of the duties of the department;

(3) To cooperate and assist in the production of motion pictures and television and other communications;

(4) To purchase advertising time or space in or upon any medium generally engaged or employed for said purpose to advertise and market the resources of the state or to inform the public at large or any specifically targeted group or industry about the benefits of living in, investing in, producing in, buying from, contracting with, or in any other way related to, the State of West Virginia or any business, industry, agency, institution, or other entity therein;

(5) To promote and disseminate information related to the attractions of the state through the operation of the state's telemarketing initiative, which telemarketing initiative shall

include a centralized reservation and information system for state parks and recreational facilities;

(6) To take such additional actions as may be necessary to carry out the powers, duties and programs described in this article; and

(7) To provide assistance to and assist with retention and expansion of existing tourism-related enterprises in the state and to recruit or assist in the recruitment of new tourism-related enterprises to the state.

(d) The Department of Tourism may contract with the Division of Highways to sell advertising space on the WV511 website to promote in-state tourism and raise capital for technological improvements to the website: *Provided*, That 50 percent of the money collected for sale of advertising space is deposited into the Tourism Promotion Fund and the other 50 percent of the money collected from the sale of advertising space is remitted to the Division of Highways pursuant to the contract.

(e) The Department of Tourism may charge and collect reasonable fees for goods and services it provides to state agencies, departments, units of state or local government or other person, entity, or enterprise. All moneys collected by the department shall be deposited in the Tourism Promotion Fund and used in accordance with the provisions of this article.

(f) The Department of Tourism may engage and retain one or more advertising and marketing agencies, consultants, enterprises, firms, or persons, as deemed by the secretary, in his or her sole discretion, necessary or advisable to assist the department in carrying out its powers and duties as set forth in this article. In the procurement of advertising agencies, consultants, enterprises, or persons, from time to time, estimated to cost $250,000 or more, the secretary shall encourage such advertising and marketing agencies, consultants, enterprises, firms, or persons to submit an expression of interest, which shall include a statement of qualifications, including anticipated concepts and proposed advertising, marketing and advertising campaigns. All potential contracts shall be announced by public notice published as a Class II legal

advertisement in compliance with §59-3-3 of this code. A committee of three to five representatives of the department or the Tourism Advisory Council, as selected by the secretary, shall evaluate the statements of qualifications and other materials submitted by interested firms and select three firms which, in their opinion, are best qualified to perform the desired service. The committee shall then rank, in order of preference, the three firms selected and shall commence scope of service and price negotiations with the first-ranked firm. If the department is unable to negotiate a satisfactory contract with the first-ranked firm, at a fee determined to be fair and reasonable, price negotiations with the firm of second choice shall commence. Failing accord with the second-ranked firm, the committee shall undertake price negotiations with the third-ranked firm. If the department is unable to negotiate a satisfactory contract with any of the selected firms, the office shall select additional firms in order of their competence and qualifications and it shall continue negotiations in accordance with this section until an agreement is reached.

If the procurement of the services is estimated by the secretary to cost less than $250,000, the department shall conduct discussions with three or more firms solicited on the basis of known or submitted qualifications for the assignment prior to the awarding of any contract: *Provided*, That if a judgment is made that special circumstances exist and that seeking competition is not practical, the department may select a firm on the basis of previous satisfactory performance and knowledge of the department's needs. After selection, the department and selected firm shall develop the scope of desired services and negotiate a contract.

(g) The secretary of the Department of Tourism may, in order to carry out the powers and duties of the department described in this article, employ necessary personnel, contract with professional or technical experts or consultants and purchase or contract for the necessary equipment or supplies.

(h) The secretary of the Department of Tourism may designate, in writing, a list of positions within the department that shall be exempt from coverage under the state's classified service.

(i) The Department of Tourism shall submit a report annually to the Governor and the Legislature about the development of the tourism industry in the state and the necessary funding required by the state to continue the development of the tourism industry.

(j) The Department of Tourism and the secretary shall engage, collaborate, assist, and cooperate with the Department of Economic Development, when and as appropriate, to facilitate retention, expansion, recruitment, and location of existing and new tourism-related enterprises.

(k) The Department of Tourism shall utilize, to the fullest extent practicable and efficient, existing resources of the Department of Commerce for functions necessary for the operation of the department but which functions are not directly related to the purposes of the department listed above. The Department of Tourism may enter into such agreements with the Department of Commerce or other agencies of this state as may be necessary or advisable to utilize existing resources of this state.

(l) The Department of Tourism shall be exempt from §5A-3-1 *et seq.* of this code.

§5B-2I-5. Public-private partnerships.

(a) The Department of Tourism may enter into contractual or joint venture agreements with one or more nonprofit corporations organized pursuant to the corporate laws of the state, organized to permit qualification pursuant to Section 501(c) of the Internal Revenue Code and organized for purposes of the promotion and development of tourism in West Virginia, and funded from sources other than the state. Members of the Tourism Advisory Council provided in this article are authorized to sit on the board of directors of such private nonprofit corporations.

(b) From time to time the department may enter into joint ventures wherein the Department of Economic Development and one or more said nonprofit corporations share in the development and funding of tourism advertising, promotion and development programs and campaigns.

(c) All contracts and joint venture agreements entered into pursuant to this section for longer than one fiscal year shall contain, in substance, a provision that the contract shall be considered canceled without further obligation on the part of the state if the Legislature, or, where appropriate, the federal government shall fail to appropriate sufficient funds therefor or shall act to impair the contract or cause it to be canceled.

§5B-2I-6. Tourism Promotion Fund; use of funds.

(a) There is continued in the State Treasury the special revenue fund known as the Tourism Promotion Fund created under prior enactment of §5B-1-9 of this code.

(b) Moneys deposited in the fund each year shall be used solely for marketing, direct advertising, business development and public relations promoting travel and tourism within the state or the state's image and brand identity at the discretion and direction of the secretary of the Department of Tourism. "Direct advertising" means advertising which includes, but is not limited to, television, radio, mailings, newspaper, magazines, digital marketing, including the Internet and social media, and outdoor billboards or any combination thereof. Any balance remaining at the end of any fiscal year does not revert to the General Revenue Fund, but shall remain in the fund for expenditures in accordance with this section.

(c) Effective July 1, 2017, the Tourism Advertising Partnership Program and all related legislative or procedural rules shall cease, except as necessary for the Tourism Advisory Council to settle, finalize and conclude all outstanding advertising grants or other financial obligations of the Tourism Advisory Council respecting funds in the Tourism Promotion Fund previously approved, expended or obligated by the Tourism Advisory Council as of the effective date of this article pursuant to §5B-2I-7(e) (2) of this code and be replaced by a cooperative advertising program to be created and established by the Department of Tourism, under and pursuant to §5B-2I-4 of this code, to offer, facilitate and allow participation in the department's advertising and marketing campaigns and activities, to state agencies, departments, units of state or local government, private tourism enterprises and other persons, entities

or private enterprises, including, without limitation, convention and visitors' bureaus. The secretary of the Department of Tourism shall establish and publish a fee schedule, which shall include a match of state funds to program participant's funds, for participation in the cooperative advertising program.

§5B-2I-7. Tourism Advisory Council; members, appointment and expenses.

(a) There is continued within the Department of Tourism an independent Tourism Advisory Council.

(b) The Tourism Advisory Council consists of the following 16 members:

(1) The Secretary of Commerce or his or her designee, ex officio;

(2) The Secretary of the Department of Economic Development or his or her designee, ex officio;

(3) The Secretary of Transportation or his or her designee, ex officio;

(4) Twelve members appointed by the Governor, with the advice and consent of the Senate, representing participants in the state's tourism industry. Ten of the members shall be from the private sector, one shall be a director employed by a convention and visitors bureau and one shall be a member of a convention and visitors bureau. In making the appointments, the Governor may select from a list provided by the West Virginia Hospitality and Travel Association of qualified applicants. Of the 12 members so appointed, no less than three shall be from each congressional district within the state and shall be appointed to provide the broadest geographic distribution which is feasible;

(5) One member to be appointed by the Governor to represent public sector nonstate participants in the tourism industry within the state.

(c) Each member appointed by the Governor serves a staggered term of four years. Any member whose term has expired serves until his or her successor has been appointed. Any person appointed to fill a vacancy serves only for the unexpired term. Any member is eligible for reappointment. In case of a vacancy in the office of a member, the vacancy shall be filled by the Governor in the same manner as the original appointment.

(d) The chair of the Tourism Advisory Council shall be appointed by the Governor from members then serving on the commission, and serves at the will and pleasure of the Governor.

(e) The Tourism Advisory Council shall:

(1) Advise the secretary of the Department of Tourism in the development and implementation of the state's comprehensive tourism advertising, marketing, promotion, and development strategy; and

(2) Take all actions, in consultation with the secretary, necessary to settle, finalize and conclude all outstanding advertising grants or other financial obligations of the Tourism Advisory Council respecting funds in the Tourism Promotion Fund previously approved, expended or obligated by the Tourism Advisory Council as of the effective date of this article.

(f) Members of the Tourism Advisory Council are not entitled to compensation for services performed as members. Each member from the private sector is entitled to reimbursement for reasonable expenses incurred in the discharge of their official duties. All expenses incurred by members from the private sector shall be paid in a manner consistent with guidelines of the Travel Management Office of the Department of Administration and are payable solely from the funds of the Department of Tourism or from funds appropriated for that purpose by the Legislature. Liability or obligation is not incurred by the Department of Tourism beyond the extent to which moneys are available from funds of the authority or from the appropriations.

(g) Members shall meet quarterly as designated by the chair.

§5B-2I-8. Confidentiality.

Any documentary material, data or other writing made or received by the Department of Tourism, the West Virginia Department of Economic Development, or the Tourism Advisory Council, for the purpose of furnishing assistance to a new or existing business, or of developing or implementing a comprehensive tourism advertising, promotion, and development strategy pursuant to §5B-2I-4 of this code, are exempt from §29B-1-1 *et seq.* of this code: *Provided*, That any agreement entered into or signed by the Department of Tourism or the Department of Economic Development which obligates public funds is subject to inspection and copying pursuant to §29B-1-1 *et seq.* of this code as of the date the agreement is entered into, signed or otherwise made public.

CHAPTER 5F. REORGANIZATION OF THE EXECUTIVE BRANCH OF STATE GOVERNMENT.

ARTICLE 1. GENERAL PROVISIONS.

§5F-1-2. Executive departments created; offices of secretary created.

(a) There are created, within the executive branch of the state government, the following departments:

(1) Department of Administration;

(2) Department of Environmental Protection;

(3) Department of Health and Human Resources;

(4) Department of Homeland Security;

(5) Department of Revenue;

(6) Department of Transportation;

(7) Department of Commerce;

(8) Department of Veterans' Assistance;

(9) Department of Economic Development; and

(10) Department of Tourism.

(b) Each department will be headed by a secretary appointed by the Governor with the advice and consent of the Senate. Each secretary serves at the will and pleasure of the Governor.

ARTICLE 2. TRANSFER OF AGENCIES AND BOARDS.

§5F-2-1. Transfer and incorporation of agencies and boards; funds.

(a) The following agencies and boards, including all of the allied, advisory, affiliated, or related entities and funds associated with any agency or board, are incorporated in and administered as a part of the Department of Administration:

(1) Public Employees Insurance Agency provided in §5-16-1 *et seq.* of this code;

(2) Governor's Mansion Advisory Committee provided in §5A-5-1 *et seq.* of this code;

(3) Commission on Uniform State Laws provided in §29-1A-1 *et seq.* of this code;

(4) West Virginia Public Employees Grievance Board provided in §6C-3-1 *et seq.* of this code;

(5) Board of Risk and Insurance Management provided in §29-12-1 *et seq.* of this code;

(6) Boundary Commission provided in §29-23-1 *et seq.* of this code;

(7) Public Defender Services provided in §29-21-1 *et seq.* of this code;

(8) Division of Personnel provided in §29-6-1 *et seq.* of this code;

(9) The West Virginia Ethics Commission provided in §6B-2-1 *et seq.* of this code;

(10) Consolidated Public Retirement Board provided in §5-10D-1 *et seq.* of this code; and

(11) Real Estate Division provided in §5A-10-1 *et seq.* of this code.

(b) The following agencies and boards, including all of the allied, advisory, affiliated, or related entities and funds associated with any agency or board, are incorporated in and administered as a part of the Department of Commerce:

(1) Division of Labor provided in §21-1-1 *et seq.* of this code, which includes:

(A) Occupational Safety and Health Review Commission provided in §21-3A-1 *et seq.* of this code; and

(B) Board of Manufactured Housing Construction and Safety provided in §21-9-1 *et seq.* of this code.

(2) Office of Miners' Health, Safety, and Training provided in §22A-1-1 *et seq.* of this code. The following boards are transferred to the Office of Miners' Health, Safety, and Training for purposes of administrative support and liaison with the Office of the Governor:

(A) Board of Coal Mine Health and Safety and Coal Mine Safety and Technical Review Committee provided in §22A-6-1 *et seq.* of this code;

(B) Board of Miner Training, Education, and Certification provided in §22A-7-1 *et seq.* of this code; and

(C) Mine Inspectors' Examining Board provided in §22A-9-1 *et seq.* of this code.

(3) Division of Natural Resources and Natural Resources Commission provided in §20-1-1 *et seq.* of this code;

(4)Division of Forestry provided in §19-1A-1 *et seq.* of this code;

(5) Geological and Economic Survey provided in §29-2-1 *et seq.* of this code;

(6) Workforce West Virginia provided in chapter 21A of this code, which includes:

(A) Division of Unemployment Compensation;

(B) Division of Employment Service;

(C) Division of Workforce Development; and

(D) Division of Research, Information and Analysis; and

(7) Division of Rehabilitation Services provided in §18-10A-1 *et seq.* of this code.

(c) The Economic Development Authority provided in §31-15-1 *et seq.* of this code is continued as an independent agency within the executive branch.

(d) The Water Development Authority and the Water Development Authority Board provided in §22C-1-1 *et seq.* of this code is continued as an independent agency within the executive branch.

(e) The West Virginia Educational Broadcasting Authority provided in §10-5-1 *et seq.* of this code and the State Library Commission provided in §10-1-1 *et seq.* of this code are each continued as separate independent agencies within the Department of Arts, Culture, and History, which shall provide administrative support for both entities.

(f) The Division of Culture and History as established in §29-1-1 *et seq.* of this code is continued as a separate independent agency within the Executive Branch as the Department of Arts, Culture, and History. All references throughout this code to the "Division of Culture and History" means the "Department of Arts, Culture, and History".

(g) The following agencies and boards, including all of the allied, advisory, and affiliated entities, are transferred to the Department of Environmental Protection for purposes of administrative support and liaison with the Office of the Governor:

(1) Air Quality Board provided in §22B-2-1 *et seq.* of this code;

(2) Solid Waste Management Board provided in §22C-3-1 *et seq.* of this code;

(3) Environmental Quality Board, or its successor board, provided in §22B-3-1 *et seq.* of this code;

(4) Surface Mine Board provided in §22B-4-1 *et seq.* of this code;

(5) Oil and Gas Inspectors' Examining Board provided in §22C-7-1 *et seq.* of this code;

(6) Shallow Gas Well Review Board provided in §22C-8-1 *et seq.* of this code; and

(7) Oil and Gas Conservation Commission provided in §22C-9-1 *et seq.* of this code.

(h) The following agencies and boards, including all of the allied, advisory, affiliated, or related entities and funds associated with any agency or board, are incorporated in and administered as a part of the Department of Health and Human Resources:

(1) Human Rights Commission provided in §5-11-1 *et seq.* of this code;

(2) Bureau for Public Health provided in §16-1-1 *et seq.* of this code;

(3) Office of Emergency Medical Services and the Emergency Medical Service Advisory Council provided in §16-4C-1 *et seq.* of this code;

(4) Health Care Authority provided in §16-29B *et seq.* of this code;

(5) State Commission on Intellectual Disability provided in §29-15-1 *et seq.* of this code;

(6) Women's Commission provided in §29-20-1 *et seq.* of this code; and

(7) Bureau for Child Support Enforcement provided in chapter 48 of this code.

(i) The following agencies and boards, including all of the allied, advisory, affiliated, or related entities and funds associated with any agency or board, are incorporated in and administered as a part of the Department of Homeland Security:

(1) West Virginia State Police;

(2) Division of Emergency Management provided in §15-5-1 *et seq.* of this code and Emergency Response Commission provided in §15-5A-1 *et seq.* of this code: *Provided*, That notwithstanding any other provision of this code to the contrary, whenever in this code, or a rule promulgated thereunder, a reference is made to the Division of Homeland Security and Emergency Management, it shall be construed to mean the Division of Emergency Management;

(3) Division of Administrative Services;

(4) Division of Corrections and Rehabilitation;

(5) Fire Commission;

(6) The State Fire Marshal;

(7) Board of Probation and Parole;

(8) The West Virginia Fusion Center;

(9) The Division of Protective Services; and

(10) Any other agency or entity hereinafter established within the Department of Homeland Security by an act of the Legislature.

(j) The following agencies and boards, including all of the allied, advisory, affiliated, or related entities and funds associated with any agency or board, are incorporated in and administered as a part of the Department of Revenue:

(1) Tax Division provided in chapter 11 of this code;

(2) Racing Commission provided in §19-23-1 *et seq.* of this code;

(3) Lottery Commission and position of Lottery Director provided in §29-22-1 of this code;

(4) Insurance Commissioner provided in §33-2-1 *et seq.* of this code;

(5) West Virginia Alcohol Beverage Control Commissioner provided in §11-16-1 *et seq.* of this code and §60-2-1 *et seq.* of this code;

(6) Board of Banking and Financial Institutions provided in §31A-3-1 *et seq.* of this code;

(7) Lending and Credit Rate Board provided in chapter 47A of this code;

(8) Division of Financial Institutions provided in §31A-2-1 *et seq.* of this code;

(9) The State Budget Office provided in §11B-2-1 *et seq.* of this code;

(10) The Municipal Bond Commission provided in §13-3-1 *et seq.* of this code;

(11) The Office of Tax Appeals provided in §11-10A-1 of this code; and

(12) The State Athletic Commission provided in §29-5A-1 *et seq.* of this code.

(k) The following agencies and boards, including all of the allied, advisory, affiliated, or related entities and funds associated with any agency or board, are incorporated in and administered as a part of the Department of Transportation:

(1) Division of Highways provided in §17-2A-1 *et seq.* of this code;

(2) Parkways Authority provided in §17-16A-1 *et seq.* of this code;

(3) Division of Motor Vehicles provided in §17A-2-1 *et seq.* of this code;

(4) Driver's Licensing Advisory Board provided in §17B-2-1 *et seq.* of this code;

(5) Aeronautics Commission provided in §29-2A-1 *et seq.* of this code;

(6) State Rail Authority provided in §29-18-1 *et seq.* of this code; and

(7) Public Port Authority provided in §17-16B-1 *et seq.* of this code.

(l) Effective July 1, 2011, the Veterans' Council provided in §9A-1-1 *et seq.* of this code, including all of the allied, advisory, affiliated, or related entities and funds associated with it, is incorporated in and administered as a part of the Department of Veterans' Assistance.

(m) Except for powers, authority, and duties that have been delegated to the secretaries of the departments by of §5F-2-2 of this code, the position of administrator and the powers, authority, and duties of each administrator and agency are not affected by the enactment of this chapter.

(n) Except for powers, authority, and duties that have been delegated to the secretaries of the departments by §5F-2-2 of this code, the existence, powers, authority, and duties of boards and the

membership, terms, and qualifications of members of the boards are not affected by the enactment of this chapter. All boards that are appellate bodies or are independent decision makers may not have their appellate or independent decision-making status affected by the enactment of this chapter.

(o) Any department previously transferred to and incorporated in a department by prior enactment of this section means a division of the appropriate department. Wherever reference is made to any department transferred to and incorporated in a department created in §5F-1-2 of this code, the reference means a division of the appropriate department and any reference to a division of a department so transferred and incorporated means a section of the appropriate division of the department.

(p) When an agency, board, or commission is transferred under a bureau or agency other than a department headed by a secretary pursuant to this section, that transfer is solely for purposes of administrative support and liaison with the Office of the Governor, a department secretary, or a bureau. Nothing in this section extends the powers of department secretaries under §5F-2-2 of this code to any person other than a department secretary and nothing limits or abridges the statutory powers and duties of statutory commissioners or officers pursuant to this code.

(q) The Department of Economic Development as established in §5B-2-1 *et seq.* of this code is continued as a separate independent agency within the Executive Branch.

(r) The Department of Tourism as established in §5B-2I-1 *et seq.* of this code is continued as a separate independent agency within the Executive Branch.

CHAPTER 145

(H. B. 2366 - By Delegates Foster, Espinosa, Steele, Graves, Martin and Hardy)

[Passed April 5, 2021; in effect ninety days from passage.]
[Approved by the Governor on April 19, 2021.]

AN ACT to amend and reenact §29A-3-11 of the Code of West Virginia, 1931, as amended, relating to requiring agencies who have approved a proposed rule that affects fees or other special revenues to provide to the committee a fiscal note that includes the fund name, the fund number, and the past five years of the fund's revenues and expenses.

Be it enacted by the Legislature of West Virginia:

ARTICLE 3. RULE MAKING.

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

(a) When an agency finally approves a proposed legislative rule for submission to the Legislature, pursuant to the provisions of section nine of this article, the secretary of the executive department which administers the agency pursuant to the provisions of §5F-2-1 *et seq.,* of this code shall submit to the Legislative Rule-Making Review Committee at its offices or at a regular meeting of such committee a number of copies in electronic or paper form as requested by the committee, which shall include the following information:

(1) The full text of the legislative rule as finally approved by the agency, with new language underlined and with language to be deleted from any existing rule stricken through but clearly legible;

(2) A brief summary of the content of the legislative rule and a description and a copy of any existing rule which the agency proposes to amend or repeal;

(3) A statement of the circumstances which require the rule;

(4) A detailed description of the rule's purpose and all proposed changes to the rule;

(5) A fiscal note containing all information included in a fiscal note for either house of the Legislature, a statement of the economic impact of the rule on the state or its residents, and, if there are any adjustments to any fees or other special revenue included in the rule, a fiscal note shall include, for any fund affected by adjustments to fees or other special revenue, the fund name, the fund number, and the past five years of actual revenues and expenses of the fund;

(6) One copy of any relevant federal statutes or regulations;

(7) An explanation of the statutory authority for the rule, including a detailed summary of the effect of each provision of the rule with citation to the specific statute which empowers the agency to enact such provision;

(8) All public comments for each proposed rule. An agency may consolidate substantially similar comments in the interest of efficiency;

(9) All written responses by the agency to the substance of any public comments received, including whether the agency chose to modify the proposed rule in response to the comments or, if no changes were made, the rationale for declining to incorporate or make any suggested changes responding to the public comments. An agency may consolidate substantially similar responses in the interest of efficiency: *Provided,* That the agency's response shall address each issue and concern expressed by all comments received; and

(10) Any other information which the committee may request or which may be required by law. If the agency is an agency, board

or commission which is not administered by an executive department as provided for in §5F-2-1 *et seq.,* of this code, the agency shall submit the final agency-approved rule as required by this subsection.

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

(1) Whether the agency has specific statutory authority to propose the rule and has not exceeded the scope of its statutory authority in approving the proposed legislative rule;

(2) Whether the proposed legislative rule is in conformity with the legislative intent of the statute which the rule is intended to implement, extend, apply, interpret or make specific;

(3) Whether the proposed legislative rule overlaps, duplicates or conflicts with any other provision of this code, any other rule adopted by the same or a different agency, with federal statutes and rules, or with local laws and rules;

(4) Whether federal funding will be impacted by its expiration and explanation as to such;

(5) Whether the proposed legislative rule is necessary to fully accomplish the objectives of the statute under which the rule was proposed for promulgation;

(6) Whether the proposed legislative rule is reasonable, especially as it affects the convenience of the general public or of persons particularly affected by it;

(7) Whether the proposed legislative rule could be made less complex or more readily understandable by the general public; and

(8) Whether the proposed legislative rule was proposed for promulgation in compliance with the requirements of this article and with any requirements imposed by any other provision of this code.

(c) After reviewing the legislative rule, the committee shall recommend 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.

The committee shall file notice of its action in the State Register and with the agency proposing the rule: *Provided,* That when the committee makes the recommendations of subdivision (2), (3), (4), or (5) of this subsection, the notice shall contain a statement of the reasons for such recommendation.

(d) When the committee recommends that a rule be authorized, in whole or in part, by the Legislature, the committee shall instruct its staff or the office of Legislative Services to draft a bill authorizing the promulgation of all or part of the legislative rule and incorporating such amendments as the committee desires. If the committee recommends that the rule not be authorized, it shall include in its report a draft of a bill authorizing promulgation of the rule together with a recommendation. Any draft bill prepared under this section shall contain a legislative finding that the rule is within the legislative intent of the statute which the rule is intended to implement, extend, apply or interpret and shall be available for any member of the Legislature to introduce to the Legislature.

CHAPTER 146

(Com. Sub. for H. B. 2667 - By Delegates Riley, Hansen, Queen, Hanna, Skaff, Steele, Hardy, Clark, Criss, Capito and Reynolds)

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

AN ACT to amend and reenact §5A-3B-2 and §5B-2F-2 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto three new sections, designated §5B-2F-3, §5B-2F-4 and §5B-2F-5, all relating to promoting cost savings for state taxpayers by implementing an energy savings program for assessment and implementation of energy savings goals for state buildings; requiring energy-savings contracts to include provisions relating to energy cost savings guarantees and deficiency payments; providing for the auditing and potential removal of energy metering devices installed at state buildings; establishing an energy savings program and contracting program within Division of Energy for state buildings; and establishing benchmarking and energy efficiency goals for state buildings.

Be it enacted by the Legislature of West Virginia:

CHAPTER 5A. DEPARTMENT OF ADMINISTRATION.

ARTICLE 3B. ENERGY-SAVINGS CONTRACTS.

§5A-3B-2. Energy-savings contracts.

(a) Agencies are authorized to enter into performance-based contracts with qualified providers of energy-conservation measures for the purpose of significantly reducing energy operating costs of agency owned buildings, subject to the requirements of this section.

(b) Before entering into a contract or before the installation of equipment, modifications or remodeling to be furnished under a contract, the qualified provider shall first issue a proposal summarizing the scope of work to be performed. A proposal must contain estimates of all costs of installation, modifications or remodeling, including the costs of design, engineering, installation, maintenance, repairs or debt service, as well as estimates of the amounts by which energy operating costs will be reduced. If the agency finds, after receiving the proposal, that the proposal includes one or more energy-conservation measures, the installation of which is guaranteed to result in a net savings of a minimum of five percent of the then current energy operating costs which savings will, at a minimum, satisfy any debt service required, the agency may enter into a contract with the provider pursuant to this section.

(c) An energy-savings contract must include the following:

(1) A guarantee of a specific minimum net percentage amount of at least five percent of energy operating costs each year over the term of the contract that the agency will save;

(2) A statement of all costs of energy-conservation measures, including the costs of design, engineering, installation, maintenance, repairs and operations; and

(3) A provision that payments, except obligations upon termination of the contract before its expiration, are to be made over time.

(4) A provision relating to guaranteed energy cost savings and payments due the State for any deficiency, in a form substantially similar to the following: In the event the energy and cost savings achieved during a guarantee year are less than the guaranteed energy cost savings for that year, the qualified provider shall pay the agency an amount equal to the deficiency. In no event shall a qualified provider use credit for excess savings to satisfy saving guarantees in future years of the contract. Savings achieved by the installed projects must comply with requirements contained in this section and sufficiently cover all project costs, including, as

applicable, debt service and contractor fees, maintenance, monitoring, and other services, for the duration of the contract term. If a project does not generate the guaranteed level of savings in any predefined reconciliation term, the qualified provider is liable to the agency for the amount of the shortfall plus related costs.

(d) An agency may supplement its payments with federal, state or local funds to reduce the annual cost or to lower the initial amount to be financed.

(e) An energy-savings contract is subject to competitive bidding requirements and other requirements of article three of this chapter.

(f) An energy-savings contract may extend beyond the fiscal year in which it first becomes effective: *Provided,* That such a contract may not exceed a fifteen-year term: *Provided, however,* That the long term contract will be void unless the agreement provides that the agency shall have the option during each fiscal year of the contract to terminate the agreement.

(g) Agencies may enter into a "lease with an option to purchase" contract for the purchase and installation of energy-conservation measures if the term of the lease does not exceed fifteen years and the lease contract includes the provisions contained in subsection (f) of this section and meets federal tax requirements for tax-exempt municipal leasing or long-term financing.

(h) The agency may include in its annual budget for each fiscal year any amounts payable under long-term energy-savings contracts during that fiscal year.

(i) Upon the issuance of a request for proposals or request for quotations for an energy-savings contract, the agency shall provide a copy thereof to the Joint Committee on Government and Finance.

(j) Before signing an energy-savings contract or extending an existing energy-savings contract, the agency shall give thirty days' written notice, which notice shall include a copy of the proposal

containing the information required by subsection (b) of this section, to the Joint Committee on Government and Finance.

CHAPTER 5B. ECONOMIC DEVELOPMENT ACT OF 1985.

ARTICLE 2F. DIVISION OF ENERGY.

§5B-2F-2. Purpose; Office of Energy; office to develop energy policy and development plan; contents of energy policy and development plan; and office to promote energy initiatives.

(a) Effective July 1, 2017, the Division of Energy is hereby continued, but shall be designated and known as the Office of Energy and shall be organized within the Department of Economic Development. All references throughout this code to the Division of Energy shall be construed to refer to the Office of Energy. The office may receive federal funds.

(b) The office is intended to provide leadership for developing energy policies emphasizing the increased efficiency of energy use, the increased development and production of new and existing domestic energy sources, the increased awareness of energy use on the environment and the economy, dependable, efficient and economical statewide energy systems capable of supporting the needs of the state, increased energy self-sufficiency where the ratio of indigenous to imported energy use is increased, reduce the ratio energy consumption to economic activity and maintain low-cost energy. The energy policies and development plans shall also provide direction for the private sector.

(c) The office shall have authority over the energy efficiency program existing under the Department of Economic Development.

(d) The office shall develop an energy policy and shall report the same back to the Governor and the Joint Committee on Government and Finance before December 1, 2007. The energy policy shall be a five-year plan setting forth the state's energy policies and shall provide a direction for the private sector. Prior to the expiration of the energy policy, the office shall begin review of the policy and submit a revised energy policy to the Governor and

the Joint Committee on Government and Finance six months before the expiration of the policy.

(e) The office shall prepare and submit an annual energy development plan to the Governor and the Joint Committee on Government and Finance on or before December 1 of each year. The development plan shall relate to the office's implementation of the energy policy and the activities of the office during the previous year. The development plan shall include any recommended legislation. The Public Energy Authority, the Office of Coalfield Community Development, the energy efficiency program, the Department of Environmental Protection and the Public Service Commission, in addition to their other duties prescribed by this code, shall assist the office in the development of an energy policy and related development plans. The energy development plan shall set forth the plans for implementing the state's energy policy and shall provide a direction for the private sector. The energy development plan shall recognize the powers of the Public Energy Authority as to development and financing of projects under its jurisdiction and shall make such recommendations as are reasonable and practicable for the exercise of such powers.

(f) The office shall hold public hearings and meetings with notice to receive public input regarding proposed energy policies and development plans. The energy policy and development plans required by subsections (d) and (e) of this section shall address increased efficiency of energy use, traditional and alternative energy, water as a resource and a component of energy production, energy distribution systems, the siting of energy facilities, the increased development and production of new and existing domestic energy sources, increased awareness of energy use on the environment and the economy, energy infrastructure, the development and implementation of renewable, clean, technically innovative and advanced energy projects in this state. Projects may include, without limitation, solar and wind energy, low-impact hydro power, geothermal, biomass, landfill gas, fuel cells, renewable hydrogen fuel technologies, waste coal, coal mine

methane, coal gasification to ultraclean fuels, solid waste to fuel grade ethanol and coal liquefaction technologies.

(g) The office may propose rules for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code designed to implement an energy policy and development plan in accordance with the provisions of this chapter.

(h) The energy policy and development plans required by subsections (d) and (e) of this section shall identify and report on the energy infrastructure in this state and include without limitation energy infrastructure related to protecting the state's essential data, information systems and critical government services in times of emergency, inoperativeness or disaster. In consultation with the Director of the Division of Homeland Security and Emergency Management, the office shall encourage the development of energy infrastructure and strategic resources that will ensure the continuity of governmental operations in situations of emergency, inoperativeness or disaster.

(i) In preparing or revising the energy policy and development plan, the office may rely upon internal staff reports or the advice of outside advisors or consultants and may procure such services with the consent of the Secretary of Economic Development. The office may also involve national, state and local government leadership and energy experts.

(j) The office shall prepare an energy use database, including without limitation, end-use applications and infrastructure needs for different classes of energy users including residential, commercial and industrial users, data regarding the interdependencies and sources of electricity, oil, coal, water and gas infrastructure, data regarding energy use of schools and state-owned facilities and collect data on the impact of the energy policy and development plan on the decisions and strategies of energy users of the state.

(k) The office shall promote collaboration between the state's universities and colleges, private industry and nonprofit

organizations to encourage energy research and leverage available federal energy research and development resources.

(l) The office shall promote initiatives to enhance the nation's energy security through research and development directed at transforming the state's energy resources into the resources that fuel the nation.

(m) The office shall work with the President of the United States and his or her administration to develop a plan that would allow West Virginia to become the leader in transitioning the United States to a new energy future.

(n) The office is to determine the best way for West Virginia to utilize its resources and any federal funding to develop the technologies that are necessary for such a transition.

(o) The office is to clearly articulate West Virginia's position on an energy solution for the United States that encompasses clean coal, natural gas, transtech energy technologies and renewable energy technologies.

(p) The office shall develop and distribute an informational program and policies that emphasize the importance of West Virginia energy resources and their positive impact on the eastern seaboard and the nation.

(q) The office shall monitor legal challenges to the energy industries in the state and submit a report quarterly to the Joint Committee on Government and Finance. The report shall contain information relating to any litigation that challenges any statute that could affect the production, distribution and utilization of natural resources of the state.

(r) The office shall develop and administer a program for auditing the energy metering devices for both electricity and natural gas currently installed at state buildings for purposes of determining whether such devices are active or inactive. Such program shall be designed to audit no fewer than 20 percent (20%) of the energy metering devices each year to enable completion of the audit of all such devices no later than January 1, 2027. In the

event the office determines during such audit that an energy metering device is no longer active, it shall notify the energy service provider to request (1) removal of such device and (2) adjustment of utility bills prospectively to remove any charge associated with such meter.

§5B-2F-3. Energy Savings Contracting Program.

The secretary shall, working with such other agencies of the state as the secretary deems appropriate, establish an energy savings contracting program to support the design and installation of energy-savings contracts that may be entered into by agencies of the state under §5A-3B-1 *et seq.* of the code. Such program shall include the development and provision of model, template, or standardized contracts, guidelines, procedures, manuals, and other related documents regarding the use of energy-savings contracts.

§5B-2F-4. Energy savings program.

(a) No later than October 1, 2021, the secretary shall establish an energy savings program designed to reduce energy usage for electricity, natural gas, fuel oil, and steam in all state buildings under the care, custody, and control of the state by 25% below 2018 levels by 2030. The secretary shall report annually to the Legislature regarding the energy-conservation measures, as defined by §5A-3B-1(b) of this code, installed under the energy savings program, achieved reductions in energy usage, and additional energy-conservation measures, if any, necessary to achieve the required reductions by 2030. The secretary is authorized to enter into energy-savings contracts as defined in §5A-3B-1 *et seq.* of this code, as necessary, to implement the energy savings program. Energy-savings contracts entered into as part of the energy savings program shall require an annual energy audit performed by a third party and at the cost of the qualified provider. Energy audits shall include (1) A comparative analysis of anticipated to actual energy savings; and (2) the terms and conditions of agency payment and performance guarantees. Any such performance guarantees shall provide that the contractor is responsible for maintenance and repair services for any energy related equipment, including computer software.

(b) The department will collaborate with the Department of Administration to develop energy saving strategies and improve energy efficiency in state buildings under the control and care of the Department of Administration.

§5B-2F-5. Disclosure of energy usage.

No later than July 1, 2021, the secretary shall establish a program for measuring and benchmarking the energy, including electricity, natural gas, fuel oil, and steam, efficiency of all state buildings under custody and control of the state. Such program shall use the benchmarking tool Energy Star Portfolio Manager® operated by the United States Environmental Protection Agency. No later than October 1, 2021 and each year thereafter, the secretary shall compile and submit energy usage data for all state buildings to such benchmarking tool. The secretary shall report annually to the Legislature regarding the building energy performance compared to similar buildings in similar climates, as determined by the Energy Star Portfolio Manager®.

CHAPTER 147

(Com. Sub. for H. B. 2720 - By Delegate Criss)

(By Request of the Department of Transportation)

[Passed April 10, 2021; in effect January 1, 2022.]
[Approved by the Governor on April 26, 2021.]

AN ACT to repeal §17-2A-24 of the Code of West Virginia, 1931, as amended, and to amend said code by adding thereto a new section, designated §5F-2-8, all relating to establishing a merit-based personnel administration system for the agencies, authorities, boards, and commissions within the Department of Transportation; authorizing the Secretary of Transportation to establish a merit-based personnel system; providing requirements and effective date for the personnel system; preserving classified or classified-exempt status, rights and privileges thereof, and due process protections; requiring compliance with state law regarding nepotism, favoritism, discrimination, and ethics in the employment process; prohibiting actions with a negative effect on federal funding; requiring inter-agency cooperation by the Division of Personnel; authorizing rule-making; and removing duplicative special employment procedures for Division of Highways personnel.

Be it enacted by the Legislature of West Virginia:

CHAPTER 5F. REORGANIZATION OF THE EXECUTIVE BRANCH OF STATE GOVERNMENT.

ARTICLE 2. TRANSFER OF AGENCIES AND BOARDS.

§5F-2-8. Special merit-based personnel system for Department of Transportation employees.

(a) In order to attract and retain employees in the Department of Transportation, the Secretary of Transportation shall establish a system of personnel administration based on merit principles and scientific methods governing the appointment, promotion, transfer, layoff, removal, discipline, classification, compensation, and welfare of its employees, and other incidents of state employment. All appointments and promotions to positions shall be made solely on the basis of merit and fitness for the position.

(b) The Department of Transportation personnel system shall be founded on effective performance management principles that set clear goals, provide efficient and effective services for our citizens, and appraise and reward employees for being responsible and performing as required.

(c) Beginning on January 1, 2022, notwithstanding any provision of this code or any rule to the contrary, employees and positions within the various agencies, boards, commissions, and divisions within the Department of Transportation currently governed by the provisions of §29-6-1 *et seq.* of this code shall be subject to the personnel system created pursuant to this section: *Provided*, That such employees and positions shall be deemed to retain their classified or classified-exempt status and all rights and privileges thereof. The employees of the Department of Transportation shall be afforded due process protections through §6C-2-1 *et seq.* of this code or other procedures established by the department that assure all of the protections required by law.

(d) The Department of Transportation personnel system is not exempt from the provisions of this code prohibiting nepotism, favoritism, discrimination, or unethical practices related to the employment process.

(e) The Department of Transportation personnel system may not be applied in any manner that would disqualify the department or its agencies, boards, commissions, or divisions for eligibility for any federal funding or assistance.

(f) The Division of Personnel shall, upon request of the Secretary of Transportation, take any action necessary to assist the

Department of Transportation in completing the transition to the department's personnel system in an orderly and efficient manner.

(g) The Secretary of Transportation may propose rules for legislative approval in accordance with the provisions of §29A-3-1 *et seq.* of this code and may promulgate emergency rules pursuant to the provisions of §29A-3-15 of this code to implement the provisions of this section.

CHAPTER 17. ROADS AND HIGHWAYS.

ARTICLE 2A. WEST VIRGINIA COMMISSIONER OF HIGHWAYS.

§17-2A-24. Special employment procedures for Division of Highways personnel.

[Repealed.]

CHAPTER 148

(Com. Sub. for H. B. 2747 - By Delegates Fast, Criss, D. Kelly, Reynolds, Hott, Westfall and Toney)

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

AN ACT to amend and reenact §15A-9-1 of the Code of West Virginia, 1931 as amended, and to amend and reenact §62-12-12 of said code, all relating to offices and officers in the Department of Homeland Security generally; clarifying duties and qualifications of the Chief Hearing Examiner of the Department of Homeland Security; removing language dictating residence requirements of Parole Board members based on congressional districts; clarifying that substitute Parole Board members serve at the will and pleasure of the Governor; directing that a least three board members initially appointed after July 1, 2021, have at least five years experience in social work, mental health, or prisoner reentry; exempting Parole Board meetings from open meeting law and clarifying that parole hearings are open to the public.

Be it enacted by the Legislature of West Virginia:

CHAPTER 15A. DEPARTMENT OF MILITARY AFFAIRS AND PUBLIC SAFETY.

ARTICLE 9. OFFICE OF ADMINISTRATIVE HEARINGS.

§15A-9-1. Office created; appointment of Chief Hearing Examiner.

(a) The Office of Administrative Hearings is created as a separate operating agency within the department.

(b) The secretary shall appoint a director of the office who serves as the administrative head of the office and as Chief Hearing Examiner.

(c) The Chief Hearing Examiner shall be a citizen of the United States and a resident of this state who is admitted to the practice of law in this state.

(d) The salary of the Chief Hearing Examiner shall be set by the secretary of the department.

(e) In addition to adherence to the code of conduct set forth in §6B-2-5a of this code, the Chief Hearing Examiner during his or her term shall:

(1) Not engage directly or indirectly in any activity, occupation, or business interfering or inconsistent with his or her duties as Chief Hearing Examiner;

(2) Not hold any other appointed public office or any elected public office or any other position of public trust; and

(3) Not be a candidate for any elected public office, or serve on or under any committee of, any political party.

(f) The Chief Hearing Examiner serves at the will and pleasure of the secretary.

CHAPTER 62. CRIMINAL PROCEDURE.

ARTICLE 12. PROBATION AND PAROLE.

§62-12-12. Parole Board generally.

(a) The West Virginia Parole Board is continued as part of the Division of Corrections and Rehabilitation. The board shall consist of nine members, each of whom shall have been a resident of this state for at least five consecutive years prior to his or her appointment. No more than five of the board members may at any one time belong to the same political party, except as provided in subsection (b) of this section. The board shall be appointed by the

Governor, by and with the advice and consent of the Senate and shall serve at the will and pleasure of the Governor.

(b) The Governor shall appoint one of the nine members to serve as chairperson at the Governor's will and pleasure. In addition to all other powers, duties, and responsibilities granted and assigned to the chairperson by law and rule, the chairperson has the following powers and duties:

(1) To provide for the management of facilities and personnel of the board;

(2) To supervise the administration and operation of the board;

(3) To delegate the powers and duties of his or her office to the vice chairperson or other members of the board, who shall act under the direction of the chairperson and for whose acts he or she is responsible: *Provided*, That if the position of chairperson becomes vacant by death, resignation, or otherwise, the vice chairperson shall assume all the powers and duties of the chairperson until such time as a new chairperson is appointed pursuant to the provisions of this subsection;

(4) To employ one full-time administrative employee, who shall be a classified exempt; and

(5) To exercise all other powers and perform all other duties necessary and proper in carrying out his or her responsibilities as chairperson.

(c) The board, from its membership, shall elect a vice chairperson, at least once every year, to serve as chair in the absence of a chairperson. In the absence of or at the direction of the chairperson, the vice chairperson may exercise the powers and duties of the chairperson. The vice chairperson shall, while performing the duties and responsibilities of the chairperson, have all of the statutorily authorized power and duties of the chairperson.

(d) Members of the board shall have at least an undergraduate degree from an accredited college or university or at least five years of actual experience in the fields of corrections, law enforcement,

sociology, law, education, psychology, social work, or medicine, or a combination thereof, and shall be otherwise competent to perform the duties of his or her office: *Provided,* That at least three members initially appointed after July 1, 2021, shall have five or more years experience in the fields of mental health, social work, or inmate reentry services. All members currently serving on the board shall continue the terms they are currently serving, unless otherwise removed. The members shall be appointed for overlapping terms of six years. Members are eligible for reappointment. The members of the board shall devote their full time and attention to their board duties.

(e) The Governor may, if he or she is informed that a vacancy is imminent, appoint a member to fill the imminent vacancy prior to it becoming vacant: *Provided,* That the new member may be appointed no more than 30 days prior to the vacancy occurring and only for purposes of training. He or she may not assume the powers and duties of the position until the vacancy has actually occurred.

(f) The Governor may appoint no more than five persons to a list of substitute board members. Substitute board members shall meet the qualifications set forth in subsection (d) of this section. The persons on the list shall be used in a rotating fashion. If a full-time board member is unable to serve, a substitute board member may serve in his or her place. These substitute board members shall have the same powers and duties of the fulltime board members while acting as a substitute and shall serve at the will and pleasure of the Governor. These members shall be reimbursed for expenses and paid a per diem rate set by the secretary.

(g) The Division of Corrections and Rehabilitation shall provide administrative and other services to the board as the board requires. Expenses of the board shall be included within the annual budget of the Division of Corrections and Rehabilitation: *Provided*, That the salaries of the members appointed pursuant to subsection (b) of this section are to be included in a separate budget for the Parole Board.

(h) Notwithstanding any provision of this code to the contrary, meetings of the parole board are not subject to the provisions of §6-9A-1 *et seq.* of this code: *Provided*, That hearings before the parole board shall be open to the public.

CHAPTER 149

(Com. Sub. for H. B. 2763 - By Delegate Linville)

[Passed April 6, 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 article, designated §5A-6C-1, §5A-6C-2, §5A-6C-3, and §5A-6C-4, all relating to "West Virginia Cyber Incident Reporting;" providing definitions; requiring all state agencies within the executive branch, constitutional officers, all local governmental entities, county boards of education, Judiciary, and Legislature to report cybersecurity incidents; establishing criteria for reporting incidents; mandating Cybersecurity Office develop and disseminate procedure for reporting incidents; and requiring annual report.

Be it enacted by the Legislature of West Virginia:

ARTICLE 6C. WEST VIRGINIA CYBER INCIDENT REPORTING.

§5A-6C-1. Definitions.

As used in this article:

"Cybersecurity Office" means the office created by §5A-6B-1 of this code.

"Incident" or "cybersecurity incident" means a violation, or imminent threat of violation, of computer security policies, acceptable use policies, or standard security practices.

§5A-6C-2. Scope.

This article applies to all state agencies within the executive branch, constitutional officers, all local government entities as defined

by §7-1-1 or §8-1-2 of this code, county boards of education as defined by §18-1-1 of this code, the Judiciary, and the Legislature.

§5A-6C-3. Cyber Incident reporting; when required.

(a) Qualified cybersecurity incidents shall be reported to the Cybersecurity Office before any citizen notification, but no later than 10 days following a determination that the entity experienced a qualifying cybersecurity incident.

(b) A qualified cybersecurity incident meets at least one of the following criteria:

(1) State or federal law requires the reporting of the incident to regulatory or law- enforcement agencies or affected citizens;

(2) The ability of the entity that experienced the incident to conduct business is substantially affected; or

(3) The incident would be classified as emergency, severe, or high by the U.S. Cybersecurity and Infrastructure Security Agency.

(c) The report of the cybersecurity incident to the Cybersecurity Office shall contain at a minimum:

(1) The approximate date of the incident;

(2) The date the incident was discovered;

(3) The nature of any data that may have been illegally obtained or accessed; and

(4) A list of the state and federal regulatory agencies, self-regulatory bodies, and foreign regulatory agencies to whom the notice has been or will be provided.

(d) The procedure for reporting cybersecurity incidents shall be established by the Cybersecurity Office and disseminated to the entities listed §5A-6C-2 of this code.

§5A-6C-4. Cybersecurity Office annual report.

(a) On or before December 31 of each year, and when requested by the Legislature, the Cybersecurity Office shall provide a report

to the Joint Committee on Government and Finance containing the number and nature of incidents reported to it during the preceding calendar year.

(b) The Cybersecurity Office shall also make recommendations, if any, on security standards or mitigation that should be adopted.

CHAPTER 150

(Com. Sub. for H. B. 2834 - By Delegates Espinosa, Howell, Barrett, Householder and Higginbotham)

(By Request of the West Virginia Department of Arts, Culture and History)

[Passed April 7, 2021; in effect ninety days from passage.]
[Approved by the Governor on April 26, 2021.]

AN ACT to amend and reenact §29-1-3 of the Code of West Virginia, 1931, as amended, related to the Commission on the Arts; to add the Curator of the West Virginia Department of Arts, Culture and History as an ex officio voting member of the commission; other technical updates.

Be it enacted by the Legislature of West Virginia:

ARTICLE 1. DIVISION OF CULTURE AND HISTORY.

§29-1-3. Commission on the Arts.

(a) The Commission on the Arts is continued and shall be composed of 15 appointed voting members, the Curator of the West Virginia Department of Arts, Culture and History as an ex officio voting member, the director of the arts section as an ex officio nonvoting member, and the ex officio nonvoting members set forth or authorized for appointment in this section.

(b)(1) The Governor shall appoint, by and with the advice and consent of the Senate, the voting members of the commission for staggered terms of three years. A person appointed to fill a vacancy shall be appointed only for the remainder of that term.

(2) No more than eight appointed voting members may be of the same political party. Effective July 1, 2004, no more than three voting members may be from the same regional educational service agency district created in §18-2-26 of this code. Appointed voting members of the commission shall be appointed so as to fairly represent both sexes, the ethnic and cultural diversity of the state, and the geographic regions of the state.

(3) The commission shall elect one of its members as chair. It shall meet at the times specified by the chair. Notice of each meeting shall be given to each member by the chair in compliance with the open meetings laws of the state. A majority of the voting members constitute a quorum for the transaction of business. The director of the arts section shall serve as secretary. The curator or a majority of the members also may call a meeting upon notice as provided in this section.

(4) Each member of the commission shall serve without compensation, but shall be reimbursed for all reasonable and necessary expenses actually incurred in the performance of the duties of the office; except that if the expenses are paid, or are to be paid, by a third party, the member or ex officio member, as the case may be, may not be reimbursed by the state.

(5) Upon recommendation of the curator, the Governor also may appoint those officers of the state that are appropriate to serve on the commission as ex officio nonvoting members.

(c) The commission may:

(1) Advise the curator and the director of the arts section concerning the accomplishment of the purposes of that section and establish a state plan with respect to the arts section;

(2) Approve and distribute grants-in-aid and awards from federal and state funds relating to the purposes of the arts section;

(3) Request, accept, or expend federal funds to accomplish the purposes of the arts section when federal law or regulations would prohibit those actions by the curator or section director, but would permit them to be done by the commission on the arts;

(4) Otherwise encourage and promote the purposes of the arts section;

(5) Approve rules concerning the professional policies and functions of the section as promulgated by the director of the arts section; and

(6) Advise and consent to the appointment of the director by the curator.

(d) A special revenue account in the State Treasury, known as the "Cultural Facilities and Capital Resources Matching Grant Program Fund", is continued. The fund shall consist of moneys received under §29-22A-10 of this code and funds from any other source. The moneys in the fund shall be expended in accordance with the following:

(1) Fifty percent of the moneys deposited in the fund shall be expended by the Commission on the Arts for capital improvements, preservation, and operations of cultural facilities: *Provided,* That the Commission on the Arts may use no more than 25 percent of the funding for operations of cultural facilities pursuant to the rule required by this subdivision. The Commission on the Arts shall propose rules for legislative approval in accordance with the provisions of §29A-3-1 *et seq.* of this code to create a matching grant program for cultural facilities and capital resources; and

(2) Fifty percent of the moneys deposited in the fund shall be expended by the Department of Arts, Culture and History for:

(A) Capital improvements, preservation, and operation of cultural facilities that are managed by the department; and

(B) Capital improvements, preservation, and operation of cultural facilities that are not managed by the department.

(e) The commission shall undertake a study, solicit designs, and make recommendations for the establishment of an appropriate memorial on state capitol grounds for soldiers killed in the conflicts in Iraq, Afghanistan, and other locations who died fighting the United States War on Terror, and to recognize and honor the West

Virginians who lost their lives in these conflicts. The commission shall consult with the Capitol Building Commission and state veterans, including veterans groups and Gold Star mothers of those lost in these conflicts, prior to adoption of a proposal for the memorial. The commission shall provide a report to the Legislature's Joint Committee on Government and Finance by January 1, 2022, including recommendations for design and location of the memorial and estimated construction costs.

CHAPTER 151

(H. B. 2914 - By Delegates Rowan, Rowe, Steele, Foster, Espinosa, Linville, Hardy, Skaff, Hornbuckle and Fluharty)

[Passed April 7, 2021; in effect ninety days from passage.]
[Approved by the Governor on April 26, 2021.]

AN ACT to amend and reenact §29-1-5 of the Code of West Virginia, 1931, as amended, relating to the Archives and History Commission; removing ex officio voting members; and update formatting.

Be it enacted by the Legislature of West Virginia:

ARTICLE 1. DIVISION OF CULTURE AND HISTORY.

§29-1-5. Archives and history commission.

(a) The archives and history commission which is hereby created shall be composed of thirteen appointed members and six ex officio nonvoting members as provided in this section.

(b) The Governor shall nominate, and by and with the advice and consent of the Senate, appoint the members of the commission for staggered terms of three years. A person appointed to fill a vacancy shall be appointed only for the remainder of that term.

(c) No more than seven of the appointed members may be of the same political party. Members of the commission should be appointed so as to fairly represent both sexes, the ethnic and cultural diversity of the state and the geographic regions of the state. The archives and history commission shall contain the required professional representation necessary to carry out the provisions of the National Historic Preservation Act of 1966, as amended, and shall serve as the "state review board" and shall follow all rules and regulations as specified therein. This

representation shall include the following professions: Historian, architectural historian, historical architect, archaeologist specializing in historic and prehistoric archaeology, archivist, librarian and museum specialist.

(d) The commission shall elect one of its members chair. It shall meet at such time as shall be specified by the chair, or in accordance with the provisions of subsection (g) of this section. A majority of the voting members shall constitute a quorum for the transaction of business.

(e) The commission shall be comprised of:

(1) The thirteen appointed, voting members; and

(2) The following six ex officio, nonvoting members:

(A) The Director of the State Geological and Economic Survey;

(B) The President of the West Virginia Preservation Alliance, Inc.;

(C) The State Historic Preservation Officer;

(D) The Director of the Archives and History Section;

(E) The Director of the Historic Preservation Section; and

(F) The Director of the Museums Section.

(f) The Director of the Archives and History Section shall serve as secretary of the commission.

(g) Notice of each meeting shall be given to each member by the chair in compliance with the open meetings law. The secretary, or a majority of the members, may also call a meeting upon such notice as provided in this section.

(h) Each member or ex officio member of the commission shall serve without compensation, but shall be reimbursed for all reasonable and necessary expenses actually incurred in the

performance of the duties of the commission; except that in the event the expenses are paid, or are to be paid, by a third party, the member or ex officio member, as the case may be, shall not be reimbursed by the state.

(i) The commission shall have the following powers:

(1) To advise the commissioner and the directors of the archives and history section, the historic preservation section and the museums section concerning the accomplishment of the purposes of those sections and to establish a state plan with respect thereto;

(2) To approve and distribute grants-in-aid and awards from federal and state funds relating to the purposes of the archives and history section, the historic preservation section and the museums section;

(3) To request, accept or expend federal funds to accomplish the purposes of the archives and history section, the historic preservation section and the museums section when federal law or regulations would prohibit the same by the commissioner or section director, but would permit the same to be done by the archives and history commission;

(4) To otherwise encourage and promote the purposes of the archives and history section, the historic preservation section and the museums section;

(5) To approve rules and regulations concerning the professional policies and functions of the archives and history section, the historic preservation section and the museums section as promulgated by the directors of those sections;

(6) To advise and consent to the appointment of the section directors by the commissioner; and

(7) To review and approve nominations to the state and national registers of historic places.

CHAPTER 152

(Com. Sub. for H. B. 2916 - By Delegates Rowan, Rowe, Steele, Foster, Burkhammer, Espinosa, Linville, Hardy, Young, Skaff and Hornbuckle)

[Passed April 7, 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 §4-13A-1, §4-13A-2, §4-13A-3, §4-13A-4, §4-13A-5, §4-13A-6, and §4-13A-7, relating to the creation of the West Virginia Semiquincentennial Commission and Fund to support the celebration of the 250th anniversary of our nation's founding; providing for the method and manner by which the commission shall be appointed; providing for expense reimbursement for the commission's members; establishing the powers and duties of the commission; and providing a sunset provision for the commission.

Be it enacted by the Legislature of West Virginia:

ARTICLE 13A. WEST VIRGINIA SEMIQUINCENTENNIAL COMMISSION AND FUND.

§4-13A-1. Findings; West Virginia Semiquincentennial Commission established; purpose.

(a) The Legislature finds that the 250th anniversary of our nation's founding is of such historical significance as to warrant its commemoration.

(b) There is hereby created the West Virginia Semiquincentennial Commission.

(c) The purpose of the commission is to prepare for and commemorate the semiquincentennial of our nation's founding.

§4-13A-2. Membership; terms; filling vacancies; election of chair and vice chair.

(a) The Governor shall appoint 10 members as follows:

(1) Three academic historians;

(2) Five citizens members, no more than one of whom may be from any one state senatorial district;

(3) A member of the National Society of the Sons of the American Revolution;

(4) A member of the National Society of the Daughters of the American Revolution;

(b) The following shall serve as ex-officio voting members;

(1) The State Superintendent of Schools, or a designee;

(2) The Cabinet Secretary of Commerce, or a designee;

(3) The Curator of the Department of Arts, Culture, and History, or a designee;

(4) The Secretary of the Department of Tourism, or a designee;

(5) The Executive Director of the Herbert Henderson Minority Affairs Office, or a designee;

(6) The West Virginia State Archivist;

(7) The Director of the West Virginia State Museums;

(8) One member of the House of Delegates, to be appointed by the Speaker of the House of Delegates, who shall serve as an ex officio nonvoting member of the commission; and

(9) One member of the State Senate, to be appointed by the President of the Senate, who shall serve as an ex officio nonvoting member of the commission;

(10) Members of the United States Senate from the State of West Virginia, or their designees shall serve as ex officio nonvoting members of the commission;

(11) Members of the United States House of Representatives from the State of West Virginia, or their designees shall serve as ex officio nonvoting members of the commission;

(c) All appointed members shall serve at the will and pleasure of the Governor;

(d) Appointments to fill vacancies shall be for the unexpired terms. Vacancies shall be filled in the same manner as the original appointments.

(e) The curator of the West Virginia Department of Arts, Culture and History shall serve as the chair of the commission. The commission shall elect a vice chair and secretary from among its members.

§4-13A-3. Expense reimbursement.

(a) Members shall serve without compensation.

(b) The commission may reimburse members for all reasonable and necessary expenses actually incurred in the performance of his or her duties as a commission member, in a manner consistent with the guidelines of the travel management office of the Department of Administration, subject to availability of funds received pursuant to §4-13A-6(a)(1). No provision of this section may be construed to require any appropriation of funds by the Legislature.

§4-13A-4. Quorum; meetings.

(a) A simple majority of the members serving on the board at a given time constitutes a quorum for the transaction of business.

(b) Meetings shall be held in accordance with the provisions of §6-9A-1 *et seq.*, of this code.

§4-13A-5. Advisory council.

The commission may establish an advisory council composed of citizens at large who have knowledge of American history and interest in its semiquincentennial celebration to assist the commission in its work.

§4-13A-6. Powers; duties; limitation on duration of contracts.

The commission may:

(1) Solicit, accept, use, and dispose of gifts, grants, donations, bequests, or other funds or real or personal property for the purpose of aiding or facilitating the work of the commission, upon compliance with the provisions of §12-2-2 of this code;

(2) Procure supplies, services, and property and make or enter into contracts, leases, or other legal agreement as necessary to carry out its duties: *Provided,* That no contract, lease or other legal agreement may be entered into by the commission with terms which would extend beyond the termination date of the commission;

(3) Plan, develop and carry out programs and activities appropriate to commemorate the semiquincentennial of the founding of our nation;

(4) Encourage civic, historical, educational, economic, and other organizations throughout West Virginia to organize and participate in activities to expand the understanding and appreciation of the United States of America;

(5) Provide technical assistance to localities and nonprofit organizations to further the commemoration of the semiquincentennial of the founding of our nation;

(6) Develop programs and facilities to ensure that the semiquincentennial commemoration of the founding of our nation results in a positive legacy and long-term public benefit; and

(7) Encourage the development and conduct of programs designed to involve all citizens in activities that commemorate the semiquincentennial of the founding of our nation.

§4-13A-7. Termination of the commission.

The commission shall terminate on June 30, 2027.

CHAPTER 153

(Com. Sub. for H. B. 2933 - By Delegates Kessinger, Hardy, D. Jeffries, Pinson, J. Pack, Summers, L. Pack, Haynes, Brown, Hanshaw (Mr. Speaker) and Mazzocchi)

[Passed April 10, 2021; in effect July 1, 2022.]
[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 §5A-3-63, relating to prohibiting the state from contracting with companies that boycott Israel; establishing findings of the Legislature; defining terms; forbidding the State of West Virginia, any political subdivision thereof and spending units of state government from entering into contracts with companies that boycott Israel; setting an effective date; providing that contracts that violate new requirements will be void; and providing for rulemaking.

Be it enacted by the Legislature of West Virginia:

CHAPTER 5A. DEPARTMENT OF ADMINISTRATION

ARTICLE 3. PURCHASING DIVISION.

§5A-3-63. Prohibition on contracting with companies that boycott Israel.

(a) The Legislature finds that:

(1) The State of Israel is one of the United States' closest allies and international trading partners; and

(2) In recent years, the State of Israel and Israeli-owned businesses have been the target of boycotts that attempt to isolate Israel within the international community have served as a vehicle

for spreading anti-Semitism and advocating for the elimination of the Jewish State of Israel.

(3) The State of West Virginia has an economic and a humanitarian obligation to denounce and reject the Boycott, Divestment, and Sanctions Movement against Israel, and to prevent the state or any of its instrumentalities from contracting with companies that engage in the movement;

(b) Definitions. – For the purposes of this section:

(1) "Boycott of Israel" means engaging in actions that are intended to penalize, inflict economic harm on, or otherwise limit commercial relations with the State of Israel or companies based in the State of Israel or in territories controlled by the State of Israel.

(2) "Company" means a corporation, partnership, joint venture, limited partnership, limited liability partnership, limited liability company, organization, association, or any other business entity that has 10 or more employees and operates to earn a profit: *Provided*, That the term does not include a sole proprietorship.

(3) "Public entity" means the state of West Virginia, or any political subdivision thereof, and all spending units of state government including those otherwise excluded from applicability under §5A-3-1 of this code.

(c) Effective July 1, 2022, a public entity may not enter into a contract with a company for goods or services valued at $100,000 or more unless the contract includes a written certification that the company is not currently engaged in, and will not for the duration of the contract, engage in a boycott of Israel.

(d) Any contract that violates the requirements of this section shall be void as against public policy.

(e) The Director of the Purchasing Division is authorized to promulgate legislative rules, including emergency rules, to implement the provisions of this section.

CHAPTER 154

(S. B. 307 - By Senators Weld, Phillips, Stollings, Nelson, Rucker, Romano, and Plymale)

[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 §18B-10-1a of the Code of West Virginia, 1931, as amended, relating generally to in-state residency tuition rates; providing that nonresident members of a reserve unit in West Virginia qualify as residents for purposes of determining tuition rates; removing the requirement that members of the National Guard participate in the National Guard education services program; and providing that current members of the United States armed forces who reside in West Virginia qualify as residents for purposes of determining tuition rates.

Be it enacted by the Legislature of West Virginia:

ARTICLE 10. FEES AND OTHER MONEY COLLECTED AT STATE INSTITUTIONS OF HIGHER EDUCATION.

§18B-10-1a. Resident tuition rates for members of the National Guard, reserves, and armed forces.

(a) The term "resident" or "residency", or any other term or expression used to designate a West Virginia resident student, when used to determine the rate of tuition to be charged students attending state institutions of higher education, shall be construed to include the following:

(1) Members of the National Guard or reserves who are not residents of West Virginia but who are active members of a National Guard or reserve unit in West Virginia; and

(2) Current members of the United States armed forces who reside in West Virginia.

(b) A person who qualifies as a resident, as that term is defined in subsection (a) of this section, on the first day of the semester or term of the college or institution, shall be charged resident tuition rates.

(c) The provisions of this section apply at the beginning of the semester or term immediately following the effective date of this section.

CHAPTER 155

(Com. Sub. for Com. Sub. for S. B. 335 - By Senators Nelson, Grady, Unger, Romano, Hamilton, Martin, Stollings, and Baldwin)

[Passed April 8, 2021; to take effect July 1, 2021]
[Approved by the Governor on April 15, 2021.]

AN ACT to amend and reenact §18C-9-3, §18C-9-4, and §18C-9-5 of the Code of West Virginia, 1931, as amended, all relating to the West Virginia Invests Grant Program; defining terms; modifying the eligible costs for which the grants may be used; providing program fees must be approved by Council for Community and Technical College Education; and revising requirement for drug testing as a condition of West Virginia Invests Grant eligibility.

Be it enacted by the Legislature of West Virginia:

ARTICLE 9. WEST VIRGINIA INVESTS GRANT PROGRAM.

§18C-9-3. Definitions.

As used in this article:

"Academic fees" means fees charged to students for specific courses or programs to support such expenses such as lab or equipment costs.

"Council" means the West Virginia Council for Community and Technical College Education.

"Commission" means the West Virginia Higher Education Policy Commission.

"Eligible institution" means a public community and technical college under the authority of the West Virginia Council for Community and Technical College Education or a public baccalaureate institution that grants associate degrees satisfying the requirements of participating in Advanced Career Education (ACE) program partnerships in accordance with §18-2E-11 of this code.

"Eligible post-secondary program" means a curriculum of courses leading to a certificate or associate degree at an eligible institution which satisfies a course of study that has been deemed by the Department of Commerce to satisfy a workforce need as determined by the department in accordance with §18-2E-11(d) of this code.

"Tuition" means the semester or term charges imposed by an eligible institution and, additionally, all mandatory fees required as a condition of enrollment by all students.

§18C-9-4. WV Invests Grant Program.

(a) There is hereby created a grant program known as the WV Invests Grant Program, which shall be administered by the vice chancellor for administration in accordance with this article.

(b) The council shall award WV Invests Grants pursuant to the following terms and conditions:

(1) A WV Invests Grant may only be awarded to applicants satisfying the requirements provided in §18C-9-5 of this code;

(2) The maximum amount of a WV Invests Grant shall be the cost of tuition mandatory fees, and academic program fees for coursework leading to completion of the chosen associate degree or certificate, less all other state and federal scholarships and grants for which the student is eligible: *Provided,* That all academic program fees charged in addition to base tuition must be approved by the Council for Community and Technical College Education to be eligible for the West Virginia Invests Grant as set forth in this article. All other state and federal scholarships and grants for which the grant recipient is eligible shall be deducted from the amount of

the WV Invests Grant for each individual student. The amount of a WV Invests Grant at an eligible public baccalaureate institution shall not exceed the average cost of tuition and mandatory fees of the community and technical colleges;

(3) Grant payments shall be made directly to the eligible institutions;

(4) If a grant recipient transfers from one eligible institution to another, the grant is transferable only with approval of the vice chancellor for administration;

(5) A WV Invests Grant may be used at any eligible institution to seek an associate degree or certificate in an eligible post-secondary program. An institution is not required to accept a grant recipient for enrollment and may enforce its own admission requirements, standards, and policies; and

(6) If a WV Invests Grant recipient terminates enrollment for any reason during the academic year, the unused portion of the grant shall be returned by the institution to the council in accordance with the council's policy for issuing refunds. The council shall transfer such funds to the WV Invests Fund for allocation and expenditure.

(c) On or before January 1 annually, the council shall provide to the Legislature and the Governor a report on the WV Invests Grant Program, which shall include, but not be limited to, research and data concerning student success and grant retention.

(d) The council shall propose legislative rules for legislative approval pursuant to §29A-3A-1 *et seq.* of this code to implement the provisions of this article, which shall provide for:

(1) Application requirements and deadlines fully implementing requirements of this article;

(2) Appeal procedures for the denial or revocation of the grant; and

(3) Any other provisions necessary to effectuate the purposes of this article.

(e) The Legislature hereby declares that an emergency situation exists and, therefore, the council may establish, by emergency rule, under the procedures of §29A-3A-1 *et seq.* of this code, a rule to implement the provisions of this article.

(f) Beginning with the 2021 fiscal year, and for every fiscal year thereafter, any appropriation by the Legislature to support and or alleviate the cost to citizens in this state to obtain advanced certifications and associate degrees shall only be distributed to those community and technical colleges or public baccalaureate institutions that form one or more partnerships to establish ACE programs and pathways. Once distributed, such funds may be used to support any eligible post-secondary program or pathway provided by an eligible institution leading to the award of such degree or certification.

§18C-9-5. Eligibility requirements; agreements.

(a) To be eligible for a WV Invests Grant, an individual must satisfy the following requirements:

(1) Be a citizen or legal resident of the United States and have been a resident of West Virginia for at least one year immediately preceding the date of application for a grant;

(2) Have completed a secondary education program in a public, private, or home school;

(3) Have not been previously awarded a post-secondary degree;

(4) Be at least 18 years of age: *Provided*, That individuals younger than 18 years of age may qualify for the grant upon completion of a secondary education program in a public, private, or home school;

(5) Meet the admission requirements of, and be admitted into, an eligible institution;

(6) Satisfactorily meet any additional qualifications of enrollment, academic promise, or achievement as established by the council through rule;

(7) Have filed a completed free application for federal student aid for the academic year in which the grant award is sought;

(8) Be enrolled in an eligible post-secondary program;

(9) Be enrolled in at least six credit hours per semester;

(10) Have completed a WV Invests Grant application as provided by the council in accordance with a schedule established by the council; and

(11) Have, prior to the start of each academic year or prior to the initial academic period for which the student is enrolled if that period for which the student is enrolled is not the beginning of the academic year, taken a drug test administered by the eligible institution. If the individual tests positive, he or she shall take another drug test prior to the beginning of the next academic period. If the results of the second test are positive, the individual shall complete a drug rehabilitation program as prescribed by the Vice Chancellor for Administration as a condition of continued eligibility for a WV Invests Grant. The applicant shall be responsible for the actual cost of any drug tests required by this subdivision.

(b) Each grant may be renewed until the course of study is completed as long as the following qualifications, as determined by the vice chancellor for administration and the council, are satisfied:

(1) Maintaining satisfactory academic standing, including a cumulative grade point average of at least 2.0;

(2) Making adequate progress toward completion of the eligible post-secondary program;

(3) Satisfactory participation in a community service program authorized by the council. The council shall include in the legislative rules, required by §18C-9-4 of this code, provisions for

the administration of community service requirements, including, but not limited to, requiring completion of at least eight hours of unpaid community service during the time of study, which may include, but is not limited to, participating with nonprofit, governmental, institutional, or community-based organizations designed to improve the quality of life for community residents, meet the needs of community residents, or foster civic responsibility;

(4) Continued satisfaction of eligibility requirements provided by §18C-9-5(a) of this code; and

(5) Satisfaction of any additional eligibility criteria established by the council through legislative rule.

(c) Each recipient of a WV Invests Grant shall enter into an agreement with the vice chancellor for administration, which shall require repayment of an amount of the grant or grants awarded to the recipient, in whole or in part, if a recipient chooses to reside outside the state within two years following obtainment of the degree or certificate for which the grant or grants were awarded. The council may not require a recipient to repay grants, in whole or in part, unless the prospective recipient has been informed of this requirement in writing before initial acceptance of the grant award. Each WV Invests Grant agreement shall include the following:

(1) Disclosure of the full terms and conditions under which assistance under this article is provided and under which repayment may be required; and

(2) A description of the appeals procedure required to be established under this article.

(d) WV Invests Grant recipients found to be in noncompliance with the agreement entered into under §18C-9-5(c) of this code shall be required to repay the amount of the grant awards received, plus interest, and, where applicable, reasonable collection fees, on a schedule and at a rate of interest prescribed in rules promulgated by the council. The council shall also provide for proration of the

amount to be repaid by a recipient who maintains employment in the state for a period of time within the time period required under §18C-9-5(c) of this code.

(e) A recipient is not in violation of an agreement entered into pursuant to §18C-9-5(c) of this code during any period in which the recipient is meeting any of the following conditions:

(1) Pursuing a half-time course of study at an accredited institution of higher education;

(2) Serving as a member of the armed services of the United States;

(3) Failing to comply with the terms of the agreement due to death or permanent or temporary disability as established by sworn affidavit of a qualified physician; or

(4) Satisfying the provisions of any additional repayment exemptions prescribed by the council through rule.

CHAPTER 156

(Com. Sub. for Com. Sub. for S. B. 657 - By Senators Phillips, Azinger, Rucker, Smith, Sypolt, Tarr, Woodrum, Roberts, Karnes, Grady, and Maynard)

[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 article, designated §18B-20-1, §18B-20-2, §18B-20-3, §18B-20-4, §18B-20-5, §18B-20-6, §18B-20-7, §18B-20-8, and §18B-20-9, all relating to free expression on state institution of higher education campuses; providing for definitions; defining protected expressive activities; defining public forums and prohibiting "free speech zones"; permitting expressive activity on campus under certain conditions; allowing state institutions of higher education to maintain and enforce reasonable time, place, and manner restrictions under certain parameters; requiring state institutions of higher education to treat student organizations which are open to all students equally; requiring state institutions of higher education to develop materials to educate the campus community on its free speech policies; requiring posting of policies on website; requiring campus to report a description of any barriers to, or incidents of disruption of, free expression occurring on campus; allowing a person or student organization who believes a violation of this article has occurred to bring an action for relief against the state institution of higher education and certain of its employees; establishing the relief available for a violation of the article; and enacting a one-year statute of limitations for alleged violations under the article.

Be it enacted by the Legislature of West Virginia:

ARTICLE 20. FREE EXPRESSION ON CAMPUS.

§18B-20-1. Definitions.

As used in this article:

(1) "Campus community" includes students, administrators, faculty, and staff at the institution of higher education, and their invited guests.

(2) "Harassment" means an expression that is unwelcome, so severe, pervasive, and subjectively and objectively offensive that a student is effectively denied equal access to educational opportunities or benefits provided by the state institution of higher education or sexual harassment as defined by federal law and federal regulations applicable to state institutions of higher education.

(3) "Materially and substantially disrupts" means an occurrence where a person or group significantly hinders another person's or group's expressive activity, prevents the communication of the message, prevents the transaction of the business of a lawful meeting, gathering, or procession, or interferes with or prevents the operations and functions of a state institution of higher education by:

(A) Engaging in fighting, violent, or other unlawful behavior;

(B) Physically blocking or using threats of violence to prevent any person from attending, listening to, viewing, or otherwise participating in an expressive activity;

(C) Using sound to drown out or muffle expressive activity; or

(D) Violating a state institution of higher education's reasonable time, place, and manner restrictions.

(E) Conduct that "materially and substantially disrupts" shall not include conduct that is protected under the First Amendment to the United States Constitution or West Virginia Constitution. The protected conduct includes, but is not limited to, lawful protests in

the outdoor areas of campus generally accessible to the members of the public (except during times when those areas have been reserved in advance for other events), or minor, brief, or fleeting nonviolent disruptions of events that are isolated and short in duration.

(4) "Outdoor areas of campus" means the generally accessible outside areas of campus where members of the campus community are commonly allowed, such as grassy areas, walkways, or other similar common areas and does not include outdoor areas where access is restricted from a majority of the campus community.

(5) "State institution of higher education" means any university, college, or community and technical college under the jurisdiction of a governing board as defined in §18B-1-2 of this code.

(6) "Student" means any person who is enrolled on a full-time or part-time basis in a state institution of higher education.

(7) "Student organization" means an officially recognized group at a state institution of higher education, or a group seeking official recognition, comprised of admitted students that receive, or are seeking to receive, benefits through the institution of higher education as defined in this section.

§18B-20-2. Protected expressive activities.

Expressive activities protected under the provisions of §18-1-1 *et seq.* of this code include, but are not limited to, any lawful verbal and nonverbal speech. This may include lawful and protected forms of peaceful assembly, protests, speeches and guest speakers, distribution of literature, carrying signs, and circulating petitions.

§18B-20-3. Public forums; establishment of "free speech zones" prohibited.

The outdoor areas of campuses of state institutions of higher education shall be considered public forums for the campus community, and state institutions of higher education shall not limit free speech by creating "free speech zones" or other designated

areas of campus outside of which expressive activities are prohibited. Nothing in this section shall be interpreted as limiting the right of student expression elsewhere on campus.

§18B-20-4. Time, place, and manner restrictions.

(a) Any person who wishes to engage in protected and lawful expressive activity on campus shall be permitted to do so freely, as long as the person's conduct is not unlawful, and does not materially and substantially disrupt the functioning of the state institution of higher education.

(b) To enable the state institutions of higher education to function in a safe and secure manner and to advance their missions and objectives, the state institutions of higher education may enact reasonable time, place, and manner restrictions which are content neutral and narrowly tailored to serve a significant state institution of higher education or other governmental interest. A state institution of higher education may deny, cancel, or postpone a reservation, or immediately terminate any ongoing activity that represents a violation of its time, place, and manner restrictions. A state institution of higher education shall endeavor to allow members of the campus community to spontaneously and contemporaneously engage in protected expressive activities.

(c) Nothing in this article shall be interpreted as preventing state institutions of higher education from prohibiting, limiting, or restricting expression not protected by the First Amendment to the Constitution of the United States such as true threats, expression designed to provoke imminent lawless actions and likely to produce it or prohibiting harassment as defined in §18B-20-2 of this code, or sexual harassment as prohibited by federal law and defined by federal regulations applicable to state institutions of higher education.

(d) Nothing in this article shall be construed to authorize a person or group to intentionally, materially, and substantially disrupt another person or group's expressive activity if that activity is occurring in a campus space reserved for that activity under the exclusive use or control of a particular group.

§18B-20-5. Freedom of association and nondiscrimination against students and student organizations.

A state institution of higher education may not deny a religious, political, or ideological student organization which is open to all students any benefit or privilege made available to any other student organization by the state institution of higher education, or otherwise discriminate against an organization, based on the expression of the organization.

§18B-20-6. Development of policies and procedures.

State institutions of higher education shall develop materials to educate the campus community on the institution's free speech policies.

§18B-20-7. Accountability to the public.

(a) Each state institution of higher education shall publicly post on its website any policies it has enacted regarding protected expressive activity under the First Amendment to the United States Constitution.

(b) Each campus shall report to the Higher Education Policy Commission or the Council for Community and Technical College Education, as applicable, a description of any barriers to, or incidents of disruption of, free expression occurring on campus, including, but not limited to, attempts to block or prohibit speakers and investigations into students or student organizations for their speech. The description shall include the nature of each barrier or incident, as well as what disciplinary action, if any, was taken against members of the campus community determined to be responsible for those specific barriers or incidents involving students and shall be reported without revealing those students' personally identifiable information. Annually, by August 1, the commission and council shall report to the Legislative Oversight Commission on Education Accountability any barriers or incidents reported to them pursuant to this subsection.

§18B-20-8. Remedies.

Any person or student organization aggrieved by a violation of this article may bring an action against the state institution of higher education and its employees acting in their official capacities, alleged to be responsible for the alleged violation. The aggrieved person or student organization may seek injunctive relief and actual damages, as well as reasonable attorney's fees, and court costs if the person or student organization substantially prevails.

§18B-20-9. Statute of limitations.

Any action brought pursuant to this article shall be commenced not later than one year after the day the cause of action accrues.

CHAPTER 157

(Com. Sub. for H. B. 2529 - By Delegate Fast)

[Passed April 7, 2021; in effect ninety days from passage.]
[Approved by the Governor on April 21, 2021.]

AN ACT to amend and reenact §18-8-12 and §18B-1-1e of the Code of West Virginia, 1931, as amended; all relating to nondiscrimination in the higher education admissions process; allowing an institution, once a student has been fully admitted, to administer placement tests or other assessments for certain purposes; prohibiting state institutions of higher education from discriminating against graduates of private, nonpublic, or home schools by requiring them to submit to alternative testing as a precondition for acceptance into the institution of higher education; and prohibiting institutions of higher education from rejecting a person with appropriate diploma or credentialing for admission to an institution of higher education solely because their secondary education was not accredited by the state Board of Education or agency the board approves.

Be it enacted by the Legislature of West Virginia:

CHAPTER 18. EDUCATION.

ARTICLE 8. COMUPULSORY SCHOOL ATTENDANCE.

§18-8-12. Issuance of a diploma or other appropriate credential by public, private or home school administrator.

A person who administers a program of secondary education at a public, private or home school that meets the requirements of this chapter may issue a diploma or other appropriate credential to a person who has completed the program of secondary education. Such diploma or credential is legally sufficient to demonstrate that

the person meets the definition of having a high school diploma or its equivalent. No state agency or institution of higher learning in this state may reject or otherwise treat a person differently solely on the grounds of the source of such a diploma or credential. Nothing in this section prevents an institution, once a student has been fully admitted, from administering placement tests or other assessments to determine the appropriate placement of students into college-level course sequences or to assess the content thereof for the purposes of determining whether a person meets other requirements for a specific program.

CHAPTER 18B. HIGHER EDUCATION.

ARTICLE 1. GOVERNANCE.

§18B-1-1e. Public education and higher education collaboration for the preparation of students for college and other post-secondary education.

(a) *Purpose.* — The purpose of this section is as follows:

(1) To assist students in the planning and preparation for success in college and other post-secondary education if their education major interests require such formal education after high school;

(2) To establish the minimum expected level of knowledge, skill and competency a student must possess to be prepared fully for college and other post-secondary education at state institutions of higher education;

(3) To implement a method for communicating the minimum level of knowledge, skill and competency to students, parents, educators and counselors in the public schools, and admissions officers, advisors and faculty in the higher education institutions; and

(4) To assure that the teacher preparation programs in state institutions of higher education prepare educators to, at a minimum, deliver instruction necessary to prepare students fully for college and other post-secondary education or gainful

employment consistent with the provisions of section eight, article two-e, chapter eighteen of this code.

(b) *Joint rule.* — On or before October 1, 1996, the higher education governing boards shall promulgate a joint rule to achieve the purposes of subsection (a) of this section. In the development of such rule, the governing boards shall consult with the state board and the jobs through education employer panel, established pursuant to section eight, article two-e, chapter eighteen of this code, and shall collaborate with the state board in the establishment of compatible practices within their separate systems.

(c) *Assessment of student readiness.* — To provide continuous assessment and program improvement in the preparation of high school students for success in college or other post-secondary education, the higher education governing boards shall communicate to the state board and the Legislative Oversight commission on education accountability by December 1, in each year, beginning in December, 1997, the number of graduates from the public schools in the state by high schools who were accepted in the last calendar year for enrollment at each of the state institutions of higher education within one year of graduation, and whose knowledge, skill and competency were below the minimum expected levels for full preparation as defined by the governing boards. The governing boards also shall report the areas in which the knowledge, skill and competency of the students were below the minimum expected level. The state board shall provide information to each of the high schools of the state for graduates from the high school.

(d) *Nondiscrimination in admission process.* —

(1) State institutions of higher education may not require a person who has obtained a diploma or other appropriate credentialing from private, nonpublic, or home schooling, and who has acceptable test results on ACT, SAT or other tests recognized by the institution of higher education which would qualify the person for admission, to submit to alternate testing as a condition of admission.

(2) A person who has obtained a diploma or other appropriate credentialing may not be rejected for admission to an institution of higher education solely because their secondary education was not accredited by the state Board of Education or any accrediting agency approved by the board.

CHAPTER 158

(H. B. 3299 - By Delegates Ellington, Clark, Horst and Griffith)

[Passed April 10, 2021; in effect ninety days from passage.]
[Approved by the Governor on April 26, 2021.]

AN ACT to amend and reenact §18B-17-2 of the Code of West Virginia, 1931, as amended, relating to authorizing legislative rules for the Higher Education Policy Commission regarding the Mental Health Loan Repayment Program and Administrative Exemption.

Be it enacted by the Legislature of West Virginia:

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

(a) The legislative rule filed in the State Register on October 15, 2004, relating to the Higher Education Policy Commission (Underwood-Smith Teacher Scholarship Program rule), is authorized.

(b) The legislative rule filed in the State Register on October 15, 2004, relating to the Higher Education Policy Commission (West Virginia Engineering, Science, and Technology Scholarship Program rule), is authorized.

(c) The legislative rule filed in the State Register on October 15, 2004, relating to the Higher Education Policy Commission (Medical Education Fee and Medical Student Loan Program rule), is authorized.

(d) The legislative rule filed in the State Register on October 27, 2005, relating to the Higher Education Policy Commission (authorization of degree-granting institutions), is authorized.

(e) The legislative rule filed in the State Register on August 23, 2006, relating to the Higher Education Policy Commission (West Virginia Higher Education Grant Program), is authorized.

(f) The legislative rule filed in the State Register on January 4, 2008, relating to the Higher Education Policy Commission (Providing Real Opportunities for Maximizing In-state Student Excellence - PROMISE), is authorized.

(g) The legislative rule filed in the State Register on August 25, 2008, relating to the Higher Education Policy Commission (Research Trust Program), is authorized.

(h) The legislative rule filed in the State Register on January 8, 2009, relating to the Higher Education Policy Commission (Guidelines for Governing Boards in Employing and Evaluating Presidents), is authorized.

(i) The legislative rule filed in the State Register on September 10, 2008, relating to the Higher Education Policy Commission (Medical Student Loan Program), is authorized, with the following amendment:

On page two, subsection 5.1, following the words "financial aid office" by inserting a new subdivision 5.1.3 to read as follows: "United States citizenship or legal immigrant status while actively pursuing United States citizenship.".

(j) The legislative rule filed in the State Register on December 1, 2008, relating to the Higher Education Policy Commission (West Virginia Higher Education Grant Program), is authorized.

(k) The legislative rule filed in the State Register on January 26, 2009, relating to the Higher Education Policy Commission (Accountability System), is authorized.

(l) The legislative rule filed in the State Register on May 20, 2009, relating to the Higher Education Policy Commission (Energy and Water Savings Revolving Loan Fund Program), is authorized.

(m) The legislative rule filed in the State Register on January 27, 2010, relating to the Higher Education Policy Commission (Providing Real Opportunities for Maximizing In-state Student Excellence - PROMISE), is authorized.

(n) The legislative rule filed in the State Register on December 8, 2010, relating to the Higher Education Policy Commission (authorization of degree-granting institutions), is authorized, with the following amendment:

On page 28, subsection 9.1.b, following the words "Good cause shall consist of" by inserting the words "any one or more of the following".

(o) The legislative rule filed in the State Register on December 12, 2011, relating to the Higher Education Policy Commission (Tuition and Fee Policy), is authorized.

(p) The legislative rule filed in the State Register on August 10, 2012, relating to the Higher Education Policy Commission (authorization of degree-granting institutions), is authorized.

(q) The legislative rule filed in the State Register on August 10, 2012, relating to the Higher Education Policy Commission (annual reauthorization of degree-granting institutions), is authorized.

(r) The legislative rule filed in the State Register on March 20, 2013, relating to the Higher Education Policy Commission (Human Resources Administration), is authorized.

(s) The legislative rule filed in the State Register on January 24, 2014, relating to the Higher Education Policy Commission (Capital Project Management), is authorized.

(t) The legislative rule filed in the State Register on April 4, 2014, relating to the Higher Education Policy Commission (Underwood-Smith Teacher Scholarship Program), is authorized.

(u) The legislative rule filed in the State Register on August 4, 2014, relating to the Higher Education Policy Commission (Nursing Scholarship Program), is authorized.

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

(w) The legislative rule filed in the State Register on October 28, 2015, relating to the Higher Education Policy Commission (Nursing Scholarship Program), is authorized.

(x) The legislative rule filed in the State Register on December 20, 2016, relating to the Higher Education Policy Commission (West Virginia Higher Education Grant Program), is authorized.

(y) The legislative rule filed in the State Register on December 20, 2016, relating to the Higher Education Policy Commission (Providing Real Opportunities for Maximizing In-state Student Excellence - PROMISE), is authorized.

(z) The legislative rule filed in the State Register on December 20, 2016, relating to the Higher Education Policy Commission (Research Trust Fund Program), is authorized.

(aa) The legislative rule filed in the State Register on December 20, 2016, relating to the Higher Education Policy Commission (annual reauthorization of degree-granting institutions), is authorized.

(bb) The legislative rule filed in the State Register on January 16, 2018, relating to the Higher Education Policy Commission (Tuition and Fee Policy), is authorized.

(cc) The legislative rule filed in the State Register on January 16, 2018, relating to the Higher Education Policy Commission (Human Resources Administration), is authorized.

(dd) The legislative rule filed in the State Register on January 22, 2018, relating to the Higher Education Policy Commission (Capital Project Management), is authorized, with the following amendments:

On page one, subsection 2.1, by striking out all of subdivision 2.1.d. and inserting in lieu thereof a new subdivision 2.1.d., to read

as follows: "Efficient use of existing classroom and other space by institutions, while maintaining an appropriate deference to the value judgments of the institutional governing boards".;

On page seven, subsection 4.2, by striking out all of subdivision 4.2.d.5. and inserting in lieu thereof a new subdivision 4.2.d.5., to read as follows: "Funding will be prioritized for each institution in accordance with institutional plans confirmed by the Commission or approved by the Council.";

On page seven, subsection 4.2, by striking out all of subdivision 4.2.d.6. and inserting in lieu thereof a new subdivision 4.2.d.6., to read as follows: "Facility utilization rates will be an important factor in prioritizing capital projects across the systems.";

On page seven, subsection 4.2, by striking out all of subdivision 4.2.d.7. and inserting in lieu thereof a new subdivision 4.2.d.7., to read as follows: "Institutions with overall net asset values and capacity utilization rates that exceed or equal thresholds set annually by the Commission and Council are the presumptive priority for new facilities. If these projects do not replace an existing facility, they would be included in the Program Improvement category."; and

On pages 10-11, section 5, by striking out all of subdivision 5.6. and inserting in lieu thereof a new subdivision 5.6., to read as follows: "A governing board may not implement a campus development plan or plan update that has not been confirmed by the Commission or approved by the Council, as appropriate. The purchase of any property for the construction of a facility that is not included in the campus development plan creates an update to the campus development plan that must be confirmed by the Commission or approved by the Council, as appropriate, prior to its purchase. In the case of institutions governed by the Council, this provision applies equally to property acquired by any means, whether by purchase or otherwise.".

(ee) The legislative rule filed in the State Register on January 22, 2019, relating to the Higher Education Policy Commission (Acceptance of Advanced Placement Credit), is repealed.

(ff) The legislative rule filed in the State Register on January 22, 2019, relating to the Higher Education Policy Commission (Human Resources Administration), is repealed.

(gg) The legislative rule filed in the State Register on August 28, 2018, relating to the Higher Education Policy Commission (Guidelines for Governing Boards in Employing and Evaluating Presidents), is authorized.

(hh) The legislative rule filed in the State Register on August 7, 2018, relating to the Higher Education Policy Commission (Providing Real Opportunities for Maximizing In-state Student Excellence (PROMISE) Scholarship Program), is authorized, with the following amendments:

On page one, subsection 2.1, by striking out all of subdivision 2.1.a. and inserting in lieu thereof a new subdivision 2.1.a., to read as follows: "Must complete high school graduation requirements at a West Virginia public, private or home school unless he or she qualified as a military dependent under Section 5 of this rule, or has commuted to an out-of-state school pursuant to Section 6 of this rule; and";

On page one, subsection 2.1, by striking out all of subdivision 2.1.b. and inserting in lieu thereof a new subdivision 2.1.b., to read as follows: "Must complete at least one half of the credits required for high school graduation through attendance at a public, private or home school in this state, unless he or she qualified as a military dependent under Section 5 of this rule, or has commuted to an out-of-state school pursuant to Section 6 of this rule; and";

On page one, subdivision 2.1.c., by striking out the words "Section 5" and inserting in lieu thereof the words "Section 4";

On page one, subsection 2.1, by striking out all of subdivision 2.1.d. and inserting in lieu thereof a new subdivision 2.1.d., to read as follows: "Must have attained a cumulative grade point average

of at least 3.0 on a 4.0 scale, based on county board grading policies, in both core courses and overall coursework required for graduation by the State Board of Education, while enrolled in a public or private high school. If home-schooled pursuant to the exemption allowed by W.Va. Code §18-8-1 as documented by the county school board system, the applicant must have completed in both the 11th and 12th grades the required core and elective coursework necessary to prepare students for success in postsecondary education at the associate and baccalaureate levels by attaining a cumulative grade point average of at least 3.0 on a 4.0 grading scale in both core courses and overall coursework as determined by the Commission; and";

On page one, subsection 2.1, subdivision 2.1.f., preceding the words "have resided in West Virginia", by striking out the word "Must" and inserting in lieu thereof the words "The applicant and his or her parent or legal guardian must";

On page one, subdivision 2.1.f., by striking out the words "Section 5" and inserting in lieu thereof the words "Section 4";

On page one, subdivision 2.1.f., by striking out the words "Section 6" and inserting in lieu thereof the words "Section 5";

On page two, subsection 2.4., by striking out the words "Section 10.7 or 10.8" and inserting in lieu thereof the words "Section 9.7 or 9.8";

On page two, subsection 2.5, by striking out the words "Section 8" and inserting in lieu thereof the words "Section 7";

On page two, subsection 2.5, by striking out the words "Section 10" and inserting in lieu thereof the words "Section 9";

On page two, by striking out all of section 3 and renumbering the remaining sections accordingly;

On page three, subsection 4.4, by striking out the words "Section 14" and inserting in lieu thereof the words "Section 13";

On page five-six, subsection 10.6, by striking out the words "Section 10.3" and inserting in lieu thereof the words "Section 9.3";

On page six, subsection 10.6, by striking out the words "Section 10.2" and inserting in lieu thereof the words "Section 9.2";

On page six, subsection 10.9.c., by striking out the words "Section 5" and inserting in lieu thereof the words "Section 4"; and

On page eight, subsection 15.1.b, by striking out the words "Section 11.1" and inserting in lieu thereof the words "Section 10.1".

(ii) The legislative rule filed in the State Register on September 30, 2019, relating to the Higher Education Policy Commission (Higher Education Accountability System) is authorized.

(jj) The legislative rule filed in the State Register on November 5, 2019, relating to the Higher Education Policy Commission (Underwood-Smith Teaching Scholars Program and Teacher Education Loan Repayment Program) is authorized.

(kk) The legislative rule filed in the State Register on October 4, 2019, relating to the Higher Education Policy Commission (Accountability System) is repealed.

(ll) The legislative rule filed in the State Register on July 29, 2020, relating to the Higher Education Policy Commission (Mental Health Loan Repayment Program) is authorized, with the following amendments:

On page one, subdivision, 3.1.b., after the words "family therapist," by inserting the words "psychiatric mental health nurse practitioner,";

On page two, subsection 6.1, by striking out the words "at least" and inserting in lieu thereof the words "up to"; and

On page three, subsection 9.1, after the words "family therapists," by inserting the words "psychiatric mental health nurse practitioners,".

(mm) The legislative rule filed in the State Register on March 11, 2021, relating to the Higher Education Policy Commission (Administrative Exemption) is authorized.

CHAPTER 159

(Com. Sub. for S. B. 387 - By Senator Maroney)

[Passed April 8, 2021; in effect 90 days from passage (July 7, 2021)]
[Approved by the Governor on April 26, 2021.]

AN ACT to amend and reenact §9-3-6 of the Code of West Virginia, 1931, as amended, relating to the program for drug screening of applicants for cash assistance; and providing extension of time frame for program.

Be it enacted by the Legislature of West Virginia:

ARTICLE 3. APPLICATION FOR AND GRANTING OF ASSISTANCE.

§9-3-6. Program for drug screening of applicants for cash assistance.

(a) As used in this section:

(1) "Applicant" means a person who is applying for benefits from the Temporary Assistance for Needy Families Program.

(2) "Board of Review" means the board established in §9-2-6(13) of this code.

(3) "Caseworker" means a person employed by the department with responsibility for making a reasonable suspicion determination during the application process for Temporary Assistance for Needy Families Program.

(4) "Child Protective Services" means the agency within the department responsible for investigating reports of child abuse and neglect as required in §49-2-802 of this code.

(5) "Department" means the Department of Health and Human Resources.

(6) "Drug screen" or "drug screening" means any analysis regarding substance abuse conducted by the Department of Health and Human Resources on applicants for assistance from the Temporary Assistance for Needy Families Program.

(7) "Drug test" or "drug testing" means a drug test which tests urine for amphetamines (amphetamine and methamphetamine) cocaine, marijuana, opiates (codeine and morphine), phencyclidine, barbiturates, benzodiazepines, methadone, propoxyphene, and expanded opiates (oxycodone, hydromorphone, hydrocodone, oxymorphone).

(8) "Secretary" means the secretary of the department or his or her designee.

(9) "Temporary Assistance for Needy Families Program" means assistance provided through ongoing cash benefits pursuant to 42 U. S. C. § 601 *et seq.* operated in West Virginia as the West Virginia Works Program pursuant to §9-9-1 *et seq.* of this code.

(b) Subject to federal approval, the secretary shall implement and administer a program to drug screen any adult applying for assistance from the Temporary Assistance for Needy Families Program. The secretary shall administer this program until December 31, 2026.

(c) Reasonable suspicion exists if:

(1) A case worker determines, based upon the result of the drug screen, that the applicant demonstrates qualities indicative of substance abuse based upon the indicators of the drug screen; or

(2) An applicant has been convicted of a drug-related offense within the three years immediately prior to an application for Temporary Assistance for Needy Families Program and whose conviction becomes known as a result of a drug screen as set forth in this section.

(d) Presentation of a valid prescription for a detected substance that is prescribed by a health care provider authorized to prescribe a controlled substance is an absolute defense for failure of any drug test administered under the provisions of this section.

(e) Upon a determination by the case worker of reasonable suspicion as set forth in this section an applicant shall be required to complete a drug test. The cost of administering the drug test and initial substance abuse testing program is the responsibility of the Department of Health and Human Resources. Any applicant whose drug test results are positive may request that the drug test specimen be sent to an alternative drug-testing facility for additional drug testing. Any applicant who requests an additional drug test at an alternative drug-testing facility shall be required to pay the cost of the alternative drug test.

(f) Any applicant who has a positive drug test shall complete a substance abuse treatment and counseling program and a job skills program approved by the secretary. An applicant may continue to receive benefits from the Temporary Assistance for Needy Families program while participating in the substance abuse treatment and counseling program or job skills program. Upon completion of both a substance abuse treatment and counseling program and a job skills program, the applicant is subject to periodic drug screening and testing as determined by the secretary in rule. Subject to applicable federal laws, any applicant for Temporary Assistance for Needy Families Program who fails to complete, or refuses to participate in, the substance abuse treatment and counseling program or job skills program as required under this subsection is ineligible to receive Temporary Assistance for Needy Families benefits until he or she is successfully enrolled in substance abuse treatment and counseling and job skills programs. Upon a second positive drug test, an applicant shall be ordered to complete a second substance abuse treatment and counseling program and job skills program. He or she shall be suspended from the Temporary Assistance for Needy Families Program for a period of 12 months, or until he or she completes both a substance abuse treatment and counseling program and a job skills program. Upon a third positive drug test an applicant shall be permanently

terminated from the Temporary Assistance for Needy Families Program subject to applicable federal law.

(g) Any applicant who refuses a drug screen or a drug test is ineligible for assistance.

(h) The secretary shall order an investigation and home visit from Child Protective Services on any applicant whose benefits are suspended and who has not designated a protective payee or whose benefits are terminated due to failure to pass a drug test. This investigation and home visit may include a face-to-face interview with the child, if appropriate; the development of a protection plan; and, if necessary for the health and well-being of the child, may also involve law enforcement. This investigation and home visit shall be followed by a report detailing recommended action which Child Protective Services shall undertake. Child Protective Services is responsible for providing, directing, or coordinating the appropriate and timely delivery of services to any child who is the subject of any investigation and home visit conducted pursuant to this section. In cases where Child Protective Services determines that the best interests of the child require court action, it shall initiate the appropriate legal proceeding.

(i) Any other adult members of a household that includes a person declared ineligible for the Temporary Assistance for Needy Families Program pursuant to this section shall, if otherwise eligible, continue to receive Temporary Assistance for Needy Families benefits.

(j)(1) No dependent child's eligibility for benefits under the Temporary Assistance for Needy Families Program may be affected by a parent's failure to pass a drug test.

(2) If pursuant to this section a parent is deemed ineligible for the Temporary Assistance for Needy Families Program, the dependent child's eligibility is not affected and an appropriate protective payee shall be designated to receive benefits on behalf of the child.

(3) The parent may choose to designate another person as a protective payee to receive benefits for the minor child. The designated person shall be an immediate family member, or if an immediate family member is not available or declines the option, another person may be designated.

(4) The secretary shall screen and approve the designated person.

(k)(1) An applicant who is determined by the secretary to be ineligible to receive benefits pursuant to subsection (f) of this section due to a failure to participate in a substance abuse treatment and counseling program or a job skills program who can later document successful completion of a drug treatment program approved by the secretary may reapply for benefits six months after the completion of the substance abuse treatment and counseling program or job skills program. An applicant who has met the requirements of this subdivision and reapplies is also required to submit to a drug test and is subject to the provisions of subsection (f) of this section.

(2) An applicant may reapply only once pursuant to the exceptions contained in this subsection.

(3) The cost of any drug screen or test and drug treatment provided under this subsection is the responsibility of the individual being screened and receiving treatment.

(l) An applicant who is denied assistance under this section may request a review of the denial by the Board of Review. The results of a drug screen or test are admissible without further authentication or qualification in the review of denial by the Board of Review and in any appeal. The Board of Review shall provide a fair, impartial, and expeditious grievance and appeal process to applicants who have been denied Temporary Assistance for Needy Families benefits pursuant to the provisions of this section. The Board of Review shall make findings regarding the denial of benefits and issue a decision which either verifies the denial or reverses the decision to deny benefits. Any applicant adversely

affected or aggrieved by a final decision or order of the Board of Review may seek judicial review of that decision.

(m) The secretary shall ensure the confidentiality of all drug screen and drug test results administered as part of this program. Drug screen and test results shall be used only for the purpose of determining eligibility for the Temporary Assistance for Needy Families Program. At no time may drug screen or test results be released to any public or private person or entity or any law-enforcement agency, except as otherwise authorized by this section.

(n) The secretary shall promulgate emergency rules pursuant to the provisions of §29A-3-1 *et seq.* of this code to prescribe the design, operation, and standards for the implementation of this section.

(o) A person who intentionally misrepresents any material fact in an application filed under the provisions of this section is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than $100 nor more than $1,000 or by confinement in jail not to exceed six months, or by both fine and confinement.

(p) The secretary shall report to the Joint Committee on Government and Finance by December 31, 2016, and annually after that until the conclusion of the program on the status of the federal approval and program described in this section. The report shall include, but is not limited to:

(1) The total number of applicants who were deemed ineligible to receive benefits under the program due to a positive drug test for controlled substances;

(2) The number of applicants for whom there was a reasonable suspicion due to a conviction of a drug-related offense within the five years prior to an application for assistance;

(3) The number of those applicants that receive benefits after successful completion of a drug treatment program as specified in this section; and

(4) The total cost to operate the program.

(q) Should federal approval not be given for any portion of the program as set forth in this section, the secretary shall implement the program to meet the federal objections and continue to operate a program consistent with the purposes of this section.

(r) For the purposes of the program contained in this section, pursuant to the authority and option granted by 21 U. S. C. § 862a(d)(1)(A) to the states, West Virginia hereby exempts all persons domiciled within the state from the application of 21 U. S. C. § 862a(a).

CHAPTER 160

(Com. Sub. for H. B. 2266 - By Delegates Rohrbach, L. Pack, J. Pack, Worrell, Pushkin, Fleischauer, Young, Rowe and Williams)

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

AN ACT to amend and reenact §9-5-12 of the Code of West Virginia, 1931, as amended, relating to expanding certain insurance coverages for pregnant women; and providing an effective date.

Be it enacted by the Legislature of West Virginia:

§9-5-12. Medicaid program; maternity and infant care.

(a) The department shall:

(1) Extend Medicaid coverage to pregnant women and their newborn infants to 185 percent of the federal poverty level and to provide coverage up to 1-year postpartum care, effective July 1, 2021 or as soon as federal approval has occurred.

(2) As provided under the Consolidated Omnibus Budget Reconciliation Act (COBRA), Public Law 99-272, the Sixth Omnibus Budget Reconciliation Act (SOBRA), Public Law 99-509, and the Omnibus Budget Reconciliation Act (OBRA), Public Law 100-203, effective July 1, 1988, infants shall be included under Medicaid coverage with all children eligible for Medicaid coverage born after October 1, 1983, whose family incomes are at or below 100 percent of the federal poverty level and continuing until such children reach the age of eight years.

(3) Elect the federal options provided under COBRA, SOBRA, and OBRA impacting pregnant women and children below the

poverty level: *Provided*, That no provision in this article shall restrict the department in exercising new options provided by or to be in compliance with new federal legislation that further expands eligibility for children and pregnant women.

(4) The department is responsible for the implementation and program design for a maternal and infant health care system to reduce infant mortality in West Virginia. The health system design shall include quality assurance measures, case management, and patient outreach activities. The department shall assume responsibility for claims processing in accordance with established fee schedules and financial aspects of the program necessary to receive available federal dollars and to meet federal rules and regulations.

(5) The department shall increase to no less than $600 the reimbursement rates under the Medicaid program for prenatal care, delivery, and post-partum care.

(b) In order to be in compliance with the provisions of OBRA through rules and regulations, the department shall ensure that pregnant women and children whose incomes are above the Aid to Families and Dependent Children (AFDC) payment level are not required to apply for entitlements under the AFDC program as a condition of eligibility for Medicaid coverage. Further, the department shall develop a short, simplified pregnancy/pediatric application of no more than three pages, paralleling the simplified OBRA standards.

(c) Any woman who establishes eligibility under this section shall continue to be treated as an eligible individual without regard to any change in income of the family of which she is a member until the end of the 1 year period beginning on the last day of her pregnancy.

(d) The department shall make payment for tubal ligation without requiring at least 30 days between the date of informed consent and the date of the tubal ligation procedure.

CHAPTER 161

(S. B. 463 - By Senator Azinger)

[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 §33-41-8 and §33-41-8a of the Code of West Virginia, 1931, as amended, all relating to the consolidation of the positions of the Inspector General of the former Workers' Compensation Commission's Fraud and Abuse Unit and the position of Director of the Insurance Fraud Unit.

Be it enacted by the Legislature of West Virginia:

ARTICLE 41. WEST VIRGINIA INSURANCE FRAUD PREVENTION ACT.

§33-41-8. Creation of Insurance Fraud Unit; purpose; duties; personnel qualifications.

(a) There is established the West Virginia Insurance Fraud Unit within the offices of the commissioner. The commissioner may employ full-time supervisory, legal, and investigative personnel for the unit who shall be qualified by training and experience in the areas of detection, investigation, or prosecution of fraud within and against the insurance industry to perform the duties of their positions. The Inspector General of the unit is a full-time position and shall be appointed by the commissioner and serve at his or her will and pleasure. The commissioner shall provide office space, equipment, and supplies, and shall employ and train personnel, including legal counsel, investigators, auditors, and clerical staff necessary for the unit to carry out its duties and responsibilities under this article as the commissioner determines is necessary.

(b) It is the duty of the unit to:

(1) Initiate inquiries and conduct investigations when the unit has cause to believe violations of any of the following provisions of this code relating to the business of insurance have been or are being committed: §33-1-1 *et seq.* and §23-1-1 *et seq.* of this code; §61-3-1 *et seq.* of this code; and §61-4-5 of this code. Notwithstanding any provision of this code to the contrary, the unit may, with the agreement of the Director of the Public Employees Insurance Agency, conduct investigations related to possible fraud under §5-16-1 *et seq.* of this code;

(2) Review reports or complaints of alleged fraud related to the business of insurance activities from federal, state, and local law-enforcement and regulatory agencies, persons engaged in the business of insurance and the general public to determine whether the reports require further investigation;

(3) Conduct independent examinations of alleged fraudulent activity related to the business of insurance and undertake independent studies to determine the extent of fraudulent insurance acts; and

(4) Perform any other duties related to the purposes of this article assigned to it by the commissioner.

(c) The unit may:

(1) Inspect, copy, or collect records and evidence;

(2) Serve subpoenas issued by grand juries and trial courts in criminal matters;

(3) Administer oaths and affirmations;

(4) Share records and evidence with federal, state, or local law-enforcement or regulatory agencies, and enter into interagency agreements. For purposes of carrying out investigations under this article, the unit shall be considered a criminal justice agency under all federal and state laws and regulations and as such shall have access to any information that is available to other criminal justice

agencies concerning violations of the insurance laws of West Virginia or related criminal laws;

(5) Make criminal referrals to the county prosecutors;

(6) Execute search warrants and arrest warrants for criminal violations of the insurance laws of West Virginia or related criminal laws: *Provided*, That those persons designated by the commissioner to do so meet the requirements of and are certified as law-enforcement officers under §30-29-5 of this code and the certification is currently active;

(7) Arrest upon probable cause, without a warrant a person found in the act of violating or attempting to violate an insurance law of West Virginia or related criminal law: *Provided*, That those persons designated by the commissioner to do so meet the requirements of and are certified as law-enforcement officers under §30-29-5 of this code and the certification is currently active;

(8) Conduct investigations outside this state. If the information the unit seeks to obtain is located outside this state, the person from whom the information is sought may make the information available to the unit to examine at the place where the information is located. The unit may designate representatives, including officials of the state in which the matter is located, to inspect the information on behalf of the unit, and may respond to similar requests from officials of other states;

(9) Initiate investigations and participate in the development of, and, if necessary, the prosecution of, any health care provider, including a provider of rehabilitation services, suspected of fraudulent activity related to the business of insurance; and

(10) Initiate investigations and participate in the development of, and, if necessary, the investigation, control, and prosecution of, any workers' compensation fraud, as previously assigned to the Workers' Compensation Fraud and Abuse Unit created pursuant to §23-1-1b of this code.

(d) Specific personnel of the unit designated by the commissioner may operate vehicles owned or leased for the state displaying Class A registration plates.

(e) Notwithstanding any provision of this code to the contrary, specific personnel of the unit designated by the commissioner may carry firearms in the course of their official duties after meeting specialized qualifications established by the Governor's Committee on Crime, Delinquency, and Correction, which shall include the successful completion of handgun training provided to law-enforcement officers by the West Virginia State Police: *Provided*, That nothing in this subsection shall be construed to include any person designated by the commissioner as a law-enforcement officer as that term is defined by the provisions of §30-29-1 of this code.

(f) The unit is not subject to the provisions of §6-9A-1 *et seq.* of this code and the investigations conducted by the unit and the materials placed in the files of the unit as a result of any such investigation are exempt from public disclosure under the provisions of §29B-1-1 *et seq.* of this code.

§33-41-8a. Fingerprinting and background check for applicants for employment with fraud unit.

(a) The commissioner shall require any applicant for employment with the fraud unit to be fingerprinted. The commissioner is authorized to conduct a criminal records check through the Criminal Identification Bureau of the West Virginia State Police and a national criminal history check through the Federal Bureau of Investigation. The results of any criminal records or criminal history check shall be sent to the commissioner. The West Virginia State Police may exchange this fingerprint data with the Federal Bureau of Investigation.

(b) The Inspector General shall not disclose information obtained pursuant to subsection (a) of this section except for purposes directly related to the employment of the applicant.

CHAPTER 162

(Com. Sub. for H. B. 2005 - By Delegates D. Jeffries, B. Ward, Rohrbach, G. Ward, Holstein, Worrell, Sypolt, Tully, Summers, Pinson and Burkhammer)

[Passed April 8, 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 §33-2-24, relating to health care costs generally; requiring the Insurance Commissioner to enforce the applicable provisions of the No Surprises Act; permitting the Insurance Commissioner to assess a fine for violation of the No Surprises Act; permitting the Insurance Commissioner to seek administrative penalties for violations of the No Surprises Act; permitting the Insurance Commissioner to seek assistance from any other state government agency regarding regulatory enforcement; permitting the Insurance Commissioner to use the Attorney General for legal assistance; permitting rulemaking; and providing effective date.

Be it enacted by the Legislature of West Virginia:

ARTICLE 2. INSURANCE COMMISSIONER.

§33-2-24. Authority of Insurance Commissioner to enforce No Surprises Act; administrative penalties; injunctive relief; regulatory assistance of other agencies; rulemaking; effective date.

(a) The Insurance Commissioner shall enforce the applicable provisions of the No Surprises Act (H.R. 133, Public Law 116-260) against health insurers, medical providers, and health care facilities.

(b) Whenever the Insurance Commissioner believes, from evidence satisfactory to him or her, that any insurer, medical provider, or health care facility is violating the applicable provisions of the No Surprises Act, the Commissioner may assess a fine, not to exceed $10,000 per violation, after notice and hearing pursuant to §33-2-13 of this code. In addition to the administrative penalty available in this subsection, the Insurance Commissioner may cause a complaint to be filed in the appropriate court of this state seeking to enjoin and restrain the insurer, medical provider, or health care facility from continuing the violation or engaging therein or doing any act in furtherance thereof.

(c) The Insurance Commissioner may, at his or her discretion, seek assistance from any other state government agency regarding regulatory enforcement of this section against medical providers or health care facilities. The Insurance Commissioner may also call upon the Attorney General for legal assistance and representation as provided by law.

(d) The Insurance Commissioner may propose rules for legislative approval in accordance with §29A-3-1 *et seq.* of this code to effectuate the provisions of this section.

(e) The provisions of this section shall become effective January 1, 2022.

CHAPTER 163

(Com. Sub. for H. B. 2221 - By Delegates Westfall, Espinosa, D. Jeffries, Williams, L. Pack, Hott, Capito, Pritt, Keaton, Barnhart and Reed)

[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 article, designated §33-60-1, §33-60-2, §33-60-3, §33-60-4, §33-60-5, §33-60-6, §33-60-7, §33-60-8, §33-60-9, and §33-60-10, all relating to the establishment of an insurance innovation process; defining terms; setting forth application requirements; prohibiting certain persons from applying; providing for the acceptance or rejection of the application by the Insurance Commissioner; requiring that the Insurance Commissioner set forth certain terms and conditions that will govern a proposed insurance innovation; providing that the Insurance Commissioner issue a limited no-action letter that establishes a safe harbor under which the commissioner will not take administrative or regulatory action against a participant or client of the participant; establishing the time period of the safe harbor and for the extension thereof; setting forth the requirements that a participant must adhere to during the safe harbor period; providing for penalties regarding violations of the terms contained in a limited no-action letter; providing the right to an administrative hearing; setting forth the criteria for the Insurance Commissioner to issue an extended no-action letter; providing for what the extended no-action letter must contain; requiring that documents and other information submitted to the Insurance Commissioner in relation to the insurance innovation be confidential and privileged; allowing the Insurance Commissioner to disclose in the extended no-action letter any information necessary to clearly establish the safe harbor; requiring the Insurance

Commissioner to provide reports and, upon request, briefings to the Legislature; allowing the Insurance Commissioner to enter into reciprocity agreements with state, federal, or foreign regulatory agencies; and requiring rulemaking.

Be it enacted by the Legislature of West Virginia:

ARTICLE 60. INSURANCE INNOVATION.

§33-60-1. Definitions.

For the purposes of this article, unless the context otherwise indicates:

"Applicant" means a person or entity that has filed an application under §33-60-2 of this code.

"Beta test" means the phase of testing of an insurance innovation in the regulatory sandbox through the use, sale, license, or availability of the insurance innovation by or to clients or consumers under the supervision of the commissioner.

"Client" means a person, other than a consumer, utilizing a participant's insurance innovation during a beta test to carry on some activity regulated by the commissioner.

"Commissioner" means the West Virginia Insurance Commissioner or the West Virginia Offices of the Insurance Commissioner, as appropriate.

"Extended no-action letter" means a public notice setting forth the conditions for an extended safe harbor beyond the beta test under which the commissioner will not take any administrative or regulatory action against any person using the insurance innovation described in the extended no-action letter.

"Innovation" means any product, process, method, or procedure relating to the sale, solicitation, negotiation, fulfilment, administration, or use of any product or service regulated by the commissioner:

(A) That has not been used, sold, licensed, or otherwise made available in this state before the filing date of the application, whether or not the product or service is marketed or sold directly to consumers; and

(B) That has regulatory and statutory barriers that prevent its use, sale, license, or availability within this state.

"Innovation's utility" means an evaluation by the commissioner of the insurance innovation's ability to adequately satisfy factors set forth in §33-60-2(a)(2)(A) of this code.

"Limited no-action letter" or "limited letter" means a letter setting forth the conditions of a beta test and establishing a safe harbor under which the commissioner will not take any administrative or regulatory action against a participant or client of the participant concerning the compliance of the insurance innovation with West Virginia law so long as the participant or client abides by the terms and conditions established in the limited no-action letter.

"Participant" means an applicant that has been issued a limited no-action letter under §33-60-4 of this code.

"Person" means a person or entity.

"Qualified United States financial institution" means an institution that:

(A) Is organized or, in the case of a United States office of a foreign banking organization, licensed under the laws of the United States or any state thereof;

(B) Is regulated, supervised, and examined by federal or state authorities having regulatory authority over banks and trust companies; and

(C) Has been determined by either the commissioner or the Securities Valuation Office of the National Association of Insurance Commissioners to meet such standards of financial condition and standing as are considered necessary and appropriate

to regulate the quality of financial institutions whose letters of credit will be acceptable to the commissioner.

"Regulatory sandbox" means the process established under this article by which an applicant may apply to beta test and obtain a limited no-action letter for an innovation, potentially resulting in the issuance of an extended no-action letter.

§33-60-2. Application for admission to regulatory sandbox.

(a) Except as provided in subsection (b) of this section, on or before December 31, 2025, an applicant may apply to the commissioner for admission to the regulatory sandbox by submitting an application in the form prescribed by the commissioner, accompanied by the following:

(1) A filing fee of $750;

(2) A detailed description of the innovation, which shall include:

(A) An explanation of how the innovation will:

(i) Add value to customers and serve the public interest;

(ii) Be economically viable for the applicant;

(iii) Provide suitable consumer protection; and

(iv) Pose no unreasonable risk of consumer harm.

(B) A detailed description of the statutory and regulatory issues that prevents the innovation from being utilized, issued, sold, solicited, distributed, or advertised in the market currently;

(C) A description of how the innovation functions, as well as the manner in which it will be offered or provided;

(D) If the innovation involves the use of software, hardware, or other technology developed for the purpose of implementing or operating it, a technical white paper setting forth a description of

the operation and general content of technology to be utilized, including:

(i) The problem addressed by that technology; and

(ii) The interaction between that technology and its users;

(E) If the innovation involves the issuance of a policy of insurance, a statement that:

(i) If the applicant will be the insurer on the policy, the applicant holds a valid license or certificate of authority and is authorized to issue the insurance coverage in question; or

(ii) If some other person will be the insurer on the policy, the other person holds a valid license or certificate of authority and is authorized to issue the insurance coverage in question; and

(F) A statement by an officer of the applicant certifying that no product, process, method, or procedure substantially similar to the innovation has been used, sold, licensed, or otherwise made available in this state before the filing date of the application;

(3) The name, contact information, and bar number of the applicant's insurance regulatory counsel, which shall be a person with experience providing insurance regulatory compliance advice;

(4) A detailed description of the specific conduct that the applicant proposes should be permitted by the limited no-action letter;

(5) Proposed terms and conditions to govern the applicant's beta test, which shall include:

(A) Citation to the provisions of West Virginia law that should be excepted in the notice of acceptance issued under §33-60-3(d)(2) of this code; and

(B) Any request for an extension of the time period for a beta test under §33-60-5(a) of this code and the grounds for the request;

(6) Proposed metrics by which the commissioner may reasonably test the innovation's utility during the beta test;

(7) Disclosure of all:

(A) Persons who are directors and executive officers of the applicant;

(B) General partners of the applicant if the applicant is a limited partnership;

(C) Members of the applicant if the applicant is a limited liability applicant;

(D) Persons who are beneficial owners owning 10 percent or more of the voting securities of the applicant;

(E) Other persons with direct or indirect authority to direct the management and policies of the applicant by contract, other than a commercial contract for goods or nonmanagement services; and

(F) Conflicts of interest with respect to any person listed in this subdivision and the commissioner;

(8) A statement that the applicant has funds of at least $25,000 available to guarantee its financial stability through one or a combination of any of the following:

(A) A contractual liability insurance policy;

(B) A surety bond issued by an authorized surety;

(C) Securities of the type eligible for deposit by authorized insurers in this state;

(D) Evidence that the applicant has established an account payable to the commissioner in a federally insured financial institution in this state and has deposited money of the United States in an amount equal to the amount required by this subdivision that is not available for withdrawal except by direct order of the commissioner;

(E) A letter of credit issued by a qualified United States financial institution; or

(F) Another form of security authorized by the commissioner; and

(9) A statement confirming that the applicant is not seeking authorization for, nor shall it engage in, any conduct that would render the applicant unauthorized to make an application under subsection (b) of this section.

(b)(1)The following persons shall not be authorized to make an application to the commissioner for admission to the regulatory sandbox:

(A) Any person seeking to sell or license an insurance innovation directly to any federal, state, or local government entity, agency, or instrumentality as the insured person or end user of the innovation;

(B) Any person seeking to sell, license, or use an insurance innovation that is not in compliance with §33-60-2(a)(2)(E) of this code;

(C) Any person seeking to make an application that would result in the person having more than five active beta tests ongoing within the state at any one time; or

(D) Any person seeking a limited or extended no-action letter or exemption from any administrative regulation or statute concerning:

(i) Assets, deposits, investments, capital, surplus, or other solvency requirements applicable to insurers;

(ii) Required participation in any assigned risk plan, residual market, or guaranty fund;

(iii) Any licensing or certificate of authority requirements; or

(iv) The application of any taxes or fees.

(2) For the purposes of this subsection, "federal, state, or local government entity, agency, or instrumentality" includes but is not limited to any county, city, municipal corporation, local government, special district, public school district, or public institution of education.

§33-60-3. Acceptance or rejection of application.

(a)(1) Unless extended as provided in §33-60-3(a)(2) of this code, the commissioner shall issue a notice of acceptance or rejection in accordance with this section within 60 days from the date an application is received.

(2) The commissioner may extend by not more than 30 days the period provided in subdivision (1) of this subsection if he or she notifies the applicant before expiration of the initial 60-day period.

(3) An application that has not been accepted or rejected by a notice of acceptance or rejection issued by the commissioner prior to expiration of the initial 60-day period, or if applicable, the period provided in §33-60-3(a)(2) of this code, shall be deemed accepted.

(b) The commissioner may request from the applicant any additional material or information necessary to evaluate the application, including but not limited to:

(1) Proof of financial stability;

(2) A proposed business plan;

(3) Pro-forma financial statement; and

(4) Executive profiles on the applicant and its leadership demonstrating insurance or insurance-related industry experience and applicable experience in the use of the technology.

(c) The commissioner shall review the application to:

(1) Identify and assess:

(A) The potential risks to consumers, if any, posed by the innovation; and

(B) The manner in which the innovation would be offered or provided; and

(2) Determine whether it satisfies the following requirements:

(A) The application satisfies the requirements of §33-60-2 of this code;

(B) The application proposes a product, process, method, or procedure that meets the definition of innovation under §33-60-1 of this code;

(C) Approval of the application does not pose an unreasonable risk of consumer harm;

(D) The application identifies statutory or regulatory requirements that actually prevent the innovation from being utilized, issued, sold, solicited, distributed, or advertised in this state; and

(E) The application proposes an innovation that is not substantially similar to another innovation:

(i) That has been previously beta tested; or

(ii) Proposed in an application that is currently pending with the commissioner.

(d) Upon review of the application, the commissioner shall, in his or her discretion, issue one of the following:

(1) If the commissioner determines that the application fails to satisfy any of the requirements under §33-60-3(c)(2) of this code, he or she shall:

(A) Issue a notice of rejection to the applicant; and

(B) Describe in the notice of rejection the specific defects in the application; or

(2) If the commissioner determines that the application satisfies the requirements of §33-60-3(c)(2) of this code, he or she shall issue a notice of acceptance to the applicant. The notice of acceptance shall:

(A) Set forth the terms and conditions that will govern the applicant's beta test, which shall include, at a minimum:

(i) A requirement that the applicant:

(I) Abide by all West Virginia law, except where explicitly excepted;

(II) Utilize the insurance innovation within this state; and

(III) Report any change in the disclosures made pursuant to §33-60-2(a)(7) of this code;

(ii) A notice of the licenses required to be obtained prior to the commencement of the beta test;

(iii) Monthly reporting obligations structured to determine the progress of the beta test;

(iv) Consumer protection measures deemed necessary by the commissioner to be employed by the applicant;

(v) The level of financial stability required to be in place for the beta test. The commissioner may increase, decrease, or waive the requirements for financial stability required under §33-60-2(a)(8) of this code, commensurate with the risk of consumer harm posed by the insurance innovation;

(vi) The duration of the beta test, including any extension authorized under §33-60-5 of this code;

(vii) Permitted conduct under the limited letter;

(viii) Any limits established by the commissioner on the:

(I) Financial exposure that may be assumed by an applicant during the beta test;

(II) Number of customers an applicant may accept; and

(III) Volume of transactions that an applicant or its clients may complete during the beta test; and

(ix) The metrics the commissioner intends to use to determine the innovation's utility; and

(B) Provide that the notice of acceptance shall expire unless:

(i) It is accepted by the applicant in writing; and

(ii) The acceptance is filed with the commissioner within 60 days of the issuance of the notice.

(e) An applicant may request a hearing pursuant to §33-2-13 of this code on:

(1) A notice of rejection; and

(2) A notice of acceptance, if the request is made prior to its expiration.

§33-60-4. Limited no-action letter.

(a) Within 10 days following the timely receipt of an acceptance pursuant to §33-60-3(d)(2)(B) of this code, the commissioner shall issue a limited no-action letter that:

(1) Sets forth terms and conditions for the participant that are the same as those set forth in the notice of acceptance issued under §33-60-3(d)(2) of this code; and

(2) Provides that so long as the participant and any clients of the participant abide by the terms and conditions set forth in the letter, no administrative or regulatory action concerning the compliance of the insurance innovation with West Virginia law will be taken by the commissioner against the participant or any clients during the term of the beta test.

(b) If the application is deemed accepted under §33-60-3(a)(3) of this code, the proposed limited no-action letter included with the

application shall be deemed to have the effect of a limited letter issued by the commissioner.

(c) The safe harbor of the limited letter shall persist until the earlier of:

(1) The early termination of the beta test under §33-60-5 of this code;

(2) The issuance of an extended no-action letter; or

(3) The issuance of a notice declining to issue an extended no-action letter.

(d) The commissioner shall publish all limited letters issued pursuant to this section on the commissioner's publicly accessible internet website.

§33-60-5. Time period of beta test; extension of time period; penalties for violation of limited no-action letter.

(a) The time period for a beta test shall be three years. The time period may be extended by the commissioner in the notice of acceptance for a period that is not longer than one year if a request is made in accordance with §33-60-2(a)(5)(B) of this code.

(b) During the beta test, the participant and any clients of the participant shall:

(1) Comply with all terms and conditions set forth in the limited no-action letter; and

(2) Provide the commissioner with all documents, data, and information requested by the commissioner.

(c) For any violation of the terms or conditions set forth in the limited letter, the commissioner may:

(1) Issue an order terminating the beta test and the safe harbor of the limited letter before the time period set forth in the limited letter has expired; and

(2) Impose a fine of not more than $2,000 per violation.

(d) The commissioner may issue an order under §33-60-5(c) of this code if, following receipt of information or complaints, the commissioner determines the beta test is causing consumer harm.

(e) The commissioner may issue an order requiring a client to cease and desist any activity violating the terms or conditions set forth in the limited letter. The issuance of a cease and desist order to one client shall not otherwise impact the ability of the participant or any other clients to continue activities relating to the innovation in a manner compliant with the requirements of the limited letter.

(f) A participant or client may request a hearing on any order issued under this section pursuant to §33-2-13 of this code.

§33-60-6. Extended no-action letter; review of beta test.

(a) Within 60 days of completion of the beta test, unless the time period is extended up to 30 days upon notice from the commissioner, the commissioner shall issue an extended no-action letter or a notice declining to issue an extended no-action letter. The participant may continue to employ the insurance innovation pursuant to the terms and conditions of the limited letter during the period between the completion of the beta test and the issuance of either an extended no-action letter or a notice declining to issue an extended no-action letter.

(b) The commissioner shall review the results of the beta test to determine whether the innovation satisfies the following requirements:

(1) The data presented demonstrates that the innovation's utility was meritorious of an extension;

(2) Regulatory and statutory barriers prevent continued use of the innovation within this state;

(3) The innovation provided a benefit to West Virginia consumers; and

(4) The issuance of an extended no-action letter:

(A) Presents no risk of unreasonable harm to consumers or the marketplace; and

(B) Serves the public interest.

(c) Upon review of the results of the beta test the commissioner shall, in his or her discretion, issue one of the following:

(1) If the commissioner determines that the innovation fails to satisfy any of the requirements under §33-60-6(b) of this code, he or she shall:

(A) Issue a notice declining to issue an extended no-action letter;

(B) Describe in the notice the reasons for the declination;

(C) Notify the participant for the innovation of the notice; and

(D) Publish the notice on the commissioner's publicly accessible Internet website; or

(2) If the commissioner determines that the innovation satisfies the requirements under §33-60-6(b) of this code, he or she shall issue an extended no-action letter. An extended no-action letter issued by the commissioner shall include:

(A) A description of the insurance innovation and the specific conduct permitted by the extended no-action letter in sufficient detail to enable any person to use the innovation or a product, process, method, or procedure not substantially different from the innovation within the safe harbor of the extended no-action letter;

(B) Notice of any certificate of authority, license, or permit the commissioner determines is necessary to use, sell, or license the innovation, or make the innovation available, in this state;

(C) An expiration date not greater than three years following the date of issuance;

(D) Notice that the extended no-action letter may:

(i) Be modified only by:

(I) Legislative rule proposed by the commissioner, if the safe harbor addresses a requirement established by rule; or

(II) An act of the Legislature; and

(ii) Be rescinded prior to its expiration if the commissioner receives complaints and determines continued activity poses a risk of harm to consumers;

(E) Clarification of required procedures related to the issuance and cancellation of any policies of insurance, if applicable, due to the expiration period; and

(F) Notice that, upon expiration, all persons relying on the extended no-action letter shall cease and desist operations related to the innovation unless changes have been made to West Virginia law to permit the innovation by:

(i) The promulgation of a legislative rule by the commissioner, if the safe harbor addresses a requirement established by rule; or

(ii) An act of the Legislature.

(d) A hearing on a notice of declination may be requested in accordance with §33-2-13 of this code.

(e) An extended no-action letter issued by the commissioner pursuant to this section shall be published on the commissioner's publicly accessible internet website.

§33-60-7. Confidentiality of information.

(a) All documents, materials, or other information in the possession or control of the commissioner that are created, produced, obtained, or disclosed in relation to this article and that relate to the financial condition of any person shall be confidential by law and privileged, are not subject to the provisions of chapter

29B of this code, are not subject to subpoena, and are not subject to discovery or admissible in evidence in any private civil action.

(b) Notwithstanding any law to the contrary, the commissioner may disclose in an extended no-action letter any information relating to the insurance innovation necessary to clearly establish the safe harbor of the extended no-action letter.

§33-60-8. Reports to the Legislature.

(a) On or before September 1 each year during which there was activity pursuant to this article during the prior fiscal year, the commissioner shall submit a written report to the Joint Committee on Government and Finance that meets the requirements of §33-60-8(b) of this code.

(b) The report shall include the following:

(1) The number of:

(A) Applications filed and accepted;

(B) Beta tests conducted; and

(C) Extended no-action letters issued;

(2) A description of the innovations tested;

(3) The length of each beta test;

(4) The results of each beta test;

(5) A description of each safe harbor created under §33-60-6 of this code;

(6) The number and types of orders or other actions taken by the commissioner or any other interested party under this article;

(7) Identification of any statutory barriers for consideration by the Legislature following successful beta tests and the issuance of extended no-action letters; and

(8) Any other information or recommendations deemed relevant by the commissioner.

(c) The commissioner shall also, upon request of any committee of the Legislature, testify and explain any report submitted under this section and any activity pursuant to this article.

§33-60-9. Reciprocity agreements.

The commissioner may enter into agreements with state, federal, or foreign regulatory agencies to allow persons who make an insurance innovation available in West Virginia through the regulatory sandbox to make their insurance innovation available in other jurisdictions and to allow persons operating in similar regulatory sandboxes in other jurisdictions to make insurance innovations available in West Virginia under the standards of this article.

§33-60-10. Rulemaking.

(a) The Insurance Commissioner shall propose rules for legislative approval in accordance with the provisions of §29A-3-1 *et seq.* of this code for the purposes of administering this article.

(b) The Insurance Commissioner shall develop all forms, contracts, or other documents to be used for the purposes outlined in this article.

CHAPTER 164

(Com. Sub. for H. B. 2263 - By Delegates J. Pack, Rohrbach, Summers, G. Ward, Forsht, Smith, Worrell, Bates and Walker)

[Passed March 30, 2021; in effect ninety days from passage.]
[Approved by the Governor on April 9, 2021.]

AN ACT to amend and reenact §5-16-9 of the Code of West Virginia, 1931, as amended; to amend and reenact §33-51-2, §33-51-3, §33-51-8, and §33-51-9 of said code; and to amend said code by adding thereto two new sections, designated §33-51-11 and §33-51-12, all relating to the regulation of pharmacy benefit managers; updating the reporting requirements related Public Employees Insurance Agency; expanding scope; defining terms; regulating the reimbursements of pharmacy benefit managers; requiring a adequate network; providing rulemaking authority; providing an effective date; requiring filing of certain methodologies utilized by pharmacy benefit managers; prohibiting certain practices by pharmacy benefits managers; providing consumer choice for pharmacies; setting guidelines for pharmacy benefit plans; requiring rebates to be passed down; requiring reporting; and requiring the commissioner to consider information in reviewing rates.

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 16. WEST VIRGINIA PUBLIC EMPLOYEES INSURANCE ACT.

§5-16-9. Authorization to execute contracts for group hospital and surgical insurance, group major medical insurance, group prescription drug insurance, group life and accidental death insurance, and other accidental death insurance; mandated benefits; limitations; awarding of contracts; reinsurance; certificates for covered employees; discontinuance of contracts.

(a) The director is given exclusive authorization to execute such contract or contracts as are necessary to carry out the provisions of this article and to provide the plan or plans of group hospital and surgical insurance coverage, group major medical insurance coverage, group prescription drug insurance coverage, and group life and accidental death insurance coverage selected in accordance with the provisions of this article, such contract or contracts to be executed with one or more agencies, corporations, insurance companies, or service organizations licensed to sell group hospital and surgical insurance, group major medical insurance, group prescription drug insurance and group life and accidental death insurance in this state.

(b) The group hospital or surgical insurance coverage and group major medical insurance coverage herein provided shall include coverages and benefits for x-ray and laboratory services in connection with mammogram and pap smears when performed for cancer screening or diagnostic services and annual checkups for prostate cancer in men age 50 and over. Such benefits shall include, but not be limited to, the following:

(1) Mammograms when medically appropriate and consistent with the current guidelines from the United States Preventive Services Task Force;

(2) A pap smear, either conventional or liquid-based cytology, whichever is medically appropriate and consistent with the current guidelines from the United States Preventive Services Task Force or The American College of Obstetricians and Gynecologists, for women age 18 and over;

(3) A test for the human papilloma virus (HPV) for women age 18 or over, when medically appropriate and consistent with the current guidelines from either the United States Preventive Services Task Force or the American College of Obstetricians and Gynecologists for women age 18 and over;

(4) A checkup for prostate cancer annually for men age 50 or over; and

(5) Annual screening for kidney disease as determined to be medically necessary by a physician using any combination of blood pressure testing, urine albumin or urine protein testing, and serum creatinine testing as recommended by the National Kidney Foundation.

(6) Coverage for general anesthesia for dental procedures and associated outpatient hospital or ambulatory facility charges provided by appropriately licensed healthcare individuals in conjunction with dental care if the covered person is:

(A) Seven years of age or younger or is developmentally disabled and is either an individual for whom a successful result cannot be expected from dental care provided under local anesthesia because of a physical, intellectual, or other medically compromising condition of the individual and for whom a superior result can be expected from dental care provided under general anesthesia; or

(B) A child who is 12 years of age or younger with documented phobias, or with documented mental illness, and with dental needs of such magnitude that treatment should not be delayed or deferred and for whom lack of treatment can be expected to result in infection, loss of teeth or other increased oral or dental morbidity and for whom a successful result cannot be expected from dental care provided under local anesthesia because of such condition and for whom a superior result can be expected from dental care provided under general anesthesia.

(7) (A) A policy, plan, or contract that is issued or renewed on or after January 1, 2019, and that is subject to this section, shall

provide coverage, through the age of 20, for amino acid-based formula for the treatment of severe protein-allergic conditions or impaired absorption of nutrients caused by disorders affecting the absorptive surface, function, length, and motility of the gastrointestinal tract. This includes the following conditions, if diagnosed as related to the disorder by a physician licensed to practice in this state pursuant to either §30-3-1 *et seq.* or §30-14-1 *et seq.* of this code:

(i) Immunoglobulin E and Nonimmunoglobulin E-medicated allergies to multiple food proteins;

(ii) Severe food protein-induced enterocolitis syndrome;

(iii) Eosinophilic disorders as evidenced by the results of a biopsy; and

(iv) Impaired absorption of nutrients caused by disorders affecting the absorptive surface, function, length, and motility of the gastrointestinal tract (short bowel).

(B) The coverage required by §5-16-9(b)(7)(A) of this code shall include medical foods for home use for which a physician has issued a prescription and has declared them to be medically necessary, regardless of methodology of delivery.

(C) For purposes of this subdivision, "medically necessary foods" or "medical foods" shall mean prescription amino acid-based elemental formulas obtained through a pharmacy: *Provided,* That these foods are specifically designated and manufactured for the treatment of severe allergic conditions or short bowel.

(D) The provisions of this subdivision shall not apply to persons with an intolerance for lactose or soy.

(c) The group life and accidental death insurance herein provided shall be in the amount of $10,000 for every employee. The amount of the group life and accidental death insurance to which an employee would otherwise be entitled shall be reduced to $5,000 upon such employee attaining age 65.

(d) All of the insurance coverage to be provided for under this article may be included in one or more similar contracts issued by the same or different carriers.

(e) The provisions of §5A-3-1 *et seq.* of this code, relating to the Division of Purchasing of the Department of Finance and Administration, shall not apply to any contracts for any insurance coverage or professional services authorized to be executed under the provisions of this article. Before entering into any contract for any insurance coverage, as authorized in this article, the director shall invite competent bids from all qualified and licensed insurance companies or carriers, who may wish to offer plans for the insurance coverage desired: *Provided,* That the director shall negotiate and contract directly with healthcare providers and other entities, organizations and vendors in order to secure competitive premiums, prices, and other financial advantages. The director shall deal directly with insurers or healthcare providers and other entities, organizations, and vendors in presenting specifications and receiving quotations for bid purposes. No commission or finder's fee, or any combination thereof, shall be paid to any individual or agent; but this shall not preclude an underwriting insurance company or companies, at their own expense, from appointing a licensed resident agent, within this state, to service the companies' contracts awarded under the provisions of this article. Commissions reasonably related to actual service rendered for the agent or agents may be paid by the underwriting company or companies: *Provided, however,* That in no event shall payment be made to any agent or agents when no actual services are rendered or performed. The director shall award the contract or contracts on a competitive basis. In awarding the contract or contracts the director shall take into account the experience of the offering agency, corporation, insurance company, or service organization in the group hospital and surgical insurance field, group major medical insurance field, group prescription drug field, and group life and accidental death insurance field, and its facilities for the handling of claims. In evaluating these factors, the director may employ the services of impartial, professional insurance analysts or actuaries or both. Any contract executed by the director with a selected carrier shall be a contract to govern all eligible employees

subject to the provisions of this article. Nothing contained in this article shall prohibit any insurance carrier from soliciting employees covered hereunder to purchase additional hospital and surgical, major medical or life and accidental death insurance coverage.

(f) The director may authorize the carrier with whom a primary contract is executed to reinsure portions of the contract with other carriers which elect to be a reinsurer and who are legally qualified to enter into a reinsurance agreement under the laws of this state.

(g) Each employee who is covered under any contract or contracts shall receive a statement of benefits to which the employee, his or her spouse and his or her dependents are entitled under the contract, setting forth the information as to whom the benefits are payable, to whom claims shall be submitted and a summary of the provisions of the contract or contracts as they affect the employee, his or her spouse and his or her dependents.

(h) The director may at the end of any contract period discontinue any contract or contracts it has executed with any carrier and replace the same with a contract or contracts with any other carrier or carriers meeting the requirements of this article.

(i) The director shall provide by contract or contracts entered into under the provisions of this article the cost for coverage of children's immunization services from birth through age 16 years to provide immunization against the following illnesses: Diphtheria, polio, mumps, measles, rubella, tetanus, hepatitis-b, hemophilia influenzae-b, and whooping cough. Additional immunizations may be required by the Commissioner of the Bureau for Public Health for public health purposes. Any contract entered into to cover these services shall require that all costs associated with immunization, including the cost of the vaccine, if incurred by the healthcare provider, and all costs of vaccine administration be exempt from any deductible, per visit charge and/or copayment provisions which may be in force in these policies or contracts. This section does not require that other healthcare services provided at the time of immunization be exempt from any deductible and/or copayment provisions.

(j) The director shall include language in all contracts for pharmacy benefits management, as defined by §33-51-3 of this code, requiring the pharmacy benefit manager to report quarterly to the agency the following:

(1) The overall total amount charged to the agency for all claims processed by the pharmacy benefit manager during the quarter;

(2) The overall total amount of reimbursements paid to pharmacy providers during the quarter;

(3) The overall total number of claims in which the pharmacy benefits manager reimbursed a pharmacy provider for less than the amount charged to the agency for all claims processed by the pharmacy benefit manager during the quarter; and

(4) For all pharmacy claims, the total amount paid to the pharmacy provider per claim, including, but not limited to, the following:

(A) The cost of drug reimbursement;

(B) Dispensing fees;

(C) Copayments; and

(D) The amount charged to the agency for each claim by the pharmacy benefit manager.

In the event there is a difference between the amount for any pharmacy claim paid to the pharmacy provider and the amount reimbursed to the agency, the pharmacy benefit manager shall report an itemization of all administrative fees, rebates, or processing charges associated with the claim. All data and information provided by the pharmacy benefit manager shall be kept secure, and notwithstanding any other provision of this code to the contrary, the agency shall maintain the confidentiality of the proprietary information and not share or disclose the proprietary information contained in the report or data collected with persons outside the agency. All data and information provided by the

pharmacy benefit manager shall be considered proprietary and confidential and exempt from disclosure under the West Virginia Freedom of Information Act pursuant to §29B-1-4(a)(1) of this code. Only those agency employees involved in collecting, securing, and analyzing the data for the purpose of preparing the report provided for herein shall have access to the proprietary data. The director shall provide a quarterly report to the Joint Committee on Government and Finance and the Joint Committee on Health detailing the information required by this section, including any difference or spread between the overall amount paid by pharmacy benefit managers to the pharmacy providers and the overall amount charged to the agency for each claim by the pharmacy benefit manager. To the extent necessary, the director shall use aggregated, nonproprietary data only: *Provided,* That the director must provide a clear and concise summary of the total amounts charged to the agency and reimbursed to pharmacy providers on a quarterly basis.

(k) If the information required herein is not provided, the agency may terminate the contract with the pharmacy benefit manager and the Office of the Insurance Commissioner shall discipline the pharmacy benefit manager as provided in §33-51-8(e) of this code.

CHAPTER 33. INSURANCE

ARTICLE 51. REGULATION OF PHARMACY AUDITING ENTITIES AND PHARMACY BENEFIT MANAGERS.

§33-51-2. Scope.

This article covers any audit of the records of a pharmacy conducted by a managed care company, third-party payer, pharmacy benefits manager or an entity that represents a covered entity, or health benefit plan, the registration of auditing entities, and the licensure and regulation of pharmacy benefits managers.

§33-51-3. Definitions.

For purposes of this article:

"340B entity" means an entity participating in the federal 340B drug discount program, as described in 42 U.S.C. § 256b, including its pharmacy or pharmacies, or any pharmacy or pharmacies, contracted with the participating entity to dispense drugs purchased through such program.

"Affiliate" means a pharmacy, pharmacist, or pharmacy technician which, either directly or indirectly through one or more intermediaries: (A) Has an investment or ownership interest in a pharmacy benefits manager licensed under this chapter; (B) shares common ownership with a pharmacy benefits manager licensed under this chapter; or (C) has an investor or ownership interest holder which is a pharmacy benefits manager licensed under this article.

"Auditing entity" means a person or company that performs a pharmacy audit, including a covered entity, pharmacy benefits manager, managed care organization, or third-party administrator.

"Business day" means any day of the week excluding Saturday, Sunday, and any legal holiday as set forth in §2-2-1 of this code.

"Claim level information" means data submitted by a pharmacy or required by a payer or claims processor to adjudicate a claim.

"Covered entity" means a contract holder or policy holder providing pharmacy benefits to a covered individual under a health insurance policy pursuant to a contract administered by a pharmacy benefits manager and may include a health benefit plan.

"Covered individual" means a member, participant, enrollee, or beneficiary of a covered entity who is provided health coverage by a covered entity, including a dependent or other person provided health coverage through the policy or contract of a covered individual.

"Extrapolation" means the practice of inferring a frequency of dollar amount of overpayments, underpayments, nonvalid claims, or other errors on any portion of claims submitted, based on the frequency of dollar amount of overpayments, underpayments,

nonvalid claims, or other errors actually measured in a sample of claims.

"Defined cost sharing" means a deductible payment or coinsurance amount imposed on an enrollee for a covered prescription drug under the enrollee's health plan.

"Health benefit plan" or "health plan" means a policy, contract, certificate, or agreement entered into, offered, or issued by a health carrier to provide, deliver, arrange for, pay for, or reimburse any of the costs of health care services.

"Health care provider" has the same meaning as defined in §33-41-2 of this code.

"Health insurance policy" means a policy, subscriber contract, certificate, or plan that provides prescription drug coverage. The term includes both comprehensive and limited benefit health insurance policies.

"Insurance commissioner" or "commissioner" has the same meaning as defined in §33-1-5 of this code.

"Network" means a pharmacy or group of pharmacies that agree to provide prescription services to covered individuals on behalf of a covered entity or group of covered entities in exchange for payment for its services by a pharmacy benefits manager or pharmacy services administration organization. The term includes a pharmacy that generally dispenses outpatient prescriptions to covered individuals or dispenses particular types of prescriptions, provides pharmacy services to particular types of covered individuals or dispenses prescriptions in particular health care settings, including networks of specialty, institutional or long-term care facilities.

"Maximum allowable cost" means the per unit amount that a pharmacy benefits manager reimburses a pharmacist for a prescription drug, excluding dispensing fees and copayments, coinsurance, or other cost-sharing charges, if any.

"National average drug acquisition cost" means the monthly survey of retail pharmacies conducted by the federal Centers for Medicare and Medicaid Services to determine average acquisition cost for Medicaid covered outpatient drugs.

"Nonproprietary drug" means a drug containing any quantity of any controlled substance or any drug which is required by any applicable federal or state law to be dispensed only by prescription.

"Pharmacist" means an individual licensed by the West Virginia Board of Pharmacy to engage in the practice of pharmacy.

"Pharmacy" means any place within this state where drugs are dispensed and pharmacist care is provided.

"Pharmacy audit" means an audit, conducted on-site by or on behalf of an auditing entity of any records of a pharmacy for prescription or nonproprietary drugs dispensed by a pharmacy to a covered individual.

"Pharmacy benefits management" means the performance of any of the following:

(1) The procurement of prescription drugs at a negotiated contracted rate for dispensation within the state of West Virginia to covered individuals;

(2) The administration or management of prescription drug benefits provided by a covered entity for the benefit of covered individuals;

(3) The administration of pharmacy benefits, including:

(A) Operating a mail-service pharmacy;

(B) Claims processing;

(C) Managing a retail pharmacy network;

(D) Paying claims to a pharmacy for prescription drugs dispensed to covered individuals via retail or mail-order pharmacy;

(E) Developing and managing a clinical formulary including utilization management and quality assurance programs;

(F) Rebate contracting administration; and

(G) Managing a patient compliance, therapeutic intervention, and generic substitution program.

"Pharmacy benefits manager" means a person, business, or other entity that performs pharmacy benefits management for covered entities;

"Pharmacy record" means any record stored electronically or as a hard copy by a pharmacy that relates to the provision of prescription or nonproprietary drugs or pharmacy services or other component of pharmacist care that is included in the practice of pharmacy.

"Pharmacy services administration organization" means any entity that contracts with a pharmacy to assist with third-party payer interactions and that may provide a variety of other administrative services, including contracting with pharmacy benefits managers on behalf of pharmacies and managing pharmacies' claims payments from third-party payers.

"Point-of-sale fee" means all or a portion of a drug reimbursement to a pharmacy or other dispenser withheld at the time of adjudication of a claim for any reason.

"Rebate" means any and all payments that accrue to a pharmacy benefits manager or its health plan client, directly or indirectly, from a pharmaceutical manufacturer, including, but not limited to, discounts, administration fees, credits, incentives, or penalties associated directly or indirectly in any way with claims administered on behalf of a health plan client.

"Retroactive fee" means all or a portion of a drug reimbursement to a pharmacy or other dispenser recouped or reduced following adjudication of a claim for any reason, except as otherwise permissible as described in this article.

"Third party" means any insurer, health benefit plan for employees which provides a pharmacy benefits plan, a participating public agency which provides a system of health insurance for public employees, their dependents and retirees, or any other insurer or organization that provides health coverage, benefits, or coverage of prescription drugs as part of workers' compensation insurance in accordance with state or federal law. The term does not include an insurer that provides coverage under a policy of casualty or property insurance.

§33-51-8. Licensure of pharmacy benefit managers.

(a) A person or organization may not establish or operate as a pharmacy benefits manager in the state of West Virginia without first obtaining a license from the Insurance Commissioner pursuant to this section: *Provided*, That a pharmacy benefit manager registered pursuant to §33-5-7 of this code may continue to do business in the state until the Insurance Commissioner has completed the legislative rule as set forth in §33-55-10 of this code: *Provided, however*, That additionally the pharmacy benefit manager shall submit an application within six months of completion of the final rule. The Insurance Commissioner shall make an application form available on its publicly accessible internet website that includes a request for the following information:

(1) The identity, address, and telephone number of the applicant;

(2) The name, business address, and telephone number of the contact person for the applicant;

(3) When applicable, the federal employer identification number for the applicant; and

(4) Any other information the Insurance Commissioner considers necessary and appropriate to establish the qualifications to receive a license as a pharmacy benefit manager to complete the licensure process, as set forth by legislative rule promulgated by the Insurance Commissioner pursuant to §33-51-10 of this code.

(b) Term and fee. —

(1) The term of licensure shall be two years from the date of issuance.

(2) The Insurance Commissioner shall determine the amount of the initial application fee and the renewal application fee for the registration. The fee shall be submitted by the applicant with an application for registration. An initial application fee is nonrefundable. A renewal application fee shall be returned if the renewal of the registration is not granted.

(3) The amount of the initial application fees and renewal application fees must be sufficient to fund the Insurance Commissioner's duties in relation to his/her responsibilities under this section, but a single fee may not exceed $10,000.

(4) Each application for a license, and subsequent renewal for a license, shall be accompanied by evidence of financial responsibility in an amount of $1 million.

(c) Licensure. —

(1) The Insurance Commissioner shall propose legislative rules, in accordance with §33-51-10 of this code, establishing the licensing, fees, application, financial standards, and reporting requirements of pharmacy benefit managers.

(2) Upon receipt of a completed application, evidence of financial responsibility, and fee, the Insurance Commissioner shall make a review of each applicant and shall issue a license if the applicant is qualified in accordance with the provisions of this section and the rules promulgated by the Insurance Commissioner pursuant to this section. The commissioner may require additional information or submissions from an applicant and may obtain any documents or information reasonably necessary to verify the information contained in the application.

(3) The license may be in paper or electronic form, is nontransferable, and shall prominently list the expiration date of the license.

(d) Network adequacy. —

(1) A pharmacy benefit manager's network shall be reasonably adequate, shall provide for convenient patient access to pharmacies within a reasonable distance from a patient's residence and shall not be comprised only of mail-order benefits but must have a mix of mail-order benefits and physical stores in this state.

(2) A pharmacy benefit manager shall provide a pharmacy benefit manager's network report describing the pharmacy benefit manager's network and the mix of mail-order to physical stores in this state in a time and manner required by rule issued by the Insurance Commissioner pursuant to this section.

(3) Failure to provide a timely report may result in the suspension or revocation of a pharmacy benefit manager's license by the Insurance Commissioner.

(e) Enforcement. —

(1) The Insurance Commissioner shall enforce this section and may examine or audit the books and records of a pharmacy benefit manager providing pharmacy benefits management to determine if the pharmacy benefit manager is in compliance with this section: *Provided*, That any information or data acquired during the examination or audit is considered proprietary and confidential and exempt from disclosure under the West Virginia Freedom of Information Act pursuant to §29B-1-4(a)(1) of this code.

(2) The Insurance Commissioner may propose rules for legislative approval in accordance with §29A-3-1 *et seq.* of this code regulating pharmacy benefit managers in a manner consistent with this chapter. Rules adopted pursuant to this section shall set forth penalties or fines, including, without limitation, monetary fines, suspension of licensure, and revocation of licensure for violations of this chapter and the rules adopted pursuant to this section.

(f) Applicability. —

This section is applicable to any contract or health benefit plan issued, renewed, recredentialed, amended, or extended on or after July 1, 2019.

§33-51-9. Regulation of pharmacy benefit managers.

(a) A pharmacy, a pharmacist, and a pharmacy technician shall have the right to provide a covered individual with information related to lower cost alternatives and cost share for the covered individual to assist health care consumers in making informed decisions. Neither a pharmacy, a pharmacist, nor a pharmacy technician may be penalized by a pharmacy benefit manager for discussing information in this section or for selling a lower cost alternative to a covered individual, if one is available, without using a health insurance policy.

(b) A pharmacy benefit manager may not collect from a pharmacy, a pharmacist, or a pharmacy technician a cost share charged to a covered individual that exceeds the total submitted charges by the pharmacy or pharmacist to the pharmacy benefit manager.

(c) A pharmacy benefit manager may only directly or indirectly charge or hold a pharmacy, a pharmacist, or a pharmacy technician responsible for a fee related to the adjudication of a claim if:

(1) The total amount of the fee is identified, reported, and specifically explained for each line item on the remittance advice of the adjudicated claim; or

(2) The total amount of the fee is apparent at the point of sale and not adjusted between the point of sale and the issuance of the remittance advice.

(d) A pharmacy benefit manager, or any other third party, that reimburses a 340B entity for drugs that are subject to an agreement under 42 U.S.C. § 256b shall not reimburse the 340B entity for pharmacy-dispensed drugs at a rate lower than that paid for the same drug to pharmacies similar in prescription volume that are not 340B entities, and shall not assess any fee, charge-back, or other

adjustment upon the 340B entity on the basis that the 340B entity participates in the program set forth in 42 U.S.C. §256b.

(e) With respect to a patient eligible to receive drugs subject to an agreement under 42 U.S.C. § 256b, a pharmacy benefit manager, or any other third party that makes payment for such drugs, shall not discriminate against a 340B entity in a manner that prevents or interferes with the patient's choice to receive such drugs from the 340B entity: *Provided*, That for purposes of this section, "third party" does not include the state Medicaid program when Medicaid is providing reimbursement for covered outpatient drugs, as that term is defined in 42 U.S.C. §1396r-8(k), on a fee-for-service basis: *Provided, however*, That "third party" does include a Medicaid-managed care organization as described in 42 U.S.C. § 1396b(m).

(f) A pharmacy benefit manager may not reimburse a pharmacy or pharmacist for a prescription drug or pharmacy service in an amount less than the national average drug acquisition cost for the prescription drug or pharmacy service at the time the drug is administered or dispensed, plus a professional dispensing fee of $10.49: *Provided,* That if the national average drug acquisition cost is not available at the time a drug is administered or dispensed, a pharmacy benefit manager may not reimburse in an amount that is less than the wholesale acquisition cost of the drug, as defined in 42 U.S.C. § 1395w-3a(c)(6)(B), plus a professional dispensing fee of $10.49.

(g) A pharmacy benefit manager may not reimburse a pharmacy or pharmacist for a prescription drug or pharmacy service in an amount less than the amount the pharmacy benefit manager reimburses itself or an affiliate for the same prescription drug or pharmacy service.

(h) The commissioner may order reimbursement to an insured, pharmacy, or dispenser who has incurred a monetary loss as a result of a violation of this article or legislative rules implemented pursuant to this article.

(i) (1) Any methodologies utilized by a pharmacy benefits manager in connection with reimbursement shall be filed with the commissioner at the time of initial licensure and at any time thereafter that the methodology is changed by the pharmacy benefit manager for use in determining maximum allowable cost appeals. The methodologies are not subject to disclosure and shall be treated as confidential and exempt from disclosure under the West Virginia Freedom of Information Act §29B-1-4(a)(1) of this code.

(2) A pharmacy benefits manager shall utilize the national average drug acquisition cost as a point of reference for the ingredient drug product component of a pharmacy's reimbursement for drugs appearing on the national average drug acquisition cost list; and,

(j) A pharmacy benefits manager may not:

(1) Discriminate in reimbursement, assess any fees or adjustments, or exclude a pharmacy from the pharmacy benefit manager's network on the basis that the pharmacy dispenses drugs subject to an agreement under 42 U.S.C. § 256b; or

(2) Engage in any practice that:

(A) In any way bases pharmacy reimbursement for a drug on patient outcomes, scores, or metrics. This does not prohibit pharmacy reimbursement for pharmacy care, including dispensing fees from being based on patient outcomes, scores, or metrics so long as the patient outcomes, scores, or metrics are disclosed to and agreed to by the pharmacy in advance;

(B) Includes imposing a point-of-sale fee or retroactive fee; or

(C) Derives any revenue from a pharmacy or insured in connection with performing pharmacy benefits management services: *Provided,* That this may not be construed to prohibit pharmacy benefits managers from receiving deductibles or copayments.

(k) A pharmacy benefits manager shall offer a health plan the option of charging such health plan the same price for a

prescription drug as it pays a pharmacy for the prescription drug: *Provided,* That a pharmacy benefits manager shall charge a health benefit plan administered by or on behalf of the state or a political subdivision of the state, the same price for a prescription drug as it pays a pharmacy for the prescription drug.

(l) A covered individual's defined cost sharing for each prescription drug shall be calculated at the point of sale based on a price that is reduced by an amount equal to at least 100% of all rebates received, or to be received, in connection with the dispensing or administration of the prescription drug. Any rebate over and above the defined cost sharing would then be passed on to the health plan to reduce premiums. Nothing precludes an insurer from decreasing a covered individual's defined cost sharing by an amount greater than what is previously stated. The Commissioner may propose a legislative rule or by policy effectuate the provisions of this subsection. Notwithstanding any other effective date to the contrary, the amendments to this article enacted during the 2021 regular legislative session shall apply to all policies, contracts, plans, or agreements subject to this section that are delivered, executed, amended, adjusted, or renewed on or after January 1, 2022.

(m) This section is effective for policy, contract, plans, or agreements beginning on or after January 1, 2022. This section applies to all policies, contracts, plans, or agreements subject to this section that are delivered, executed, amended, adjusted, or renewed on or after the effective date of this section.

§33-51-11. Freedom of consumer choice for pharmacy.

(a) A pharmacy benefits manager or health benefit plan may not:

(1) Prohibit or limit any covered individual from selecting a pharmacy or pharmacist of his or her choice who has agreed to participate in the plan according to the terms offered by the insurer;

(2) Deny a pharmacy or pharmacist the right to participate as a contract provider under the policy or plan if the pharmacy or

pharmacist agrees to provide pharmacy services, including, but not limited to, prescription drugs, that meet the terms and requirements set forth by the insurer under the policy or plan and agrees to the terms of reimbursement set forth by the insurer;

(3) Impose upon a beneficiary of pharmacy services under a health benefit plan any copayment, fee, or condition that is not equally imposed upon all beneficiaries in the same benefit category, class, or copayment level under the health benefit plan when receiving services from a contract provider;

(4) Impose a monetary advantage or penalty under a health benefit plan that would affect a beneficiary's choice among those pharmacies or pharmacists who have agreed to participate in the plan according to the terms offered by the insurer. Monetary advantage or penalty includes higher copayment, a reduction in reimbursement for services, or promotion of one participating pharmacy over another by these methods;

(5) Reduce allowable reimbursement for pharmacy services to a beneficiary under a health benefit plan because the beneficiary selects a pharmacy of his or her choice, so long as that pharmacy has enrolled with the health benefit plan under the terms offered to all pharmacies in the plan coverage area;

(6) Require a beneficiary, as a condition of payment or reimbursement, to purchase pharmacy services, including prescription drugs, exclusively through a mail-order pharmacy; or

(7) Impose upon a beneficiary any copayment, amount of reimbursement, number of days of a drug supply for which reimbursement will be allowed, or any other payment or condition relating to purchasing pharmacy services from any pharmacy, including prescription drugs, that is more costly or more restrictive than that which would be imposed upon the beneficiary if such services were purchased from a mail-order pharmacy or any other pharmacy that is willing to provide the same services or products for the same cost and copayment as any mail order service.

(b) If a health benefit plan providing reimbursement to West Virginia residents for prescription drugs restricts pharmacy participation, the entity providing the health benefit plan shall notify, in writing, all pharmacies within the geographical coverage area of the health benefit plan, and offer to the pharmacies the opportunity to participate in the health benefit plan at least 60 days prior to the effective date of the plan. All pharmacies in the geographical coverage area of the plan shall be eligible to participate under identical reimbursement terms for providing pharmacy services, including prescription drugs. The entity providing the health benefit plan shall, through reasonable means, on a timely basis and on regular intervals, inform the beneficiaries of the plan of the names and locations of pharmacies that are participating in the plan as providers of pharmacy services and prescription drugs. Additionally, participating pharmacies shall be entitled to announce their participation to their customers through a means acceptable to the pharmacy and the entity providing the health benefit plans. The pharmacy notification provisions of this section shall not apply when an individual or group is enrolled, but when the plan enters a particular county of the state.

(c) The Insurance Commissioner shall not approve any pharmacy benefits manager or health benefit plan providing pharmaceutical services which do not conform to this section.

(d) Any covered individual or pharmacy injured by a violation of this section may maintain a cause of action to enjoin the continuance of any such violation.

(e) This section shall apply to all pharmacy benefits managers and health benefit plans providing pharmaceutical services benefits, including prescription drugs, to any resident of West Virginia. For purposes of this section, "health benefit plan" means any entity or program that provides reimbursement for pharmaceutical services. This section shall also apply to insurance companies and health maintenance organizations that provide or administer coverages and benefits for prescription drugs. This section shall not apply to any entity that has its own facility, employs or contracts with physicians, pharmacists, nurses and other health care personnel, and that dispenses prescription drugs

from its own pharmacy to its employees and dependents enrolled in its health benefit plan; but this section shall apply to an entity otherwise excluded that contracts with an outside pharmacy or group of pharmacies to provide prescription drugs and services.

§33-51-12. Reporting requirements.

(a) A pharmacy benefits manager shall report to the commissioner on an annual basis, or more often as the commissioner deems necessary, for each health plan or covered entity the following information:

(1) The aggregate amount of rebates received by the pharmacy benefits manager;

(2) The aggregate amount of rebates distributed to each health plan or covered entity contracted with the pharmacy benefits manager;

(3) The aggregate amount of rebates passed on to the enrollees of each health plan or covered entity at the point of sale that reduced the enrollees applicable deductible, copayment, coinsurance, or other cost-sharing amount;

(4) The individual and aggregate amount paid by the health plan or covered entity to the pharmacy benefits manager for pharmacist services itemized by pharmacy, by product, and by goods and services; and

(5) The individual and aggregate amount a pharmacy benefits manager paid for pharmacist services itemized by pharmacy, by product, and by goods and services.

(b) A pharmacy benefits manager shall annually report in the aggregate to the commissioner and to a health plan or covered entity the difference between the amount the pharmacy benefits manager reimbursed a pharmacy and the amount the pharmacy benefits manager charged a health plan.

(c) A health benefit plan or covered entity shall annually report to the commissioner the aggregate amount of credits, rebates,

discounts, or other such payments received by the health benefit plan or covered entity from a pharmacy benefits manager or drug manufacturer and disclose whether or not those credits, rebates, discounts or other such payments were passed on to reduce insurance premiums or rates. The commissioner shall consider the information in this report in reviewing any premium rates charged for any individual or group accident and health insurance policy as set forth in §33-6-9(e), §33-24-6(c), and §33-25A-8 of this code.

(d) A pharmacy benefits manager shall produce a quarterly report to the commissioner of all drugs appearing on the national average drug acquisition cost list reimbursed 10 percent and below the national average drug acquisition cost, as well as all drugs reimbursed 10 percent and above the national average drug acquisition cost. For each drug in the report, a pharmacy benefits manager shall include the month the drug was dispensed, the quantity of the drug dispensed, the amount the pharmacy was reimbursed, whether the dispensing pharmacy was an affiliate of the pharmacy benefits manager, whether the drug was dispensed pursuant to a government health plan, and the average national drug acquisition cost for the month the drug was dispensed. The report shall exclude drugs dispensed pursuant to 42 U.S.C. § 256b. A copy of this report shall also be published on the pharmacy benefits manager's publicly available website for a period of at least 24 months. This report is exempt from the confidentiality provisions of subsection (f).

(e) The reports shall be filed electronically on a form and manner as prescribed by the commissioner pursuant to a legitimate rule promulgated by the commissioner.

(f) With the exception of the quarterly report noted in subsection (d) of this section all data and information provided by the pharmacy benefits manager, health plan, or covered entity pursuant to these established reporting requirements shall be considered proprietary and confidential and exempt from disclosure under the West Virginia Freedom of Information Act §29B-1-4(a)(1) of this code.

CHAPTER 165

(Com. Sub. for H. B. 2682 - By Delegates Westfall, Hott and Espinosa)

(By Request of the Insurance Commissioner)

[Passed March 19, 2021; in effect July 1, 2021.]
[Approved by the Governor on March 30, 2021.]

AN ACT to amend and reenact §33-12-8 and §33-12-9 of the Code of West Virginia, 1931, as amended, and to amend and reenact §33-12B-13 and §33-12B-14 of said code, all relating to the issuance of license suspensions to insurance producers and insurance adjusters who have failed to meet continuing education requirements; changing the requirement that the Insurance Commissioner send license suspensions to insurance producers by certified mail with a requirement that the suspensions be sent by electronic mail or regular mail; providing that each agent, insurance agency, solicitor, or service representative must report his or her respective electronic mail address to the Insurance Commissioner and providing time periods to report changes of information provided to Insurance Commissioner; changing the requirement that the Insurance Commissioner send license suspensions to insurance adjusters by certified mail with a requirement that the suspensions be sent by electronic mail or regular mail; providing that each insurance adjuster must report his or her respective electronic mail address to the Insurance Commissioner and providing time periods to report changes of information provided to Insurance Commissioner; and requiring the Insurance Commissioner to maintain certain information.

Be it enacted by the Legislature of West Virginia:

ARTICLE 12. INSURANCE PRODUCERS AND SOLICITORS.

§33-12-8. Continuing education required.

The purpose of this section is to provide continuing education requirements under guidelines set up under the Insurance Commissioner's office in conjunction with the Board of Insurance Agent Education.

(a) This section applies to individual insurance producers licensed to engage in the sale of the following types of insurance:

(1) Life. — Life insurance coverage on human lives, including benefits of endowment and annuities, and may include benefits in the event of death or dismemberment by accident and benefits for disability income;

(2) Accident and health or sickness. — Insurance coverage for sickness, bodily injury, or accidental death and may include benefits for disability income;

(3) Property. — Property insurance coverage for the direct or consequential loss or damage to property of every kind;

(4) Casualty. — Insurance coverage against legal liability, including that for death, injury, or disability or damage to real or personal property;

(5) Variable life and variable annuity products. — Insurance coverage provided under variable life insurance contracts and variable annuities;

(6) Personal lines. — Property and casualty insurance coverage sold to individuals and families for primarily noncommercial purposes; and

(7) Any other line of insurance permitted under state laws or regulations.

(b) This section does not apply to:

(1) Individual insurance producers holding limited line credit insurance licenses for any kind or kinds of insurance offered in connection with loans or other credit transactions or insurance for which an examination is not required by the commissioner, nor does it apply to any limited or restricted license as the commissioner may exempt; and

(2) Individual insurance producers selling credit life or credit accident and health insurance.

(c)(1) The Board of Insurance Agent Education as established by §33-12-7 of this code shall develop a program of continuing insurance education and submit the proposal for the approval of the commissioner on or before December 31 of each year. No program may be approved by the commissioner that includes a requirement that any individual insurance producer complete more than 24 hours of continuing insurance education biennially. No program may be approved by the commissioner that includes a requirement that any of the following individual insurance producers complete more than six hours of continuing insurance education biennially:

(A) Individual insurance producers who sell only preneed burial insurance contracts; and

(B) Individual insurance producers who engage solely in telemarketing insurance products by a scripted presentation which scripted presentation has been filed with and approved by the commissioner.

(C) The biennium mandatory continuing insurance education provisions of this section become effective on the reporting period beginning July 1, 2006.

(2) The commissioner and the board, under standards established by the board, may approve any course or program of instruction developed or sponsored by an authorized insurer, accredited college or university, agents' association, insurance trade association, or independent program of instruction that presents the criteria and the number of hours that the board and commissioner determine appropriate for the purpose of this section.

(d) Individual insurance producers licensed to sell insurance and who are not otherwise exempt shall satisfactorily complete the courses or programs of instructions the commissioner may prescribe.

(e) Every individual insurance producer subject to the continuing education requirements shall furnish, at intervals and on forms as may be prescribed by the commissioner, written certification listing the courses, programs, or seminars of instruction successfully completed by the person. The certification shall be executed by, or on behalf of, the organization sponsoring the courses, programs, or seminars of instruction.

(f) Subject to the approval by the commissioner, the active annual membership by an individual insurance producer in an organization or association recognized and approved by the commissioner as a state, regional, or national professional insurance organization or association may be approved by the commissioner for up to two hours of continuing insurance education: *Provided*, That not more than two hours of continuing insurance education may be awarded to an individual insurance producer for membership in a professional insurance organization during a biennial reporting period. Credit for continuing insurance education pursuant to this subdivision may only be awarded to individual insurance producers who are required to complete more than six hours of continuing education biennially.

(g) Individual insurance producers who are required to complete more than six hours of continuing education biennially and who exceed the minimum continuing education requirement for the biennial reporting period may carry-over a maximum of six credit hours only into the next reporting period.

(h) Any individual insurance producer failing to meet the requirements mandated in this section and who has not been granted an extension of time, with respect to the requirements, or who has submitted to the commissioner a false or fraudulent certificate of compliance shall have his or her license automatically suspended and no further license may be issued to the person for any kind or kinds of insurance until the person demonstrates to the

satisfaction of the commissioner that he or she has complied with all of the requirements mandated by this section and all other applicable laws or rules.

(i) The commissioner shall notify the individual insurance producer of his or her suspension pursuant to §33-12-8(h) of this code by electronic mail or regular mail, if requested, to the last respective address on file with the commissioner pursuant to §33-12-9(f) of this code. Any individual insurance producer who has had a suspension notice entered against him or her pursuant to this section may, within 30 calendar days of receipt of the notice, file with the commissioner a request for a hearing for reconsideration of the matter.

(j) Any individual insurance producer who does not satisfactorily demonstrate compliance with this section and all other laws applicable thereto as of the last day of the biennium following his or her suspension shall have his or her license automatically canceled and is subject to the education and examination requirements of §33-12-5 of this code.

(k) The commissioner is authorized to hire personnel and make reasonable expenditures considered necessary for purposes of establishing and maintaining a system of continuing education for insurers. The commissioner shall charge a fee of $25 to continuing education providers for each continuing education course submitted for approval which shall be used to maintain the continuing education system. The commissioner may, at his or her discretion, designate an outside administrator to provide all of or part of the administrative duties of the continuing education system subject to direction and approval by the commissioner. The fees charged by the outside administrator shall be paid by the continuing education providers. In addition to fees charged by the outside administrator, the outside administrator shall collect and remit to the commissioner the $25 course submission fee.

§33-12-9. Issuance of license.

(a) Unless denied licensure pursuant to §33-12-24 of this code, individuals who have met the requirements of §33-12-5 and §33-

12-6 of this code shall be issued an insurance producer license. An insurance producer may receive qualification for a license in one or more of the following lines of authority:

(1) Life insurance coverage on human lives including benefits of endowment and annuities, and may include benefits in the event of death or dismemberment by accident and benefits for disability income;

(2) Accident and health or sickness. — Insurance coverage for sickness, bodily injury, or accidental death and may include benefits for disability income;

(3) Property insurance coverage for the direct or consequential loss or damage to property of every kind;

(4) Casualty. — Insurance coverage against legal liability, including that for death, injury, or disability or damage to real or personal property;

(5) Variable life and variable annuity products. — Insurance coverage provided under variable life insurance contracts and variable annuities;

(6) Personal lines. — Property and casualty insurance coverage sold to individuals and families for primarily noncommercial purposes;

(7) Credit. — Limited line credit insurance; or

(8) Any other line of insurance permitted under state laws or regulations.

(b) An insurance producer license shall remain in effect unless revoked or suspended as long as the fee set forth in §33-3-13 of this code is paid and education requirements for resident individual producers are met by the due date.

(c) An individual insurance producer who allows his or her license to lapse may, within 12 months from the due date of the renewal fee, reinstate the same license without the necessity of

passing a written examination. However, a penalty in the amount of double the unpaid renewal fee shall be required for any renewal fee received after the due date.

(d) An individual licensed insurance producer who is unable to comply with license renewal procedures due to military service or some other extenuating circumstance (e.g., a long-term medical disability) may request a waiver of those procedures. The producer may also request a waiver of any examination requirement or any other fine or sanction imposed for failure to comply with renewal procedures.

(e) The license shall contain the licensee's name, address, personal identification number, and the date of issuance, the lines of authority, the expiration date, and any other information the Insurance Commissioner considers necessary.

(f) At the time of application for licensure, the applicant shall inform the Insurance Commissioner of the applicant's full name, physical and mailing address, if different, and electronic mail address. Each agent, insurance agency, solicitor, or service representative that is licensed on July 1, 2021, shall provide the Insurance Commissioner with the licensee's electronic mail address in connection with the next license renewal application of the respective licensee. If a change occurs to the licensee's name, physical address, mailing address, or electronic mail address after licensure, the licensee shall inform the Insurance Commissioner by any means acceptable to the Insurance Commissioner of the updated contact information within 30 days of the change. Failure to timely inform the Insurance Commissioner of a change in legal name, residency, mailing address, or electronic mail address may result in a penalty pursuant to §33-12-24 of this code. The commissioner shall maintain the information provided pursuant to this subsection for each agent, insurance agency, solicitor, and service representative on file.

(g) In order to assist in the performance of the Insurance Commissioner's duties, the Insurance Commissioner may contract with nongovernmental entities, including the National Association of Insurance Commissioners (NAIC) or any affiliates or

subsidiaries that the NAIC oversees, to perform any ministerial functions, including the collection of fees, related to producer licensing that the Insurance Commissioner and the nongovernmental entity may consider appropriate.

ARTICLE 12B. ADJUSTERS.

§33-12B-13. Continuing education.

(a) The purpose of this section is to provide continuing education requirements for individual adjusters under guidelines established by the commissioner's office in conjunction with the Board of Insurance Agent Education as provided in §33-12-7 of this code.

(b) This section applies to company adjusters, independent adjusters, and public adjusters licensed pursuant to §33-12B-2 of this code.

(c) This section shall not apply to:

(1) Licensees not licensed for one full year prior to the end of the applicable continuing education biennium; or

(2) Licensees holding nonresident adjuster licenses who have met substantially similar continuing education requirements of their designated home state and whose home state gives credit to residents of this state on the same basis.

(d)(1) The Board of Insurance Agent Education as established by §33-12-7 of this code shall develop a program of continuing education for adjusters and submit the proposal for the approval of the commissioner on or before December 31 of each year. No program may be approved by the commissioner that includes a requirement that any individual adjuster complete more than 24 hours of continuing insurance education biennially.

(2) The biennium mandatory continuing education provisions of this section become effective on the reporting period beginning July 1, 2021.

(3) The commissioner and the Board of Insurance Agent Education, under standards established by the board, may approve any course or program of instruction developed or sponsored by an authorized insurer, accredited college or university, adjusters' association, insurance trade association, or independent program of instruction that presents the criteria and the number of hours that the board and commissioner determine appropriate for the purpose of this section.

(e) An individual who holds an adjuster license and who is not exempt shall satisfactorily complete a minimum of 24 hours of continuing education courses, of which three hours must be in ethics, reported to the commissioner on a biennial basis in conjunction with their license renewal cycle.

(f) Every individual adjuster subject to the continuing education requirements shall furnish, at intervals and on forms as may be proposed by the commissioner, written certification listing the courses, programs, or seminars of instruction successfully completed by the adjuster. The certification shall be executed by, or on behalf of, the organization sponsoring the courses, programs, or seminars of instruction.

(g) Subject to the approval of the commissioner, the active annual membership by an adjuster in an organization or association recognized and approved by the commissioner as a state, regional, or national professional insurance organization or association may be approved by the commissioner for up to two hours of continuing insurance education: *Provided*, That not more than two hours of continuing education may be awarded to an adjuster for membership in a professional insurance organization during a biennial reporting period.

(h) Adjusters who exceed the minimum continuing education requirement for the biennial reporting period may carry over a maximum of six credit hours only into the next reporting period.

(i) Any individual adjuster failing to meet the requirements mandated in this section and who has not been granted an extension of time with respect to the requirements, or who has submitted to

the commissioner a false or fraudulent certificate of compliance, shall have his or her license automatically suspended and no further license may be issued to the person until the person demonstrates to the satisfaction of the commissioner that he or she has complied with all of the requirements mandated by this section and all other applicable laws or rules.

(j) The commissioner shall notify the individual adjuster of his or her suspension pursuant to §33-12B-13(i) of this code by electronic mail or regular mail, if requested, to the last respective address on file with the commissioner pursuant to §33-12B-14(a) of this code. Any individual insurance adjuster who has had a suspension notice entered against him or her pursuant to this section may, within 30 calendar days of receipt of the notice, file with the commissioner a request for a hearing for reconsideration of the matter.

(k) Any individual adjuster who does not satisfactorily demonstrate compliance with this section and all other laws applicable thereto as of the last day of the biennium following his or her suspension shall have his or her license automatically terminated and is subject to the licensing and examination requirements of §33-12B-5 of this code.

(l) The commissioner is authorized to hire personnel and make reasonable expenditures considered necessary for purposes of establishing and maintaining a system of continuing education for adjusters. The commissioner shall charge a fee of $25 to continuing education providers for each continuing education course submitted for approval which shall be used to maintain the continuing education system. The commissioner may, at his or her discretion, designate an outside administrator to provide all of or part of the administrative duties of the continuing education system subject to direction and approval by the commissioner. The fees charged by the outside administrator shall be paid by the continuing education providers. In addition to fees charged by the outside administrator, the outside administrator shall collect and remit to the commissioner the $25 course submission fee.

§33-12B-14. Current address of adjusters to be filed; effective notice of appearance at hearing before commissioner.

(a) Each adjuster shall file with the commissioner the complete address of his principal place of business and the complete address of his residence including the name and number of the street, or if the street where the business is located is not numbered, the number of the post office box. An adjuster shall also file with the commissioner the adjuster's electronic mail address. An adjuster licensed on July 1, 2021, shall provide the commissioner with the licensee's electronic mail address in connection with the licensee's next license renewal application. Within 30 days of a change of business or residence address or electronic mail address by an adjuster, the adjuster must file with the commissioner notice of such change of address. The commissioner shall maintain the information provided pursuant to this subsection for each adjuster on file.

(b) When conducting any hearing authorized by §33-2-13 of this code which concerns any adjuster, the commissioner shall give notice of such hearing and the matters to be determined therein to such adjuster by certified mail, return receipt requested, sent to the last address filed by such person or entity pursuant to this section.

(c) If an adjuster fails to appear at such hearing, the hearing may proceed, at which time the commissioner shall establish that notice was sent to such person pursuant to this section prior to the entry of any orders adverse to the interests of such adjuster based upon the allegations against such person which were set forth in the notice of hearing. Certified copies of all orders entered by the commissioner shall be sent to the person affected therein by certified mail, return receipt requested, at the last address filed by such person with the commissioner.

(d) An adjuster who fails to appear at a hearing of which notice has been provided pursuant to this section, and who has had an adverse order entered by the commissioner against them as a result of their failure to so appear may, within 30 calendar days of the entry of such adverse order, file with the commissioner a written verified appeal with any relevant documents attached thereto,

which demonstrates good and reasonable cause for the adjuster's failure to appear, and may request reconsideration of the matter and a new hearing. The commissioner in his or her discretion, and upon a finding that the adjuster has shown good and reasonable cause for his or her failure to appear, shall issue an order that the previous order be rescinded, that the matter be reconsidered, and that a new hearing be set.

(e) Orders entered pursuant to this section are subject to the judicial review provisions of §33-2-14 of this code.

CHAPTER 166

(H. B. 2776 - By Delegates Westfall 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 the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §33-11B-1, relating to the creation of the West Virginia Air Ambulance Patient Protection Act; declaring that an air ambulance service provider or affiliated entity who solicits air ambulance membership subscriptions, accepts membership applications, or charges membership fees, is engaged in the business of insurance to the extent that it promises to pay, reimburse, or indemnify the copayments, deductibles, cost-sharing amounts, or post-service payments of a patient related to air ambulance transport as set by the patient's health insurance provider, health care provider, or other third parties; providing that air ambulance membership agreements or subscriptions declared to be the business of insurance shall be regulated by the commissioner; requiring a valid license issued by the commissioner to solicit or sell air ambulance membership agreements or subscriptions; providing for rulemaking by the commissioner; and providing for severability.

Be it enacted by the Legislature of West Virginia:

ARTICLE 11B. WEST VIRGINIA AIR AMBULANCE PATIENT PROTECTION ACT.

§33-11B-1. Air ambulance membership products as insurance.

(a) An air ambulance service provider or any affiliated entity who solicits air ambulance membership subscriptions, accepts membership applications, or charges membership fees, is deemed

to be engaged in the business of insurance to the extent that it contracts, promises, guarantees, or in any other way portends to pay, reimburse, or indemnify the copayments, deductibles, or other cost-sharing amounts of a patient relating to the air ambulance transport as determined or set by the patient's health insurance provider, health care provider, or other third parties, or any post-service payment of costs to third parties relating to the transport.

(b) An air ambulance membership agreement or subscription for air ambulance services under subsection (a) of this section is insurance and may be considered secondary insurance coverage or a supplement to any insurance coverage, and shall by subject to regulation by the commissioner pursuant to the provisions of this chapter.

(c) To the extent that activity falls within the business of insurance as described in subsection (a) of this section, no person or entity, whether directly or indirectly through an affiliated entity, agreement with a third party, or otherwise, may solicit or sell air ambulance membership agreements or subscriptions, accept membership applications, or charge membership fees except as authorized by a valid license issued by the commissioner pursuant to the provisions of this chapter.

(d)The commissioner may promulgate rules in accordance with §29A-3-1 *et seq.* of this code to effectuate the provisions of this section.

(e) If any provision of this section is held invalid by a court of competent jurisdiction, the invalidity shall not affect other provisions of this section, and to this end the provisions of this section are declared to be severable.

CHAPTER 167

(Com. Sub. for S. B. 272 - By Senators Blair (Mr. President) and Baldwin)

[By Request of the Executive]

[Passed March 11, 2021; in effect 90 days from passage (June 9, 2021)]
[Approved by the Governor on March 19, 2021.]

AN ACT to amend and reenact §21-5-1 of the Code of West Virginia, 1931, as amended; to amend said code by adding thereto a new article, designated §21-5I-1, §21-5I-2, §21-5I-3, §21-5I-4, §21-5I-5, and §21-5I-6; to amend and reenact §21A-1A-16 of said code; and to amend and reenact §23-2-1a of said code, all relating generally to creating the West Virginia Employment Law Worker Classification Act; creating a short title; making certain findings; defining terms; superseding certain existing statutory provisions relating to distinguishing independent contractors from employees; applying classification provisions to workers' compensation, unemployment compensation, wage payment and collection, and Human Rights Act matters; establishing classification criteria; setting forth limitations to applicability of the act; and providing for severability.

Be it enacted by the Legislature of West Virginia:

CHAPTER 21. LABOR.

ARTICLE 5. WAGE PAYMENT AND COLLECTION.

*§21-5-1. Definitions.

As used in this article:

(a) The term "firm" includes any partnership, association, joint-stock company, trust, division of a corporation, the

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***NOTE:** This section was also amended by H. B. 2009 (Chapter 170), which passed subsequent to this act.

administrator or executor of the estate of a deceased individual, or the receiver, trustee, or successor of any of the same, or officer thereof, employing any person.

(b) The term "employee" or "employees" includes any person suffered or permitted to work by a person, firm, or corporation, except those classified as an independent contractor pursuant to §21-5I-4 of this code.

(c) The term "wages" means compensation for labor or services rendered by an employee, whether the amount is determined on a time, task, piece, commission, or other basis of calculation. As used in §21-5-4, §21-5-5, §21-5-8a, §21-5-10, and §21-5-12 of this code, the term "wages" shall also include then accrued fringe benefits capable of calculation and payable directly to an employee: *Provided,* That nothing herein contained shall require fringe benefits to be calculated contrary to any agreement between an employer and his or her employees which does not contradict the provisions of this article.

(d) The term "commissioner" means the Commissioner of Labor or his or her designated representative.

(e) The term "railroad company" includes any firm or corporation engaged primarily in the business of transportation by rail.

(f) The term "special agreement" means an arrangement filed with and approved by the commissioner whereby a person, firm, or corporation is permitted upon a compelling showing of good cause to establish regular paydays less frequently than once every two weeks: *Provided,* That in no event shall the employee be paid in full less frequently than once each calendar month on a regularly established schedule.

(g) The term "deductions" includes amounts required by law to be withheld, and amounts authorized for union or club dues, pension plans, payroll savings plans, credit unions, charities, and hospitalization and medical insurance.

(h) The term "officer" shall include officers or agents in the management of a corporation or firm who knowingly permit the corporation or firm to violate the provisions of this article.

(i) The term "wages due" shall include at least all wages earned up to and including the 12th day immediately preceding the regular payday.

(j) The term "construction" means the furnishing of work in the fulfillment of a contract for the construction, alteration, decoration, painting, or improvement of a new or existing building, structure, roadway, or pipeline, or any part thereof, or for the alteration, improvement, or development of real property: *Provided,* That construction performed for the owner or lessee of a single-family dwelling or a family farming enterprise is excluded.

(k) The term "minerals" means clay, coal, flagstone, gravel, limestone, manganese, sand, sandstone, shale, iron ore, and any other metallurgical ore.

(l) The term "fringe benefits" means any benefit provided an employee or group of employees by an employer, or which is required by law, and includes regular vacation, graduated vacation, floating vacation, holidays, sick leave, personal leave, production incentive bonuses, sickness and accident benefits, and benefits relating to medical and pension coverage.

(m) The term "employer" means any person, firm, or corporation employing any employee.

(n) The term "doing business in this state" means having employees actively engaged in the intended principal activity of the person, firm, or corporation in West Virginia.

ARTICLE 5I. WEST VIRGINIA EMPLOYMENT LAW WORKER CLASSIFICATION ACT.

§21-5I-1. Short title.

This article shall be known as the West Virginia Employment Law Worker Classification Act.

§21-5I-2. Findings.

The Legislature finds as follows:

(a) Recent developments in the workforce marketplace, and in particular with the advent of the so-called "gig", "entrepreneurial", or "sharing" economy, have highlighted the uncertainty that currently exists with determining the correct classification of workers as independent contractors or employees. The proper classification of workers as employees or independent contractors is a complex legal issue that vexes workers and businesses as well as lawyers and the courts.

(b) Not only are the legal standards used to differentiate employees from independent contractors generally subjective in nature, but those standards differ based on the particular law at issue. As a result, some workers may be found to be employees under one law but independent contractors under another law, leaving the same person classified as an employee for some purposes but as an independent contractor for other purposes.

(c) It is in the best interests of this state, workers, and businesses for there to be certainty regarding the legal status of workers concerning workers' compensation as defined in chapter 23 of this code, unemployment compensation in chapter 21A of this code, Human Rights Act rights in §5-11-1 *et seq.* of this code, and wage payment and collection in §21-5-1 *et seq.* of this code, and their applicable rights and obligations. Clarity in a worker's classification allows businesses to comply with applicable laws, provides workers with certainty as to their benefits and obligations, and minimizes unnecessary mistakes, litigation, risk, and legal exposure laws concerning workers' compensation in chapter 23 of this code, unemployment compensation in chapter 21A of this code, Human Rights Act rights in §5-11-1 *et seq.* of this code, and wage payment and collection in §21-5-1 *et seq.* of this code.

(d) It is in the best interests of workers, business, and government to have clear, objective, and certain standards for determining who is an employee and who is an independent contractor concerning workers' compensation as defined in chapter

23 of this code, unemployment compensation in chapter 21A of this code, Human Rights Act rights in §5-11-1 *et seq.* of this code, and wage payment and collection in §21-5-1 *et seq.* of this code.

(e) The purpose of this article is to bring certainty and consistency in the laws and clarity regarding the distinction between employees and independent contractors in laws concerning workers' compensation as defined in chapter 23 of this code, unemployment compensation as defined in chapter 21A of this code, Human Rights Act rights as defined in §5-11-1 *et seq.* of this code, and wage payment and collection as defined in §21-5-1 *et seq.* of this code. By doing so, the state will ensure that workers who are indeed "employees" are properly classified as such and will be afforded the legal protections and obligations that apply to such status, and that workers who desire to be, and meet the standards of being, independent contractors will be entitled to the freedoms that such a relationship provides, which will reduce unnecessary and costly litigation and confusion in the workforce marketplace and in the courts.

§21-5I-3. Certain laws may be superseded.

The purpose of this article is to bring clarity and certainty under the laws of this state with regard to differentiating employees from independent contractors in employment laws as defined in workers' compensation in chapter 23 of this code, unemployment compensation in chapter 21A of this code, Human Rights Act rights in §5-11-1 *et seq.* of this code, and wage payment and collection in §21-5-1 *et seq.* of this code, and by imposing objective standards for making that distinction. Consequently, all laws concerning workers' compensation in chapter 23 of this code, unemployment compensation in chapter 21A of this code, Human Rights Act rights in §5-11-1 *et seq.* of this code, and wage payment and collection in §21-5-1 *et seq.* of this code where the application thereof is contingent upon the classification of a worker as being an employee are superseded, to the extent necessary, by this article.

§21-5I-4. Classification of independent contractors and employees.

(a) Subject only to the provisions of subsection (b) of this section, a person shall be classified as an independent contractor

under the laws of this state as defined in workers' compensation in chapter 23 of this code, unemployment compensation in chapter 21A of this code, Human Rights Act rights in §5-11-1 *et seq.* of this code, and wage payment and collection as defined in §21-5-1 *et seq.* of this code, if:

(1) The person signs a written contract with the principal, in substantial compliance with the terms of this subsection, that states the principal's intent to engage the services of the person as an independent contractor and contains acknowledgements that the person understands that he or she is:

(A) Providing services for the principal as an independent contractor;

(B) Not going to be treated as an employee of the principal;

(C) Not going to be provided by the principal with either workers' compensation or unemployment compensation benefits;

(D) Obligated to pay all applicable federal and state income taxes, if any, on any moneys earned pursuant to the contractual relationship, and that the principal will not make any tax withholdings from any payments from the principal; and

(E) Responsible for the majority of supplies and other variable expenses that he or she incurs in connection with performing the contracted services unless: The expenses are for travel that is not local; the expenses are reimbursed under an express provision of the contract; or the supplies or expenses reimbursed are commonly reimbursed under industry practice; and

(2) The person:

(A) Has either filed, or is contractually required to file, in regard to the fees earned from the work, an income tax return with the appropriate federal, state, and local agencies for a business or for earnings from self-employment; or

(B) Provides his or her services through a business entity, including, but not limited to, a partnership, limited liability

company or corporation, or through a sole proprietorship registered with a "doing business as" as required under state or local law; and

(3) With the exception of the exercise of control necessary to ensure compliance with statutory, regulatory, licensing, permitting, or other similar obligations required by a governmental or regulatory entity, or to protect persons or property, or to protect a franchise brand, the person actually and directly controls the manner and means by which the work is to be accomplished, even though he or she may not have control over the final result of the work: *Provided,* That the required deployment, implementation, or use of any safety improvement by an independent contractor as required by contract or otherwise shall not be considered when evaluating status as an employee or independent contractor under any state law. For purposes of this section, "safety improvement" shall mean any device, equipment, software, technology, procedure, training, policy, program, or operational practice intended and primarily used to improve or facilitate compliance with state, federal, or local safety laws or regulations or general safety concerns. This provision is satisfied even though the principal may provide orientation, information, guidance, or suggestions about the principal's products, business, services, customers and operating systems, and training otherwise required by law; and

(4) The person satisfies three or more of the following criteria:

(A) Except for an agreement with the principal relating to final completion or final delivery time or schedule, range of work hours, or the time entertainment is to be presented if the work contracted for is entertainment, the person has control over the amount of time personally spent providing services;

(B) Except for services that can only be performed at specific locations, the person has control over where the services are performed;

(C) The person is not required to work exclusively for one principal unless:

(i) A law, regulation, or ordinance prohibits the person from providing services to more than one principal; or

(ii) A license or permit that the person is required to maintain in order to perform the work limits the person to working for only one principal at a time or requires identification of the principal;

(D) The person is free to exercise independent initiative in soliciting others to purchase his or her services;

(E) The person is free to hire employees or to contract with assistants, helpers, or substitutes to perform all or some of the work;

(F) The person cannot be required to perform additional services without a new or modified contract;

(G) The person obtains a license or other permission from the principal to utilize any workspace of the principal in order to perform the work for which the person was engaged;

(H) The principal has been subject to an employment audit by the Internal Revenue Service (IRS) and the IRS has not reclassified the person to be an employee or has not reclassified the category of workers to be employees;

(I) The person is responsible for maintaining and bearing the costs of any required business licenses, insurance, certifications, or permits required to perform the services; or

(5) The person satisfies the definition of a direct seller under Section 3508(b)(2) of the Internal Revenue Code of 1986.

(b) The classification of all workers who do not satisfy the criteria set forth in subsection (a) of this section shall be determined by the test set forth in Internal Revenue Service Rev. Ruling 87-41, for purposes of classifying workers under the laws concerning workers' compensation as defined in chapter 23 of this code, unemployment compensation in chapter 21A of this code, Human Rights Act rights in §5-11-1 *et seq.* of this code, and wage payment and collection in §21-5-1 *et seq.* of this code. In addition, nothing

contained in said subsection requires a principal to classify a worker who meets the criteria contained therein as an independent contractor, the principal always being free to hire the worker as an employee.

§21-5I-5. Limitations as to scope of article.

The test for determining whether a person is an independent contractor or employee set forth in this article applies only for purposes of workers' compensation as defined in chapter 23 of this code, unemployment compensation in chapter 21A of this code, Human Rights Act rights in §5-11-1 *et seq.* of this code, and wage payment and collection in §21-5-1 *et seq.* of this code. This test has no application to other areas of law, such as whether a person is an independent contractor or an agent of principal for determining whether the law of principal and agent applies with respect to such questions as the issue of vicarious liability to a third party in tort. Further, this article does not apply with respect to organizations or persons subject to the provisions of §17-29-11 of this code.

§21-5I-6. Severability.

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

CHAPTER 21A. UNEMPLOYMENT COMPENSATION.

ARTICLE 1A. DEFINITIONS.

§21A-1A-16. Employment.

"Employment", subject to the other provisions of this article, means:

(1) Service, including service in interstate commerce, performed for wages or under any contract of hire, written or oral, express or implied;

(2) Any service performed by an employee, as defined in Section 3306(i) of the federal Unemployment Tax Act, including service in interstate commerce;

(3) Any service performed, including service in interstate commerce, by any officer of a corporation;

(4) An individual's entire service, performed within or both within and without this state if: (A) The service is localized in this state; or (B) the service is not localized in any state but some of the service is performed in this state and: (i) The base of operations, or, if there is no base of operations, then the place from which the service is directed or controlled, is in this state; or (ii) the base of operations or place from which the service is directed or controlled is not in any state in which some part of the service is performed but the individual's residence is in this state;

(5) Service not covered under subdivision (4) of this section and performed entirely without this state with respect to no part of which contributions are required and paid under an unemployment compensation law of any other state or of the federal government, is employment subject to this chapter if the individual performing the services is a resident of this state and the commissioner approves the election of the employing unit for whom the services are performed that the entire service of the individual is employment subject to this chapter;

(6) Service is localized within a state, if: (A) The service is performed entirely within the state; or (B) the service is performed both within and without the state, but the service performed without the state is incidental to the individual's service within this state, as, for example, is temporary or transitory in nature or consists of isolated transactions;

(7) Services performed by an individual for wages are employment subject to this chapter unless and until it is shown to the satisfaction of the commissioner that the individual is classified as an independent contractor pursuant to §21-5I-4 of this code;

(8) All service performed by an officer or member of the crew of an American vessel (as defined in Section 305 of an act of Congress entitled Social Security Act Amendment of 1946, approved August 10, 1946), on or in connection with the vessel, provided that the operating office, from which the operations of the vessel operating on navigable waters within and without the United States is ordinarily and regularly supervised, managed, directed, and controlled, is within this state;

(9)(A) Service performed by an individual in the employ of this state or any of its instrumentalities (or in the employ of this state and one or more other states or their instrumentalities) for a hospital or institution of higher education located in this state: *Provided,* That the service is excluded from "employment" as defined in the federal Unemployment Tax Act solely by reason of Section 3306(c)(7) of that act and is not excluded from "employment" under §21A-1A-17(9) of this code;

(B) Service performed in the employ of this state or any of its instrumentalities or political subdivisions thereof or any of its instrumentalities or any instrumentality of more than one of the foregoing or any instrumentality of any foregoing and one or more other states or political subdivisions: *Provided,* That the service is excluded from "employment" as defined in the federal Unemployment Tax Act by Section 3306(c)(7) of that act and is not excluded from "employment" under §21A-1A-17(13) of this code; and

(C) Service performed in the employ of a nonprofit educational institution which is not an institution of higher education;

(10) Service performed by an individual in the employ of a religious, charitable, educational, or other organization but only if the following conditions are met:

(A) The service is excluded from "employment" as defined in the federal Unemployment Tax Act solely by reason of Section 3306(c)(8) of that act; and

(B) The organization had four or more individuals in employment for some portion of a day in each of 20 different weeks, whether or not the weeks were consecutive, within either the current or preceding calendar year, regardless of whether they were employed at the same moment of time;

(11) Service of an individual who is a citizen of the United States, performed outside the United States after December 31, 1971 (except in Canada and in the case of the Virgin Islands after December 31, 1971, and before January 1 the year following the year in which the Secretary of Labor approves for the first time an unemployment insurance law submitted to him or her by the Virgin Islands for approval), in the employ of an American employer (other than service which is considered "employment" under the provisions of subdivision (4), (5), or (6) of this section or the parallel provisions of another state's law) if:

(A) The employer's principal place of business in the United States is located in this state; or

(B) The employer has no place of business in the United States, but: (i) The employer is an individual who is a resident of this state; or (ii) the employer is a corporation which is organized under the laws of this state; or (iii) the employer is a partnership or a trust and the number of the partners or trustees who are residents of this state is greater than the number who are residents of any one other state; or

(C) None of the criteria of paragraphs (A) and (B) of this subdivision is met but the employer has elected coverage in this state or, the employer having failed to elect coverage in any state, the individual has filed a claim for benefits, based on the service, under the law of this state.

(D) An "American employer", for purposes of this subdivision, means a person who is: (i) An individual who is a resident of the United States; or (ii) a partnership if two thirds or more of the partners are residents of the United States; or (iii) a trust, if all of the trustees are residents of the United States; or (iv) a corporation organized under the laws of the United States or of any state;

(12) Service performed by an individual in agricultural labor as defined in §21A-1A-17(3) of this code when:

(A) The service is performed for a person who: (i) During any calendar quarter in either the current or the preceding calendar year paid remuneration in cash of $20,000 or more to individuals employed in agricultural labor including labor performed by an alien referred to in paragraph (B) of this subdivision; or (ii) for some portion of a day in each of 20 different calendar weeks, whether or not the weeks were consecutive, in either the current or the preceding calendar year, employed in agricultural labor, including labor performed by an alien referred to in paragraph (B) of this subdivision, 10 or more individuals, regardless of whether they were employed at the same moment of time;

(B) The service is not performed in agricultural labor if performed by an individual who is an alien admitted to the United States to perform service in agricultural labor pursuant to Sections 214(c) and 101(a)(15)(H) of the Immigration and Nationality Act;

(C) For the purposes of the definition of employment, any individual who is a member of a crew furnished by a crew leader to perform service in agricultural labor for any other person shall be treated as an employee of the crew leader: (i) If the crew leader holds a valid certificate of registration under the Migrant and Seasonal Agricultural Worker Protection Act; or substantially all the members of the crew operate or maintain tractors, mechanized harvesting or crop-dusting equipment, or any other mechanized equipment, which is provided by the crew leader; and (ii) if the other person is not otherwise an employer of the individual;

(D) For the purposes of this subdivision, in the case of any individual who is furnished by a crew leader to perform service in agricultural labor for any other person and who is not treated as an employee of the crew leader under paragraph (C) of this subdivision: (i) The other person and not the crew leader shall be treated as the employer of the individual; and (ii) the other person shall be treated as having paid cash remuneration to the individual in an amount equal to the amount of cash remuneration paid to the individual by the crew leader (either on his or her own behalf or on

behalf of the other person) for the service in agricultural labor performed for the other person; and

(E) For the purposes of this subdivision, the term "crew leader" means an individual who: (i) Furnishes individuals to perform service in agricultural labor for any other person; (ii) pays (either on his or her own behalf or on behalf of the other person) the individuals so furnished by him or her for the service in agricultural labor performed by them; and (iii) has not entered into a written agreement with the other person under which the individual is designated as an employee of the other person;

(13) (A) The term "employment" includes domestic service in a private home, local college club, or local chapter of a college fraternity or sorority performed for a person who paid cash remuneration of $1,000 or more in any calendar quarter in the current calendar year or the preceding calendar year to individuals employed in domestic service; and

(B) Notwithstanding the foregoing definition of "employment", if the services performed during one half or more of any pay period by an employee for the person employing him or her constitute employment, all the services of the employee for the period are employment; but if the services performed during more than one half of any such pay period by an employee for the person employing him or her do not constitute employment, then none of the services of the employee for the period are employment.

CHAPTER 23. WORKERS' COMPENSATION.

ARTICLE 2. EMPLOYERS AND EMPLOYEES SUBJECT TO CHAPTER; EXTRATERRITORIAL COVERAGE.

§23-2-1a. Employees subject to chapter.

(a) Employees subject to this chapter are all persons in the service of employers, except those classified as an independent contractor pursuant to §21-5I-4 of this code, and employed by them for the purpose of carrying on the industry, business, service, or work in which they are engaged, including, but not limited to:

(1) Persons regularly employed in the state whose duties necessitate employment of a temporary or transitory nature by the same employer without the state;

(2) Every person in the service of the state or of any political subdivision or agency thereof, under any contract of hire, express or implied, and every appointed official or officer thereof while performing his or her official duties;

(3) Checkweighmen employed according to law;

(4) All members of rescue teams assisting in mine accidents with the consent of the owner who, in such case, shall be deemed the employer, or at the direction of the director of the department of mines;

(5) All forest firefighters who, under the supervision of the Director of the Division of Natural Resources or his or her designated representative, assist in the prevention, confinement, and suppression of any forest fire; and

(6) Students while participating in a work-based learning experience with an employer approved as a part of the curriculum by the county board. The county board shall be the employer of record of students while participating in unpaid work-based experiences off school premises with employers other than the county board. Students in unpaid work-based learning experiences shall be considered to be paid the amount of wages so as to provide the minimum workers' compensation weekly benefits required by §23-4-6 of this code.

(b) The right to receive compensation under this chapter shall not be affected by the fact that a minor is employed or is permitted to be employed in violation of the laws of this state relating to the employment of minors, or that he or she obtained his or her employment by misrepresenting his or her age.

CHAPTER 168

(Com. Sub. for S. B. 435 - By Senators Roberts and Karnes)

[Passed March 26, 2021; in effect 90 days from passage (June 24, 2021)]
[Approved by the Governor on April 7, 2021.]

AN ACT to amend and reenact §21-6-3, §21-6-4, §21-6-5, and §21-6-10 of the Code of West Virginia, 1931, as amended, all relating to issuance of a work permit for a child 14 or 15 years of age; authorizing certain additional persons to issue a work permit; requiring review rather than receipt of certain documents required as a condition of the issuance of a work permit; providing exception to the requirement for a certificate showing that the child is attending school; resolving conflict as to whether child must appear before the person issuing the work permit; and requiring the printed forms for work permits be made available to all authorized to issue work permits.

Be it enacted by the Legislature of West Virginia:

ARTICLE 6. CHILD LABOR.

§21-6-3. Issuance of work permit.

(a) A child 14 or 15 years of age may be employed or permitted to work in any gainful occupation, except as provided in §21-6-2 of this code, when the person, firm, or corporation by whom the child is employed or permitted to work, obtains and keeps on file and accessible to officers charged with the enforcement of this article, a work permit issued by the Superintendent of Schools of the county in which the child resides, by some person authorized by him or her in writing, or by a person authorized to issue education credentials to that child upon completion of the secondary education program pursuant to §18-8-12 of this code. Whenever a work permit has been issued, or wherever an age

certificate has been issued under the provisions of §21-6-5 of this code, it shall be conclusive as to the age of the child on whose behalf the work permit or age certificate was issued.

(b) The Superintendent of Schools, person authorized by him or her in writing, or other person authorized to issue a work permit pursuant to subsection (a) of this section shall issue the work permit only upon review of the following documents:

(1) A written statement, signed by the person for whom the child expects to work, that he or she intends legally to employ the child;

(2) A brief written description of the job the child is expected to perform;

(3) A birth certificate, or attested transcript thereof, issued by the registrar of vital statistics or other officer charged with the duty of recording births;

(4) A certificate signed by the principal of the school attended showing that the child is attending school: *Provided*, That the requirement for review of this certificate does not apply in the case of a homeschooled student exempt from compulsory school attendance pursuant to §18-8-1(c) of this code; and

(5) The written consent of the parent or parents, guardian, or custodian of the child.

(c) No person authorized to issue a work permit pursuant to subsection (a) of this section may require a physical examination to be included in the application for a work permit.

(d) No person authorized to issue a work permit pursuant to subsection (a) of this section is required to certify that the minor personally appeared before him or her prior to the issuance, modification, or rejection of a work permit.

§21-6-4. Contents of work permit; forms; filing; records; revocation.

(a) A work permit issued under this article shall set forth the full name and the date and place of birth of the child, with the name

and address of his or her parents or parent, or guardian or custodian. It shall certify that the child has submitted for review proofs of age, school attendance except as provided in §21-6-3 of this code, prospective employment, brief description of job and parental or other consent required in §21-6-3 of this code.

(b) The State Commissioner of Labor shall prepare printed forms for work permits and furnish them to the superintendents of schools in the counties of the state and make them available to all others authorized to issue work permits pursuant to §21-6-3 of this code by posting on the Division of Labor's website or other method as determined pursuant to rule. A copy of each permit issued shall be forwarded to the State Commissioner of Labor within four days after its issuance. A record of all permits granted and of all applications denied shall be kept in the office of the issuing officer or other person issuing the permit.

(c) The State Commissioner of Labor may at any time revoke a permit if in his or her judgment it was improperly issued, and for this purpose he or she is authorized to investigate the true age of any child employed, to hear evidence, and to require the production of relevant books and documents. If a permit is revoked, the issuing officer shall be notified of the action, and the child may not thereafter be employed or permitted to labor until a new permit has been legally obtained or until the child is to be outside the operation of this article.

§21-6-5. Age certificate for employers; inquiry as to age; revocation of certificate; supervision by State Superintendent of Schools.

(a) Upon request of any employer who is desirous of employing a child who represents his or her age to be 16 years or over, the officer or other person charged with the issuance of work permits shall require of the child the proof of age specified in §21-6-3 of this code, and, upon review thereof, if it be found that the child is actually 16 years of age or over, shall issue to the employer a certificate showing the age and date and place of birth of the child. The age certificate, when filed in the office of the employer, must be accepted by an officer charged with the enforcement of this

article as evidence of the age of the child in whose name it was issued.

(b) Any officer charged with the enforcement of this article may inquire into the true age of a child apparently under the age of 16 years who is employed or permitted to work in any gainful occupation and for whom no work permit or age certificate is on file; and if the age of the child is found to be actually under 16 years, the employment of the child shall be considered a violation of the provisions of this article.

(c) The State Commissioner of Labor may at any time revoke any age certificate if in his or her judgment it was improperly issued, and for this purpose he or she is authorized to investigate the true age of any child employed as in the case of work permits.

(d) The issuance of work permits and of age certificates shall be under the supervision of the State Superintendent of Schools.

§21-6-10. Offenses; penalties.

(a) Any person who violates a provision of this article, or any parent, guardian, or custodian of a child, who permits the child to work in violation of the provisions of this article, or any school official or other person who illegally issues a work permit, or any person who furnishes false evidence in reference to the age, birthplace, job description, consent, or educational qualifications of a child under this article, shall be guilty of a misdemeanor and, upon conviction thereof, shall for the first offense be fined not less than $50 nor more than $200.

(b) For the second or subsequent offense, a person convicted of violating a provision of this article shall be fined not less than $200 nor more than $1,000, or confined in the county or regional jail for not more than six months, or both fined and confined.

CHAPTER 169

(Com. Sub. for H. B. 2008 - By Delegates Foster, Horst, Hamrick, Howell, Espinosa, Steele, Holstein, Clark, Keaton and Burkhammer)

[Passed March 18, 2021; in effect ninety days from passage.]
[Approved by the Governor on March 27, 2021.]

AN ACT to repeal §21-3D-4, §21-3D-5, §21-3D-6, §21-3D-7, and §21-3D-9 of the Code of West Virginia, 1931, as amended; to amend said code by adding thereto a new section, designated §21-3C-14; to amend and reenact §21-3D-1, §21-3D-2, §21-3D-3, and §21-3D-8 of said code; to amend and reenact §21-14-2 and §21-14-7 of said code; to amend and reenact §21-16-2, §21-16-3, §21-16-5, and §21-16-8 of said code; to amend said code by adding thereto a new section, designated §21-16-11; to amend and reenact §29-3B-2, §29-3B-3, §29-3B-4, §29-3B-6, and §29-3B-8 of said code; and to amend and reenact §29-3D-2, §29-3D-3, §29-3D-4, §29-3D-6, and §29-3D-7 of said code, all relating to licensure in this state; providing for state code precedence over local ordinances; providing for a national standard and national certification for crane operators; providing for legislative appropriation of the Crane Operators Certification Fund on a certain date; providing altered definitions of journeyman and master plumber; providing for monetary penalties for improperly performing plumbing work under certain conditions; providing altered definition of HVAC Technician; providing that an applicant for a HVAC technician license may only be required to provide documentation of up to 2,000 hours work, training, and experience; eliminating requirement that HVAC residential technicians furnish evidence of 2,000 hours of experience or training before being allowed to take examination; establishing monetary penalties for improperly performing HVAC work under certain conditions; providing veterans who meet certain conditions are

eligible for HVAC technician licensure; providing for altered definitions of journeyman and master electricians; providing exemptions from licensure under certain conditions; providing for extended time frames for electricians to renew a license without retesting; providing for monetary penalties for improperly performing electrical work under certain conditions; providing for definitions of fire protection workers; providing for an altered definition of journeyman sprinkler fitter; providing exemption from licensure when meeting certain conditions; establishing monetary penalties for improperly performing fire protection work; and making other minor technical changes.

Be it enacted by the Legislature of West Virginia:

CHAPTER 21. LABOR.

ARTICLE 3C. ELEVATOR SAFETY.

§21-3C-14. Inapplicability of local ordinances.

Effective January 1, 2022, a political subdivision of this state may not require, as a condition precedent to the performance of erecting, constructing, installing, altering, servicing, repairing, or maintaining elevators or related conveyances covered by this article in the political subdivision, a person who holds a valid license to perform such work issued under the provisions of this article, to have any additional occupational license or other evidence of competence to engage in the business of erecting, constructing, installing, altering, servicing, repairing, or maintaining elevators or related conveyance covered by this article.

ARTICLE 3D. CRANE OPERATOR CERTIFICATION ACT.

§21-3D-1. Definitions.

For purposes of this article:

(a) "Commissioner" means the Commissioner of the Division of Labor, or his or her authorized representative.

(b) "Crane" means a power-operated hoisting machine used in construction, demolition, or excavation work, which has a power-operated winch and load line and a power-operated boom that moves laterally by the rotation of the machine on a carrier, and which has a manufacturer's rated lifting capacity of more than 2,000 pounds. "Crane" does not mean a forklift, digger, derrick truck, bucket truck, or any vehicle, aircraft, or helicopter, or equipment which does not have a power-operated winch and load line.

(c) "Tower crane" means a crane in which a boom, swinging jib, or other structural member is mounted on a vertical mast or tower.

§21-3D-2. Certification required.

A person may not operate a crane or tower crane without certification issued according to OSHA regulation 29 CFR §1926.1427 Subpart CC and any amendments that may be made from time to time. Any certifications that may expire in calendar year 2021 shall not expire until January 1, 2022. The commissioner may enter into a cooperative agreement with OSHA to assist in the enforcement of this section.

§21-3D-3. Inapplicability of local ordinances.

On January 1, 2022, and thereafter, a political subdivision of this state may not require, as a condition precedent to the operation of a crane or tower crane in the political subdivision, a person who is certified according to OSHA regulation 29 CFR §1926.1427 Subpart CC, to have any other license or other evidence of competence as a crane operator.

§21-3D-4. Minimum certification requirements.

[Repealed.]

§21-3D-5. Denial, suspension, revocation, or reinstatement of certification.

[Repealed.]

§21-3D-6. Effect of accident.

[Repealed.]

§21-3D-7. Penalties.

[Repealed.]

§21-3D-8. Crane Operator Certification Fund; fees; disposition of funds.

(a) All fees paid pursuant to this article shall be paid to the Commissioner of Labor and deposited in an appropriated special revenue account known as the Crane Operator Certification Fund in the State Treasury and expended for the implementation and enforcement of this article. Through June 30, 2019, amounts collected which are found from time to time to exceed the funds needed for purposes set forth in this article may be utilized by the commissioner as needed to meet the division's funding obligations: *Provided*, That beginning July 1, 2019, amounts collected may not be utilized by the commissioner as needed to meet the division's funding obligations.

(b) All funds remaining in the Crane Operating Certification Fund on January 1, 2022, shall be appropriated by the Legislature.

§21-3D-9. Reciprocity.

[Repealed.]

ARTICLE 14. SUPERVISION OF PLUMBING WORK.

§21-14-2. Definitions.

As used in this article:

(a) "License" means a valid and current license issued by the Commissioner of Labor in accordance with the provisions of this article.

(b) "Journeyman plumber" means a person qualified by passage of a journeyman plumber written examination with a score

of at least 70 percent and who is competent to instruct and supervise the work of a plumber in training.

(c) "Master plumber" means a person who has passed a master plumber written examination with a score of at least 70 percent and who is competent to design plumbing systems, and to instruct and supervise the plumbing work of journeyman plumbers, and plumbers in training: *Provided,* That the master plumber written examination may not be taken until one year after passage of the journeyman plumber examination.

(d) "Plumber in training" means a person who has not passed the journeyman plumber examination: *Provided*, That the fee for plumbers in training may not be higher than $25.00.

(e) "Plumbing" means the practice, materials, and fixtures utilized within a building in the installation, extension, and alteration of all piping, fixtures, water treatment devices, plumbing appliances, and appurtenances, in connection with sanitary drainage or storm drainage facilities; the plumbing venting systems; medical gas systems; fuel oil and gas piping for residential, commercial, and institutional facilities; backflow preventers; and public or private water supply systems, as defined by the state building code.

(f) "Single family dwelling" means a building which is occupied as, or designed or intended for occupancy as, a single residence for one or more persons.

§21-14-7. Penalties.

(a) On and after January 1, 2009, a person performing or offering to perform plumbing work without a license issued by the Commissioner of Labor, is subject to a cease and desist order.

(b) Any person continuing to engage in plumbing work after the issuance of a cease and desist order is subject to the following penalties:

(1) For the first offense, a fine of not less than $200 nor more than $1,000;

(2) For the second offense, a fine of not less than $500 nor more than $2,000; and

(3) For the third and subsequent offenses, a fine of not less than $1,000 nor more than $5,000.

(c) A separate offense means each day, after official notice is given, that a person performs plumbing work that is unlawful or is not in compliance with the provisions of this article.

(d) The Commissioner of Labor may institute proceedings in the circuit court of the county where the alleged violation of the provisions of this article occurred or is occurring to enjoin any violation of any provision of this article. A circuit court by injunction may compel compliance with the provisions of this article, with the lawful orders of the Commissioner of Labor, and with any final decision of the Commissioner of Labor. The Commissioner of Labor shall be represented in all such proceedings by the Attorney General or his or her assistants.

(e) Any person adversely affected by an action of the Commissioner of Labor may appeal the action pursuant to the provisions of chapter 29A of this code.

ARTICLE 16. REGULATION OF HEATING, VENTILATING, AND COOLING WORK.

§21-16-2. Definitions.

As used in this article and the legislative rules promulgated pursuant to this article:

(a) "Perform work on a heating, ventilating, and cooling system" means to install, maintain, alter, remodel, or repair one or more components of a heating, ventilating, and cooling system.

(b) "Heating, ventilating, and cooling system" means equipment to heat, cool, or ventilate residential or commercial structures, comprised of one or more of the following components:

(1) "Heating system" means a system in which heat is transmitted by radiation, conduction, or convection, or a combination of any of these methods, to the air, surrounding surfaces, or both, and includes a forced air system that uses air being moved by mechanical means to transmit heat, but does not include a fireplace or wood-burning stove not incorporated into or used as a primary heating system;

(2) "Ventilating system" means the natural or mechanical process of supplying air to, or removing air from, any space whether the air is conditioned or not conditioned, at a rate of airflow of more than 250 cubic feet per minute; and

(3) "Cooling system" means a system in which heat is removed from air, surrounding surfaces, or both, and includes an air-conditioning system.

(c) "HVAC Technician" means a person with at least 2,000 hours of HVAC-related work, training, and experience and is licensed to install, test, maintain, and repair both residential and nonresidential heating, ventilating, and cooling systems.

(d) "HVAC Residential Technician" means a person licensed to install, test, maintain, and repair residential heating, ventilating, and cooling systems: *Provided*, That such persons may perform work on nonresidential heating, ventilating, and cooling systems subject to rules promulgated by the commissioner pursuant to §21-16-3 of this code.

(e) "Residential heating, ventilating, and cooling system" means a system of no more than four separate heating, ventilating, and cooling units each with a combined capacity of five tons – 130,000 BTUs for: (1) A single or dual family structure; or (2) a commercial location of no more than 5,000 square feet in size where no fire damper is required. Such term shall not apply to heating, ventilating, and cooling systems that include any packaged rooftop units.

(f) "HVAC technician in training" means a person with less than 2,000 hours of HVAC-related work, training, and experience:

Provided, That the fee for an HVAC technician in training license may not be higher than $25.00.

(g) "HVAC residential technician license" means a valid and current license issued by the Commissioner of Labor in accordance with the provisions of this article to perform work as an HVAC residential technician.

(h) "HVAC technician license" means a valid and current license issued by the Commissioner of Labor in accordance with the provisions of this article to perform work as an HVAC technician.

(i) "Routine maintenance" means work performed on a routine schedule that includes cleaning and/or replacing filters, greasing or lubricating motor bearings, adjusting and/or replacing belts, checking system temperature, checking gas temperature, adjusting gas pressure as required, and checking voltage and amperage draw on heating, ventilating, and cooling systems.

(j) "Single family dwelling" means a building that is occupied as, or designed or intended for occupancy as, a single residence for one or more persons.

§21-16-3. License required; exemptions.

(a) On and after January 1, 2016, a person performing or offering to perform work on a heating, ventilating, and cooling system in this state shall have a license issued by the Commissioner of Labor, in accordance with the provisions of this article and the legislative rules promulgated pursuant hereto: *Provided*, That the commissioner shall issue HVAC residential technician licenses to qualified applicants without examination who present satisfactory evidence no later than December 31, 2019, of having at least 2,000 hours of experience and/or training working on heating, ventilating, and cooling systems: *Provided, however*, That if a license issued under the authority of this subsection subsequently lapses, the applicant is subject to all licensure requirements, including the examination.

(b) Notwithstanding any other provision of this article to the contrary, the commissioner shall credit verified military service, training, or education toward the licensing requirements, including examination requirements pursuant to §21-16-11 of this code, for a license issued under this article. The commissioner shall expedite the issuance of a provisional license or a license by endorsement or reciprocity under this article to an applicant who has verified military experience or holds a current license issued by another jurisdiction that has license requirements that are substantially equivalent to the license requirements of this state.

(c) A person licensed under this article shall carry a copy of the license on any job in which heating, ventilating, and cooling work is being performed.

(d) This article does not apply to:

(1) A person who personally performs work on a heating, ventilating, and cooling system in a single family dwelling owned by that person or by a member of that person's immediate family;

(2) A person who performs work on a heating, ventilating, and cooling system at a manufacturing plant or other industrial establishment as an employee of the person, firm, or corporation operating the plant or establishment;

(3) A person who performs only electrical or plumbing work on a heating, ventilating, and cooling system, which includes, but is not limited to, thermostats, bathroom fans, and tankless water heater ventilation, so long as the work is within the scope of practice which the person is otherwise licensed or authorized to perform; or

(4) A person who performs routine maintenance on any heating, ventilating, and cooling system.

§21-16-5. Rule-making authority.

(a) The Commissioner of Labor shall propose rules for legislative approval, in accordance with the provisions of §21-16-

5 *et seq.* of this code, for the implementation and enforcement of the provisions of this article, which shall provide:

(1) Standards and procedures for issuing and renewing licenses, applications, examinations, and qualifications: *Provided*, That an HVAC technician may not be required to provide documentation of more than 2,000 hours of total work, training, and experience as a requirement for licensure;

(2) Provisions for the granting of HVAC technician licenses, without examination, to applicants who present satisfactory evidence no later than July 1, 2016, of having at least 2,000 hours of experience and/or training working on heating, ventilating, and cooling systems and at least 6,000 hours of experience and/or training in heating, ventilating, and cooling, or related work, to include other sheet metal industry tasks: *Provided*, That if a license issued under the authority of this subsection subsequently lapses, the applicant is subject to all licensure requirements, including the examination;

(3) Reciprocity provisions;

(4) Procedures for investigating complaints and revoking or suspending licenses, including appeal procedures;

(5) Fees for issuance and renewal of licenses and other costs necessary to administer the provisions of this article;

(6) Enforcement procedures; and

(7) Any other rules necessary to effectuate the purposes of this article.

(b) The commissioner may promulgate emergency rules pursuant to the provisions of §29A-3-15 of this code for the purpose of describing:

(1) Provisions for the granting of HVAC residential technician licenses without examination to qualified applicants who present satisfactory evidence no later than December 31, 2019, of having at least 2,000 hours of experience and/or training working on

heating, ventilating, and cooling systems: *Provided*, That if a license issued under the authority of this subsection subsequently lapses, the applicant is subject to all licensure requirements, including the examination;

(2) Provisions for developing an examination required to obtain an HVAC residential technician license commensurate with the scope of practice for HVAC residential technicians as described in §21-16-2(d) of this code: *Provided*, That the rules proposed by the commissioner shall provide that the HVAC residential license examination will be developed in consultation with HVAC industry representatives; and

(3) Provisions for allowing HVAC residential technicians to perform work on nonresidential heating, ventilating, and cooling systems subject to rules promulgated by the commissioner.

§21-16-8. Penalties.

(a) On and after January 1, 2016, a person performing or offering to perform, or an employer authorizing a person not exempt by the provisions of section three of this article, to perform, heating, ventilating, and cooling work without a license issued by the Commissioner of Labor, is subject to a cease and desist order.

(b) A person continuing to perform, or an employer continuing to authorize a person not exempt by the provisions of §21-16-3 of this code, to perform, heating, ventilating, and cooling work after the issuance of a cease and desist order is subject to the following penalties:

(1) For the first offense, a fine of not less than $200 nor more than $1,000;

(2) For the second offense, a fine of not less than $500 nor more than $2,000;

(3) For the third and subsequent offenses, a fine of not less than $1,000 nor more than $5,000.

(c) Each day after official notice is given, a person continues to perform, or an employer continues to authorize a person to perform, and which is not exempt by the provisions of section three of this article, heating, ventilating, and cooling work, is a separate offense and punishable accordingly.

(d)(1) The Commissioner of Labor may institute proceedings in the circuit court of Kanawha County or of the county where the alleged violation of the provisions of this article occurred or are occurring to enjoin any violation of any provision of this article.

(2) A circuit court may by injunction compel compliance with this article, with the lawful orders of the Commissioner of Labor, and with any final decision of the Commissioner of Labor.

(3) The Commissioner of Labor shall be represented in all such proceedings by the Attorney General or his or her assistants.

(e) Any person adversely affected by an action of the Commissioner of Labor may appeal the action pursuant to chapter 29A of this code.

§21-16-11. Veteran qualifications for license as HVAC Technician.

(a) Any person who has served as a member of any branch of the United States Armed Forces, the National Guard, or armed forces reserve, may apply for licensure, if:

(1) He or she has successfully completed a course of instruction required to qualify him or her for rating as an HVAC technician's mate or other equivalent rating in his or her particular branch of the armed forces;

(2) He or she meets the requirements of this article;

(3) He or she has been honorably discharged from service and submits, to the Commissioner of Labor, a photostatic copy of the honorable discharge;

(4) He or she submits a completed application to the Commissioner of Labor; and

(5) He or she pays the prescribed licensing fees.

(b) A veteran who has allowed more than 30 years to pass from the date of his or her successful completion of a course of instruction and the date of application for licensure in this state may be required to attend additional training courses.

CHAPTER 29. MISCELLANEOUS BOARDS AND OFFICERS.

ARTICLE 3B. SUPERVISION OF ELECTRICIANS.

§29-3B-2. Necessity of license; definitions.

After the effective date of this article, no electrical work may be performed, offered, or engaged in for compensation or hire within the state of West Virginia by any person, firm, or corporation unless such person, firm, or corporation possesses a license and a certificate issued by the State Fire Marshal in accordance with this article: *Provided*, That any person who is assisting a journeyman or master electrician does not require a license to perform such supervised work, and a copy of the license is posted on any job in which electrical work is being performed for hire.

As used in this article:

(a) "Electrical contractor" means a person, firm, or corporation who engages in the business of electrical work and employs master electricians, journeyman electricians, or other related workers for the construction, alteration, or repair of any electrical wiring, equipment, or systems as defined in the scope of the national electric code.

(b) "Electrical work" means the installation of wires, conduits, apparatus, fixtures, other appliances, equipment, or systems for transmitting, carrying, controlling, or using electricity as defined in the scope of the national electric code.

(c) "Journeyman electrician" means a person qualified by at least one year of electrical work experience to do any work installing wires, conduits, apparatus, equipment, fixtures, and other appliances, provided that this classification is not authorized to design electrical systems.

(d) "License" means a valid and current certificate of competency issued by the state Fire Marshal.

(e) "Master electrician" means a person with at least two years of electrical work experience, including experience in all phases of electrical wiring and installation, who is competent to design electrical systems, and to instruct and supervise the electrical work of journeyman electricians, and other related workers.

(f) "Specialty electrician" means a person qualified to perform electrical work in a limited or specialized area.

§29-3B-3. Exemptions; nonapplicability of license requirements; legislative rules for limited reciprocity.

(a) This article does not apply to, and no license may be required for:

(1) A person who performs electrical work with respect to any property owned or leased by that person or that person's immediate family;

(2) A person who performs electrical work at any manufacturing plant or other industrial establishment as an employee of the firm or corporation operating the plant or establishment;

(3) A person who performs electrical work while employed by an employer who engages in the business of selling appliances at retail, so long as such electrical work is performed incident to the installation or repair of appliances sold by the employer;

(4) A person who, while employed by a public utility or its affiliate, performs electrical work in connection with the furnishing of public utility service;

(5) Any government employee performing electrical work on government property; or

(6) Any person who performs low voltage electrical work with only low voltage wiring will not be required to have an electrician's license other than a specialty license. For purposes of this section, low voltage electrical work is 80 volts or less, and directly related wiring. Wiring is directly related if it:

(A) Originated at the load-side terminals of a disconnecting means or junction box that has been installed, complete with line-side connections by others for the specific purpose of supply to the low voltage wiring system involved;

(B) Is permanently and legibly marked to identify the low voltage wiring system supplied; and

(C) Is not installed in a location considered hazardous under the National Electrical Code.

(b)(1) Notwithstanding any other provision of this article to the contrary, a journeyman or master electrician license may be issued for a person who is a former resident of this state, who formerly held an electrician's license issued by this state, who has obtained an equivalent electrician license from another state, and who returns to this state as a permanent resident, without requiring the person to meet the application or examination requirements that would otherwise be imposed on the person by the requirements of this article when the issuance of the license is permitted by legislative rules promulgated pursuant to the provisions of this subsection.

(2) The State Fire Marshal shall propose rules for legislative approval in accordance with the provisions of §29A-3-1 *et seq.* of this code to provide for the licensing of electricians with equivalent qualifications described in subdivision (1) of this subsection. Notwithstanding any other provision of this code to the contrary, the legislative rules described in this subsection may not be filed as emergency rules.

§29-3B-4. Licenses; classes of licenses; issuance of licenses by commissioner; qualifications required for license; nontransferability and nonassignability of licenses; expiration of license; renewal; reciprocity.

(a) The following classes of license may be issued by the State Fire Marshal: master electrician license, journeyman electrician license, and temporary electrician license. Additional classes of specialty electrician license may be issued by the State Fire Marshal.

(b) The State Fire Marshal shall issue the appropriate class of license upon a finding that the applicant possesses the qualifications for the class of license to be issued. When considering whether an applicant possess the qualifications for the class of license, the State Fire Marshal shall consider whether an applicant's prior criminal convictions bear a rational nexus on the license being sought.

(1) The State Fire Marshal may not disqualify an applicant from initial licensure because of a prior criminal conviction that remains unreversed unless that conviction is for a crime that bears a rational nexus to the activity requiring licensure. In determining whether a criminal conviction bears a rational nexus to a profession or occupation, the State Fire Marshal shall consider at a minimum:

(A) The nature and seriousness of the crime for which the individual was convicted;

(B) The passage of time since the commission of the crime;

(C) The relationship of the crime to the ability, capacity, and fitness required to perform the duties and discharge the responsibilities of the profession or occupation; and

(D) Any evidence of rehabilitation or treatment undertaken by the individual.

(2) Notwithstanding any other provision of this code to the contrary, if an applicant is disqualified from licensure because of a

prior criminal conviction, the State Fire Marshal shall permit the applicant to apply for initial licensure if:

(A) A period of five years has elapsed from the date of conviction or the date of release from incarceration, whichever is later;

(B) The individual has not been convicted of any other crime during the period of time following the disqualifying offense; and

(C) The conviction was not for an offense of a violent or sexual nature: *Provided*, That a conviction for an offense of a violent or sexual nature may subject an individual to a longer period of disqualification from licensure, to be determined by the State Fire Marshal.

(3) An individual with a criminal record who has not previously applied for licensure may petition the State Fire Marshal at any time for a determination of whether the individual's criminal record will disqualify the individual from obtaining a license. This petition shall include sufficient details about the individual's criminal record to enable the State Fire Marshal to identify the jurisdiction where the conviction occurred, the date of the conviction, and the specific nature of the conviction.

(c) The State Fire Marshal shall propose rules for legislative approval regarding qualifications for testing, issuance of licenses, and renewal in accordance with the provisions of §29A-3-1 *et seq.,* of this code.

(d) To the extent that other jurisdictions provide for the licensing of electricians, the State Fire Marshal shall grant the same or equivalent classification of license without written examination upon satisfactory proof furnished to the State Fire Marshal that the qualifications of the applicant demonstrate that the person can perform work safely and competently and is in good standing with all other jurisdictions where he or she is licensed, and upon payment of the required fee.

(e) In addition to any other information required, the applicant's social security number shall be recorded on any

application for a license submitted pursuant to the provisions of this section.

§29-3B-6. Relicensing without retesting after nonrenewal under certain circumstances.

An electrician previously licensed by the State Fire Marshal who did not renew his or her electrician's license may renew the license without retesting within five years of the date of the last renewal: *Provided,* That the electrician's license had not been revoked and that the applicant pays double the current fee.

§29-3B-8. Effect of noncompliance with article; failure to obtain license.

Any person, firm, corporation, or employee thereof, or any representative, member, or officer of such firm or corporation, individually, entering upon or engaging in the business of performing any electrical work as defined in this article, without obtaining the required license or otherwise complying with this article, for the first offense shall be fined not less than $100, nor more than $500. For a second offense, the penalty and punishment is a fine of not less than $500 nor more than $1,000. For the third and each subsequent offense, the penalty and punishment is a fine of not less than $1,000 nor more than $5,000.

Each day during which such electrical work is performed without the required license or while in noncompliance with any of the provisions of this article, after official notice that such work is unlawful, is a separate offense.

Any electrical work performed by a person, firm, or corporation which is determined by the State Fire Marshal to constitute a safety or health hazard to members of the public or any electrical work of an extensive nature being performed by any person without the required license or otherwise in noncompliance with the requirements of this article or contrary to an order or rule promulgated lawfully by the State Fire Marshal, is subject to being issued a citation or a civil action in the name of the state in the circuit court of the county where such work is being performed for

an injunction against such person, firm, or corporation, enjoining such work or violation. A circuit court by mandatory or prohibitory injunction may compel compliance with the provisions of this article, with the lawful orders of the State Fire Marshal and with any final decision of the State Fire Marshal or State Fire Commission. The State Fire Marshal shall be represented in all such proceedings by the Attorney General or his or her assistants.

ARTICLE 3D. SUPERVISION OF FIRE PROTECTION WORK.

§29-3D-2. Definitions.

As used in this article and the legislative rules promulgated pursuant to this article:

"Combination fire/smoke damper" means a device that meets both fire damper and smoke damper requirements.

"Damper" means a fire damper, smoke damper, or combination fire/smoke damper.

"Damper work" means to install, test, maintain, or repair a damper.

"Engineered suppression systems installer" means a person certified by a manufacturer to install, alter, extend, maintain, lay out, or repair an agent suppression system.

"Engineered Suppression Systems Technician" means a person certified by a manufacturer to maintain or repair an agent suppression system.

"Fire damper" means a device installed in an air distribution system, designed to close automatically upon detection of heat, to interrupt migratory airflow, and to restrict the passage of flame. Fire dampers are classified for use in either static systems or for dynamic systems, where the dampers are rated for closure under airflow.

"Fire protection layout technician" is an individual who has achieved National Institute for Certification in Engineering Technologies (NICET) Level III, or has achieved from the National Fire Protection Association a certification in Certified Water Based Systems Professional (CWBSP), or has passed an exam approved by the state Fire Marshal from the National Inspection Testing Certification (NITC) organization, or higher certification as recognized by the state Fire Marshal, and who has the knowledge, experience, and skills necessary to lay out fire protection systems based on engineering design documents.

"Fire protection system" means any fire protection suppression device or system designed, installed, and maintained in accordance with the applicable National Fire Protection Association (NFPA) codes and standards, but does not include public or private mobile fire vehicles.

"Fire protection work" means the installation, alteration, extension, maintenance, or testing of all piping, materials, and equipment inside a building, including the use of shop drawings prepared by a fire protection layout technician, in connection with the discharge of water, other special fluids, chemicals, or gases, and backflow preventers for fire protection for the express purpose of extinguishing or controlling fire.

"Journeyman sprinkler fitter" means a person qualified by at least 2,000 hours of work experience installing, adjusting, repairing, and dismantling fire protection systems and who is competent to instruct and supervise fire protection work: *Provided,* That current license renewal exemptions to examinations apply.

"License" means a valid and current license issued by the State Fire Marshal in accordance with the provisions of this article.

"Portable fire extinguisher technician" means a person certified in accordance with NFPA 10 to install, maintain, repair, and certify portable fire extinguishers as defined by NFPA 10.

"Preengineered suppression systems installer" means a person certified by a manufacturer to install, alter, extend, maintain, lay out, or repair an agent suppression system.

"Preengineered suppression systems technician" means a person certified to maintain or repair an agent suppression system.

"Single family dwelling" means a building which is occupied as, or designed or intended for occupancy as, a single residence for one or more persons.

"Smoke damper" means a device within an operating (dynamic) air distribution system to control the movement of smoke.

§29-3D-3. License required; exemptions.

(a) On and after January 1, 2009, a person performing or offering to perform fire protection work in this state shall have a license issued by the State Fire Marshal, in accordance with the provisions of this article.

(b) A person licensed under this article must carry a copy of the license on any job in which fire protection work is being performed.

(c) This article does not apply to:

(1) A person who personally performs fire protection work or damper work on a single family dwelling owned or leased by that person or that person's immediate family;

(2) A person who performs fire protection work or damper work at any manufacturing plant or other industrial establishment as an employee of the person, firm, or corporation operating the plant or establishment;

(3) A person who, while employed by a public utility or its affiliate, performs fire protection work in connection with the furnishing of public utility service.

(4) A person who performs fire protection work while engaging in the business of installing, altering, or repairing water distribution or drainage lines outside the foundation walls of a building, public or private sewage treatment or water treatment systems, including all associated structures or buildings, sewers, or underground utility services;

(5) A person who performs fire protection work while engaged in the installation, extension, dismantling, adjustment, repair, or alteration of a heating ventilation and air conditioning (HVAC) system, air-veyor system, air exhaust system, or air handling system; or

(6) A person who performs fire protection work at a coal mine that is being actively mined or where coal is being processed.

§29-3D-4. Rule-making authority.

The State Fire Marshal shall propose rules for legislative approval, in accordance with the provisions of §29A-3-1 *et seq.* of this code, for the implementation and enforcement of the provisions of this article, which shall provide:

(1) Standards and procedures for issuing and renewing licenses, including classifications of licenses as defined in this article, applications, examinations, and qualifications: *Provided,* That the rules shall require a person to be licensed as a HVAC technician pursuant to §21-16-1 *et seq.* of this code and the rules promulgated pursuant thereto, before performing damper work pursuant to this article;

(2) Provisions for the granting of licenses without examination, to applicants who present satisfactory evidence of having the expertise required to perform fire protection work at the level of the classifications defined in this article and who apply for licensure on or before July 1, 2009: *Provided,* That if a license issued under the authority of this subsection subsequently lapses, the applicant is subject to all licensure requirements, including the examination;

(3) Provisions for the granting of licenses without examination, to applicants who present satisfactory evidence of having the expertise required to perform damper work at the level of the classifications defined in this article and who apply for licensure on or before July 1, 2016: *Provided*, That if a license issued under the authority of this subsection subsequently lapses, the applicant is subject to all licensure requirements, including the examination;

(4) Reciprocity provisions;

(5) Procedures for investigating complaints and revoking or suspending licenses, including appeal procedures;

(6) Fees for testing, issuance and renewal of licenses, and other costs necessary to administer the provisions of this article;

(7) Enforcement procedures; and

(8) Any other rules necessary to effectuate the purposes of this article.

§29-3D-6. Denial, suspension and revocation of license.

(a) The State Fire Marshal may deny a license to any applicant who fails to comply with the rules established by the State Fire Marshal, or who lacks the necessary qualifications. When considering whether an applicant possesses the qualifications for a license, the State Fire Marshal shall consider whether an applicant's prior criminal convictions bear a rational nexus on the license being sought.

(1) The State Fire Marshal may not disqualify an applicant from initial licensure because of a prior criminal conviction that remains unreversed unless that conviction is for a crime that bears a rational nexus to the activity requiring licensure. In determining whether a criminal conviction bears a rational nexus to a profession or occupation, the State Fire Marshal shall consider at a minimum:

(A) The nature and seriousness of the crime for which the individual was convicted;

(B) The passage of time since the commission of the crime;

(C) The relationship of the crime to the ability, capacity, and fitness required to perform the duties and discharge the responsibilities of the profession or occupation; and

(D) Any evidence of rehabilitation or treatment undertaken by the individual.

(2) Notwithstanding any other provision of this code to the contrary, if an applicant is disqualified from licensure because of a prior criminal conviction, the State Fire Marshal shall permit the applicant to apply for initial licensure if:

(A) A period of five years has elapsed from the date of conviction or the date of release from incarceration, whichever is later;

(B) The individual has not been convicted of any other crime during the period of time following the disqualifying offense; and

(C) The conviction was not for an offense of a violent or sexual nature: *Provided*, That a conviction for an offense of a violent or sexual nature may subject an individual to a longer period of disqualification from licensure, to be determined by the State Fire Marshal.

(3) An individual with a criminal record who has not previously applied for licensure may petition the State Fire Marshal at any time for a determination of whether the individual's criminal record will disqualify the individual from obtaining a license. This petition shall include sufficient details about the individual's criminal record to enable the State Fire Marshal to identify the jurisdiction where the conviction occurred, the date of the conviction, and the specific nature of the conviction.

(b) The State Fire Marshal may, upon complaint or upon his or her own inquiry, and after notice to the licensee, suspend or revoke a licensee's license if:

(1) The license was granted upon an application or documents supporting the application which materially misstated the terms of the applicant's qualifications or experience;

(2) The licensee subscribed or vouched for a material misstatement in his or her application for licensure; or

(3) The licensee incompetently or unsafely performs fire protection work or damper work.

§29-3D-7. Penalties.

(a) On and after January 1, 2009, a person performing or offering to perform fire protection work without a license issued by the State Fire Marshal, is subject to a citation.

(b) Any person continuing to engage in fire protection work after the issuance of a citation is subject to the following penalties:

(1) For the first offense, a fine of not less than $200 nor more than $1,000;

(2) For the second offense, a fine of not less than $500 nor more than $2,000; and

(3) For the third and subsequent offenses, a fine of not less than $1,000 nor more than $5,000.

(c) Each day after a citation is given that a person continues to perform, or an employer continues to authorize a person to perform, fire protection work, which is not exempt by the provisions of §29-3D-3 of this code, is a separate offense and punishable accordingly.

(d)(1) The State Fire Marshal may institute proceedings in the circuit court of Kanawha County or the county where the alleged violation of the provisions of this article occurred or are now occurring to enjoin any violation of any provision of this article.

(2) A circuit court by injunction may compel compliance with the provisions of this article, with the lawful orders of the State Fire Marshal and with any final decision of the State Fire Marshal.

(3) The State Fire Marshal shall be represented in all such proceedings by the Attorney General or his or her assistants.

(e) Any person adversely affected by an action of the State Fire Marshal may appeal the action pursuant to the provisions of chapter 29A of this code.

CHAPTER 170

(Com. Sub. for H. B. 2009 - By Delegates Foster, Burkhammer, Kimes, Higginbotham, Forsht, Keaton, Espinosa and Pritt)

[Passed March 19, 2021; in effect ninety days from passage.]
[Approved by the Governor on March 30, 2021.]

AN ACT to amend the Code of West Virginia, 1931, as amended by adding thereto a new section, designated §7-5-25; to amend and reenact §8-5-12 of said code; to amend and reenact §12-3-13b of said code; to amend and reenact §18A-4-9 of said code; to amend and reenact §21-5-1 and §21-5-3 of said code; and to amend and reenact §46A-2-116 of said code, all relating generally to deductions from wages; defining terms under the Wage Payment and Collection Act; including union, labor organization, or club dues or fees as deductions; expanding types of insurance considered as deductions; prohibiting deduction of union, labor organization, or club dues or fees from wages of public employees; providing an exception for certain municipal employees; incorporating definition of "assignment of earnings" from Consumer Credit and Protection Act into Wage Payment and Collection Act; replacing notarization requirement for assignments or orders for future wages with requirement that such assignments or orders be in writing; protecting right of private employers and their employees to agree between themselves as to payroll deductions; protecting right of employees to participate in unions, labor organizations, and clubs; excluding union, labor organization, or club dues or fees from definition of "assignment of earnings" in the Consumer Credit Protection Act; expanding types of insurance excluded from assignments; prohibiting deductions and assignments of earnings for union, labor organization, or club dues or fees from the compensation of county officers and employees; prohibiting deductions and

assignments of earnings for union, labor organization, or club dues or fees from the compensation of certain municipal officers or employees; eliminating voluntary deductions from net wages of state officers and employees for payment of membership dues or fees to employee organizations; prohibiting deductions and assignments of earnings for union, labor organization, or club dues or fees from the compensation of state officers and employees; and prohibiting deductions and assignments of earnings for union, labor organization, or club dues or fees from the compensation of teachers and other school employees.

Be it enacted by the Legislature of West Virginia:

CHAPTER 7. COUNTY COMMISSIONS AND OFFICERS.

ARTICLE 5. FISCAL AFFAIRS.

§7-5-25. Prohibition against certain deductions and assignments of earnings from compensation of county officers or employees.

No deductions or assignments of earnings shall be allowed for union, labor organization, or club dues or fees from the compensation of county officers and employees.

CHAPTER 8. MUNICIPAL CORPORATIONS.

ARTICLE 5. ELECTION, APPOINTMENT, QUALIFICATION AND COMPENSATION OF OFFICERS; GENERAL PROVISIONS RELATING TO OFFICERS AND EMPLOYEES; ELECTIONS AND PETITIONS GENERALLY; CONFLICT OF INTEREST.

§8-5-12. Compensation of officers and employees.

(a) Notwithstanding any charter provision to the contrary, the governing body of every municipality shall by ordinance fix or cause to be fixed the salary or compensation of every municipal officer and employee: *Provided,* That the salary of any officer shall not be increased or diminished during his or her term.

(b) The governing body of every municipality shall have plenary power and authority to provide by ordinance for the allowance of time off of officers and employees with pay for vacations and illness and for personnel management incentives, as additional consideration for their services and employment.

(c) No deductions or assignments of earnings shall be allowed for union, labor organization, or club dues or fees from the compensation of officers or employees covered by this section: *Provided,* That this subsection shall not apply to municipal employees covered by a collective bargaining agreement with a municipality which is in effect on July 1, 2021.

CHAPTER 12. PUBLIC MONEYS AND SECURITIES.

ARTICLE 3. APPROPRIATIONS, EXPENDITURES, AND DEDUCTIONS.

§12-3-13b. Voluntary deductions by State Auditor from salaries of employees to pay supplemental health and life insurance premiums; voluntary other deductions.

(a) Any officer or employee of the State of West Virginia may authorize that a voluntary deduction from his or her net wages be made for any supplemental health and life insurance premium, subject to prior approval by the Auditor. Such deductions shall be authorized on a form provided by the Auditor of the State of West Virginia and shall state:

(1) The identity of the employee;

(2) The amount and frequency of such deductions; and

(3) The identity and address of the insurance company to which such dues shall be paid.

(b) Upon execution of such authorization and its receipt by the office of the Auditor, such deductions shall be made in the manner specified on the form and remitted to the designated insurance company on the tenth day of each month: *Provided,* That the Auditor may approve and authorize voluntary other deductions, as

defined under §21-5-1 of this code, to be made in accordance with rules proposed by the Auditor pursuant to §29A-3-1 *et seq.* of this code: *Provided, however,* That deductions shall be made at least twice monthly. Deduction authorizations may be revoked at any time 30 days prior to the date on which the deduction is regularly made and on a form to be provided by the office of the State Auditor.

(c) No deductions or assignments of earnings shall be allowed for union, labor organization, or club dues or fees from the compensation of officers and employees covered by this section.

CHAPTER 18A. SCHOOL PERSONNEL.

ARTICLE 4. SALARIES, WAGES AND OTHER BENEFITS.

§18A-4-9. Payment of teachers and other employees; withholdings.

Teachers and all other employees whose salaries or wages are payable out of the school current fund shall be paid for their services by orders duly signed by the president and secretary of the board in accordance with the following provisions:

(1) Notwithstanding any other provisions of this chapter and §18-1-1 *et seq.* of this code, the number of pays to be made during the school year to the various classes of employees shall be determined by the board: *Provided,* That the sum of such pays for any employee does not exceed the equivalent of an annual salary based upon 12 calendar months.

(2) In the event a teacher or other employee is not paid the full salary or wage earned in the fiscal year in which the work is performed, the unpaid amount may be paid during July and August of the following fiscal year.

(3) Adjustments for time loss due to absence may be made in the next paycheck following such time loss.

(4) The county board may withhold the pay of any teacher or employee until he or she has made the reports required by the board or the state superintendent.

(5) Accompanying the pay of each employee shall be an accounting of gross earnings, all withholdings, and the dollar value of all benefits provided by the state on behalf of the employee.

(6) No deductions or assignments of earnings shall be allowed for union, labor organization, or club dues or fees from the compensation of teachers and other employees covered by this section.

CHAPTER 21. LABOR.

ARTICLE 5. WAGE PAYMENT AND COLLECTION.

*§21-5-1. Definitions.

As used in this article:

(a) The term "firm" includes any partnership, association, joint-stock company, trust, division of a corporation, the administrator or executor of the estate of a deceased individual, or the receiver, trustee, or successor of any of the same, or officer thereof, employing any person.

(b) The term "employee" or "employees" includes any person suffered or permitted to work by a person, firm, or corporation, except those classified as an independent contractor pursuant to §21-5I-4 of this code.

(c) The term "wages" means compensation for labor or services rendered by an employee, whether the amount is determined on a time, task, piece, commission, or other basis of calculation. As used in §21-5-4, §21-5-5, §21-5-8a, §21-5-10, and §21-5-12 of this code, the term "wages" shall also include then accrued fringe benefits capable of calculation and payable directly to an employee: *Provided,* That nothing herein contained shall require fringe benefits to be calculated contrary to any agreement between

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***NOTE:** This section was also amended by S. B. 272 (Chapter 167), which passed prior to this act.

an employer and his or her employees which does not contradict the provisions of this article.

(d) The term "commissioner" means Commissioner of Labor or his or her designated representative.

(e) The term "railroad company" includes any firm or corporation engaged primarily in the business of transportation by rail.

(f) The term "special agreement" means an arrangement filed with and approved by the commissioner whereby a person, firm, or corporation is permitted upon a compelling showing of good cause to establish regular paydays less frequently than once in every two weeks: *Provided,* That in no event shall the employee be paid in full less frequently than once each calendar month on a regularly established schedule.

(g) The term "deductions" includes amounts required by law to be withheld, and amounts authorized for union, labor organization, or club dues or fees, pension plans, payroll savings plans, credit unions, charities, and any form of insurance offered by an employer: *Provided*, That for a public employee, other than a municipal employee covered by a collective bargaining agreement with a municipality which is in effect on July 1, 2021, the term "deductions" shall not include any amount for union, labor organization, or club dues or fees.

(h) The term "officer" shall include officers or agents in the management of a corporation or firm who knowingly permit the corporation or firm to violate the provisions of this article.

(i) The term "wages due" shall include at least all wages earned up to and including the twelfth day immediately preceding the regular payday.

(j) The term "construction" means the furnishing of work in the fulfillment of a contract for the construction, alteration, decoration, painting, or improvement of a new or existing building, structure, roadway, or pipeline, or any part thereof, or for the alteration, improvement, or development of real property: *Provided,* That

construction performed for the owner or lessee of a single family dwelling or a family farming enterprise is excluded.

(k) The term "minerals" means clay, coal, flagstone, gravel, limestone, manganese, sand, sandstone, shale, iron ore, and any other metallurgical ore.

(l) The term "fringe benefits" means any benefit provided an employee or group of employees by an employer, or which is required by law, and includes regular vacation, graduated vacation, floating vacation, holidays, sick leave, personal leave, production incentive bonuses, sickness and accident benefits, and benefits relating to medical and pension coverage.

(m) The term "employer" means any person, firm, or corporation employing any employee.

(n) The term "doing business in this state" means having employees actively engaged in the intended principal activity of the person, firm, or corporation in West Virginia.

(o) The term "assignment", as used in §21-5-3 of this code, shall have the same meaning as the term "assignment of earnings" set forth in §46A-2-116(2)(b) of this code.

§21-5-3. Payment of wages by employers other than railroads; assignments of wages.

(a) Every person, firm, or corporation doing business in this state, except railroad companies as provided in §21-5-1 of this code, shall settle with its employees at least twice every month and with no more than 19 days between settlements, unless otherwise provided by special agreement, and pay them the wages due, less authorized deductions and authorized wage assignments, for their work or services.

(b) Payment required in subsection (a) of this section shall be made:

(1) In lawful money of the United States;

(2) By cash order as described and required in §21-5-4 of this code;

(3) By deposit or electronic transfer of immediately available funds into an employee's payroll card account in a federally insured depository institution. The term "payroll card account" means an account in a federally insured depository institution that is directly or indirectly established through an employer and to which electronic fund transfers of the employee's wages, salary, commissions, or other compensation are made on a recurring basis, whether the account is operated or managed by the employer, a third person payroll processor, a depository institution, or another person. "Payroll card" means a card, code, or combination thereof or other means of access to an employee's payroll card account, by which the employee may initiate electronic fund transfers or use a payroll card to make purchases or payments. Payment of employee compensation by means of a payroll card must be agreed upon in writing by both the person, firm, or corporation paying the compensation and the person being compensated; or

(4) By any method of depositing immediately available funds in an employee's demand or time account in a bank, credit union, or savings and loan institution that may be agreed upon in writing between the employee and such person, firm, or corporation, which agreement shall specifically identify the employee, the financial institution, the type of account, and the account number: *Provided*, That nothing herein contained shall be construed in a manner to require any person, firm, or corporation to pay employees by depositing funds in a financial institution.

(c) If, at any time of payment, any employee is absent from his or her regular place of labor and does not receive his or her wages through a duly authorized representative, he or she is entitled to payment at any time thereafter upon demand upon the proper paymaster at the place where his or her wages are usually paid and where the next pay is due.

(d) Nothing herein contained may affect the right of an employee to assign part of his or her claim against his or her employer except as in subsection (e) of this section.

(e) No assignment of or order for future wages may be valid for a period exceeding one year from the date of the assignment or order. An assignment or order shall be in writing and shall specify thereon the total amount due and collectible by virtue of the same and, unless otherwise provided for in subsection (f) of this section, three-fourths of the periodical earnings or wages of the assignor are all times exempt from such assignment or order and no assignment or order is valid which does not so state upon its face: *Provided*, That no such order or assignment is valid unless the written acceptance of the employer of the assignor to the making thereof is endorsed thereon: *Provided, however*, That nothing herein contained may be construed as affecting the right of a private employer and its employees to agree between themselves as to deductions to be made from the payroll of employees.

(f) If an employee of the state has been overpaid wages, including incremental salary increases pursuant to §5-5-2 of this code, an employee may voluntarily authorize a written assignment or order for future wages to the state to repay the overpayment in an amount not to exceed three-fourths of his or her periodical earnings or wages.

(g) Nothing in this chapter shall be construed to interfere with the right of an employee to join, become a member of, contribute to, donate to, or pay dues or fees to a union, labor organization, or club.

CHAPTER 46A. WEST VIRGINIA CONSUMER CREDIT AND PROTECTION ACT.

ARTICLE 2. CONSUMER CREDIT PROTECTION.

§46A-2-116. Assignment of earnings.

(1) The maximum part of the aggregate disposable earnings of an individual for any workweek which may be subjected to any one or more assignments of earnings for the payment of a debt or debts arising from one or more consumer credit sales, consumer leases, or consumer loans, or one or more sales as defined in §46A-6-102

of this code, may not exceed 25 percent of his or her disposable earnings for that week.

(2) As used in this section:

(a) "Disposable earnings" means that part of the earnings of an individual remaining after the deduction from those earnings of amounts required by law to be withheld; and

(b) "Assignment of earnings" includes all forms of assignments, deductions, transfers, or sales of earnings to another, either as payment or as security, and whether stated to be revocable or nonrevocable, and includes any deductions authorized under the provisions of §21-5-3 of this code, except deductions for union, labor organization, or club dues or fees, pension plans, payroll savings plans, charities, stock purchase plans, and any form of insurance offered by an employer.

(3) Any assignment of earnings and any deduction under §21-5-3 of this code shall be revocable by the employee at will at any time, notwithstanding any provision to the contrary.

(4) The priority of multiple assignments of earnings shall be according to the date and time of each such assignment.

CHAPTER 171

(Com. Sub. for S. B. 126 - By Senator Sypolt)

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

AN ACT to amend and reenact §64-2-1 *et seq.* of the Code of West Virginia, 1931, as amended, all relating generally, to authorizing certain agencies of the Department of Administration to promulgate legislative rules; authorizing the rules as filed, as modified, and as amended by the Legislative Rule-Making Review Committee; authorizing the Department of Administration to promulgate a legislative rule relating to purchasing; authorizing the State Board of Risk and Insurance Management to promulgate a legislative rule relating to mine subsidence insurance; authorizing the State Board of Risk and Insurance Management to promulgate a legislative rule relating to the public entities insurance program; and authorizing the State Board of Risk and Insurance Management to promulgate a legislative rule relating to the procedure for providing written notification of claims of potential liability to the state or its employees.

Be it enacted by the Legislature of West Virginia:

ARTICLE 2. AUTHORIZATION FOR DEPARTMENT OF ADMINISTRATION TO PROMULGATE LEGISLATIVE RULES.

§64-2-1. Department of Administration.

The legislative rule filed in the State Register on August 10, 2020, authorized under the authority of §5A-3-4 of this code, relating to the Department of Administration (purchasing, 148 CSR 01), is authorized with the following amendment:

On page 24, by striking out all of section 15.

§64-2-2. State Board of Risk and Insurance Management.

(a) The legislative rule filed in the State Register on August 18, 2020, authorized under the authority of §33-30-15 of this code, relating to the State Board of Risk and Insurance Management (mine subsidence insurance, 115 CSR 01), is authorized.

(b) The legislative rule filed in the State Register on August 18, 2020, authorized under the authority of §29-12-5 of this code, modified by the State Board of Risk and Insurance Management to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on November 30, 2020, relating to the State Board of Risk and Insurance Management (public entities insurance program, 115 CSR 02), is authorized.

(c) The legislative rule filed in the State Register on August 18, 2020, authorized under the authority of §29-12-5 of this code, relating to the State Board of Risk and Insurance Management (procedures for providing written notification of claims of potential liability to the state or its employees, 115 CSR 05), is authorized.

CHAPTER 172

(Com. Sub. for S. B. 156 - By Senator Sypolt)

[Passed March 23, 2021; in effect from passage]
[Approved by the Governor on March 31, 2021.]

AN ACT to amend and reenact §64-6-1 *et seq.* of the Code of West Virginia, 1931, as amended, all relating generally to authorizing certain agencies of the Department of Homeland Security to promulgate legislative rules; authorizing the rules as filed and as amended by the Legislature; relating to authorizing the Fire Commission to promulgate a legislative rule relating to standards for the certification and continuing education of municipal, county, and other public sector building code officials, building code inspectors, and plans examiners; relating to authorizing the Fire Marshal to promulgate a legislative rule relating to standards for the certification and continuing education of municipal, county, and other public sector building code officials, building code inspectors, and plans examiners; relating to authorizing the State Emergency Response Commission to promulgate a legislative rule relating to emergency planning and community right-to-know; and relating to authorizing the State Emergency Response Commission to promulgate a legislative rule relating to the emergency planning grant program.

Be it enacted by the Legislature of West Virginia:

ARTICLE 6. AUTHORIZATION FOR DEPARTMENT OF HOMELAND SECURITY TO PROMULGATE LEGISLATIVE RULES.

§64-6-1. Fire Commission.

The legislative rule filed in the State Register on August 24, 2020, authorized under the authority of §15A-11-5 of this code,

relating to the Fire Commission (standards for the certification and continuing education of municipal, county, and other public sector building code officials, building code inspectors, and plans examiners, 87 CSR 07), is authorized.

§64-6-2. Fire Marshal.

The legislative rule filed in the State Register on August 13, 2020, authorized under the authority of §15A-10-5(a) of this code, relating to the Fire Marshal (standards for the certification and continuing education of municipal, county, and other public sector building code officials, building code inspectors, and plans examiners, 103 CSR 06), is authorized with the following amendment:

On page six, after subdivision 8.1.a, by adding a new subdivision 8.1.b to read as follows:

"Each inspector, during the inspection, shall maintain and have readily available the current provisions in paper or electronic format of the appropriate standard for the relevant discipline available for review. The Code Official is responsible for ensuring that this is done, and that the inspector shall inform the building owner or agent, in writing, of the specific violation of the code by number and or title."

§64-6-3. State Emergency Response Commission.

(a) The legislative rule filed in the State Register on August 28, 2020, authorized under the authority of §15-5A-5 of this code, relating to the State Emergency Response Commission (emergency planning and community right-to-know, 55 CSR 01), is authorized.

(b) The legislative rule filed in the State Register on August 28, 2020, authorized under the authority of §15-5A-5 of this code, relating to the State Emergency Response Commission (emergency planning grant program, 55 CSR 02), is authorized with the following amendments:

On page 1, section 2, by striking out all of subsection 2.4;

And,

By renumbering the remaining subsection.

CHAPTER 173

(Com. Sub. for S. B. 160 - By Senator Sypolt)

[Passed March 23, 2021; in effect from passage]
[Approved by the Governor on March 31, 2021.]

AN ACT to amend and reenact §64-7-1 *et seq*. of the Code of West Virginia, 1931, as amended, all relating generally to authorizing certain agencies of the Department of Revenue to promulgate legislative rules; authorizing the rules as filed and as modified by the Legislative Rule-Making Review Committee; directing the amendment of a legislative-exempt rule by the Legislature; relating to authorizing the Alcohol Beverage Control Commission to promulgate a legislative rule relating to private club licensing; relating to authorizing the Alcohol Beverage Control Commission to promulgate a legislative rule relating to distilleries, mini-distilleries, and micro-distilleries; relating to authorizing the Financial Institutions Division to promulgate a legislative rule relating to a rule pertaining to the Fintech Regulatory Sandbox; relating to authorizing the Insurance Commissioner to promulgate a legislative rule relating to fingerprinting requirements for applicants for insurance producer and insurance adjuster license; relating to authorizing the Insurance Commissioner to promulgate a legislative rule relating to insurance adjusters; relating to authorizing the Insurance Commissioner to promulgate a legislative rule relating to credit for reinsurance; relating to authorizing the Insurance Commissioner to promulgate a legislative rule relating to insurance continuing education for individual insurance producers and individual insurance adjusters; relating to authorizing the Insurance Commissioner to promulgate a legislative rule relating to mental health parity; relating to authorizing the Insurance Commissioner to promulgate a legislative rule relating to

health benefit plan network access and adequacy; relating to authorizing the Racing Commission to promulgate a legislative rule relating to thoroughbred racing; relating to authorizing the Racing Commission to promulgate a legislative rule relating to greyhound racing; relating to authorizing the Racing Commission to promulgate a legislative rule relating to advance deposit account wagering; relating to authorizing the Lottery Commission to promulgate a legislative rule relating to West Virginia Lottery interactive wagering rule; relating to directing the State Tax Department to amend a legislative-exempt rule relating to valuation of farmland and structures situated thereon for ad valorem property tax purposes; relating to authorizing the State Tax Department to promulgate a legislative rule relating to a tax credit for providing vehicles to low-income workers; relating to authorizing the State Tax Department to promulgate a legislative rule relating to the downstream natural gas manufacturing investment tax credit; and relating to authorizing the State Tax Department to promulgate a legislative rule relating to the high-wage growth business tax credit.

Be it enacted by the Legislature of West Virginia:

ARTICLE 7. AUTHORIZATION FOR DEPARTMENT OF REVENUE TO PROMULGATE LEGISLATIVE RULES.

§64-7-1. Alcohol Beverage Control Commission.

(a) The legislative rule filed in the State Register on July 24, 2020, authorized under the authority of §60-7-10 of this code, modified by the Alcohol Beverage Control Commission to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on November 18, 2020, relating to the Alcohol Beverage Control Commission (private club licensing, 175 CSR 02), is authorized.

(b) The legislative rule filed in the State Register on July 24, 2020, authorized under the authority of §60-2-16 of this code, modified by the Alcohol Beverage Control Commission to meet the objections of the Legislative Rule-Making Review Committee

and refiled in the State Register on November 18, 2020, relating to the Alcohol Beverage Control Commission (distilleries, mini-distilleries, and micro-distilleries, 175 CSR 10), is authorized.

§64-7-2. Division of Financial Institutions.

The legislative rule filed in the State Register on August 14, 2020, authorized under the authority of §31A-8G-3 of this code, modified by the Division of Financial Institutions to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on November 30, 2020, relating to the Division of Financial Institutions (rule pertaining to the FinTech Regulatory Sandbox, 106 CSR 21), is authorized.

§64-7-3. Insurance Commissioner.

(a) The legislative rule filed in the State Register on July 27, 2020, authorized under the authority of §33-2-10 of this code, modified by the Insurance Commissioner to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on September 30, 2020, relating to the Insurance Commissioner (fingerprinting requirements for applicants for insurance producer and insurance adjuster license, 114 CSR 02A), is authorized.

(b) The legislative rule filed in the State Register on July 27, 2020, authorized under the authority of §33-12B-12 of this code, modified by the Insurance Commissioner to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on September 30, 2020, relating to the Insurance Commissioner (insurance adjusters, 114 CSR 25), is authorized.

(c) The legislative rule filed in the State Register on July 27, 2020, authorized under the authority of §33-2-10 of this code, modified by the Insurance Commissioner to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on September 30, 2020, relating to the Insurance Commissioner (credit for reinsurance, 114 CSR 40), is authorized.

(d) The legislative rule filed in the State Register on July 27, 2020, authorized under the authority of §33-2-10 of this code,

relating to the Insurance Commissioner (continuing education for individual insurance producers and individual insurance adjusters, 114 CSR 42), is authorized.

(e) The legislative rule filed in the State Register on August 11, 2020, authorized under the authority of §33-2-10 of this code, modified by the Insurance Commissioner to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on September 30, 2020, relating to the Insurance Commissioner (mental health parity, 114 CSR 64), is authorized.

(f) The legislative rule filed in the State Register on August 11, 2020, authorized under the authority of §33-55-9 of this code, modified by the Insurance Commissioner to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on November 17, 2020, relating to the Insurance Commissioner (health benefit plan network access and adequacy, 114 CSR 100), is authorized.

§64-7-4. Racing Commission.

(a) The legislative rule filed in the State Register on August 21, 2020, authorized under the authority of §19-23-6 of this code, modified by the Racing Commission to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on December 10, 2020, relating to the Racing Commission (thoroughbred racing, 178 CSR 01), is authorized.

(b) The legislative rule filed in the State Register on August 17, 2020, authorized under the authority of §19-23-6 of this code, relating to the Racing Commission (greyhound racing, 178 CSR 02), is authorized.

(c) The legislative rule filed in the State Register on August 17, 2020, authorized under the authority of §19-23-12e of this code, modified by the Racing Commission to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on December 10, 2020, relating to the Racing Commission (advance deposit account wagering, 178 CSR 10), is authorized.

§64-7-5. Lottery Commission.

The legislative rule filed in the State Register on August 10, 2020, authorized under the authority of §29-22E-4(c) of this code, modified by the Lottery Commission to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on December 21, 2020, relating to the Lottery Commission (West Virginia Lottery interactive wagering rule, 179 CSR 10), is authorized.

§64-7-6. State Tax Department.

(a) The Legislature, pursuant to §11-1C-5a of this code, directs the State Tax Department to amend the legislative-exempt rule filed in the State Register on July 26, 1991, authorized under the authority of §11-1C-5(b) of this code, relating to the State Tax Department (valuation of farmland and structures situated thereon for ad valorem property tax purposes, 110 CSR 1A) with the following amendments:

On page 4, Subdivision 2.5.8., by striking out the period and inserting in lieu thereof a colon and adding the following proviso: *Provided*, That conservation practices, such as high tunnels, shall not be considered as farm buildings or otherwise evaluated as structures for the purposes of applying this rule.;

On page 4 after Subdivision 2.5.15, by adding a new Subdivision 2.5.16 to read as follows:

"2.5.16. "High tunnels" also known by other names, including but not limited to, polytunnels or hoophouses, are unheated, plastic-covered structures that provide an intermediate level of environmental protection and control compared to open field conditions and heated greenhouses.";

And,

By renumbering the remaining subdivisions.

(b) The legislative rule filed in the State Register on August 17, 2020, authorized under the authority of §11-10-5 of this code,

modified by the State Tax Department to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on October 5, 2020, relating to the State Tax Department (tax credit for providing vehicles to low-income workers, 110 CSR 13FF), is authorized.

(c) The legislative rule filed in the State Register on July 29, 2020, authorized under the authority of §11-10-5 of this code, relating to the State Tax Department (downstream natural gas manufacturing investment tax credit, 110 CSR 13GG), is authorized.

(d) The legislative rule filed in the State Register on July 29, 2020, authorized under the authority of §11-10-5 of this code, modified by the State Tax Department to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on October 5, 2020, relating to the State Tax Department (high-wage growth business tax credit, 110 CSR 13II), is authorized.

CHAPTER 174

(Com. Sub. for S. B. 182 - By Senator Sypolt)

[Passed March 23, 2021; in effect from passage]
[Approved by the Governor on March 31, 2021.]

AN ACT to amend and reenact §64-9-1 *et seq.* of the Code of West Virginia, 1931, as amended, all relating generally to authorizing certain miscellaneous agencies and boards to promulgate legislative rules; authorizing the rules as filed, as modified by the Legislative Rule-Making Review Committee, and as amended by the Legislature; authorizing the Commissioner of Agriculture to promulgate a legislative rule relating to animal disease control; authorizing the Commissioner of Agriculture to promulgate a legislative rule relating to West Virginia Seed Law; authorizing the Commissioner of Agriculture to promulgate a legislative rule relating to inspection of meat and poultry; authorizing the Commissioner of Agriculture to promulgate a legislative rule relating to poultry litter and manure movement into primary poultry breeder rearing areas; authorizing the Commissioner of Agriculture to promulgate a legislative rule relating to a seed certification program; authorizing the Commissioner of Agriculture to promulgate a legislative rule relating to West Virginia-exempted dairy farms and milk and milk products processing rules; authorizing the Auditor to promulgate a legislative rule relating to standards for requisitions for payment issued by state officers on the Auditor; authorizing the Funeral Service Examiners to promulgate a legislative rule relating to funeral director, embalmer, apprentice, courtesy card holders and funeral establishment requirements; authorizing the Funeral Service Examiners to promulgate a legislative rule relating to crematory requirements; authorizing the Funeral Service Examiners to promulgate a legislative rule

relating to a fee schedule; authorizing the Board of Hearing Aid Dealers to promulgate a legislative rule relating to governing the West Virginia Board of Hearing Aid Dealers; authorizing the Board Landscape Architects to promulgate a legislative rule relating to registration of landscape architects; authorizing the Board of Landscape Architects to promulgate a legislative rule relating to application for waiver of initial licensing fees for certain individuals; authorizing the Livestock Care Standards Board to promulgate a legislative rule relating to livestock care standards; authorizing the Board of Medicine to promulgate a legislative rule relating to registration to practice during declared state of emergency; relating to authorizing the Municipal Pensions Oversight Board to promulgate a legislative rule relating to exempt purchasing; authorizing the Board of Occupational Therapy to promulgate a legislative rule relating to telehealth practice requirements, and definitions; authorizing the Board of Osteopathic Medicine to promulgate a legislative rule relating to licensing procedures for osteopathic physicians; authorizing the Board of Osteopathic Medicine to promulgate a legislative rule relating to emergency temporary permits to practice during states of emergency or state of preparedness; authorizing the Board of Pharmacy to promulgate a legislative rule relating to licensure and practice of pharmacy; authorizing the Board of Pharmacy to promulgate a legislative rule relating to the Uniform Controlled Substances Act; authorizing the Board of Pharmacy to promulgate a legislative rule relating to Board of Pharmacy rules for continuing education for licensure of pharmacists; authorizing the Board of Pharmacy to promulgate a legislative rule relating to licensure of wholesale drug distributors, third-party logistics providers, and manufacturers; authorizing the Board of Pharmacy to promulgate a legislative rule relating to the Controlled Substances Monitoring Program; authorizing the Board of Pharmacy to promulgate a legislative rule relating to Board of Pharmacy Rules for immunizations administered by pharmacists and pharmacy interns; authorizing the Board of Physical Therapy to promulgate a legislative rule relating to general provisions for physical therapist and physical therapist's assistants; authorizing the Board of Physical

Therapy to promulgate a legislative rule relating to fees for physical therapist and physical therapist's assistants; authorizing the Board of Physical Therapy to promulgate a legislative rule relating to general provisions for athletic trainers; authorizing the Board of Physical Therapy to promulgate a legislative rule relating to fees for athletic trainers; authorizing the Board of Professional Surveyors to promulgate a legislative rule relating to examination and licensing of professional surveyors in West Virginia; authorizing the Real Estate Commission to promulgate a legislative rule relating to licensing real estate brokers, associate brokers, and salespersons and the conduct of brokerage business; authorizing the Board of Respiratory Care to promulgate a legislative rule relating to criteria for licensure; authorizing the Secretary of State to promulgate a legislative rule relating to loan and grants programs under the Help America Vote Act (HAVA) for the purchase of voting equipment, election systems, software, services, and upgrades; authorizing the Secretary of State to promulgate a legislative rule relating to guidelines and standards for electronic notarizations; and authorizing the Board of Senior Services to promulgate a legislative rule relating to a shared table initiative for senior citizens.

Be it enacted by the Legislature of West Virginia:

ARTICLE 9. AUTHORIZATION FOR MISCELLANEOUS AGENCIES AND BOARDS TO PROMULGATE LEGISLATIVE RULES.

§64-9-1. Commissioner of Agriculture.

(a) The legislative rule filed in the State Register on August 27, 2020, authorized under the authority of §19-9-2 of this code, relating to the Commissioner of Agriculture (animal disease control, 61 CSR 01), is authorized.

(b) The legislative rule filed in the State Register on August 27, 2020, authorized under the authority of §19-16-6 of this code, modified by the Commissioner of Agriculture to meet the

objections of the Legislative Rule-Making Review Committee and refiled in the State Register on December 23, 2020, relating to the Commissioner of Agriculture (West Virginia Seed Law, 61 CSR 09), is authorized.

(c) The legislative rule filed in the State Register on August 17, 2020, authorized under the authority of §19-2B-3 of this code, relating to the Commissioner of Agriculture (inspection of meat and poultry, 61 CSR 16), is authorized.

(d) The legislative rule filed in the State Register on July 27, 2020, authorized under the authority of §19-9-2 of this code, relating to the Commissioner of Agriculture (poultry litter and manure movement into primary poultry breeder rearing areas, 61 CSR 28), is authorized.

(e) The legislative rule filed in the State Register on August 26, 2020, authorized under the authority of §19-16-3a of this code, modified by the Commissioner of Agriculture to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on December 22, 2020, relating to the Commissioner of Agriculture (seed certification program, 61 CSR 39), is authorized.

(f) The legislative rule filed in the State Register on September 21, 2020, authorized under the authority of §19-11E-8 of this code, relating to the Commissioner of Agriculture (WV-exempted dairy farms and milk and milk products processing rules, 61 CSR 40), is authorized.

§64-9-2. Auditor.

The legislative rule filed in the State Register on September 17, 2020, authorized under the authority of §12-3-10 of this code, modified by the Auditor to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on November 19, 2020, relating to the Auditor (standards for requisitions for payment issued by state officers on the Auditor, 155 CSR 01), is authorized with the following amendments:

On page 2, subsection 2.15., by striking the word "or" and following the acronym "(PRC)", by inserting the following, ", or WIRE";

On page 4, subdivision 3.1.3., after the word "signature." by adding a new sentence to read as follows, "Alternative certifications may be approved by the Auditor if required by business processes.";

On page 10, by inserting a new subsection 12.2. to read as follows:

"12.2. The auditor may approve alternative documents if necessitated by business processes.";

And,

On page 10, subsection 13.1., following the words "For all nonrecurring wires, the", by inserting the following, "State Treasurer's Office (STO)".

§64-9-3. Board of Funeral Service Examiners.

(a) The legislative rule filed in the State Register on August 26, 2020, authorized under the authority of §30-6-6 of this code, modified by the Board of Funeral Service Examiners to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on November 18, 2020, relating to the Board of Funeral Service Examiners (funeral director, embalmer, apprentice, courtesy card holders, and funeral establishment requirements, 6 CSR 01), is authorized.

(b) The legislative rule filed in the State Register on August 24, 2020, authorized under the authority of §30-6-6 of this code, modified by the Board of Funeral Service Examiners to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on November 18, 2020, relating to the Board of Funeral Service Examiners (crematory requirements, 6 CSR 02), is authorized with the following amendments:

On page 3, after paragraph 4.1.1.6. by adding a new subdivision 4.1.3. to read as follows:

"4.1.3. An applicant must attend a crematory operator certification program approved by the Board prior to submitting an application. The completion certificate must be submitted with the registration application.";

And,

On page 21, Subdivision 22.5.3., by striking out the words "or courtesy card holder".

(c) The legislative rule filed in the State Register on August 24, 2020, authorized under the authority of §30-6-6 of this code, modified by the Board of Funeral Service Examiners to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on November 18, 2020, relating to the Board of Funeral Service Examiners (fee schedule, 6 CSR 07), is authorized with the following amendment:

On page 3, Subdivision 4.2.2., by striking out the words "three hundred fifty dollars ($350.00)" and inserting in lieu thereof the words "two hundred seventy five dollars ($275.00)"

§64-9-4. Board of Hearing Aid Dealers.

The legislative rule filed in the State Register on August 28, 2020, authorized under the authority of §30-26-3 of this code, modified by the Board of Hearing Aid Dealers to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on December 1, 2020, relating to the Board of Hearing Aid Dealers (rule governing the West Virginia Board of Hearing Aid Dealers, 8 CSR 01), is authorized.

§64-9-5. Board of Landscape Architects.

(a) The legislative rule filed in the State Register on August 27, 2020, authorized under the authority of §30-22-7 of this code, modified by the Board of Landscape Architects to meet the objections of the Legislative Rule-Making Review Committee and

refiled in the State Register on December 1, 2020, relating to the Board of Landscape Architects (registration of landscape architects, 9 CSR 01), is authorized.

(b) The legislative rule filed in the State Register on August 26, 2020, authorized under the authority of §30-22-7 of this code, modified by the Board of Landscape Architects to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on December 23, 2020, relating to the Board of Landscape Architects (application for waiver of initial licensing fees for certain individuals, 9 CSR 04), is authorized.

§64-9-6. Livestock Care Standards Board.

The legislative rule filed in the State Register on August 21, 2020, authorized under the authority of §19-1C-4 of this code, relating to the Livestock Care Standards Board (livestock care standards, 73 CSR 01), is authorized.

§64-9-7. Board of Medicine.

The legislative rule filed in the State Register on June 24, 2020, authorized under the authority of §30-3-7 of this code, relating to the Board of Medicine (registration to practice during declared state of emergency, 11 CSR 14), is authorized.

§64-9-8. Municipal Pensions Oversight Board.

The legislative rule filed in the State Register on August 7, 2020, authorized under the authority of §8-22-18a of this code, modified by the Municipal Pensions Oversight Board to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on November 17, 2020, relating to the Municipal Pensions Oversight Board (exempt purchasing, 211 CSR 02), is authorized.

§64-9-9. Board of Occupational Therapy.

The legislative rule filed in the State Register on August 10, 2020, authorized under the authority of §30-28-7 of this code,

relating to the Board of Occupational Therapy (telehealth practice requirements, definitions, 13 CSR 09), is authorized.

§64-9-10. Board of Osteopathic Medicine.

(a) The legislative rule filed in the State Register on August 28, 2020, authorized under the authority of §30-14-14 of this code, modified by the Board of Osteopathic Medicine to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on November 23, 2020, relating to the Board of Osteopathic Medicine (licensing procedures for osteopathic physicians, 24 CSR 01), is authorized.

(b) The legislative rule filed in the State Register on June 22, 2020, authorized under the authority of §30-14-14 of this code, modified by the Board of Osteopathic Medicine to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on November 23, 2020, relating to the Board of Osteopathic Medicine (emergency temporary permits to practice during states of emergency or states of preparedness, 24 CSR 09), is authorized.

§64-9-11. Board of Pharmacy.

(a) The legislative rule filed in the State Register on August 26, 2020, authorized under the authority of §30-5-7 of this code, relating to the Board of Pharmacy (licensure and practice of pharmacy, 15 CSR 01), is authorized.

(b) The legislative rule filed in the State Register on August 26, 2020, authorized under the authority of §60A-3-301 of this code, modified by the Board of Pharmacy to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on December 2, 2020, relating to the Board of Pharmacy (Uniform Controlled Substances Act, 15 CSR 02), is authorized.

(c) The legislative rule filed in the State Register on August 26, 2020, authorized under the authority of §30-5-7 of this code, modified by the Board of Pharmacy to meet the objections of the Legislative Rule-Making Review Committee and refiled in the

State Register on December 2, 2020, relating to the Board of Pharmacy (board of pharmacy rules for continuing education for licensure of pharmacists, 15 CSR 03), is authorized.

(d) The legislative rule filed in the State Register on August 26, 2020, authorized under the authority of §60A-8-9 of this code, modified by the Board of Pharmacy to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on December 2, 2020, relating to the Board of Pharmacy (licensure of wholesale drug distributors, third-party logistics providers, and manufacturers, 15 CSR 05), is authorized.

(e) The legislative rule filed in the State Register on August 26, 2020, authorized under the authority of §30-5-7 of this code, modified by the Board of Pharmacy to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on December 2, 2020, relating to the Board of Pharmacy (Controlled Substances Monitoring Program, 15 CSR 08), is authorized.

(f) The legislative rule filed in the State Register on September 4, 2020, authorized under the authority of §30-5-7 of this code, modified by the Board of Pharmacy to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on December 2, 2020, relating to the Board of Pharmacy (board of pharmacy rules for immunizations administered by pharmacists and pharmacy interns, 15 CSR 12), is authorized.

§64-9-12. Board of Physical Therapy.

(a) The legislative rule filed in the State Register on October 19, 2020, authorized under the authority of §30-20-6 of this code, modified by the Board of Physical Therapy to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on December 18, 2020, relating to the Board of Physical Therapy (general provisions for physical therapist and physical therapist's assistants, 16 CSR 01), is authorized.

(b) The legislative rule filed in the State Register on August 28, 2020, authorized under the authority of §30-20-6 of this code, modified by the Board of Physical Therapy to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on December 16, 2020, relating to the Board of Physical Therapy (fees for physical therapist and physical therapist's assistants, 16 CSR 04), is authorized.

(c) The legislative rule filed in the State Register on October 19, 2020, authorized under the authority of §30-20A-2 of this code, modified by the Board of Physical Therapy to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on December 21, 2020, relating to the Board of Physical Therapy (general provisions for athletic trainers, 16 CSR 05), is authorized.

(d) The legislative rule filed in the State Register on August 28, 2020, authorized under the authority of §30-20A-2 of this code, modified by the Board of Physical Therapy to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on December 16, 2020, relating to the Board of Physical Therapy (fees for athletic trainers, 16 CSR 06), is authorized.

§64-9-13. Board of Professional Surveyors.

The legislative rule filed in the State Register on August 24, 2020, authorized under the authority of §30-13A-6 of this code, modified by the Board of Professional Surveyors to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on November 19, 2020, relating to the Board of Professional Surveyors (examination and licensing of professional surveyors in West Virginia, 23 CSR 01), is authorized.

§64-9-14. Real Estate Commission.

The legislative rule filed in the State Register on August 24, 2020, authorized under the authority of §30-40-8 of this code, modified by the Real Estate Commission to meet the objections of the Legislative Rule-Making Review Committee and refiled in the

State Register on December 11, 2020, relating to the Real Estate Commission (licensing real estate brokers, associate brokers, and salespersons and the conduct of brokerage business, 174 CSR 01), is authorized.

§64-9-15. Board of Respiratory Care.

The legislative rule filed in the State Register on August 26, 2020, authorized under the authority of §30-34-6 of this code, modified by the Board of Respiratory Care to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on November 17, 2020, relating to the Board of Respiratory Care (criteria for licensure, 30 CSR 01), is authorized.

§64-9-16. Secretary of State.

(a) The legislative rule filed in the State Register on June 23, 2020, authorized under the authority of §3-1-48 of this code, modified by the Secretary of State to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on December 4, 2020, relating to the Secretary of State (loan and grant programs under the Help America Vote Act for the purchase of voting equipment, election systems, software, services, and upgrades, 153 CSR 10), is authorized.

(b) The legislative rule filed in the State Register on June 25, 2020, authorized under the authority of §39-4-25 of this code, modified by the Secretary of State to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on December 4, 2020, relating to the Secretary of State (guidelines and standards for electronic notarization, 153 CSR 45), is authorized.

§64-9-17. Bureau of Senior Services.

The legislative rule filed in the State Register on August 25, 2020, authorized under the authority of §16-5P-6 of this code, modified by the Bureau of Senior Services to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on November 30, 2020, relating to the Bureau of

Senior Services (shared table initiative for senior citizens, 76 CSR 06), is authorized with the following amendments:

On page 1, subsection 1.1., by striking out "Share tables are tables or stations where food service staff, senior citizens, and volunteers may return unopened prepackaged items, whole fruit and unopened beverage items they choose not to eat. These food and beverage items are then available to other senior citizens who may need additional nutritional servings.";

On page 1, section 2, by adding a new subsection 2.6 to read as follows:

"2.6. "Sharing tables" are tables or stations at senior centers or other locations where congreg7ate meals are provided to senior citizens where senior citizens may return unopened prepackaged items, whole fruit and unopened beverage items they choose not to eat. These food and beverage items are then available to other senior citizens who may need additional nutritional servings.";

On page 2, section 3, by striking out all of subsection 3.1 and inserting in lieu thereof the following:

"3.1. Any unopened pre-packaged items, including, but not limited to pretzels, crackers, bags of fruits and vegetables stored in a cooling bin, wrapped whole fruit, such as apples and bananas and unopened milk which has been stored in a cooling bin maintained at 41 degrees Fahrenheit or below may be distributed at a sharing table. Nutrition providers shall be aware of and comply with all Federal, state, and local laws, rules, regulations, and codes regarding standards for the preparation and distribution of food and beverages.";

On page 2, section 4, by striking out all of subsection 4.1. and inserting in lieu thereof the following:

"4.1. "Food and beverages which may be distributed under section three of this rule may be distributed at sharing table or to senior citizens who receive home-delivered meals.";

On page 2, subsection 5.1. after the words "serving times or" by inserting the words "the food or beverage item";

On page 2, subsection 5.1. by deleting the words "where the Federal and State standards have been maintained";

On page 2, section 6, by striking out all of subsection 6.1 and inserting in lieu thereof the following:

"Senior centers or other locations where congregate meals are provided to senior citizens' which receive, prepare, or donate food and beverages to a food bank or other nonprofit charitable organization under this rule, shall comply with and are subject to the Good Samaritan Food Donation Act, W.Va. Code §55-7D-1 *et seq*.";

And,

On page 2, section 6, by striking out all of subsection 6.2.

CHAPTER 175

(Com. Sub. for S. B. 216 - By Senator Sypolt)

[Passed March 11, 2021; in effect from passage]
[Approved by the Governor on March 16, 2021.]

AN ACT to amend and reenact §64-10-1 *et seq.* of the Code of West Virginia, 1931, as amended, all relating generally to authorizing certain agencies of the Department of Commerce to promulgate legislative rules; authorizing the rules as filed, as modified, and as amended by the Legislative Rule-Making Review Committee and as amended by the Legislature; authorizing the Department of Commerce to promulgate a legislative rule relating to tourism development districts; authorizing the Division of Labor to promulgate a legislative rule relating to high pressure steam boiler and forced flow steam generator requirements; authorizing the Office of Miners' Health, Safety, and Training to promulgate a legislative rule relating to rule governing the submission and approval of a comprehensive mine safety program for coal mining operations in the State of West Virginia; authorizing the Division of Natural Resources to promulgate a legislative rule relating to Cabwaylingo State Forest trail system two-year pilot program permitting ATV's and ORV's; authorizing the Division of Natural Resources to promulgate a legislative rule relating to defining the terms used in all hunting and trapping; authorizing the Division of Natural Resources to promulgate a legislative rule relating to deer hunting rule; authorizing the Division of Natural Resources to promulgate a legislative rule relating to special migratory game bird hunting; authorizing the Division of Natural Resources to promulgate a legislative rule relating to special waterfowl hunting; and authorizing the Division of Rehabilitation Services to promulgate a legislative rule relating to Ron Yost Personal Assistance Services Act Board.

Be it enacted by the Legislature of West Virginia:

ARTICLE 10. AUTHORIZATION FOR DEPARTMENT OF COMMERCE TO PROMULGATE LEGISLATIVE RULES.

§64-10-1. Department of Commerce.

The legislative rule filed in the State Register on August 25, 2020, authorized under the authority of §5B-1-9(p) of this code, modified by the Department of Commerce to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on December 10, 2020, relating to the Department of Commerce (tourism development districts, 145 CSR 16), is authorized with the following amendments:

On page 7, subdivision 4.18.2., following the semi-colon, by inserting the word "and";

On page 8, by striking out subdivision 4.18.3. in its entirety;

And,

By renumbering the remaining subdivision.

§64-10-2. Division of Labor.

The legislative rule filed in the State Register on August 24, 2020, authorized under the authority of §21-3-7 of this code, relating to the Division of Labor (high pressure steam boiler and forced flow steam generator requirements, 42 CSR 03), is authorized with the following amendments:

On page 13, subsection 12.2, by striking out "$50.00" and inserting in lieu thereof "$35.00";

On page 13, subsection 12.5, striking out "$50.00" and inserting in lieu thereof "$35.00";

On page 23, subdivision 14.2.a, by striking out "$150.00" and inserting in lieu thereof "$100.00";

On page 23, subdivision 14.2.b, by striking out "$200.00" and inserting in lieu thereof "$150.00";

On page 23, subdivision 14.2.c, by striking out "$250.00" and inserting in lieu thereof "$175.00";

On page 23, subdivision 14.2.d, by striking out "$250.00" and inserting in lieu thereof "$175.00";

On page 23, subsection 14.3, by striking out "$50.00" and inserting in lieu thereof "$35.00";

On page 23, subsection 14.4, by striking out "$90.00" and inserting in lieu thereof "$35.00";

On page 24, subsection 14.5, by striking out "$50.00" and inserting in lieu thereof "$35.00";

On page 24, subsection 14.6, by striking out "$50.00" and inserting in lieu thereof "$20.00";

On page 24, subsection 14.7, by striking out "$90.00" and inserting in lieu thereof "$70.00"; And,

On page 24, subsection 14.8, by striking out "$90.00" and inserting in lieu thereof "$70.00".

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

The legislative rule filed in the State Register on August 19, 2020, authorized under the authority of §22A-1-6 of this code, relating to the Office of Miners' Health, Safety, and Training (rule governing the submission and approval of a comprehensive mine safety program for coal mining operations in the State of West Virginia, 56 CSR 08), is authorized.

§64-10-4. Division of Natural Resources.

(a) The legislative rule filed in the State Register on February 26, 2020, authorized under the authority of §20-3-3a of this code, relating to the Division of Natural Resources (Cabwaylingo State

Forest trail system two-year pilot program permitting ATV's and ORV's, 58 CSR 36), is authorized.

(b) The legislative rule filed in the State Register on August 28, 2020, authorized under the authority of §20-1-7(31) of this code, relating to the Division of Natural Resources (defining the terms used in all hunting and trapping, 58 CSR 46), is authorized.

(c) The legislative rule filed in the State Register on August 28, 2020, authorized under the authority of §20-1-7(31) of this code, modified by the Division of Natural Resources to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on September 29, 2020, relating to the Division of Natural Resources (deer hunting rule, 58 CSR 50), is authorized with the following amendment:

On page 3, subsection 3.10, after the word "season", by striking out the remainder of the sentence.

(d) The legislative rule filed in the State Register on August 28, 2020, authorized under the authority of §20-1-7(31) of this code, relating to the Division of Natural Resources (special migratory game bird hunting, 58 CSR 56), is authorized.

(e) The legislative rule filed in the State Register on August 28, 2020, authorized under the authority of §20-1-7(31) of this code, relating to the Division of Natural Resources (special waterfowl hunting, 58 CSR 58), is authorized.

§64-10-5. Division of Rehabilitation Services.

(f) The legislative rule filed in the State Register on August 26, 2020, authorized under the authority of §18-10L-6 of this code, relating to the Division of Rehabilitation Services (Ron Yost Personal Assistance Services Act Board, 198 CSR 01), is authorized.

CHAPTER 176

(S. B. 296 - By Senator Sypolt)

[Passed March 10, 2021; in effect 90 days from passage (June 8, 2021)]
[Approved by the Governor on March 19, 2021.]

AN ACT to amend and reenact §64-12-1, §64-12-2, §64-12-3, and §64-12-4 of the Code of West Virginia, 1931, as amended, all relating generally to repealing certain legislative, procedural, and interpretative rules promulgated by certain agencies, boards, and commissions which are no longer authorized or are obsolete; authorizing certain agencies under the Department of Administration, Department of Health and Human Resources, Department of Revenue, and Department of Commerce to repeal certain legislative, procedural, and interpretative rules; repealing the Board of Risk and Insurance Management legislative rule relating to discontinuation of professional malpractice insurance; repealing the Department of Health and Human Resources legislative rule relating to DUI safety and treatment; repealing the Department of Health and Human Resources legislative rule relating to incorporation of the social services manual; repealing the Department of Health and Human Resources legislative rule relating to operating rules and regulations for the West Virginia Commission on Children and Youth; repealing the Department of Health and Human Resources legislative rule relating to state child fatality review team and county multidisciplinary review teams; repealing the Insurance Commissioner legislative rule relating to emergency medical services; repealing the Insurance Commissioner legislative rule relating to diabetes regulations; repealing the Racing Commission procedural rule relating to dispute resolution procedures; repealing the State Tax Department interpretative rule relating to tax shelter voluntary compliance program; repealing the State Tax Department interpretative

rule relating to preference for determining successful bids; repealing the State Tax Department procedural rule relating to tobacco products excise tax on floorstocks; repealing the State Tax Department legislative rule relating to West Virginia Film Industry Investment Act; repealing the State Tax Department legislative rule relating to residential solar energy tax credit; repealing the State Tax Department legislative rule relating to Business Franchise Tax; repealing the Division of Labor legislative rule relating to hazardous chemical substances; and repealing the Division of Labor legislative rule relating to Commercial Bungee Jumping Safety Act.

Be it enacted by the Legislature of West Virginia:

ARTICLE 12. REPEAL OF UNAUTHORIZED AND OBSOLETE RULES.

§64-12-1. Department of Administration

Board of Risk and Insurance Management

The legislative rule effective April 14, 1992, authorized under the authority of §29-12-5 of this code, relating to the Board of Risk and Insurance Management (discontinuation of professional malpractice insurance, 115 CSR 04), is repealed.

§64-12-2. Department of Health and Human Resources

(a) The legislative rule effective May 4, 2012, authorized under the authority of §22-1-3 of this code, relating to the Department of Health and Human Resources (DUI safety and treatment, 64 CSR 98), is repealed.

(b) The legislative rule effective July 1, 1986, authorized under the authority of §49-2-121 of this code, relating to the Department of Health and Human Resources (incorporation of the social services manual, 78 CSR 04), is repealed.

(c) The procedural rule effective March 15, 1986, authorized under the authority of §49-2-121 of this code, relating to the Department of Health and Human Resources (operating rules and

regulations for the West Virginia Commission on Children and Youth, 79 CSR 01), is repealed.

(d) The procedural rule effective December 1, 2001, authorized under the authority of §49-2-121 of this code, relating to the Department of Health and Human Resources (state child fatality review team and county multidisciplinary review teams, 64 CSR 20), is repealed.

§64-12-3. Department of Revenue

(a) Insurance Commissioner

(1) The legislative rule effective May 16, 1997, authorized under the authority of §33-2-10 of this code, relating to the Insurance Commissioner (emergency medical services, 114 CSR 50), is repealed.

(2) The legislative rule effective May 16, 1997, authorized under the authority of §33-2-10 of this code, relating to the Insurance Commissioner (diabetes regulation, 114 CSR 52), is repealed.

(b) Racing Commission

The procedural rule effective September 30, 1991, authorized under the authority of §19-23-6 of this code, relating to the Racing Commission (dispute resolution procedures, 178 CSR 04), is repealed.

(c) State Tax Department

(1) The interpretative rule effective August 26, 2006, authorized under the authority of §11-10E-2 of this code, relating to the State Tax Department (tax shelter voluntary compliance program, 110 CSR 10E), is repealed.

(2) The interpretative rule effective October 12, 1992, authorized under the authority of §5A-3-37 of this code, relating to the State Tax Department (preference for determining successful bids, 110 CSR 12C), is repealed.

(3) The legislative rule effective May 11, 2010, authorized under the authority of §11-13X-9 of this code, relating to the State Tax Department (West Virginia Film Industry Investment Act, 110 CSR 13X), is repealed.

(4) The procedural rule effective June 16, 2003, authorized under the authority of §11-10-5 of this code, relating to the State Tax Department (tobacco products excise tax on floorstocks, 110 CSR 17A), is repealed.

(5) The legislative rule effective May 11, 2010, authorized under the authority of §11-13Z-3 of this code, relating to the State Tax Department (residential solar energy tax credit, 110 CSR 21D), is repealed.

(6) The legislative rule effective April 15, 1992, authorized under the authority of §11-10-5 of this code, relating to the State Tax Department (Business Franchise Tax, 110 CSR 23), is repealed.

§64-12-4. Department of Commerce

Division of Labor

(1) The legislative rule effective April 25, 1984, authorized under the authority of §21-3-18 of this code, relating to the Division of Labor (hazardous chemical substances, 42 CSR 04), is repealed.

(2) The legislative rule effective April 1, 1996, authorized under the authority of §21-12-3 of this code, relating to the Division of Labor (Commercial Bungee Jumping Safety Act, 42 CSR 23), is repealed.

CHAPTER 177

(Com. Sub. for H. B. 2382 - By Delegate Foster)

[Passed March 26, 2021; in effect from passage.]
[Approved by the Governor on April 7, 2021.]

AN ACT to amend and reenact §64-3-1 of the Code of West Virginia, 1931, as amended, all relating generally to authorizing certain agencies of the Department of Environmental Protection to promulgate legislative rules; authorizing the rules as filed and as modified by the Legislative Rule-Making Review Committee; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to ambient air quality standards; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to standards of performance for new stationary sources; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to control of air pollution from combustion of solid waste; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to control of air pollution from municipal solid waste landfills; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to acid rain provisions and permits; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to emission standards for hazardous air pollutants; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to control of greenhouse gas emissions from existing coal-fired electric utility generating units; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to requirements governing water quality standards; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to hazardous waste management system; and

authorizing the Department of Environmental Protection to promulgate a legislative rule relating to voluntary remediation and redevelopment rule.

Be it enacted by the Legislature of West Virginia:

ARTICLE 3. AUTHORIZATION FOR DEPARTMENT OF ENVIRONMENTAL PROTECTION TO PROMULGATE LEGISLATIVE RULES.

§64-3-1. Department of Environmental Protection.

(a) The legislative rule filed in the State Register on August 26, 2020, authorized under the authority of §22-5-4 of this code, relating to the Department of Environmental Protection (ambient air quality standards, 45 CSR 08), is authorized.

(b) The legislative rule filed in the State Register on August 26, 2020, authorized under the authority of §22-5-4 of this code, relating to the Department of Environmental Protection (standards of performance for new stationary sources, 45 CSR 16), is authorized.

(c) The legislative rule filed in the State Register on August 26, 2020, authorized under the authority of §22-5-4 of this code, relating to the Department of Environmental Protection (control of air pollution from combustion of solid waste, 45 CSR 18), is authorized.

(d) The legislative rule filed in the State Register on August 26, 2020, authorized under the authority of §22-5-4 of this code, relating to the Department of Environmental Protection (control of air pollution from municipal solid waste landfills, 45 CSR 23), is authorized.

(e) The legislative rule filed in the State Register on August 26, 2020, authorized under the authority of §22-5-4 of this code, relating to the Department of Environmental Protection (acid rain provisions and permits, 45 CSR 33), is authorized.

(f) The legislative rule filed in the State Register on August 26, 2020, authorized under the authority of §22-5-4 of this code, relating to the Department of Environmental Protection (emission standards for hazardous air pollutants, 45 CSR 34), is authorized.

(g) The legislative rule filed in the State Register on August 26, 2020, authorized under the authority of §22-5-4 of this code, modified by the Department of Environmental Protection to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on September 28, 2020, relating to the Department of Environmental Protection (control of greenhouse gas emissions from existing coal-fired electric utility generating units, 45 CSR 44), is authorized.

(h) The legislative rule filed in the State Register on August 17, 2020, authorized under the authority of §22-11-4 of this code, modified by the Department of Environmental Protection to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on December 22, 2020, relating to the Department of Environmental Protection (requirements governing water quality standards, 47 CSR 02), is authorized.

(i) The legislative rule filed in the State Register on August 25, 2020, authorized under the authority of §22-18-6 of this code, relating to the Department of Environmental Protection (hazardous waste management system, 33 CSR 20), is authorized.

(j) The legislative rule filed in the State Register on August 25, 2020, authorized under the authority of §22-22-3 of this code, modified by the Department of Environmental Protection to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on December 11, 2020, relating to the Department of Environmental Protection (voluntary remediation and redevelopment rule, 60 CSR 03), is authorized.

CHAPTER 178

(Com. Sub. for H. B. 2400 - By Delegate Foster)

[Passed April 1, 2021; in effect from passage.]
[Approved by the Governor on April 15, 2021.]

AN ACT to amend and reenact §64-8-1 *et seq.* of the Code of West Virginia, 1931, as amended, all relating generally to authorizing certain agencies of the Department of Transportation to promulgate legislative rules; authorizing the rules as filed and as modified by the Legislative Rule-Making Review Committee and as amended by the Legislature; authorizing the Division of Highways to promulgate a legislative rule relating to traffic and safety rules; relating to authorizing the Division of Motor Vehicles to promulgate a legislative rule relating to examination and issuance of driver's license; relating to authorizing the Division of Motor Vehicles to promulgate a legislative rule relating to denial, suspension, revocation, disqualification, restriction, non-renewal, cancellation, administrative appeals and reinstatement of driving privileges; relating to authorizing the Division of Motor Vehicles to promulgate a legislative rule relating to compulsory motor vehicle liability insurance, and relating to authorizing the Division of Motor Vehicles to promulgate a legislative rule relating to special purpose vehicles.

Be it enacted by the Legislature of West Virginia:

ARTICLE 8. AUTHORIZATION FOR DEPARTMENT OF TRANSPORTATION TO PROMULGATE LEGISLATIVE RULES.

§64-8-1. Division of Highways.

The legislative rule filed in the State Register on August 28, 2020, authorized under the authority of §17-2A-8 of this code,

relating to the Division of Highways (traffic and safety rules, 157 CSR 05), is authorized.

§64-8-2. Division of Motor Vehicles.

(a) The legislative rule filed in the State Register on August 11, 2020, authorized under the authority of §17B-2-15 of this code, modified by the Division of Motor Vehicles to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on September 29, 2020, relating to the Division of Motor Vehicles (examination and issuance of driver's license, 91 CSR 04), is authorized with the following amendment:

On page 4, after subdivision 3.11.e., by adding a new subdivision 3.11.f. to read as follows:

3.11.f. In the Commissioner's discretion, the Division may accept a social security number provided by any applicant for a driver's license or identification card without a document presented as proof of social security number when the United States Social Security Administration verifies the social security number electronically, except for license types where a social security card or document submission is mandated by federal law or regulation.

(b) The legislative rule filed in the State Register on August 19, 2020, authorized under the authority of §17A-2-9 of this code, relating to the Division of Motor Vehicles (denial, suspension, revocation, disqualification, restriction, non-renewal, cancellation, administrative appeals and reinstatement of driving privileges, 91 CSR 05), is authorized.

(c) The legislative rule filed in the State Register on August 28, 2020, authorized under the authority of §17A-2-9 of this code, modified by the Division of Motor Vehicles to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on September 29, 2020, relating to the Division of Motor Vehicles (compulsory motor vehicle liability insurance, 91 CSR 13), is authorized.

(d) The legislative rule filed in the State Register on August 7, 2020, authorized under the authority of §17A-13-1(m) of this code,

modified by the Division of Motor Vehicles to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on November 17, 2020, relating to the Division of Motor Vehicles (special purpose vehicles, 91 CSR 25), is authorized.

CHAPTER 179

(Com. Sub. for H. B. 2427 - By Delegate Foster)

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

AN ACT to amend and reenact §64-5-1 *et seq.* of the Code of West Virginia, 1931, as amended, all relating generally to authorizing certain agencies of the Department of Health and Human Resources to promulgate legislative rules; authorizing the rules as filed, as modified by the Legislative Rule-Making Review Committee and as amended by the Legislature; directing the promulgation of a current legislative rule with amendments; authorizing the Department of Health and Human Resources to promulgate a legislative rule relating to behavioral health centers licensure; authorizing the Department of Health and Human Resources to promulgate a legislative rule relating to hospital licensure; authorizing the Department of Health and Human Resources to promulgate a legislative rule relating to nursing home licensure; directing the Department of Health and Human Resources to promulgate a legislative rule relating to food establishments; authorizing the Department of Health and Human Resources to promulgate a legislative rule relating to lead abatement licensing; authorizing the Department of Health and Human Resources to promulgate a legislative rule relating to emergency medical services; authorizing the Department of Health and Human Resources to promulgate a legislative rule relating to client rights at state-operated mental health facilities; authorizing the Department of Health and Human Resources to promulgate a legislative rule relating to delegation of medication administration and health maintenance tasks to approved medication assistive personnel; authorizing the Department of Health and Human Resources to promulgate a legislative rule relating to diabetes self-management education; authorizing

the Department of Health and Human Resources to promulgate a legislative rule relating to West Virginia clearance for access, registry, and employment screening; authorizing the Department of Health and Human Resources to promulgate a legislative rule relating to a recovery residence certification and accreditation program; authorizing the Department of Health and Human Resources to promulgate a legislative rule relating to child placing agencies licensure; authorizing the Department of Health and Human Resources to promulgate a legislative rule relating to minimum licensing requirements for residential child care and treatment facilities for children and transitioning adults and vulnerable and transitioning youth group homes and programs in West Virginia; authorizing the Department of Health and Human Resources to promulgate a legislative rule relating to the procedure to contest the substantiation of child abuse or neglect; and authorizing the Health Care Authority to promulgate a legislative rule relating to exemption from certificate of need.

Be it enacted by the Legislature of West Virginia:

ARTICLE 5. AUTHORIZATION FOR DEPARTMENT OF HEALTH AND HUMAN RESOURCES TO PROMULGATE LEGISLATIVE RULES.

§64-5-1. Department of Health and Human Resources.

(a) The legislative rule filed in the State Register on August 25, 2020, authorized under the authority of §27-9-1 of this code, modified by the Department of Health and Human Resources to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on January 4, 2021, relating to the Department of Health and Human Resources (behavioral health centers licensure, 64 CSR 11), is authorized with the following amendments:

On page 1, subsection 1.7, after the words, “supports in the” by inserting the words, “state of”;

On page 11, subdivision 4.5.5 by striking out the word, "alternations" and inserting in lieu thereof the word, "alterations";

On page 11, by adding a new subdivision 4.5.6 to read as follows:

"4.5.6. All plumbing shall meet the requirements of local plumbing codes or, in the absence thereof, the National Plumbing Code and be maintained and repaired in a state to conform with its intended purpose.";

And,

By renumbering the remaining subdivisions;

On page 25, by striking out all of paragraph 9.5.1.f. and inserting in lieu thereof a new paragraph 9.5.1.f. to read as follows:

"9.5.1.f. Documentation that information on the Child Abuse and Neglect Registry created under W. Va. Code §15-13-1 *et seq.* was checked for that employee, student, or volunteer."

On page 28, paragraph 10.1.4.i, by striking out the word, "daily";

On page 28, by striking out all of paragraph 10.1.4.l,:

On page 29, paragraph 10.1.4.m, after the word, "vermin" by inserting the words, "that stand to pose a threat to the health or safety of consumers or employees";

And,

By renumbering the remaining paragraph;

On page 30, subdivision 10.2.11, by striking out the word, "sued" and inserting in lieu thereof the word, "used";

On page 45, subdivision 12.16.5, by striking out the word, "uses" and inserting in lieu thereof the word, "use";

On page 45, subdivision 12.16.5, by striking out the word, "made" and inserting in lieu thereof the word, "make";

On page 52, paragraph 12.28.2.f, after the word, "immediate" by inserting a comma, and the words, "in-home";

On page 52, paragraph 12.28.2.f, after the word, "record" by inserting the words, "in order to provide safe and appropriate care to consumers";

And,

On page 55, subdivision 13.3.1 by changing the period and to a colon and inserting the following proviso: "*Provided*, That the Secretary may only suspend or revoke a license, if the licensee commits a violation which endangers the health, safety or welfare of a person;";

(b) The legislative rule filed in the State Register on August 21, 2020, authorized under the authority of §16-5B-8 of this code, relating to the Department of Health and Human Resources (hospital licensure, 64 CSR 12), is authorized with the following amendment:

'On page 13, by inserting a new subdivision 4.3.7 to read as follows;

"4.3.7. A hospital shall post signage in every patient room, patient care area or department, and staff rest area information outlining the process for reporting patient safety concerns via the facility's designated internal reporting mechanism and the process for reporting unresolved patient safety concerns or complaints to the West Virginia Office for Health Facility Licensure and Certification. The posting shall include the address and telephone number for the West Virginia Office for Health Facility Licensure and Certification. Signage color and text shall conform to the Office of Safety and Health Administration regulations for safety instruction signs as provided in standard §1910.145. Nothing in the provision precludes any patient, patient representative, or healthcare provider from making a good faith report pertaining to

patient safety concerns and/or alleged wrongdoing or waste to any other appropriate authorities as provided §16-39-3".'

(c) The legislative rule filed in the State Register on August 25, 2020, authorized under the authority of §16-5C-5 of this code, modified by the Department of Health and Human Resources to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on December 16, 2020, relating to the Department of Health and Human Resources (nursing home licensure, 64 CSR 13), is authorized.

(d) The Legislature directs the Department of Health and Human Resources to promulgate the legislative rule effective of July 1, 2019, authorized under the authority of §16-1-4 of this code, relating to the Department of Health and Human Resources (food establishments, 64 CSR 17), with the following amendments:

On page 2, subsection 3.1, by adding a new subdivision 3.1.h, to read as follows:

'3.1.h Chapter 6, section 6-501.115 is not appliable if the following conditions are met:

3.1.h.1. The dog is prohibited from entering any areas where food is being prepared.

3.1.h.2. An exterior play area is available for the dog;

3.1.h.3. The dog owner shall certify that his or her dog has a current rabies vaccination;

3.1.h.4. The dog owner will be asked to leave, if a dog creates a nuisance;

3.1.h.5. The establishment is licensed a private club, brew pub, or micro distillery;

3.1.h.6. The establishment has liability insurance for dog related incidents;

3.1.h.7. Dog accidents are cleaned and sanitized. Dog waste stations are available. A written procedure shall be established and posted concerning dog accident cleanup;

3.1.h.8. Signage is present indicating that the establishment is dog friendly;

3.1.h.9. Dog rules are provided to customers upon entrance.'

And,

By renumbering the remaining subdivisions.

(e) The legislative rule filed in the State Register on August 21, 2020, authorized under the authority of §16-35-4 of this code, modified by the Department of Health and Human Resources to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on December 10, 2020, relating to the Department of Health and Human Resources (lead abatement licensing, 64 CSR 45), is authorized.

(f) The legislative rule filed in the State Register on November 20, 2020, authorized under the authority of §16-1-4 of this code, modified by the Department of Health and Human Resources to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on January 4, 2021, relating to the Department of Health and Human Resources (emergency medical services, 64 CSR 48), is authorized with the following amendment:

On page 50, after subsection 12.4., by adding a new section 13 to read as follows:

"§64-48-13. Federal Model Program.

13.1. Any EMS agency licensed by the Bureau may seek approval from the Centers for Medicare and Medicaid Services of the United States Department of Health and Human Services to participate in the national Emergency Triage, Treat and Transport (ET3) Model program. Services under the ET3 Model program shall specifically include, but not be limited to, the transport of

patients to alternative destinations such as federally qualified health centers, urgent care centers, physician offices and clinics, and behavioral health care facilities. The ET3 Model program has a five-year performance period and is not administered by the Bureau. Any EMS agency approved to participate in the ET3 Model program shall be governed solely by the standards and criteria established by the Centers for Medicare & Medicaid Services in its delivery of ET3 services thereunder."

(g) The legislative rule filed in the State Register on August 26, 2020, authorized under the authority of §27-5-9(g) of this code, modified by the Department of Health and Human Resources to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on December 9, 2020, relating to the Department of Health and Human Resources (client rights at state-operated mental health facilities, 64 CSR 59), is authorized.

(h) The legislative rule filed in the State Register on August 21, 2020, authorized under the authority of §16-5O-11 of this code, modified by the Department of Health and Human Resources to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on December 16, 2020, relating to the Department of Health and Human Resources (delegation of medication administration and health maintenance tasks to approved medication assistive personnel, 64 CSR 60), is authorized.

(i) The legislative rule filed in the State Register on August 26, 2020, authorized under the authority of §33-59-1(k) of this code, modified by the Department of Health and Human Resources to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on November 20, 2020, relating to the Department of Health and Human Resources (diabetes self-management education, 64 CSR 115), is authorized with the following amendment:

On page 1, subsection 1.2, by striking out, "53" and inserting in lieu thereof "59".

(j) The legislative rule filed in the State Register on August 21, 2020, authorized under the authority of §16-49-9 of this code, modified by the Department of Health and Human Resources to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on November 20, 2020, relating to the Department of Health and Human Resources (West Virginia clearance for access, registry, and employment screening, 69 CSR 10), is authorized with the following amendment:

On page 2, by adding a new subsection 2.3 to read as follows:

" 2.3. Covered Provider – means the following facilities or providers that are required to participate in the WV CARES program: skilled nursing facilities; nursing facilities; home health agencies; providers of hospice care; long-term care hospitals; providers of personal care services; providers of adult day care; residential care providers that arrange for or directly provide long-term care services including assisted living facilities; intermediate care facilities for individuals with intellectual disabilities; persons responsible for the care of children as described in W. Va. Code 49-2-114; chronic pain management clinics; behavioral health centers; neonatal abstinence syndrome centers; opioid treatment centers; and any other facility or provider required to participate in the West Virginia Clearance for Access: Registry and Employment Screening program as determined by the secretary in legislative rule.";

And,

By renumbering the remaining subsections;

(k) The legislative rule filed in the State Register on July 1, 2020, authorized under the authority of §16-59-2(g) of this code, modified by the Department of Health and Human Resources to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on December 9, 2020, relating to the Department of Health and Human Resources (recovery residence certification and accreditation program, 69 CSR 15), is authorized.

(l) The legislative rule filed in the State Register on August 25, 2020, authorized under the authority of §49-2-121 of this code, modified by the Department of Health and Human Resources to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on December 16, 2020, relating to the Department of Health and Human Resources (child placing agencies licensure, 78 CSR 02), is authorized with the following amendments:

On page 11, by striking out paragraph 6.3.1.b;

And,

By renumbering the remaining paragraph;

On page 20, subsection 8.1, by striking out the sentence, "The agency shall require the following qualifications for each position."

On page 20, by striking out subdivision 8.1.1,

And,

On page 20, by striking out subdivision 8.1.4. and inserting in lieu thereof a new subdivision 8.1.4 to read as follows:

"8.1.4. Case Managers shall have a bachelor's or master's degree in social work or a related human service field, or a Board of Regents degree with a human service concentration, or a Bachelor's degree who has completed department approved training provided by the child placing agency;

On page 21 by striking paragraph, 8.2.1.a:

And,

By renumbering the remaining paragraphs;

On page 36, by striking out subdivision, 11.4.5.;

And,

Renumbering the remaining subdivisions.

(m) The legislative rule filed in the State Register on August 25, 2020, authorized under the authority of §49-2-121 of this code, modified by the Department of Health and Human Resources to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on December 15, 2020, relating to the Department of Health and Human Resources (minimum licensing requirements for residential child care and treatment facilities for children and transitioning adults and vulnerable and transitioning youth group homes and programs in West Virginia, 78 CSR 03), is authorized with the following amendments:

On page 23, by striking out all of subdivision 6.1.1.;

And,

By renumbering the remaining subdivisions;

On page 26, subsection 7.1., by striking out "governing body shall be one of the following:"

On page 26, by striking out all of subdivisions 7.1.1, 7.1.2, 7.1.3, 7.1.4, and 7.1.5;

On page 36, by striking out all of subsection 10.6.;

On page 40, by striking out all of subdivision 11.3.2;

And,

By renumbering the remaining subdivisions;

On page 41, by striking out all of subsection 12.1 and inserting in lieu thereof a new subsection 12.1. to read as follows:

12.1 The organization shall meet all applicable federal, state, and local, health, building, safety, and fire codes."

On page 42, by striking out all of subdivision 12.2.1 and inserting in lieu thereof a new subsection 12.2.1 to read as follows:

"12.2.1 Food shall be stored, prepared, and served according to local health department regulations;

On page 43, by striking out all of subdivision 12.2.2.;

And,

On page 43, by striking out all of subsection 12.3.;

(n) The legislative rule filed in the State Register on August 26, 2020, authorized under the authority of §49-4-601b of this code, modified by the Department of Health and Human Resources to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on December 15, 2020, relating to the Department of Health and Human Resources (procedure to contest the substantiation of child abuse or neglect, 78 CSR 27), is authorized with the following amendments:

On page 2, after subsection 2.14, by adding two new sections designated sections 3 and 4 to read as follows:

"§78-27-3. Substantiation of abuse and neglect.

The Bureau may consider an allegation against a person of abuse or neglect of a child to have been substantiated for purposes of its records in either of the following two circumstances:

(a) The allegation of abuse or neglect has been the subject of a petition under chapter 49 of this code, that resulted in an adjudication finding that the person committed one or more acts of abuse or neglect of a child, and that adjudication has not been reversed or vacated on appeal; or

(b) The Bureau, as a result of its own investigation has determined that an allegation against a person of abuse or neglect of a child has been substantiated, whether or not there has a been adjudication under subsection (a) of this section: *Provided*, that when there has been no adjudication, sections four and five of this rule apply.

§78-27-4. Allegations of abuse or neglect substantiated on or before July 1, 2021.

(a) Any person may write to the Bureau and inquire if the Bureau has included him or her in its records of persons against whom there has been a substantiated claim of abuse or neglect of a child. The person making the inquiry shall provide the Bureau with his or her full name, date of birth, address, and social security number.

(b) Within 30 days of the request, the Bureau shall inform the person that: (1) the Bureau has no record of any substantiated claim against the person of abuse or neglect of a child; or (2) the Bureau does have a record of a substantiated allegation against the person of abuse or neglect of a child. If the substantiation is not based upon an adjudication described in subsection (a), section three of this rule, the Bureau shall provide the notice required under section five of this rule, and all of the rights and obligations of the Bureau and the person apply as if the Bureau's substantiation had occurred after July 1, 2021.";

And,

By renumbering the remaining sections;

On page 2, section 3, by striking out all of subsection 3.1. and inserting in lieu thereof a new subsection 3.1 to read as follows:

"3.1. After July 1, 2021, if the Bureau determines that an allegation against a person of abuse or neglect of a child has been substantiated, the Bureau shall provide written notice to the maltreater of its determination.";

And,

On page 3, subsection 3.4., after the words "The notice shall" by striking out the remainder of the sentence and inserting in lieu thereof "inform the maltreater that a finding of a substantiated abuse and neglect is recorded with the Bureau. The notice shall also inform the maltreater that the fact that a finding of a substantiated abuse and neglect is recorded with the Bureau may

keep the maltreater from certain types of employment and may also prevent him or her from foster or kinship care of a child.”.

§64-5-2. Health Care Authority.

The legislative rule filed in the State Register on September 28, 2020, authorized under the authority of §16-2D-4 of this code, relating to the Health Care Authority (exemption from certificate of need, 65 CSR 29), is authorized with the following amendments:

On page 1, by striking out all of subsections 3.1 and 3.2 and inserting in lieu thereof a new subsection 3.1 and subsection 3.2 to read as follows:

3.1. A health service exempt from certificate of need review by W.Va. Code §16-2D-11 may not be acquired, offered, or developed within this state unless notification of the performance of the exemption is provided to the authority.

3.2. A person or health care facility may not knowingly charge or bill for a health service exempted from certificate of need review by W.Va. Code §16-2D-11 without first submitting a notification of performance of the exemption to the authority.’

On pages 2 and 3, by striking out all of section 5 in its entirety;

And,

By renumbering the remaining sections.

CHAPTER 180

(Com. Sub. for S. B. 677 - By Senators Phillips, Caputo, Smith, Romano, Hamilton, Karnes, Lindsay, Unger, and Woodrum)

[Passed April 9, 2021; in effect 90 days from passage (July 8, 2021)]
[Approved by the Governor on April 28, 2021.]

AN ACT to amend and reenact §22A-1-2 and §22A-1-12 of the Code of West Virginia, 1931, as amended; to amend and reenact §22A-2-33, §22A-2-40, §22A-2-46, and §22A-2-70 of said code; and to amend and reenact §22A-9-1 of said code, all relating to miners' safety, health, and training standards; updating language regarding capacitors used for power correction, electrical work performed on low, medium, or high voltage circuits or equipment, and the use of gas-detecting devices; making technical corrections; authorizing the director to terminate tenured mine inspectors; providing for a hearing process related to a mine inspector's termination; and clarifying the hearing process related to a mine inspector's suspension.

Be it enacted by the Legislature of West Virginia:

ARTICLE 1. OFFICE OF MINERS' HEALTH, SAFETY, AND TRAINING.

§22A-1-2. Definitions.

Unless the context in which used clearly requires a different meaning, the following definitions apply to this chapter:

(a) *General.* —

(1) Accident: The term "accident" means any mine explosion, mine ignition, mine fire, or mine inundation, or injury to, or death of any person.

(2) Agent: The term "agent" means any person charged with responsibility for the operation of all or a part of a mine or the supervision of the miners in a mine.

(3) Approved: The term "approved" means in strict compliance with mining law or, in the absence of law, accepted by a recognized standardizing body or organization whose approval is generally recognized as authoritative on the subject.

(4) Face equipment: The term "face equipment" means mobile or portable mining machinery having electric motors or accessory equipment normally installed or operated inby the last open crosscut in an entry or room.

(5) Imminent danger: The term "imminent danger" means the existence of any condition or practice in a coal mine which could reasonably be expected to cause death or serious physical harm before such condition or practice can be abated.

(6) Mine: The term "mine" includes the shafts, slopes, drifts, or inclines connected with, or intended in the future to be connected with, excavations penetrating coal seams or strata, which excavations are ventilated by one general air current or divisions thereof, and connected by one general system of mine haulage over which coal may be delivered to one or more points outside the mine, and the surface structures or equipment connected or associated therewith which contribute directly or indirectly to the mining, preparation or handling of coal, or construction thereof.

(7) Miner: The term "miner" means any individual working in a coal mine.

(8) Operator: The term "operator" means any firm, corporation, partnership, or individual operating any coal mine, or part thereof, or engaged in the construction of any facility associated with a coal mine.

(9) Permissible: The term "permissible" means any equipment, device, or explosive that has been approved as permissible by the federal Mine Safety and Health Administration and/or the United States Bureau of Mines and meets all requirements, restrictions, exceptions, limitations, and conditions attached to such classification by that agency or the bureau.

(10) Person: The term "person" means any individual, partnership, association, corporation, firm, subsidiary of a corporation, or other organization.

(11) Work of preparing the coal: The term "work of preparing the coal" means the breaking, crushing, sizing, cleaning, washing, drying, mixing, storing, and loading of bituminous coal or lignite and such other work of preparing such coal as is usually done by the operator of the coal mine.

(b) *Office of Miners' Health, Safety and Training.* —

(1) Board of appeals: The term "board of appeals" means as provided for in §22A-5-1 *et seq.* of this code.

(2) Director: The term "director" means the Director of the Office of Miners' Health, Safety, and Training provided for in §22A-1-3 of this code.

(3) Mine inspector: The term "mine inspector" means a state mine inspector provided for in §22A-1-8 of this code.

(4) Office: The term "office" means, when referring to a specific office, the Office of Miners' Health, Safety, and Training provided for in this article. The term "office", when used generically, includes any office, board, agency, unit, organizational entity, or component thereof.

(c) *Mine areas.* —

(1) Abandoned workings: The term "abandoned workings" means excavation, either caved or sealed, that is deserted and in which further mining is not intended, or open workings which are ventilated and not inspected regularly.

(2) Active workings: The term "active workings" means all places in a mine that are ventilated and inspected regularly.

(3) Drift: The term "drift" means a horizontal or approximately horizontal opening through the strata or in a coal seam and used for the same purposes as a shaft.

(4) Excavations and workings: The term "excavations and workings" means any or all parts of a mine excavated or being excavated, including shafts, slopes, drifts, tunnels, entries, rooms, and working places, whether abandoned or in use.

(5) Inactive workings: The term "inactive workings" includes all portions of a mine in which operations have been suspended for an indefinite period, but have not been abandoned.

(6) Mechanical working section: The term "mechanical working section" means an area of a mine: (A) In which coal is loaded mechanically; (B) which is comprised of a number of working places that are generally contiguous; and (C) which is of such size to permit necessary supervision during shift operation, including pre-shift and on-shift examinations and tests required by law.

(7) Panel: The term "panel" means workings that are or have been developed off of submain entries which do not exceed 3,000 feet in length.

(8) Return air: The term "return air" means a volume of air that has passed through and ventilated all the working places in a mine section.

(9) Shaft: The term "shaft" means a vertical opening through the strata that is or may be used for the purpose of ventilation, drainage, and the hoisting and transportation of individuals and material, in connection with the mining of coal.

(10) Slope: The term "slope" means a plane or incline roadway, usually driven to a coal seam from the surface and used for the same purposes as a shaft.

(11) Working face: The term "working face" means any place in a coal mine in which work of extracting coal from its natural deposit in the earth is performed during the mining cycle.

(12) Working place: The term "working place" means the area of a coal mine inby the last open crosscut.

(13) Working section: The term "working section" means all areas of the coal mine from the loading point of the section to and including the working faces.

(14) Working unit: The term "working unit" means an area of a mine in which coal is mined with a set of production equipment; a conventional mining unit by a single loading machine; a continuous mining unit by a single continuous mining machine, which is comprised of a number of working places.

(d) *Mine personnel.* —

(1) Assistant mine foreman: The term "assistant mine foreman" means a certified person designated to assist the mine foreman in the supervision of a portion or the whole of a mine or of the persons employed therein.

(2) Certified electrician: The term "certified electrician" means any person who is qualified as a mine electrician and who has passed an examination given by the office, or has at least three years of experience in performing electrical work underground in a coal mine, in the surface work areas of an underground coal mine, in a surface coal mine, in a non-coal mine, in the mine equipment manufacturing industry, or in any other industry using or manufacturing similar equipment, and has satisfactorily completed a coal mine electrical training program approved by the office or any person who is qualified as a mine electrician in any state that recognizes certified electricians licensed in West Virginia.

(3) Certified person: The term "certified person", when used to designate the kind of person to whom the performance of a duty in connection with the operation of a mine shall be assigned, means a person who is qualified under the provisions of this law to perform such duty.

(4) Interested persons: The term "interested persons" includes the operator, members of any mine safety committee at the mine affected and other duly authorized representatives of the mine workers and the office.

(5) Mine foreman: The term "mine foreman" means the certified person whom the operator or superintendent shall place in charge of the inside workings of the mine and of the persons employed therein.

(6) Qualified person: The term "qualified person" means a person who has completed an examination and is considered qualified on record by the office.

(7) Shot firer: The term "shot firer" means any person having had at least two years of practical experience in coal mines, who has a knowledge of ventilation, mine roof and timbering, and who has demonstrated his or her knowledge of mine gases, and approved gas detecting devices by examination and certification given him or her by the office.

(8) Superintendent: The term "superintendent" means the person who has, on behalf of the operator, immediate supervision of one or more mines.

(9) Supervisor: The term "supervisor" means a superintendent, mine foreman, assistant mine foreman, or any person specifically designated by the superintendent or mine foreman to supervise work or employees and who is acting pursuant to such specific designation and instructions.

(e) *Electrical.* —

(1) Armored cable: The term "armored cable" means a cable provided with a wrapping of metal, usually steel wires or tapes, primarily for the purpose of mechanical protection.

(2) Borehole cable: The term "borehole cable" means a cable designed for vertical suspension in a borehole or shaft and used for power circuits in the mine.

(3) Branch circuit: The term "branch circuit" means any circuit, alternating current or direct current, connected to and leading from the main power lines.

(4) Cable: The term "cable" means a standard conductor (single conductor cable) or a combination of conductors insulated from one another (multiple conductor cable).

(5) Circuit breaker: The term "circuit breaker" means a device for interrupting a circuit between separable contacts under normal or abnormal conditions.

(6) Delta connected: The term "delta connected" means a power system in which the windings or transformers or a.c. generators are connected to form a triangular phase relationship, and with phase conductors connected to each point of the triangle.

(7) Effectively grounded: The term "effectively grounded" is an expression which means grounded through a grounding connection of sufficiently low impedance (inherent or intentionally added or both) so that fault grounds which may occur cannot build up voltages in excess of limits established for apparatus, circuits, or systems so grounded.

(8) Flame-resistant cable, portable: The term "flame-resistant cable, portable" means a portable flame-resistant cable that has passed the flame tests of the federal Mine Safety and Health Administration.

(9) Ground or grounding conductor (mining): The term "ground or grounding conductor (mining)", also referred to as a safety ground conductor, safety ground and frame ground, means a metallic conductor used to connect the metal frame or enclosure of any equipment, device or wiring system with a mine track or other effective grounding medium.

(10) Grounded (earthed): The term "grounded (earthed)" means that the system, circuit, or apparatus referred to is provided with a ground.

(11) High voltage: The term "high voltage" means voltages of more than 1,000 volts.

(12) Lightning arrestor: The term "lightning arrestor" means a protective device for limiting surge voltage on equipment by discharging or bypassing surge current; it prevents continued flow of follow current to ground and is capable of repeating these functions as specified.

(13) Low voltage: The term "low voltage" means up to and including 660 volts.

(14) Medium voltage: The term "medium voltage" means voltages from 661 to 1,000 volts.

(15) Mine power center or distribution center: The term "mine power center or distribution center" means a combined transformer or distribution unit, complete within a metal enclosure from which one or more low-voltage power circuits are taken.

(16) Neutral (derived): The term "neutral (derived)" means a neutral point or connection established by the addition of a "zig-zag" or grounding transformer to a normally underground power system.

(17) Neutral point: The term "neutral point" means the connection point of transformer or generator windings from which the voltage to ground is nominally zero, and is the point generally used for system groundings in wye-connected a.c. power system.

(18) Portable (trailing) cable: The term "portable (trailing) cable" means a flexible cable or cord used for connecting mobile, portable or stationary equipment in mines to a trolley system or other external source of electric energy where permanent mine wiring is prohibited or is impracticable.

(19) Wye-connected: The term "wye-connected" means a power system connection in which one end of each phase windings or transformers or a.c. generators are connected together to form a neutral point, and a neutral conductor may or may not be connected

to the neutral point, and the neutral point may or may not be grounded.

(20) Zig-zag transformer (grounding transformer): The term "zig-zag transformer (grounding transformer)" means a transformer intended primarily to provide a neutral point for grounding purposes.

§22A-1-12. Employment of underground mine inspectors; eligibility; qualifications; examinations; salary and expenses; reinstatement; removal.

(a) The office shall employ as many underground mine inspectors as the director determines to be reasonably necessary in fully and effectively carrying out the applicable provisions of this chapter.

(b) To be eligible for employment as a mine inspector the applicant shall be: (1) A citizen of West Virginia, in good health, not less than 24 years of age, of good character and reputation, and of temperate habits; (2) a person who has had at least five years of practical experience in coal mines, at least two years of which have been in mines of this state: *Provided,* That graduation from any accredited college of mining engineering may be considered the equivalent of two years of practical experience; (3) a person who has had practical experience with dangerous gases found in coal mines; and (4) a person who has a good theoretical and practical knowledge of mines, mining methods, mine ventilation, sound safety practices, and applicable mining laws and rules. For the purpose of this section, practical experience means the performance of normal mining duties requiring a person to hold a certificate of competency and qualification as an experienced underground miner prior to actually performing such duties.

(c) In order to qualify for appointment as an underground mine inspector, an eligible applicant shall submit to written, oral, and practical examinations administered by the Mine Inspectors' Examining Board and furnish evidence of good health, character, and other facts establishing eligibility as the board may require. The examinations shall relate to the duties to be performed by an

underground mine inspector and, subject to the approval of the Mine Inspectors' Examining Board, may be prepared by the director. If the board finds after investigation and examination that an applicant: (1) Is eligible for appointment; and (2) has passed each required examination, with a grade of at least 75 percent or an overall combined average score of 80 percent, the board shall add the applicant's name and grades to the register of qualified eligible candidates and promptly certify its action in writing to the director. The director shall then appoint one of the candidates from the three having the highest grades.

(d) Underground mine inspectors shall be paid an annual salary of not less than $38,160; assistant inspectors-at-large, not less than $44,448; inspectors-at-large, not less than $46,104, each of which shall be fixed by the director, who shall take into consideration ability, performance of duty, and experience. In accordance with established rules of the state's Travel Management Office, underground mine inspectors shall also be allowed and paid expenses necessarily incident to the performance of their official duties: *Provided,* That no reimbursement for expenses may be made other than upon the timely submittal of a properly itemized expense account settlement completed by the underground mine inspector, approved and countersigned by the director, or his or her designated representative, verifying that the expenses were actually incurred in the performance of official duties. Underground mine inspectors shall devote all of their time to the duties of the office and shall be afforded compensatory time or compensation of at least the regular rate for all time in excess of 40 hours per week.

(e) (1) An underground mine inspector, after having received a permanent appointment, may be removed from office only for physical or mental impairment, incompetency, neglect of duty, public intoxication, malfeasance in office, or other similarly good cause.

(2) The director may remove an underground mine inspector at any time for the reasons set forth in §22A-1-12(e)(1) of this code. Upon such removal, the inspector shall be provided a written notice of removal, describing the cause(s) for removal and setting forth

with particularity the facts on which the removal was based. Not less than 20 reputable citizens, who are operators or employees in mines in this state, may petition the director for the removal of an underground mine inspector. If the petition is verified by at least one of the petitioners, based on actual knowledge of the affiant of the alleged facts, which, if true, warrant the removal of the inspector, the director shall cause an investigation of the alleged facts to be made. If, after the investigation, the director finds that there is substantial evidence that warrants removal of the inspector, the director shall remove the inspector and provide him or her a written notice of removal, describing the cause(s) for removal and setting forth with particularity the evidence found in the investigation: *Provided*, That in all cases of removal, the inspector may request, in writing, a hearing before the Board of Coal Mine Health and Safety within 15 days of receipt of the notice of removal. The director shall provide the inspector written notice of the right to a hearing in the notice of removal.

(3) If the inspector requests a hearing in writing, the board shall promptly schedule a hearing and provide notice to the inspector of the time and place for such hearing, at which time and place the board shall hear all evidence offered in support of the removal and on behalf of the inspector. Each witness shall be sworn, and a transcript shall be made of all evidence taken and proceedings had at the hearing. No continuance may be granted except for good cause shown. The administrator of the board, or in their absence a member of the board designated by the board, has the power to administer oaths and subpoena witnesses.

(4) If any removed mine inspector requests a hearing and thereafter willfully refuses or fails to appear before the board, or having appeared, refuses to answer under oath any relevant question on the basis that the testimony or answer might incriminate him or her or refuses to waive immunity from prosecution because of any relevant matter about which the inspector may be asked to testify, then the inspector shall forfeit his or her position.

(5) If the inspector fails to request a hearing in writing, or after requesting a hearing in writing and such hearing having been held,

the board finds that the inspector should be removed based on a preponderance of the evidence, the board shall enter an order to that effect. Should the board find that the inspector should not have been removed, the inspector shall be reinstated. The decision of the board is final and is not subject to judicial review.

ARTICLE 2. UNDERGROUND MINES.

§22A-2-33. Preparation of shots; blasting practices.

(a) Only a certified "shot firer" designated by mine management shall be permitted to handle explosives and do blasting. Only electric detonators of proper strength fired with permissible shot firing units shall be used except under special permits as hereinafter provided, and drillholes shall be stemmed with at least 24 inches of incombustible material, or at least one half of the length of the hole shall be stemmed if the hole is less than four feet in depth, unless other permissible stemming devices or methods are used. Drillholes shall not be drilled beyond the limits of the cut, and as far as practicable, cuttings and dust shall be cleaned from the holes before the charge is inserted. Charges of explosives exceeding one and one-half pounds, but not exceeding three pounds, shall be used only if drillholes are six feet or more in depth. Ample warning shall be given before shots are fired, and care shall be taken to determine that all persons are in the clear before firing. Miners shall be removed from adjoining places and other places when there is danger of shots blowing through. No shots shall be fired in any place known to liberate explosive gas, until such place has been properly examined by a competent person who is designated by mine management for that purpose, and no shots shall be fired in any place where gas is detected with an approved gas detecting device until such gas has been removed by means of ventilation. After firing any shot, or shots, the person firing the same shall not return to the working face until the smoke has been cleared away and then he or she shall make a careful examination of the working face before leaving the place or before performing any other work in the place.

(b) Multiple shooting in coal or rock or both is authorized only under permit issued by the director. Permission to shoot more than

10 shots simultaneously may be granted by the director only after consultation with interested persons, and such shooting will be performed by special methods and under precautions prescribed by the director. All multiple shooting in bottom or roof rock shall be performed in intake air, except by special permit from the director, after consultation with interested persons, as heretofore provided. Multiple blasting of more than 10 shots performed under any permit granted by the director under this section shall be done only on noncoal-producing shifts or idle days, except as may be provided as a condition of the permit granted.

(c) Regular or short-interval delay detonators may be used for blasting purposes with written permission from the director. Regular delay detonators shall not be used for blasting coal, but may be used for grading above or below coal seams and during shaft, slope, tunnel work and in faults or wants. Where short-interval delay detonators are permitted by said director to be used, the shot firing circuit must be tested with a blasting galvanometer before firing, and the leg wires connected in series. No instantaneous, regular, or zero-delay detonators are to be fired in conjunction with short-interval delay detonators. The delay interval between dependent rows must not be less than 25 milliseconds or more than 100 milliseconds, and the entire series of any one round shall not provide a delay of more than 500 milliseconds between the first and last shot. The total number of charged holes to be fired during any one round must not exceed the limit permitted by the director. Misfires must be tested with a blasting galvanometer before removing.

(d) Electrical equipment shall not be operated in the face areas, and only work in connection with timbering and general safety shall be performed while boreholes are being charged. Shots shall be fired promptly after charging. Mudcaps (adobes) or any other unconfined shots shall not be permitted in any coal mine. No solid shooting shall be permitted without written permission of the office.

(e) Blasting cables shall be well insulated and shall be as long as may be necessary to permit persons authorized to fire shots to get in a safe place out of the line of fire. The cable, when new, shall

be at least 125 feet in length and never less than 100 feet. Shooting cables shall be kept away from power wires and all other sources of electric current, connected to the leg wires by the person who fires the shot, staggered as to length or well separated at the detonator leg wires, and shunted at the battery until ready to connect to the blasting unit.

ARTICLE 2. UNDERGROUND MINES.

§22A-2-40. General provisions.

Operators of coal mines in which electricity is used as a means of power shall comply with the following provisions:

(1) All surface transformers, unless of a construction which will eliminate shock hazards, or unless installed at least eight feet above ground, shall be enclosed in a house or surrounded by a fence at least six feet high. If the enclosure is of metal, it shall be grounded effectively. The gate or door to the enclosure shall be kept locked at all times, unless authorized persons are present.

(2) Underground transformers shall be air cooled or cooled with noninflammable liquid or inert gas.

(3) Underground stations containing circuit breakers filled with inflammable liquids shall be put on a separate split of air or ventilated to the return air, and shall be of fireproof construction.

(4) Transformers shall be provided with adequate overload protection.

(5) "Danger — High Voltage" signs with the voltage indicated shall be posted conspicuously on all transformer enclosures, high-potential switchboards, and other high-potential installations.

(6) Dry insulating platforms of rubber or other suitable nonconductive material shall be kept in place at each switchboard and at stationary machinery where shock hazards exist.

(7) Capacitors used for power factor correction shall be nonflammable liquid filled. Suitable drain-off resistors or other

means to protect miners against electric shock following removal of power shall be provided.

(8) All unattended underground loading points where electric driven hydraulic systems are used shall utilize a fireproof oil or emulsion.

(9) Before electrical changes are made to permissible equipment for use in a mine, they shall be approved by the director.

(10) Reverse current protection shall be provided at storage battery charging stations to prevent the storage batteries from energizing the power circuits in the event of power failure.

(11) In all mines all junction or distribution boxes used for making multiple power connections inby the last open crosscut shall be permissible.

(12) All hand-held electric drills, blower and exhaust fans, electric pumps, and such other low horsepower electric face equipment which are taken into or used inby the last open crosscut of any coal mine shall be permissible.

(13) All electric face equipment which is taken into or used inby the last open crosscut of any coal mine shall be permissible.

(14) In mines operated in coal seams which are located at elevations above the water table, the phrase "coal seams above the water table" means coal seams in a mine which are located at an elevation above a river or the tributary of a river into which a local surface water system naturally drains.

(15) The operator of each coal mine shall maintain in permissible condition all electric face equipment, which is taken into or used inby the last open crosscut of any mine.

(16) Except where permissible power connection units are used, all power-connection points outby the last open crosscut shall be in intake air.

(17) All power circuits and electric equipment shall be deenergized before work is done on such circuits and equipment, except when necessary for trouble shooting or testing.

(18) Energized trolley wires may be repaired only by a person trained to perform electrical work and to maintain electrical equipment and the operator of a mine shall require that such persons wear approved and tested insulated shoes and wireman's gloves.

(19) No electrical work shall be performed on low-, medium-, or high-voltage distribution circuits or equipment, except by a qualified person or by a person trained to perform electrical work and to maintain electrical equipment under the direct supervision of a qualified person. Disconnecting devices shall be locked out and suitably tagged by each person who performs such work, except that in cases where locking out is not possible, such devices shall be opened and suitably tagged by such persons who installed them, or, if such persons are unavailable, by qualified persons authorized by the operator or his or her agent.

(20) All electric equipment shall be examined weekly, tested, and properly maintained by a qualified person to assure safe operating conditions. When a potentially dangerous condition is found on electric equipment, such equipment shall be removed from service until such condition is corrected. A record of such examinations shall be kept and made available to an authorized representative of the director and to the miners in such mine.

(21) All electric conductors shall be sufficient in size and have adequate current-carrying capacity and be of such construction that a rise in temperature resulting from normal operation will not damage the insulating material.

(22) All electrical connections or splices in conductors shall be mechanically and electrically efficient, and suitable connectors shall be used. All electrical connections or splices in insulated wire shall be reinsulated at least to the same degree of protection as the remainder of the wire.

(23) Cables shall enter metal frames of motors, splice boxes, and electric compartment only through proper fittings. When insulated wire, other than cables, pass through metal frames, the holes shall be substantially bushed with insulated bushings.

(24) All power wire (except trailing cables on mobile equipment, specially designed cables conducting high-voltage power to underground rectifying equipment or transformers, or bare or insulated ground and return wires) shall be supported on well-installed insulators and shall not contact combustible material, roof, or ribs.

(25) Power wires and cables, including, but not limited to, phone communication and control wires, except trolley wires, trolley feeder wires, and bare signal wires, shall be insulated adequately and fully protected. The provisions of this subdivision became effective on January 1, 1978.

(26) Automatic circuit-breaking devices or fuses of the correct type and capacity shall be installed so as to protect all electric equipment and circuits against short circuit and overloads. Three-phase motors on all electric equipment shall be provided with overload protection that will deenergize all three phases in the event that any phase is overloaded.

(27) Incandescent lamps installed along haulageways and at other locations shall not contact combustible material, and if powered from trolley or direct current feeder circuits, need not be provided with separate short circuits or overload protection, if the lamp is not more than eight feet in distance from such circuits.

(28) In all main power circuits, disconnecting switches shall be installed underground within 500 feet of the bottoms of shafts and boreholes through which main power circuits enter the underground area of the mine and within 500 feet of all other places where main power circuits enter the underground area of the mine.

(29) All electric equipment shall be provided with switches or other controls that are safely designed, constructed, and installed.

(30) Each underground, exposed power conductor that leads underground shall be equipped with suitable lightning arrestors of approved type within 100 feet of the point where the circuit enters the mine. Lightning arrestors shall be connected to a low-resistance grounding medium on the surface which shall be separated from neutral ground by a distance of not less than 25 feet.

(31) Except for areas of a coal mine inby the last open crosscut, incandescent lamps may be used to illuminate underground areas. When incandescent lamps are used in a track entry or belt entry or near track entries to illuminate special areas other than structures, the lamps shall be installed in weatherproof sockets located in positions such that the lamps will not come in contact with any combustible material. Lamps used in all other places must be of substantial construction and be fitted with a glass enclosure.

(32) An authorized representative of the director may require in any mine that electric face equipment be provided with devices that will permit the equipment to be deenergized quickly in the event of an emergency.

(33) An authorized representative of the director shall require manually operated emergency stop switches, designed to deenergize the traction motor circuit when the contractors or controller fail to open, to be installed on all battery powered tractors, taken into or used inby the last open crosscut of any entry or room.

(34) Trailing cables used in coal mines shall meet the requirements for flame-resistant cables.

(35) Short circuit protection for trailing cables shall be provided by an automatic circuit breaker or other no less effective device approved by the director of adequate current-interrupting capacity in each ungrounded conductor. Disconnecting devices used to disconnect power from trailing cables shall be plainly marked and identified and such devices shall be equipped or designed in such a manner that it can be determined by visual observation that the power is disconnected.

(36) When two or more trailing cables junction to the same distribution center, means shall be provided to assure against connecting a trailing cable to the wrong size circuit breaker.

(37) One temporary splice may be made in any trailing cable. Such trailing cable may only be used for the next 24-hour period. No temporary splice shall be made in a trailing cable within 25 feet of the machine, except cable reel equipment. Temporary splices in trailing cables shall be made in a workmanlike manner and shall be mechanically strong and well insulated. Trailing cables or hand cables which have exposed wires or which have splices that heat or spark under load shall not be used. As used in this section, the term "splice" means a mechanical joining of one or more conductors that have been severed.

(38) When permanent splices in trailing cables are made, they shall be:

(A) Mechanically strong with adequate electrical conductivity and flexibility;

(B) Effectively insulated and sealed so as to exclude moisture; and

(C) Vulcanized or otherwise treated with suitable materials to provide flame-resistant qualities and good bonding to the outer jacket.

(39) Trailing cables shall be clamped to machines in a manner to protect the cables from damage and to prevent strain on the electrical connections. No cables will be hung in a manner which will damage the insulation or conductors.

(40) Trailing cables shall be adequately protected to prevent damage by mobile equipment.

(41) Trailing cable and power cable connections to junction boxes and to electrical equipment shall not be made or broken under load.

(42) All metallic sheaths, armors and conduits enclosing power conductors shall be electrically continuous throughout and shall be grounded by methods approved by an authorized representative of the director.

(43) Except where waived by the director, metallic frames, casings and other enclosures of electric equipment that can become alive through failure of insulation or by contact with energized parts shall be grounded, and shall have a ground monitoring system.

(44) In instance where single-phase 110-220 volt circuits are used to feed electrical equipment, the only method of grounding that will be approved is the connection of all metallic frames, casings, and other enclosure of such equipment to a separate grounding conductor which establishes a continuous connection to a grounded center tap of the transformer.

(45) The attachment of grounding wires to a mine track or other grounded power conductor will be approved if separate clamps, suitable for such purpose, are used and installed to provide a solid connection.

(46) The frames of all offtrack direct-current machines and the enclosures of related detached components shall be effectively grounded or otherwise maintained at no less safe voltages.

(47) Installation of silicon diodes shall be restricted to electric equipment receiving power from a direct-current system with one polarity grounded. Where such diodes are used on circuits having a nominal voltage rating of 250, they must have a forward current rating of 400 amperes or more, and have a peak inverse voltage rating of 400 or more. Where such diodes are used on circuits having nominal voltage rating of 550, they must have a forward current rating of 250 amperes or more, and have a peak inverse voltage rating of 800 or more.

(48) In addition to the grounding diode, a polarizing diode must be installed in the machine control circuit to prevent operation of the machine when the polarity of a trailing cable is reversed.

(49) When installed on permissible equipment, all grounding diodes, over-current devices, and polarizing diodes must be placed in explosion-proof compartments.

(50) High-voltage lines, both on the surface and underground, shall be deenergized and grounded before work is performed on them, except that repairs may be permitted, in the case of energized surface high-voltage lines, if such repairs are made by a qualified person in accordance with procedures and safeguards, including, but not limited to, a requirement that the operator of such mine provide, test and maintain protective devices in making such repairs.

(51) When two or more persons are working on an energized high-voltage surface line simultaneously, and any one of them is within reach of another, such persons shall not be allowed to work on different phases or on equipment with different potentials.

(52) All persons performing work on energized high-voltage surface lines shall wear protective rubber gloves, sleeves, and climber guards if climbers are worn. Protective rubber gloves shall not be worn wrong side out or without protective leather gloves. Protective devices worn by a person assigned to perform repairs on high-voltage surface lines shall be worn continuously from the time he or she leaves the ground until he or she returns to the ground, and, if such devices are employed for extended periods, such person shall visually inspect the equipment assigned him or her for defects before each use, and, in no case, less than twice each day.

(53) Disconnecting or cutout switches on energized high-voltage surface lines shall be operated only with insulated sticks, fuse tongs, or pullers which are adequately insulated and maintained to protect the operator from the voltage to which he or she is exposed. When such switches are operated from the ground, the person operating such devices shall wear protective rubber gloves.

(54) Solely for purposes of grounding ungrounded high-voltage power systems, grounded messenger wires used to suspend the cables of such systems may be used as a grounding medium.

(55) When not in use, power circuits underground shall be deenergized on idle days and idle shifts, except that rectifiers and transformers may remain energized.

(56) High-voltage circuits entering the underground area of any coal mine shall be protected by suitable circuit breakers of adequate interrupting capacity. Such breakers shall be equipped with devices to provide protection against undervoltage, grounded phase, short circuit, and overcurrent.

(57) Circuit breakers protecting high-voltage circuits entering an underground area of any coal mine shall be located on the surface and in no case installed either underground or within a drift.

(58) One circuit breaker may be used to protect two or more branch circuits, if the circuit breaker is adjusted to afford overcurrent protection for the smallest conductor.

(59) The grounding resistor, where required, shall be of the proper ohmic value to limit the voltage drop in the grounding circuit external to the resistor to not more than 100 volts under fault conditions. The grounding resistor shall be rated for maximum fault current continuously and insulated from ground for a voltage equal to the phase-to-phase voltage of the system.

(60) High-voltage circuits extending underground and supplying portable mobile or stationary high-voltage equipment shall contain either a direct or derived neutral which shall be grounded through a suitable resistor at the source transformers, and a grounding circuit, originating at the grounded side of the grounding resistor, shall extend along with the power conductors and serve as a grounding conductor for the frames of all high-voltage equipment supplied power from the circuit, except that the director or his or her authorized representative may permit ungrounded high-voltage circuits to be extended underground to feed stationary electrical equipment if such circuits are either steel armored or installed in grounded, rigid steel conduit throughout their entire length, and upon his or her finding that such exception does not pose a hazard to the miners. Within 100 feet of the point on the surface where high-voltage circuits enter the underground

portion of the mine, disconnecting devices shall be installed and so equipped or designed in such a manner that it can be determined by visual observation that the power is disconnected, except that the director or his or her authorized representative may permit such devices to be installed at a greater distance from such area of the mine if he or she determines, based on existing physical conditions, that such installation will be more accessible at a greater distance and will not pose any hazard to the miners.

(61) High-voltage resistance grounded systems serving portable or mobile equipment shall include a fail-safe ground check circuit to monitor continuously the grounding circuit to assure continuity, and the fail-safe ground check circuit shall cause the circuit breaker to open when either the ground or pilot check wire is broken, or other no less effective device approved by the director or his or her authorized representative to assure such continuity.

(62) Underground high-voltage cables used in resistance grounded systems shall be equipped with metallic shields around each power conductor with one or more ground conductors having a total cross-sectional area of not less than one half the power conductor, and with an insulated internal or external conductor not smaller than No. 10 (A.W.G.) for the ground continuity check circuit.

(63) All such cables shall be adequate for the intended current and voltage. Splices made in such cables shall provide continuity of all components.

(64) Single-phase loads, such as transformer primaries, shall be connected phase-to-phase.

(65) All underground high-voltage transmission cables shall be installed only in regularly inspected air courses and haulageways, and shall be covered, buried, or placed so as to afford protection against damage, guarded where men regularly work or pass under them unless they are six and one-half feet or more above the floor or rail, securely anchored, properly insulated, and guarded at ends, and covered, insulated, or placed to prevent contact with trolley wires and other low-voltage circuits.

(66) Disconnecting devices shall be installed at the beginning of branch lines in underground high-voltage circuits and equipped or designed in such a manner that it can be determined by visual observation that the circuit is deenergized when the switches are open.

(67) Circuit breakers and disconnecting switches underground shall be marked for identification.

(68) In the case of high-voltage cables used as trailing cables, temporary splices shall not be used and all permanent splices shall be made in accordance with the manufacturers' specifications.

(69) Frames, supporting structures and enclosures of stationary, portable, or mobile underground high-voltage equipment and all high-voltage equipment supplying power to such equipment receiving power from resistance grounded systems shall be effectively grounded to the high-voltage ground.

(70) Low- and medium-voltage power circuits serving three-phase alternating current equipment serving portable or mobile equipment shall be protected by suitable circuit breakers of adequate interrupting capacity which are properly tested and maintained as prescribed by the director. Such breakers shall be equipped with devices to provide protection against under-voltage, grounded phase, short circuit, and overcurrent.

(71) Power centers and portable transformers shall be deenergized before they are moved from one location to another, except that, when equipment powered by sources other than such centers or transformers is not available, the director may permit such centers and transformers to be moved while energized, if he or she determines that another equivalent or greater hazard may otherwise be created, and if they are moved under the supervision of a qualified person, and if such centers and transformers are examined prior to such movement by such person and found to be grounded by methods approved by an authorized representative of the director and otherwise protected from hazards to the miner. A record shall be kept of such examinations. High-voltage cables, other than trailing cables, shall not be moved or handled at any time

while energized, except that when such centers and transformers are moved while energized as permitted under this section, energized high-voltage cables attached to such centers and transformers may be moved only by a qualified person and the operator of such mine shall require that such person wear approved and tested insulated wireman's gloves.

(72) Low- and medium-voltage three-phase alternating-current circuits used underground shall contain either a direct or derived neutral which shall be grounded through a suitable resistor at the power center, and a grounding circuit, originating at the grounded side of the grounding resistor, shall extend along with the power conductors and serve as a grounding conductor for the frames of all the electrical equipment supplied power from the circuit, except that the director or his or her authorized representative may permit underground low- and medium-voltage circuits to be used underground to feed such stationary electrical equipment if such circuits are either steel armored or installed in grounded rigid steel conduit throughout their entire length. The grounding resistor, where required, shall be of the proper ohmic value to limit the ground fault current to 25 amperes. The grounding resistor shall be rated for maximum fault current continuously and insulated from ground for a voltage equal to the phase-to-phase voltage of the system.

(73) Low- and medium-voltage resistance grounded systems serving portable or mobile equipment shall include a fail-safe ground check circuit to monitor continuously the grounding circuit to assure continuity which ground check circuit shall cause the circuit breaker to open when either the ground or pilot check wire is broken, or other not less effective device approved by the director or his or her authorized representative to assure such continuity, except that an extension of time, not in excess of 12 months, may be permitted by the director on a mine-to-mine basis if he or she determines that such equipment is not available. Cable couplers shall be constructed so that the ground check continuity conductor shall be broken first and the ground conductors shall be broken last when the coupler is being uncoupled.

(74) Disconnecting devices shall be installed in conjunction with circuit breakers serving portable or mobile equipment to provide visual evidence that the power is connected.

(75) Circuit breakers shall be marked for identification.

(76) Single-phase loads shall be connected phase-to-phase.

(77) Trailing cables for medium-voltage circuits shall include grounding conductors, a ground check conductor, and grounded metallic shields around each power conductor or a ground metallic shield over the assembly, except that on equipment employing cable reels, cables without shields may be used if the insulation is rated 2,000 volts or more.

(78) Trolley wires and trolley feeder wires shall be provided with cutout switches at intervals of not more than 2,000 feet and near the beginning of all branch lines.

(79) Trolley wires and trolley feeder wires shall be provided with overcurrent protection.

(80) Trolley wires and trolley feeder wires, high-voltage cables, and transformers shall not be located within 15 feet of the last open crosscut and shall be kept at least 150 feet from pillar workings.

(81) Trolley wires, trolley feeder wires, and bare signal wires shall be insulated adequately where they pass through doors and stoppings and where they cross other power wires and cables. Trolley wires and trolley feeder wires shall be guarded adequately:

(A) At all points where men are required to work or pass regularly under the wires.

(B) On both sides of all doors and stoppings.

(C) At man-trip stations.

(82) Temporary guards shall be provided where trackmen and other persons work in close proximity to trolley wires and trolley feeder wires.

(83) Adequate precaution shall be taken to ensure that equipment being moved along haulageways will not come in contact with trolley wires or trolley feeder wires.

(84) Trolley and feeder wires shall be installed as follows: Where installed on permanent haulage, they shall be:

(A) At least six inches outside the track gauge line.

(B) Kept taut and not permitted to touch the roof, rib, or crossbars. Particular care shall be taken where they pass through door openings to preclude bare wires from coming in contact with combustible material.

(C) Installations of trolley wire hangers shall be provided within three feet of each splice in a trolley wire.

§22A-2-46. Welding and cutting.

(a) A record shall be kept of oxygen and gas tanks or cylinders taken into a mine and the date shall be recorded when they are removed from the mine. No more tanks or cylinders than necessary to perform the work efficiently shall be permitted underground at one time.

(b) Propane torches may be used in lieu of blowtorches. Only approved apparatus such as torches, regulators, pressure reducing valves, hoses, check valves, and gas cylinders shall be used.

(c) Welding and cutting may be done in mines: *Provided,* That all equipment and gauges are maintained in safe condition and not abused, that suitable precautions are taken against ignition of methane, coal dust, or combustible materials, that means are provided for prompt extinguishment of fires accidentally started, and that only persons who have demonstrated competency in welding and cutting are entrusted to do this work. Adequate eye protection shall be used by all persons doing welding or cutting, and precautions shall be taken to prevent other persons from exposure that might be harmful to their eyes. A suitable wrench designed for compressed tanks shall be provided to the person authorized to use the equipment.

(d) Transportation of oxygen and gas tanks or cylinders shall be permitted on self-propelled machinery or belt conveyors specially equipped for safe holding of the containers in transportation. In no instance shall such transportation be permitted in conjunction with any mantrip, unless such mantrip is especially equipped with a compartment, lined with at least four inches of foam rubber or the equivalent, and capable of tightly securing the tank inside the manufactured frame of the vehicle.

(e) Empty oxygen and gas tanks or cylinders shall be marked "empty" and shall be removed from the mine promptly in safe containers provided for transportation of the same.

(f) When tanks and cylinders are not in use and when they are being transported, valve protection caps and plugs shall be placed on all tanks or cylinders for which caps and plugs are available. No oxygen tanks, gas tanks, or cylinders shall be transported with the hoses and gauges attached thereto.

(g) In all mines a certified person, pursuant to §22A-2-12 of this code, shall examine for gas with an approved gas detector before and during welding or cutting. The safety of the equipment and methods used in such cases shall be subject to approval of the director. If equipment is mobile, it shall be removed outby the last open breakthrough before cutting and welding may be performed on such equipment.

§22A-2-70. Shafts and slopes.

(a) *When mine examiner to be employed; qualifications*. — During the sinking of a shaft or the driving of a slope to a coal bed or while engaged in underground construction work, or relating thereto, the operator shall assign a mine examiner to such project areas. Such mine examiner shall have a certificate of competency valid only for the type of work stipulated thereon and issued to him or her by the Office of Miners' Health, Safety, and Training after he or she has passed an examination given by the Office of Miners' Health, Safety, and Training. He or she or she shall, at the time he or she takes the examination, have a minimum of five years' experience in shaft sinking, slope driving and underground

construction; moreover, he or she shall be able to detect methane with an approved gas detector and have a thorough knowledge of the ventilation of shafts, slopes, and mines, and the machinery connected therewith, and finally, he or she shall be a person of good moral character with temperate habits.

(b) *Mine examiner or certified person acting as such; duties generally; records open for inspection*. — In all shafts and slopes within three hours immediately preceding the beginning of a work shift and before any workmen in such shift, other than those who may be designated to make the examinations, enter the underground areas of such shafts or slopes, a certified foreman or mine examiner, designated by the operator of such shaft or slope to do so, shall make an examination of such areas. Each person designated to make such examinations shall make tests with an approved gas detector for accumulations of methane and oxygen deficiency, and examine sides of shafts and ribs and roof of all slopes. Should he or she find a condition which he or she considers dangerous to persons, he or she shall place a conspicuous danger sign at all entrances to such places. He or she shall record the results of his or her examination with ink or indelible pencil in a book prescribed by the director, kept at a place on the surface designated by mine management. All records as prescribed herein shall be open for inspection by interested persons.

(c) *Approvals and permits*. — An approval shall be obtained from the office before work is started. A permit shall be obtained from the office: (1) To stop fan when miners are in shafts or slopes; (2) to use electrical machinery in shafts or slopes; (3) to use electric lights in shafts or slopes; (4) to use welders, torches, and like equipment in shafts or slopes; (5) to hoist more than four miners at one time in buckets or cars; (6) to shoot more than 15 shots in one series.

(d) *Records*. — The foreman in charge on each shift shall keep a daily report of conditions and practices. The foreman in charge on each shift shall read and countersign the reports of the previous shift. Unsatisfactory conditions and practices reported shall be repeated on daily reports until corrected. Hoists, buckets, cars, ropes, and appliances thereto shall be examined by a qualified

person before the start of each shift and a written record kept. Deaths from accidents or previous injuries shall be reported immediately by wire to the office of the director and to the district mine inspector or the inspector-at-large. A written report of all injuries and deaths shall be mailed to the Office of Miners' Health, Safety, and Training and district mine inspector promptly. Immediate notice shall be given the office of the director, the district mine inspector and the inspector-at-large in the event of an ignition of gas, or serious accident to miners or equipment. All permits and approvals must be available for inspection by all interested persons.

(e) *General.* — The foreman on shift shall have at least five years' experience in shafts or slopes. New employees shall be instructed in the dangers and rules incident to their work. Conspicuous bulletin boards and warning signs shall be maintained. Unauthorized persons shall not be permitted around shafts or slopes. First-aid material shall be maintained at the operation as required by §22A-2-59 of this code. The scene of a fatal accident shall be left unchanged until an investigation is made by all interested persons. All employees and others around the operation shall wear hard-toe shoes and hard-top hats. Goggles or other eye protection shall be worn when cutting, welding, or striking where particles may fly. Gears, belts, and revolving parts of machinery shall be properly guarded. Hand tools shall be in good condition. Sides of shafts, ribs, and roof of all slopes shall be closely observed for loose and dangerous conditions. Loose brows, ribs, and top in slopes shall be taken down or supported; loose ribs in shafts shall be scaled. Miners shall be hoisted and lowered under power in shafts and slopes. All hoists must have two positive breaking devices. At least three wraps of rope shall remain on the hoist drum at all times. Wire ropes shall not be less than three-fourths inches in diameter, and of a design to prevent excessive spinning or turning when hoisting.

When heavy materials are hoisted, a large rope shall be used if necessary. A hoisting engineer shall be in constant attendance while men are in shaft. Head frames shall be constructed substantially. Noise from machinery shall not interfere with

signals. The standard signal code, whistle or bell shall be used for hoisting:

One signal.....Hoist

One signal.....Stop

Two signals.....Lower

Three signals.....Man cage

One signal from hoisting engineer.....Miners board cage

Hoist signals shall be posted in front of the hoisting engineer. The shaft opening shall be enclosed by a fence five feet high. Buckets shall not be loaded within six inches of the top rim. Buckets shall have a positive lock on the handle or bale to prevent bucket from crumpling while being hoisted. Positive coupling devices shall be used on buckets or cars (hooks with safety catches or threaded clevis). Emergency devices for escape shall be provided while shafts are under construction. Miners shall not ride on or work from rims of buckets. Buckets or cars shall not be lowered without a signal from working area. Only sober and competent engineers shall be permitted to operate hoists. No intoxicating liquors or intoxicated persons shall be permitted in or around any shaft, slope, or machinery. Lattice type platforms shall be used.

(f) *Explosives.* — Explosives and blasting caps being taken into or removed from the operation shall be transported and kept in approved nonconducting receptacles (unopened cartons or cases are permissible). Explosives shall not be primed until ready to be inserted into holes. Handling of explosives and loading of holes shall be under the strict supervision of a qualified person or shotfirer. No more explosives or caps than are required to shoot one round shall be taken into shafts. Adobe, mudcapped, or unconfined shots shall not be fired. Holes shall be stemmed tightly and full into the mouth. Blasting caps shall be inserted in line with the explosive. Leg wires of blasting caps and buss wires shall be kept shunted until connected. Shooting cables shall be shunted at firing devices and before connecting to leg wires. Only approved

shooting devices shall be used. Shots shall be fired promptly after the round of holes are charged. Warnings shall be given before shots are fired by shouting "Fire" three times slowly after those notified have withdrawn. The blasting circuit shall be wired in series or parallel series. All shooting circuits shall be tested with a galvanometer by a qualified person before shooting. A careful examination for misfires shall be made after each shot. Persons shall not return to the face until smoke and dust have cleared away. The shooting cable shall be adequately insulated and have a substantial covering; be connected by the person firing the shot; and be kept away from power circuits. Misfires shall be removed by firing separate holes or by washing; shall not be drilled out; and shall be removed under supervision of a foreman or qualified person. Separate magazines for the storage of explosives and detonators shall be located not less than 300 feet from openings or other structures. Magazines for the storage of explosives and detonators shall be separated at least 50 feet. Magazines shall be located behind barricades. The outside of magazines shall be constructed of incombustible material. Rubbish and combustible material shall not be permitted to accumulate around or in magazine. Warning signs, to be seen in all directions, shall be posted near magazines.

(g) *Electrical*. — Power cables installed in slopes shall be placed in conduit away from the belt as far as possible. Surface transformers shall be elevated at least eight feet from the ground or enclosed by a fence six feet high, grounded if metal; shall be properly grounded; shall be installed so that they will not present a fire hazard; and shall be guarded by sufficient danger signs.

Electric equipment shall be in good condition, clean and orderly; shall be equipped with guards around moving parts; and shall be grounded with effective frame grounds on motors and control boxes.

All electric wires shall be installed and supported on insulators. All electric equipment shall be protected by dual element fuse or circuit breakers.

(h) *Ventilation.* — Ventilating fans shall be offset from portal at least 15 feet; shall be installed so that the ventilating current is not contaminated by dust, smoke or gases; shall be effectively frame grounded; and shall be provided with fire extinguishers.

All shafts and slopes shall be ventilated adequately and continuously with fresh air. Air tubing shall deliver not less than 9,000 feet per minute at the working area or as much more as the inspector may require.

(i) *Gases.* — A foreman shall be in attendance at all times in shafts and slopes who has passed an examination given by the office as to his or her competency in the use of an approved gas detector.

An examination shall be made before and after shooting by the foreman on shift. The foreman shall have no superior in the performance of his or her duties. An approved gas detector shall be carried at all times by the foreman when in the working area and weekly gas analysis made. In all shafts and slopes within three hours immediately preceding the beginning of a work shift and before any workmen in such shift, other than those who may be designated to make the examinations, enter the underground areas of such shafts or slopes, a certified mine foreman or mine examiner designated by the operator of such shaft or slope to do so, shall make an examination of such area. Evidence of official examination shall be left at the face by marking date and initials.

Gases should be removed under the supervision of the foreman in charge. Smoking shall not be permitted inside of shafts or slopes.

(j) *Drilling.* — Dust allaying or dust collecting devices shall be used while drilling.

(k) *Lights to be used in shafts.* — Only approved electric cap lights shall be used in shafts. Other lights shall be of explosive-proof type. Lights shall be suspended in shafts by cable or chain other than the power conductor. In slopes, lights must be substantially installed. Power cables shall be of an approved type. Power cables shall not be taut from shaft collar to light. Power

cables shall be in good condition and free of improper splices. Lights shall be suspended not less than 20 feet above where miners are working. Lights shall be removed from shaft and power cut off when shooting. In slopes, lights must be removed a safe distance when shots are fired. Lights shall not be replaced in shafts or slopes until examination has been made for gas by the mine examiner and found clear. Front of light shall be protected by a substantial metal type guard. Lights shall be protected from falling objects from above by a metal hood. The lighting circuit shall be properly fused. Electric lights shall not be used in gaseous atmospheres. An approved gas detector shall be kept for use at the face while miners are at work.

ARTICLE 9. MINE INSPECTORS' EXAMINING BOARD.

§22A-9-1. Mine Inspectors' Examining Board abolished and duties imposed upon the Board of Coal Mine Health and Safety.

The Mine Inspectors' Examining Board is hereby abolished. All duties and responsibilities imposed upon the Mine Inspectors' Examining Board are transferred and hereby imposed upon the Board of Coal Mine Health and Safety. On the effective date of the reenactment of this article and section of the code, all equipment and records necessary to effectuate the purposes of this article shall be transferred to the Board of Coal Mine Health and Safety.

In addition to other duties expressly set forth elsewhere in this article, the Board of Coal Mine Health and Safety shall:

(1) Establish and, from time to time, revise forms of application for employment as mine inspectors, which shall include the applicant's Social Security number and forms for written examinations to test the qualifications of candidates for that position;

(2) Adopt and promulgate reasonable rules relating to the examination, qualification, and certification of candidates for appointment as mine inspectors, and hearing for removal of inspectors, held under §22A-1-12 of this code. All of such rules

shall be printed and a copy thereof furnished by the board to any person upon request. The board shall determine whether applicants have the necessary experience to take the mine inspector examination, and the examination of candidates for appointment as a mine inspector shall be conducted by the board and it shall rank all applicants;

(3) Prepare and certify to the Director of the Office of Miners' Health, Safety, and Training a register of qualified eligible candidates for appointment as mine inspectors. The register shall list all qualified eligible candidates in the order of their grades, the candidate with the highest grade appearing at the top of the list. After each meeting of the board held to examine such candidates, and at least annually, the board shall prepare and submit to the Director of the Office of Miners' Health, Safety, and Training a revised and corrected register of qualified eligible candidates for appointment as mine inspector, deleting from such revised register all persons: (a) Who are no longer residents of West Virginia; (b) who have allowed a calendar year to expire without, in writing, indicating their continued availability for such appointment; (c) who have been passed over for appointment for three years; (d) who have become ineligible for appointment since the board originally certified that such person was qualified and eligible for appointment as mine inspector; or (e) who, in the judgment of the board, should be removed from the register for good cause by the board;

(4) The board shall keep and preserve the written examination papers, manuscripts, grading sheets, and other papers of all applicants for appointment as mine inspector for a period of two years. Specimens of the examinations given, together with the correct solution of each question, shall be preserved;

(5) The board shall issue a letter or written notice of qualification to each successful eligible candidate;

(6) The Board of Coal Mine Health and Safety shall hear and determine proceedings for hearings for the removal of mine inspectors in accordance with the provisions of §22A-1-12 of this code when requested in writing by the mine inspector;

(7) The board shall hear and determine appeals of mine inspectors from suspension orders made by the director pursuant to the provisions of §22A-1-4 of this code: *Provided,* That an aggrieved inspector, in order to appeal from any order of suspension, shall file such appeal in writing with the Board of Coal Mine Health and Safety not later than 10 days after receipt of notice of suspension. On such appeal the board shall promptly affirm the act of the director unless it is satisfied from a clear preponderance of the evidence that the director has acted arbitrarily. Each witness shall be sworn, and a transcript shall be made of all evidence taken and the proceedings had at the hearing. No continuance may be granted except for good cause shown. The administrator of the board, or in their absence a member of the board designated by the board, shall have the power to administer oaths and subpoena witnesses; and

(8) The board and office shall make an annual report to the Governor and the director concerning the administration of mine inspection personnel in the state service, making such recommendations as the board considers to be in the public interest.

CHAPTER 181

(Com. Sub. for S. B. 343 - By Senators Weld, Smith, Ihlenfeld, Grady, and Jeffries)

[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 §17B-2-13 of the Code of West Virginia, 1931, as amended, relating to authorizing the Division of Motor Vehicles to renew or reissue driver's licenses and identification cards online upon request due to a change of address.

Be it enacted by the Legislature of West Virginia:

ARTICLE 2. ISSUANCE OF LICENSE, EXPIRATION AND RENEWAL.

§17B-2-13. Notice of change of address or name.

(a) Whenever any person after applying for or receiving a driver's license moves from the address named in the application or in the license issued to the person, or when the name of a licensee is changed by marriage or otherwise, the person shall within 20 days thereafter notify the division in writing of the old and new addresses or of the former and new names and of the number of any license then held by the person on the forms prescribed by the division. Notwithstanding the provisions of legislative rule 91 CSR 4, the division may renew or reissue a driver's license or identification card online in accordance with §17B-2-1 or §17B-2-12a of this code at the request of a person due to a change in the person's postal address.

(b) Whenever any person, after applying for or receiving a driver's license, is assigned a new address by the United States

postal service or other legally constituted authority, the person shall notify the division in writing of the old and new address and of the number of any license held by the person. The notification of change of address shall be made at least 20 days prior to the final date on which mail with the old address is deliverable by the United States postal service.

(c) The provisions of §17B-5-1 of this code relating to imprisonment do not apply to persons who violate the provisions of this section.

CHAPTER 182

(Com. Sub. for S. B. 346 - By Senators Weld, Smith, Ihlenfeld, Nelson, and Jeffries)

[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 §17A-2-19 of the Code of West Virginia, 1931, as amended, relating to the use by the Division of Motor Vehicles of electronic means and other alternate means when providing notice.

Be it enacted by the Legislature of West Virginia:

ARTICLE 2. DIVISION OF MOTOR VEHICLES.

§17A-2-19. Giving of notice.

(a) Whenever the division is authorized or required to give any notice under this chapter or other law regulating the operation of vehicles, unless a different method of giving such notice is otherwise expressly prescribed or authorized, such notice shall be given either by personal delivery thereof to the person to be so notified, or by deposit in the United States mail of the notice in an envelope with postage prepaid, addressed to the person at his or her address as shown by the records of the division.

(b) (1) Notwithstanding any provision in this chapter, chapter 17B, chapter 17D, or chapter 17G of this code to the contrary, whenever the division is required to deliver notice by United States mail, certified mail, or registered mail, the division may instead deliver such notice by electronic means as provided in this subsection. For purposes of this subsection, "notice by electronic means" or "electronic notice" means notice by electronic mail, text message, online portal of the division, mobile application of the

division, or alternate delivery method having the capability of generating a read receipt or other confirmation of access of the notice.

(2) Electronic notice may be used for any person who provided the division with means for electronic access to such person. The division shall make reasonable methods available to its customers to provide and update contact information for electronic notice.

(3) Delivery of electronic notice is complete upon receipt by the division of evidence of electronic notice access. If there is no confirmation of access of the electronic notice within four days, the division shall provide additional notice by United States mail, either regular mail or certified mail, at the discretion of the division.

(c) Delivery of notice by mail is complete upon the expiration of four days after such deposit of the notice. Proof of the giving of notice in any manner may be made by the certificate of any officer or employee of the division or affidavit of any person over 18 years of age, naming the person to whom the notice was given, and specifying the time, place, and manner of the giving thereof.

CHAPTER 183

(Com. Sub. for S. B. 356 - By Senators Grady, Stollings, Karnes, and Roberts)

[Passed March 26, 2021; in effect 90 days from passage (June 24, 2021)]
[Approved by the Governor on April 7, 2021.]

AN ACT to amend and reenact §17B-2-7 of the Code of West Virginia, 1931, as amended, relating to allowing the written part of the operator's license examination to be given in school driver's education courses.

Be it enacted by the Legislature of West Virginia:

ARTICLE 2. ISSUANCE OF LICENSE, EXPIRATION, AND RENEWAL.

§17B-2-7. Examination of applicants.

(a) Upon the presentment of the applicant's certified copy of the birth certificate issued by a state or other governmental entity responsible for vital records or a valid and unexpired passport issued by the United States government, as evidence that the applicant is of lawful age and verifiable identity, the Division of Motor Vehicles shall examine every applicant for a license to operate a motor vehicle in this state, except as otherwise provided in this section. The examination shall include a test of the applicant's eyesight, the applicant's ability to read and understand highway signs regulating, warning, and directing traffic, the applicant's knowledge of the traffic laws of this state, and the applicant's knowledge of the effects of alcohol upon persons and the dangers of driving a motor vehicle under the influence of alcohol. The examination shall also include an actual demonstration of ability to exercise ordinary and reasonable control in the operation of a motor vehicle, and any further physical

and mental examination as the Division of Motor Vehicles considers necessary to determine the applicant's fitness to operate a motor vehicle safely upon the highways.

(b) The commissioner shall propose legislative rules for promulgation pursuant to §29A-3-1 *et seq.* of this code concerning the examination of applicants for licenses and the qualifications required of applicants, and the examination of applicants by the division shall be in accordance with the rules. The rules shall provide for the viewing of educational material or films on the medical, biological, and psychological effects of alcohol upon persons, the dangers of driving a motor vehicle while under the influence of alcohol, and the criminal penalties and administrative sanctions for alcohol and drug related motor vehicle violations. By September 1, 2021, the commissioner shall propose rules for legislative approval and emergency rules pursuant to §29A-3-1 *et seq.* of this code allowing driver education instructors providing instruction pursuant to §18-6-1 *et seq.* of this code, to administer a knowledge test developed by the division. Notwithstanding §18-8-11 of this code, any person successfully completing a test administered by a driver's education instructor pursuant to the rule is exempt from the proof of school enrollment requirements in that code section.

(c) After successful completion of the examination required by this section, §17B-2-3 or §17B-2-7b of this code, and prior to the issuance of a license pursuant to §17B-2-8 of this code, every applicant for a driver's license, graduated driver's license, or motorcycle-only license shall attend a mandatory education class on the dangers and social consequences of driving a motor vehicle while under the influence of alcohol. To the extent practicable, the commissioner shall use as lecturers at those classes persons who can relate first-hand experiences as victims or family members of victims of alcohol-related accidents or drivers who have been involved in alcohol-related accidents which caused serious bodily injury or death.

CHAPTER 184

(Com. Sub. for S. B. 431 - By Senators Weld and Woelfel)

[Passed March 26, 2021; in effect 90 days from passage (June 24, 2021)]
[Approved by the Governor on April 7, 2021.]

AN ACT to amend and reenact §18-8-11 of the Code of West Virginia, 1931, as amended, relating to authorizing a county board of education to provide electronic notice of school attendance and satisfactory progress to the Division of Motor Vehicles in lieu of requiring each student to provide a paper notice.

Be it enacted by the Legislature of West Virginia:

ARTICLE 8. COMPULSORY SCHOOL ATTENDANCE.

§18-8-11. School attendance and satisfactory academic progress as conditions of licensing for privilege of operation of motor vehicle.

(a) In accordance with the provisions of §17B-2-3a and §17B-2-5 of this code, the Division of Motor Vehicles shall deny a license or instruction permit for the operation of a motor vehicle to any person under the age of 18 who does not at the time of application present a diploma or other certificate of graduation issued to the person from a secondary high school of this state or any other state or documentation that the person: (1) Is enrolled and making satisfactory progress in a course leading to a general education development certificate (GED) from a state-approved institution or organization or has obtained the certificate; (2) is enrolled and is making satisfactory academic progress in a secondary school of this state or any other state; (3) is excused from the requirement due to circumstances beyond his or her control; or

(4) is enrolled in an institution of higher education as a full-time student in this state or any other state.

(b) The attendance director or chief administrator shall, upon request, provide a driver's eligibility certificate on a form approved by the Department of Education to any student at least 15 but less than 18 years of age who is properly enrolled and is making satisfactory academic progress in a school under the jurisdiction of the official for presentation to the Division of Motor Vehicles on application for or reinstatement of an instruction permit or license to operate a motor vehicle: *Provided*, That a parent or legal guardian of a child who is being educated pursuant to §18-8-1(c) of this code may provide a signed statement in lieu of a driver's eligibility certificate issued by the attendance director or chief administrator affirming that the child is being educated in accordance with law, is making satisfactory academic progress, and meets the conditions to be eligible to obtain any permit or license under this section. The Division of Motor Vehicles may accept from a county board of education electronic notice of a student's compliance with the provisions of this section in lieu of any written form or written statement otherwise required from an applicant for an instruction permit or driver's license.

(c) Whenever a student at least 15 but less than 18 years of age, except as provided in subsection(g) of this section, withdraws from school, the attendance director or chief administrator shall notify the Division of Motor Vehicles of the student's withdrawal no later than five days from the date of the withdrawal. Within five days of receipt of the notice, the Division of Motor Vehicles shall send notice to the student that the student's instruction permit or license to operate a motor vehicle will be suspended under the provisions of §17B-3-6 of this code on the 30th day following the date the notice was sent unless documentation of compliance with the provisions of this section is received by the Division of Motor Vehicles before that time. The notice shall also advise the student that he or she is entitled to a hearing before the county superintendent of schools or his or her designee or before the appropriate private school official concerning whether the student's withdrawal from school was due to a circumstance or

circumstances beyond the control of the student. If suspended, the division may not reinstate an instruction permit or license until the student returns to school and shows satisfactory academic progress or until the student attains 18 years of age.

(d) Whenever a student at least 15 but less than 18 years of age is enrolled in a secondary school and fails to maintain satisfactory academic progress, the attendance director or chief administrator shall follow the procedures set out in subsection (c) of this section to notify the Division of Motor Vehicles. Within five days of receipt of the notice, the Division of Motor Vehicles shall send notice to the student that the student's instruction permit or license will be suspended under the provisions of §17B-3-6 of this code on the 30th day following the date the notice was sent unless documentation of compliance with the provisions of this section is received by the Division of Motor Vehicles before that time. The notice shall also advise the student that he or she is entitled to a hearing before the county superintendent of schools or his or her designee or before the appropriate private school official concerning whether the student's failure to make satisfactory academic progress was due to a circumstance or circumstances beyond the control of the student. Once suspension is ordered, the division may not reinstate an instruction permit or license until the student shows satisfactory academic progress or until the student attains 18 years of age.

(e) Upon written request of a student, within 10 days of receipt of a notice of suspension as provided by this section, the Division of Motor Vehicles shall afford the student the opportunity for an administrative hearing. The scope of the hearing shall be limited to determining if there is a question of improper identity, incorrect age, or some other clerical error.

(f) For the purposes of this section:

(1) "Withdrawal" is defined as more than 10 consecutive or 15 total days unexcused absences during a school year, or suspension pursuant to §18A-5-1a(a) and §18A-5-1a(b) of this code.

(2) "Satisfactory academic progress" means the attaining and maintaining of grades sufficient to allow for graduation and course work in an amount sufficient to allow graduation in five years or by age 19, whichever is earlier.

(3) "Circumstances outside the control of the student" shall include, but not be limited to, medical reasons, familial responsibilities, and the necessity of supporting oneself or another.

(4) Suspension or expulsion from school or imprisonment in a jail or a West Virginia correctional facility is not a circumstance beyond the control of the student.

(g) Whenever the withdrawal from school of the student, the student's failure to enroll in a course leading to or to obtain a GED or high school diploma, or the student's failure to make satisfactory academic progress is due to a circumstance or circumstances beyond the control of the student, or the withdrawal from school is for the purpose of transfer to another school as confirmed in writing by the student's parent or guardian, no notice shall be sent to the Division of Motor Vehicles to suspend the student's motor vehicle operator's license and if the student is applying for a license, the attendance director or chief administrator shall provide the student with documentation to present to the Division of Motor Vehicles to excuse the student from the provisions of this section. The school district superintendent (or the appropriate school official of any private secondary school) with the assistance of the county attendance director and any other staff or school personnel shall be the sole judge of whether any of the grounds for denial or suspension of a license as provided by this section are due to a circumstance or circumstances beyond the control of the student.

(h) The state board shall promulgate rules necessary for uniform implementation of this section among the counties and as may otherwise be necessary for the implementation of this section. The rule may not include attainment by a student of any certain grade point average as a measure of satisfactory progress toward graduation.

CHAPTER 185

(S. B. 529 - By Senator Maynard)

[Passed April 8, 2021; in effect 90 days from passage (July 7, 2021)]
[Approved by the Governor on April 15, 2021.]

AN ACT to amend and reenact §17A-6-6 of the Code of West Virginia, 1931, as amended, relating to refusal or issuance of a license certificate; and correcting an erroneous code citation.

Be it enacted by the Legislature of West Virginia:

ARTICLE 6. LICENSING OF DEALERS AND WRECKERS OR DISMANTLERS; SPECIAL PLATES; TEMPORARY PLATES OR MARKERS.

§17A-6-6. Refusal or issuance of license certificate; license certificate not transferable.

(a) Upon the review of the application and all other information before him or her, the commissioner may make and enter an order denying an application for a license certificate and refuse the license certificate sought. A denial and refusal are final and conclusive unless an appeal is made in accordance with the provisions of rules proposed for legislative approval in accordance with the provisions of §29A-3-1 *et seq.* of this code. The commissioner shall make and enter an order denying or refusing a license, if the commissioner finds that the applicant (individually, if an individual, or the partners, if a co-partnership, or the officers and directors, if a corporation):

(1) Has failed to furnish the required bond unless otherwise exempt under the provisions of §17A-6-2a of this code;

(2) Has failed to furnish the required certificate of insurance;

(3) Has knowingly made false statement of a material fact in his or her application;

(4) Has habitually defaulted on financial obligations in this state or any other state or jurisdiction;

(5) Has been convicted of a felony: *Provided*, That the commissioner shall apply §17A-6-6(c) and §17A-6-6(d) of this code in determining whether an applicant's prior criminal convictions bear a rational nexus to the license being sought;

(6) So far as can be ascertained, has not complied with, and will not comply with, the registration and title laws of this state or any other state or jurisdiction;

(7) Does not or will not have or maintain at each place of business, subject to the qualification contained in §17A-6-1(a)(17) of this code with respect to a new motor vehicle dealer (an established place of business as defined for the business in question) in that section;

(8) Has been convicted of any fraudulent act in connection with the business of new motor vehicle dealer, used motor vehicle dealer, house trailer dealer, trailer dealer, recreational vehicle dealer, motorcycle dealer, used parts dealer, or wrecker or dismantler in this state or any other state or jurisdiction: *Provided*, That the commissioner shall apply §17A-6-6(c) and §17A-6-6(d) of this code in determining whether an applicant's prior criminal convictions bear a rational nexus to the license being sought;

(9) Has done any act or has failed or refused to perform any duty for which the license certificate sought could be suspended or revoked were it then issued and outstanding;

(10) Is not age 18 years or older;

(11) Is delinquent in the payment of any taxes owed to the United States, the State of West Virginia, or any political subdivision of the state;

(12) Has been denied a license in another state or has been the subject of license revocation or suspension in another state;

(13) Has committed any action in another state which, if it had been committed in this state, would be grounds for denial and refusal of the application for a license certificate;

(14) Has failed to pay any civil penalty assessed by this state or any other state;

(15) Has failed to reimburse, when ordered, any claim against the dealer recovery fund as prescribed in §17A-6-2a of this code; or

(16) Has failed to comply with the provisions of §17A-6E-1 *et seq.* of this code pertaining to the employment of licensed salespersons.

Otherwise, the commissioner shall issue to the applicant the appropriate license certificate which entitles the licensee to engage in the business of new motor vehicle dealer, used motor vehicle dealer, house trailer dealer, trailer dealer, recreational vehicle dealer, motorcycle dealer, used parts dealer, or wrecker or dismantler, as the case may be.

(b) A license certificate issued in accordance with the provisions of this article is not transferable.

(c) The commissioner may not disqualify an applicant from initial licensure because of a prior criminal conviction that remains unreversed unless that conviction is for a crime that bears a rational nexus to the activity requiring licensure. In determining whether a criminal conviction bears a rational nexus to a profession or occupation, the commissioner shall consider at a minimum:

(1) The nature and seriousness of the crime for which the individual was convicted;

(2) The passage of time since the commission of the crime;

(3) The relationship of the crime to the ability, capacity, and fitness required to perform the duties and discharge the responsibilities of the profession or occupation; and

(4) Any evidence of rehabilitation or treatment undertaken by the individual.

(d) Notwithstanding any other provision of this code to the contrary, if an applicant is disqualified from licensure because of a prior criminal conviction, the commissioner shall permit the applicant to apply for initial licensure if:

(1) A period of five years has elapsed from the date of conviction or the date of release from incarceration, whichever is later;

(2) The individual has not been convicted of any other crime during the period of time following the disqualifying offense; and

(3) The conviction was not for an offense of a violent or sexual nature: *Provided*, That a conviction for an offense of a violent or sexual nature may subject an individual to a longer period of disqualification from licensure, to be determined by the commissioner.

(e) An individual with a criminal record who has not previously applied for licensure may petition the commissioner at any time for a determination of whether the individual's criminal record will disqualify the individual from obtaining a license. This petition shall include sufficient details about the individual's criminal record to enable the commissioner to identify the jurisdiction where the conviction occurred, the date of the conviction, and the specific nature of the conviction. The commissioner shall provide the determination within 60 days of receiving the petition from the applicant. The commissioner may charge a fee to recoup costs for each petition.

CHAPTER 186

(Com. Sub. for S. B. 655 - By Senator Swope)

[Passed April 9, 2021; in effect 90 days from passage (July 8, 2021)]
[Approved by the Governor on April 28, 2021.]

AN ACT to amend and reenact §24A-2-2b of the Code of West Virginia, 1931, as amended, relating to rescheduling a review of Public Service Commission rules regarding recovering, hauling, and storing wrecked or disabled vehicles; and changing a sunset requirement on those rules.

Be it enacted by the Legislature of West Virginia:

ARTICLE 2. COMMON CARRIERS BY MOTOR VEHICLES.

*§24A-2-2b. Rule-making authority; establishing rates for recovering, towing, hauling, carrying, or storing wrecked or disabled vehicles; complaint process; and required legislative audit.

(a) On or before July 1, 2016, the commission shall promulgate rules to effectuate the provisions of this article.

(b) The rules promulgated pursuant to the provisions of this section shall describe:

(1) Factors determining the fair, effective, and reasonable rates levied by a carrier for recovering, towing, hauling, carrying, or storing a wrecked or disabled vehicle. The commission shall consider, but shall not be limited to:

(A) Tow vehicles and the special equipment required to complete the recovery or tow;

***NOTE:** This section was also amended by H. B. 3130 (Chapter 190), which passed subsequent to this act.

(B) Total time to complete the recovery or tow;

(C) Number of regular and extra employees required to complete the recovery or tow;

(D) Location of vehicle recovered or towed;

(E) Materials or cargo involved in recovery or tow;

(F) Comparison with reasonable prices in the region;

(G) Weather conditions; and

(H) Any other relevant information having a direct effect on the pricing of the recovery, towing, and storage of a recovered or towed vehicle;

(2) The process for filing a complaint, the review and investigation process to ensure it is fair, effective, and timely: *Provided*, That in any formal complaint against a carrier relating to a third-party tow, the burden of proof to show that the carrier's charges are just, fair, and reasonable is on the carrier;

(3) The process for aggrieved parties to recover the cost, from the carrier, for the charge or charges levied by a carrier for recovering, towing, hauling, carrying, or storing a wrecked or disabled vehicle where the commission determines that the charge or charges are not otherwise just, fair, or reasonable; and

(4) The process to review existing maximum statewide wrecker rates and special rates for the use of special equipment in towing and recovery work to ensure that rates are just, fair, and reasonable: *Provided*, That the commission shall generally disapprove hourly and flat rates for ancillary equipment.

(c) All carriers regulated under this article shall list their approved rates, fares, and charges on every invoice provided to an owner, operator, or insurer of a wrecker or disabled motor vehicle.

(d) The rules promulgated pursuant to this article shall sunset on July 1, 2023, unless reauthorized.

(e) On or before December 31, 2022, the Legislative Auditor shall review the rules promulgated by the Public Service Commission under this section. The audit shall evaluate the rate-making policy for reasonableness, the complaint process for timeliness, the penalties for effectiveness, and any other metrics the Legislative Auditor considers appropriate. The Legislative Auditor may recommend that the rule be reauthorized, reauthorized with amendment, or repealed.

CHAPTER 187

(H. B. 2701 - By Delegate Capito)

[Passed March 22, 2021; in effect ninety days from passage.]
[Approved by the Governor on April 1, 2021.]

AN ACT to amend and reenact §17B-2B-1, §17B-2B-2, §17B-2B-4 and §17B-2B-6 of the Code of West Virginia, 1931, as amended, relating to authorizing the Division of Rehabilitation Services to approve acceptable training programs required for low vision individuals to obtain a Class G driver's license.

Be it enacted by the Legislature of West Virginia:

ARTICLE 2B. LICENSE TO OPERATE A MOTOR VEHICLE WITH BIOPTIC TELESCOPIC DEVICE.

§17B-2B-1. Definitions.

For purposes of this article, the following terms have the meaning indicated:

(1) "Applicant" means any person applying for a Class G instruction permit or license to operate a motor vehicle in this state who must use a bioptic telescopic device to meet the commissioner's minimum visual acuity and visual field standards for licensure.

(2) "Approved driver training program" means a program that:

(A) Provides and coordinates comprehensive assessment and training of driving skills and responses;

(B) Emphasizes clinical and functional vision skills, predriver readiness skills and the physical, mental and social driving skills of an applicant; and

(C) Is approved by the Division of Rehabilitation Services, after consultation with the division.

(3) "Bioptic telescopic device" means a two focus optical system used to magnify distant objects by including a small telescope that is mounted in a spectacle lens so as to allow an unobstructed view of the horizontal visual field through normal distance corrective lenses.

(4) "Corrective lenses" means eyeglasses, contact lenses, and intraocular lenses, but does not mean a bioptic telescopic device.

(5) "Daytime driving restriction" means a limitation on the operation of a motor vehicle to:

(A) The period of time between 30 minutes after sunrise and 30 minutes before sunset; and

(B) Weather conditions that do not significantly reduce the visibility of the roadway, other traffic, and traffic control devices.

(6) "Field expander" means a device used to compensate for peripheral visual field loss.

(7) "Restricted out-of-state driver" means a person who has been issued, by another state, a valid driver's license with a restriction requiring the driver to use a bioptic telescopic device.

(8) "Vision specialist" means a licensed ophthalmologist or optometrist.

(9) "Visual acuity" means the measure of a person's clarity of vision based on the Snellen visual acuity scale.

(10) "Visual field" means the area of physical space visible to the eye in a given fixed position.

§17B-2B-2. Class G instruction permit or driver's license; participation in approved driver training program; eligibility criteria; required curriculum.

(a) A person who does not meet the visual acuity and visual field standards established by the commissioner for licensure to

operate a motor vehicle in this state, but who is able to satisfy the minimum vision requirements using a bioptic telescopic device is eligible for a Class G instruction permit or driver's license pursuant to this article if he or she is participating in or has successfully completed an approved driver training program.

(b) An applicant is eligible to participate in an approved driver training program if he or she:

(1) Submits to the commissioner and to the Division of Rehabilitation Services a report of examination by a vision specialist, on a form prescribed by the Division of Rehabilitation Services, which certifies that:

(A) In the opinion of the vision specialist, the applicant's vision can be corrected with the use of a bioptic telescopic device and without field expanders to satisfy the minimum visual acuity and visual field standards established by the commissioner;

(B) No ocular diagnosis or prognosis currently exists or is likely to occur during the period of licensure which would cause deterioration of the applicant's visual acuity or visual field to levels below the commissioner's minimum visual acuity and visual field standards for licensure; and

(C) The applicant is a likely candidate for acceptance into an approved driver training program; and

(2) Satisfies any other criteria for participation established by the Division of Rehabilitation Services.

(c) An approved driver training program shall include, at a minimum:

(1) Predriving instruction with regard to highway signs and the rules of the road;

(2) Predriving instruction in proper use of bioptic telescopic devices; and

(3) At least 30 hours of behind-the-wheel instruction in driving with bioptic telescopic devices.

(d) The Division of Rehabilitation Services, or its approved driver training program, may waive predriving instruction with regard to highway signs and the rules of the road pursuant to subdivision (1), subsection (c) of this section if the applicant:

(1) Has at least three years of experience driving with an unrestricted license; and

(2) Passes the written examination provided in §17B-2B-3(a)(2) of this code.

§17B-2B-4. Class G driver's license; eligibility criteria; duration of license; surrender of current license; provisions not applicable to persons already licensed to drive with bioptic device.

(a) A person who has obtained a Class G instruction permit may obtain a Class G driver's license to operate a motor vehicle if he or she has:

(1) Been certified by the Division of Rehabilitation Services, or its approved driver training program, as having successfully completed an approved driver training program, along with any recommendations regarding license restrictions or modifications, including, but not limited to:

(A) Special adaptive equipment;

(B) Hours of permitted operation;

(C) Types of roads on which the applicant may operate a vehicle; and

(D) How far from home the applicant may operate a vehicle;

(2) Submitted to the commissioner and to the Director of the Division of Rehabilitation Services, on a form prescribed by the Division of Rehabilitation Services, a report of examination by a vision specialist, conducted after the applicant completes the

approved driver training program, certifying that the applicant continues to meet the minimum visual acuity and visual field standards established by the commissioner for licensure to operate a motor vehicle;

(3) Successfully completed a comprehensive road skills examination, conducted at a location determined by the commissioner, with a certified driver rehabilitation specialist or driver rehabilitation educator in the test vehicle along with the driving examiner. The comprehensive road skills examination shall include, at a minimum:

(A) A "passenger in car" test with bioptic telescopic device in place designed to test competency in using the bioptic telescopic device under stationary and dynamic conditions;

(B) A maneuverability skills test; and

(C) A standardized on-road test designed to test driving competency of the applicant; and

(4) Satisfied, at each stage of the licensing process, any additional requirements for licensure required by article two of this chapter that are not addressed in this article;

(b) If an applicant fails the comprehensive road skills examination three times, he or she is not eligible to retake the examination until he or she has successfully completed additional training in an approved driver training program and been recommended for retesting by the director of the program.

(c) An applicant who has a current license to operate a motor vehicle other than a Class G driver's license must surrender his or her current driver's license before the commissioner will issue a Class G driver's license or instruction permit.

(d) Every Class G licensee must provide the commissioner with a report of examination by a vision specialist, conducted no more than three months prior to the annual anniversary of the issuance of the license, certifying that the applicant continues to meet the minimum visual acuity and visual field standards established by

the commissioner for licensure to operate a motor vehicle. The report shall be submitted on a form prescribed by the commissioner.

§17B-2B-6. Restricted out-of-state drivers; required to obtain Class G driver's license; surrender of current license; waiver of requirement to participate in an approved driver training program.

(a) A restricted out-of-state driver establishing residence in West Virginia must apply for a Class G driver's license in this state.

(b) To obtain a Class G driver's license, the restricted out-of-state driver must:

(1) Satisfy all the requirements of licensure contained in sections three and four of this article;

(2) Surrender his or her out-of-state driver's license to the commissioner; and

(3) Provide the commissioner with a report of examination by a vision specialist, conducted no more than 90-days prior to the application, showing that the applicant meets the minimum vision standards.

(c) If, based upon an evaluation of the out-of-state driver's abilities, along with any recommendations, the Division of Rehabilitation Services, or its approved driver training program, certifies to the commissioner that the restricted out-of-state driver was required, as a condition of licensure in the other state, to complete training substantially equivalent to the approved driver training program required by this article, the commissioner may waive the requirement that the restricted out-of-state driver complete an approved driver training program in this state prior to licensure.

CHAPTER 188

(Com. Sub. for H. B. 2890 - By Delegates Steele, Foster and J. Pack)

[Passed April 7, 2021; in effect ninety days from passage.]
[Approved by the Governor on April 26, 2021.]

AN ACT to amend and reenact §24A-1-2 and §24A-1-3 of the Code of West Virginia, 1931, as amended, all relating to clarifying the authority of the Public Service Commission of West Virginia over luxury limousine services; defining terms; and creating exemption from certain contract and common carrier laws for luxury limousine services.

Be it enacted by the Legislature of West Virginia:

ARTICLE 1. PURPOSES, DEFINITIONS AND EXEMPTIONS.

§24A-1-2. Definitions.

As used in this chapter:

"Commission" means the Public Service Commission of West Virginia;

"Common carrier by motor vehicle" means any person who undertakes, whether directly or by lease or any other arrangement, to transport passengers or property, or any class or classes of property, for the general public over the highways of this state by motor vehicles for hire, whether over regular or irregular routes, including such motor vehicle operations of carriers by rail, water, or air, and of express or forwarding agencies, and leased or rented motor vehicles, with or without drivers;

"Contract carrier by motor vehicle" means any person not included within the definition of "common carrier by motor

vehicle", who under special and individual contracts or agreements, and whether directly or by lease or any other arrangement, transports passengers or property over the highways in this state by motor vehicles for hire;

"Driveaway operation" means an operation in which any vehicle or vehicles, operated singly or in lawful combinations, new or used, not owned by the transporting motor carrier, constitute the commodity being transported;

"Emergency substitute carrier" means a common carrier by motor vehicle or a contract carrier by motor vehicle that is authorized by the Public Service Commission to provide service on a temporary basis outside of its certificated territory or its contract because of commission suspension of a motor carrier certificate of convenience and necessity, or contract carrier by motor vehicle permit;

"Exempt carrier" means any person operating a motor vehicle exempt from the provisions of §24A-1-3 of this code;

"I.C.C." means the Interstate Commerce Commission;

"Luxury limousine service" means passenger motor carrier service by pre-arranged appointment with a minimum charge of no less than $60.00, with a formally dressed chauffeur, using a large and luxurious sedan, sport utility vehicle, or van, or an antique vehicle: *Provided*, That "luxury limousine service" does not include a passenger motor carrier that is serving railroad crews for railroad purposes or used for nonemergency medical transportation other than Medicaid members.

"Motor carrier" includes both a common carrier by motor vehicle and a contract carrier by motor vehicle;

"Motor vehicle" means, and includes, any automobile, truck, tractor, truck-tractor, trailer, semitrailer, motorbus, taxicab, any self-propelling motor-driven motor vehicle, or any combination thereof used upon any public highway in this state for the purpose of transporting persons or property;

"NARUC" means the National Association of Regulatory Utility Commissioners;

"Operations within the borders of this state" means interstate or foreign operations to, from, within, or traversing this state;

"Person" means and includes any individual, firm, copartnership, corporation, company, association, or joint-stock association, and includes any trustee, receiver, assignee, or personal representative thereof;

"Planting and harvesting season" means January 1 through December 31 of each calendar year only as it relates to the administration of rules promulgated pursuant to §24A-5-5(j) of this code;

"Private commercial carrier" means and includes any person who undertakes, whether directly or by lease or other arrangement, to transport property, including hazardous materials as defined in rules and regulations promulgated by the commission, for himself or herself over the public highways of this state, in interstate or intrastate commerce, for any commercial purpose, by motor vehicle with a gross vehicle weight rating of 10,001 pounds or more, by motor vehicle designed to transport more than 15 passengers, including the driver; or by any motor vehicle used to transport hazardous materials in a quantity requiring placarding under federal hazardous material regulations as adopted by the commission;

"Power unit" means any vehicle which contains within itself the engine, motor, or other source of power by which said vehicle is propelled; and

"Public highway" means any public street, alley, road or highway, or thoroughfare of any kind in this state used by the public.

§24A-1-3. Exemptions from chapter.

The provisions of this chapter, except where specifically otherwise provided, do not apply to:

(1) Motor vehicles operated exclusively in the transportation of United States mail or in the transportation of newspapers: *Provided,* That the vehicles and their operators are subject to the safety rules promulgated by the commission;

(2) Motor vehicles owned and operated by the United States of America, the State of West Virginia or any county, municipality or county board of education, urban mass transportation authority established and maintained pursuant to §8-27-1 *et seq.* of this code or by any of their departments, and any motor vehicles operated under a contract with a county board of education exclusively for the transportation of children to and from school or other legitimate transportation for the schools as the commission may specifically authorize;

(3) Motor vehicles used exclusively in the transportation of agricultural or horticultural products, livestock, poultry and dairy products from the farm or orchard on which they are raised or produced to markets, processing plants, packing houses, canneries, railway shipping points and cold storage plants, and in the transportation of agricultural or horticultural supplies to farms or orchards where they are to be used: *Provided,* That the vehicles that are exempted by this subdivision and are also operated by common carriers by motor vehicle or contract carriers by motor vehicle, and their operators are subject to the safety and insurance rules promulgated by the commission;

(4) Motor vehicles used exclusively in the transportation of human or animal excreta;

(5) Motor vehicles used exclusively in ambulance service or duly chartered rescue squad service;

(6) Motor vehicles used exclusively for volunteer fire department service;

(7) Motor vehicles used exclusively in the transportation of coal from mining operations to loading facilities for further shipment by rail or water carriers: *Provided,* That the vehicles and their operators are subject to the safety rules promulgated by the

commission and the vehicles that are exempted by this subdivision and are also operated by common carriers by motor vehicle or contract carriers by motor vehicle, and their operators are subject to the insurance rules promulgated by the commission;

(8) Motor vehicles used by petroleum commission agents and oil distributors solely for the transportation of petroleum products and related automotive products when the transportation is incidental to the business of selling the products: *Provided,* That the vehicles and their operators are subject to the safety rules promulgated by the commission and the vehicles that are exempted by this subdivision and are also operated by common carriers by motor vehicle or contract carriers by motor vehicle, and their operators are subject to the insurance rules promulgated by the commission;

(9) Motor vehicles owned, leased by or leased to any person and used exclusively for the transportation of processed source-separated recycled materials generated by commercial, institutional and industrial customers, transported free of charge or by a nonprofit recycling cooperative association in accordance with §19-4-1(d)(1) of this code from the customers to a facility for further processing: *Provided,* That the vehicles and their operators shall be subject to the safety rules promulgated by the commission and the vehicles that are exempted by this subdivision and are also operated by common carriers by motor vehicle or contract carriers by motor vehicle, and their operators are subject to the insurance rules promulgated by the commission;

(10) Motor vehicles specifically preempted from state economic regulation of intrastate motor carrier operations by the provisions of 49 U. S. C. §14501 as amended by Title I, Section 103 of the federal Interstate Commerce Commission Termination Act of 1995: *Provided,* That the vehicles and their operators are subject to the safety regulations promulgated by the commission and the vehicles that are exempted by this subdivision and are also operated by common carriers by motor vehicle or contract carriers by motor vehicle, and their operators are subject to the insurance rules promulgated by the commission;

(11) Motor vehicles designated by the West Virginia Bureau of Senior Services for use and operation by local county aging programs: *Provided,* That the vehicles and their operators are subject to the safety rules promulgated by the commission;

(12) Motor vehicles designated by the West Virginia Division of Public Transit operated by organizations that receive federal grants from the Federal Transit Administration: *Provided,* That the vehicles and their operators are subject to the safety and insurance rules promulgated by the commission;

(13) Motor vehicles used exclusively in the nonemergency medical transportation of Medicaid members including those under contract with any broker authorized by the Bureau for Medical Services: *Provided*, That these vehicles and their operators shall be subject to the safety rules promulgated by the commission;

(14) Common carriers or contract carriers engaged in the business of transporting household goods and motor vehicles used exclusively in the transportation of household goods;

(15) Common carriers or contract carriers engaged in the business of transporting scrap tires, waste tires, or other used tires to storage, disposal, or recycling locations; or

(16) Motor vehicles operated under a contract with the West Virginia Department of Environmental Protection exclusively for the cleanup and transportation of waste tires generated from state authorized waste tire remediation or cleanup projects: *Provided*, That the vehicles that are exempted by this subdivision, and their operators, are subject to the safety and insurance rules promulgated by the commission.

(17) Luxury limousine service: *Provided*, That luxury limousine service vehicles and their operators are subject to the safety rules and insurance requirements promulgated by the commission.

CHAPTER 189

(H. B. 3129 - By Delegates Capito, Keaton and L. Pack)

[Passed April 10, 2021; in effect ninety days from passage.]
[Approved by the Governor on April 21, 2021.]

AN ACT to amend §24A-5-2a of the Code of West Virginia, 1931, as amended; relating to how the federal index rate increase percentage is calculated regarding solid waste motor carrier rate increases; requiring revised tariff showing rate increase be filed; requiring appropriate notice be provided; allowing covered carriers to correct excessive requested rates in lieu of administrative hearing; and providing when such increases become effective in each instance.

Be it enacted by the Legislature of West Virginia:

ARTICLE 5. POWERS AND DUTIES OF COMMISSION.

§24A-5-2a. Procedure for changing rates for collection and hauling of solid waste by motor carriers; rural rates.

(a) Unless a motor carrier collecting and hauling solid waste elects to increase rates under §24A-5-2 and the commission's existing rules and regulations, effective July 1, 2020, no solid waste motor carrier subject to this chapter shall change, suspend, or annul any individual rate, joint rate, fare, charge, or classification for the collection or hauling of solid waste, except after 30 days' notice to the commission and the carrier's customers, with such notice to customers being sent as a bill insert or separately mailed statement that plainly states the changes proposed to be made in the schedule then in force and the time when the changed rates or charges will go into effect. The motor carrier shall file its proposed public notice with the commission for review. Within five business days of the

filing of the notice with the commission, the commission shall issue an order approving the notice.

(b) Any proposed rate changes shall be shown by printing new schedules, or shall be plainly indicated upon the schedules in force at the time, and kept open to public inspection: *Provided*, That the commission may, in its discretion, and for good cause shown, allow changes upon less time than the notice herein specified, or may modify the requirements of this section in respect to publishing, posting and filing of tariffs, either by particular instructions or by general order.

(c) Whenever a solid waste motor carrier shall file with the commission any schedule stating a change in the rates or charges, or joint rates or charges, or stating a new individual or joint rate or charge or joint classification or any new individual or joint regulation or practice affecting any rate or charge, except as set forth in subsection (d) below, the commission shall have authority, on its own initiative, or upon substantial protest filed with the commission within 30 days' notice of the proposed increase or change demonstrated by the complaints submitted by the lesser of: (i) 25 percent of the customers impacted by the proposed change in rates or charges; or (ii) 750 customers impacted by the proposed change in rates or charges to suspend the rates pending a hearing and final determination that the rate, charge, classification, regulation or practice is just, reasonable, and based primarily on the cost of service. At any hearing involving a rate sought to be increased or involving the change of any fare, charge, classification, regulation, or practice, the burden of proof to show that the increased rate or proposed increased rate, or the proposed change of fare, charge, classification, regulation or practice, is just, reasonable, and based primarily on the cost of service, shall be upon the motor carrier making application for such change. Any suspension of a rate, charge classification, regulation, or practice under this subsection shall not extend beyond such time that the commission enters a final decision in the case or 120 days from the date notice was first given. The commission may extend the time in which a final decision is due by an additional 30 days if a motor

carrier fails to provide material information requested by the commission more than 30 days in advance of the hearing.

(d) *Urban Consumer Garbage Trash Collection Index rate change* – Effective July 1, 2020, solid waste motor carriers shall be permitted to increase rates for the collection and hauling of solid waste once on or after January 1 of each year, without the filing of an application for approval by the commission and such increase shall be considered just and reasonable and not unfairly discriminatory, prejudicial, or preferential if: (1) the percentage increase over the prior rate is equal to or less than the percentage increase in the United States Department of Labor Bureau of Labor Statistics Garbage and Trash Collection Index (the "Index") between September of the year preceding the effective date of the requested rate increase and September of the year prior to the year preceding the effective date of the requested rate increase (the "relevant time period"); (2) the carrier files a revised tariff in compliance with the commission's rules and regulations; and (3) notice is provided as directed by the commission. After September 30 of each year, the commission shall issue a general order stating the percentage increase in the Index and the inflation factor to apply to the rates currently in effect to calculate the maximum rate increase authorized under this subsection. Any rate increase that a motor carrier believes is at or below the aforementioned increase in the Index shall be identified as such when filed with the commission. Such rate increases shall be subject to challenge by the commission only if it determines that the increase is in fact in excess of the amount of the increase in the Index for the relevant time period. If the commission determines a rate increase filed pursuant to this subsection is in excess of the increase in the Index for the relevant time period, it may enter an order suspending the rate increase. If such an order is entered, the motor carrier shall be entitled to a hearing pursuant to the process authorized in subsection (c) of this section or it may correct its requested rates, in which case the suspension will be lifted and the rates may go into effect as of the original requested effective date or the date that the carrier corrects its rates, whichever comes later. Notwithstanding any provision to the contrary, the fact that a solid waste motor carrier has already raised its rates in a given year

pursuant to this subsection shall not preclude that carrier from applying for and receiving from the commission a rate increase pursuant to subsection (c) of this section: *Provided*, That the commission shall take into account the prior rate increase taken pursuant to this subsection when considering the carrier's application to increase rates. A motor carrier may implement up to four annual indexed rate increases under this subsection before filing for a rate increase under chapter 24A of this code: *Provided*, That the commission shall not engage in retroactive rate making.

(e) The commission shall prescribe such rules and regulations as to the giving of notice of a change in rates pursuant to this section as are reasonable and are deemed proper in the public interest.

CHAPTER 190

(H. B. 3130 - By Delegates Capito, Keaton and L. Pack)

[Passed April 10, 2021; in effect ninety days from passage.]
[Approved by the Governor on April 21, 2021.]

AN ACT to amend §24A-2-2b of the Code of West Virginia, 1931, as amended, relating to rulemaking by the Public Service Commission with respect to common carriers by motor vehicle engaged in recovering, towing, hauling, carrying, or storing wrecked or disabled vehicles; extending sunset date for such rules to July 1, 2023; and extending deadline for audit of such rules by Legislative Auditor to December 31, 2022.

Be it enacted by the Legislature of West Virginia:

ARTICLE 2. COMMON CARRIER BY MOTOR VEHICLES.

*§24A-2-2b. Rule-making authority; establishing rates for recovering, towing, hauling, carrying, or storing wrecked or disabled vehicles; complaint process; and required Legislative Audit.

(a) On or before July 1, 2016, the Commission shall promulgate rules to effectuate the provisions of this article.

(b) The rules promulgated pursuant to the provisions of this section shall describe:

(1) Factors determining the fair, effective, and reasonable rates levied by a carrier for recovering, towing, hauling, carrying, or storing a wrecked or disabled vehicle. The commission shall consider, but shall not be limited to:

***NOTE:** This section was also amended by S. B. 655 (Chapter 186), which passed prior to this act.

(A) Tow vehicle or vehicles and the special equipment required to complete recovery or tow;

(B) Total time to complete the recovery or tow;

(C) Number of regular and extra employees required to complete the recovery or tow;

(D) Location of vehicle recovered or towed;

(E) Materials or cargo involved in recovery or tow;

(F) Comparison with reasonable prices in the region;

(G) Weather conditions; and

(H) Any other relevant information having a direct effect on the pricing of the recovery, towing, and storage of a recovered or towed vehicle;

(2) The process for filing a complaint, and the review and investigation process to ensure it is fair, effective, and timely: *Provided*, That in any formal complaint against a carrier relating to a third-party tow, the burden of proof to show that the carrier's charges are just, fair, and reasonable is on the carrier;

(3) The process for aggrieved parties to recover the cost, from the carrier, for the charge or charges levied by a carrier for recovering, towing, hauling, carrying, or storing a wrecked or disabled vehicle where the commission determines that such charge or charges are not otherwise just, fair, or reasonable; and

(4) The process to review existing maximum statewide wrecker rates and special rates for the use of special equipment in towing and recovery work to ensure that rates are just, fair, and reasonable: *Provided*, That the commission shall generally disapprove hourly and flat rates for ancillary equipment.

(c) All carriers regulated under this article shall list their approved rates, fares, and charges on every invoice provided to an owner, operator, or insurer of a wrecker or disabled motor vehicle.

(d) The rules promulgated pursuant to this section shall sunset on July 1, 2023, unless reauthorized.

(e) On or before December 31, 2022, the Legislative Auditor shall review the rules promulgated by the Public Service Commission under this section. The audit shall evaluate the rate-making policy for reasonableness, the complaint process for timeliness, the penalties for effectiveness, and any other metrics the Legislative Auditor deems appropriate. The Legislative Auditor may recommend that the rule be reauthorized, reauthorized with amendment, or repealed.

CHAPTER 191

(H. B. 3133 - By Delegates Capito, Keaton 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 §24A-2-5 of the Code of West Virginia, 1931, as amended, and to amend and reenact §24A-5-2 of said code, all relating to correcting error in commercial motor carrier provisions of said code; restoring language to code setting forth the process to change rates for motor carriers that was inadvertently deleted and replaced; and to correct an erroneous exclusion to include the appropriate language relating to transfer of certificate of convenience and necessity.

Be it enacted by the Legislature of West Virginia:

CHAPTER 24A. COMMERCIAL MOTOR CARRIERS.

ARTICLE 2. COMMON CARRIERS BY MOTOR VEHICLES.

§24A-2-5. Certificate of convenience and necessity.

(a) *Required; application; hearing; granting.* — It shall be unlawful for any common carrier by motor vehicle to operate within this state without first having obtained from the commission a certificate of convenience and necessity unless the common carrier is an emergency substitute carrier. Upon the filing of an application for such certificate, the commission shall set a time and place for a hearing on the application: *Provided,* That the commission may, after giving proper notice and if no protest is received, waive formal hearing on the application. Notice shall be by publication which shall state that a formal hearing may be waived in the absence of a protest to such application. The notice shall be published as a Class I legal advertisement in compliance with the provisions of §59-3-1 *et seq.* of this code and the

publication area for such publication shall be the proposed area of operation. The notice shall be published at least 10 days prior to the date of the hearing. After the hearing or waiver by the commission of the hearing, if the commission finds from the evidence that the public convenience and necessity require the proposed service or any part thereof, it shall issue the certificate as prayed for, or issue it for the partial exercise only of the privilege sought, and may attach to the exercise of the right granted by such certificate such terms and conditions as in its judgment the public convenience and necessity may require, and if the commission shall be of the opinion that the service rendered by any common carrier holding a certificate of convenience and necessity over any route or routes in this state is in any respect inadequate or insufficient to meet the public needs, such certificate holder shall be given reasonable time and opportunity to remedy such inadequacy or insufficiency before any certificate shall be granted to an applicant proposing to operate over such route or routes as a common carrier. Before granting a certificate to a common carrier by motor vehicle, the commission shall take into consideration existing transportation facilities in the territory for which a certificate is sought, and in case it finds from the evidence that the service furnished by existing transportation facilities is reasonably efficient and adequate, the commission shall not grant such certificate.

(b) *Rules and regulations; taking evidence at hearings; burden of proof.* — The commission shall prescribe such rules and regulations as it may deem proper for the enforcement of the provisions of this section, and in establishing that public convenience and necessity do exist, the burden of proof shall be upon the applicant. The commission may designate any of its employees to take evidence at the hearing of any application for a certificate and submit findings of fact as a part of a report or reports to be made to the commission.

(c) *Certificate not franchise, etc.; assignment or transfer.* — No certificate issued in accordance with the terms of this chapter shall be construed to be either a franchise or irrevocable, or to confer any proprietary or property rights in the use of the public

highways. No certificate issued under this chapter shall be assigned or otherwise transferred without the approval of the commission. Upon the death of a person holding a certificate, his or her personal representative or representatives may operate under such certificate while the same remains in force and effect and, with the consent of the commission, may transfer such certificate.

(1) Upon the death of a person holding a certificate, his or her personal representative or representatives may operate under such certificate while the same remains in force and effect and, with the consent of the commission, may transfer such certificate; and

(2) An application by a motor carrier to transfer a certificate of convenience and necessity, or a portion thereof, to another motor carrier possessing one or more certificates of public convenience and necessity for the same commodity shall be affirmed or denied within 90 days of the submission of a complete application for transfer. The commission shall make a determination within ten business days of receiving a transfer application if the application is complete and notify the applicant if additional information is required. If the commission shall fail to act on a complete application within 90 days, the application to transfer the certificate shall be deemed approved.

(d) *Suspension, revocation or amendment.* — The commission may at any time, for good cause, suspend a common carrier certificate of convenience and necessity, and upon suspension, authorize an emergency substitute carrier to provide temporary replacement service until further order of the commission: *Provided,* That an emergency substitute carrier may continue to operate during the pendency of its application for a certificate of convenience and necessity filed pursuant to §24A-2-5(a) of this code. Upon not less than 15 days' notice to the grantee of any certificate and an opportunity to be heard, the commission may revoke or amend any certificate.

(e) *Reinstitution of certificated service.* — No sooner than 30 days after a suspension of authority, a common carrier may petition the commission to end the suspension and terminate the authority of an emergency substitute carrier. Upon notice to the emergency

substitute carrier and an opportunity to be heard, the commission shall issue its order granting or denying the petition.

(f) The commission shall have the authority, after hearing, to ratify, approve, and affirm those orders issued pursuant to this section. For the purposes of this subsection, the commission may give notice by a Class I legal advertisement of such hearing in any newspaper or newspapers of general circulation in this state, and such other newspapers as the commission may designate.

ARTICLE 5. POWERS AND DUTIES OF COMMISSION.

§24A-5-2. Procedure for changing rates, etc.

Except for motor carriers collecting and hauling solid waste who elect to increase rates under section 2a of this chapter, no motor carrier subject to this chapter shall change, suspend, or annul any individual rate, joint rate, fare, charge, or classification for the transportation of passengers or property except after thirty days' notice to the commission and the public, which notice shall plainly state the changes proposed to be made in the schedule then in force and the time when the changed rates or charges shall go into effect. The commission may enter an order suspending the proposed rate and prohibiting such motor carrier from putting such proposed new rate into effect pending the hearing and final decision of the matter, in which case the proposed new rate shall stand suspended until it is determined by the commission whether or not the same is just or reasonable. The proposed changes shall be shown by printing new schedules, or shall be plainly indicated upon the schedules in force at the time, and kept open to public inspection: *Provided, however,* That the commission may, in its discretion, and for good cause shown, allow changes upon less time than the notice herein specified, or may modify the requirements of this section in respect to publishing, posting and filing of tariffs, either by particular instructions or by general order.

Whenever there shall be filed with the commission any schedule stating a change in the rates or charges, or joint rates or charges, or stating a new individual or joint rate or charge or joint classification or any new individual or joint regulation or practice

affecting any rate or charge, the commission shall have authority, either upon complaint or upon its own initiative without complaint, to enter upon a hearing concerning the propriety of such rate, charge, classification, regulation or practice; and, if the commission so orders, it may proceed without answer or other form of pleading by the interested parties, but upon reasonable notice, and pending such hearing and the decision thereon the commission, upon filing with such schedule and delivering to the motor carrier affected thereby a statement in writing of its reasons for such suspension, may suspend the operation of such schedule and defer the use of such rate, charge, classification, regulation or practice, but not for a longer period than one hundred and twenty days beyond the time when such rate, charge, classification, regulation or practice would otherwise go into effect; and after full hearing, whether completed before or after the rate, charge, classification, regulation, or practice goes into effect, the commission may make such order in reference to such rate, charge, classification, regulation or practice as would be proper in a proceeding initiated after the rate, charge, classification, regulation or practice had become effective: *Provided,* That if any such hearing cannot be conducted within the period of suspension, as above stated, the commission may in its discretion extend the time of suspension for a further period, not exceeding six months. At any hearing involving a rate sought to be increased or involving the change of any fare, charge, classification, regulation or practice, the burden of proof to show that the increased rate or proposed increased rate, or the proposed change of fare, charge, classification, regulation or practice, is just and reasonable, shall be upon the motor carrier making application for such change. When in any case pending before the commission all evidence shall have been taken, and the hearing completed, the commission shall, within three months, render a decision in such case.

The commission shall prescribe such rules and regulations as to the giving of notice of a change in rates as are reasonable and are deemed proper in the public interest.

CHAPTER 192

(Com. Sub. for S. B. 502 - By Senators Hamilton, Stover, Woodrum, Ihlenfeld, Lindsay, Smith, Romano, Jeffries, and Grady)

[Passed April 9, 2021; in effect from passage]
[Approved by the Governor on April 26, 2021.]

AN ACT to amend and reenact §20-2B-7 of the Code of West Virginia, 1931, as amended, relating to lifetime hunting, fishing, and trapping licenses for residents who have not reached their 15th birthday; providing that residents who have not reached their 15th birthday may be eligible to receive their lifetime hunting, fishing, and trapping license; providing that adopted children who have not reached their 15th birthday may be eligible to receive their lifetime hunting, fishing, and trapping license; providing that lifetime hunting, fishing, and trapping license fees for adopted children are calculated from the date of adoption decree or order; providing that foster children who have not reached their 15th birthday may be eligible to receive their lifetime hunting, fishing, and trapping license; providing that lifetime hunting, fishing, and trapping license fees for foster children are calculated from the date of entry of the order placing the child in foster care; and providing the Director of the Division of Natural Resources emergency legislative rule-making authority.

Be it enacted by the Legislature of West Virginia:

ARTICLE 2B. WILDLIFE ENDOWMENT FUND.

§20-2B-7. Lifetime hunting, fishing, and trapping licenses created.

(a) Pursuant to §20-2B-3 of this code, the director may issue the following lifetime hunting, fishing, and trapping licenses and

for the lifetime of the licensee, the lifetime licenses serve in lieu of the equivalent annual license: Lifetime resident statewide hunting and trapping license; lifetime resident combination statewide hunting, fishing, and trapping license; lifetime resident statewide fishing license; and lifetime resident trout fishing license.

(b) The director shall propose a rule for legislative approval in accordance with §29A-3-1 *et seq.* of this code, setting fees for lifetime licenses and shall have authority to promulgate emergency legislative rules necessary to make effective the provisions of this section by July 1, 2021. The fees for adult lifetime licenses shall be 23 times the fee for the equivalent annual licenses or stamps. The rule shall provide that the fee for any resident who has not reached his or her 15th birthday shall be:

(1) Forty percent of the adult fee set under rule for any resident who has not reached his or her first birthday;

(2) Fifty-five percent of the adult fee set under rule for any resident who is over one year old but has not reached his or her fifth birthday;

(3) Seventy-five percent of the adult fee set under rule for any resident who is over five years old but has not reached his or her 10th birthday; and

(4) Ninety percent of the adult fee set under rule for any resident who is over 10 years old but has not reached his or her 15th birthday.

The rule shall also provide that any resident who has not reached his or her 15th birthday and has been legally adopted shall be provided the same fee schedule, except the division shall use the date of entry of the order or decree of adoption as the licensee's date of birth for purposes of calculating the appropriate fee: *Provided*, That in addition to the provisions of this subsection for adopted children, foster parents may also purchase a lifetime license for their respective foster children under the same guidelines, except the division shall use the date of entry of the order placing the child in foster care as the licensee's date of birth for purposes of calculating the appropriate fee.

CHAPTER 193

(Com. Sub. for H. B. 2773 - By Delegates Maynard and J. Jeffries)

[Passed April 8, 2021; in effect from passage.]
[Approved by the Governor on April 26, 2021.]

AN ACT to amend and reenact §20-7-23 of the Code of West Virginia, 1931, as amended, all relating to boating operations with motors greater than 10 horsepower; and permitting the Division of Natural Resources to promulgate emergency legislative rules and legislative rules relating to the operation of boats with motors greater than 10 horsepower.

Be it enacted by the Legislature of West Virginia:

ARTICLE 7. LAW ENFORCEMENT, MOTORBOATING, LITTER.

§20-7-23. Local rules.

(a) The provisions of this article, and of other applicable laws of this state, shall govern the operation, equipment, numbering and all other matters relating thereto whenever any vessel shall be operated on the waters of this state, or when any activity regulated by this article shall take place thereon, but nothing in this article shall be construed to prevent the adoption of any ordinance or local law relating to operation and equipment of vessels the provisions of which are identical to the provisions of this article, amendments thereto or rules promulgated thereunder: *Provided,* That such ordinances or local laws shall be operative only so long as to the extent that they continue to be identical to provisions of this article, amendments thereto or rules promulgated thereunder.

(b) Any subdivision of this state may, at any time, but only after public notice, make formal application to the director for special

rules with reference to the operation of vessels on any waters within its territorial limits and shall set forth therein the reasons which make such special rules necessary or appropriate.

(c) The director is hereby authorized to promulgate special rules with reference to the operation of vessels on any waters within the territorial limits of any subdivision of this state.

(d) The director shall promulgate emergency legislative rules and legislative rules pursuant to §29A-3-1 *et seq.* of this code providing for the operation of motorboats with motors greater than 10 horsepower, only in a manner where no wake is created on the Upper Mud River Lake.

CHAPTER 194

(S. B. 372 - By Senators Maroney, Grady, Weld, Rucker, Azinger, Stover, Woodrum, Roberts, Stollings, Unger, Lindsay, and Plymale)

[Passed March 9, 2021; in effect from passage]
[Approved by the Governor on March 19, 2021.]

AN ACT to amend and reenact §30-3-10 and §30-3-11 of the Code of West Virginia, 1931, as amended, all relating to the practice of medicine; establishing criteria for graduate clinical training; updating terminology; updating rule-making authority; and clarifying authority conferred by a temporary permit.

Be it enacted by the Legislature of West Virginia:

ARTICLE 3. WEST VIRGINIA MEDICAL PRACTICE ACT.

§30-3-10. Licenses to practice medicine and surgery or podiatry.

(a) A person seeking licensure as an allopathic physician shall apply to the board.

(b) A license may be granted to an applicant who has graduated and received the degree of doctor of medicine or its equivalent from a school of medicine located within the United States, the Commonwealth of Puerto Rico, or Canada, and is approved by the Liaison Committee on Medical Education or by the board, and who:

(1) Submits a complete application;

(2) Pays the applicable fees;

(3) Demonstrates to the board's satisfaction that the applicant:

(A) Is of good moral character;

(B) Is physically and mentally capable of engaging in the practice of medicine and surgery;

(C) Has, within 10 consecutive years, passed all component parts of the United States Medical Licensing Examination or any prior examination or examination series approved by the board which relates to a national standard, is administered in the English language, and is designed to ascertain an applicant's fitness to practice medicine and surgery;

(D) Has successfully completed:

(i) A minimum of one year of graduate clinical training in a program is approved by the Accreditation Council for Graduate Medical Education; or

(ii) A graduate medical education residency program outside of the United States and a minimum of one year of fellowship training in the United States in a clinical field related to the applicant's residency training which was completed:

(I) At an institution that sponsors or operates a residency program in the same clinical field or a related clinical field approved by the Accreditation Council for Graduate Medical Education; or

(II) At a time when accreditation was not available for the fellowship's clinical field and the board has determined that the training was similar to accredited training due to objective standards, including, but not limited to, the presence of other accredited programs at the sponsoring institution during the applicant's clinical training at the fellowship location; and

(E) Meets any other criteria for licensure set forth in this article or in rules promulgated by the board pursuant to §30-3-7 of this code and in accordance with §29A-3-1 *et seq.* of this code.

(c) A license may be granted to an applicant who has received the degree of doctor of medicine or its equivalent from a school of

medicine located outside of the United States, the Commonwealth of Puerto Rico, and Canada, who:

(1) Submits a complete application;

(2) Pays the applicable fees;

(3) Demonstrates to the board's satisfaction that the applicant:

(A) Is of good moral character;

(B) Is physically and mentally capable of engaging in the practice of medicine and surgery;

(C) Has, within 10 consecutive years, passed all component parts of the United States Medical Licensing Examination or any prior examination or examination series approved by the board which relates to a national standard, is administered in the English language, and is designed to ascertain an applicant's fitness to practice medicine and surgery;

(D) Has successfully completed:

(i) A minimum of two years of graduate clinical training approved by the Accreditation Council for Graduate Medical Education;

(ii) A minimum of one year of graduate clinical training approved by the Accreditation Council for Graduate Medical Education or one year of fellowship training which comports with the requirements of subparagraph (iii) of this paragraph and the applicant holds a current certification by a member board of the American Board of Medical Specialties; or

(iii) A graduate medical education residency program outside of the United States and a minimum of two years of fellowship training in the United States in a clinical field related to the applicant's residency training which was completed:

(I) At an institution that sponsors or operates a residency program in the same clinical field or a related clinical field

approved by the Accreditation Council for Graduate Medical Education; or

(II) At a time when accreditation was not available for the fellowship's clinical field and the board has determined that the training was similar to accredited training due to objective standards, including, but not limited to, the presence of other accredited programs at the sponsoring institution during the applicant's clinical training at the fellowship location;

(E) Holds a valid ECFMG certificate issued by the Educational Commission for Foreign Medical Graduates or:

(i) Holds a full, unrestricted, and unconditional license to practice medicine and surgery under the laws of another state, the District of Columbia, Canada, or the Commonwealth of Puerto Rico;

(ii) Has been engaged in the practice of medicine on a full-time professional basis within the state or jurisdiction where the applicant is fully licensed for a period of at least five years; and

(iii) Is not the subject of any pending disciplinary action by a medical licensing board and has not been the subject of professional discipline reportable to the National Practitioner Data Bank by a medical licensing board in any jurisdiction;

(F) Can communicate in the English language; and

(G) Meets any other criteria for licensure set forth in this article or in rules promulgated by the board pursuant to §30-3-7 of this code and in accordance with §29A-3-1 *et seq.* of this code.

(d) A person seeking licensure as a podiatrist shall apply to the board. A license may be granted to an applicant who:

(1) Submits a complete application;

(2) Pays the applicable fees;

(3) Demonstrates to the board's satisfaction that the applicant:

(A) Is of good moral character;

(B) Is physically and mentally capable of engaging in the practice of podiatric medicine and surgery;

(C) Has graduated and received the degree of doctor of podiatric medicine or its equivalent from a school of podiatric medicine approved by the Council of Podiatric Medical Education or by the board;

(D) Has, within 10 consecutive years, passed all component parts of the American Podiatric Medical Licensing Examination, or any prior examination or examination series approved by the board which relates to a national standard, is administered in the English language, and is designed to ascertain an applicant's fitness to practice podiatric medicine;

(E) Has successfully completed a minimum of one year of graduate clinical training in a program approved by the Council on Podiatric Medical Education or the Colleges of Podiatric Medicine. The board may consider a minimum of two years of graduate podiatric clinical training in the United States armed forces or three years' private podiatric clinical experience in lieu of this requirement; and

(F) Meets any other reasonable criteria for licensure set forth in this article or in legislative rules promulgated by the board.

(e) Notwithstanding any of the provisions of this article, the board may issue a restricted license to an applicant in extraordinary circumstances under the following conditions:

(1) Upon a finding by the board that based on the applicant's exceptional education, training, and practice credentials, the applicant's practice in the state would be beneficial to the public welfare;

(2) Upon a finding by the board that the applicant's education, training, and practice credentials are substantially equivalent to the requirements of licensure established in this article;

(3) Upon a finding by the board that the applicant received his or her post-graduate medical training outside of the United States and its territories;

(4) That the restricted license issued under extraordinary circumstances is approved by a vote of three fourths of the members of the board; and

(5) That orders denying applications for a restricted license under this subsection are not appealable.

(f) The board may propose rules for legislative approval in accordance with the provisions of §29A-3-1 *et seq.* of this code that establish and regulate the restricted license issued to an applicant in extraordinary circumstances pursuant to the provisions of this section.

(g) Personal interviews by board members of all applicants are not required. An applicant for a license may be required by the board, in its discretion, to appear for a personal interview and may be required to produce original documents for review by the board.

(h) All licenses to practice medicine and surgery granted prior to July 1, 2008, and valid on that date shall continue in full effect for the term and under the conditions provided by law at the time of the granting of the license: *Provided*, That the provisions of subsection (d) of this section do not apply to any person legally entitled to practice chiropody or podiatry in this state prior to June 11, 1965: *Provided, however*, That all persons licensed to practice chiropody prior to June 11, 1965, are permitted to use the term "chiropody-podiatry" and shall have the rights, privileges, and responsibilities of a podiatrist set out in this article.

(i) The board may not issue a license to a person not previously licensed in West Virginia whose license has been revoked or suspended in another state until reinstatement of his or her license in that state.

(j) The board need not reject a candidate for a nonmaterial technical or administrative error or omission in the application process that is unrelated to the candidate's professional

qualifications as long as there is sufficient information available to the board to determine the eligibility and qualifications of the candidate for licensure.

§30-3-11. Endorsement of licenses to practice medicine and surgery and podiatry; fees; temporary license; summer camp doctors.

(a) (1) Any person seeking to be licensed to practice medicine and surgery in this state who holds a valid license to practice medicine and surgery attained under requirements similar to the requirement of §30-3-10 of this code from another state, the District of Columbia, the Commonwealth of Puerto Rico, or Canada; or

(2) Any person seeking to be licensed to practice podiatry in this state who holds a valid license to practice podiatry attained under requirements similar to the requirements in §30-3-10 of this code from another jurisdiction shall be issued a license to practice podiatry, as appropriate, in this state if he or she meets the following requirements:

(A) He or she must submit an application to the board on forms provided by the board and remit a licensure fee, as provided in legislative rule. The application must, as a minimum, require a statement that the applicant is a licensed physician or podiatrist in good standing and indicate whether any medical disciplinary action has been taken against him or her in the past; and

(B) He or she must demonstrate to the satisfaction of the board that he or she has the requisite qualifications to provide the same standard of care as a physician or podiatrist initially licensed in this state.

(b) The board may investigate the applicant and may request a personal interview to review the applicant's qualifications and professional credentials.

(c) The board may grant a temporary license to an individual applying for licensure under this section if the individual meets the requirements of this section. A temporary license issued by the

board authorizes the holder to practice medicine and surgery or podiatry in West Virginia for the term of the temporary license, and includes full prescriptive authority. The temporary license is valid until its holder has either been granted or denied a license at the next regular meeting of the board. The board may fix and collect a fee for a temporary license, as provided in legislative rule.

(d) The application fee shall be waived, and to the extent consistent with the integrity of the licensure process and the requirements for licensure as set forth in this section and in the relevant legislative rules, the board shall expedite its processing of an individual's application to practice medicine and surgery, or practice podiatry: *Provided,* That the sole purpose for licensure is to provide services at a children's summer camp for not more than one specifically designated three-week period annually. The license shall be issued for a period of the specifically designated three weeks only, on an annual basis.

CHAPTER 195

(Com. Sub. for S. B. 434 - By Senators Woelfel, Stollings, Caputo, Grady, and Lindsay)

[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 §30-29-3 of the Code of West Virginia, 1931, as amended, relating to law-enforcement training for investigating sexual assault cases involving adult victims; requiring the Law-Enforcement Professional Standards Subcommittee of the Governor's Committee on Crime, Delinquency, and Correction to develop standards and procedures for law-enforcement officers responsible for investigating sexual assault cases involving adult victims; and setting forth required components of training.

Be it enacted by the Legislature of West Virginia:

ARTICLE 29. LAW-ENFORCEMENT TRAINING AND CERTIFICATION.

§30-29-3. Duties of the subcommittee.

(a) The subcommittee shall, by or pursuant to rules proposed for legislative approval in accordance with §29A-3-1 *et seq.* of this code:

(1) Provide funding for the establishment and support of law-enforcement training academies in the state;

(2) Establish standards governing the establishment and operation of the law-enforcement training academies, including regional locations throughout the state, in order to provide access

to each law-enforcement agency in the state in accordance with available funds;

(3) Establish minimum law-enforcement instructor qualifications;

(4) Certify qualified law-enforcement instructors;

(5) Maintain a list of approved law-enforcement instructors;

(6) Promulgate standards governing the training, firearms qualification, and initial and ongoing professional certification of law-enforcement officers and the entry-level, law-enforcement training curricula. These standards shall require satisfactory completion of a minimum of 800 classroom hours as promulgated by legislative rule and shall provide that the required classroom hours shall be accumulated on the basis of a full-time curricula;

(7) Establish standards governing in-service, law-enforcement officer training curricula and in-service supervisory level training curricula;

(8) Certify organized criminal enterprise investigation techniques with a qualified anti-racial profiling training course or module;

(9) Establish standards governing mandatory training to effectively investigate organized criminal enterprises as defined in §61-13-1 *et seq.* of this code while preventing racial profiling, as defined in §30-29-10 of this code, for entry-level training curricula and for law-enforcement officers who have not received such training as certified by the subcommittee as required in this section;

(10) Establish procedures for implementation of a course in investigation of organized criminal enterprises which includes an anti-racial training module to be available on the Internet or otherwise to all law-enforcement officers. The procedures shall include the frequency with which a law-enforcement officer shall receive training in investigation of organized criminal enterprises and anti-racial profiling and a time frame for which all law-enforcement officers must receive such training: *Provided*, That all

law-enforcement officers in this state shall receive such training no later than July 1, 2012. In order to implement and carry out the intent of this section, the subcommittee may promulgate emergency rules pursuant to §29A-3-15 of this code;

(11) Certify or decertify or reactivate law-enforcement officers, as provided in §30-29-5 and §30-29-11 of this code;

(12) Establish standards and procedures for the reporting of complaints and certain disciplinary matters concerning law-enforcement officers and for reviewing the certification of law-enforcement officers. These standards and procedures shall provide for preservation of records and access to records by law-enforcement agencies and conditions as to how the information in those records is to be used regarding an officer's law-enforcement employment by another law-enforcement agency:

(A) The subcommittee shall establish and manage a database that is available to all law-enforcement agencies in the state concerning the status of any person's certification.

(B) Personnel or personal information not resulting in a criminal conviction is exempt from disclosure pursuant to the provisions of chapter 29B of this code;

(13) Seek supplemental funding for law-enforcement training academies from sources other than the fees collected pursuant to §30-29-4 of this code;

(14) Any responsibilities and duties as the Legislature may, from time to time, see fit to direct to the subcommittee;

(15) Establish standards and procedures for initial and ongoing training for law-enforcement officers responsible for investigating sexual assault cases involving adult victims. This training shall include instruction on:

(A) The neurobiology of trauma;

(B) Trauma-informed interviewing; and

(C) Investigative techniques;

(16) Submit, on or before September 30 of each year, to the Governor, the Speaker of the House of Delegates, the President of the Senate, and, upon request, to any individual member of the Legislature, a report on its activities during the previous year, and an accounting of funds paid into and disbursed from the special revenue account established pursuant to §30-29-4 of this code;

(17) Develop and promulgate rules for state, county, and municipal law-enforcement officers, law-enforcement agencies, and communications and emergency operations centers that dispatch law-enforcement officers with regard to the identification, investigation, reporting, and prosecution of suspected child abuse and neglect: *Provided,* That such rules and procedures must be consistent with the priority criteria prescribed by generally applicable department procedures; and

(18) Make recommendations to the Governor's Committee on Crime, Delinquency, and Correction for legislation related to the subcommittee's duties and responsibilities, or for research or studies by the Division of Administrative Services on topics related to the subcommittee's duties and responsibilities.

(b) In addition to the duties authorized and established by this section, the subcommittee may:

(1) Establish training to effectively investigate human trafficking offenses as defined in §61-2-1 *et seq.* of this code for entry-level training curricula and for law-enforcement officers who have not received such training as certified by the committee as required by this section; and

(2) Establish procedures for the implementation of a course in investigation of human trafficking offenses. The course may include methods of identifying and investigating human trafficking and methods for assisting trafficking victims. In order to implement and carry out the intent of this subdivision, the committee may promulgate emergency rules pursuant to §29A-3-15 of this code.

(c) Notwithstanding any provision of this code to the contrary, the subcommittee may deny an application for the establishment of a new law-enforcement training academy if it is determined by the subcommittee that no actual need exists for the establishment of additional law-enforcement training academies to meet the needs of existing law-enforcement agencies in the state.

CHAPTER 196

(Com. Sub. for S. B. 466 - By Senator Maynard)

[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 §30-38-3, §30-38-4, §30-38-6, §30-38-11, and §30-38-17 of the Code of West Virginia, 1931, as amended; and to amend and reenact §30-38A-3, §30-38A-4, §30-38A-8, and §30-38A-10 of said code, all relating to real estate appraisal; clarifying requirement that classification and license or certification number be shown on documents; authorizing real estate appraisal licensing and certification board to hire certain persons; clarifying definition of "appraisal management company" for purposes of Appraisal Management Companies Registration Act; expanding list of individuals prohibited from owning registered appraisal management companies; requiring owners of more than 10 percent of appraisal management company to submit to background check; and making technical changes throughout.

Be it enacted by the Legislature of West Virginia:

ARTICLE 38. THE REAL ESTATE APPRAISER LICENSING AND CERTIFICATION ACT.

§30-38-3. Definitions.

As used in this article, the following terms have the following meanings:

(a) "Appraisal" means an analysis, opinion, or conclusion prepared by a real estate appraiser relating to the nature, quality, value, or utility of specified interests in, or aspects of, identified real estate or identified real property. An appraisal may be

classified by the nature of the assignment as a valuation appraisal, an analysis assignment, or a review assignment.

(b) "Analysis assignment" means an analysis, opinion, or conclusion prepared by a real estate appraiser that relates to the nature, quality, or utility of identified real estate or identified real property.

(c) "Appraisal foundation" means the appraisal foundation established on November 30, 1987, as a not-for-profit corporation under the laws of Illinois.

(d) "Appraisal report" means any communication, written or oral, of an appraisal. An appraisal report may be classified by the nature of the assignment as a "valuation report", "analysis report", or "review report". For purposes of this article, the testimony of an appraiser dealing with the appraiser's analyses, conclusions, or opinions concerning identified real estate or identified real property is considered an oral appraisal report.

(e) "Board" means the real estate appraiser licensing and certification board established by the provisions of this article.

(f) "Certified appraisal report" means a written appraisal report that is certified by a state licensed or certified real estate appraiser. When a real estate appraiser identifies an appraisal report as "certified", the real estate appraiser must indicate the type of licensure or certification he or she holds. By certifying an appraisal report, a state licensed residential real estate appraiser, a state certified general real estate appraiser, or a state certified residential real estate appraiser represents to the public that the report meets the appraisal standards established by this article.

(g) "Certified real estate appraiser" means a person who holds a current, valid certification as a state certified residential real estate appraiser or a state certified general real estate appraiser issued to him or her under the provisions of this article.

(h) "Complex appraisal" means an appraisal that: (1) For nonresidential property, relies on all three approaches to value, being the cost approach, the income approach, and the sales

comparison approach, or does not have the characteristics of a noncomplex appraisal; and (2) for residential property, relies to any significant degree on at least two of the three approaches to value, with one approach being the sales comparison approach, or one in which the property to be appraised, the form of ownership, or the market conditions are atypical.

(i) "Cost approach" means an approach to valuing real estate that requires an appraiser to: (1) Develop an opinion of site value by an appropriate appraisal method or technique; (2) analyze comparable cost data as are available to estimate the cost new of the improvements if any; and (3) analyze comparable data as are available to estimate the difference between the cost new and the present worth of the improvements, also called accrued depreciation.

(j) "Income approach" means an approach to valuing real estate that requires an appraiser to: (1) Analyze comparable rental data as are available to estimate the market rental of the property; (2) analyze comparable operating expense data as are available to estimate the operating expenses of the property; (3) analyze comparable data as are available to estimate rates of capitalization or rates of discount; and (4) base projections of future rent and expenses on reasonably clear and appropriate evidence.

(k) "Licensed real estate appraiser" means a person who holds a current, valid license as a state licensed residential real estate appraiser issued to him or her under the provisions of this article.

(l) "Noncomplex appraisal" means an appraisal for which: (1) There is an active market of essentially identical properties; (2) adequate data is available to the appraiser; (3) adjustments to comparable sales are not large in the aggregate, specifically not exceeding the trading range found in the market of essentially identical properties; and (4) for residential properties, the contract sales price falls within the market norm or median sales price for homes or lots within the same area.

(m) "Real estate" means an identified parcel or tract of land, including improvements, if any.

(n) "Real estate appraisal activity" means the act or process of making an appraisal of real estate or real property and preparing an appraisal report.

(o) "Real estate appraiser" means a person who engages in real estate appraisal activity for a fee or other valuable consideration.

(p) "Real property interests" means one or more defined interests, benefits, or rights inherent in the ownership of real estate.

(q) "Review assignment" means an analysis, opinion, or conclusion prepared by a real estate appraiser that forms an opinion as to the adequacy and appropriateness of a valuation appraisal or an analysis assignment.

(r) "Sales comparison approach" means an approach to valuing real estate that requires an appraiser to analyze such comparable sales data as are available to indicate a value conclusion.

(s) "Valuation appraisal" means an analysis, opinion, or conclusion prepared by a real estate appraiser that estimates the value of an identified parcel of real estate or identified real property at a particular point in time.

§30-38-4. Classifications of licensure and certification; authority of appraisers; classification and license or certificate number required on all documents; corporations.

(a) The three classifications of real estate appraisers are state licensed residential real estate appraiser, state certified residential real estate appraiser, and state certified general real estate appraiser.

(b) A state licensed residential real estate appraiser is authorized to conduct appraisals of: (1) Complex residential real estate of one to four units having a value of less than $250,000; (2) noncomplex residential real estate of one to four units having a value of less than $1 million; and (3) nonresidential real estate having a value of less than $100,000.

(c) A state certified residential real estate appraiser is authorized to conduct appraisals of residential real estate of one to four units without regard to value or complexity, and nonresidential real estate when the value is less than $100,000.

(d) A state certified general real estate appraiser is authorized to conduct appraisals of all types of real estate.

(e) The board is authorized to establish by legislative rule other classifications of appraiser licensing not prohibited by applicable federal law.

(f) An appraiser shall indicate his or her classification and license or certificate number, as it appears on an issued license, on all appraisals, statements of qualification, contracts, and other instruments, including advertising media.

(g) A license or certificate may not be issued under the provisions of this article to a corporation, partnership, firm, or group.

(h) Nothing contained in this article prohibits any person licensed or certified under this article from engaging in the practice of real estate appraising as a professional corporation in accordance with the provisions of the Professional Service Corporation Act of this state.

§30-38-6. Board created; appointments, qualifications, terms, oath, removal of members; quorum; meetings; disqualification from participation; compensation; records; employing staff.

(a) The West Virginia real estate appraiser licensing and certification board, which consists of nine members appointed by the Governor with the advice and consent of the Senate, is continued.

(1) Each member shall be a resident of the State of West Virginia, except the appraisal management company representative is not required to be a resident of West Virginia.

(2) Four members shall be certified real estate appraisers having at least five years' experience in appraisal as a principal line of work immediately preceding their appointment, and shall remain certified real estate appraisers throughout their terms.

(3) Two members shall have at least five years' experience in real estate lending as employees of financial institutions.

(4) Two members may not be engaged in the practice of real estate appraisal, real estate brokerage or sales, or have any financial interest in these practices.

(5) One member shall be a representative from an appraisal management company registered under the provisions of §30-38A-1 *et seq.* of this code.

(6) No member of the board may concurrently be a member of the West Virginia Real Estate Commission.

(7) Not more than two appraiser members may be appointed from each congressional district.

(b) Members will be appointed for three-year terms, which are staggered in accordance with the initial appointments under prior enactment of this act.

(1) No member may serve for more than three consecutive terms.

(2) Before entering upon the performance of his or her duties, each member shall subscribe to the oath required by section five, article IV of the constitution of this state.

(3) The Governor shall, within 60 days following the occurrence of a vacancy on the board, fill the vacancy by appointing a person who meets the requirements of this section for the unexpired term.

(4) Any member may be removed by the Governor in case of incompetency, neglect of duty, gross immorality, or malfeasance in office.

(c) The board shall elect a chairman.

(d) A majority of the members of the board constitutes a quorum.

(e) The board shall meet at least once in each calendar quarter on a date fixed by the board.

(1) The board may, upon its own motion, or shall upon the written request of three members of the board, call additional meetings of the board upon at least 24 hours' notice.

(2) No member may participate in a proceeding before the board to which a corporation, partnership, or unincorporated association is a party, and of which he or she is or was at any time in the preceding 12 months a director, officer, owner, partner, employee, member, or stockholder.

(3) A member may disqualify himself or herself from participation in a proceeding for any other cause the member considers sufficient.

(f) The appointed members will receive compensation and expense reimbursement in accordance with the provisions of §30-1-11 of this code.

(g) The board may employ staff as necessary to perform the functions of the board, to be paid out of the board fund created by the provisions of this article. Persons employed by any real estate agent, broker, appraiser, or lender, or by any partnership, corporation, association, or group engaged in any real estate business, may not be employed by the board. The board may hire a licensed or certified appraiser whose license status is inactive or who is not employed by any of the prohibited employers listed.

§30-38-11. Applications for license or certification; renewals.

(a) An individual who desires to engage in real estate appraisal activity in this state shall make application for a license, in writing, in a form as the board may prescribe. In addition to any other

information required, the applicant's Social Security number will be recorded on the application.

(b) To assist the board in determining whether grounds exist to deny the issuance of a license to an applicant, the board may require the fingerprinting of every applicant for an original license.

(c) The payment of the appropriate fee must accompany all applications for original certification and renewal of certification and all applications to take an examination.

(d) At the time of filing an application for original certification or for renewal of certification, each applicant shall sign a pledge to comply with the standards of professional appraisal practice and the ethical rules to be observed by an appraiser. Each applicant shall also certify that he or she understands the types of misconduct, as set forth in this article, for which disciplinary proceedings may be initiated.

(e) To obtain a renewal of license or certification under this article, the holder of a current license or certification shall make application and pay the prescribed fee to the board no earlier than 120 days nor later than 30 days prior to the expiration date of the current license or certification. Each application for renewal must be accompanied by evidence in the form prescribed by the board that the applicant has completed the continuing education requirements for renewal specified in this article and the board's rules.

(f) If the board determines that an applicant for renewal has failed to meet the requirements for renewal of license or certification through mistake, misunderstanding, or circumstances beyond the control of the applicant, the board may extend the term of the applicant's license or certification for a period not to exceed six months upon payment by the applicant of a prescribed fee for the extension. If the applicant for renewal of license or certification satisfies the requirements for renewal during the extension period, the beginning date of his or her renewal license or certificate shall be the day following the expiration of the certificate previously held by the applicant.

(g) If a state licensed or certified real estate appraiser under this article fails to renew his or her license or certification prior to its expiration or within any period of extension granted by the board pursuant to this article, the applicant may obtain a renewal of his or her license or certification by satisfying all of the requirements for renewal and filing an application for renewal, accompanied by a late renewal fee, within two years of the date that his or her license or certification expired.

(h) The board may deny the issuance or renewal of a license or certification for any reason enumerated in this article or in the rules of the board, or for any reason for which it may refuse an initial license or certification.

§30-38-17. Standards of professional appraisal practice.

Each real estate appraiser licensed or certified under this act shall comply with generally accepted standards of professional appraisal practice and generally accepted ethical rules to be observed by a real estate appraiser. Generally accepted standards of professional appraisal practice are currently evidenced by the uniform standards of professional appraisal practice promulgated by the appraisal foundation. The board may, after a public hearing or public comment period held in accordance with provisions of §29A-3-1 *et seq*., adopt revised versions or make modifications of or additions to the uniform standards of professional appraisal practice.

ARTICLE 38A. APPRAISAL MANAGEMENT COMPANIES REGISTRATION ACT.

§30-38A-3. Definitions.

As used in this article, the following words and terms have the following meanings, unless the context clearly indicates otherwise:

(a) "Applicant" means a person or firm making an application for registration under the provisions of this article.

(b) "Appraisal" means an analysis, opinion, or conclusion prepared by a real estate appraiser relating to the nature, quality,

value, or utility of specified interests in, or aspects of, identified real estate or identified real property. An appraisal may be classified by the nature of the assignment as a valuation appraisal, an analysis assignment, or a review assignment.

(c) "Appraisal Management Company" means a person or firm that provides appraisal management services to creditors or to secondary mortgage market participants, including affiliates; provides such services in connection with valuing a consumer's principal dwelling as security for a consumer credit transaction or incorporating such transactions into securitizations; and within a given 12-month period oversees an appraiser panel of more than 15 state certified or state licensed appraisers in a state or 25 or more state certified or state licensed appraisers in two or more states.

(d) "Appraisal management services" means the business of managing the process of having an appraisal performed for compensation or pecuniary gain, including but not limited to any of the following actions:

(1) Conducting business directly or indirectly by telephone, electronically, mail, or in person;

(2) Providing related administrative and clerical duties;

(3) Recruiting, selecting, or retaining appraisers;

(4) Verifying qualifications of appraisers;

(5) Establishing and administering an appraiser panel;

(6) Receiving appraisal orders from clients;

(7) Contracting and negotiating fees with appraisers to perform appraisal services;

(8) Receiving appraisals from the appraiser and submitting completed appraisals to clients;

(9) Tracking and determining the status of orders for appraisals;

(10) Reviewing, verifying, and conducting quality control of a completed appraisal;

(11) Collecting fees from the clients; and

(12) Compensating appraisers for appraisal services rendered.

(e) "Appraisal review" means the act of developing and communicating an opinion about the quality of another appraiser's work that was performed as part of an appraiser assignment. The review does not include:

(1) An examination of an appraisal for grammatical, typographical, or other similar errors that do not make a substantive valuation change; or

(2) A general examination for compliance including regulatory or client requirements as specified in the agreement process that do not communicate an opinion as to the valuation conclusion.

(f) "Appraisal services" means the practice of developing an opinion of the value of real estate in conformity with the minimum USPAP standards.

(g) "Appraiser" means a person licensed or certified, under the provisions of §30-38-1 *et seq.* of this code, to perform an appraisal.

(h) "Appraiser panel" means a group of appraisers that perform appraisals for an appraisal management company as independent contractors.

(i) "Automated valuation model (AVM)" means a mathematically based computer software program that produces an estimate of market value based on market analysis of location, market conditions, and real estate characteristics from information that was previously and separately collected.

(j) "Board" means the West Virginia Real Estate Appraiser Licensing and Certification Board established under the provisions of §30-38-1 *et seq.* of this code.

(k) "Client" means a person or firm that contracts or enters into an agreement with an appraisal management company for the performance of an appraisal.

(l) "Controlling person" means a person authorized by an appraisal management company to contract or enter into agreements with clients and independent appraisers for the performance of appraisal services and who has the power to manage the appraisal management company.

(m) "Firm" means a corporation, limited liability company, partnership, sole proprietorship, or any other business entity.

(n) "Registrant" means a person or firm holding a registration issued by the board under the provisions of this article.

(o) "Registration" means a registration issued by the board under the provisions of this article.

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

(q) "USPAP" means the Uniform Standards of Professional Appraisal Practice.

§30-38A-4. Registration requirements.

(a) A person or firm performing or offering to perform appraisal management services or acting as an appraisal management company within this state shall be registered with the board.

(b) A firm applying for a registration may not be owned, directly or indirectly by:

(1) A person who has had a license or certificate to act as an appraiser refused, denied, canceled, or revoked in this state or any other jurisdiction, unless the license or certificate was subsequently granted or reinstated; or

(2) A firm that employs a person who has had a license or certificate to act as an appraiser refused, denied, canceled, revoked,

or surrendered in this state or any other jurisdiction, unless the license or certificate was subsequently granted or reinstated.

(c) The board may issue a registration to perform appraisal management services or act as an appraisal management company to a person or firm that:

(1) Makes written application to the board as set out in §30-38A-6 of this code;

(2) Submits certifications as set out in §30-38A-7 of this code;

(3) Submits national and state criminal background checks as set out in §30-38A-8 of this code;

(4) Posts a surety bond as set out in §30-38A-9 of this code;

(5) Pays the applicable fees as set out in §30-38A-10 of this code;

(6) Has a designated controlling person as set out in §30-38A-11 of this code; and

(7) Meets any other requirement set by the board.

(d) The registrations issued under the provisions of this article shall be renewed annually on July 1.

(e) Registrations not renewed in a timely manner are delinquent. To reinstate a delinquent registration, the registrant must pay a monthly penalty, as set by the board.

(f) A registration that has been delinquent for more than three months shall be considered expired and a new application for registration is required.

(g) The board shall issue a registration number to each appraisal management company registered in this state.

(h) The board shall keep a list of appraisal management company registered in this state and publish the list on its website.

§30-38A-8. Background check requirements.

(a) Upon application, the applicant, each owner who owns more than 10 percent, and the controlling person of the firm seeking registration shall submit to a state and national criminal history record check, as set forth in this section.

(1) This requirement is found not to be against public policy.

(2) The criminal history record check shall be based on fingerprints submitted to the West Virginia State Police or its assigned agent for forwarding to the Federal Bureau of Investigation.

(3) The applicant shall meet all requirements necessary to accomplish the state and national criminal history record check, including:

(A) Submitting fingerprints for the purposes set forth in this subsection; and

(B) Authorizing the board, the West Virginia State Police, and the Federal Bureau of Investigation to use all records submitted and produced for the purpose of screening the applicant for a license.

(b) The results of the state and national criminal history record check may not be released to or by a private entity except:

(1) To the individual who is the subject of the criminal history record check;

(2) With the written authorization of the individual who is the subject of the criminal history record check; or

(3) Pursuant to a court order.

(c) The criminal history record check and related records are not public records for the purposes of chapter 29B of this code.

(d) The applicant shall ensure that the criminal history record check is completed as soon as possible after the date of the original application for registration.

(e) The applicant shall pay the actual costs of the fingerprinting and criminal history record check.

§30-38A-10. Fee requirements.

The fees assessed by the board, as established by legislative rule, shall include the annual fee for appraisal management companies and appraisal management companies that are subsidiaries of federally regulated financial institutions to be included in the national registry maintained by the Appraisal Subcommittee of the Federal Financial Institutions Examination Council.

CHAPTER 197

(Com. Sub. for S. B. 472 - By Senator Maynard)

[Passed April 5, 2021; in effect 90 days from passage (July 4, 2021)]
[Approved by the Governor on April 19, 2021.]

AN ACT to amend and reenact §30-1A-1, §30-1A-2, §30-1A-3, §30-1A-4, §30-1A-5, and §30-1A-6 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §30-1A-1a, all relating to regulation of occupations and professions; establishing legislative policy; providing definitions; providing criteria to analyze a required application to regulate an occupation or profession; requiring Performance Evaluation and Research Division to conduct an analysis of application; establishing rebuttable presumption against regulating an occupation or profession absent certain conditions; setting out criteria to assess harms to consumers and possible recommendations that may be instituted against an occupation or profession; providing for an economic study of the recommendations made; setting time frame for the Performance Evaluation and Research Division to conduct analysis and return report; providing for recommendations based on the assessed harm to consumers in the Performance Evaluation and Research Division's report; authorizing additional recommendations and findings by the Joint Standing Committee on Government Organization; requiring additional findings by the Joint Standing Committee on Government Organization be made public; mandating committee's findings and recommendations along with any report be submitted to any committee considering legislation prior to voting; requiring Performance Evaluation and Research Division begin review of existing licenses under certain criteria; providing effective date for licensure review; mandating review of certain licenses

annually; requiring annual licensing review to be set by the chairs of the Joint Standing Committee on Government Organization; setting eight-year review schedule; requiring Performance Evaluation and Research Division to report its findings and recommendations to the committee relating to licensing review; establishing effective date for the Performance Evaluation and Research Division to begin reporting its findings and recommendations to the committee; and establishing standards of statutory interpretation relating to government regulation of occupations or professions.

Be it enacted by the Legislature of West Virginia:

ARTICLE 1A. PROCEDURE FOR REGULATION OF OCCUPATIONS AND PROFESSIONS.

§30-1A-1. Legislative findings; policy.

(a) The Legislature finds that regulation should be imposed on an occupation or profession only when necessary for the protection of public health and safety. The Legislature further finds that establishing a procedure for reviewing the necessity of regulating an occupation or profession prior to enacting laws for such regulation and analyzing existing occupational regulations will better enable it to evaluate the need for the regulation and to determine the least restrictive regulation consistent with public health and safety.

(b) For occupational regulations and the boards of this state, it is the policy of this state that:

(1) The right of an individual to pursue a lawful occupation is a fundamental right;

(2) Where the state finds it is necessary to displace competition, it will use the least restrictive regulation to protect consumers from present, significant, and substantiated harms that threaten public health and safety; and

(3) Legislative leaders will assign the responsibility to review legislation and laws related to occupational regulations.

§30-1A-1a. Definitions.

For the purposes of this chapter, the words defined in this section have the meaning given.

"Government certification" means a voluntary, government-granted, and nontransferable recognition to an individual who meets personal qualifications related to a lawful occupation. Upon the government's initial and continuing approval, the individual may use "government certified" or "state certified" as a title. A noncertified individual also may perform the lawful occupation for compensation but may not use the title "government certified" or "state certified". In this chapter, the term "government certification" is not synonymous with "occupational license". It also is not intended to include credentials, such as those used for medical-board certification or held by a certified public accountant, that are prerequisites to working lawfully in an occupation.

"Government registration" means a requirement to give notice to the government that may include the individual's name and address, the individual's agent for service of process, the location of the activity to be performed, and a description of the service the individual provides. "Government registration" does not include personal qualifications and is not transferable but it may require a bond or insurance. Upon the government's receipt of notice, the individual may use "government registered" as a title. A nonregistered individual may not perform the occupation for compensation or use "government registered" as a title. In this chapter, "government registration" is not intended to be synonymous with "occupational license". It also is not intended to include credentials, such as those held by a registered nurse, which are prerequisites to working lawfully in an occupation.

"Lawful occupation" means a course of conduct, pursuit, or profession that includes the sale of goods or services that are not themselves illegal to sell irrespective of whether the individual selling them is subject to an occupational regulation.

"Least restrictive regulation" means, from least to most restrictive:

(1) Market competition;

(2) Third-party or consumer-created ratings and reviews;

(3) Private certification;

(4) Voluntary bonding or insurance;

(5) Specific private civil cause of action to remedy consumer harm;

(6) Deceptive trade practice act;

(7) Mandatory disclosure of attributes of the specific good or service;

(8) Regulation of the process of providing the specific good or service;

(9) Regulation of the facility where the specific good or service is sold;

(10) Inspection;

(11) Bonding;

(12) Insurance;

(13) Government registration;

(14) Government certification;

(15) Specialty occupational certification solely for medical reimbursement; and

(16) Occupational license.

"Occupational license" is a nontransferable authorization in law for an individual to perform exclusively a lawful occupation for compensation based on meeting personal qualifications established by the Legislature. In an occupation for which a license is required, it is illegal for an individual who does not possess a

valid occupational license to perform the occupation for compensation.

"Occupational regulation" means a statute, rule, practice, policy, or other state law that allows an individual to use an occupational title or work in a lawful occupation. It includes government registration, government certification, and occupational license. It excludes a business license, facility license, building permit, or zoning and land use regulation except to the extent those state laws regulate an individual's personal qualifications to perform a lawful occupation.

"Personal qualifications" are criteria related to an individual's personal background and characteristics. They may include one or more of the following: Completion of an approved educational program, satisfactory performance on an examination, work experience, apprenticeship, other evidence of attainment of requisite knowledge and skills, passing a review of the individual's criminal record, and completion of continuing education.

"Private certification" is a voluntary program in which a private organization grants nontransferable recognition to an individual who meets personal qualifications and standards relevant to performing the occupation as determined by the private organization. The individual may use a designated title of "certified" or other title conferred by the private organization.

"Specialty occupational certification solely for medical reimbursement" means a non-transferable authorization in law for an individual to qualify for payment or reimbursement from a government agency for the nonexclusive provision of new or niche medical services based on meeting personal qualifications established by the Legislature. A private health insurance company or other private company may recognize this credential. Notwithstanding this specialty certification, it is legal for a person regulated under another occupational regulation to provide similar services as defined in that statute for compensation and reimbursement. It is also legal for an individual who does not possess this specialty certification to provide the identified medical

services for compensation, but the noncertified individual will not qualify for payment or reimbursement from a government agency.

§30-1A-2. Required application for regulation of professional or occupational group; application and reporting dates.

(a) The Joint Standing Committee on Government Organization is responsible for facilitating the review of all legislation to enact or modify an occupational regulation to ensure compliance with the policy in §30-1A-1 of this code. The Joint Standing Committee on Government Organization shall refer the review of a proposal for regulation of any unregulated profession or occupation to the Performance Evaluation and Research Division of the Office of the Legislative Auditor.

(b) Any professional or occupational group or organization, any individual, or any other interested party that proposes the regulation of any unregulated profession or occupation, or who proposes to establish, revise, or expand the scope of practice of a regulated profession or occupation shall submit an application to the Joint Standing Committee on Government Organization, as set out in this article.

(c) The Joint Standing Committee on Government Organization may only accept an application for regulation of a profession or occupation, or establishment, revision, or expansion of the scope of practice of a regulated profession or occupation, when the party submitting an application files with the committee a statement of support for the proposed regulation that has been signed by at least 10 residents or citizens of the State of West Virginia who are members of the professional or occupational group or organization for which regulation is being sought, or for which establishment, revision, or expansion of the scope of practice of a regulated profession or occupation is being sought.

(d) The completed application shall contain:

(1) A description of the occupation or profession for which regulation is proposed, or for which establishment, revision, or expansion of the scope of practice of a regulated profession or

occupation is proposed, including a list of associations, organizations, and other groups currently representing the practitioners in this state, and an estimate of the number of practitioners in each group;

(2) A definition of the problem and the reasons why regulation or establishment, revision, or expansion of the scope of practice is necessary;

(3) The reasons why government certification, government registration, occupational licensure, or other type of regulation is being requested and why that regulatory alternative was chosen over a less restrictive alternative;

(4) A detailed statement of the proposed funding mechanism to pay the administrative costs of the regulation or the establishment, revision, or expansion of the scope of practice, or of the fee structure conforming with the statutory requirements of financial autonomy as set out in this chapter;

(5) A detailed statement of the location and manner in which the group plans to maintain records which are accessible to the public as set out in this chapter;

(6) The benefit to the public that would result from the proposed regulation or establishment, revision, or expansion of the scope of practice;

(7) The cost of the proposed regulation or establishment, revision, or expansion of the scope of practice; and

(8) Evidence, if any, of present, significant, and substantiated harms to consumers in the state.

§30-1A-3. Analysis and evaluation of application.

(a) The Joint Standing Committee on Government Organization shall refer the completed application of the professional or occupational group or organization to the Performance Evaluation and Research Division of the Office of the Legislative Auditor.

(b) The Performance Evaluation and Research Division of the Office of the Legislative Auditor shall conduct an analysis and evaluation of the application. The analysis and evaluation shall be based upon the criteria listed in subsections (c) through subsection (k) of this section. The Performance Evaluation and Research Division of the Office of the Legislative Auditor shall submit a report, and such supporting materials as may be required, to the Joint Standing Committee on Government Organization, as set out in this section.

(c) The Performance Evaluation and Research Division of the Office of the Legislative Auditor shall determine if the proposed regulation meets the state's policy as set forth in §30-1A-1(b) of this code of using the least restrictive regulation necessary to protect consumers from present, significant, and substantiated harms.

(d) The Performance Evaluation and Research Division of the Office of the Legislative Auditor's analysis in subsection (c) of this section will use a rebuttable presumption that consumers are sufficiently protected by market competition and private remedies, as listed in §30-1A-1a(1) through §30-1A-1a(4) of this code. The Joint Standing Committee on Government Organization will consider the use of private certification programs that allow a provider to give consumers information about the provider's knowledge, skills, and association with a private certification organization.

(e) The Performance Evaluation and Research Division of the Office of the Legislative Auditor may rebut the presumption in subsection (d) of this section if it finds both credible empirical evidence of present, significant, and substantiated harm, and that consumers do not have the information and means to protect themselves against such harm. If evidence of such unmanageable harm is found, the committee may recommend the least restrictive government regulation to address the harm, as listed in §30-1A-1a(5) through §30-1A-1a(16) of this code.

(f) The Performance Evaluation and Research Division of the Office of the Legislative Auditor will use the following guidelines

to form its recommendation in subsection (j) or subsection (k) of this section. If the harm arises from:

(1) Contractual disputes, including pricing disputes, the office may recommend enacting a specific civil cause of action in small-claims court or circuit court to remedy consumer harm. This cause of action may provide for reimbursement of attorney's fees or court costs, if a consumer's claim is successful;

(2) Fraud, the office may recommend strengthening powers under the state's deceptive trade practices acts or requiring disclosures that will reduce misleading attributes of the specific good or service or other relevant recommendations;

(3) General health and safety risks, the office may recommend enacting a regulation on the related process or requiring a facility license;

(4) A lack of protection for a person who is not a party to a contract between providers and consumers, the office may recommend requiring the provider have insurance;

(5) A shortfall or imbalance in the consumer's knowledge about the good or service relative to the provider's knowledge (asymmetrical information), the office may recommend enacting government certification;

(6) An inability to qualify providers of new or highly specialized medical services for reimbursement by the state, the office may recommend enacting a specialty certification solely for medical reimbursement;

(7) A systematic information shortfall in which a reasonable consumer of the service is permanently unable to distinguish between the quality of providers and there is an absence of institutions that provide guidance to consumers, the office may recommend enacting an occupational license; and

(8) The need to address multiple types of harm, the office may recommend a combination of regulations. This may include a government regulation combined with a private remedy including

third-party or consumer-created ratings and reviews, or private certification.

(g) The Performance Evaluation and Research Division and other relevant divisions of the Office of the Legislative Auditor's analysis of the need for regulation in subsection (e) of this section shall include the effects of legislation on opportunities for workers, consumer choices and costs, general unemployment, market competition, governmental costs, and other effects.

(h) The Performance Evaluation and Research Division of the Office of the Legislative Auditor's analysis of the need for regulation in subsection (e) of this section should include comparisons of the legislation to whether and how other states regulate the occupation, including the occupation's scope of practice that other states use, and the personal qualifications other states require.

(i) The Performance Evaluation and Research Division of the Office of the Legislative Auditor may also request information from state agencies that contract with individuals in regulated occupations and others knowledgeable of the occupation, labor market economics, or other factors, including costs and benefits, a professional who works in the profession, a board member who regulates the profession, and any other interested party.

(j) For an application proposing the regulation of an unregulated profession or occupation, the Performance Evaluation and Research Division of the Office of the Legislative Auditor's report shall include evaluation, analysis, and findings as to:

(1) Whether the unregulated practice of the occupation or profession clearly harms or endangers the health, safety, or welfare of the public, and any evidence of present, significant, and substantiated harms to consumers in the state;

(2) The requisite personal qualifications, if any;

(3) The scope of practice, if applicable;

(4) If regulation is required to address evidence of harm to consumers in the state, the least restrictive regulation of the occupation or profession; and

(5) Whether the professional or occupational group or organization should be regulated as proposed in the application.

(k) For an application proposing the establishment, revision, or expansion of the scope of practice of a regulated profession or occupation, the report shall include the evaluation, analysis, and findings as set forth in subsection (j) of this section inasmuch as applicable, and a clear recommendation as to whether the scope of practice should be established, revised, or expanded as proposed in the application.

(l) The Performance Evaluation and Research Division of the Office of the Legislative Auditor shall submit its report to the Joint Standing Committee on Government Organization no later than nine months after receiving the application for analysis.

§30-1A-4. Public hearing and committee recommendations.

(a) After receiving the required report, the Joint Standing Committee on Government Organization may conduct public hearings to receive testimony from the public, the Governor or his or her designee, the group, organization, or individual who submitted the proposal for regulation, a professional who works in the field, a board member who regulates the profession, and any other interested party.

(b) The Joint Standing Committee on Government Organization may issue additional findings and recommendations regarding:

(1) The least restrictive regulation of the occupation or profession; and

(2) Whether regulation would result in the creation of a new agency or board or could be implemented more efficiently through an existing agency or board.

(c) The Joint Standing Committee on Government Organization shall provide the Performance Evaluation and Research Division of the Office of the Legislative Auditor's report and its findings and recommendations, if any, to the next regular session of the Legislature.

(d) The Performance Evaluation and Research Division of the Office of the Legislative Auditor shall publish its report on its website. The Joint Standing Committee on Government Organization shall also make the report and any additional findings and recommendations publicly available.

(e) Any committee considering legislation to enact or modify an occupational regulation shall receive the Performance Evaluation and Research Division of the Office of the Legislative Auditor's report and the Joint Standing Committee on Government Organization's findings and recommendations as provided for in subsection (b) of this section, if applicable, prior to voting on the legislation.

(f) Nothing in this article shall be construed to preempt federal regulation or to require a private certification organization to grant or deny private certification to any individual.

§30-1A-5. Review of existing occupational licenses.

(a) Starting on July 1, 2021, the Performance Evaluation and Research Division of the Office of the Legislative Auditor is responsible for annually reviewing those current occupational licenses that the committee chairs select.

(b) The Performance Evaluation and Research Division of the Office of the Legislative Auditor shall review all occupational licenses within the subsequent eight years and shall repeat such review processes in each eight-year period thereafter.

(c) The Performance Evaluation and Research Division of the Office of the Legislative Auditor shall use the criteria set forth in §30-1A-3(c) through §30-1A-3(i) of this code to analyze all existing occupational licenses. The office also may consider research or other credible evidence regarding whether an existing

regulation directly helps consumers to avoid present, significant, and recognizable harm.

(d)(1) Starting on July 1, 2022, the Performance Evaluation and Research Division of the Office of the Legislative Auditor shall report the findings of its reviews to the Joint Standing Committee on Government Organization. In its report, the Performance Evaluation and Research Division of the Office of the Legislative Auditor may make recommendations to the committee that the Legislature enact new legislation that:

(A) Repeals the occupational licenses;

(B) Converts the occupational licenses to less restrictive regulation as set forth in the definition of "least restrictive regulation" in §30-1A-1a of this code;

(C) Changes the requisite personal qualifications of an occupational license;

(D) Redefines the scope of practice in an occupational license; or

(E) Reflects other recommendations to the Legislature.

(2) The Performance Evaluation and Research Division of the Office of the Legislative Auditor also may recommend that no new legislation is enacted.

(3) Nothing in this article shall be construed to authorize the office to review the means that a private certification organization uses to issue, deny, or revoke a private certification to any individual, or to require a private certification organization to grant or deny private certification to any individual.

§30-1A-6. Article construction.

(a) Nothing in this article shall be construed as limiting or interfering with the right of any member of the Legislature to introduce or of the Legislature to consider any bill that would

create a new state governmental department or agency or amend the law with respect to an existing department or agency.

(b) Notwithstanding the provisions of subsection (a) of this section, the recommendations of the Joint Standing Committee on Government Organization are to be given considerable weight in determining if a profession or occupation should be regulated, or if the scope of practice of a regulated profession or occupation should be established, revised, or expanded.

(c) In construing any governmental regulation of occupations, including an occupational licensing statute, rule, policy, or practice, the following interpretations are to govern, unless the regulation is unambiguous:

(1) Occupational regulations should be construed and applied to increase economic opportunities, promote competition, and encourage innovation;

(2) Any ambiguities in occupational regulations should be construed in favor of workers and aspiring workers to work; and

(3) The scope of practice in occupational regulations should be construed narrowly to avoid burdening individuals with regulatory requirements that only have an attenuated relationship to the goods and services they provide.

CHAPTER 198

(S. B. 521 - By Senator Rucker)

[Passed April 8, 2021; in effect 90 days from passage (July 7, 2021)]
[Approved by the Governor on April 15, 2021.]

AN ACT to amend and reenact §30-18-9 and §30-18-10 of the Code of West Virginia, 1931, as amended, all relating to extending the licensure renewal term of a private investigator, security guard, and private investigator or security guard firms from one to two years.

Be it enacted by the Legislature of West Virginia:

ARTICLE 18. PRIVATE INVESTIGATIVE AND SECURITY SERVICES.

§30-18-9. Renewal of license.

A license granted under the provisions of this article shall be in effect for two years from the date the certificate of license is issued and may be renewed for a period of two years by the Secretary of State upon application, in such form as the secretary may prescribe, and upon payment of the fee and the filing of the surety bond or proof of liability insurance. At the time of applying for renewal of a license, the Secretary of State may require any person to provide additional information to reflect any changes in the original application or any previous renewal. Any fee charged by the Secretary of State for renewal of a license shall not exceed $50.

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

(a) When the Secretary of State is satisfied as to the good character, competency, and integrity of an applicant, of all employees or individuals conducting the private investigation

business or security guard services under a firm license and, if the applicant is a firm, of each member, officer or partner, he or she shall issue and deliver to the applicant a certificate of license. Each license issued shall be for a period of two years and is revocable at all times for cause shown pursuant to subsection (b) of this section or any rules promulgated pursuant thereto.

(b) The Secretary of State may propose for promulgation in accordance with the provisions of chapter 29A of this code legislative rules necessary for the administration and enforcement of this article and for the issuance, suspension, and revocation of licenses issued under the provisions of this article. The Secretary of State shall afford any applicant an opportunity to be heard in person or by counsel when a determination is made to deny, revoke, or suspend an applicant's license or application for license, including a renewal of a license. The applicant has 15 days from the date of receiving written notice of the Secretary of State's adverse determination to request a hearing on the matter of denial, suspension, or revocation. The action of the Secretary of State in granting, renewing, or in refusing to grant or to renew, a license is subject to review by the circuit court of Kanawha County or other court of competent jurisdiction.

(c) At any hearing before the Secretary of State to challenge an adverse determination by the Secretary of State on the matter of a denial, suspension, or revocation of a license, if the adverse determination is based upon a conviction for a crime which would bar licensure under the provisions of this article, the hearing shall be an identity hearing only and the sole issue which may be contested is whether the person whose application is denied or whose license is suspended or revoked is the same person convicted of the crime.

(d) The Secretary of State shall require each applicant to submit to a state and national criminal history record check, as set forth in this subsection:

(1) The criminal history record check shall be based on fingerprints submitted to the West Virginia State Police or its

assigned agent for forwarding to the Federal Bureau of Investigation.

(2) The applicant shall meet all requirements necessary to accomplish the state and national criminal history record check, including:

(A) Submitting fingerprints for the purposes set forth in this section, if required by the Secretary of State, West Virginia State Police, or the Federal Bureau of Investigation; and

(B) Authorizing the Secretary of State, the West Virginia State Police, and the Federal Bureau of Investigation to use all records submitted and produced for the purpose of screening the applicant for a license.

(3) The results of the state and national criminal history record check may not be released to or by a private entity except:

(A) To the individual who is the subject of the criminal history record check;

(B) With the written authorization of the individual who is the subject of the criminal history record check; or

(C) Pursuant to a court order.

(4) The criminal history record check and related records are not public records for the purposes of chapter 29B of this code.

(5) The applicant shall ensure that the criminal history record check is completed as soon as possible after the date of the original application for registration.

(6) The applicant shall pay the actual costs of the fingerprinting and criminal history record check.

CHAPTER 199

(S. B. 644 - By Senator Weld)

[Passed April 6, 2021; in effect 90 days from passage (July 5, 2021)]
[Approved by the Governor on April 15, 2021.]

AN ACT to amend and reenact §30-26-2 of the Code of West Virginia, 1931, as amended, relating to providing an exemption to the hearing-aid dealer license.

Be it enacted by the Legislature of West Virginia:

ARTICLE 26. HEARING AID DEALERS AND FITTERS.

§30-26-2. Engaging in practice of hearing-aid dealer or trainee without license prohibited; exceptions.

(a) Except as provided in subsections (b), (c), and (e) hereof no person shall, on or after the effective date of this article, engage in the practice of dealing in or fitting of hearing aids, either as a hearing-aid dealer, fitter, or as a trainee, nor shall any person advertise or assume any such practice, without first being licensed or otherwise qualified under the provisions of this article.

(b) If the applicant is a partnership, trust, association, corporation, or other like organization, the application, in addition to such other information as the board may require, shall be accompanied by an application for a license for each person, whether owner or employee, of such applicant who serves in the capacity of a hearing-aid dealer or fitter, or shall contain a statement that such applications for all such persons are submitted separately. No partnership, trust, association, corporation, or other like organization shall permit any unlicensed person to sell hearing aids or to engage in the practice of dealing in, or fitting of, hearing aids.

(c) This article is not intended to prevent any person who is not licensed under this article from engaging in the practice of measuring human hearing for the purpose of selection of hearing aids, provided such person or organization employing such person does not sell hearing aids or accessories thereto, except in the case of earmolds to be used only for the purpose of audiologic evaluation.

(d) State or local governmental organizations or agencies and organizations chartered as not-for-profit shall not be eligible for licensure to fit and dispense hearing aids.

(e) The activities and services of persons pursuing a course of study leading to a degree in audiology at a college or university is exempt from licensure if:

(A) These activities and services constitute a part of a planned course of study at that institution;

(B) They are designated by a title such as intern, trainee, student, or other title clearly indicating the status appropriate to their level of education; and

(C) They work under the supervision of a person licensed by this state to practice audiology.

CHAPTER 200

(Com. Sub. for S. B. 668 - By Senators Takubo, Woelfel, and Woodrum)

[Passed April 7, 2021; in effect 90 days from passage (July 6, 2021)]
[Approved by the Governor on April 21, 2021.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §30-21A-1, §30-21A-2, §30-21A-3, §30-21A-4, §30-21A-5, §30-21A-6, §30-21A-7, §30-21A-8, §30-21A-9, §30-21A-10, §30-21A-11, §30-21A-12, and §30-21A-13, all relating to the Psychology Interjurisdictional Compact; providing for definitions; providing for increased public access to professional psychological services by permitted psychologists to practice across state lines; providing for temporary psychological services; providing for the state's ability to protect the health and welfare of its citizens; providing for the cooperation and exchange of information in compact states; providing for cooperation of compact states in licensure and regulation; providing for adverse actions; providing for enforcement mechanisms for compliance with the compact; providing for coordinated efforts between compact states of holding psychologists accountable to the compact; providing for effective dates of rules upon induction to the compact; providing for duties and authority of the commission; providing for election procedures for commission members; providing for alternative dispute resolution methods; providing for venue for legal action taken against the commission; providing for withdrawal from the compact; and providing for construction and severability of the terms of the compact.

Be it enacted by the Legislature of West Virginia:

ARTICLE 21A. PSYCHOLOGISTS; SCHOOL PSYCHOLOGISTS.

§30-21A-1. Definitions.

"Adverse Action" means any action taken by a State Psychology Regulatory Authority which finds a violation of a statute or regulation that is identified by the State Psychology Regulatory Authority as discipline and is a matter of public record.

"Association of State and Provincial Psychology Boards (ASPPB)" means the recognized membership organization composed of State and Provincial Psychology Regulatory Authorities responsible for the licensure and registration of psychologists throughout the United States and Canada.

"Authority to Practice Interjurisdictional Telepsychology" means a licensed psychologist's authority to practice telepsychology, within the limits authorized under this Compact, in another Compact State.

"Bylaws" means those bylaws established by the Psychology Interjurisdictional Compact Commission pursuant to §30-21A-9 of this code for its governance, or for directing and controlling its actions and conduct.

"Client/Patient" means the recipient of psychological services, whether psychological services are delivered in the context of healthcare, corporate, supervision, consulting services, or any combination thereof.

"Commissioner" means the voting representative appointed by each State Psychology Regulatory Authority pursuant to §30-21A-9 of this code.

"Compact State" means a state, the District of Columbia, or United States territory that has enacted this Compact legislation and which has not withdrawn pursuant to §30-21A-12(c) of this code or been terminated pursuant to §30-21A-11(b) of this code.

"Coordinated Licensure Information System" also referred to as "Coordinated Database" means an integrated process for collecting, storing, and sharing information on psychologists' licensure and enforcement activities related to psychology licensure laws, which is administered by the recognized membership organization composed of State and Provincial Psychology Regulatory Authorities.

"Confidentiality" means the principle that data or information is not made available or disclosed to unauthorized persons and/or processes.

"Day" means any part of a day in which psychological work is performed.

"Distant State" means the Compact State where a psychologist is physically present (not through the use of telecommunications technologies), to provide temporary in-person, face-to-face psychological services.

"E.Passport" means a certificate issued by the Association of State and Provincial Psychology Boards (ASPPB) that promotes the standardization in the criteria of interjurisdictional telepsychology practice and facilitates the process for licensed psychologists to provide telepsychological services across state lines.

"Executive Board" means a group of directors elected or appointed to act on behalf of, and within the powers granted to them by, the commission.

"Home State" means a Compact State where a psychologist is licensed to practice psychology. If the psychologist is licensed in more than one Compact State and is practicing under the Authorization to Practice Interjurisdictional Telepsychology, the Home State is the Compact State where the psychologist is physically present when the telepsychological services are delivered. If the psychologist is licensed in more than one Compact State and is practicing under the Temporary Authorization to

Practice, the Home State is any Compact State where the psychologist is licensed.

"Identity History Summary" means a summary of information retained by the FBI, or other designee with similar authority, in connection with arrests and, in some instances, federal employment, naturalization, or military service.

"In-Person, Face-to-Face" means interactions in which the psychologist and the client/patient are in the same physical space and which does not include interactions that may occur through the use of telecommunication technologies.

"Interjurisdictional Practice Certificate (IPC)" means a certificate issued by the Association of State and Provincial Psychology Boards (ASPPB) that grants temporary authority to practice based on notification to the State Psychology Regulatory Authority of intention to practice temporarily, and verification of one's qualifications for such practice.

"License" means authorization by a State Psychology Regulatory Authority to engage in the independent practice of psychology, which would be unlawful without the authorization.

"NonCompact State" means any State which is not at the time a Compact State.

"Psychologist" means an individual licensed for the independent practice of psychology.

"Psychology Interjurisdictional Compact Commission" also referred to as "commission" means the national administration of which all Compact States are members.

"Receiving State" means a Compact State where the client/patient is physically located when the telepsychological services are delivered.

"Rule" means a written statement by the Psychology Interjurisdictional Compact Commission promulgated pursuant to §30-21A-10 of this code that is of general applicability,

implements, interprets, or prescribes a policy or provision of the Compact, or an organizational, procedural, or practice requirement of the commission and has the force and effect of statutory law in a Compact State, and includes the amendment, repeal or suspension of an existing rule.

"Significant Investigatory Information" means:

(1) Investigative information that a State Psychology Regulatory Authority, after a preliminary inquiry that includes notification and an opportunity to respond if required by state law, has reason to believe, if proven true, would indicate more than a violation of state statute or ethics code that would be considered more substantial than minor infraction; or

(2) Investigative information that indicates that the psychologist represents an immediate threat to public health and safety regardless of whether the psychologist has been notified or has had an opportunity to respond.

"State" means a state, commonwealth, territory, or possession of the United States, or the District of Columbia.

"State Psychology Regulatory Authority" means the Board, office or other agency with the legislative mandate to license and regulate the practice of psychology.

"Telepsychology" means the provision of psychological services using telecommunication technologies.

"Temporary Authorization to Practice" means a licensed psychologist's authority to conduct temporary in-person, face-to-face practice, within the limits authorized under this Compact, in another Compact State.

"Temporary In-Person, Face-to-Face Practice" means where a psychologist is physically present (not through the use of telecommunications technologies), in the Distant State to provide for the practice of psychology for 30 days within a calendar year and based on notification to the Distant State.

§30-21A-2. Home state licensure.

(a) Home State shall be a Compact State where a psychologist is licensed to practice psychology.

(b) A psychologist may hold one or more Compact State licenses at a time. If the psychologist is licensed in more than one Compact State, the Home State is the Compact State where the psychologist is physically present when the services are delivered as authorized by the Authority to Practice Interjurisdictional Telepsychology under the terms of this Compact.

(c) Any Compact State may require a psychologist not previously licensed in a Compact State to obtain and retain a license to be authorized to practice in the Compact State under circumstances not authorized by the Authority to Practice Interjurisdictional Telepsychology under the terms of this Compact.

(d) Any Compact State may require a psychologist to obtain and retain a license to be authorized to practice in a Compact State under circumstances not authorized by Temporary Authorization to Practice under the terms of this Compact.

(e) A Home State's license authorizes a psychologist to practice in a Receiving State under the Authority to Practice Interjurisdictional Telepsychology only if the Compact State:

(1) Currently requires the psychologist to hold an active E.Passport;

(2) Has a mechanism in place for receiving and investigating complaints about licensed individuals;

(3) Notifies the commission, in compliance with the terms herein, of any adverse action or significant investigatory information regarding a licensed individual;

(4) Requires an Identity History Summary of all applicants at initial licensure, including the use of the results of fingerprints or other biometric data checks compliant with the requirements of the

Federal Bureau of Investigation (FBI), or other designee with similar authority, no later than 10 years after activation of the Compact; and

(5) Complies with the bylaws and rules of the commission.

(f) A Home State's license grants Temporary Authorization to Practice to a psychologist in a Distant State only if the Compact State:

(1) Currently requires the psychologist to hold an active IPC;

(2) Has a mechanism in place for receiving and investigating complaints about licensed individuals;

(3) Notifies the commission, in compliance with the terms herein, of any adverse action or significant investigatory information regarding a licensed individual;

(4) Requires an Identity History Summary of all applicants at initial licensure, including the use of the results of fingerprints or other biometric data checks, compliant with the requirements of the FBI, or other designee with similar authority, no later than 10 years after activation of the Compact; and

(5) Complies with the bylaws and rules of the commission.

§30-21A-3. Compact privilege to practice telepsychology.

(a) Compact States shall recognize the right of a psychologist, licensed in a Compact State in conformance with this section, to practice telepsychology in other Compact States (Receiving States) in which the psychologist is not licensed, under the Authority to Practice Interjurisdictional Telepsychology as provided in the Compact.

(b) To exercise the Authority to Practice Interjurisdictional Telepsychology under the terms and provisions of this Compact, a psychologist licensed to practice in a Compact State shall:

(1) Hold a graduate degree in psychology from an institute of higher education that was, at the time the degree was awarded:

(A) Regionally accredited by an accrediting body recognized by the U.S. Department of Education to grant graduate degrees, or authorized by Provincial Statute or Royal Charter to grant doctoral degrees; or

(B) A foreign college or university considered to be equivalent to §30-21A-3(b)(1)(A) of this code above by a foreign credential evaluation service that is a member of the National Association of Credential Evaluation Services (NACES) or by a recognized foreign credential evaluation service; and

(C) There shall be a clear authority and primary responsibility for the core and specialty areas whether or not the program cuts across administrative lines;

(D) The program shall consist of an integrated, organized sequence of study;

(E) There shall be an identifiable psychology faculty sufficient in size and breadth to carry out its responsibilities;

(F) The designated director of the program shall be a psychologist and a member of the core faculty;

(G) The program shall have an identifiable body of students who are matriculated in that program for a degree;

(H) The program shall include supervised practicum, internship, or field training appropriate to the practice of psychology;

(I) The curriculum shall encompass a minimum of three academic years of full-time graduate study for doctoral degree and a minimum of one academic year of full-time graduate study for master's degree;

(J) The program includes an acceptable residency as defined by the rules of the commission.

(2) Possess a current, full, and unrestricted license to practice psychology in a Home State which is a Compact State;

(3) Have no history of adverse action that violate the rules of the commission;

(4) Have no criminal record history reported on an Identity History Summary that violates the rules of the commission;

(5) Possess a current, active E.Passport;

(6) Provide attestations in regard to areas of intended practice, conformity with standards of practice, competence in telepsychology technology, criminal background, and knowledge and adherence to legal requirements in the home and receiving states, and provide a release of information to allow for primary source verification in a manner specified by the commission; and

(7) Meet other criteria as defined by the rules of the commission.

(c) The Home State maintains authority over the license of any psychologist practicing into a Receiving State under the Authority to Practice Interjurisdictional Telepsychology.

(d) A psychologist practicing into a Receiving State under the Authority to Practice Interjurisdictional Telepsychology will be subject to the Receiving State's scope of practice. A Receiving State may, in accordance with that state's due process law, limit or revoke a psychologist's Authority to Practice Interjurisdictional Telepsychology in the Receiving State and may take any other necessary actions under the Receiving State's applicable law to protect the health and safety of the Receiving State's citizens. If a Receiving State takes action, the state shall promptly notify the Home State and the commission.

(e) If a psychologist's license in any Home State, another Compact State, or any Authority to Practice Interjurisdictional Telepsychology in any Receiving State, is restricted, suspended, or otherwise limited, the E.Passport shall be revoked and therefore the psychologist may not be eligible to practice telepsychology in a Compact State under the Authority to Practice Interjurisdictional Telepsychology.

§30-21A-4. Compact temporary authorization to practice.

(a) Compact States shall also recognize the right of a psychologist, licensed in a Compact State in conformance with §30-21A-3 of this code to practice temporarily in other Compact States (Distant States) in which the psychologist is not licensed, as provided in the Compact.

(b) To exercise the Temporary Authorization to Practice under the terms and provisions of this Compact, a psychologist licensed to practice in a Compact State shall:

(1) Hold a graduate degree in psychology from an institute of higher education that was, at the time the degree was awarded:

(A) Regionally accredited by an accrediting body recognized by the U.S. Department of Education to grant graduate degrees, or authorized by Provincial Statute or Royal Charter to grant doctoral degrees; or

(B) A foreign college or university considered to be equivalent to §30-21A-4(b)(1)(A) of this code by a foreign credential evaluation service that is a member of the National Association of Credential Evaluation Services (NACES) or by a recognized foreign credential evaluation service; and

(2) Hold a graduate degree in psychology that meets the following criteria:

(A) The program, wherever it may be administratively housed, shall be clearly identified and labeled as a psychology program. Such a program shall specify in pertinent institutional catalogues and brochures its intent to educate and train professional psychologists;

(B) The psychology program shall stand as a recognizable, coherent, organizational entity within the institution;

(C) There shall be a clear authority and primary responsibility for the core and specialty areas whether or not the program cuts across administrative lines;

(D) The program shall consist of an integrated, organized sequence of study;

(E) There shall be an identifiable psychology faculty sufficient in size and breadth to carry out its responsibilities;

(F) The designated director of the program shall be a psychologist and a member of the core faculty;

(G) The program shall have an identifiable body of students who are matriculated in that program for a degree;

(H) The program shall include supervised practicum, internship, or field training appropriate to the practice of psychology;

(I) The curriculum shall encompass a minimum of three academic years of full-time graduate study for doctoral degrees and a minimum of one academic year of full-time graduate study for master's degree;

(J) The program includes an acceptable residency as defined by the rules of the commission.

(3) Possess a current, full and unrestricted license to practice psychology in a Home State which is a Compact State;

(4) No history of adverse action that violate the rules of the commission;

(5) No criminal record history that violates the rules of the commission;

(6) Possess a current, active IPC;

(7) Provide attestations in regard to areas of intended practice and work experience and provide a release of information to allow for primary source verification in a manner specified by the commission; and

(8) Meet other criteria as defined by the rules of the commission.

(c) A psychologist practicing into a Distant State under the Temporary Authorization to Practice shall practice within the scope of practice authorized by the Distant State.

(d) A psychologist practicing into a Distant State under the Temporary Authorization to Practice will be subject to the Distant State's authority and law. A Distant State may, in accordance with that state's due process law, limit or revoke a psychologist's Temporary Authorization to Practice in the Distant State and may take any other necessary actions under the Distant State's applicable law to protect the health and safety of the Distant State's citizens. If a Distant State takes action, the state shall promptly notify the Home State and the Commission.

(e) If a psychologist's license in any Home State, another Compact State, or any Temporary Authorization to Practice in any Distant State, is restricted, suspended or otherwise limited, the IPC shall be revoked and therefore the psychologist may not be eligible to practice in a Compact State under the Temporary Authorization to Practice.

§30-21A-5. Conditions of telepsychology practice in a receiving state.

A psychologist may practice in a Receiving State under the Authority to Practice Interjurisdictional Telepsychology only in the performance of the scope of practice for psychology as assigned by an appropriate State Psychology Regulatory Authority, as defined in the rules of the commission, and under the following circumstances:

(1) The psychologist initiates a client/patient contact in a Home State via telecommunications technologies with a client/patient in a Receiving State;

(2) Other conditions regarding telepsychology as determined by rules promulgated by the commission.

§30-21A-6. Adverse actions.

(a) A Home State may impose adverse action against a psychologist's license issued by the Home State. A Distant State

may take adverse action on a psychologist's Temporary Authorization to Practice within that Distant State.

(b) A Receiving State may take adverse action on a psychologist's Authority to Practice Interjurisdictional Telepsychology within that Receiving State. A Home State may take adverse action against a psychologist based on an adverse action taken by a Distant State regarding temporary in-person, face-to-face practice.

(c) If a Home State takes adverse action against a psychologist's license, that psychologist's Authority to Practice Interjurisdictional Telepsychology is terminated and the E.Passport is revoked. Furthermore, that psychologist's Temporary Authorization to Practice is terminated and the IPC is revoked.

(1) All Home State disciplinary orders which impose adverse action shall be reported to the commission in accordance with the rules promulgated by the commission. A Compact State shall report adverse actions in accordance with the rules of the commission.

(2) If discipline is reported on a psychologist, the psychologist may not be eligible for telepsychology or temporary in-person, face-to-face practice in accordance with the rules of the commission.

(3) Other actions may be imposed as determined by the rules promulgated by the commission.

(d) A Home State's Psychology Regulatory Authority shall investigate and take appropriate action with respect to reported inappropriate conduct engaged in by a licensee which occurred in a Receiving State as it would if that conduct had occurred by a licensee within the Home State. In such cases, the Home State's law shall control in determining any adverse action against a psychologist's license.

(e) A Distant State's Psychology Regulatory Authority shall investigate and take appropriate action with respect to reported inappropriate conduct engaged in by a psychologist practicing

under Temporary Authorization Practice which occurred in that Distant State as it would if such conduct had occurred by a licensee within the Home State. In such cases, Distant State's law shall control in determining any adverse action against a psychologist's Temporary Authorization to Practice.

(f) Nothing in this Compact overrides a Compact State's decision that a psychologist's participation in an alternative program may be used in lieu of adverse action and that such participation shall remain nonpublic if required by the Compact State's law. Compact States shall require psychologists who enter any alternative programs to not provide telepsychology services under the Authority to Practice Interjurisdictional Telepsychology or provide temporary psychological services under the Temporary Authorization to Practice in any other Compact State during the term of the alternative program.

(g) No other judicial or administrative remedies may be available to a psychologist in the event a Compact State imposes an adverse action pursuant to §30-21A-6(c) of this code.

§30-21A-7. Additional authorities invested in a compact state's psychology regulatory authority.

(a) In addition to any other powers granted under state law, a Compact State's Psychology Regulatory Authority may:

(1) Issue subpoenas, for both hearings and investigations, which require the attendance and testimony of witnesses and the production of evidence. Subpoenas issued by a Compact State's Psychology Regulatory Authority for the attendance and testimony of witnesses, the production of evidence from another Compact State, or both, shall be enforced in the latter state by any court of competent jurisdiction, according to that court's practice and procedure in considering subpoenas issued in its own proceedings. The issuing State Psychology Regulatory Authority shall pay any witness fees, travel expenses, mileage, and other fees required by the service statutes of the state where the witnesses or evidence are located; and

(2) Issue cease and desist, injunctive relief orders, or both, to revoke a psychologist's Authority to Practice Interjurisdictional Telepsychology, Temporary Authorization to Practice, or both.

(b) During the course of any investigation, a psychologist may not change his or her Home State licensure. A Home State Psychology Regulatory Authority is authorized to complete any pending investigations of a psychologist and to take any actions appropriate under its law. The Home State Psychology Regulatory Authority shall promptly report the conclusions of such investigations to the commission. Once an investigation has been completed, and pending the outcome of the investigation, the psychologist may change his or her Home State licensure. The commission shall promptly notify the new Home State of any such decisions as provided in the rules of the commission. All information provided to the commission or distributed by Compact States pursuant to the psychologist shall be confidential, filed under seal and used for investigatory or disciplinary matters. The commission may create additional rules for mandated or discretionary sharing of information by Compact States.

§30-21A-8. Coordinated licensure information system.

(a) The commission shall provide for the development and maintenance of a Coordinated Licensure Information System (Coordinated Database) and reporting system containing licensure and disciplinary action information on all psychologists individuals to whom this Compact is applicable in all Compact States as defined by the rules of the commission.

(b) Notwithstanding any other provision of state law to the contrary, a Compact State shall submit a uniform data set to the Coordinated Database on all licensees as required by the rules of the commission, including:

(1) Identifying information;

(2) Licensure data;

(3) Significant investigatory information;

(4) Adverse actions against a psychologist's license;

(5) An indicator that a psychologist's Authority to Practice Interjurisdictional Telepsychology, Temporary Authorization to Practice, or both, is revoked;

(6) Nonconfidential information related to alternative program participation information;

(7) Any denial of application for licensure, and the reasons for such denial; and

(8) Other information which may facilitate the administration of this Compact, as determined by the rules of the commission.

(c) The Coordinated Database administrator shall promptly notify all Compact States of any adverse action taken against, or significant investigative information on, any licensee in a Compact State.

(d) Compact States reporting information to the Coordinated Database may designate information that may not be shared with the public without the express permission of the Compact State reporting the information.

(e) Any information submitted to the Coordinated Database that is subsequently required to be expunged by the law of the Compact State reporting the information shall be removed from the Coordinated Database.

§30-21A-9. Establishment of the psychology interjurisdictional compact.

(a) The Compact States hereby create and establish a joint public agency known as the Psychology Interjurisdictional Compact Commission.

(1) The commission is a body politic and an instrumentality of the Compact States.

(2) Venue is proper and judicial proceedings by or against the commission shall be brought solely and exclusively in a court of

competent jurisdiction where the principal office of the commission is located. The commission may waive venue and jurisdictional defenses to the extent it adopts or consents to participate in alternative dispute resolution proceedings.

(3) Nothing in this Compact may be construed to be a waiver of sovereign immunity.

(b) Membership, voting, and meetings:

(1) The commission shall consist of one voting representative appointed by each Compact State who shall serve as that state's commissioner. The State Psychology Regulatory Authority shall appoint its delegate. This delegate may act on behalf of the Compact State. This delegate shall be limited to:

(A) Executive Director, Executive Secretary, or similar executive;

(B) Current member of the State Psychology Regulatory Authority of a Compact State; or

(C) Designee empowered with the appropriate delegate authority to act on behalf of the Compact State.

(2) Any commissioner may be removed or suspended from office as provided by the law of the state from which the commissioner is appointed. Any vacancy occurring in the Commission shall be filled in accordance with the laws of the Compact State in which the vacancy exists.

(3) Each commissioner shall be entitled to one vote with regard to the promulgation of rules and creation of bylaws and shall otherwise have an opportunity to participate in the business and affairs of the commission. A commissioner shall vote in person or by such other means as provided in the bylaws. The bylaws may provide for commissioners' participation in meetings by telephone or other means of communication.

(4) The commission shall meet at least once during each calendar year. Additional meetings shall be held as set forth in the bylaws.

(5) All meetings shall be open to the public, and public notice of meetings shall be given in the same manner as required under the rulemaking provisions in §30-21A-10 of this code.

(6) The commission may convene in a closed, nonpublic meeting if the commission shall discuss:

(A) Noncompliance of a Compact State with its obligations under the compact;

(B) The employment, compensation, discipline or other personnel matters, practices or procedures related to specific employees, or other matters related to the commission's internal personnel practices and procedures;

(C) Current, threatened, or reasonably anticipated litigation against the commission;

(D) Negotiation of contracts for the purchase or sale of goods, services, or real estate;

(E) Accusation against any person of a crime or formally censuring any person;

(F) Disclosure of trade secrets or commercial or financial information which is privileged or confidential;

(G) Disclosure of information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy;

(H) Disclosure of investigatory records compiled for law enforcement purposes;

(I) Disclosure of information related to any investigatory reports prepared by or on behalf of or for use of the commission or other committee charged with responsibility for investigation or determination of compliance issues pursuant to the Compact; or

(J) Matters specifically exempted from disclosure by federal and state statute.

(7) If a meeting, or portion of a meeting, is closed pursuant to this provision, the commission's legal counsel or designee shall certify that the meeting may be closed and shall reference each relevant exempting provision. The commission shall keep minutes which fully and clearly describe all matters discussed in a meeting and shall provide a full and accurate summary of actions taken, of any person participating in the meeting, and the reasons therefore, including a description of the views expressed. All documents considered in connection with an action shall be identified in such minutes. All minutes and documents of a closed meeting shall remain under seal, subject to release only by a majority vote of the commission or order of a court of competent jurisdiction.

(c) The commission shall, by a majority vote of the commissioners, prescribe bylaws and rules to govern its conduct as may be necessary or appropriate to carry out the purposes and exercise the powers of the Compact, including but not limited to:

(1) Establishing the fiscal year of the commission;

(2) Providing reasonable standards and procedures:

(A) For the establishment and meetings of other committees; and

(B) Governing any general or specific delegation of any authority or function of the commission;

(3) Providing reasonable procedures for calling and conducting meetings of the commission, ensuring reasonable advance notice of all meetings, and providing an opportunity for attendance of such meetings by interested parties, with enumerated exceptions designed to protect the public's interest, the privacy of individuals of such proceedings, and proprietary information, including trade secrets. The commission may meet in closed session only after a majority of the commissioners vote to close a meeting to the public, in whole or in part. As soon as practicable, the commission shall

make public a copy of the vote to close the meeting revealing the vote of each commissioner with no proxy votes allowed;

(4) Establishing the titles, duties, and authority and reasonable procedures for the election of the officers of the commission;

(5) Providing reasonable standards and procedures for the establishment of the personnel policies and programs of the commission. Notwithstanding any civil service or other similar law of any Compact State, the bylaws shall exclusively govern the personnel policies and programs of the commission;

(6) Promulgating a Code of Ethics to address permissible and prohibited activities of commission members and employees;

(7) Providing a mechanism for concluding the operations of the commission and the equitable disposition of any surplus funds that may exist after the termination of the Compact after the payment and reserving of all of its debts and obligations;

(8) The commission shall publish its bylaws in a convenient form and file a copy thereof and a copy of any amendment thereto, with the appropriate agency or officer in each of the Compact States;

(9) The commission shall maintain its financial records in accordance with the bylaws; and

(10) The commission shall meet and take such actions as are consistent with the provisions of this Compact and the bylaws.

(d) The commission may:

(1) Promulgate uniform rules to facilitate and coordinate implementation and administration of this Compact. The rule shall have the force and effect of law and shall be binding in all Compact States;

(2) Bring and prosecute legal proceedings or actions in the name of the commission, provided that the standing of any State Psychology Regulatory Authority or other regulatory body

responsible for psychology licensure to sue or be sued under applicable law may not be affected;

(3) Purchase and maintain insurance and bonds;

(4) Borrow, accept, or contract for services of personnel, including, but not limited to, employees of a Compact State;

(5) Hire employees, elect or appoint officers, fix compensation, define duties, grant such individuals appropriate authority to carry out the purposes of the Compact, and to establish the commission's personnel policies and programs relating to conflicts of interest, qualifications of personnel, and other related personnel matters;

(6) Accept any and all appropriate donations and grants of money, equipment, supplies, materials, and services, and to receive, utilize, and dispose of the same: *Provided,* That at all times the commission shall strive to avoid any appearance of impropriety or conflict of interest;

(7) Lease, purchase, accept appropriate gifts or donations of, or otherwise to own, hold, improve, or use, any property, real, personal or mixed: *Provided,* That at all times the commission shall strive to avoid any appearance of impropriety;

(8) Sell, convey, mortgage, pledge, lease, exchange, abandon, or otherwise dispose of any property real, personal, or mixed;

(9) Establish a budget and make expenditures;

(10) Borrow money;

(11) Appoint committees, including advisory committees comprised of members, State regulators, State legislators or their representatives, and consumer representatives, and such other interested persons as may be designated in this Compact and the bylaws;

(12) Provide and receive information from, and to cooperate with, law-enforcement agencies;

(13) Adopt and use an official seal; and

(14) Perform such other functions as may be necessary or appropriate to achieve the purposes of this Compact consistent with the state regulation of psychology licensure, temporary in-person, face-to-face practice and telepsychology practice.

(e) The elected officers shall serve as the Executive Board, which may act on behalf of the commission according to the terms of this Compact.

(1) The Executive Board shall be comprised of six members:

(A) Five voting members who are elected from the current membership of the commission by the commission;

(B) One ex-officio, nonvoting member from the recognized membership organization composed of State and Provincial Psychology Regulatory Authorities.

(2) The ex-officio member shall have served as staff or member on a State Psychology Regulatory Authority and will be selected by its respective organization.

(3) The commission may remove any member of the Executive Board as provided in bylaws.

(4) The Executive Board shall meet at least annually.

(5) The Executive Board shall have the following duties and responsibilities:

(A) Recommend to the entire commission changes to the rules or bylaws, changes to this Compact legislation, fees paid by Compact States such as annual dues, and any other applicable fees;

(B) Ensure Compact administration services are appropriately provided, contractual or otherwise;

(C) Prepare and recommend the budget;

(D) Maintain financial records on behalf of the commission;

(E) Monitor Compact compliance of member states and provide compliance reports to the commission;

(F) Establish additional committees as necessary; and

(G) Other duties as provided in rules or bylaws.

(f) Financing the commission:

(1) The commission shall pay, or provide for the payment of, the reasonable expenses of its establishment, organization, and ongoing activities.

(2) The commission may accept any and all appropriate revenue sources, donations and grants of money, equipment, supplies, materials, and services.

(3) The commission may levy on and collect an annual assessment from each Compact State or impose fees on other parties to cover the cost of the operations and activities of the commission and its staff which shall be in a total amount sufficient to cover its annual budget as approved each year for which revenue is not provided by other sources. The aggregate annual assessment amount shall be allocated based upon a formula to be determined by the commission which shall promulgate a rule binding upon all Compact States.

(4) The commission may not incur obligations of any kind prior to securing the funds adequate to meet the same; nor shall the commission pledge the credit of any of the Compact States, except by and with the authority of the Compact State.

(5) The commission shall keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the commission shall be subject to the audit and accounting procedures established under its bylaws. However, all receipts and disbursements of funds handled by the commission shall be audited yearly by a certified or licensed public accountant and the report of the audit shall be included in and become part of the annual report of the commission.

(g) Qualified Immunity, Defense, and Indemnification:

(1) The members, officers, Executive Director, employees, and representatives of the commission 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 by or arising out of any actual or alleged act, error, or omission that occurred, or that the person against whom the claim is made had a reasonable basis for believing occurred within the scope of commission employment, duties, or responsibilities*: Provided,* That nothing in this paragraph may be construed to protect any such person from suit or liability for any damage, loss, injury, or liability caused by the intentional or willful or wanton misconduct of that person.

(2) The commission shall defend any member, officer, Executive Director, employee, or representative of the commission in any civil action seeking to impose liability arising out of any actual or alleged act, error, or omission that occurred within the scope of commission employment, duties, or responsibilities, or that the person against whom the claim is made had a reasonable basis for believing occurred within the scope of commission employment, duties, or responsibilities*: Provided,* That nothing herein may be construed to prohibit that person from retaining his or her own counsel*: Provided, however,* That the actual or alleged act, error, or omission did not result from that person's intentional or willful or wanton misconduct.

(3) The commission shall indemnify and hold harmless any member, officer, Executive Director, employee, or representative of the commission for the amount of any settlement or judgment obtained against that person arising out of any actual or alleged act, error, or omission that occurred within the scope of commission employment, duties, or responsibilities, or that such person had a reasonable basis for believing occurred within the scope of commission employment, duties, or responsibilities: *Provided,* That the actual or alleged act, error, or omission did not result from the intentional or willful or wanton misconduct of that person.

§30-21A-10. Rulemaking.

(a) The commission shall exercise its rulemaking powers pursuant to the criteria set forth in this section and the rules adopted thereunder. Rules and amendments shall become binding as of the date specified in each rule or amendment.

(b) If a majority of the legislatures of the Compact States rejects a rule, by enactment of a statute or resolution in the same manner used to adopt the Compact, then such rule shall have no further force and effect in any Compact State.

(c) Rules or amendments to the rules shall be adopted at a regular or special meeting of the commission.

(d) Prior to promulgation and adoption of a final rule or rules by the commission, and at least 60 days in advance of the meeting at which the rule will be considered and voted upon, the commission shall file a Notice of Proposed Rulemaking:

(1) On the website of the commission; and

(2) On the website of each Compact States' Psychology Regulatory Authority or the publication in which each state would otherwise publish proposed rules.

(e) The Notice of Proposed Rulemaking shall include:

(1) The proposed time, date, and location of the meeting in which the rule will be considered and voted upon;

(2) The text of the proposed rule or amendment and the reason for the proposed rule;

(3) A request for comments on the proposed rule from any interested person; and

(4) The manner in which interested persons may submit notice to the commission of their intention to attend the public hearing and any written comments.

(f) Prior to adoption of a proposed rule, the commission shall allow persons to submit written data, facts, opinions, and arguments, which shall be made available to the public

(g) The commission shall grant an opportunity for a public hearing before it adopts a rule or amendment if a hearing is requested by:

(1) At least 25 persons who submit comments independently of each other;

(2) A governmental subdivision or agency; or

(3) A duly appointed person in an association that has at least 25 members.

(h) If a hearing is held on the proposed rule or amendment, the commission shall publish the place, time, and date of the scheduled public hearing.

(1) All persons wishing to be heard at the hearing shall notify the Executive Director of the commission or other designated member in writing of their desire to appear and testify at the hearing not less than five business days before the scheduled date of the hearing.

(2) Hearings shall be conducted in a manner providing each person who wishes to comment a fair and reasonable opportunity to comment orally or in writing.

(3) No transcript of the hearing is required, unless a written request for a transcript is made, in which case the person requesting the transcript shall bear the cost of producing the transcript. A recording may be made in lieu of a transcript under the same terms and conditions as a transcript. This subsection may not preclude the commission from making a transcript or recording of the hearing if it so chooses.

(4) Nothing in this section may be construed as requiring a separate hearing on each rule. Rules may be grouped for the convenience of the commission at hearings required by this section.

(i) Following the scheduled hearing date, or by the close of business on the scheduled hearing date if the hearing was not held, the commission shall consider all written and oral comments received.

(j) The commission shall, by majority vote of all members, take final action on the proposed rule and shall determine the effective date of the rule, if any, based on the rulemaking record and the full text of the rule.

(k) If no written notice of intent to attend the public hearing by interested parties is received, the commission may proceed with promulgation of the proposed rule without a public hearing.

(l) Upon determination that an emergency exists, the commission may consider and adopt an emergency rule without prior notice, opportunity for comment, or hearing, provided that the usual rulemaking procedures provided in the Compact and in this section shall be retroactively applied to the rule as soon as reasonably possible, in no event later than 90 days after the effective date of the rule. For the purposes of this provision, an emergency rule is one that shall be adopted immediately in order to:

(1) Meet an imminent threat to public health, safety, or welfare;

(2) Prevent a loss of commission or Compact State funds;

(3) Meet a deadline for the promulgation of an administrative rule that is established by federal law or rule; or

(4) Protect public health and safety.

(m) The commission or an authorized committee of the commission may direct revisions to a previously adopted rule or amendment for purposes of correcting typographical errors, errors in format, errors in consistency, or grammatical errors. Public notice of any revisions shall be posted on the website of the commission. The revision shall be subject to challenge by any person for a period of 30 days after posting. The revision may be challenged only on grounds that the revision results in a material

change to a rule. A challenge shall be made in writing and delivered to the Chair of the commission prior to the end of the notice period. If no challenge is made, the revision will take effect without further action. If the revision is challenged, the revision may not take effect without the approval of the commission.

§30-21A-11. Oversight, dispute resolution and enforcement.

(a) Oversight:

(1) The Executive, Legislative, and Judicial branches of state government in each Compact State shall enforce this Compact and take all actions necessary and appropriate to effectuate the Compact's purposes and intent. The provisions of this Compact and the rules promulgated hereunder shall have standing as statutory law.

(2) All courts shall take judicial notice of the Compact and the rules in any judicial or administrative proceeding in a Compact State pertaining to the subject matter of this Compact which may affect the powers, responsibilities, or actions of the commission.

(3) The commission may receive service of process in any such proceeding and shall have standing to intervene in such a proceeding for all purposes. Failure to provide service of process to the commission shall render a judgment or order void as to the commission, this Compact or promulgated rules.

(b) Default, Technical Assistance, and Termination:

(1) If the commission determines that a Compact State has defaulted in the performance of its obligations or responsibilities under this Compact or the promulgated rules, the commission shall:

(A) Provide written notice to the defaulting state and other Compact States of the nature of the default, the proposed means of remedying the default or any other action to be taken by the commission; and

(B) Provide remedial training and specific technical assistance regarding the default.

(2) If a state in default fails to remedy the default, the defaulting state may be terminated from the Compact upon an affirmative vote of a majority of the Compact States, and all rights, privileges, and benefits conferred by this Compact shall be terminated on the effective date of termination. A remedy of the default does not relieve the offending state of obligations or liabilities incurred during the period of default.

(3) Termination of membership in the Compact shall be imposed only after all other means of securing compliance have been exhausted. Notice of intent to suspend or terminate shall be submitted by the commission to the Governor, the majority and minority leaders of the defaulting state's legislature, and each of the Compact States.

(4) A Compact State which has been terminated is responsible for all assessments, obligations, and liabilities incurred through the effective date of termination, including obligations which extend beyond the effective date of termination.

(5) The commission may not bear any costs incurred by the state which is found to be in default, or which has been terminated from the Compact, unless agreed upon in writing between the commission and the defaulting state.

(6) The defaulting state may appeal the action of the commission by petitioning the U.S. District Court for the state of Georgia or the federal district where the Compact has its principal offices. The prevailing member shall be awarded all costs of such litigation, including reasonable attorney's fees.

(c) Dispute Resolution:

(1) Upon request by a Compact State, the commission shall attempt to resolve disputes related to the Compact which arise among Compact States and between Compact and NonCompact States.

(2) The commission shall promulgate a rule providing for both mediation and binding dispute resolution for disputes that arise before the commission.

(d) Enforcement:

(1) The commission, in the reasonable exercise of its discretion, shall enforce the provisions and rules of this Compact.

(2) By majority vote, the commission may initiate legal action in the United States District Court for the State of Georgia or the federal district where the Compact has its principal offices against a Compact State in default to enforce compliance with the provisions of the Compact and its promulgated rules and bylaws. The relief sought may include both injunctive relief and damages. In the event judicial enforcement is necessary, the prevailing member shall be awarded all costs of such litigation, including reasonable attorney's fees.

(3) The remedies herein may not be the exclusive remedies of the commission. The commission may pursue any other remedies available under federal or state law.

§30-21A-12. Date of implementation of the psychology interjurisdictional compact commission and associated rules, withdrawal, and amendments.

(a) The Compact shall come into effect on the date on which the Compact is enacted into law in the seventh Compact State. The provisions which become effective at that time shall be limited to the powers granted to the commission relating to assembly and the promulgation of rules. Thereafter, the commission shall meet and exercise rulemaking powers necessary to the implementation and administration of the Compact.

(b) Any state which joins the Compact subsequent to the commission's initial adoption of the rules shall be subject to the rules as they exist on the date on which the Compact becomes law in that state. Any rule which has been previously adopted by the commission shall have the full force and effect of law on the day the Compact becomes law in that state.

(c) Any Compact State may withdraw from this Compact by enacting a statute repealing the same.

(1) A Compact State's withdrawal may not take effect until six months after enactment of the repealing statute.

(2) Withdrawal may not affect the continuing requirement of the withdrawing State's Psychology Regulatory Authority to comply with the investigative and adverse action reporting requirements of this act prior to the effective date of withdrawal.

(d) Nothing contained in this Compact may be construed to invalidate or prevent any psychology licensure agreement or other cooperative arrangement between a Compact State and a NonCompact State which does not conflict with the provisions of this Compact.

(e) This Compact may be amended by the Compact States. No amendment to this Compact shall become effective and binding upon any Compact State until it is enacted into the law of all Compact States.

§30-21A-13. Construction and severability.

This Compact shall be liberally construed so as to effectuate the purposes thereof. If any term or provision of this Compact shall be held to be invalid for any reason, the remaining terms or provisions shall remain in full force and effect. If this Compact shall be held contrary to the Constitution of any state member thereto, the Compact shall remain in full force and effect as to the remaining Compact states.

CHAPTER 201

(S. B. 714 - By Senators Takubo, Maroney, Grady, Weld, Rucker, Azinger, Stover, Woodrum, Stollings, Plymale, Roberts, Lindsay, and Unger)

[Passed April 9, 2021; in effect 90 days from passage (July 8, 2021)]
[Approved by the Governor on April 21, 2021.]

AN ACT to repeal §30-3E-10 of the Code of West Virginia, 1931, as amended; and to amend and reenact §30-3E-1, §30-3E-2, §30-3E-3, §30-3E-4, §30-3E-9, §30-3E-10a, §30-3E-11, §30-3E-12, §30-3E-13, and §30-3E-17 of said code, all relating to health care practitioners; defining terms; limiting rule-making authority; revising licensure requirements; revising practice requirements; eliminating practice agreement requirement; revising practice notification requirement; providing prescriptive authority; revising collaboration requirements; expanding scope of practice; expanding prescriptive authority; establishing minimum reimbursement rates; and revising complaint process.

Be it enacted by the Legislature of West Virginia:

ARTICLE 3E. PHYSICIAN ASSISTANTS PRACTICE ACT.

§30-3E-1. Definitions.

As used in this article:

"Approved program" means an educational program for physician assistants approved and accredited by the Accreditation Review Commission on Education for the Physician Assistant or its successor. Prior to 2001, approval and accreditation would have been by either the Committee on Allied Health Education and

Accreditation or the Commission on Accreditation of Allied Health Education Programs.

"Boards" means the West Virginia Board of Medicine and the West Virginia Board of Osteopathic Medicine.

"Chronic condition" means a condition which lasts three months or more, generally cannot be prevented by vaccines, can be controlled but not cured by medication, and does not generally disappear. These conditions include, but are not limited to, arthritis, asthma, cardiovascular disease, cancer, diabetes, epilepsy and seizures, and obesity.

"Collaborating physician" means a doctor of medicine, osteopathy, or podiatry fully licensed, by the appropriate board in this state, without restriction or limitation, who collaborates with physician assistants.

"Collaboration" means overseeing the activities of the medical services rendered by a physician assistant. Constant physical presence of the collaborating physician is not required as long as the collaborating physician and physician assistant are, or can be, easily in contact with one another by telecommunication. Collaboration does not require the personal presence of the collaborating physician at the place or places where services are rendered.

"Endorsement" means a summer camp or volunteer endorsement authorized under this article.

"Health care facility" means any licensed hospital, nursing home, extended care facility, state health or mental institution, clinic, or physician office.

"License" means a license issued by either of the boards pursuant to the provisions of this article.

"Licensee" means a person licensed pursuant to the provisions of this article.

"Physician" means a doctor of allopathic or osteopathic medicine who is fully licensed pursuant to the provisions of either §30-3-1 *et seq.* or §30-14-1 *et seq.* of this code to practice medicine and surgery in this state.

"Physician assistant" means a person who meets the qualifications set forth in this article and is licensed pursuant to this article to practice medicine with a collaborating physician.

"Practice notification" means a written notice to the appropriate licensing board that a physician assistant will practice in collaboration with one or more collaborating physicians in the state of West Virginia.

§30-3E-2. Powers and duties of the boards.

In addition to the powers and duties set forth in this code for the boards, the boards shall:

(1) Establish the requirements for licenses and temporary licenses pursuant to this article;

(2) Establish the procedures for submitting, approving, and rejecting applications for licenses and temporary licenses;

(3) 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;

(4) Compile and publish an annual report that includes a list of currently licensed physician assistants and their primary practice locations in the state; and

(5) Take all other actions necessary and proper to effectuate the purposes of this article.

§30-3E-3. Rulemaking.

(a) The boards shall 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, including:

(1) The extent to which physician assistants may practice in this state;

(2) The extent to which physician assistants may pronounce death;

(3) Requirements for licenses and temporary licenses;

(4) Requirements for practice notifications;

(5) Requirements for continuing education;

(6) Conduct of a licensee for which discipline may be imposed;

(7) The eligibility and extent to which a physician assistant may prescribe, including: A state formulary classifying those categories of drugs which may not be prescribed by a physician assistant, including, but not limited to, Schedules I and II of the Uniform Controlled Substances Act, antineoplastics, radiopharmaceuticals, and general anesthetics: *Provided*, That a physician assistant or an advanced practice registered nurse may prescribe no more than a three-day supply, without refill, of a drug listed in the Uniform Controlled Substances Act as a Schedule II drug. Drugs listed under Schedule III shall be limited to a 30-day supply without refill. In addition to the above referenced provisions and restrictions and pursuant to a practice notification as set forth in this article, the rules shall permit the prescribing of an annual supply of any drug, with the exception of controlled substances, which is prescribed for the treatment of a chronic condition, other than chronic pain management. For the purposes of this section, a chronic condition is a condition which lasts three months or more, generally cannot be prevented by vaccines, can be controlled but not cured by medication, and does not generally disappear. These conditions, with the exception of chronic pain, include, but are not limited to, arthritis, asthma, cardiovascular disease, cancer, diabetes, epilepsy and seizures, and obesity;

(8) A fee schedule; and

(9) Any other rules necessary to effectuate the provisions of this article.

(b) The boards may propose emergency rules pursuant to §29A-3-1 *et seq.* of this code to ensure conformity with this article.

§30-3E-4. License to practice as a physician assistant.

(a) A person seeking licensure as a physician assistant shall apply to the Board of Medicine or to the Board of Osteopathic Medicine. The appropriate board shall issue a license to practice as a physician assistant with the collaboration of that board's licensed physicians or podiatrists.

(b) A license may be granted to a person who:

(1) Files a complete application;

(2) Pays the applicable fees;

(3) Demonstrates to the board's satisfaction that he or she:

(A) Obtained a baccalaureate or master's degree from an accredited program of instruction for physician assistants;

(B) Prior to July 1, 1994, graduated from an approved program of instruction in primary health care or surgery; or

(C) Prior to July 1, 1983, was certified by the Board of Medicine as a physician assistant then classified as Type B;

(4) Has passed the Physician Assistant National Certifying Examination administered by the National Commission on Certification of Physician Assistants;

(5) Has a current certification from the National Commission on Certification of Physician Assistants or has a current license in good standing from a state that does not require a physician assistant to maintain national certification;

(6) Is mentally and physically able to engage safely in practice as a physician assistant;

(7) Has not had a physician assistant license, certification, or registration in any jurisdiction suspended or revoked;

(8) Is not currently subject to any limitation, restriction, suspension, revocation, or discipline concerning a physician assistant license, certification, or registration in any jurisdiction: *Provided*, That if a board is made aware of any problems with a physician assistant license, certification, or registration and agrees to issue a license, certification, or registration notwithstanding the provisions of this subdivision or subdivision (7) of this subsection;

(9) Is of good moral character; and

(10) Has fulfilled any other requirement specified by the appropriate board.

(c) A board may deny an application for a physician assistant license to any applicant determined to be unqualified by the board.

§30-3E-9. Practice requirements.

(a) A physician assistant may not practice independent of a collaborating physician.

(b) A physician assistant may practice in collaboration with physicians in any practice setting pursuant to a practice notification which has been filed with, and activated by, the appropriate board in accordance with §30-3E-10a of this code: *Provided*, That a physician assistant who is currently practicing in collaboration with physicians pursuant to a practice agreement which was authorized by a board prior to June 1, 2021, may continue to practice under that authorization until the practice agreement terminates or until June 1, 2022, whichever is sooner.

(c) Notwithstanding any other provision of this code to the contrary, and to the degree permitted by federal law, physician assistants shall be considered providers and shall not be reimbursed at rates lower than other providers who render similar health services by health insurers as well as health plans operated or paid for by the state.

§30-3E-10. Practice agreement requirements.

[Repealed.]

§30-3E-10a. Practice notification requirements.

(a) Before a licensed physician assistant may practice in collaboration with physicians, the physician assistant and a health care facility shall:

(1) File a practice notification with the appropriate licensing board;

(2) Pay the applicable fee; and

(3) Receive written notice from the appropriate licensing board that the practice notification is complete and active.

(b) The licensing boards shall promulgate emergency rules to establish the content and criteria for submission of practice notifications.

(c) A physician assistant shall notify the board, in writing, within 10 days of the termination of a practice notification. Failure to provide timely notice of the termination constitutes unprofessional conduct and disciplinary proceedings may be instituted by the appropriate licensing board.

§30-3E-11. Collaboration with physician assistants.

(a) Unless otherwise prohibited by a health care facility, a physician who practices medicine or podiatry at a health care facility may collaborate with any physician assistant who holds an active practice notification with the same facility.

(b) When collaborating with physician assistants, collaborating physicians shall observe, direct, and evaluate the physician assistant's work, records, and practices as necessary for appropriate and meaningful collaboration.

(c) A health care facility is only legally responsible for the actions or omissions of a physician assistant when the physician assistant is employed by or on behalf of the facility.

(d) Every licensed physician assistant shall be individually responsible and liable for the care they provide. This article does

not relieve physician assistants or collaborating physicians of responsibility and liability which otherwise may exist for acts and omissions occurring during collaboration.

§30-3E-12. Scope of practice.

(a) A license issued to a physician assistant by the appropriate state licensing board shall authorize the physician assistant to perform medical acts commensurate with their education, training, and experience and which they are competent to perform, consistent with the rules of the boards. Medical acts include prescribing, dispensing, and administering of controlled substances, prescription drugs, or medical devices.

(b) A physician assistant shall provide only those medical services for which they have been prepared by their education, training, and experience and are competent to perform, consistent with sound medical practice and that will protect the health and safety of the patient. This may occur in any health care setting, both hospital and outpatient in accordance with their practice notification.

(c) A physician assistant with an active practice notification may perform medical acts and/or procedures in collaboration with physicians which are consistent with the physician assistant's education, training and experience, the collaborating physician's scope of practice, and any credentialing requirements of the health care facility where the physician assistant holds an active practice notification.

(d) This article does not authorize a physician assistant to perform any specific function or duty delegated by this code to those persons licensed as chiropractors, dentists, dental hygienists, optometrists, or pharmacists, or certified as nurse anesthetists.

§30-3E-13. Identification.

(a) While practicing, a physician assistant shall wear a name tag that identifies him or her as a physician assistant.

(b) A physician assistant shall keep his or her license and current practice notification available for inspection at his or her place of practice.

§30-3E-17. Complaint process.

(a) All hearings and procedures related to denial of a license, and all complaints, investigations, hearings, and procedures regarding a physician assistant license and the discipline accorded thereto, shall be in accordance with the processes and procedures set forth in either §30-3-1 *et seq.* or §30-14-1 *et seq.* of this code, depending on which board licenses the physician assistant.

(b) The boards may impose the same discipline, restrictions, and/or limitations upon the license of a physician assistant as they are authorized to impose upon physicians and/or podiatrists.

(c) The boards shall direct to the appropriate licensing board a complaint against a physician assistant and/or a collaborating physician.

(d) In the event that independent complaint processes are warranted by the boards with respect to the professional conduct of a physician assistant or a collaborating physician, the boards are authorized to work cooperatively and to disclose to one another information which may assist the recipient appropriate licensing board in its disciplinary process. The determination of what information, if any, to disclose shall be at the discretion of the disclosing board.

(e) A physician assistant licensed under this article may not be disciplined for providing expedited partner therapy in accordance with §16-4F-1 *et seq.* of this code.

CHAPTER 202

(Com. Sub. for H. B. 2006 - By Delegates Howell, Espinosa, Foster, Horst, Hamrick, Miller, Steele, Holstein, Clark, Keaton and Burkhammer)

[Passed March 17, 2021; in effect ninety days from passage.]
[Approved by the Governor on March 27, 2021.]

AN ACT to repeal §21-11-1, §21-11-2, §21-11-3, §21-11-4, §21-11-5, §21-11-6, §21-11-7, §21-11-8, §21-11-9, §21-11-10, §21-11-10a, §21-11-11, §21-11-12, §21-11-13, §21-11-14, §21-11-15, §21-11-16, §21-11-17, §21-11-18, and §21-11-20 of the Code of West Virginia, 1931, as amended; to amend and reenact §4-10-10 of said code; to amend and reenact §5-11A-3a of said code; to amend and reenact §5-22-1 of said code; to amend and reenact §21-1-3 of said code; to amend and reenact §21-3C-10a, §21-3C-10b, and §21-3C-11 of said code; to amend and reenact §21-9-2 and §21-9-9 of said code; to amend and reenact §21-11A-2 and §21-11A-4 of said code; to amend and reenact §21-16-4 of said code; to amend and reenact §21A-10-11 of said code; to amend said code by adding thereto a new article, designated §30-42-1, §30-42-2, §30-42-3, §30-42-4, §30-42-5, §30-42-6, §30-42-7, §30-42-8, §30-42-9, §30-42-10, §30-42-11, §30-42-12, §30-42-13, §30-42-14, §30-42-15, §30-42-16, §30-42-17, §30-42-18, §30-42-19, and §30-42-20, all relating to the West Virginia Contractor Licensing Act; providing for relocating the licensing of contractors from Chapter 21 to Chapter 30 of this code; providing a short title and declaration of policy with definitions; continuing the West Virginia Contractor Licensing Board, composition, terms, qualifications and appointment; administrative duties of board and legislative rules; providing for necessity for contractor license and exemptions; providing for procedure for licensing; providing for expiration date, fees and renewal of license; providing for revocation for unlawful use, assignment or transfer of license; providing for prerequisites to obtaining

building permit and mandatory written contracts; providing for requiring informational list for basic universal design features; providing for injunction and criminal penalties for violation of article; providing for specific administrative duties of board and record keeping by the board; establishing authorization to grant reciprocity and to provide training to students who desire to obtain a West Virginia contractor license; providing for misdemeanor criminal penalties for violations of article; providing for limitations on municipalities, local governments, and counties from requiring a license to perform contractor work; providing for an exemption from a contractor license for residential work up to $5,000 and commercial work up to $25,000; providing for an exemption from a contractor license for a person performing landscaping and painting services; establishing regulatory review schedule for board; and making technical changes that update code references to contractors throughout this code to the correct code citations.

Be it enacted by the Legislature of West Virginia:

CHAPTER 4. THE LEGISLATURE.

ARTICLE 10. PERFORMANCE REVIEW ACT.

§4-10-10. Regulatory board review schedule.

(a) A regulatory board review is required for all regulatory boards.

(b) A regulatory board review shall be performed on each regulatory board at least once every 12 years, commencing as follows:

(1) 2017: Board of Accountancy; Board of Respiratory Care Practitioners; and Board of Social Work Examiners.

(2) 2018: Board of Examiners of Psychologists; Board of Optometry; and Board of Veterinary Medicine.

(3) 2019: Board of Acupuncture; Board of Barbers and Cosmetologists; and Board of Examiners in Counseling.

(4) 2020: Board of Hearing Aid Dealers; Board of Licensed Dietitians; and Nursing Home Administrators Board.

(5) 2021: Board of Dental Examiners; Board of Medicine; and Board of Pharmacy.

(6) 2022: Board of Chiropractic Examiners; Board of Osteopathy; and Board of Physical Therapy.

(7) 2023: Board of Occupational Therapy; Board of Examiners for Speech-Language Pathology and Audiology; and Medical Imaging and Radiation Therapy Board of Examiners.

(8) 2024: Board of Professional Surveyors; Board of Registration for Foresters; Contractor Licensing Board; and Board of Registration for Professional Engineers.

(9) 2025: Board of Examiners for Licensed Practical Nurses; Board of Examiners for Registered Professional Nurses; and Massage Therapy Licensure Board.

(10) 2026: Board of Architects; Board of Embalmers and Funeral Directors; and Board of Landscape Architects; and

(11) 2027: Board of Registration for Sanitarians; Real Estate Appraiser Licensure and Certification Board; and Real Estate Commission.

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 11A. WEST VIRGINIA FAIR HOUSING ACT.

§5-11A-3a. Volunteer services or materials to build or install basic universal design features; workers, contractors, engineers, and architects; immunity from civil liability.

Any person, including a worker, contractor, engineer or architect, who in good faith provides services or materials, without

remuneration, to build or install basic universal design features as set forth in §30-42-10 of this code may not be liable for any civil damages as the result of any act or omission in providing such services or materials: *Provided,* That the basic universal design feature or features shall be built or constructed in accordance with applicable state and federal laws and applicable building codes.

ARTICLE 22. GOVERNMENT CONSTRUCTION CONTRACTS.

§5-22-1. Bidding required; government construction contracts to go to lowest qualified responsible bidder; procedures to be followed in awarding government construction projects; penalties for violation of procedures and requirements debarment; exceptions.

(a) This section and the requirements in this section may be referred to as the West Virginia Fairness in Competitive Bidding Act.

(b) As used in this section:

(1) "Lowest qualified responsible bidder" means the bidder that bids the lowest price and that meets, at a minimum, all the following requirements in connection with the bidder's response to the bid solicitation. The bidder shall certify that it:

(A) Is ready, able, and willing to timely furnish the labor and materials required to complete the contract;

(B) Is in compliance with all applicable laws of the State of West Virginia; and

(C) Has supplied a valid bid bond or other surety authorized or approved by the contracting public entity.

(2) "The state and its subdivisions" means the State of West Virginia, every political subdivision thereof, every administrative entity that includes such a subdivision, all municipalities, and all county boards of education.

(3) "State spending unit" means a department, agency, or institution of the state government for which an appropriation is requested, or to which an appropriation is made by the Legislature.

(4) "Alternates" means any additive options or alternative designs included in a solicitation for competitive bids that are different from and priced separately from what is included in a base bid.

(5) "Construction project" means a specifically identified scope of work involving the act, trade, or process of building, erecting, constructing, adding, repairing, remodeling, rehabilitating, reconstructing, altering, converting, improving, expanding, or demolishing of a building, structure, facility, road, or highway. Repair and maintenance of existing public improvements that are recurring or ongoing in nature and that are not fully identified or known at any one time shall be considered a construction project and procured according to this article on an open-ended basis, so long as the work to be performed under the contract falls into a generally accepted single class, or type, and bidders are notified of the open-ended nature of the work in the solicitation: *Provided,* That no open-ended repair or maintenance contract may exceed $500,000.

(c) The state and its subdivisions shall, except as provided in this section, solicit competitive bids for every construction project exceeding $25,000 in total cost.

(1) If a solicitation contains a request for any alternates, the alternates shall be listed numerically in the order of preference in the solicitation.

(2) A vendor who has been debarred pursuant to §5A-3-33b through §5A-3-33f of this code, may not bid on or be awarded a contract under this section.

(d) All bids submitted pursuant to this chapter shall include a valid bid bond or other surety as approved by the State of West Virginia or its subdivisions.

(e) Following the solicitation of bids, the construction contract shall be awarded to the lowest qualified responsible bidder who shall furnish a sufficient performance and payment bond. The state and its subdivisions may reject all bids and solicit new bids on the project.

(f) Any solicitation of bids shall include no more than five alternates. Alternates, if accepted, shall be accepted in the order in which they are listed on the bid form. Any unaccepted alternate contained within a bid shall expire 90 days after the date of the opening of bids for review.

Determination of the lowest qualified responsible bidder shall be based on the sum of the base bid and any alternates accepted.

(g) The apparent low bidder on a contract valued at more than $250,000 for the construction, alteration, decoration, painting, or improvement of a new or existing building or structure with a state spending unit shall submit a list of all subcontractors who will perform more than $25,000 worth of work on the project including labor and materials. This section does not apply to other construction projects such as highway, mine reclamation, water, or sewer projects. The list shall include the names of the bidders and the license numbers as required by §30-42-1 *et seq.* of this code. This information shall be provided to the state spending unit within one business day of the opening of bids for review prior to the awarding of a construction contract. If the apparent low bidder fails to submit the subcontractor list, the spending unit shall promptly request by telephone and electronic mail that the low bidder and second low bidder provide the subcontractor list within one business day of the request. Failure to submit the subcontractor list within one business day of receiving the request shall result in disqualification of the bid. A subcontractor list may not be required if the bidder provides notice in the bid submission or in response to a request for a subcontractor list that no subcontractors who will perform more than $25,000 worth of work will be used to complete the project.

(h) Written approval must be obtained from the state spending unit before any subcontractor substitution is permitted. Substitutions are not permitted unless:

(1) The subcontractor listed in the original bid has filed for bankruptcy;

(2) The state spending unit refuses to approve a subcontractor in the original bid because the subcontractor is under a debarment pursuant to §5A-3-33d of this code or a suspension under §5A-3-32 of this code; or

(3) The contractor certifies in writing that the subcontractor listed in the original bill fails, is unable, or refuses to perform the subcontract.

(i) The contracting public entity may not award the contract to a bidder which fails to meet the minimum requirements set out in this section. As to a prospective low bidder which the contracting public entity determines not to have met one or more of the requirements of this section or other requirements as determined by the public entity in the written bid solicitation, prior to the time a contract award is made, the contracting public entity shall document in writing and in reasonable detail the basis for the determination and shall place the writing in the bid file. After the award of a bid under this section, the bid file of the contracting public agency and all bids submitted in response to the bid solicitation shall be open and available for public inspection.

(j) The contracting public entity shall not award a contract pursuant to this section to any bidder that is known to be in default on any monetary obligation owed to the state or a political subdivision of the state, including, but not limited to, obligations related to payroll taxes, property taxes, sales and use taxes, fire service fees, or other fines or fees. Any governmental entity may submit to the Division of Purchasing information which identifies vendors that qualify as being in default on a monetary obligation to the entity. The contracting public entity shall take reasonable steps to verify whether the lowest qualified bidder is in default pursuant to this subsection prior to awarding a contract.

(k) A public official or other person who individually or together with others knowingly makes an award of a contract under this section in violation of the procedures and requirements of this section is subject to the penalties set forth in §5A-3-29 of this code.

(l) No officer or employee of this state or of a public agency, public authority, public corporation, or other public entity and no person acting or purporting to act on behalf of an officer or employee or public entity may require that a performance bond, payment bond, or surety bond required or permitted by this section be obtained from a particular surety company, agent, broker, or producer.

(m) All bids shall be open in accordance with the provisions of §5-22-2 of this code, except design-build projects which are governed by §5-22A-1 *et seq.* of this code and are exempt from these provisions.

(n) Nothing in this section applies to:

(1) Work performed on construction or repair projects by regular full-time employees of the state or its subdivisions;

(2) Prevent students enrolled in vocational educational schools from being utilized in construction or repair projects when the use is a part of the student's training program;

(3) Emergency repairs to building components, systems, and public infrastructure. For the purpose of this subdivision, the term "emergency repairs" means repairs that if not made immediately will seriously impair the use of building components, systems, and public infrastructure or cause danger to persons using the building components, systems, and public infrastructure; and

(4) A situation where the state or subdivision thereof reaches an agreement with volunteers, or a volunteer group, in which the governmental body will provide construction or repair materials, architectural, engineering, technical, or other professional services, and the volunteers will provide the necessary labor without charge to, or liability upon, the governmental body.

CHAPTER 21. LABOR.

ARTICLE 1. DIVISION OF LABOR.

§21-1-3. Inspections by commissioner; duties and records of employers; commissioner may appoint assistants.

The commissioner of labor and his or her authorized representatives shall have the power and authority in the discharge of their duties, to enter any place of employment or public institution, for the purpose of collecting facts and statistics relating to the employment of workers and of making inspections for the proper enforcement of all labor laws of the state. No employer or owner shall refuse to admit the commissioner of labor or his or her authorized representative when they so seek admission to his place of employment, public building, or place of public assembly.

The commissioner or his or her authorized representative shall, at least once each year, visit and inspect the principal factories and workshops of the state, and shall, upon complaint and request of any three or more reputable citizens, visit and inspect any place where labor is employed and make true report of the result of his or her inspection.

Every employer and owner shall furnish to the division of labor all information which the commissioner of labor or his or her representative is authorized to require, and shall make true and specific answers to all questions submitted by the division of labor, orally or in writing as required by said division. Every employer shall keep a true and accurate record of the name, address, and occupation of each person employed by him or her and of the daily and weekly hours worked by each such person, and of the wages paid each pay period to each such person. Such records shall be kept on file for at least one year after the date of the record. No employer shall make or cause to be made any false entries in any such record.

In addition to such other powers and duties as may be conferred upon the commissioner of labor by law, the commissioner of labor shall have the power, duty, jurisdiction, and authority to employ,

promote, and remove deputies, inspectors, clerks, and other assistants, as needed, and to fix their compensation, with regard to existing laws applicable to the employment and compensation of officers and employees of the State of West Virginia, and to assign to them their duties; to make or cause to be made all necessary inspections, including inspections relating to enforcing the West Virginia Contractor Licensing Act, §30-42-1 *et seq.*, of this code, to see that all laws and lawful orders which the department has the duty, power, and authority to enforce, are promptly and effectively carried out.

ARTICLE 3C. ELEVATOR SAFETY.

§21-3C-10a. License requirements for elevator mechanics, accessibility technicians, limited technicians; contractors license requirements; supervision of elevator apprentices requirements.

(a) A person may not engage or offer to engage in the business of erecting, constructing, installing, altering, servicing, repairing, or maintaining elevators or related conveyances covered by this article in this state, unless he or she has a license issued by the commissioner in accordance with this article.

(b) A person licensed under this article shall:

(1) Have in his or her possession a copy of the license issued pursuant to this article on any job on which he or she is performing elevator mechanic work; and

(2) Be, or be employed by, a contractor licensed pursuant to the provisions of §30-42-1 *et seq.*, of this code unless the work is performed by a historic resort hotel's regular employees, for which the employees are paid regular wages and not a contract price, on property owned or leased by the historic resort hotel which is not intended for speculative sale or lease;

(c) *Elevator mechanic license.* —

(1) To obtain an elevator mechanic's license, a person shall:

(A) Successfully complete educational programs that are registered with the Bureau of Apprenticeship and Training of the United States Department of Labor, including all required examinations and work experience: *Provided,* That if an applicant successfully completes such educational program prior to being registered with the Bureau of Apprenticeship and Training of the United States Department of Labor, the division may grant a license to the applicant after he or she demonstrates to the commissioner that he or she has successfully completed all the test and work experience requirements; or

(B) (i) Provide to the commissioner an acceptable combination of documented experience and educational credits of not less than four years of recent and active experience in the elevator industry in construction, maintenance, or service/repair or any combination thereof, as verified by current and previous employers listed to do business in this state, on a sworn affidavit; and

(ii) Obtain a score of 70 percent or better on a written competency examination approved or provided by the division.

(2) A licensed elevator mechanic may work on all elevators covered by this article.

(d) *Accessibility technician license.* —

(1) To obtain an accessibility technician's license a person shall:

(A) Provide to the commissioner a certificate of completion of an accessibility training program for the elevator industry such as the Certified Accessibility Training (CAT) program by the National Association of Elevator Contractors, or an equivalent nationally recognized training program; or

(B) (i) Have at least 18 months experience in the construction, maintenance, service and repair, or any combination thereof, as verified by current and previous employers, licensed to do business in this state, on a sworn affidavit, of accessibility lifts;

(ii) Have at least one year of documented vocational training and/or an associate degree in a related field; and

(iii) Obtain a score of 70 percent or better on a written competency examination approved or provided by the commissioner.

(2) A person holding an accessibility technician license may only perform work on accessibility equipment.

(3) A person holding an accessibility technician license may obtain a limited use/limited application (LULA) elevator endorsement. To obtain the LULA elevator endorsement, such person shall:

(A) (i) Hold a current accessibility technician license;

(ii) Provide the commissioner with a certificate of LULA manufacturer's training; and

(iii) Provide at least one year of documented work experience to the commissioner, on a sworn affidavit, in the construction, maintenance, service and repair of LULA elevators and comparable equipment, which was completed under the supervision of a licensed accessibility technician; or

(B) As of July 1, 2012, have at least 18 months of accessibility technician's experience in construction, maintenance, service and repair, or any combination thereof, as verified by current and previous employers, licensed to do business in this state, on a sworn affidavit: *Provided*, That an additional one year of documented work as an accessibility technician with certification of manufacturer's factory training, is required before a LULA endorsement may be obtained.

(4) Any person carrying an accessibility license as of July 1, 2012, shall receive the required endorsement to continue to work on this type of equipment, and will be qualified to supervise future applicants as described in this section.

(e) *Limited technician license.* —

(1) To obtain a limited technician's license an applicant shall:

(A) Complete a certified apprenticeship program, registered by the United States Department of Labor established at a historic resort hotel, qualifying for a limited technician license; or

(B) Provide an acceptable combination of documented experience, and educational credits of not less than three years of recent and active experience in the elevator industry, in maintenance, or service/repair or any combination thereof, as verified by current and previous employers authorized to do business in this state, on a sworn affidavit; and obtain a score of 70 percent or better on a written competency examination approved or provided by the division.

(2) A person holding a limited technician license may only perform work at a historic resort hotel: *Provided,* That for purposes of this section, "historic resort hotel" has the same meaning ascribed to it in §29-25-2 of this code.

(f) *Elevator apprentice.* —

(1) An elevator apprentice who is enrolled in an apprenticeship program approved by the commissioner, and who is in good standing in the program, may work under the supervision of a licensed elevator mechanic, as follows:

(A) An apprentice who has not successfully completed the equivalent of at least one year of the program may work only under the direct supervision of a licensed elevator mechanic who is present on the premises and available to the apprentice at all times.

(B) An apprentice who has successfully completed the equivalent of at least one year of the program may:

(i) Work under the direct supervision of a licensed elevator mechanic as set forth in subdivision (1) of this subsection; and

(ii) Perform the tasks set forth in this paragraph, only if delegated by and performed under the general supervision of a licensed elevator mechanic, who must, at a minimum, meet the

apprentice on the job at the beginning of each day to delegate the specific tasks, and who remains responsible for the delegated tasks:

(I) Oiling, cleaning, greasing and painting;

(II) Replacing of combplate teeth;

(III) Relamping and fixture maintenance;

(IV) Inspection, cleaning and lubricating of hoistway doors, car tops, bottoms and pits; and

(V) Observing operation of equipment.

§21-3C-10b. Issuance and renewal of licenses.

(a) Upon approval of a properly completed application for licensure, the commissioner may issue a person a license under the provisions of this article.

(b) The licenses issued under the provisions of this article shall be renewed biennially upon application for renewal on a form prescribed by the commissioner and payment of a fee established by legislative rule.

(c) Upon a proper application for renewal, the commissioner shall renew a license, even if the license holder is unemployed or not working in the industry at the time of renewal: *Provided*, That before the license holder may engage or offer to engage in the business of erecting, constructing, installing, altering, servicing, repairing, or maintaining an elevator or related conveyance covered by this article, the license holder shall be a contractor, or be employed by a contractor licensed pursuant to the provisions of §30-42-1 *et seq.*, of this code.

§21-3C-11. Disposition of fees; legislative rules.

(a) The division shall propose rules for legislative approval in accordance with §29A-3-1 *et seq.* of this code, for the implementation and enforcement of the provisions of this article, which shall provide:

(1) Standards, qualifications, and procedures for submitting applications, taking examinations and issuing and renewing licenses, certificates of competency and certificates of operation of the three licensure classifications set forth in §21-3C-10a of this code;

(2) For the renewal of a license, even if the licensee is unemployed or not working in the industry: *Provided*, That to engage or offer to engage in the business of erecting, constructing, installing, altering, servicing, repairing, or maintaining an elevator or related conveyance covered by this article, the licensee shall be a contractor, or be employed by a contractor licensed pursuant to §30-42-1 *et seq.*, of this code;

(3) Qualifications and supervision requirements for elevator apprentices;

(4) Provisions for the granting of licenses without examination, to applicants who present satisfactory evidence of having the expertise required to perform work as defined in this article and who apply for licensure on or before July 1, 2010: *Provided*, That if a license issued under the authority of this subsection subsequently lapses, the applicant may, at the discretion of the commissioner, be subject to all licensure requirements, including the examination;

(5) Provisions for the granting of emergency licenses in the event of an emergency due to disaster, act of God, or work stoppage when the number of persons in the state holding licenses issued pursuant to this article is insufficient to cope with the emergency;

(6) Provisions for the granting of temporary licenses in the event that there are no elevator mechanics available to engage in the work of an elevator mechanic as defined by this article;

(7) Continuing education requirements;

(8) Procedures for investigating complaints and revoking or suspending licenses, certificates of competency and certificates of operation, including appeal procedures;

(9) Fees for testing, issuance and renewal of licenses, certificates of competency and certificates of operation, and other costs necessary to administer the provisions of this article;

(10) Enforcement procedures; and

(11) Any other rules necessary to effectuate the purposes of this article.

(b) The rules proposed for promulgation pursuant to subsection (a) of this section shall establish the amount of any fee authorized pursuant to the provisions of this article: *Provided,* That in no event may the fees established for the issuance of certificates of operation exceed $90.

(c) All fees paid pursuant to this article shall be paid to the Commissioner of Labor and deposited in an appropriated special revenue account hereby created in the State Treasury known as the Elevator Safety Fund and expended for the implementation and enforcement of this article. Through June 30, 2019, amounts collected which are found from time to time to exceed funds needed for the purposes set forth in this article may be utilized by the commissioner as needed to meet the division's funding obligations: *Provided,* That beginning July 1, 2019, amounts collected may not be utilized by the commissioner as needed to meet the division's funding obligations.

(d) The division may enter into agreements with counties and municipalities whereby such counties and municipalities be permitted to retain the inspection fees collected to support the enforcement activities at the local level.

(e) The commissioner or his or her authorized representatives may consult with engineering authorities and organizations concerned with standard safety codes, rules and regulations governing the operation, maintenance, servicing, construction, alteration, installation and the qualifications which are adequate, reasonable and necessary for the elevator mechanic and inspector.

ARTICLE 9. MANUFACTURED HOUSING CONSTRUCTION AND SAFETY STANDARDS.

§21-9-2. Definitions.

(a) "Board" means the West Virginia Manufactured Housing Construction and Safety Board created in this article.

(b) "Commissioner" means the Commissioner of the West Virginia State Division of Labor.

(c) "Contractor" means any person who performs operations in this state at the occupancy site which render a manufactured home fit for habitation. The operations include, without limitation, installation or construction of the foundation, positioning, blocking, leveling, supporting, tying down, connecting utility systems, making minor adjustments or assembling multiple or expandable units. The operations also include transporting the unit to the occupancy site by other than a motor carrier regulated by the West Virginia Public Service Commission.

Contractor does not include:

(1) A person who personally does work on a manufactured home which the person owns or leases; or

(2) A person who is licensed under §30-42-1 *et seq.*, of this code and is performing work on a manufactured home pursuant to a contract with a person licensed under §21-9-9 of this code.

(d) "Dealer" means any person engaged in this state in the sale, leasing, or distributing of new or used manufactured homes, primarily to persons who in good faith purchase or lease a manufactured home for purposes other than resale.

(e) "Defect" includes any defect in the performance, construction, components, or material of a manufactured home that renders the home or any part of the home not fit for the ordinary use for which it was intended.

(f) "Distributor" means any person engaged in this state in the sale and distribution of manufactured homes for resale.

(g) "Federal standards" means the National Manufactured Housing Construction and Safety Standards Act of 1974, and federal manufactured home construction and safety standards and regulations promulgated by the Secretary of HUD to implement that act.

(h) "HUD" means the United States Department of Housing and Urban Development.

(i) "Manufacturer" means any person engaged in manufacturing or assembling manufactured homes, including any person engaged in importing manufactured homes for resale.

(j) "Manufactured home" means a structure, transportable in one or more sections, which in the traveling mode is eight body feet or more in width or 40 or more feet in length or, when erected on site, is 320 or more square feet, and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities, and includes the plumbing, heating, air-conditioning, and electrical systems contained therein; except that such term shall include any structure which meets all the requirements of this definition except the size requirements and with respect to which the manufacturer voluntarily files a certificate which complies with the applicable federal standards. Calculations used to determine the number of square feet in a structure will be based on the structure's exterior dimensions measured at the largest horizontal projections when erected on site.

(k) "Purchaser" means the first person purchasing a manufactured home in good faith for purposes other than resale.

§21-9-9. License required; fees; form of license; display of license; denial, suspension, or revocation.

(a) No manufacturer, dealer, distributor, or contractor shall engage in business in this state without first having applied for and received a license pursuant to this section. The license shall

authorize the holder to engage in the business permitted by the license. All license applications shall be accompanied by the required fee and surety bond or other form of assurance or fee assessed in satisfaction of assurance as required by rule or regulation promulgated by the board.

(b) All licenses shall be granted or refused within 30 days after proper and complete application. All licenses shall expire on June 30 of each year, unless sooner revoked or suspended. Applications shall be deemed valid for a period of 30 days.

(c) The annual license fees shall be in the amounts prescribed by rules promulgated by the board but in no event less than the following amounts:

(1) For manufacturers, $300;

(2) For dealers, $100;

(3) For distributors, $100; and

(4) For contractors, $50: *Provided*, That if a contractor has met the licensing requirements of this article and the West Virginia Contractor Licensing Act in §30-42-1 *et seq.*, of this code, has paid the annual license fee under §30-42-8 of this code and has furnished bond or other assurance or fee under §21-9-10 of this code, he or she shall not be required to pay the annual license fee set forth in this section.

(d) The board shall prescribe the form of license and each license shall have affixed thereon the seal of the State Division of Labor.

(e) Each licensee shall conspicuously display the license in its established place of business.

(f) Pursuant to such rules and regulations as may be promulgated by the board, the board may deny the issuance of a license or revoke or suspend any license.

(g) All fees paid pursuant to this article shall be paid to the Commissioner of Labor and deposited in an appropriated special revenue account in the State Treasury to be known as the State Manufactured Housing Administration Fund. Expenditures from the fund shall be for the administration and enforcement of this article. Through June 30, 2019, amounts collected which are found to exceed funds needed for the purposes set forth in this article may be utilized by the commissioner as needed to meet the division's funding obligations: *Provided,* That beginning July 1, 2019, amounts collected may not be utilized by the commissioner as needed to meet the division's funding obligations.

ARTICLE 11. WEST VIRGINIA CONTRACTOR LICENSING ACT.

§21-11-1. Short title.

[Repealed.]

§21-11-2. Policy declared.

[Repealed.]

§21-11-3. Definitions.

[Repealed.]

§21-11-4. West Virginia contractor licensing board created; members; appointment; terms; vacancies; qualifications; quorum.

[Repealed.]

§21-11-5. Administrative duties of the board; regulations.

[Repealed.]

§21-11-6. Necessity for license; exemptions.

[Repealed.]

§21-11-7. Application for and issuance of license.

[Repealed.]

§21-11-8. Licenses; expiration date; fees; renewal.

[Repealed.]

§21-11-9. Unlawful use, assignment, transfer of license; revocation.

[Repealed.]

§21-11-10. Prerequisites to obtaining building permit; mandatory written contracts.

[Repealed.]

§21-11-10a. Informational list for basic universal design features; penalties.

[Repealed.]

§21-11-11. Notice included with invitations to bid and specifications.

[Repealed.]

§21-11-12. License renewal, lapse and reinstatement.

[Repealed.]

§21-11-13. Violation of article; injunction; criminal penalties.

[Repealed.]

§21-11-14. Disciplinary powers of the board.

[Repealed.]

§21-11-15. Administrative duties of division.

[Repealed.]

§21-11-16. Rules.

[Repealed.]

§21-11-17. Recordkeeping; fees.

[Repealed.]

§21-11-18. Reciprocity.

[Repealed.]

§21-11-20. Board authorized to provide training.

[Repealed.]

ARTICLE 11A. NOTICE AND OPPORTUNITY TO CURE CONSTRUCTION DEFECTS.

§21-11A-2. Applicability of article.

This article does not apply to an action:

(1) Against a contractor for which a claimant, as a consumer, is entitled to a specific remedy pursuant to chapter 46A of this code;

(2) Against a contractor who is not licensed under the provisions of §30-42-1 *et seq.*, of this code;

(3) Demanding damages of $5,000 or less;

(4) Alleging a construction defect that poses an imminent threat of injury to person or property;

(5) Alleging a construction defect that causes property not to be habitable;

(6) Against a contractor who failed to provide the notice required by §21-11A-5 or §21-11A-6 of this code;

(7) Against a contractor if the parties to the contract agreed to submit claims to mediation, arbitration, or another type of alternative dispute resolution; or

(8) Alleging claims for personal injury or death.

§21-11A-4. Applicability of definitions; definitions.

For the purposes of this article, the words or terms defined in this article, and any variation of those words or terms required by the context, have the meanings ascribed to them in this article. These definitions are applicable unless a different meaning clearly appears from the context.

(1) "Action" means any civil action, or any alternative dispute resolution proceeding other than the negotiation required under this article, for damages, asserting a claim for injury or loss to real or personal property caused by an alleged defect arising out of or related to residential improvements.

(2) "Claim" means a demand for damages by a claimant based upon an alleged construction defect in residential improvements.

(3) "Claimant" means a homeowner, including a subsequent purchaser, who asserts a claim against a contractor concerning an alleged construction defect in residential improvements.

(4) "Construction defect" means a deficiency in, or a deficiency arising out of, the design, specifications, planning, supervision or construction of residential improvements that results from any of the following:

(A) Defective material, products, or components used in the construction of residential improvements;

(B) Violation of the applicable codes in effect at the time of construction of residential improvements;

(C) Failure in the design of residential improvements to meet the applicable professional standards of care;

(D) Failure to complete residential improvements in accordance with accepted trade standards for good and workmanlike construction: *Provided,* That compliance with the applicable codes in effect at the time of construction is *prima facie* evidence of construction in accordance with accepted trade

standards for good and workmanlike construction, with respect to all matters specified in those codes; or

(E) Failure to properly oversee, supervise, and inspect services or goods provided by the contractor's subcontractor, officer, employee, agent, or other person furnishing goods or services.

(5) "Contract" means a written contract between a contractor and a claimant by the terms of which the contractor agrees to provide goods or services, by sale or lease, to or for a claimant.

(6) "Contractor" means a contractor, licensed under the provisions of §30-42-1 *et seq.*, of this code, who has entered into a contract directly with a claimant. The term does not include the contractor's subcontractor, officer, employee, agent or other person furnishing goods or services to a claimant.

(7) "Day" means a calendar day. If an act is required to occur on a day falling on a Saturday, Sunday or holiday, the first working day which is not one of these days should be counted as the required day for purposes of this article.

(8) "Goods" means supplies, materials, or equipment.

(9) "Parties" means: (A) The claimant; and (B) any contractor, subcontractor, agent or other person furnishing goods or services and upon whom a claim of an alleged construction defect has been served under this article.

(10) "Residential improvements" means: (A) The construction of a residential dwelling or appurtenant facility or utility; (B) an addition to, or alteration, modification, or rehabilitation of an existing dwelling or appurtenant facility or utility; or (C) repairs made to an existing dwelling or appurtenant facility or utility; In addition to actual construction or renovation, residential improvements actually added to residential real property include the design, specifications, surveying, planning, goods, services and the supervision of a contractor's subcontractor, officer, employee, agent, or other person furnishing goods or services to a claimant.

(11) "Services" means the furnishing of skilled or unskilled labor or consulting or professional work, or a combination thereof.

(12) "Subcontractor" means a contractor who performs work on behalf of another contractor on residential improvements.

(13) "Supplier" means a person who provides goods for residential improvements.

ARTICLE 16. REGULATION OF HEATING, VENTILATING AND COOLING WORK.

§21-16-4. Scope of practice.

(a) An HVAC technician in training is authorized to assist in providing heating, ventilating, and cooling work only under the direction and control of a HVAC technician.

(b) An HVAC technician is authorized to provide heating, ventilating, and cooling work without supervision.

(c) Persons licensed under this article are subject to the applicable provisions of the Contractor Licensing Act in §30-42-1 *et seq.*, of this code in the performance of work authorized by this article.

CHAPTER 21A. UNEMPLOYMENT COMPENSATION.

ARTICLE 10. GENERAL PROVISIONS.

§21A-10-11. Reporting requirements and required information; use of information; libel and slander actions prohibited.

(a) Each employer, including labor organizations as defined in subsection (i) of this section, shall, quarterly, submit certified reports on or before the last day of the month next following the calendar quarter, on forms to be prescribed by the commissioner. The reports shall contain:

(1) The employer's assigned unemployment compensation registration number, the employer's name and the address at which the employer's payroll records are maintained;

(2) Each employee's Social Security account number, name, and the gross wages paid to each employee, which shall include the first $12,000 of remuneration and all amounts in excess of that amount, notwithstanding §21-1A-28(b)(1) of this code;

(3) The total gross wages paid within the quarter for employment, which includes money wages and the cash value of other remuneration, and shall include the first $12,000 of remuneration paid to each employee and all amounts in excess of that amount, notwithstanding §21-1A-28(b)(1) of this code; and

(4) Other information that is reasonably connected with the administration of this chapter.

(b) Information obtained may not be published or be open to public inspection to reveal the identity of the employing unit or the individual.

(c) Notwithstanding the provisions of subsection (b) of this section, the commissioner may provide information obtained to the following governmental entities for purposes consistent with state and federal laws:

(1) The United States Department of Agriculture;

(2) The state agency responsible for enforcement of the Medicaid program under Title XIX of the Social Security Act;

(3) The United States Department of Health and Human Services or any state or federal program operating and approved under Title I, Title II, Title X, Title XIV or Title XVI of the Social Security Act;

(4) Those agencies of state government responsible for economic and community development; early childhood, primary, secondary, postsecondary, and vocational education; the West Virginia P-20 longitudinal data system established pursuant to

§18B-1D-10 of this code; and vocational rehabilitation, employment and training, including, but not limited to, the administration of the Perkins Act and the Workforce Innovation and Opportunity Act;

(5) The Tax Division, but only for the purposes of collection and enforcement;

(6) The Division of Labor for purposes of enforcing the wage bond pursuant to the provisions of §21-5-14 of this code;

(7) The contractors licensing board for the purpose of enforcing the contractors licensing provisions pursuant to §30-42-1 *et seq.,* of this code;

(8) Any agency of this or any other state, or any federal agency, charged with the administration of an unemployment compensation law or the maintenance of a system of public employment offices;

(9) Any claimant for benefits or any other interested party to the extent necessary for the proper presentation or defense of a claim; and

(10) The Insurance Commissioner for purposes of its Workers Compensation regulatory duties.

(d) The agencies or organizations which receive information under subsection (c) of this section shall agree that the information shall remain confidential as not to reveal the identity of the employing unit or the individual consistent with the provisions of this chapter.

(e) The commissioner may, before furnishing any information permitted under this section, require that those who request the information shall reimburse WorkForce West Virginia for any cost associated for furnishing the information.

(f) The commissioner may refuse to provide any information requested under this section if the agency or organization making

the request does not certify that it will comply with the state and federal law protecting the confidentiality of the information.

(g) A person who violates the confidentiality provisions of this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than $20 nor more than $200 or confined in a county or regional jail not longer than 90 days, or both.

(h) An action for slander or libel, either criminal or civil, may not be predicated upon information furnished by any employer or any employee to the commissioner in connection with the administration of any of the provisions of this chapter.

(i) For purposes of subsection (a) of this section, the term "labor organization" means any organization of any kind, or any agency or employee representation committee or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work. It includes any entity, also known as a hiring hall, which is used by the organization and an employer to carry out requirements described in 29 U. S. C. §158(f)(3) of an agreement between the organization and the employer.

CHAPTER 30. PROFESSIONS AND OCCUPATIONS.

ARTICLE 42. WEST VIRGINIA CONTRACTOR LICENSING ACT.

§30-42-1. Short title.

This article shall be known and may be cited as the "West Virginia Contractor Licensing Act".

§30-42-2. Policy declared.

It is hereby declared to be the policy of the State of West Virginia that all persons desiring to perform contracting work in this state be duly licensed to ensure capable and skilled craftsmanship utilized in construction projects in this state, both public and private; fair bidding practices between competing

contractors through uniform compliance with the laws of this state; and protection of the public from unfair, unsafe, and unscrupulous bidding and construction practices.

§30-42-3. Definitions.

(a) "Basic universal design" means the design of products and environments to be useable by all people, to the greatest extent possible, without the need for adaptation or specialization.

(b) "Board" means the West Virginia Contractor Licensing Board.

(c) "Cease and desist order" means an order issued by the board pursuant to the provisions of this article.

(d) "Contractor" means a person who in any capacity for compensation, other than as an employee of another, undertakes, offers to undertake, purports to have the capacity to undertake, or submits a bid to construct, alter, repair, add to, subtract from, improve, move, wreck, or demolish any building, highway, road, railroad, structure, or excavation associated with a project, development, or improvement, or to do any part thereof, including the erection of scaffolding or other structures or works in connection therewith, where the cost of the undertaking is $5,000 or more for residential work or $25,000 or more for commercial work.

Contractor includes a construction manager who performs management and counseling services for a construction project for a professional fee.

Contractor does not include:

(1) One who merely furnishes materials or supplies without fabricating or consuming them in the construction project;

(2) A person who personally performs construction work on the site of real property which the person owns or leases whether for commercial or residential purposes;

(3) A person who is licensed or registered as a professional and who functions under the control of any other licensing or regulatory board, whose primary business is real estate sales, appraisal, development, management, and maintenance, who acting in his or her respective professional capacity and any employee of the professional, acting in the course of his or her employment, performs any work which may be considered to be performing contracting work;

(4) A pest control operator licensed under the provisions of §19-16A-7 of this code to engage in the application of pesticides for hire, unless the operator also performs structural repairs exceeding $1,000 on property treated for insect pests;

(5) A corporation, partnership, or sole proprietorship whose primary purpose is to prepare construction plans and specifications used by the contractors defined in this subsection and who employs full-time a registered architect licensed to practice in this state or a registered professional engineer licensed to practice in this state. Employees of the corporation, partnership or sole proprietorship shall also be exempt from the requirements of this article; or

(6) A person who performs landscaping or painting services for commercial or residential customers.

(e) "Electrical contractor" means a person who engages in the business of contracting to install, erect, repair, or alter electrical equipment for the generation, transmission, or utilization of electrical energy.

(f) "General building contractor" means a person whose principal business is in connection with any structures built, being built, or to be built for the support, shelter, and enclosure of persons, animals, chattels, or movable property of any kind, requiring in the construction the use of more than two contractor classifications, or a person who supervises the whole, or any part, of the construction.

(g) "General engineering contractor" means a person whose principal business is in connection with public or private works

projects, including, but not limited to, one or more of the following: Irrigation, drainage, and water supply projects; electrical generation projects; swimming pools; flood control; harbors; railroads; highways; tunnels; airports and airways; sewers and sewage disposal systems; bridges; inland waterways; pipelines for transmission of petroleum and other liquid or gaseous substances; refineries; chemical plants and other industrial plants requiring a specialized engineering knowledge and skill; piers and foundations; and structures or work incidental thereto.

(h) "Heating, ventilating and cooling contractor" means a person who engages in the business of contracting to install, erect, repair, service, or alter heating, ventilating and air conditioning equipment or systems to heat, cool, or ventilate residential and commercial structures.

(i) "License" means a license to engage in business in this state as a contractor in one of the classifications set out in this article.

(j) "Multifamily contractor" means a person who is engaged in construction, repair, or improvement of a multifamily residential structure.

(k) "Person" includes an individual, firm, sole proprietorship, partnership, corporation, association, or other entity engaged in the undertaking of construction projects or any combination thereof.

(l) "Piping contractor" means a person whose principal business is the installation of process, power plant, air, oil, gasoline, chemical, or other kinds of piping; and boilers and pressure vessels using joining methods of thread, weld, solvent weld, or mechanical methods.

(m) "Plumbing contractor" means a person whose principal business is the installation, maintenance, extension, and alteration of piping, plumbing fixtures, plumbing appliances and plumbing appurtenances, venting systems and public or private water supply systems within or adjacent to any building or structure; included in this definition is installation of gas piping, chilled water piping in connection with refrigeration processes and comfort cooling, hot

water piping in connection with building heating and piping for stand pipes.

(n) "Residential contractor" means a person whose principal business is in connection with construction, repair, or improvement of real property used as, or intended to be used for, residential occupancy.

(o) "Specialty contractor" means a person who engages in specialty contracting services which do not substantially fall within the scope of any contractor classification as set out herein.

(p) "Residential occupancy" means occupancy of a structure for residential purposes for periods greater than 30 consecutive calendar days.

(q) "Residential structure" means a building or structure used or intended to be used for residential occupancy, together with related facilities appurtenant to the premises as an adjunct of residential occupancy, which contains not more than three distinct floors which are above grade in any structural unit regardless of whether the building or structure is designed and constructed for one or more living units. Dormitories, hotels, motels, or other transient lodging units are not residential structures.

(r) "Subcontractor" means a person who performs a portion of a project undertaken by a principal or general contractor or another subcontractor.

§30-42-4. West Virginia contractor licensing board created; members; appointment; terms; vacancies; qualifications; quorum.

(a) The West Virginia Contractor Licensing Board is continued. The board shall consist of 10 members appointed by the Governor by and with the advice and consent of the Senate for terms of four years. The members shall serve until their successors are appointed and have qualified. Eight of the appointed members shall be owners of businesses engaged in the various contracting industries, with at least one member appointed from each of the

following contractor classes: One electrical contractor; one general building contractor; one general engineering contractor; one heating, ventilating and cooling contractor; one multifamily contractor; one piping contractor; one plumbing contractor; and one residential contractor, as defined in §30-42-3 of this code. Two of the appointed members shall be building code officials who are not members of any contracting industry. At least three members of the board shall reside, at the time of their appointment, in each congressional district as existing on January 1, 2018. The Secretary of the Department of Tax and Revenue or his or her designee, and the Commissioner of WorkForce West Virginia or his or her designee shall be ex-officio nonvoting members of the board.

(b) Terms of the members first appointed shall be two members for one year, two members for two years, three members for three years, and three members for four years, as designated by the Governor at the time of appointment. Thereafter, terms shall be for four years. A member who has served all or part of two consecutive terms shall not be subject to reappointment unless four years have elapsed since the member last served. Vacancies shall be filled by appointment by the Governor for the unexpired term of any member whose office is vacant and shall be made within 60 days of the occurrence of the vacancy. A vacancy on the board shall not impair the right of the remaining members to exercise all the powers of the board.

(c) The board shall elect a chair from one of the voting members of the board. The board shall meet at least once annually and at such other times as called by the chair or a majority of the board. Board members shall receive compensation not to exceed the amount paid to members of the Legislature for the interim duties as recommended by the Citizens Legislative Compensation Commission and authorized by law for each day or portion of a day spent attending meetings of the board and shall be reimbursed for all reasonable and necessary expenses incurred incident to his or her duties as a member of the board. A majority of the members appointed shall constitute a quorum of the board.

§30-42-5. Administrative duties and powers of the board; rules.

(a) The board shall propose rules for legislative approval in accordance with §29A-3-1 *et seq.*, of this code relating to the following:

(1) The minimum qualifications for applicants for examination and license in each of the following specified classes of contractor:

(A) Electrical contractor;

(B) General building contractor;

(C) General engineering contractor;

(D) Heating, ventilating, and cooling contractor;

(E) Multifamily contractor;

(F) Piping contractor;

(G) Plumbing contractor;

(H) Residential contractor; or

(l) Specialty contractor;

(2) The content of examinations for applicants in each class;

(3) Procedures for application, examination, and license renewal, and the manner in which the examination will be conducted;

(4) The continued competency of licensees for purposes of renewal and reinstatement of licenses; and

(5) Procedures for disciplinary action before the board.

(b) The board shall:

(1) Hold at least one examination in each calendar quarter for each specific classification of contractor, designate the time and place of the examinations, and notify applicants thereof;

(2) Investigate alleged violations of this article and legislative rules, orders, and final decisions of the board;

(3) Notify the board members of meeting dates and agenda items at least five days prior to the meetings; and

(4) Take minutes and records of all meetings and proceedings.

(c) The board has all the powers and duties set forth in this article, including:

(1) Maintaining an office and hire, discharge, establish the job requirements and fix the compensation of employees, and contract persons necessary to enforce the provisions of this article;

(2) To sue and be sued in its official name as an agency of this state; and

(3) Conferring with the Attorney General or assistants of the Attorney General in connection with legal matters and questions.

(d) The board shall perform the following administrative duties:

(1) Collect and record all fees;

(2) Maintain records and files;

(3) Issue and receive application forms;

(4) Notify applicants of the results of the board examination;

(5) Arrange space for holding examinations and other proceedings;

(6) Issue licenses and temporary licenses as authorized by this article;

(7) Issue duplicate licenses upon submission of a written request by the licensee attesting to loss of or the failure to receive the original and payment by the licensee of a fee established by regulation adopted by the division;

(8) Notify licensees of renewal dates at least 30 days before the expiration date of their license;

(9) Answer routine inquiries;

(10) Maintain files relating to individual licensees;

(11) Arrange for printing and advertising;

(12) Purchase supplies;

(13) Employ additional help when needed;

(14) Contract with the Division of Labor for, and the Division of Labor shall provide, inspection, enforcement, and investigative services for 24 months after the effective date of this article. After 24 months, the board shall be responsible for providing inspection, enforcement, and investigative services; and

(15) Issue cease and desist orders to persons engaging in contracting within the state without a valid license.

(e) Following successful completion of the examination, and prior to the issuance of the license, the applicant shall certify by affidavit that the applicant:

(1) Is in compliance with the business franchise tax provisions of chapter 11 of this code;

(2) Has registered, and is in compliance, with the workers' compensation fund and the employment security fund, as required by §23-1-1 *et seq.*, and §21A-1-1 *et seq.*, of this code; and

(3) Is in compliance with the applicable wage bond requirements of §21-5-14 of this code: *Provided,* That in the case of an out-of-state contractor not doing business in this state and seeking licensure for bidding purposes only, the applicant may be granted a conditional license for bid purposes only.

§30-42-6. Necessity for license; exemptions.

(a) No person may engage in this state in any activity as a contractor or submit a bid to perform work as a contractor, as

defined in this article, unless that person holds a license issued under the provisions of this article. No firm, partnership, corporation, association, or other entity may engage in contracting in this state unless an officer thereof holds a license issued pursuant to this article.

(b) Any person to whom a license has been issued under this article shall keep the license or a copy thereof posted in a conspicuous position at every construction site where work is being done by the contractor. The contractor's license number shall be included in all contracting advertisements and all fully executed and binding contracts. Any person violating the provisions of this subsection is subject, after hearing, to a warning, a reprimand, or a fine of not more than $200.

(c) Except as otherwise provided in this code, the following are exempt from licensure:

(1) Work done exclusively by employees of the United States Government, the State of West Virginia, a county, municipality or municipal corporation, and any governmental subdivision or agency thereof;

(2) The sale or installation of a finished product, material or article, or merchandise which is not actually fabricated into and does not become a permanent fixed part of the structure;

(3) Work performed personally by an owner or lessee of real property on property the primary use of which is for agricultural or farming enterprise;

(4) A material supplier who renders advice concerning use of products sold and who does not provide construction or installation services;

(5) Work performed by a public utility company regulated by the West Virginia Public Service Commission and its employees;

(6) Repair work contracted by the owner of the equipment on an emergency basis in order to maintain or restore the operation of the equipment;

(7) Work performed by an employer's regular employees, for which the employees are paid regular wages and not a contract price, on property owned or leased by the employer which is not intended for speculative sale or lease;

(8) Work personally performed on a structure by the owner or occupant thereof; and

(9) Work performed when the specifications for the work have been developed or approved by engineering personnel employed by the owner of a facility by registered professional engineers licensed pursuant to the laws of this state when the work to be performed because of its specialized nature or process cannot be reasonably or timely contracted for within the general area of the facility.

§30-42-7. Application for and issuance of license.

(a) A person desiring to be licensed as a contractor under this article shall submit to the board a written application requesting licensure, providing the applicant's social security number and such other information as the board may require on forms supplied by the board. The applicant shall pay a license fee not to exceed $150: *Provided,* That electrical contractors already licensed under §29-3B-4 of this code shall pay no more than $20.

(b) No license may be issued without examination pursuant to this subsection: *Provided,* That any person issued a contractor's license by the board pursuant to this subsection may apply to the board for transfer of the license to a new business entity in which the license holder is the principal owner, partner, or corporate officer: *Provided, however,* That a license holder may hold a license on behalf of only one business entity during a given time period. The board may transfer the license issued pursuant to this subsection to the new business entity without requiring examination of the license holder.

§30-42-8. Licenses; expiration date; fees; renewal.

(a) A license issued under the provisions of this article expires one year from the date on which it is issued. The board shall establish application and annual license fees not to exceed $150.

(b) The board may propose rules for legislative approval in accordance with §29A-3-1 *et seq.,* of this code to establish license and renewal fees.

§30-42-9. Unlawful use, assignment, transfer of license; revocation.

No license may be used for any purpose by any person other than the person to whom the license is issued. No license may be assigned, transferred, or otherwise disposed of so as to permit the unauthorized use thereof. No license issued pursuant to the provisions of §30-42-7(b) of this code may be assigned, transferred, or otherwise disposed of except as provided in said subsection. Any person who violates this section is subject to the penalties imposed in §30-42-14 of this code.

§30-42-10. Prerequisites to obtaining building permit; mandatory written contracts.

(a) Any person making application to the building inspector or other authority of any incorporated municipality or other political subdivision in this state charged with the duty of issuing building or other permits for the construction of any building, highway, sewer, or structure, or for any removal of materials or earth, grading or improvement shall, before issuance of the permit, either furnish satisfactory proof to the inspector or authority that the person is duly licensed under the provisions of this article to carry out or superintend the construction, or file a written affidavit that the person is not subject to licensure as a contractor or subcontractor as defined in this article. The inspector or authority may not issue a building permit to any person who does not possess a valid contractor's license when required by this article.

(b) No person licensed under the provisions of this article may perform contracting work of an aggregate value of $10,000 or more, including materials and labor, without a written contract, setting forth a description and cost of the work to be performed, signed by the licensee and the person for whom the work is to be performed.

(c) The board shall file a procedural rule setting forth a standard contract form which meets the minimum requirements of this subsection for use by licensees. The board shall post the contract form on its website and shall assist licensees in the correct completion of the form. The board shall mail a written notice of the requirements imposed by the rule to each licensed contractor at the address provided to the board by the contractor on his or her last application for licensure or renewal.

§30-42-11. Informational list for basic universal design features.

(a) Ninety days after the Contractor Licensing Board certifies and makes available to the general public the standard form informational list of basic universal design features pursuant to this section, a licensed contractor of any proposed residential housing in the state shall provide to the buyer an informational list of basic universal design features that would make the home entrance, interior routes of travel, the kitchen, and the bathroom or bathrooms universally accessible. Basic universal design features are to include, but not be limited to, the following:

(1) At least one nonstep entrance into the dwelling;

(2) All doors on the entry-level floor, including bathrooms, have a minimum of 36 inches;

(3) At least one accessible bathroom on the entry-level floor with ample maneuvering space;

(4) Kitchen, general living space, and one room capable of conversion into a bedroom, all with ample maneuvering space, on the entry-level floor; and

(5) Any other external or internal feature requested at a reasonable time by the buyer and agreed to by the seller.

(b) If a buyer is interested in a specific informational feature on the list established by subsection (a) of this section, the seller or builder upon request of the buyer shall indicate whether the feature

is standard, limited, optional, or not available and, if available, shall further indicate the cost of such a feature to the buyer.

(c) The standard form informational list of basic universal design features shall be certified and made available for reproduction by the board, in accordance with the provisions of subsection (a) of this section, based on mutual recommendation of the board, the American Institute of Architects-West Virginia, the Home Builders Association of West Virginia, and the West Virginia Center for Excellence in Disabilities.

§30-42-12. Notice included with invitations to bid and specifications.

Any architect or engineer preparing any plan and specification for contracting work to be performed in this state shall include in the plan, specification, and invitation to bid a reference to this article informing any prospective bidder that the person's contractor's license number must be included on any bid submission. A subcontractor shall furnish that person's contractor's license number to the contractor prior to the award of the contract.

§30-42-13. License renewal, lapse, and reinstatement.

(a) A license which is not renewed on or before the renewal date shall lapse. The board may establish by rule on a delayed renewal fee to be paid for issuance of any license which has lapsed: *Provided,* That no license which has lapsed for a period of 90 days or more may be renewed: *Provided, however,* That if a licensee is in a dispute with a state agency, and it is determined that the licensee is not at fault, the board shall renew the license.

(b) If continuing education or other requirements are made a condition of license reinstatement after lapse, suspension, or revocation, these requirements must be satisfied before the license is reissued.

§30-42-14. Violation of article; injunction; criminal penalties.

(a)(1) Upon a determination that a person is engaged in contracting business in the state without a valid license, the board

shall issue a cease and desist order requiring the person to immediately cease all operations in the state. The order shall be withdrawn upon issuance of a license to that person.

(2) After affording an opportunity for a hearing, the board may impose a penalty of not less than $200 nor more than $1,000 upon any person engaging in contracting business in the state without a valid license. The board may accept payment of the penalty in lieu of a hearing.

(3) Within 30 days after receipt of the final order issued pursuant to this section, any party adversely affected by the order may appeal the order to the circuit court of Kanawha County, West Virginia, or to the circuit court of the county in which the petitioner resides or does business.

(b) Any person continuing to engage in contracting business in the state without a valid license after service of a cease and desist order is guilty of a misdemeanor and, upon conviction, is subject to the following penalties:

(1) For a first offense, a fine of not less than $200 nor more than $1,000;

(2) For a second offense, a fine of not less than $500 nor more than $5,000, or confinement in jail for not more than six months, or both fined and confined;

(3) For a third or subsequent offense, a fine of not less than $1,000 nor more than $5,000, and confinement in jail for not less than 30 days nor more than one year.

(c) The board may institute proceedings in the circuit court of the county in which the alleged violations of the provisions of this article occurred or are now occurring to enjoin any violation of any provision of this article.

(d) Any person who undertakes any construction work without a valid license when a license is required by this article, when the total cost of the contractor's construction contract on any project upon which the work is undertaken is $25,000 or more, shall, in

addition to any other penalty herein provided, be assessed by the board an administrative penalty not to exceed $200 per day for each day the person is in violation.

§30-42-15. Disciplinary powers of the board.

(a) The board may impose the following disciplinary actions:

(1) Permanently revoke a license;

(2) Suspend a license for a specified period;

(3) Censure or reprimand a licensee;

(4) Impose limitations or conditions on the professional practice of a licensee;

(5) Impose requirements for remedial professional education to correct deficiencies in the education, training, and skill of a licensee;

(6) Impose a probationary period requiring a licensee to report regularly to the board on matters related to the grounds for probation; the board may withdraw probationary status if the deficiencies that require the sanction are remedied;

(7) Order a contractor who has been found, after hearing, to have violated any provision of this article or the rules of the board to provide, as a condition of licensure, assurance of financial responsibility. The form of financial assurance may include, but is not limited to, a surety bond, a cash bond, a certificate of deposit, an irrevocable letter of credit, or performance insurance: *Provided,* That the amount of financial assurance required under this subdivision may not exceed the total of the aggregate amount of the judgments or liens levied against the contractor or the aggregate value of any corrective work ordered by the board or both: *Provided, however,* That the board may remove this requirement for licensees against whom no complaints have been filed for a period of five continuous years; and

(8) A fine not to exceed $1,000.

(b) No license issued under the provisions of this article may be suspended or revoked without a prior hearing before the board: *Provided,* That the board may summarily suspend a licensee pending a hearing or pending an appeal after hearing upon a determination that the licensee poses a clear, significant, and immediate danger to the public health and safety.

(c) The board may reinstate the suspended or revoked license of a person if, upon a hearing, the board finds and determines that the person is able to practice with skill and safety.

(d) The board may accept the voluntary surrender of a license: *Provided,* That the license may not be reissued unless the board determines that the licensee is competent to resume practice and the licensee pays the appropriate renewal fee.

(e) A person or contractor adversely affected by disciplinary action may appeal to the board within 60 days of the date the disciplinary action is taken. The board shall hear the appeal within 30 days from receipt of notice of appeal in accordance with the provisions of chapter 29A of this code. Hearings shall be held in Charleston. The board may retain a hearing examiner to conduct the hearings and present proposed findings of fact and conclusions of law to the board for its action.

(f) Any party adversely affected by any action of the board may appeal that action in either the circuit court of Kanawha County, West Virginia, or in the circuit court of the county in which the petitioner resides or does business, within 30 days after the date upon which the petitioner received notice of the final order or decision of the board.

(g) The following are causes for disciplinary action:

(1) Abandonment, without legal excuse, of any construction project or operation engaged in or undertaken by the licensee;

(2) Willful failure or refusal to complete a construction project or operation with reasonable diligence, thereby causing material injury to another;

(3) Willful departure from or disregard of plans or specifications in any material respect without the consent of the parties to the contract;

(4) Willful or deliberate violation of the building laws or regulations of the state or of any political subdivision thereof;

(5) Willful or deliberate failure to pay any moneys when due for any materials free from defect, or services rendered in connection with the person's operations as a contractor when the person has the capacity to pay or when the person has received sufficient funds under the contract as payment for the particular construction work for which the services or materials were rendered or purchased, or the fraudulent denial of any amount with intent to injure, delay, or defraud the person to whom the debt is owed;

(6) Willful or deliberate misrepresentation of a material fact by an applicant or licensee in obtaining a license or in connection with official licensing matters;

(7) Willful or deliberate failure to comply in any material respect with the provisions of this article or the rules of the board;

(8) Willfully or deliberately acting in the capacity of a contractor when not licensed or as a contractor by a person other than the person to whom the license is issued except as an employee of the licensee;

(9) Willfully or deliberately acting with the intent to evade the provisions of this article by: (i) Aiding or abetting an unlicensed person to evade the provisions of this article; (ii) combining or conspiring with an unlicensed person to perform an unauthorized act; (iii) allowing a license to be used by an unlicensed person; or (iv) attempting to assign, transfer, or otherwise dispose of a license or permitting the unauthorized use thereof;

(10) Engaging in any willful, fraudulent, or deceitful act in the capacity as a contractor whereby substantial injury is sustained by another;

(11) Performing work which is not commensurate with a general standard of the specific classification of contractor or which is below a building or construction code adopted by the municipality or county in which the work is performed;

(12) Knowingly employing a person or persons who do not have the legal right to be employed in the United States;

(13) Failing to execute written contracts prior to performing contracting work in accordance with §30-42-10 of this code;

(14) Failing to abide by an order of the board; or

(15) Failing to satisfy a judgment or execution ordered by a magistrate court, circuit court, or arbitration board.

(h) In all disciplinary hearings the board has the burden of proof as to all matters in contention. No disciplinary action may be taken by the board except on the affirmative vote of at least six members thereof. Other than as specifically set out herein, the board has no power or authority to impose or assess damages.

§30-42-16. Rules.

The board may propose rules for legislative approval in accordance with §29A-3-1 *et seq.* of this code that are necessary to carry out the provisions of this article. The board may disseminate educational or any other material designed to improve performance standards of any contractor group to contractors within the state. The board may adopt, and use, a seal with the words "State Contractor Licensing Board of West Virginia". Any rule previously authorized under the provisions of §21-11-1 *et seq.* of this code shall remain in effect until amended, replaced, or repealed by the Legislature.

§30-42-17. Record keeping.

(a) The board shall keep a record of all actions taken and account for moneys received. All moneys shall be deposited in a special account in the State Treasury to be known as the "West Virginia Contractor Licensing Board Fund". Expenditures from

this 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 the fulfillment of the provisions set forth in §5A-2-1 *et seq.* of this code. Amounts collected which are found from time to time to exceed the funds needed for purposes set forth in this article may be transferred to other accounts or funds and redesignated for other purposes by appropriation of the Legislature.

(b) The board shall maintain at the principal office, open for public inspection during office hours, a complete indexed record of all applications, licenses issued, licenses renewed, and all revocations, cancellations, and suspensions of licenses. Applications shall show the date of application, name, qualifications, place of business, and place of residence of each applicant; and whether the application was approved or refused.

(c)(1) All investigations, complaints, reports, records, proceedings, and other information received by the board and related to complaints made to the board or investigations conducted by the board pursuant to this article, including the identity of the complainant or respondent, are confidential and may not be knowingly and improperly disclosed by any member or former member of the board or staff, except as follows:

(A) Upon a finding that probable cause exists to believe that a respondent has violated the provisions of this article, the complaint and all reports, records, nonprivileged, and nondeliberative materials introduced at any probable cause hearing held pursuant to the complaint are thereafter not confidential: *Provided,* That confidentiality of the information shall remain in full force and effect until the respondent has been served with a copy of the statement of charges.

(B) Any subsequent hearing held in the matter for the purpose of receiving evidence or the arguments of the parties or their representatives shall be open to the public and all reports, records, and nondeliberative materials introduced into evidence at the

subsequent hearing, as well as the board's orders, are not confidential.

(C) The board may release any information relating to an investigation at any time if the release has been agreed to in writing by the respondent.

(D) The complaint, as well as the identity of the complainant, shall be disclosed to a person named as respondent in any complaint filed immediately upon the respondent's request.

(E) Where the board is otherwise required by the provisions of this article to disclose the information or to proceed in such a manner that disclosure is necessary and required to fulfill these requirements.

(2) If, in a specific case, the board finds that there is a reasonable likelihood that the dissemination of information or opinion in connection with a pending or imminent proceeding will interfere with a fair hearing or otherwise prejudice the due administration of justice, the board shall order that all or a portion of the information communicated to the board to cause an investigation and all allegations of violations or misconduct contained in a complaint are confidential, and the person providing this information or filing a complaint shall be bound to confidentiality until further order of the board.

(d) If any person violates the provisions of subsection (c) of this section by knowingly and willfully disclosing any information made confidential by this section or by the board, that person is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than $500 nor more than $5,000, or confined in jail not more than one month, or both fined and confined.

§30-42-18. Reciprocity.

To the extent that other states which provide for the licensing of contractors provide for similar action, the board may grant licenses of the same or equivalent classification to contractors licensed by other states, without written examination upon satisfactory proof furnished to the board that the qualifications of

the applicants are equal to the qualifications of holders of similar licenses in this state, and upon certification to the board as required by §30-42-15(c) of this code, and upon payment of the required fee.

§30-42-19. Board authorized to provide training.

(a) The board may enter into work-sharing agreements with state vocational and technical training schools to provide classroom training to students who desire to obtain a West Virginia contractor license. The purpose of the training is limited to instruction applicable to the contractor license examinations required by the board. The terms of the work-sharing agreements shall be determined by the West Virginia Contractor Licensing Board and county boards of education.

(b) For the purposes of this section, the board may expend funds from its special revenue account, known as the West Virginia Contractor Licensing Board Fund, to support this activity.

§30-42-20. Nonapplicability of local ordinances; exclusive license.

After the effective date of this article no municipality, local government, or county may require any additional occupational license or other evidence of competence as a contractor from any person, firm, or corporation who or which holds a valid and current license issued pursuant to this article, as a condition precedent to permission for the performance of contractor work in such municipality, local government jurisdiction, or county.

CHAPTER 203

(Com. Sub. for H. B. 2758 - By Delegates Barrett, Hott, Westfall, Bates, Reed, Rowe, L. Pack and Fast)

[Passed April 7, 2021; in effect ninety days from passage.]
[Approved by the Governor on April 26, 2021.]

AN ACT to amend and reenact §51-10-1 and §51-10-8 of the Code of West Virginia, 1931, as amended, all relating to requiring the Insurance Commissioner to regulate professional bondsmen; providing definitions; requiring the Insurance Commissioner to promulgate and propose rules to carry out the intent, administration, and enforcement of the article; authorizing the promulgation of emergency rules; requiring the Insurance Commissioner to promulgate and propose rules regarding qualifications of bondsman; setting forth requirements for bondsman applicants; setting forth filing requirements for bondsmen with the Insurance Commissioner; setting forth renewal requirements for bondsman license; providing criminal penalty for false affidavit; requiring Insurance Commissioner to keep a list of licensed bondsmen and furnish to a jail upon request; and, after July 1, 2022, requiring all bondsmen to be licensed by the Insurance Commissioner.

Be it enacted by the Legislature of West Virginia:

ARTICLE 10. PROFESSIONAL BONDSMEN IN CRIMINAL CASES.

§51-10-1. Definitions.

When used in this article:

(1) "Bonding business" means the business of becoming surety for compensation upon bonds in criminal cases in the State of West Virginia;

(2) "Bondsman" means (A) any person engaged in the bonding business that has satisfied the requirements for, and is duly licensed as, an insurance producer with a property and casualty line of authority as set forth by the Insurance Commissioner and §33-12-1, *et seq.* of this code; or (B) any person who is approved and licensed under the provisions of this article who pledges cash or approved securities with the commissioner as security for bail bonds written in connection with a judicial proceeding and receives or is promised money or other things of value for the pledge;

(3) "Commissioner" means the Insurance Commissioner of West Virginia, as defined in §33-1-5 of this code; and

(4) "Insurer" means any domestic, foreign, or alien person, including a surety company, which has been qualified generally to transact surety business in the State of West Virginia.

§51-10-8. Qualifications of bondsmen; rules to be prescribed by Insurance Commissioner; bondsman filing requirements; bondsman license renewal requirements; criminal penalty for filing false affidavit; list of bondsmen kept and provided to places of detention by Insurance Commissioner; requiring all bondsman to be licensed by Insurance Commissioner after July 1, 2022.

(a) The commissioner shall promulgate and propose legislative rules for promulgation under §29A-3-1, *et seq.* of this code, to carry out the intent, administration, and enforcement of this article. The commissioner may promulgate any emergency rules under §29A-3-15 of this code necessary to carry out the intent, administration, and enforcement of this article. The commissioner shall develop all forms, contracts, or other documents to be used for the purposes outlined in this article.

(b) The rules required by subsection (a) of this section shall specify the qualifications that a person must have when applying to be a bondsman, and the terms and conditions upon which the bonding business may be conducted. The commissioner shall require a biennial fee of $200 for all bondsman licensed under this article.

(c) The commissioner, in promulgating and proposing rules required by subsection (a) of this section, and in granting a license to a person to engage in the bonding business, shall take into consideration both the financial responsibility and the moral qualities of the person applying, and a person who has been convicted of any offense involving moral turpitude, or who is not known to be a person of good moral character shall not be licensed.

(d) The applicant shall provide the commissioner a qualifying power-of-attorney from a licensed insurer or surety company or pledge cash or approved securities with the commissioner as security for bail bonds.

(e) The applicant shall comply with the provisions of §33-12-37 of this code regarding criminal history record checks.

(f) The commissioner shall require every bondsman licensed to engage in the bonding business as a principal to file with the commissioner a list showing the name, age, and residence of each person employed by the bondsman as an agent, clerk, or representative in the bonding business, and require an affidavit from each of the persons stating that the person will abide by the terms and provisions of this article.

(g) (1) The commissioner shall require a person licensed as a bondsman to renew his or her license every two years and to file an affidavit stating that since his or her previous license to engage in the bonding business he or she has abided by the provisions of this article.

(2) A person who files a false affidavit is guilty of false swearing and, upon conviction thereof, shall be punished as provided by law for the offense.

(3) A person seeking to renew his or her license to engage in the bonding business shall submit to the property and casualty requirements under section (d) of this section for each renewal, unless he or she has voluntarily terminated his or her license to engage in the bonding business.

(h) The commissioner shall keep a list of all bondsmen and, upon the request of a place of detention listed under §51-10-6 of this code, furnish an alphabetical list of all licensed bondsmen to the jail.

(j) After July 1, 2022, a person shall not, either as principal, or as agent, clerk, or representative of an agent, engage in the bonding business unless licensed by the commissioner under this section.

CHAPTER 204

(Com. Sub. for H. B. 2877 - By Delegates Westfall, Summers, Jennings, Tully, Bates and L. Pack)

[Passed April 5, 2021; in effect ninety days from passage.]
[Approved by the Governor on April 19, 2021.]

AN ACT to amend and reenact §30-3F-1, §30-3F-2, and §30-3F-3 of the Code of West Virginia, 1931, as amended, relating to expanding direct medical care arrangements.

Be it enacted by the Legislature of West Virginia:

ARTICLE 3F. DIRECT MEDICAL CARE.

§30-3F-1. Definitions.

As used in this section:

(1) "Boards" means the West Virginia Board of Medicine; the West Virginia Board of Osteopathic Medicine, the West Virginia Board of Optometry, West Virginia Board of Physical Therapy, West Virginia Board of Chiropractic, West Virginia Board of Dentistry and the West Virginia Board of Examiners for Registered Professional Nurses;

(2) "Direct medical care membership agreement" means a written contractual agreement between a care provider and a person, or the person's legal representative;

(3) "Direct medical care provider" means an individual or legal entity, alone or with others professionally associated with the provider or other legal entity, that is authorized to provide medical care services and who chooses to enter into a direct medical care membership agreement;

(4) "Medical products" means any product used to diagnose or manage a disease, including any medical device, treatment or drug;

(5) "Medical services" means a screen, assessment, diagnosis or treatment for the purpose of promotion of health or the detection and management of disease or injury within the competency and training of the direct medical care provider; and

(6) "Medical care provider" means an individual or other legal entity that is authorized to provide medical services and medical products under his or her scope of practice in this state.

§30-3F-2. Direct Medical Care.

(a) A person or a legal representative of a person may seek care outside of an insurance plan, or outside of the Medicaid or Medicare program, and pay for the care.

(b) A medical care provider may accept payment for medical services or medical products outside of an insurance plan.

(c) A medical care provider may accept payment for medical services or medical products provided to a Medicaid or Medicare beneficiary.

(d) A patient or legal representative does not forfeit insurance benefits, Medicaid benefits or Medicare benefits by purchasing medical services or medical products outside the system.

(e) The offer and provision of medical services or medical products purchased and provided under this article is not an offer of insurance nor regulated by the insurance laws of the state.

(f) The direct medical care provider may not bill third parties on a fee for service basis for services provided under the direct medical care membership agreement.

(g) A medical care provider may not bill any third-party payer for services rendered or products sold pursuant to a direct medical care membership agreement.

§30-3F-3. Prohibited and authorized practices.

(a) A direct medical care membership agreement is not insurance and is not subject to regulation by the Office of the Insurance Commission.

(b) A direct medical care provider or its agent is not required to obtain a certification of authority or license under chapter thirty-three to market, sell or offer to sell a direct care agreement.

(c) A direct medical care membership agreement is not a discount medical plan.

(d) A direct medical care membership agreement shall:

(1) Be in writing;

(2) Be signed by the medical care provider or agent of the medical care provider and the individual patient or his or her legal representative;

(3) Allow either party to terminate the agreement on at least 30 days prior written notice to the other party;

(4) Describe the scope of medical care services that are covered by the periodic fee;

(5) Specify the periodic fee and any additional fees outside of the periodic fee for ongoing care under the agreement;

(6) Specify the duration of the agreement and any automatic renewal periods. Any per-visit charges under the agreement will be less than the monthly equivalent of the periodic fee. The person is not required to pay more than twelve months of the fee in advance. Funds are not earned by the practice until the month of ongoing care is completed. Upon discontinuing the agreement all unearned funds are returned to the patient; and

(7) Prominently state in writing that the agreement is not health insurance.

CHAPTER 205

(Com. Sub. for H. B. 2891 - By Delegates D. Kelly, B. Ward, Hott, Capito, Steele, Pinson, Queen, Westfall, Young 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 §30-29-1 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §30-29-14, all relating to minimum standards for hiring of pre-certified law-enforcement officers; adding "pre-certified law-enforcement officer" as a defined term; prohibiting West Virginia law-enforcement agencies from employing or offering to employ a pre-certified law-enforcement officer without certain findings; requiring a hiring West Virginia law-enforcement agency to make written findings or adopt the written findings of a previous employing West Virginia law-enforcement agency documenting that the pre-certified law-enforcement officer meets certain minimum standards; requiring such written findings to be made available to the Law-Enforcement Professional Standards Subcommittee of the Governor's Committee on Crime, Delinquency, and Correction; providing ten minimum standards for hiring of a pre-certified law-enforcement officer; requiring report from background investigation to be made part of written findings; authorizing Law-Enforcement Professional Standards Subcommittee to deny certification or deny admission to a basic entry-level training program to a person failing to meet minimum standards; requiring direct supervision of a pre-certified law-enforcement officer by a certified law-enforcement officer while engaged in law-enforcement duties; providing meaning of "directly supervised"; providing for recordkeeping; providing for transfer of records between employing West Virginia law-enforcement agencies;

providing exception for West Virginia State Police; specifying application of requirements pertaining to minimum standards for hiring of pre-certified law-enforcement officers; and providing exception to disclosure under West Virginia Freedom of Information Act for certain records.

Be it enacted by the Legislature of West Virginia:

ARTICLE 29. LAW ENFORCEMENT TRAINING AND CERTIFICATION.

*§30-29-1. Definitions.

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

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

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

(3) "County" means the 55 major political subdivisions of the state;

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

(5) "Governor's Committee on Crime, Delinquency, and Correction" or "Governor's committee" means the Governor's Committee on Crime, Delinquency, and Correction established as a state planning agency pursuant to §15-9-1 of this code;

(6) "Law-enforcement officer" means any duly authorized member of a law-enforcement agency who is authorized to

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***NOTE:** This section was also amended by H. B. 3132 (Chapter 271), which passed prior to this act.

maintain public peace and order, prevent and detect crime, make arrests, and enforce the laws of the state or any county or municipality thereof, other than parking ordinances, and includes those persons employed as campus police officers at state institutions of higher education in accordance with the provisions of §18B-4-5 of this code, persons employed as hospital police officers in accordance with the provisions of §16-5B-19 of this code, and persons employed by the Public Service Commission as motor carrier inspectors and weight-enforcement officers charged with enforcing commercial motor vehicle safety and weight restriction laws, although those institutions and agencies may not be considered law-enforcement agencies. The term also includes those persons employed as county litter control officers charged with enforcing litter laws: *Provided*, That those persons have been trained and certified as law-enforcement officers and that certification is currently active. The term also includes those persons employed as rangers by resort area districts in accordance with the provisions of §7-25-23 of this code, although no resort area district may be considered a law-enforcement agency: *Provided, however*, That the subject rangers shall pay the tuition and costs of training. As used in this article, the term "law-enforcement officer" does not apply to the chief executive of any West Virginia law-enforcement agency or any watchman or special Natural Resources police officer;

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

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

(9) "Pre-certified law-enforcement officer" means a person employed or offered employment by a West Virginia law-enforcement agency prior to his or her initial certification by the subcommittee. This term does not include a person employed or offered employment by a West Virginia law-enforcement agency whose certification status is inactive, suspended, or has been revoked.

(10) "Subcommittee" or "law-enforcement professional standards subcommittee" means the subcommittee of the Governor's Committee on Crime, Delinquency, and Correction created by §30-29-2 of this code; and

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

§30-29-14. Minimum standards for hiring of pre-certified law-enforcement officers; disqualification for entry into basic law-enforcement academy or from certification; direct supervision of uncertified officers; maintenance and transfer of records; applicability; limitation on disclosure of records.

(a) Notwithstanding other provisions of law to the contrary, a West Virginia law-enforcement agency may not employ or offer to employ a pre-certified law-enforcement officer until it makes written findings documenting that the person meets the minimum standards contained in this subsection, or adopts a previous employing West Virginia law-enforcement agency's written findings, which shall be made available upon request to the subcommittee: *Provided*, That the hiring West Virginia law-enforcement agency may set higher minimum standards, or the subcommittee may promulgate legislative rules which establish higher minimum standards or interpret the minimum standards contained this section, as the agency or the subcommittee considers necessary for the employment of law-enforcement officers: *Provided, however,* That nothing in this section shall be construed to limit, abrogate, or modify any existing rule promulgated by the subcommittee. The minimum standards apply only to the hiring of a pre-certified law-enforcement officer and consist of the following:

(1) The person is 18 years of age or older;

(2) The person is a high school graduate or equivalent;

(3) The person has submitted to a psychological assessment and has been recommended for hire as a result;

(4) The person has submitted to and passed a polygraph examination;

(5) The person has not been dishonorably discharged from any branch of the armed forces of the United States or the National Guard;

(6) The person has not been convicted in any civilian or military court of a crime punishable by imprisonment for a term exceeding one year, a crime involving moral turpitude, or a crime of domestic violence, or who has been administratively pardoned for any such crime;

(7) The person has not admitted to committing any criminal acts as set forth in subdivision (6) of this subsection which did not result in a conviction;

(8) The person is not prohibited by state or federal law from shipping, transporting, receiving, or possessing firearms or ammunition;

(9) The person is not addicted to narcotics or other controlled substances; and

(10) The person has consented to a thorough investigation by the hiring West Virginia law-enforcement agency into the person's background and moral character, including, but not limited to, a nationwide criminal background check consisting of inquiries of the National Instant Criminal Background Check System, the West Virginia criminal history record responses and the National Interstate Identification index, the report of which shall be made a part of the written findings required by this section.

(b) Upon review of the written findings of the hiring West Virginia law-enforcement agency and the background investigation, the subcommittee may deny the certification of a

law-enforcement officer or, if applicable, deny admission to a basic entry-level training program to a person failing to meet the minimum standards set forth in this section in the discretion of the subcommittee.

(c) A pre-certified law-enforcement officer who is employed by a West Virginia law-enforcement agency must be directly supervised by a certified law-enforcement officer at all times when the pre-certified law-enforcement officer is engaged in law-enforcement duties. For purposes of this section, "directly supervised" means that the certified law-enforcement officer is physically present with, maintains a close visual and verbal contact with, and provides adequate direction to, the pre-certified law-enforcement officer while he or she is engaged in law-enforcement duties.

(d) The initial hiring West Virginia law-enforcement agency shall maintain the written findings and background investigation required herein, for the duration of the person's term of employment, at a minimum. Each time the person transfers to a different West Virginia law-enforcement agency, copies of the written findings and background investigation shall be transmitted by the West Virginia law-enforcement agency which is the person's most recent employer to the West Virginia law-enforcement agency which is the person's new employer: *Provided*, That the provisions of this subsection do not apply to the West Virginia State Police.

(e) The provisions of this section apply to any person hired by a West Virginia law-enforcement agency as a pre-certified law-enforcement officer after the effective date of this section.

(f) Written findings and information obtained in the course of any investigation authorized by this section are not public records and are not subject to disclosure under §29B-1-1 *et seq.* of this code.

CHAPTER 206

(Com. Sub. for H. B. 2962 - By Delegates Steele and J. 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 §30-4-8, §30-4-10, §30-4-13, §30-4-15, §30-4-16, §30-4-17, §30-4-19, §30-4-20, §30-4-22, §30-4-23, and §30-4-24 of the Code of West Virginia, 1931, as amended, all relating to the practice of dentistry; updating the requirements for a license to practice dentistry; updating the requirements for a license to practice as a dental hygienist; requiring a board authorization be present in the place of practice; making technical corrections to special volunteer dentists; requiring payment for certain examinations; permitting the formation of a professional limited liability companies; updating the complaint process; updating the criteria used when considering disciplinary action; updating the types of disciplinary sanctions; requiring providing criminal penalties; clarifying that a student enrolled in an accredited dental program may, under the supervision of a licensed dentist or dental hygienist perform certain tasks under certain conditions without necessitating a license; and making technical changes.

Be it enacted by the Legislature of West Virginia:

ARTICLE 4. WEST VIRGINIA DENTAL PRACTICE ACT.

§30-4-8. License to practice dentistry.

(a) The board shall issue a license to practice dentistry to an applicant who meets the following:

(1) Is at least 18 years of age;

(2) Does not have any criminal convictions which would bar the applicant's licensure pursuant to §30-1-24 of this code;

(3) Is a graduate of and has a diploma from a school accredited by the Commission on Dental Accreditation or equivalently approved dental college, school, or dental department of a university as determined by the board;

(4) Has passed a national board examination as given by the Joint Commission on National Dental Examinations and a clinical examination administered by the Commission on Dental Competency Assessments, the Central Regional Dental Testing Service, the Council of Interstate Testing Agencies, the Southern Regional Testing Agency, or the Western Regional Examining Board, or the successor to any of those entities, which demonstrates competency, and passed each individual component with no compensatory scoring in:

(A) Endodontics, including access opening of a posterior tooth and access, canal instrumentation, and obturation of an anterior tooth;

(B) Fixed prosthodontics, including an anterior crown preparation and two posterior crown preparations involving a fixed partial denture factor;

(C) Periodontics, including scaling and root planing; and

(D) Restorative, including a class II amalgam or composite preparation and restoration and a class III composite preparation and restoration.

(E) The board may consider clinical examinations taken prior to July 1, 2019, or individual state clinical examinations as equivalent which demonstrates competency.

(5) Has not been found guilty of cheating, deception, or fraud in the examination or any part of the application;

(6) Has paid the application fee specified by rule;

(7) Not be an alcohol or drug abuser, as these terms are defined in §27-1A-11 of this code: *Provided*, That an applicant in an active recovery process, which may, in the discretion of the board, be evidenced by participation in a 12-step program or other similar group or process, may be considered; and

(8) Meets the other requirements specified by rule.

(b) A dentist may not represent to the public that he or she is a specialist in any branch of dentistry or limit his or her practice to any branch of dentistry unless first issued a certificate of qualification in that branch of dentistry by the board.

(c) A license to practice dentistry issued by the board shall for all purposes be considered a license issued under this section: *Provided*, That a person holding a license shall renew the license.

§30-4-10. License to practice dental hygiene.

(a) The board shall issue a dental hygienist license to an applicant who meets the following requirements:

(1) Is at least 18 years of age;

(2) Does not have any criminal convictions which would bar the applicant's licensure pursuant to §30-1-24 of this code;

(3) Is a graduate with a degree in dental hygiene from an approved dental hygiene program of a college, school, or dental department of a university;

(4) Has passed a national board examination as given by the Joint Commission on National Dental Examinations and passed a board-approved examination designed to determine the applicant's level of clinical skills;

(5) Has not been found guilty of cheating, deception, or fraud in the examination or any part of the application;

(6) Has paid the application fee specified by rule;

(7) Is not an alcohol or drug abuser, as those terms are defined in §27-1A-11 of this code: *Provided*, That an applicant in an active recovery process, which may, in the discretion of the board, be evidenced by participation in a 12-step program or other similar group or process, may be considered; and

(8) Meets the other requirements specified by rule.

(b) A dental hygienist license issued by the board and in good standing on the effective date of the amendments to this section shall for all purposes be considered a dental hygienist license issued under this section: *Provided*, That a person holding a dental hygienist license shall renew the license.

§30-4-13. Board authorizations shall be displayed.

(a) The board shall prescribe the form for a board authorization, and may issue a duplicate upon payment of a fee.

(b) Any person regulated by this article shall conspicuously display his or her board authorization at his or her principal place of practice.

§30-4-15. Special volunteer dentist or dental hygienist license; civil immunity for voluntary services rendered to indigents.

(a) There is continued a special volunteer dentist and dental hygienist license for dentists and dental hygienists retired or retiring from the active practice of dentistry and dental hygiene who wish to donate their expertise for the care and treatment of indigent and needy patients in the clinical setting of clinics organized, in whole or in part, for the delivery of health care services without charge. The special volunteer dentist or dental hygienist license shall be issued by the board to a dentist or dental hygienist licensed or otherwise eligible for licensure under this article and the legislative rules promulgated hereunder without the payment of an application fee, license fee or renewal fee, shall be issued for the remainder of the licensing period and renewed consistent with the board's other licensing requirements. The board shall develop application forms for the special license provided in

this subsection which shall contain the dentist's or dental hygienist's acknowledgment that:

(1) The dentist's or dental hygienist's practice under the special volunteer dentist or dental hygienist license will be exclusively devoted to providing dentistry or dental hygiene care to needy and indigent persons in West Virginia;

(2) The dentist or dental hygienist will not receive any payment or compensation, either direct or indirect, or have the expectation of any payment or compensation but may donate to the clinic the proceeds of any reimbursement, for any dentistry or dental hygiene services rendered under the special volunteer dentist or dental hygienist license;

(3) The dentist or dental hygienist will supply any supporting documentation that the board may reasonably require; and

(4) The dentist or dental hygienist agrees to continue to participate in continuing professional education as required by the board for the special volunteer dentist or dental hygienist.

(b) Any person engaged in the active practice of dentistry and dental hygiene in this state whose license is in good standing may donate their expertise for the care and treatment of indigent and needy patients pursuant to an arrangement with a clinic organized, in whole or in part, for the delivery of health care services without charge to the patient. Services rendered pursuant to an arrangement may be performed in either the office of the dentist or dental hygienist or the clinical setting.

(c) Any dentist or dental hygienist who renders any dentistry or dental hygiene service to indigent and needy patients of a clinic organized, in whole or in part, for the delivery of health care services without charge under a special volunteer dentist or dental hygienist license authorized under subsection (a) of this section or pursuant to an arrangement with a clinic as authorized pursuant to subsection (b) of this section without payment or compensation or the expectation or promise of payment or compensation is immune from liability in any civil action arising out of any act or omission

incident to rendering service at the clinic unless the act or omission was the result of the dentist's or dental hygienist's gross negligence or willful misconduct. In order for the immunity under this subsection to apply, there shall be a written agreement between the dentist or dental hygienist and the clinic, pursuant to which the dentist or dental hygienist will provide voluntary uncompensated services under the control of the clinic to patients of the clinic, executed prior to the rendering of any services by the dentist or dental hygienist at the clinic: *Provided*, That any clinic entering into such written agreement is required to maintain liability coverage of not less than $1 million per occurrence.

(d) Notwithstanding the provisions of subsection (b) of this section, a clinic organized, in whole or in part, for the delivery of health care services without charge is not relieved from imputed liability for the negligent acts of a dentist or dental hygienist rendering voluntary uncompensated services at or for the clinic under a special volunteer dentist or dental hygienist license issued under subsection (a) of this section or who renders such care and treatment pursuant to an arrangement with a clinic as authorized pursuant to subsection (b) of this section.

(e) For purposes of this section, "otherwise eligible for licensure" means the satisfaction of all the requirements for licensure as listed in section eight of this article and in the legislative rules promulgated thereunder, except the fee requirements of subdivision (6) of said section and of the legislative rules promulgated by the board relating to fees.

(f) Nothing in this section may be construed as requiring the board to issue a special volunteer dentist or dental hygienist license to any dentist or dental hygienist whose license is or has been subject to any disciplinary action or to any dentist or dental hygienist who has surrendered a license or caused such license to lapse, expire or become inactive in lieu of having a complaint initiated or other action taken against his or her license, or who has been denied a dentist or dental hygienist license.

(g) Any policy or contract of liability insurance providing coverage for liability that is sold, issued or delivered in this state to

any dentist or dental hygienist covered under the provisions of this article shall be read so as to contain a provision or endorsement whereby the company issuing such policy waives or agrees not to assert as a defense on behalf of the policyholder or any beneficiary thereof, to any claim covered by the terms of such policy within the policy limits, the immunity from liability of the insured by reason of the care and treatment of needy and indigent patients by a dentist or dental hygienist who holds a special volunteer dentist or dental hygienist license or who renders such care and treatment pursuant to an arrangement with a clinic as authorized pursuant to subsection (b) of this section.

§30-4-16. Dental corporations and professional limited liability companies.

(a) Dental corporations and professional limited liability companies are continued.

(b) One or more dentists licensed by the board may organize and become a shareholder or shareholders of a dental corporation, or member or members of a professional limited liability company, domiciled within this state under the terms and conditions and subject to the limitations and restrictions specified by rule.

(c) No corporation or professional limited liability company may practice dentistry, or any of its branches, or hold itself out as being capable of doing so without a certificate of authorization from the board.

(d) When the Secretary of State receives a certificate of authorization to act as a dental corporation or professional limited liability company from the board, he or she shall attach the authorization to the corporation application and, upon compliance with the applicable provisions of Chapter 31 or Chapter 31B of this code, the Secretary of State shall issue to the incorporators a certificate of incorporation for the dental corporation or to the organizers a certificate of organization for the professional limited liability company.

(e) A corporation or professional limited liability company holding a certificate of authorization shall renew annually, on or before June 30, on a form prescribed by the board and pay an annual fee in an amount specified by rule.

(f) A dental corporation or professional limited liability company may practice dentistry only through one or more dentists licensed to practice dentistry in this state, but the dentist or dentists may be employees rather than shareholders or members of the corporation or company.

(g) A dental corporation holding a certificate of authorization shall cease to engage in the practice of dentistry upon being notified by the board that any of its shareholders is no longer a licensed dentist or when any shares of the corporation have been sold or disposed of to a person who is not a licensed dentist: *Provided*, That the personal representative of a deceased shareholder has a period, not to exceed twenty-four months from the date of the shareholder's death, to dispose of the shares; but nothing contained herein may be construed as affecting the existence of the corporation or its right to continue to operate for all lawful purposes other than the practice of dentistry.

§30-4-17. Reinstatement.

(a) A licensee against whom disciplinary action has been taken under the provisions of this article shall be afforded an opportunity to demonstrate the qualifications to resume practice. The application for reinstatement shall be in writing and subject to the procedures specified by the board by rule.

(b) A licensee who does not complete annual renewal, as specified herein and by the board by rule, and whose license has lapsed for one year or longer, shall make application for reinstatement as specified by the board by rule.

(c) The board, at its discretion and for cause, may require an applicant for reinstatement to undergo a physical and/or mental evaluation, at his or her expense, to determine whether the applicant is competent to practice dentistry or dental hygiene.

§30-4-19. Complaints; investigations; due process procedure; grounds for disciplinary action.

(a) The board may initiate a complaint upon receipt of the quarterly report from the Board of Pharmacy as required by §60A-9-1 *et seq.* of this code or upon receipt of credible information and shall, upon the receipt of a written complaint of any person, cause an investigation to be made to determine whether grounds exist for disciplinary action under this article or the legislative rules promulgated pursuant to this article.

(b) After reviewing any information obtained through an investigation, the board shall determine if probable cause exists that the licensee, certificate holder, or permittee has violated §30-4-19 (g) of this code or rules promulgated pursuant to this article.

(c) Upon a finding of probable cause to go forward with a complaint, the board shall provide a copy of the complaint to the licensee, certificate holder, or permittee.

(d) Upon a finding that probable cause exists that the licensee, certificate holder, or permittee has violated §30-4-19(g) of this code or rules promulgated pursuant to this article, the board may enter into a consent decree or hold a hearing for disciplinary action against the licensee, certificate holder, or permittee. Any hearing shall be held in accordance with the provisions of this article and shall require a violation to be proven by a preponderance of the evidence.

(e) A member of the complaint committee or the executive director of the board may issue subpoenas and subpoenas duces tecum to obtain testimony and documents to aid in the investigation of allegations against any person regulated by this article.

(f) Any member of the board or its executive director may sign a consent decree or other legal document on behalf of the board.

(g) The board may, after notice and opportunity for hearing, deny or refuse to renew, suspend, restrict, or revoke the license, certificate, or permit of, or impose probationary conditions upon,

or take disciplinary action against, any licensee, certificate holder, or permittee for any of the following reasons:

(1) Obtaining a board authorization by fraud, misrepresentation, or concealment of material facts;

(2) Being convicted of a felony crime, or being convicted of a misdemeanor crime related to the practice of dentistry or dental hygiene;

(3) Being guilty of malpractice or neglect in the practice of dentistry or dental hygiene;

(4) Violation of a lawful order or legislative rule of the board;

(5) Having had a board authorization revoked or suspended, other disciplinary action taken, or an application for a board authorization denied by the proper authorities of another jurisdiction;

(6) Aiding, abetting, or supervising the practice of dentistry or dental hygiene by an unlicensed person;

(7) Engaging in conduct, while acting in a professional capacity, which has endangered or is likely to endanger the health, welfare, or safety of the public;

(8) Having an incapacity that prevents one from engaging in the practice of dentistry or dental hygiene, with reasonable skill, competence, and safety to the public;

(9) Committing fraud in connection with the practice of dentistry or dental hygiene;

(10) Failing to report to the board one's surrender of a license or authorization to practice dentistry or dental hygiene in another jurisdiction while under disciplinary investigation by any of those authorities or bodies for conduct that would constitute grounds for action as defined in this section;

(11) Failing to report to the board any adverse judgment, settlement, or award arising from a malpractice claim related to

conduct that would constitute grounds for action as defined in this section;

(12) Being guilty of unprofessional conduct as contained in the American Dental Association principles of ethics and code of professional conduct. The following acts are conclusively presumed to be unprofessional conduct:

(A) Being guilty of any fraud or deception;

(B) Abusing alcohol or drugs;

(C) Violating or improperly disclosing any professional confidence;

(D) Harassing, abusing, intimidating, insulting, degrading, or humiliating a patient physically, verbally, or through another form of communication;

(E) Obtaining any fee by fraud or misrepresentation;

(F) Employing directly or indirectly, or directing or permitting any suspended or unlicensed person, to perform operations of any kind or to treat lesions of the human teeth or jaws, or correct malimposed formations thereof;

(G) Practicing or offering or undertaking to practice dentistry under any firm name or trade name not approved by the board;

(H) Having a professional connection or association with, or lending his or her name to, another for the illegal practice of dentistry, or having a professional connection or association with any person, firm, or corporation holding himself or herself, themselves, or itself out in any manner contrary to this article;

(I) Making use of any advertising relating to the use of any drug or medicine of unknown formula;

(J) Advertising to practice dentistry or perform any operation thereunder without causing pain;

(K) Advertising professional superiority or the performance of professional services in a superior manner;

(L) Advertising to guarantee any dental service;

(M) Advertising in any manner that is false or misleading in any material respect; or

(N) Engaging in any action or conduct which would have warranted the denial of the license.

(13) Knowing or suspecting that a licensee is incapable of engaging in the practice of dentistry or dental hygiene, with reasonable skill, competence, and safety to the public, and failing to report that information to the board;

(14) Using or disclosing protected health information in an unauthorized or unlawful manner;

(15) Engaging in any conduct that subverts or attempts to subvert any licensing examination or the administration of any licensing examination;

(16) Failing to furnish to the board or its representatives any information legally requested by the board or failing to cooperate with or engaging in any conduct which obstructs an investigation being conducted by the board;

(17) Announcing or otherwise holding himself or herself out to the public as a specialist or as being specially qualified in any particular branch of dentistry or as giving special attention to any branch of dentistry or as limiting his or her practice to any branch of dentistry without first complying with the requirements established by the board for the specialty and having been issued a certificate of qualification in the specialty by the board;

(18) Failing to report to the board within 72 hours of becoming aware of any life threatening occurrence, serious injury, or death of a patient resulting from the licensee's or permittee's dental treatment;

(19) Administering sedation anesthesia without a valid permit, or other violation of §30-4A-1 *et seq.* of this code;

(20) Failing to observe or adhere to regulations, standards, or guidelines regarding infection control, disinfection, or sterilization, or otherwise applicable to dental care settings;

(21) Failing to report to the board any driving under the influence and/or driving while intoxicated offense; or

(22) Violation of any of the terms or conditions of any order entered in any disciplinary action.

(h) For the purposes of §30-4-19(g) of this code, disciplinary action may include:

(1) Reprimand;

(2) Probation;

(3) Restrictions;

(4) Suspension;

(5) Revocation;

(6) Administrative fine, not to exceed $1,000 per day per violation;

(7) Mandatory attendance at continuing education seminars or other training;

(8) Practicing under supervision or other restriction; or

(9) Requiring the licensee or permittee to report to the board for periodic interviews for a specified period of time.

(i) In addition to any other sanction imposed, the board may require a licensee or permittee to pay the board's costs incurred in investigating and adjudicating a disciplinary matter, including the board's legal fees.

(j) The board may defer disciplinary action with regard to an impaired licensee or permittee who voluntarily signs an agreement, in a form satisfactory to the board, agreeing not to practice dental care and to enter an approved treatment and monitoring program in accordance with the board's legislative rules: *Provided*, That this subsection does not apply to a licensee or permittee who has been convicted of, pleads guilty to, or enters a plea of nolo contendere to an offense relating to a controlled substance in any jurisdiction.

(k) A person authorized to practice under this article who reports or otherwise provides evidence of the negligence, impairment, or incompetence of another member of this profession to the board or to any peer review organization is not liable to any person for making the report if the report is made without actual malice and in the reasonable belief that the report is warranted by the facts known to him or her at the time.

§30-4-20. Procedures for hearing; right of appeal.

(a) Hearings are governed by the provisions of §30-1-8 of this code and the legislative rules promulgated pursuant to this article.

(b) The board may conduct the hearing or elect to have an administrative law judge conduct the hearing.

(c) If the hearing is conducted by an administrative law judge, at the conclusion of the hearing he or she shall prepare a proposed written order containing findings of fact and conclusions of law. The proposed order may contain proposed disciplinary actions if the board so directs. The board may accept, reject or modify the decision of the administrative law judge.

(d) Any member of the board or the executive director of the board has the authority to administer oaths and to examine any person under oath.

(e) If, after a hearing, the board determines the licensee or permittee has violated one or more provisions of this article or the board's rules, a formal written decision shall be prepared which contains findings of fact, conclusions of law, and a specific description of the disciplinary actions imposed.

§30-4-22. Criminal offenses.

(a) When, as a result of an investigation under this article or otherwise, the board has reason to believe that a person has committed a criminal offense in violation of this article, the board may bring such information to the attention of an appropriate law-enforcement official.

(b) Any person who practices dentistry or dental hygiene in this state and (1) has never been licensed by the board under this article, (2) holds a license that has been classified by the board as expired or lapsed, or (3) holds a license that has been inactive, revoked, or suspended as a result of disciplinary action, or surrendered to the board, is guilty of a felony and, upon conviction, shall be fined not more than $10,000 or imprisoned in a correctional facility for not less than one year nor more than five years, or both fined and imprisoned.

(c) Any person who holds himself or herself out as licensed to practice dentistry or dental hygiene in this State, or who uses any title, word, or abbreviation to indicate to or induce others to believe he or she is licensed to practice dentistry or dental hygiene in this State, and (1) has never been licensed by the board under this article, (2) holds a license that has been classified by the board as expired or lapsed, or (3) holds a license that has been inactive, revoked, or suspended as a result of disciplinary action, or surrendered to the board, is guilty of a misdemeanor and, upon conviction, shall be fined not more than $5,000 or confined in jail not more than twelve months, or both fined and confined.

§30-4-23. Single act evidence of practice.

In any action brought under this article, or under §30-4A-1 *et seq.* or §30-4B-1 *et seq.* of this code evidence of the commission of a single act prohibited by said article is sufficient to justify a penalty, injunction, restraining order or conviction without evidence of a general course of conduct.

§30-4-24. Inapplicability of article.

The provisions of this article do not apply to:

(1) A licensed physician or surgeon in the practice of his or her profession when rendering dental relief in emergency cases, unless he or she undertakes to reproduce or reproduces lost parts of the human teeth or to restore or replace lost or missing teeth in the human mouth;

(2) A dental laboratory in the performance of dental laboratory services, while the dental laboratory, in the performance of the work, conforms in all respects to the requirements of article four-b of this chapter, and further does not apply to persons performing dental laboratory services under the direct supervision of a licensed dentist;

(3) A student enrolled in an accredited D.D.S. or D.M.D. degree program or an accredited dental hygiene program practicing under the direct supervision of an instructor licensed by the board and (A) within a school, college, or university in this State; (B) in a dental clinic operated by a nonprofit organization providing indigent care; (C) in governmental or indigent care clinics in which the student is assigned to practice during his or her final academic year rotations; or (D) in a private dental office for a limited time during the student's final academic year: *Provided*, That the supervising dentist holds appointment on the faculty of the school in which the student is enrolled;

(4) An authorized dentist of another state temporarily operating a clinic under the auspices of an organized and reputable dental college or reputable dental society, or to one lecturing before a reputable society composed exclusively of dentists; or

(5) A dentist whose practice is confined exclusively to the service of the United States Army, the United States Navy, the United States Air Force, The United States Coast Guard, the United States Public Health Service, the United States Veteran's Bureau or any other authorized United States government agency or bureau.

CHAPTER 207

(Com. Sub. for S. B. 11 - By Senators Rucker, Roberts, Takubo, Maroney, and Swope)

[Passed March 4, 2021; in effect 90 days from passage (June 2, 2021)]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §18-5-45a, relating to declaring any work stoppage or strike by public employees to be unlawful; providing legislative findings; defining when a county board of education employee is considered to be participating in a concerted work stoppage or strike; prohibiting use of accrued and equivalent instructional time and delivery of instruction through alternative methods to cancel days lost due to a concerted work stoppage or strike; prohibiting a waiver by the state board for a county board of education's noncompliance with the employment and instructional term requirements if the noncompliance is the result of a concerted work stoppage or strike; declaring participation in a concerted work stoppage or strike to be grounds for termination; requiring, if the employee remains employed, county boards of education to withhold the prorated salary or hourly pay of each employee participating in the concerted work stoppage or strike for each day the employee participates; and requiring the sums to be forfeited to the county board of education.

Be it enacted by the Legislature of West Virginia:

ARTICLE 5. COUNTY BOARD OF EDUCATION.

§18-5-45a. Legislative findings; time lost due to work stoppage or strike; effect on pay and extracurricular activities; closure of schools due to work stoppage or strike prohibited.

(a) *Legislative findings.* —

(1) The West Virginia Supreme Court of Appeals held, in *Jefferson County Bd. of Educ. v. Jefferson County Educ. Ass'n*, 183 W.Va. 15 (1990), that "[p]ublic employees have no right to strike in the absence of express legislation or, at the very least, appropriate statutory provisions for collective bargaining, mediation, and arbitration".

(2) Public employees in West Virginia have no right, statutory or otherwise, to engage in collective bargaining, mediation, or arbitration, and any work stoppage or strike by public employees is hereby declared to be unlawful. Furthermore, any work stoppage or strike by employees of a county board of education poses a serious disruption to the thorough and efficient system of free schools, guaranteed to the children of West Virginia by section one, article XII of the Constitution of West Virginia.

(3) Section 18-5-45 of this code is designed to define the school term both for employment of school personnel and for instruction of students. The employment term consists of at least 200 days and, within the employment term, an instructional term for students must consist of at least 180 separate instructional days. Section 18-5-45 of this code also defines the minimum length of an instructional day, requires county boards to develop a policy for additional minutes of instruction to recover time lost due to late arrivals and early dismissals, and allows schools with an instructional day in excess of certain minimums to apply this equivalent instructional time to cancel time lost due to necessary closures and other purposes designed to improve instruction. Furthermore, §18-5-45 of this code allows a county board, subject to approval of its plan by the state board, to deliver instruction through alternative methods for a maximum of five days, when schools are closed and provides that these days are considered to be instructional days, notwithstanding the closure of schools.

(4) The Legislature intended, by providing for equivalent instructional time and the use of alternative methods to deliver instruction on days when schools are closed, as defined in §18-5-45 of this code, to: (1) Provide flexibility for collaborative time and

other methods of improving instruction; and (2) lessen the disruption of the planned school calendar if rescheduling and adding instructional days became necessary to make up lost days due to closures pursuant to §18-4-10(5) of this code, when conditions are detrimental to the health, safety, or welfare of pupils. The Legislature did not intend with the enactment of these provisions to permit a reduction in the instructional term for students or in the employment term for personnel when the conditions causing the closure of the school are a concerted work stoppage or strike by the employees.

(b) For the purposes of this section, an employee of a county board of education is considered to be participating in a concerted work stoppage or strike if, on any day during a concerted stoppage of work or interruption of operations by the employees of the county board of education:

(1) The employee does not report to work as required by his or her contract of employment;

(2) The employee is not on leave, as specifically permitted by any provision of this code: *Provided*, That nothing in this section permits an employee to use personal leave in connection with a work stoppage or strike in violation of §18A-4-10 of this code; and

(3) The employee is not otherwise prevented from reporting to work based on circumstances beyond the employee's control, that are unrelated to the employee's participation in the ongoing concerted work stoppage or strike, as determined by the county superintendent.

(c) The provisions of §18-5-45 of this code, permitting accrued and equivalent instructional time to cancel days lost, and the delivery of instruction through alternative methods, do not apply to and may not be used to cancel days lost due to a concerted work stoppage or strike. Notwithstanding any provision of this code to the contrary, the state board may not grant a waiver to a county board of education for its noncompliance with the 200-day minimum employment term or the 180-day minimum instructional

term requirements if such noncompliance is the result of a concerted work stoppage or strike.

(d) Notwithstanding §18A-5-2 of this code or any other provision of this code to the contrary, if an employee remains employed by the county board of education, notwithstanding his or her participation in a concerted work stoppage or strike, which the Legislature hereby determines to be a ground for termination, the county board of education shall withhold the prorated salary or hourly pay of each employee participating in the concerted work stoppage or strike for each day that such employee participates in a concerted work stoppage or strike, and such sums shall be forfeited to the county board of education.

CHAPTER 208

(Com. Sub. for Com. Sub. for S. B. 470 - By Senators Woelfel, Ihlenfeld, Rucker, Lindsay, Caputo, Romano, 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 and reenact §5A-8-21 and §5A-8-22 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §5A-8-24, all relating to certain disclosures of certain personal information; clarifying that certain personal information which is maintained by state agencies regarding persons in their capacity as state officers, employees, retirees, or legal dependents thereof is confidential and exempt from disclosure to non-governmental entities as an unreasonable invasion of privacy; protecting confidentiality of the former legal name of certain individuals associated with state agencies; clarifying that certain personal information which is maintained by state executive branch agencies regarding individuals and their dependents is exempted from disclosure as an unreasonable invasion of privacy; creating Daniel's Law; providing for liberal construction to accomplish certain purposes and public policies; defining terms; prohibiting certain disclosures regarding certain persons in the judicial system; authorizing a civil action against certain private persons and entities; authorizing relief to be granted by the court; providing for certain individuals to request that certain persons or entities refrain from disclosing certain information and that the disclosed information be removed; requiring immediate removal of certain disclosed information; authorizing a civil action for failure to comply with request to refrain from and remove certain disclosed information; providing for misdemeanor crime for willful refusal to remove certain

disclosed information and establishing penalties therefor; and clarifying that Daniel's Law does not prohibit disclosures required by state or federal law.

Be it enacted by the Legislature of West Virginia:

ARTICLE 5A. DEPARTMENT OF ADMINISTRATION.

§5A-8-21. Limitation on release of certain personal information maintained by state agencies and entities regarding state employees.

(a) The following personal information maintained by executive, legislative, or judicial branch agencies of the State of West Virginia regarding persons in their capacity as state officers, employees, retirees, or the legal dependents thereof is hereby deemed to be confidential and exempt from disclosure, as an unreasonable invasion of privacy, to non-governmental entities in documents otherwise subject to disclosure under the provisions of §29B-1-1 *et seq.* of this code:

(1) An individual's home address;

(2) An individual's Social Security number;

(3) An individual's credit or debit card numbers;

(4) An individual's driver's license identification number; and

(5) An individual's marital status or former legal name.

(b) It is the policy of the State of West Virginia that the information enumerated in subsection (a) of this section is personal and confidential and should only be released to non-governmental entities for such purposes as are authorized by federal law or regulation, a provision of this code, or a legislative rule promulgated pursuant to the provisions of §29A-1-1 *et seq.* of this code.

§5A-8-22. Personal information maintained by state entities.

(a) The following information maintained by state executive branch agencies with respect to individuals and their dependents is

personal information exempted from disclosure as an unreasonable invasion of privacy under the provisions of §29B-1-1 *et seq.* of this code, and may not be released to non-governmental entities:

(1) An individual's Social Security number; or

(2) An individual's credit or debit card number.

(b) Notwithstanding the provisions of subsection (a) of this section, the information enumerated in said subsection may be released for such purposes as are authorized by federal law or regulation, a provision of this code, or a legislative rule promulgated pursuant to the provisions of §29A-1-1 *et seq*.

§5A-8-24. Protection of personal information relating to judicial officers, prosecutors, and law-enforcement officers.

(a) This section shall be known as Daniel's Law.

(b) This act shall be liberally construed in order to accomplish its purpose and the public policy of this state, which is to enhance the safety and security of certain public officials in the justice system, including judicial officers, prosecutors, federal and state public defenders, federal and state assistant public defenders, and law-enforcement officers, who serve or have served the citizens of West Virginia, and the immediate family members of these individuals, to foster the ability of these public servants who perform critical roles in the justice system, and to carry out their official duties without fear of personal reprisal from affected individuals related to the performance of their public functions.

(c) *Definitions*. — As used in this section:

(1) "Disclose" means to publish, publicly display, distribute, deliver, circulate, post, lend, provide, advertise, or disseminate by any means including, but not limited to, electronic transmission and on any medium including, but not limited to, the Internet.

(2) "Immediate family member" means spouse, child, parent, or any other family member related by blood or by law to the

judicial officer, prosecutor, or law-enforcement officer, and who resides in the same residence as the judicial officer, prosecutor, federal or state public defender, federal or state assistant public defender, or law-enforcement officer.

(3) "Judicial officer" means the chief justice or an associate justice of the United States Supreme Court, a judge of the United States Court of Appeals, a judge of a federal district court, a magistrate judge of a federal district court, any other judge for a court established by federal law, the chief justice or a justice of the Supreme Court of Appeals of West Virginia, a circuit judge, a family law judge, a magistrate, an administrative law judge, a municipal court judge, or any other judge established by state law.

(4) "Law-enforcement officer" shall have the same definition as that term is defined in §29B-1-2 of this code.

(5) "Prosecutor" means United States Attorney or his or her assistant United States attorneys, any other prosecutor established by federal law, the Attorney General of the State of West Virginia or his or her assistant attorneys general, a county prosecuting attorney or his or her assistant prosecuting attorneys, or any other prosecutor established by state law.

(d) Unless written permission is first obtained from the individual, a state or local government agency shall not knowingly disclose, redisclose, or otherwise make available the home address or unpublished home or personal telephone number of any active, formerly active, or retired judicial officer, prosecutor, federal or state public defender, federal or state assistant public defender, or law-enforcement officer.

(e) Unless written permission is first obtained from the individual, a person, business, or association shall not disclose, redisclose, or otherwise make available the home address or unpublished home or personal telephone number of any active, formerly active, or retired judicial officer, prosecutor, federal or state public defender, federal or state assistant public defender, or law-enforcement officer under circumstances in which a reasonable person would believe that providing such information

would expose another to harassment or risk of harm to life or property.

(1) A civil action may be maintained by the active, formerly active, or retired judicial officer, prosecutor, federal or state public defender, federal or state assistant public defender, or law-enforcement officer, or any other person residing at the home address of the active, formerly active, or retired judicial officer, prosecutor, federal or state public defender, federal or state assistant public defender, or law-enforcement officer, for any violation of subsection (e) of this section.

(2) The court may award:

(A) Actual damages, but not less than $1,000, for each violation of this act;

(B) Punitive damages, if applicable, in accordance with §55-7-29 of this code;

(C) Reasonable attorney's fees and other litigation costs reasonably incurred; and

(D) Any other preliminary or equitable relief as the court deems appropriate.

(f) Any active, formerly active, or retired judicial officer, prosecutor, federal or state public defender, federal or state assistant public defender, or law-enforcement officer whose home address or unpublished home or personal telephone number is disclosed, redisclosed, or otherwise made available by any person, business, or association may request that the person, business, or association in violation of subsection (e) of this section that disclosed, redisclosed, or otherwise made available the information to refrain from that action and remove the information.

(g) Any immediate family member of any active, formerly active, or retired judicial officer, prosecutor, federal or state public defender, federal or state assistant public defender, or law-enforcement officer whose name, home address, or unpublished home or personal telephone number, which may be used alone or

in conjunction with any other information to identify the person as the family member of an active, formerly active, or retired judicial officer, prosecutor, federal or state public defender, federal or state assistant public defender, or law-enforcement officer, is disclosed, redisclosed, or otherwise made available by any person, business, or association in violation of subsection (e) of this section may request that the person, business, or association that disclosed, redisclosed, or otherwise made available the information to refrain from that action and remove the information.

(h) A request to refrain and remove information pursuant to subsection (f) or (g) of this section shall be made in writing to the person, business, or association that disclosed, redisclosed, or otherwise made available the information.

(1) Upon receipt of a written request to refrain and remove information, the person, business, or association that disclosed, redisclosed, or otherwise made available the information shall immediately remove the information from any location where the information has been disclosed which is within the control of the person, business, or association.

(2) A civil action may be maintained by the individual whose information is disclosed, redisclosed, or otherwise made available for failure to comply with a request to refrain and remove the information made pursuant to subdivision (1) of this subsection, and the court may award injunctive or declaratory relief. If the court grants injunctive or declaratory relief, the person, business, or association responsible for the violation shall be required to pay reasonable attorney's fees and other litigation costs reasonably incurred by the judicial officer, prosecutor, federal or state public defender, federal or state assistant public defender, law-enforcement officer, or immediate family member thereof, as applicable and appropriate.

(3) A person who willfully refuses to remove information within 24 hours of receipt of the written request pursuant to subdivision (1), subsection (h) of this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more

than $1,000, or confined for up to six months, or both fined and confined.

(i) This section does not prohibit disclosures required by state or federal law.

CHAPTER 209

(Com. Sub. for S. B. 613 - By Senators Weld, Lindsay, Woodrum, Baldwin, and Stollings)

[Passed April 9, 2021; to take effect July 1, 2021]
[Approved by the Governor on April 26, 2021.]

AN ACT to amend and reenact §15-2-5 and §15-2-7 of the Code of West Virginia, 1931, as amended, all relating to adding the classification and base salaries of certain civilian employees of the West Virginia State Police Forensic Laboratory as Evidence Custodians I-IV, Forensic Technicians I-III, Forensic Scientists I-VI, and Forensic Scientist Supervisors I-IV; providing for promotion based upon the Forensic Lab Career Progression System; directing that a written manual be provided to individuals within the forensic laboratory governing certain established systems and that specific procedures must be identified for the evaluation of promotion or reclassification of those individuals; and providing for the inclusion of these civilian employees in longevity salary increase provisions.

Be it enacted by the Legislature of West Virginia:

ARTICLE 2. WEST VIRGINIA POLICE.

§15-2-5. Career progression system state; salaries; exclusion from wage and hour laws, with supplemental payment; bond; leave time for members called to duty in guard or reserves.

(a) The superintendent shall establish within the West Virginia State Police a system to provide for: (1) The promotion of members to the supervisory ranks of sergeant, first sergeant, second lieutenant, and first lieutenant; (2) the classification of

nonsupervisory members within the field operations force to the ranks of trooper, senior trooper, trooper first class, or corporal; and (3) the temporary reclassification of members assigned to administrative duties as administrative support specialist I-VIII. The promotion of individuals in the forensic laboratory shall include the classifications of Evidence Custodians I-IV, Forensic Technicians I-III, Forensic Scientists I-VI, and Forensic Scientist Supervisors I-IV, based on the Forensic Lab Career Progression System.

(b) The superintendent may propose legislative rules for promulgation in accordance with §29A-3-1 *et seq.* of this code for the purpose of ensuring consistency, predictability, and independent review of any system developed under the provisions of this section.

(c) The superintendent shall provide to each member a written manual governing any system established under the provisions of this section and specific procedures shall be identified for the evaluation and testing of members for promotion or reclassification and the subsequent placement of any members on a promotional eligibility or reclassification recommendation list. A written manual shall also be provided to individuals within the forensic laboratory governing any system established under the provisions of this section and specific procedures shall be identified for the evaluation of promotion or reclassification of those individuals.

(d) Beginning on July 1, 2019, members shall receive annual salaries payable at least twice per month as follows:

ANNUAL SALARY SCHEDULE (BASE PAY)

SUPERVISORY AND NONSUPERVISORY RANKS

Cadet During Training .....$ 38,524

Cadet Trooper After Training.....45,784

Trooper Second Year 46,796

Trooper Third Year 47,179

Senior Trooper 47,578

Trooper First Class 48,184

Corporal 48,790

Sergeant 53,091

First Sergeant 55,242

Second Lieutenant 57,392

First Lieutenant 59,543

Captain 61,694

Major 63,844

Lieutenant Colonel 65,995

ANNUAL SALARY SCHEDULE (BASE PAY)

ADMINISTRATION SUPPORT SPECIALIST CLASSIFICATION

I $46,796

II 47,578

III 48,184

IV 48,790

V 53,091

VI 55,242

VII 57,392

VIII 59,543

Beginning on July 1, 2021, designated individuals within the forensic laboratory shall receive annual base salaries payable at least twice per month as follows:

ANNUAL SALARY SCHEDULE (BASE PAY)

EVIDENCE CUSTODIAN

I $35,650

II 37,978

III 41,639

IV 44,666

FORENSIC TECHNICIAN

I $37,850

II 39,544

III 43,426

FORENSIC SCIENTIST

I $45,050

II 47,234

III 49,338

IV 51,737

V 55,263

VI 59,063

FORENSIC SCIENTIST SUPERVISOR

I $61,762

II 65,326

III 69,104

IV 73,108

Each member of the West Virginia State Police whose salary is fixed and specified in this annual salary schedule is entitled to the length of service increases set forth in §15-2-5(e) of this code and supplemental pay as provided in §15-2-5(g) of this code.

(e) Each member of the West Virginia State Police whose salary is fixed and specified pursuant to this section shall receive, and is entitled to, an increase in salary over that set forth in §15-2-5(d) of this code for grade in rank, based on length of service, including that service served before and after the effective date of this section with the West Virginia State Police as follows: Beginning on January 1, 2015, and continuing thereafter, at the end of two years of service with the West Virginia State Police, the member shall receive a salary increase of $500 to be effective during his or her next year of service and a like increase at yearly intervals thereafter, with the increases to be cumulative. The forensic laboratory employees whose salaries are fixed and specified pursuant to this section, shall receive, and are entitled to, an increase in salary over that set forth in §15-2-5(d) of this code, in accordance with §15-2-7(h) of this code.

(f) In applying the salary schedules set forth in this section where salary increases are provided for length of service, members of the West Virginia State Police in service at the time the schedules become effective shall be given credit for prior service and shall be paid the salaries the same length of service entitles them to receive under the provisions of this section.

(g) The Legislature finds and declares that because of the unique duties of members of the West Virginia State Police, it is not appropriate to apply the provisions of state wage and hour laws to them. Accordingly, members of the West Virginia State Police are excluded from the provisions of state wage and hour laws. This express exclusion shall not be construed as any indication that the members were or were not covered by the wage and hour laws prior to this exclusion.

In lieu of any overtime pay they might otherwise have received under the wage and hour laws, and in addition to their salaries and increases for length of service, members who have completed basic

training and who are exempt from federal Fair Labor Standards Act guidelines may receive supplemental pay as provided in this section.

The authority of the superintendent to propose a legislative rule or amendment thereto for promulgation in accordance with §29A-3-1 *et seq.* of this code to establish the number of hours per month which constitute the standard pay period for the members of the West Virginia State Police is hereby continued. The rule shall further establish, on a graduated hourly basis, the criteria for receipt of a portion or all of supplemental payment when hours are worked in excess of the standard pay period. The superintendent shall certify at least twice per month to the West Virginia State Police payroll officer the names of those members who have worked in excess of the standard pay period and the amount of their entitlement to supplemental payment. The supplemental payment may not exceed $200 per pay period. The superintendent and civilian employees of the West Virginia State Police are not eligible for any supplemental payments.

(h) Each member of the West Virginia State Police, except the superintendent and civilian employees, shall execute, before entering upon the discharge of his or her duties, a bond with security in the sum of $5,000 payable to the State of West Virginia, conditioned upon the faithful performance of his or her duties, and the bond shall be approved as to form by the Attorney General and as to sufficiency by the Governor.

(i) In consideration for compensation paid by the West Virginia State Police to its members during those members' participation in the West Virginia State Police Cadet Training Program pursuant to §30-29-8 of this code, the West Virginia State Police may require of its members by written agreement entered into with each of them in advance of such participation in the program that, if a member should voluntarily discontinue employment any time within one year immediately following completion of the training program, he or she shall be obligated to pay to the West Virginia State Police a pro rata portion of such compensation equal to that part of such year which the member has chosen not to remain in the employ of the West Virginia State Police.

(j) Any member of the West Virginia State Police who is called to perform active duty training or inactive duty training in the National Guard or any reserve component of the armed forces of the United States annually shall be granted, upon request, leave time not to exceed 30 calendar days for the purpose of performing the active duty training or inactive duty training and the time granted may not be deducted from any leave accumulated as a member of the West Virginia State Police.

§15-2-7. Cadet selection board; qualifications for and appointment to membership in State Police; civilian employees; forensic laboratory employees; salaries.

(a) The superintendent shall establish within the West Virginia State Police a cadet selection board which shall be representative of commissioned and noncommissioned officers within the State Police.

(b) The superintendent shall appoint a member to the position of trooper from among the top three names on the current list of eligible applicants established by the cadet selection board.

(c) Preference in making appointments shall be given whenever possible to honorably discharged members of the armed forces of the United States and to residents of West Virginia. Each applicant for appointment shall be a person not less than 21 years of age nor more than 39 years of age, of sound constitution and good moral character, and is required to pass any mental and physical examination and meet other requirements as provided in rules promulgated by the cadet selection board: *Provided*, That a former member may, at the discretion of the superintendent, be reenlisted.

(d) No person may be barred from becoming a member of the State Police because of his or her religious or political convictions.

(e) The superintendent shall adhere to the principles of equal employment opportunity set forth in §5-11-1 *et seq.* of this code and shall take positive steps to encourage applications for State Police membership from females and minority groups within the

state. An annual report shall be filed with the Legislature on or before January 1 of each year by the superintendent which includes a summary of the efforts and the effectiveness of those efforts intended to recruit females, African-Americans, and other minorities into the ranks of the State Police.

(f) Except for the superintendent, no person may be appointed or enlisted to membership in the State Police at a grade or rank above the grade of trooper.

(g) The superintendent shall appoint civilian employees as are necessary and all employees may be included in the classified service of the civil service system except those in positions exempt under the provisions of §29-6-1 *et seq.* of this code.

(h) Effective June 30, 2014, West Virginia State Police civilian employees with a minimum of one year service shall receive an annual longevity salary increase equal to $500. The increases in salary provided by this subsection are in addition to any other increases to which the civilian employees might otherwise be entitled.

(i) Effective July 1, 2014, all current West Virginia State Police Forensic Laboratory analysts, directors, and evidence technicians shall receive a one-time, across-the-board salary increase equal to 20 percent of their current salary.

(j) On or before January 1, 2018, the Director of the West Virginia State Police Forensic Laboratory shall submit a report to the Joint Committee on Government and Finance detailing the West Virginia State Police Forensic Laboratory's ability to retain employees.

(k) Effective July 1, 2021, the salaries of West Virginia State Police Forensic Laboratory Evidence Custodians, Forensic Technicians, Forensic Scientists, and Forensic Scientist Supervisors shall be as set forth in the provisions of §15-2-5(d) of this code.

CHAPTER 210

(Com. Sub. for H. B. 2011 - By Delegates Capito, Howell, L. Pack, Reynolds, Clark, Linville, Espinosa and Storch)

[Passed March 16, 2021; in effect from passage.]
[Approved by the Governor on March 24, 2021.]

AN ACT to amend and reenact §29-6-4 of the Code of West Virginia, 1931, as amended, relating to eliminating any time requirements for temporary employees to work during a working year to be exempt from classified service; and exempting temporary employees in state forests, parks, and recreational areas from classified service.

Be it enacted by the Legislature of West Virginia:

ARTICLE 6. CIVIL SERVICE SYSTEM.

§29-6-4. Classified-exempt service; additions to classified service; exemptions.

(a) The classified-exempt service includes all positions included in the classified-exempt service on the effective date of this article.

(b) Except for the period commencing on July 1, 1992, and ending on the first Monday after the second Wednesday of the following January and except for the same periods commencing in the year 1996, and in each fourth year thereafter, the Governor may, by executive order, with the written consent of the State Personnel Board and the appointing authority concerned, add to the list of positions in the classified service, but the additions may not include any positions specifically exempted from coverage as provided in this section.

(c) The following offices and positions are exempt from coverage under the classified service:

(1) All judges, officers, and employees of the judiciary;

(2) All members, officers, and employees of the Legislature;

(3) All officers elected by popular vote and employees of the officer;

(4) All secretaries of departments and employees within the office of a secretary;

(5) Members of boards and commissions and heads of departments appointed by the Governor or heads of departments selected by commissions or boards when expressly exempt by law or board order;

(6) Excluding the policy-making positions in an agency, one principal assistant or deputy and one private secretary for each board or commission or head of a department elected or appointed by the Governor or Legislature;

(7) All policy-making positions;

(8) Patients or inmates employed in state institutions;

(9) Persons employed in a professional or scientific capacity to make or conduct a temporary and special inquiry, investigation, or examination on behalf of the Legislature or a committee thereof, an executive department, or by authority of the Governor;

(10) All employees of the office of the Governor, including all employees assigned to the executive mansion;

(11) Part-time professional personnel engaged in professional services without administrative duties;

(12) Temporary employees;

(13) Members and employees of the board of trustees and board of directors or their successor agencies;

(14) Uniformed personnel of the State Police; and

(15) Temporary employees in the state forests, parks, and recreational areas.

(d) The Legislature finds that the holding of political beliefs and party commitments consistent or compatible with those of the Governor contributes in an essential way to the effective performance of and is an appropriate requirement for occupying certain offices or positions in state government, such as the secretaries of departments and the employees within their offices, the heads of agencies appointed by the Governor and, for each such head of agency, a private secretary and one principal assistant or deputy, all employees of the office of the Governor including all employees assigned to the executive mansion, as well as any persons appointed by the Governor to fill policy-making positions, in that those offices or positions are confidential in character and require their holders to act as advisors to the Governor or the Governor's appointees, to formulate and implement the policies and goals of the Governor or the Governor's appointees, or to help the Governor or the Governor' appointees communicate with and explain their policies and views to the public, the Legislature, and the press.

(e) All county road supervisor positions are covered under the classified service effective July 1, 1999. A person employed as a county road supervisor on the effective date of this section is not required to take or pass a qualifying or competitive examination upon, or as a condition of, becoming a classified service employee. All county road supervisors who become classified service employees pursuant to this subsection who are severed, removed, or terminated in his or her employment must be severed, removed, or terminated as if the person was a classified service employee.

CHAPTER 211

(Com. Sub. for H. B. 2855 - By Delegates Storch, Gearheart, Pethtel, Evans, Anderson, Graves and J. Pack)

(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 §20-18-2, §20-18-8, §20-18-20, §20-18-23, and §20-18-27 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §20-18-37, all relating to the Natural Resources Police Officers Retirement System; defining terms; clarifying concurrent employer contribution rate; clarifying preretirement death benefits; clarifying certain survivor benefits; amending conflicting statutory provisions; and adding a severability clause.

Be it enacted by the Legislature of West Virginia:

ARTICLE 18. WEST VIRGINIA DIVISION OF NATURAL RESOURCES POLICE OFFICER RETIREMENT SYSTEM.

§20-18-2. 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 retire after July 1, 2025, 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 §20-18-13 of this code.

(b) "Accumulated contributions" means the sum of all amounts deducted from the annual compensation of a member or paid on his or her behalf pursuant to §5-10C-1 *et seq.* of this code, either pursuant to §20-18-8(a) 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 normal retirement age.

(i) "Beneficiary" means a natural person who is entitled to, or will be entitled to, an annuity or other benefit payable by the plan.

(j) "Board" means the Consolidated Public Retirement Board created pursuant to §5-10D-1 *et seq.* of this code.

(k) "Covered employment" means either: (1) Employment as a Natural Resources Police Officer and the active performance of the duties required of a Natural Resources Police Officer; (2) the period of time which active duties are not performed but disability benefits are received under §20-18-21 or §20-18-22 of this code; or (3) concurrent employment by a Natural Resources Police Officer in a job or jobs in addition to his or her employment as a Natural Resources Police Officer where the secondary employment requires the Natural Resources Police Officer 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 Natural Resources Police Officer contributes to the fund created in §20-18-7 of this code the amount specified as the Natural Resource Police Officer's contribution in §20-18-8 of this code.

(l) "Credited service" means the sum of a member's years of service, active military duty, disability service, eligible annual and sick leave service.

(m) "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.

(n) "Dependent parent" means the father or mother of the member who was claimed as a dependent by the member for Federal Income Tax purposes at the time of the member's death.

(o) "Director" means Director of the Division of Natural Resources.

(p) "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 §20-18-21 or §20-18-22 of this code.

(q) "Division of Natural Resources" or "division" means the West Virginia Division of Natural Resources.

(r) "Effective date" means January 2, 2021.

(s) "Employer error" means an omission, misrepresentation, or violation of relevant provisions of the West Virginia Code or of the

West Virginia Code of State Rules or the relevant provisions of both the West Virginia Code and of the West Virginia Code of State Rules by the participating public employer that has resulted in an underpayment or overpayment of contributions required. A deliberate act contrary to the provisions of this section by a participating public employer does not constitute employer error.

(t) "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 §20-18-21 or §20-18-22 of this code then "final average salary" means the average of the monthly salary determined paid to the member during that period determined as if the disability first commenced after the effective date of this article with monthly compensation equal to that average monthly compensation which the member was receiving in the plan year prior to the initial disability multiplied by 12.

(u) "Fund" means the West Virginia Natural Resources Police Officer Retirement Fund created pursuant to §20-18-7 of this code.

(v) "Hour of service" means:

(1) Each hour for which a member is paid;

(2) Each hour for which a member is paid 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 §20-18-21 or §20-18-22 of this code; and

(3) Each hour for which back pay is either awarded or agreed to be paid by the Division of Natural Resources, irrespective of mitigation of damages. The same hours of service may not be credited both under this subdivision and subdivision (1) or (2) of this subsection. 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.

(w) "Member" means a person first hired as a Natural Resources Police Officer, as defined in subsection (y) of this section, on or after January 2, 2021, or a Natural Resources Police Officer first hired prior to the effective date and who elects to become a member pursuant to §20-18-6 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 §20-18-6 of this code.

(x) "Monthly salary" means the portion of a member's gross annual compensation which is paid to him or her per month.

(y) "Natural Resources Police Officer" means any person regularly employed in the service of the division as a law-enforcement officer on or after the effective date of this article, and who is eligible to participate in the fund. The term shall not include Emergency Natural Resources Police Officers as defined in §20-7-1(c) of this code, Special Natural Resources Police Officers as defined in §20-7-1(d) of this code, Forestry Special Natural Resources Police Officers as defined in §20-7-1(e) of this code, or Federal Law Enforcement Officer as defined in §20-7-1b of this code.

(z) "Normal form" means a monthly annuity which is 1/12 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 or beneficiaries shall receive in one lump sum the difference between the accumulated contributions at the annuity starting date and the total of the retirement income payments made to the member.

(aa) "Normal retirement age" means the first to occur of the following: (1) Attainment of age 55 years and the completion of 15 or more years of service; (2) while still in covered employment, attainment of at least age 55 years, and when the sum of current age plus years of service equals or exceeds 70 years; or (3) attainment of at least age 62 years, and completion of 10 years of service: *Provided*, That any member shall in qualifying for retirement pursuant to this article have 10 or more years of service, all of which years shall be actual, contributory ones.

(bb) "Partially disabled" means a member's inability to engage in the duties of a Natural Resources Police Officer by reason of any medically determinable physical or mental impairment that can be expected to result in death or that has lasted or can be expected to last for a continuous period of not less than 12 months. A member may be determined partially disabled for the purposes of this article and maintain the ability to engage in other gainful employment which exists within the state but which ability would not enable him or her to earn an amount at least equal to two thirds of the average annual compensation earned by all active members of this plan during the plan year ending as of the most recent June 30, as of which plan data has been assembled and used for the actuarial valuation of the plan.

(cc) "Plan" means the West Virginia Natural Resources Police Officers Retirement System established by this article.

(dd) "Plan year" means the 12-month period commencing on July 1 of any designated year and ending the following June 30.

(ee) "Public Employees Retirement System" means the West Virginia Public Employees Retirement System created by §5-10-1 *et seq.* of this code.

(ff) "Qualified public safety employee" means any employee of the division who provides police protection, fire-fighting services, or emergency medical services for any area within the jurisdiction of the state or political subdivision, or such other meaning given to the term by Section 72(t)(10)(B) of the Internal

Revenue Code or by Treasury Regulation §1.401(a)-1(b)(2)(v) as they may be amended from time to time.

(gg) "Regular interest" means the rate or rates of interest per annum, compounded annually, as the board adopts in accordance with the provisions of this article.

(hh) "Required beginning date" means April 1 of the calendar year following the later of: (i) The calendar year in which the member attains age 72; or (ii) the calendar year in which he or she retires or otherwise separates from covered employment.

(ii) "Retirant" means any member who commences an annuity payable by the retirement system.

(jj) "Retire" or "retirement" means a member's termination 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) "Substantial gainful employment" or "gainful employment" means employment in which an individual may earn up to an amount that is determined by the United States Social Security Administration as substantial gainful activity and still receive total disability benefits.

(nn) "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.

(oo) "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 Natural Resources Police Officer 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.

(pp) "Year of service." A member shall, except in his or her first and last years of covered employment, or within the plan year of the effective date, 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 or within the plan year of the effective date, the member shall be credited with 1/12 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

§20-18-21 or §20-18-22 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 §20-18-20 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 §20-18-20 of this code or had prior to the effective date made the repayment pursuant to §5-10-18 of this code.

§20-18-8. Members' contributions; employer contributions.

(a) There shall be deducted from the monthly salary of each member and paid into the fund an amount equal to nine and one-half percent of his or her monthly salary.

(b) An additional 12 percent of the monthly salary of each member shall be paid to the fund by the employer.

(c) If the board finds that the benefits provided by this article can be actuarially funded with a lesser contribution, then the board shall reduce the required member or employer contributions or both. The sums withheld each pay date shall be paid to the fund no later than 15 days following the end of the pay date.

(d) Any active member who has concurrent employment in an additional job or jobs and the additional employment requires the Natural Resources Police Officer 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 shall make an additional contribution to the fund of nine and one-half percent of his or her monthly salary earned from any additional employment which requires the Natural Resources Police Officer 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. An additional employer contribution shall be paid to the fund by the concurrent employer for which the member is employed in an amount equal to 12 percent of his or her monthly salary. If the board finds that the benefits provided by this article

can be funded with a lesser contribution, then the board shall reduce the required member, or employer contributions or both. The sums withheld each calendar month shall be paid to the fund no later than 15 days following the end of the calendar month.

§20-18-20. 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. 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 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 Natural Resources Police Officer, 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 Natural Resources Police Officer'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 §20-18-6(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 non-Natural Resources Police Officer service which were withdrawn from the Public Employees Retirement System plan prior to his or her elective transfer into this plan.

(d) Any member of this plan who: (1) Was employed as a Natural Resource Police Officer prior to the effective date of this article; and (2) was not employed as a Natural Resource Police Officer on the effective date of this article; and (3) thereafter becomes reemployed in covered employment, may not receive any credited service for any previously withdrawn 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 Natural Resources Police Officer, 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 for his or her former service in covered employment as if no refund had been made. The repayment required by this subsection shall be made in a lump sum within 60 months of the Natural Resource Police Officers reemployment in covered employment.

(e) In the event a member dies from any cause other than those specified in §20-18-25 of this code and does not have ten 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) Every member who completes 120 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.

(g) 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.

§20-18-23. Awards and benefits for disability — Physical examinations; termination of disability.

(a) The board may require any member who has applied for or any retirant who is receiving disability benefits under this article to submit to a physical examination, mental examination or both, by a physician or physicians selected or approved by the board and may cause all costs incident to the examination and approved by the board to be paid from the fund. The costs may include hospital, laboratory, X ray, medical, and physicians' fees. A report of the findings of any physician shall be submitted in writing to the board for its consideration. If, from the report, independent information, or from the report and any hearing on the report, the board is of the opinion and finds that: (1) The member has become reemployed as a law-enforcement officer; (2) two physicians who have examined the member have found that considering the opportunities for law enforcement in West Virginia, the member could be so employed as a Natural Resources Police Officer; or (3) other facts exist to demonstrate that the member is no longer totally disabled or partially disabled as the case may be, then the disability benefits shall cease. If the member was totally disabled and is found to have recovered, the board shall determine whether the member continues to be partially disabled. If the board finds that the member is no longer totally disabled but is partially disabled, then the member shall continue to receive partial disability benefits in accordance with this article. Benefits shall cease once the member has been found to be no longer either totally or partially disabled: *Provided,* That the board shall require recertification for each partial or total disability at regular intervals.

(b) If from the report, or from the report and hearing on the report, the board is of the opinion and finds that the disabled retirant has recovered from the disability to the extent that he or she is able to perform adequately the duties of a law-enforcement officer, the board shall within five working days provide written notice of the finding to the Director of the Division of Natural

Resources, who shall reinstate the retirant to active duty as a member of the department at his or her rank or classification and assigned to his or her area of assignment prior to the disability retirement within 45 days of the finding, unless the retirant declines to be reinstated.

(c) A disability retirant who is returned to active duty as a Natural Resources Police Officer for the West Virginia Division of Natural Resources shall again become a member of the retirement system in which he or she was enrolled and the retirant's credited service shall be restored.

(d) If a retirant refuses to submit to a medical examination or submit a statement by his or her physician certifying continued disability in any period, his or her disability annuity may be discontinued by the board until the retirant complies. If the refusal continues for one year, all the retirant's rights in and to the annuity may be revoked by the board.

§20-18-27. Additional death benefits and scholarships - Dependent children.

(a) In addition to the spouse death benefits in §20-18-25 and §20-18-26 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 §20-18-25 or §20-18-26 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 §20-18-25 or §20-18-26 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.

§20-18-37. 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 212

(H. B. 3191 - By Delegates Boggs, Storch, Pethtel, Householder, Westfall and Hott)

[Passed April 7, 2021; in effect ninety days from passage.]
[Approved by the Governor on April 21, 2021.]

AN ACT to amend and reenact §5-10-19 of the Code of West Virginia, 1931, as amended; and to amend and reenact §18-7A-13a of said code, all relating to requiring employers to send certain notifications when retirants are hired as temporary, part-time employees.

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 10. WEST VIRGINIA PUBLIC EMPLOYEES RETIREMENT ACT.

§5-10-19. Employers to file information as to employees' service.

(a) Each participating public employer shall file with the board of trustees, in such form as the board shall from time to time prescribe, a detailed statement of all service rendered to participating public employers by each of its employees and by any retirant who retired under section twenty-two-c of this article and who is working for the employer on a contract basis, as defined in section twenty-two-c of this article, and such other information as the board shall require in the operation of the retirement system.

(b) Prior to any retirant subsequently becoming employed on a temporary full-time or temporary part-time basis by a participating public employer, the employer shall notify the board and the retirant, in writing, if and when the retirant's potential temporary employment will negatively impact the retirant's retired status or benefits. Upon the retirant's acceptance of either temporary full-time or temporary part-time employment, the employer shall notify the board, in writing, of the retirant's subsequent employment.

CHAPTER 18. EDUCATION.

ARTICLE 7A. STATE TEACHERS RETIREMENT SYSTEM.

§18-7A-13a. Resumption of service by retired teachers.

(a) For the purpose of this section, reemployment of a former or retired teacher as a teacher shall in no way impair the teacher's eligibility for a prior service pension or any other benefit provided by this article.

(b) Retired teachers who qualified for an annuity because of age or service may not receive prior service allowance from the retirement board when employed as a teacher and when regularly employed by the State of West Virginia. The payment of the allowance shall be discontinued on the first day of the month within which such employment begins and shall be resumed on the first day of the month succeeding the month within which such employment ceases. The annuity paid the teacher on first retirement resulting from the Teachers' Accumulation Fund and the Employers' Accumulation Fund shall continue throughout the governmental service and thereafter according to the option selected by the teacher upon first retirement.

(c) Retired teachers who qualified for an annuity because of disability shall receive no further retirement payments if the retirement board finds that the disability of the teacher no longer exists; payment shall be discontinued on the first day of the month within which the finding is made. If the retired teacher returns to service as a teacher, he or she shall contribute to the Teachers' Accumulation Fund as a member of the system. His or her prior

service eligibility, if any, shall not be impaired because of his or her disability retirement. His or her accumulated contributions which were transferred to the benefit fund upon his or her retirement shall be returned to his or her individual account in the Teachers' Accumulation Fund, minus retirement payments received which were not supported by such contributions and interest. Upon subsequent retirement, he or she shall receive credit for all of his or her contributory experience, anything to the contrary in this article notwithstanding.

(d) Notwithstanding any provision of this code to the contrary, a person who retires under the system provided by this article may subsequently become employed on either a full-time basis, part-time basis or contract basis by any institution of higher education without any loss of retirement annuity or retirement benefits if the person's retirement commences between the effective date of the enactment of this section in 2002 and December 31, 2002: *Provided,* That the person shall not be eligible to participate in any other state retirement system provided by this code.

(e) The retirement board is herewith authorized to require of the retired teachers and their employers such reports as it deems necessary to effectuate the provisions of this section.

(f) Prior to any retirant subsequently becoming employed on a substitute or temporary basis which if full-time would qualify the retirant as a teacher member or a nonteaching member, the employer shall notify the retirement board and the retirant, in writing, if and when the retirant's potential substitute or temporary employment will negatively impact the retirant's retired status or benefits. Upon the retirant's acceptance of either substitute or temporary employment, the employer shall notify the retirement board, in writing, of the retirant's subsequent employment.

CHAPTER 213

(Com. Sub. for S. B. 12 - By Senators Maroney, Takubo, and Swope)

[Passed March 4, 2021; in effect 90 days from passage (June 2, 2021)]
[Approved by the Governor on March 16, 2021.]

AN ACT to amend and reenact §16-2-2, §16-2-9, and §16-2-11 of the Code of West Virginia, 1931, as amended, all relating to local health departments; defining terms; permitting an appointing entity to remove a board member; creating an appeal process for adverse determinations; requiring rules by a local board of health to be published; requiring rules to be approved, disapproved or amended and approved by an appointing entity; providing that a rule currently in effect is not subject to approval, unless amended; providing an emergency rule process; requiring that an approved rule shall be filed with the appropriate entity; clarifying that a rule is only effective in the jurisdiction where the appointing entity grants approval; requiring rules shall be kept as public records; establishing an emergency health rule process; and permitting the state health officer to develop policies that each of the local departments must comply with when a statewide public health emergency is declared.

Be it enacted by the Legislature of West Virginia:

ARTICLE 2. LOCAL BOARDS OF HEALTH.

§16-2-2. Definitions.

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

"Appointing authority" means the county commission or municipality, or combination thereof, that authorized the creation or combination of the local board of health, in whatever form it presently exists;

"Basic public health services" means those services that are necessary to protect the health of the public and that a local board of health must provide. The three areas of basic public health services are communicable and reportable disease prevention and control, community health promotion, and environmental health protection;

"Bureau" means the Bureau for Public Health in the Department of Health and Human Resources;

"Clinical and categorical programs" means those services provided to individuals of specified populations and usually focus on health promotion or disease prevention. These services are not considered comprehensive health care but focus on specific health issues such as breast and cervical cancer, prenatal and pediatric health services, and home health services;

"Combined local board of health" is one form of organization for a local board of health and means a board of health serving any two or more counties or any county or counties and one or more municipalities within or partially within the county or counties;

"Commissioner" means the Commissioner of the Bureau for Public Health, who is the state health officer;

"Communicable and reportable disease prevention and control" is one of three areas of basic public health services each local board of health must offer. Services shall include disease surveillance, case investigation and follow-up, outbreak investigation, response to epidemics, and prevention and control of rabies, sexually transmitted diseases, vaccine preventable diseases, HIV/AIDS, tuberculosis, and other communicable and reportable diseases;

"Community health promotion" is one of three areas of basic public health services each local board of health must offer.

Services shall include assessing and reporting community health needs to improve health status, facilitating community partnerships including identifying the community's priority health needs, mobilization of a community around identified priorities, and monitoring the progress of community health education services;

"County board of health" is one form of organization for a local board of health and means a local board of health serving a single county;

"Department" means the West Virginia Department of Health and Human Resources;

"Director" or "director of health" means the state health officer. Administratively within the department, the Bureau for Public Health through its commissioner carries out the public health function of the department, unless otherwise assigned by the secretary;

"Environmental health protection" is one of three areas of basic public health services each local board of health must offer. Services shall include efforts to protect the community from environmental health risks including, inspection of housing, institutions, recreational facilities, sewage, and wastewater facilities; inspection and sampling of drinking water facilities; and response to disease outbreaks or disasters;

"Enhanced public health services" means services that focus on health promotion activities to address a major health problem in a community, are targeted to a particular population and assist individuals in this population to access the health care system, such as lead and radon abatement for indoor air quality and positive pregnancy tracking. Enhanced public health services are services a local health department may offer;

"Local board of health", "local board", or "board" means a board of health serving one or more counties or one or more municipalities or a combination thereof;

"Local health department" means the staff of the local board of health;

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

"Municipal board of health" is one form of organization for a local board of health and means a board of health serving a single municipality;

"Performance-based standards" means generally accepted, objective standards such as rules or guidelines against which a local health department's level of performance can be measured;

"Primary care services" means health care services, including medical care, that emphasize first contact patient care and assume overall and ongoing responsibility for the patient in health maintenance and treatment of disease. Primary care services are services that local boards of health may offer if the board has determined that an unmet need for primary care services exists in its service area. Basic public health services funding may not be used to support these services;

"Program plan" or "plan of operation" means the annual plan for each local board of health that must be submitted to the commissioner for approval;

"Secretary" means the Secretary of the Department of Health and Human Resources; and

"Service area" means the territorial jurisdiction of the local board of health.

§16-2-9. Local board of health; terms of appointment; reappointment; oath of office; vacancies; removal; compensation; expenses.

(a) The term of office for members selected and appointed to a local board of health pursuant to the provisions of this article is five years. Members may serve until their duly qualified successors are selected and appointed by vote of the original appointing authority.

Members may be reappointed for additional terms of five years. Board members' oaths of office shall be duly recorded before entering into or discharging any duties of the office.

(b) Any vacancy on any local board of health shall be filled by appointment of the original appointing authority. This appointment is for the unexpired term.

(c) A local board, or the appointing authority, of health may remove any of its members pursuant to the provisions of its lawfully adopted bylaws and shall remove any of its members for official misconduct, incompetence, neglect of duty, or the revocation of any state professional license or certification. With respect to a combined board, a county commission or appointing authority may remove any of its appointed members pursuant to the provisions of its lawfully adopted bylaws and shall remove any of its appointed members for official misconduct, incompetence, neglect of duty, or the revocation of any state professional license or certification. A local board of health, or any of its members may be removed by the state health officer for failure or refusal to comply with duties as set forth by statute or rule. Upon removal, a successor or successors to the member or members removed shall immediately be appointed by the original appointing body pursuant to the provisions of this article.

(d) Each member of a local board of health may receive compensation as determined by the local board for attending meetings of and other activities for the board as required by law: *Provided,* That this compensation may not exceed $100 per day. Each member of a local board may be reimbursed for all reasonable and necessary travel and other expenses actually incurred by the member in the performance of duties as a member of the local board.

§16-2-11. Local board of health; powers and duties.

(a) Each local board of health created, established, and operated pursuant to the provisions of this article shall:

(1) Provide the following basic public health services and programs in accordance with state public health performance-based standards:

(i) Community health promotion including assessing and reporting community health needs to improve health status, facilitating community partnerships including identifying the community's priority health needs, mobilization of a community around identified priorities and monitoring the progress of community health education services;

(ii) Environmental health protection including the promoting and maintaining of clean and safe air, water, food, and facilities, and the administering of public health laws as specified by the commissioner as to general sanitation, the sanitation of public drinking water, sewage and wastewater, food and milk, and the sanitation of housing, institutions, and recreation; and

(iii) Communicable or reportable disease prevention and control including disease surveillance, case investigation and follow-up, outbreak investigation, response to epidemics, and prevention and control of rabies, sexually transmitted diseases, vaccine preventable diseases, HIV/AIDS, tuberculosis, and other communicable and reportable diseases;

(2) Appoint a local health officer to serve at the will and pleasure of the local board of health with approval of the commissioner;

(3) Submit a general plan of operation to the commissioner for approval, if it receives any state or federal money for health purposes. This program plan shall be submitted annually and comply with provisions of the local board of health standards administrative rule;

(4) Provide equipment and facilities for the local health department that are in compliance with federal and state law;

(5) Permit the commissioner to act by and through it, as needed. The commissioner may enforce all public health laws of this state, the rules and orders of the secretary, any county commission orders

or municipal ordinances of the board's service area relating to public health, and the rules and orders of the local board within the service area of a local board. The commissioner may enforce these laws, rules, and orders when, in the opinion of the commissioner, a public health emergency exists or when the local board fails or refuses to enforce public health laws and rules necessary to prevent and control the spread of a communicable or reportable disease dangerous to the public health. The expenses incurred shall be charged against the counties or municipalities concerned;

(6) Deposit all moneys and collected fees into an account designated for local board of health purposes. The moneys for a municipal board of health shall be deposited with the municipal treasury in the service area. The moneys for a county board of health shall be deposited with the county treasury in the service area. The moneys for a combined local board of health shall be deposited in an account as designated in the plan of combination*: Provided,* That nothing contained in this subsection is intended to conflict with the provisions of §16-1-1 *et seq.* of this code;

(7) Submit vouchers or other instruments approved by the board and signed by the local health officer or designated representative to the county or municipal treasurer for payment of necessary and reasonable expenditures from the county or municipal public health funds: *Provided,* That a combined local board of health shall draw upon its public health funds account in the manner designated in the plan of combination;

(8) Participate in audits, be in compliance with tax procedures required by the state and annually develop a budget for the next fiscal year;

(9) Perform public health duties assigned by order of a county commission or by municipal ordinance consistent with state public health laws; and

(10) Enforce the public health laws of this state and any other laws of this state applicable to the local board.

(b) Each local board of health created, established, and operated pursuant to the provisions of this article may:

(1) Provide primary care services, clinical and categorical programs, and enhanced public health services;

(2) Employ or contract with any technical, administrative, clerical, or other persons, to serve as needed and at the will and pleasure of the local board of health. Staff and any contractors providing services to the board shall comply with applicable West Virginia certification and licensure requirements. Eligible staff employed by the board shall be covered by the rules of the Division of Personnel under §29-10-6 of this code. However, any local board of health may, in the alternative and with the consent and approval of the appointing authority, establish and adopt a merit system for its eligible employees. The merit system may be similar to the state merit system and may be established by the local board by its order, subject to the approval of the appointing authority, adopting and making applicable to the local health department all, or any portion of any order, rule, standard, or compensation rate in effect in the state merit system as may be desired and as is properly applicable;

(3) (A) Adopt and promulgate and from time to time amend rules consistent with state public health laws and the rules of the West Virginia State Department of Health and Human Resources, that are necessary and proper for the protection of the general health of the service area and the prevention of the introduction, propagation, and spread of disease.

(B) The commissioner shall establish a procedure by which adverse determinations by local health departments may be appealed, unless otherwise provided for, for the purpose of ensuring a consistent interpretation of state public health laws and rules of the Department of Health and Human Resources.

(C) When rules are adopted, promulgated, or amended, the local board of health shall place notice in the State Register and on their organization's web page setting forth a notice of proposed

action, including the text of the new rule or the amendment and the date, time, and place for receipt of public comment.

(D) All rules shall be approved, disapproved, or amended and approved by the county commission or appointing entity within 30 days of approval from the local board of health.

(E) All rules of a combined local board of health shall be approved, disapproved, or amended and approved by each appointing entity within 30 days of approval from the combined local board of health. If one appointing entity approves and another other does not approve a rule from a combined local board health department, the rule is only in effect in the jurisdiction of the appointing entity which approved the rule.

(F) An approved rule shall be filed with the clerk of the county commission or the clerk or the recorder of the municipality, or both, and shall be kept by the clerk or recording officer in a separate book as public records.

(G) A rule currently in effect is not subject to approval, unless amended, from the county commission or appointing authority.

(H) If there is an imminent public health emergency, approval of the county commission or appointing authority is not necessary before the rule goes into effect but shall be approved or disapproved by the county commission or appointing authority within 30 days after the rules are effective;

(4) Accept, receive, and receipt for money or property from any federal, state, or local governmental agency, from any other public source or from any private source, to be used for public health purposes or for the establishment or construction of public health facilities;

(5) Assess, charge, and collect fees for permits and licenses for the provision of public health services: *Provided,* That permits and licenses required for agricultural activities may not be assessed, charged, or collected: *Provided, however,* That a local board of health may assess, charge, and collect all of the expenses of inspection of the physical plant and facilities of any distributor,

producer, or pasteurizer of milk whose milk distribution, production, or pasteurization facilities are located outside this state but who sells or distributes in the state, or transports, causes or permits to be transported into this state, milk or milk products for resale, use or consumption in the state and in the service area of the local board of health. A local board of health may not assess, charge, and collect the expenses of inspection if the physical plant and facilities are regularly inspected by another agency of this state or its governmental subdivisions or by an agency of another state or its governmental subdivisions certified as an approved inspection agency by the commissioner. No more than one local board of health may act as the regular inspection agency of the physical plant and facilities; when two or more include an inspection of the physical plant and facilities in a regular schedule, the commissioner shall designate one as the regular inspection agency;

(6) Assess, charge, and collect fees for services provided by the local health department: *Provided,* That fees for services shall be submitted to and approved by the commissioner: *Provided, however,* That a local health department may bill health care service fees to a payor which includes, but is not limited to, Medicaid, a Medicaid Managed Care Organization, and the Public Employees Insurance Agency for medical services provided: *Provided further,* That health care service fees billed by a local health department are not subject to commissioner approval and may be at the payor's maximum allowable rate;

(7) Contract for payment with any municipality, county, or board of education, for the provision of local health services or for the use of public health facilities. Any contract shall be in writing and permit provision of services or use of facilities for a period not to exceed one fiscal year. The written contract may include provisions for annual renewal by agreement of the parties; and

(8) Retain and make available child safety car seats, collect rental and security deposit fees for the expenses of retaining and making available child safety car seats, and conduct public education activities concerning the use and preventing the misuse of child safety car seats: *Provided,* That this subsection is not

intended to conflict with the provisions of §17C-15-46 of this code: *Provided, however,* That any local board of health offering a child safety car seat program or employee or agent of a local board of health is immune from civil or criminal liability in any action relating to the improper use, malfunction, or inadequate maintenance of the child safety car seat and in any action relating to the improper placement, maintenance, or securing of a child in a child safety car seat.

(c) The local boards of health are charged with protecting the health and safety, as well as promoting the interests of the citizens of West Virginia. All state funds appropriated by the Legislature for the benefit of local boards of health shall be used for provision of basic public health services.

(d) If the Governor declares a statewide public health emergency, the state health officer may develop emergency policies and guidelines that each of the local health departments responding to the emergency must comply with in response to the public health emergency.

CHAPTER 214

(S. B. 67 - By Senators Sypolt, Stollings, Maroney, and Rucker)

[Passed March 26, 2021; in effect from passage]
[Approved by the Governor on April 7, 2021.]

AN ACT to amend and reenact §16-4C-5 of the Code of West Virginia, 1931, as amended, relating to the authority of the Emergency Medical Services Advisory Council in reviewing rules proposed by the Commissioner of the Bureau for Public Health under the Emergency Medical Services Act.

Be it enacted by the Legislature of West Virginia:

ARTICLE 4C. EMERGENCY MEDICAL SERVICES ACT.

§16-4C-5. Emergency Medical Services Advisory Council; duties; composition; appointment; meetings; compensation and expenses.

(a) The Emergency Medical Services Advisory Council, created and established by former §16-4C-7 of this code, is continued for the purpose of developing, with the commissioner, standards for emergency medical services personnel and for the purpose of providing advice to the Office of Emergency Medical Services and the commissioner with respect to reviewing and making recommendations for, and providing assistance to, the establishment and maintenance of adequate emergency medical services for all portions of this state.

(b) The council shall advise the commissioner in all matters pertaining to his or her duties and functions in relation to carrying out the purposes of this article.

(c) The council shall review any rule proposed by the commissioner for legislative approval as provided for in §16-4C-6(a) of this code. After reviewing the legislative rule, the Emergency Medical Services Advisory Council shall 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.

(d) The council shall be composed of 18 members appointed by the Governor by and with the advice and consent of the Senate. The Mountain State Emergency Medical Services Association shall submit to the Governor a list of six names of representatives from its association and a list of three names shall be submitted to the Governor of representatives of their respective organizations by the County Commissioners' Association of West Virginia, the West Virginia State Firemen's Association, the West Virginia Hospital Association, the West Virginia Chapter of the American College of Emergency Physicians, the West Virginia Emergency Medical Services Administrators Association, the West Virginia Emergency Medical Services Coalition, the Ambulance Association of West Virginia, and the State Department of Education. The Governor shall appoint, from the respective lists submitted, two persons who represent the Mountain State Emergency Medical Services Association, one of whom shall be a paramedic and one of whom shall be an emergency medical technician-basic; and one person from the County Commissioners' Association of West Virginia, the West Virginia State Firemen's Association, the West Virginia Hospital Association, the West Virginia Chapter of the American College of Emergency Physicians, the West Virginia Emergency Medical Services

Administrators Association, the West Virginia Emergency Medical Services Coalition, the Ambulance Association of West Virginia, and the State Department of Education. In addition, the Governor shall appoint the following:

(1) One person to represent emergency medical services providers operating within the state;

(2) One person to represent small emergency medical services providers operating within this state;

(3) One person to represent emergency medical services training officers or representatives;

(4) Two people to represent emergency medical services supervisors or administrators; and

(5) Three people to represent the general public who serve as voting members.

(e) Not more than six of the members may be appointed from any one congressional district.

(f) Each term is to be for three years, and no member may serve more than four consecutive terms.

(g) The council shall choose its own chairperson and meet at the call of the commissioner at least twice a year.

(h) The members of the council shall receive compensation and expense reimbursement in an amount not to exceed the same compensation and expense reimbursement as 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 substantial portion thereof, engaged in the performance of official duties.

CHAPTER 215

(Com. Sub. for S. B. 334 - By Senators Tarr and Grady)

[Passed April 10, 2021; in effect 90 days from passage (July 9, 2021)]
[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 article, designated †§16-63-1, †§16-63-2, †§16-63-3, †§16-63-4, †§16-63-5, †§16-63-6, †§16-63-7, †§16-63-8, †§16-63-9, and †§16-63-10, all relating to syringe services programs; defining terms; providing license application requirements and process; establishing program requirements; providing procedure for revocation or limitation of the syringe services programs; setting forth administrative due process; providing for administrative and judicial appeal; establishing reporting requirements and renewal provisions; providing for rulemaking; providing criminal immunity in certain circumstances; providing civil immunity in certain circumstances; providing for expungement; providing immunity from professional sanction, detainment, arrest, or prosecution in certain circumstances; providing for administrative penalties and allowing Office of Health Facilities Licensure and Certification to seek injunctive relief; requiring a syringe services program to coordinate with health care providers; requiring that a syringe services program that is closing to post notice and provide transition care plan for individuals; requiring the Bureau of Medical Services to amend the state plan; and providing for effective date.

Be it enacted by the Legislature of West Virginia:

†ARTICLE 63. SYRINGE SERVICES PROGRAMS.

†§16-63-1. Definitions.

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†**NOTE:** H. B. 2500 (Chapter 73), which passed prior to this act, also created a new Article 63. Therefore, this has been redesignated as Article 64 for the code.

As used in this article, the term:

"Administrator" means a person having the authority and responsibility for operation of the syringe services program and serves as the contact for communication with the Director of the Harm Reduction Program.

"Applicant" means the entity applying for a license under this article.

"Board of Review" means the board established in §9-2-6(13) of this code.

"Director" means the Director of the Office of Health Facility Licensure and Certification.

"Fixed site" means a building or single location where syringe exchange services are provided.

"Harm reduction program" means a program that provides services intended to lessen the adverse consequences of drug use and protect public health and safety, by providing direct access to or a referral to: Syringe services program; substance use disorder treatment programs; screenings; vaccinations; education about overdose prevention; wound care; opioid antagonist distribution and education; and other medical services.

"HIV" means the etiologic virus of AIDS or Human Immunodeficiency Virus.

"License" means the document issued by the office authorizing the syringe services program to operate.

"Local health department" means a health department operated by local boards of health, created, established, and maintained pursuant to §16-2-1 *et seq.* of this code.

"Location" means a site within the service area of a local health department. A location can be a fixed site or a mobile site.

"Mobile site" means a location accessible by foot or vehicle that is not at a fixed indoor setting.

"Syringe services program" means a community-based program that provides access to sterile syringes, facilitates safe disposal of used syringes, and is part of a harm reduction program.

"Syringe stick injury" means a penetrating wound from a syringe that may result in exposure to blood.

"Syringe stick injury protocol" means policies and procedures to prevent syringe stick injury to syringe exchange staff, including volunteers, community members, and to syringe exchange participants.

"Service area" means the territorial jurisdiction of the syringe services program.

"Sharps waste" means used syringes and lancets.

"Staff" means a person who provides syringe services or harm reduction services on behalf of a program.

"Syringe" means both the needle and syringe used to inject fluids into the body.

†§16-63-2. Application for license to offer a syringe services program.

(a) All new and existing syringe services programs shall obtain a license from the Office for Health Facility Licensure and Certification.

(b) To be eligible for a license, a syringe services program shall:

(1) Submit an application on a form approved and provided by the office director;

(2) Provide the name of the program;

(3) Provide a description of the harm reduction program it is associated with and the harm reduction services provided in accordance with §16-2-3 of this code;

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†**NOTE:** H. B. 2500 (Chapter 73), which passed prior to this act, also created a new Article 63. Therefore, this has been redesignated as Article 64 for the code.

(4) Provide the contact information of the individual designated by the applicant as the administrator of the harm reduction program;

(5) Provide the hours of operation, location, and staffing. The description of hours of operation must include the specific days the syringe services program is open, opening and closing times, and frequency of syringe exchange services. The description of staffing must include number of staff, titles of positions, and descriptions of their functions;

(6) Provide a specific description of the applicant's ability to refer to or facilitate entry into substance use treatment;

(7) Provide a specific description of the applicant's ability to encourage usage of medical care and mental health services as well as social welfare and health promotion;

(8) Pay an application fee in amount not to exceed $500, to be determined by the director by legislative rule; and

(9) Provide a written statement of support from a majority of the members of the county commission and a majority of the members of a governing body of a municipality in which it is located or is proposing to locate.

†§16-63-3. Program requirements.

(a) To be approved for a license, a syringe services program shall be part of a harm reduction program which offers or refers an individual to the following services which shall be documented in the application:

(1) HIV, hepatitis, and sexually transmitted diseases screening;

(2) Vaccinations;

(3) Birth control and long-term birth control;

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†**NOTE:** H. B. 2500 (Chapter 73), which passed prior to this act, also created a new Article 63. Therefore, this has been redesignated as Article 64 for the code.

(4) Behavioral health services;

(5) Overdose prevention supplies and education;

(6) Syringe collection and sharps disposal;

(7) Educational services related to disease transmission;

(8) Assist or refer an individual to a substance use treatment program;

(9) Refer to a health care practitioner or treat medical conditions; and

(10) Programmatic guidelines including a sharps disposal plan, a staff training plan, a data collection and program evaluation plan, and a community relations plan.

(b) A syringe services program:

(1) Shall offer services, at every visit, from a qualified licensed health care provider;

(2) Shall exclude minors from participation in the syringe exchange, but may provide minors with harm reduction services;

(3) Shall ensure a syringe is unique to the syringe services program;

(4) Shall distribute syringes with a goal of a 1:1 model;

(5) May substitute weighing the volume of syringes returned versus dispensed as specified. This substitution is only permissible if it can be done accurately and in the following manner:

(A) The syringes shall be contained in a see-through container; and

(B) A visual inspection of the container shall take place prior to the syringes being weighed;

(6) Shall distribute the syringe directly to the program recipient;

(7) Proof of West Virginia identification upon dispensing of the needles;

(8) Shall train staff on:

(A) The services and eligibility requirements of the program;

(B) The services provided by the program;

(C) The applicant's policies and procedures concerning syringe exchange transactions;

(D) Disposing of infectious waste;

(E) Sharps waste disposal education that ensures familiarity with the state law regulating proper disposal of home-generated sharps waste;

(F) Procedures for obtaining or making referrals;

(G) Opioid antagonist administration;

(H) Cultural diversity and sensitivity to protected classes under state and federal law; and

(I) Completion of attendance logs for participation in mandatory training;

(9) Maintain a program for the public to report syringe litter and shall endeavor to collect all syringe litter in the community.

(c) Each syringe services program shall have a syringe dispensing plan which includes, but is not limited to the following:

(1) Maintaining records of returned syringes by participants for two years;

(2) Preventing syringe stick injuries;

(3) Tracking the number of syringes dispensed;

(4) Tracking the number of syringes collected;

(5) Tracking the number of syringes collected as a result of community reports of syringe litter;

(6) Eliminating direct handling of sharps waste;

(7) Following a syringe stick protocol and plan;

(8) A budget for sharps waste disposal or an explanation if no cost is associated with sharps waste disposal; and

(9) A plan to coordinate with the continuum of care, including the requirements set forth in this section.

(d) If an applicant does not submit all of the documentation required in §16-63-2 of this code, the application shall be denied and returned to the applicant for completion.

(e) If an applicant fails to comply with the program requirements, the application shall be denied and returned to the applicant for completion.

(f) A license is effective for one year.

†§16-63-4. Procedure for revocation or limitation of the syringe services programs.

(a) The director may revoke, suspend, or limit a syringe services program's ability to offer services for the following reasons:

(1) The syringe services program provides false or misleading information to the director;

(2) An inspection indicates the syringe services programs is in violation of the law or legislative rule;

(3) The syringe services program fails to cooperate with the director during a complaint investigation; or

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†**NOTE:** H. B. 2500 (Chapter 73), which passed prior to this act, also created a new Article 63. Therefore, this has been redesignated as Article 64 for the code.

(4) Recission of the letter of approval from a majority of the county commissioners or the governing body of a municipality.

(b) The director shall send written notice to the syringe services program of revocation, suspension, or limitation of its operations. The written notice shall include the following:

(1) Effective date of the revocation, suspension, or limitation;

(2) The basis for the revocation, suspension, or limitation;

(3) The location to which the revocation, suspension, or limitation applies;

(4) The remedial measures the syringe services programs shall take, if any, to consider reinstatement of the program or removal of the limitation; and

(5) Steps to appeal of the decision.

†§16-63-5. Administrative due process.

(a) A syringe services program who disagrees with an administrative decision may, within 30 days after receiving notice of the decision, appeal the decision to the department's board of review.

(b) All pertinent provisions of §29A-5-1 *et seq.* of this code apply to and govern any hearing authorized by this statute.

(c) The filing of a request for a hearing does not stay or supersede enforcement of the final decision of the director. The director may, upon good cause shown, stay such enforcement.

†§16-63-6. Administrative appeals and judicial review.

(a) A syringe services program who disagrees with the final administrative decision may, within 30 days after the date the appellant received notice of the decision of the board of review,

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†**NOTE:** H. B. 2500 (Chapter 73), which passed prior to this act, also created a new Article 63. Therefore, this has been redesignated as Article 64 for the code.

appeal the decision to the Circuit Court of Kanawha County or in the county where the petitioner resides or does business.

(b) The filing of the petition for appeal does not stay or supersede enforcement of the final decision or order of the director. An appellant may apply to the circuit court for a stay of or to supersede the final decision or order for good cause shown.

(c) No circuit court has jurisdiction to consider a decision of the board if the petitioner has failed to file a request for review with the board of review within the time frame set forth in this article.

†§16-63-7. Reporting requirements; renewal; rulemaking.

(a) A syringe services program shall renew its license annually on the anniversary date of license approval.

(b) A syringe services program shall file an annual report with the director. The report shall include:

(1) The total number of persons served;

(2) The total numbers and types of syringes, and syringes dispensed, collected, and disposed of;

(3) The total number of syringe stick injuries to non-participants;

(4) Statistics regarding the number of individuals entering substance use treatment; and

(5) The total and types of referrals made to substance use treatment and other services.

(c) The office shall promulgate and propose rules and regulations under §29A-1-1 *et seq.* of this code to carry out the intent and purposes of this article. Such rules and regulations shall be in accordance with evidence-based practices. The office shall promulgate an emergency rule by July 1, 2021. The emergency rule

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†**NOTE:** H. B. 2500 (Chapter 73), which passed prior to this act, also created a new Article 63. Therefore, this has been redesignated as Article 64 for the code.

shall effectuate the provisions of this article in accordance with evidence-based practices.

†§16-63-8. Immunity.

(a) Notwithstanding any provision of this code to the contrary, an employee, volunteer, or participant of a licensed syringe services program may not be arrested, charged with, or prosecuted for possession of any of the following:

(1) Sterile or used syringes, hypodermic syringes, injection supplies obtained from or returned to a program, or other safer drug use materials obtained from a program established pursuant to this article, including testing supplies for illicit substances.

(2) Residual amounts of a controlled substance contained in a used syringe, used injection supplies obtained from or returned to a program.

(b) A law-enforcement officer who, acting on good faith, arrests or charges a person who is thereafter determined to be entitled to immunity from prosecution under this section is not liable for the arrest or filing of charges.

(c) An individual who is wrongly detained, arrested or prosecuted under this section shall have the public record associated with the detainment, arrest or prosecution expunged.

(d) A health care professional, or an employee or volunteer of a licensed syringe services program is not subject to professional sanction, detainment, arrest, or prosecution for carrying out the provisions of this article.

(e) A business that has syringe litter on its property is immune from civil or criminal liability in any action relating to the needle on its property unless the business owner acted in reckless disregard for the safety of others.

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†**NOTE:** H. B. 2500 (Chapter 73), which passed prior to this act, also created a new Article 63. Therefore, this has been redesignated as Article 64 for the code.

†§16-63-9. Civil penalties and injunctive relief.

(a) The Office of Health Facilities Licensure and Certification may assess an administrative penalty of not less than $500 nor more than $10,000 per violation of this article.

(b) The Office of Health Facilities Licensure and Certification may seek injunctive relief to enforce the provisions of this article.

†§16-63-10. Coordination of care.

(a) A syringe service program shall coordinate with other health care providers in its services to render care to the individuals as set forth in the program requirements.

(b) In the event that the syringe services program is closed, the syringe services program shall notify the participant of the closure of the service, prior to closure, in a conspicuous location, and provide an individual with a transition care plan.

(c) The Bureau for Medical Services shall submit a state plan amendment to permit harm reduction programs to be an eligible provider, except that the syringe exchange services shall not be eligible for reimbursement under the state plan.

(d) Upon passage, any existing provider not offering the full array of harm reduction services as set forth in this section shall cease and desist offering all needle exchange services. Any provider offering the full array of harm reduction services shall have until January 1, 2022, to come into compliance with this section. Any new provider shall have until January 1, 2022, to come into compliance with the provisions of this section.

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†**NOTE:** H. B. 2500 (Chapter 73), which passed prior to this act, also created a new Article 63. Therefore, this has been redesignated as Article 64 for the code.

CHAPTER 216

(Com. Sub. for S. B. 377 - By Senator Takubo)

[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 §16-1-9a of the Code of West Virginia, 1931, as amended, relating to public water systems; providing an extension of the deadline by which a water utility company and public service district must provide boiled water advisories through a text or voice alert mass notification system; and clarifying the advisory may be made by either text or voice alert.

Be it enacted by the Legislature of West Virginia:

ARTICLE 1. STATE PUBLIC HEALTH SYSTEM.

§16-1-9a. Regulation of public water systems.

(a) The commissioner shall regulate public water systems as prescribed in this section.

(b) The commissioner shall establish by legislative rule, in accordance with §29A-3-1 *et seq.* of this code:

(1) The maximum contaminant levels to which all public water systems shall conform in order to prevent adverse effects on the health of individuals;

(2) Treatment techniques that reduce the contaminant or contaminants to a level which will not adversely affect the health of the consumer;

(3) Provisions to protect and prevent contamination of wellheads and well fields used by public water supplies so that

contaminants do not reach a level that would adversely affect the health of the consumer;

(4) Minimum requirements for:

(A) Sampling and testing;

(B) System operation;

(C) Public notification by a public water system on being granted a variance or exemption or upon failure to comply with specific requirements of this section and regulations promulgated under this section;

(D) Recordkeeping;

(E) Laboratory certification; and

(F) Procedures and conditions for granting variances and exemptions to public water systems from state public water systems' regulations;

(5) Requirements covering the production and distribution of bottled drinking water;

(6) Requirements governing the taste, odor, appearance, and other consumer acceptability parameters of drinking water;

(7) Any requirements for a water supply system the commissioner determines is necessary to be equipped with a backflow prevention assembly, all maintenance activities must be documented and provided to the commissioner upon request; and

(8) Any other requirement the commissioner finds necessary to effectuate the provisions of this article.

(c) The commissioner, or his or her authorized representative or designee, may enter any part of a public water system, whether or not the system is in violation of a legal requirement, for the purpose of inspecting, sampling, or testing and shall be furnished records or information reasonably required for a complete inspection.

(d) The commissioner, or his or her authorized representative or designee, may conduct an evaluation necessary to assure the public water system meets federal safe drinking water requirements. The public water system shall provide a written response to the commissioner within 30 days of receipt of the evaluation by the public water system, addressing corrective actions to be taken as a result of the evaluation.

(e)(1) Any individual or entity who violates any provision of this article, or any of the rules or orders issued pursuant to this article, is liable for a civil penalty not less than $1,000 nor more than $5,000. Each day's violation shall constitute a separate offense.

(2) For a willful violation of a provision of this article, or of any of the rules or orders issued under this article, an individual or entity shall be subject to a civil penalty of not more than $10,000 and each day's violation shall be grounds for a separate penalty.

(3) Civil penalties are payable to the commissioner. All moneys collected under this section shall be deposited into a restricted account known as the Safe Drinking Water Fund. All moneys deposited into the fund shall be used by the commissioner to provide technical assistance to public water systems.

(f) The commissioner, or his or her authorized representative or designee, may also seek injunctive relief in the circuit court of the county in which all or part of the public water system is located for threatened or continuing violations.

(g) By July 1, 2020, a public water system supplying water to the public within the state shall immediately, but in no instance later than six hours, report the occurrence and the lifting of each advisory to local departments of health and to local office of emergency management 911 answering point.

(h) By January 1, 2022, a public water system shall make available to interested customers boiled water advisories promptly through a text or a voice alert mass notification system.

CHAPTER 217

(Com. Sub. for S. B. 671 - By Senators Phillips, Plymale, and Roberts)

[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 §16-4C-4 of the Code of West Virginia, 1931, as amended, relating to providing for the appointment of a Director of the Office of Emergency Medical Services; providing qualifications; and requiring that the Office of Emergency Medical Services director be appointed by the Secretary of the Department of Health and Human Resources.

Be it enacted by the Legislature of West Virginia:

ARTICLE 4C. EMERGENCY MEDICAL SERVICES ACT.

§16-4C-4. Office of Emergency Medical Services created; requiring appointment of a Director of the Office of Emergency Medical Services; staffing.

(a) There is hereby created within state government under the Commissioner of the Bureau of Public Health an office to be known as the Office of Emergency Medical Services. A Director of the Office of Emergency Medical Services shall be appointed by the Secretary of the Department of Health and Human Resources to manage the office in a manner consistent with the purposes of this article. The director shall have experience in the delivery and administration of emergency medical services and related pre-hospital care. The director shall serve at the will and pleasure of the secretary and shall not be actively engaged or employed in any other business, vocation, or employment, serving full time as the Director of the Office of Emergency Medical Services.

(b) The commissioner may employ any technical, clerical, stenographic, and other personnel as may be necessary to carry out the purposes of this article. The personnel may be paid from funds appropriated therefor or from other funds as may be made available for carrying out the purposes of this article.

(c) The Office of Emergency Medical Services, as created by former §16-4D-4 of this code, shall continue in existence as the Office of Emergency Medical Services established by this section.

CHAPTER 218

(Com. Sub. for H. B. 2024 - By Delegates Hanshaw (Mr. Speaker) and Skaff)

[By Request of the Executive]

[Passed March 30,2021; in effect from passage.]
[Approved by the Governor on April 9, 2021.]

AN ACT to amend and reenact §5-16-7b of the Code of West Virginia, 1931, as amended; to amend said code by adding thereto a new section, designated §9-5-28; to amend and reenact §30-1-26 of said code; to amend and reenact §30-3-13a of said code; to amend and reenact §30-14-12d of said code; and to amend and reenact §33-57-1 of said code, all relating to telehealth; defining terms; establishing reimbursement for telehealth services at a negotiated rate for virtual telehealth encounters; establishing reimbursement for a telehealth service on the same basis and at the same rate as if the service is provided in-person for established patients or for care rendered on a consulting basis to a patient located in an acute care facility; establishing a registration; permitting health care practitioners licensed in other states to practice in West Virginia using telehealth services; providing emergency rule-making authority; setting forth requirements for registration; permitting a fee for registration; establishing that a registrant is subject to this jurisdiction; placing a cap on the fee; providing for when the physician-patient relationship is established; providing for how a physician-patient relationship is established; removing restrictions on prescriptive authority; providing exceptions to prescriptive authority; adding criteria to the standard of care related to telehealth services; providing exceptions; and providing for effective date.

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 16. WEST VIRGINIA PUBLIC EMPLOYEES INSURANCE ACT.

§5-16-7b. Coverage for telehealth services.

(a) The following terms are defined:

(1) "Distant site" means the telehealth site where the health care practitioner is seeing the patient at a distance or consulting with a patient's health care practitioner.

(2) "Established patient" means a patient who has received professional services, face-to-face, from the physician, qualified health care professional, or another physician or qualified health care professional of the exact same specialty and subspecialty who belongs to the same group practice, within the past three years.

(3) "Health care practitioner" means a person licensed under §30-1-1 *et seq.* of this code who provides health care services.

(4)"Originating site" means the location where the patient is located, whether or not accompanied by a health care practitioner, at the time services are provided by a health care practitioner through telehealth, including, but not limited to, a health care practitioner's office, hospital, critical access hospital, rural health clinic, federally qualified health center, a patient's home, and other nonmedical environments such as school-based health centers, university-based health centers, or the work location of a patient.

(5) "Remote patient monitoring services" means the delivery of home health services using telecommunications technology to enhance the delivery of home health care, including monitoring of clinical patient data such as weight, blood pressure, pulse, pulse oximetry, blood glucose, and other condition-specific data;

medication adherence monitoring; and interactive video conferencing with or without digital image upload.

(6) "Telehealth services" means the use of synchronous or asynchronous telecommunications technology or audio only telephone calls by a health care practitioner to provide health care services, including, but not limited to, assessment, diagnosis, consultation, treatment, and monitoring of a patient; transfer of medical data; patient and professional health-related education; public health services; and health administration. The term does not include e-mail messages, or facsimile transmissions.

(7) "Virtual telehealth" means a new patient or follow-up patient for acute care that does not require chronic management or scheduled medications.

(b) After July 1, 2020, the plan shall provide coverage of health care services provided through telehealth services if those same services are covered through face-to-face consultation by the policy.

(c) After July 1, 2020, the plan may not exclude a service for coverage solely because the service is provided through telehealth services.

(d) The plan, which issues, renews, amends, or adjusts a plan, policy, contract, or agreement on or after July 1, 2021, shall provide reimbursement for a telehealth service at a rate negotiated between the provider and the insurance company for virtual telehealth encounters. The plan, which issues, renews, amends, or adjusts a plan, policy, contract, or agreement on or after July 1, 2021, shall provide reimbursement for a telehealth service for an established patient, or care rendered on a consulting basis to a patient located in an acute care facility whether inpatient or outpatient on the same basis and at the same rate under a contract, plan, agreement, or policy as if the service is provided through an in-person encounter rather than provided via telehealth.

(e) The plan may not impose any annual or lifetime dollar maximum on coverage for telehealth services other than an annual

or lifetime dollar maximum that applies in the aggregate to all items and services covered under the policy, or impose upon any person receiving benefits pursuant to the provisions of or the requirements of this section any copayment, coinsurance, or deductible amounts, or any policy year, calendar year, lifetime, or other durational benefit limitation or maximum for benefits or services, that is not equally imposed upon all terms and services covered under the policy, contract, or plan.

(f) An originating site may charge the plan a site fee.

(g) The coverage required by this section shall include the use of telehealth technologies as it pertains to medically necessary remote patient monitoring services to the full extent that those services are available.

CHAPTER 9. HUMAN SERVICES.

ARTICLE 5. MISCELLANEOUS PROVISIONS.

§9-5-28. Requirement for telehealth rates.

The Medicaid plan, which issues, renews, amends, or adjusts a plan, policy, contract, or agreement on or after July 1, 2021, shall provide reimbursement for a telehealth service at a rate negotiated between the provider and the insurance company for virtual telehealth encounters. The Medicaid plan, which issues, renews, amends, or adjusts a plan, policy, contract, or agreement on or after July 1, 2021, shall provide reimbursement for a telehealth service for an established patient, or care rendered on a consulting basis to a patient located in an acute care facility whether inpatient or outpatient on the same basis and at the same rate under a contract, plan, agreement, or policy as if the service is provided through an in-person encounter rather than provided via telehealth.

CHAPTER 30. PROFESSIONS AND OCCUPATIONS.

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

§30-1-26. Telehealth practice.

(a) For the purposes of this section:

'Established patient' means a patient who has received professional services, face-to-face, from the physician, qualified health care professional, or another physician or qualified health care professional of the exact same specialty and subspecialty who belongs to the same group practice, within the past three years.

"Health care practitioner" means a person authorized to practice under §30-3-1 *et seq.*, §30-3E-1 *et seq.*, §30-4-1 *et seq.*, §30-5-1 *et seq.*, §30-7-1 *et seq.*, §30-7A-1 *et seq.*, §30-8-1 *et seq.*, §30-10-1 *et seq.*, §30-14-1 *et seq.*, §30-16-1 *et seq.*, §30-20-1 *et seq.*, §30-20A-1 *et seq.*, §30-21-1 *et seq.*, §30-23-1 *et seq.*, §30-26-1 *et seq.*, §30-28-1 *et seq.*, §30-30-1 *et seq.*, §30-31-1 *et seq.*, §30-32-1 *et seq.*, §30-34-1 *et seq.*, §30-35-1 *et seq.*, §30-36-1 *et seq.*, §30-37-1 *et seq.* and any other person licensed under this chapter that provides health care services.

"Interstate telehealth services" means the provision of telehealth services to a patient located in West Virginia by a health care practitioner located in any other state or commonwealth of the United States.

"Registration" means an authorization to practice a health profession regulated by §30-1-1 *et seq.* of this code for the limited purpose of providing interstate telehealth services within the registrant's scope of practice.

"Telehealth services" means the use of synchronous or asynchronous telecommunications technology or audio only telephone calls by a health care practitioner to provide health care services, including, but not limited to, assessment, diagnosis, consultation, treatment, and monitoring of a patient; transfer of medical data; patient and professional health-related education; public health services; and health administration. The term does not include internet questionnaires, e-mail messages, or facsimile transmissions.

(b) Unless provided for by statute or legislative rule, a health care board, referred to in §30-1-1 *et seq.* of this code, shall propose an emergency rule for legislative approval in accordance with the provisions of §29A-3-15 *et seq.* of this code to regulate telehealth practice by a telehealth practitioner. The proposed rule shall consist of the following:

(1) The practice of the health care service occurs where the patient is located at the time the telehealth services are provided;

(2) The health care practitioner who practices telehealth shall be:

(A) Licensed in good standing in all states in which he or she is licensed and not currently under investigation or subject to an administrative complaint; and

(B) Registered as an interstate telehealth practitioner with the appropriate board in West Virginia;

(3) When the health care practitioner-patient relationship is established.

(4) The standard of care for the provision of telehealth services. The standard of care shall require that with respect to the established patient, the patient shall visit an in-person health care practitioner within 12 months of using the initial telemedicine service or the telemedicine service shall no longer be available to the patient until an in-person visit is obtained. This requirement may be suspended, in the discretion of the health care practitioner, on a case-by-case basis, and it does not to the following services: acute inpatient care, post-operative follow-up checks, behavioral medicine, addiction medicine, or palliative care.

(5) A prohibition of prescribing any controlled substance listed in Schedule II of the Uniform Controlled Substance Act, unless authorized by another section: *Provided*, That the prescribing limitations contained in this section do not apply to a physician or a member of the same group practice with an established patient.

(6) Establish the conduct of a registrant for which discipline may be imposed by the board of registration.

(7) Establish a fee, not to exceed the amount to be paid by a licensee, to be paid by the interstate telehealth practitioner registered in the state.

(8) A reference to the Board's discipline process.

(c) A registration issued pursuant to the provisions of or the requirements of this section does not authorize a health care professional to practice from a physical location within this state without first obtaining appropriate licensure.

(d) By registering to provide interstate telehealth services to patients in this state, a health care practitioner is subject to:

(1) The laws regarding the profession in this state, including the state judicial system and all professional conduct rules and standards incorporated into the health care practitioner's practice act and the legislative rules of registering board; and

(2) The jurisdiction of the board with which he or she registers to provide interstate telehealth services, including such board's complaint, investigation, and hearing process.

(e) A health care professional who registers to provide interstate telehealth services pursuant to the provisions of or the requirements of this section shall immediately notify the board where he or she is registered in West Virginia and of any restrictions placed on the individual's license to practice in any state or jurisdiction.

(f) A person currently licensed in this state is not subject to registration but shall practice telehealth in accordance with the provisions of this section and the rules promulgated thereunder.

ARTICLE 3. WEST VIRGINIA MEDICAL PRACTICE ACT.

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

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

(1) "Chronic nonmalignant pain" means pain that has persisted after reasonable medical efforts have been made to relieve the pain or cure its cause and that has continued, either continuously or episodically, for longer than three continuous months. "Chronic nonmalignant pain" does not include pain associated with a terminal condition or illness or with a progressive disease that, in the normal course of progression, may reasonably be expected to result in a terminal condition or illness.

(2) "Physician" means a person licensed or registered by the West Virginia Board of Medicine to practice allopathic medicine in West Virginia.

(3) "Store and forward telemedicine" means the asynchronous computer-based communication of medical data or images from an originating location to a physician or podiatrist at another site for the purpose of diagnostic or therapeutic assistance.

(4) "Telemedicine" means the practice of medicine using tools such as electronic communication, information technology, store and forward telecommunication, audio only telephone calls, or other means of interaction between a physician or podiatrist in one location and a patient in another location, with or without an intervening health care provider.

(5) "Telemedicine technologies" means technologies and devices which enable secure communications and information exchange in the practice of telemedicine, and typically involve the application of secure real-time audio/video conferencing or similar secure video services, remote monitoring or store and forward digital image technology, or audio only telephone calls to provide or support health care delivery by replicating the interaction of a traditional in-person encounter between a physician or podiatrist and a patient.

(b) *Licensure or registration*. –

(1) The practice of medicine occurs where the patient is located at the time the telemedicine technologies are used.

(2) A physician or podiatrist who practices telemedicine must be licensed as provided in this article or registered as provided in §30-1-1 *et seq.* of this code.

(3) This section does not apply to:

(A) An informal consultation or second opinion, at the request of a physician or podiatrist who is licensed to practice medicine or podiatry in this state: *Provided,* That the physician or podiatrist requesting the opinion retains authority and responsibility for the patient's care; and

(B) Furnishing of medical assistance by a physician or podiatrist in case of an emergency or disaster, if no charge is made for the medical assistance.

(c) *Physician-patient or podiatrist-patient relationship through telemedicine encounter.* –

(1) A physician-patient or podiatrist-patient relationship may not be established through:

Text-based communications such as e-mail, Internet questionnaires, text-based messaging, or other written forms of communication.

(2) If an existing physician-patient or podiatrist-patient relationship does not exist prior to the utilization to telemedicine technologies, or if services are rendered solely through telemedicine technologies, a physician-patient or podiatrist-patient relationship may only be established:

(A) Through the use of telemedicine technologies which incorporate interactive audio using store and forward technology, real-time videoconferencing, or similar secure video services during the initial physician-patient or podiatrist-patient encounter;

(B) For the practice of pathology and radiology, a physician-patient relationship may be established through store and forward telemedicine or other similar technologies; or

(C) Through the use of audio-only calls or conversations that occur in real time. Patient communication though audio-visual communication is preferable, if available or possible. Audio-only calls or conversations that occur in real time may be used to establish the physician-patient relationship.

(3) Once a physician-patient or podiatrist-patient relationship has been established, either through an in-person encounter or in accordance with subdivision (2) of this subsection, the physician or podiatrist may utilize any telemedicine technology that meets the standard of care and is appropriate for the patient presentation.

(d) *Telemedicine practice*. –

A physician or podiatrist using telemedicine technologies to practice medicine or podiatry shall:

(1) Verify the identity and location of the patient;

(2) Provide the patient with confirmation of the identity and qualifications of the physician or podiatrist;

(3) Provide the patient with the physical location and contact information of the physician;

(4) Establish or maintain a physician-patient or podiatrist-patient relationship that conforms to the standard of care;

(5) Determine whether telemedicine technologies are appropriate for the patient presentation for which the practice of medicine or podiatry is to be rendered;

(6) Obtain from the patient appropriate consent for the use of telemedicine technologies;

(7) Conduct all appropriate evaluations and history of the patient consistent with traditional standards of care for the patient presentation;

(8) Create and maintain health care records for the patient which justify the course of treatment and which verify compliance with the requirements of this section; and

(9) The requirements of §30-3-13(a)(1) through §30-3-13(a)(8) of this code do not apply to the practice of pathology or radiology medicine through store and forward telemedicine.

(e) *Standard of care*. –

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

(f) *Patient records*. –

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

(g) *Prescribing limitations*. –

(1) A physician or podiatrist who practices medicine to a patient solely through the utilization of telemedicine technologies may not prescribe to that patient any controlled substances listed in Schedule II of the Uniform Controlled Substances Act: *Provided*, That the prescribing limitations contained in this section do not apply to a physician or a member of the same group practice with an established patient.

(2) The prescribing limitations in this subsection do not apply when a physician is providing treatment to patients who are minors, or if 18 years of age or older, who are enrolled in a primary or secondary education program and are diagnosed with intellectual or developmental disabilities, neurological disease, Attention Deficit Disorder, Autism, or a traumatic brain injury in accordance with guidelines as set forth by organizations such as the American Psychiatric Association, the American Academy of Child and Adolescent Psychiatry, or the American Academy of Pediatrics. The physician must maintain records supporting the diagnosis and the continued need of treatment.

(3) The prescribing limitations in this subsection do not apply to a hospital, excluding the emergency department, when a physician submits an order to dispense a controlled substance, listed in Schedule II of the Uniform Controlled Substances Act, to a hospital patient for immediate administration in a hospital.

(4) A physician or podiatrist may not prescribe any pain-relieving controlled substance listed in Schedule II of the Uniform Controlled Substance Act as part of a course of treatment for chronic nonmalignant pain solely based upon a telemedicine encounter: *Provided*, That the prescribing limitations contained in this section do not apply to a physician or a member of the same group practice with an established patient.

(5) A physician or health care provider may not prescribe any drug with the intent of causing an abortion. The term "abortion" has the same meaning ascribed to it in §16-2F-2 of this code.

(h) *Exceptions.* –

This article does not prohibit the use of audio-only or text-based communications by a physician or podiatrist who is:

(1) Responding to a call for patients with whom a physician-patient or podiatrist-patient relationship has been established through an in-person encounter by the physician or podiatrist;

(2) Providing cross coverage for a physician or podiatrist who has established a physician-patient or podiatrist-patient relationship with the patient through an in-person encounter; or

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

(i) *Rulemaking*. –

The West Virginia Board of Medicine and West Virginia Board of Osteopathic Medicine may propose joint rules for legislative approval in accordance with §29A-3-1, of this code to implement standards for and limitations upon the utilization of telemedicine technologies in the practice of medicine and podiatry in this state.

(j) *Preserving traditional physician-patient or podiatrist-patient relationship*. –

Nothing in this section changes the rights, duties, privileges, responsibilities, and liabilities incident to the physician-patient or podiatrist-patient relationship, nor is it meant or intended to change in any way the personal character of the physician-patient or podiatrist-patient relationship. This section does not alter the scope of practice of any health care provider or authorize the delivery of health care services in a setting, or in a manner, not otherwise authorized by law.

ARTICLE 14. OSTEOPATHIC PHYSICIANS AND SURGEONS.

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

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

(1) "Chronic nonmalignant pain" means pain that has persisted after reasonable medical efforts have been made to relieve the pain or cure its cause and that has continued, either continuously or episodically, for longer than three continuous months. "Chronic nonmalignant pain" does not include pain associated with a terminal condition or illness or with a progressive disease that, in the normal course of progression, may reasonably be expected to result in a terminal condition or illness.

(2) "Physician" means a person licensed or registered by the West Virginia Board of Osteopathic Medicine to practice osteopathic medicine in West Virginia.

(3) "Store and forward telemedicine" means the asynchronous computer-based communication of medical data or images from an originating location to a physician at another site for the purpose of diagnostic or therapeutic assistance.

(4) "Telemedicine" means the practice of medicine using tools such as electronic communication, information technology, store and forward telecommunication, audio only telephone calls, or other means of interaction between a physician in one location and a patient in another location, with or without an intervening health care provider.

(5) "Telemedicine technologies" means technologies and devices which enable secure communications and information exchange in the practice of telemedicine, and typically involve the application of secure real-time audio/video conferencing or similar secure video services, remote monitoring or store and forward digital image technology, or audio only telephone calls, to provide or support health care delivery by replicating the interaction of a traditional in-person encounter between a physician and a patient.

(b) *Licensure or registration*. –

(1) The practice of medicine occurs where the patient is located at the time the telemedicine technologies are used.

(2) A physician who practices telemedicine must be licensed as provided in this article or registered as provided in §30-1-1 *et seq.* of this code.

(3) This section does not apply to:

(A) An informal consultation or second opinion, at the request of a physician who is licensed to practice medicine in this state: *Provided,* That the physician requesting the opinion retains authority and responsibility for the patient's care; and

(B) Furnishing of medical assistance by a physician in case of an emergency or disaster if no charge is made for the medical assistance.

(c) *Physician-patient relationship through telemedicine encounter.* –

(1) A physician-patient relationship may not be established through:

Text-based communications such as e-mail, Internet questionnaires, text-based messaging, or other written forms of communication.

(2) If an existing physician-patient relationship is not present prior to the utilization to telemedicine technologies, or if services are rendered solely through telemedicine technologies, a physician-patient relationship may only be established:

(A) Through the use of telemedicine technologies which incorporate interactive audio using store and forward technology, real-time videoconferencing, or similar secure video services during the initial physician-patient encounter;

(B) For the practice of pathology and radiology, a physician-patient relationship may be established through store and forward telemedicine or other similar technologies; or

(C) Through the use of audio-only calls or conversations that occur in real time. Patient communication though audio-visual communication is preferable, if available or possible. Audio-only calls or conversations that occur in real time may be used to establish the physician-patient relationship.

(3) Once a physician-patient relationship has been established, either through an in-person encounter or in accordance with subdivision (2) of this subsection, the physician may utilize any telemedicine technology that meets the standard of care and is appropriate for the patient presentation.

(d) *Telemedicine practice*. – A physician using telemedicine technologies to practice medicine shall:

(1) Verify the identity and location of the patient;

(2) Provide the patient with confirmation of the identity and qualifications of the physician;

(3) Provide the patient with the physical location and contact information of the physician;

(4) Establish or maintain a physician-patient relationship which conforms to the standard of care;

(5) Determine whether telemedicine technologies are appropriate for the patient presentation for which the practice of medicine is to be rendered;

(6) Obtain from the patient appropriate consent for the use of telemedicine technologies;

(7) Conduct all appropriate evaluations and history of the patient consistent with traditional standards of care for the patient presentation;

(8) Create and maintain health care records for the patient which justify the course of treatment and which verify compliance with the requirements of this section; and

(9) The requirements of §30-3-13(a)(1) through §30-3-13(a)(8) of this code do not apply to the practice of pathology or radiology medicine through store and forward telemedicine.

(e) *Standard of care*. –

The practice of medicine provided via telemedicine technologies, including the establishment of a physician-patient relationship and issuing a prescription via electronic means as part of a telemedicine encounter, are subject to the same standard of care, professional practice requirements, and scope of practice limitations as traditional in-person physician-patient encounters. Treatment, including issuing a prescription, based solely on an

online questionnaire does not constitute an acceptable standard of care.

(f) *Patient records*. –

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

(g) *Prescribing limitations*. –

(1) A physician or podiatrist who practices medicine to a patient solely through the utilization of telemedicine technologies may not prescribe to that patient any controlled substances listed in Schedule II of the Uniform Controlled Substances Act: *Provided*, That the prescribing limitations contained in this section do not apply to a physician or a member of the same group practice with an established patient.

(2) The prescribing limitations in this subsection do not apply when a physician is providing treatment to patients who are minors, or if 18 years of age or older, who are enrolled in a primary or secondary education program and are diagnosed with intellectual or developmental disabilities, neurological disease, Attention Deficit Disorder, Autism, or a traumatic brain injury in accordance with guidelines as set forth by organizations such as the American Psychiatric Association, the American Academy of Child and Adolescent Psychiatry, or the American Academy of Pediatrics. The physician must maintain records supporting the diagnosis and the continued need of treatment.

(3) The prescribing limitations in this subsection do not apply to a hospital, excluding the emergency department, when a physician submits an order to dispense a controlled substance, listed in Schedule II of the Uniform Controlled Substances Act, to a hospital patient for immediate administration in a hospital.

(4) A physician or podiatrist may not prescribe any pain-relieving controlled substance listed in Schedule II of the Uniform Controlled Substance Act as part of a course of treatment for chronic nonmalignant pain solely based upon a telemedicine encounter: *Provided*, That the prescribing limitations contained in this section do not apply to a physician or a member of the same group practice with an established patient.

(5) A physician or health care provider may not prescribe any drug with the intent of causing an abortion. The term "abortion" has the same meaning ascribed to it in §16-2F-2 of this code.

(h) *Exceptions*. –

This section does not prohibit the use of audio-only or text-based communications by a physician who is:

(1) Responding to a call for patients with whom a physician-patient relationship has been established through an in-person encounter by the physician;

(2) Providing cross coverage for a physician who has established a physician-patient or relationship with the patient through an in-person encounter; or

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

(i) *Rulemaking*. –

The West Virginia Board of Medicine and West Virginia Board of Osteopathic Medicine may propose joint rules for legislative approval in accordance with §29A-3-1, of this code to implement standards for and limitations upon the utilization of telemedicine technologies in the practice of medicine in this state. The West Virginia Board of Medicine and the West Virginia Board of

Osteopathic Medicine may promulgate emergency rules pursuant to the provisions of §29A-3-15 of this code to implement the provisions of the bill passed during the 2021 session of the Legislature.

(j) *Preservation of the traditional physician-patient relationship*. –

Nothing in this section changes the rights, duties, privileges, responsibilities, and liabilities incident to the physician-patient relationship, nor is it meant or intended to change in any way the personal character of the physician-patient relationship. This section does not alter the scope of practice of any health care provider or authorize the delivery of health care services in a setting, or in a manner, not otherwise authorized by law.

CHAPTER 33. INSURANCE.

ARTICLE 57. REQUIRED COVERAGE FOR HEALTH INSURANCE.

§33-57-1. Coverage of telehealth services.

(a) The following terms are defined:

(1) "Distant site" means the telehealth site where the health care practitioner is seeing the patient at a distance or consulting with a patient's health care practitioner.

(2) "Established patient" means a patient who has received professional services, face-to-face, from the physician, qualified health care professional, or another physician or qualified health care professional of the exact same specialty and subspecialty who belongs to the same group practice, within the past three years.

(3) "Health care practitioner" means a person licensed under §30-1-1 *et seq.* of this code who provides health care services.

(4) "Originating site" means the location where the patient is located, whether or not accompanied by a health care practitioner, at the time services are provided by a health care practitioner

through telehealth, including, but not limited to, a health care practitioner's office, hospital, critical access hospital, rural health clinic, federally qualified health center, a patient's home, and other nonmedical environments such as school-based health centers, university-based health centers, or the work location of a patient.

(5) "Remote patient monitoring services" means the delivery of home health services using telecommunications technology to enhance the delivery of home health care, including monitoring of clinical patient data such as weight, blood pressure, pulse, pulse oximetry, blood glucose, and other condition-specific data; medication adherence monitoring; and interactive video conferencing with or without digital image upload.

(6) "Telehealth services" means the use of synchronous or asynchronous telecommunications technology or audio only telephone calls by a health care practitioner to provide health care services, including, but not limited to, assessment, diagnosis, consultation, treatment, and monitoring of a patient; transfer of medical data; patient and professional health-related education; public health services; and health administration. The term does not include e-mail messages or facsimile transmissions.

(7) "Virtual telehealth" means a new patient or follow-up patient for acute care that does not require chronic management or scheduled medications.

(b) Notwithstanding the provisions of §33-1-1 *et seq.* of this code, an insurer subject to §33-15-1 *et seq.*, §33-16-1 *et seq.*, §33-24-1 *et seq.*, §33-25-1 *et seq.*, and §33-25A-1 *et seq.* of this code which issues or renews a health insurance policy on or after July 1, 2020, shall provide coverage of health care services provided through telehealth services if those same services are covered through face-to-face consultation by the policy.

(c) An insurer subject to §33-15-1 *et seq.*, §33-16-1 *et seq.,* §33-24-1 *et seq.,* §33-25-1 *et seq.,* and §33-25A-1 *et seq.* of this code which issues or renews a health insurance policy on or after July 1, 2020, may not exclude a service for coverage solely because the service is provided through telehealth services.

(d) An insurer subject to §33-15-1 *et seq.*, §33-16-1 *et seq.*, §33-24-1 *et seq.*, §33-25-1 *et seq.*, and §33-25A-1 *et seq.* of this code which issues, renews, amends, or adjusts a plan, policy, contract, or agreement on or after July 1, 2021, shall provide reimbursement for a telehealth service at a rate negotiated between the provider and the insurance company for the virtual telehealth encounter. An insurer subject to §33-15-1 *et seq.*, §33-16-1 *et seq.*, §33-24-1 *et seq.*, §33-25-1 *et seq.*, and §33-25A-1 *et seq.* of this code which issues, renews, amends, or adjusts a plan, policy, contract, or agreement on or after July 1, 2021, shall provide reimbursement for a telehealth service for an established patient, or care rendered on a consulting basis to a patient located in an acute care facility whether inpatient or outpatient on the same basis and at the same rate under a contract, plan, agreement, or policy as if the service is provided through an in-person encounter rather than provided via telehealth.

(e) An insurer subject to §33-15-1 *et seq.,* §33-16-1 *et seq.,* §33-24-1 *et seq.*, §33-25-1 *et seq.,* and §33-25A-1 *et seq.* of this code may not impose any annual or lifetime dollar maximum on coverage for telehealth services other than an annual or lifetime dollar maximum that applies in the aggregate to all items and services covered under the policy, or impose upon any person receiving benefits pursuant to the provisions of or the requirements of this section any copayment, coinsurance, or deductible amounts, or any policy year, calendar year, lifetime, or other durational benefit limitation or maximum for benefits or services, that is not equally imposed upon all terms and services covered under the policy, contract, or plan.

(f) An originating site may charge an insurer subject to §33-15-1 *et seq.,* §33-16-1 *et seq.*, §33-24-1 *et seq.*, §33-25-1 *et seq.*, and §33-25A-1 *et seq.* of this code a site fee.

(g) The coverage required by this section shall include the use of telehealth technologies as it pertains to medically necessary remote patient monitoring services to the full extent that those services are available.

CHAPTER 219

(Com. Sub. for H. B. 2093 - By Delegates Graves, Hott, Sypolt, Mandt, J. Pack, Toney, Longanacre, Jennings, Smith, Wamsley and Clark)

[Passed April 7, 2021; in effect ninety days 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 section, designated §16-5E-3a; and to amend and reenact §16-49-1 of said code, all relating to the regulation of medical foster homes; defining terms; providing an exemption to medical foster homes from the requirements for unlicensed health care homes; and requiring an annual report.

Be it enacted by the Legislature of West Virginia:

ARTICLE 5E. REGISTRATION AND INSPECTION OF SERVICE PROVIDERS IN LEGALLY UNLICENSED HEALTH CARE HOMES.

§16-5E-3a. Exemption for the United States Department of Veterans Affairs Medical Foster Homes; reporting.

(a) The provisions of this article do not apply to any home or facility approved and annually reviewed by the United States Department of Veterans Affairs as a Medical Foster Home, pursuant to 38 CFR §17.73, in which care is provided exclusively to three or fewer veterans.

(b) The West Virginia Department of Veterans Affairs shall report annually by December 1, to the Governor, outlining the scope and effectiveness of the Medical Foster Home Program for veterans in West Virginia.

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

§16-49-1. Definitions.

As used in this article:

"Applicant" means an individual who is being considered for employment or engagement with the department, a covered provider or covered contractor.

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

"Bureau" means a division within the Department of Health and Human Resources.

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

"Covered provider" means the following facilities or providers:

(i) A skilled nursing facility;

(ii) A nursing facility;

(iii) A home health agency;

(iv) A provider of hospice care;

(v) A long-term care hospital;

(vi) A provider of personal care services;

(vii) A provider of adult day care;

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

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

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

(xi) Excludes medical foster home approved and annually reviewed by the United States Department of Veterans Affairs pursuant to 38 CFR §17.73.

"Department" means the Department of Health and Human Resources.

"Department employee" means any prospective or current part-time employee, full-time employee, temporary employee, independent contractor, or volunteer of the department.

"Direct access" means physical contact with a resident, member, beneficiary, or client, or access to their property, personally identifiable information, protected health information, or financial information.

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

"Disqualifying offense" means:

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

(B) A conviction of any other crime specified by the secretary in rule, which shall include crimes against care-dependent or

vulnerable individuals, crimes of violence, sexual offenses, and financial crimes.

"Negative finding" means a finding in the prescreening that excludes an applicant from direct access personnel positions.

"Notice of ineligibility" means a notice pursuant to §16-49-3 of this code that the secretary's review of the applicant's criminal history record information reveals a disqualifying offense.

"Prescreening" means a mandatory search of databases and registries specified by the secretary in legislative rule for exclusions and licensure status prior to the submission of fingerprints for a criminal history record information check.

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

"Secretary" means the Secretary of the West Virginia Department of Health and Human Resources, or his or her designee.

"State Police" means the West Virginia State Police Criminal Identification Bureau.

CHAPTER 220

(Com. Sub. for H. B. 2368 - By Delegates D. Jeffries, Summers, Tully, J. Pack, Rohrbach, Ellington, Steele, Espinosa, Linville, Howell and L. Pack)

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

AN ACT to repeal §16-39-2 of the Code of West Virginia, 1931, as amended, and to amend and reenact §16-39-1 and §16-39-3, and to amend said code by adding thereto a new section designated §16-39-8 of the code, all relating to the short title; defining terms; and, providing for visitation of a patient in a health care facility during a declared state of emergency.

Be it enacted by the Legislature of West Virginia:

CHAPTER 16. PUBLIC HEALTH.

ARTICLE 39. PATIENT SAFETY AND VISITATION ACT.

§16-39-1. Short title.

This article may be cited as the "Patient Safety Act of 2001." The amendments made to this article during the 2021 Regular Session of the Legislature shall be known as "Mylissa Smith's Law."

§16-39-2. Legislative findings and purpose.

[Repealed.]

§16-39-3. Definitions.

For purposes of this article, the following words and phrases have the following meanings:

"Appropriate authority" means a federal, state, county, or municipal government body, agency or organization having jurisdiction over criminal law enforcement, regulatory violations, professional conduct or ethics, or waste or any member, officer, agent, representative, or supervisory employee thereof;

"Commissioner" means the commissioner of the division of health;

"Direct patient care" means health care that provides for the physical, diagnostic, emotional, or rehabilitational needs of a patient or health care that involves examination, treatment, or preparation for diagnostic tests or procedures.

"Discrimination or retaliation" includes any threat, intimidation, discharge, or any adverse change in a health care worker's position, location, compensation, benefits, privileges, or terms or conditions of employment that occurs as a result of a health care worker engaging in any action protected by this article.

"Good faith report" means a report of conduct defined in this article as wrongdoing or waste that is made without malice or consideration of personal benefit and which the person making the report has reasonable cause to believe is true.

"Health care entity" includes a health care facility, such as a hospital, clinic, nursing facility, or other provider of health care services.

"Health care facility" means:

(1) A hospital licensed pursuant to §16-5B-1 *et seq.* of this code;

(2) A nursing home licensed pursuant to §16-5C-1 *et seq.* of this code;

(3) An assisted living residence licensed pursuant to §16-5D-1 *et seq.* of this code; and

(4) Hospice licensed pursuant to §16-5I-1 *et seq.* of this code.

"Health care worker" means a person who provides direct patient care to patients of a health care entity and who is an employee of the health care entity, a subcontractor, or independent contractor for the health care entity, or an employee of the subcontractor or independent contractor. The term includes, but is not limited to, a nurse, nurse's aide, laboratory technician, physician, intern, resident, physician assistant, physical therapist, or any other person who provides direct patient care.

"Patient" means a person living or receiving services as an inpatient at a healthcare facility.

"Public Health State of Emergency" means a federal or state declaration of a state of emergency arising from or relating to a public health crisis.

"Visitor" means any visitor from the patient's family, hospice or clergy visiting a patient in a healthcare facility.

"Waste" means the conduct, act, or omission by a health care entity that results in substantial abuse, misuse, destruction, or loss of funds, resources, or property belonging to a patient, a health care entity, or any federal or state program.

"Wrongdoing" means a violation of any law, rule, regulation, or generally recognized professional or clinical standard that relates to care, services, or conditions and which potentially endangers one or more patients or workers or the public.

§16-39-8. Visitation of a patient in a health care facility.

(a) During a declared public health state of emergency for a contagious disease, a health care facility shall permit visitation of a patient. If the patient's death is imminent, the health care facility shall allow visitation upon request at any time and frequency. In all other instances, the health care facility shall allow visitation not less than once every five days. *Provided*, That visitation permitted by any health care entity may not be inconsistent with any applicable federal law, rule, policy, or guidance in effect for the same emergency.

(b) A visitor shall comply with the applicable procedures established by the health care facility.

(c) The health care facility may deny a visitor entry to the health care facility, may subject a visitor to expulsion from the facility, or may permanently revoke visitation rights to a visitor who does not comply with the applicable procedures established by the health care facility.

(d) A healthcare facility is not liable to a person visiting another person, nor to any other patient or resident of the health care facility, for any civil damages for injury or death resulting from or related to actual or alleged exposure during, or through the performance of, the visitation in compliance with this section, unless the health care facility failed to substantially comply with the applicable health and safety procedures established by the health care facility.

CHAPTER 221

(Com. Sub. for H. B. 2616 - By Delegates J. Pack and Rohrbach)

[Passed March 19, 2021; in effect ninety days from passage.]
[Approved by the Governor on March 30, 2021.]

AN ACT to amend and reenact §16-5N-2 and §16-5N-3 of the Code of West Virginia, 1931, as amended, all relating to residential care communities; updating definitions; requiring a report to be published on a website; requiring specific information to be reported; and making technical changes.

Be it enacted by the Legislature of West Virginia:

ARTICLE 5N. RESIDENTIAL CARE COMMUNITIES.

§16-5N-2. Definitions.

(a) As used in this article, unless a different meaning appears from the context:

(1) "Capable of self-preservation" means that a person is, at a minimum, physically capable of removing himself or herself from situations involving imminent danger such as fire;

(2) "Deficiency" means a statement of the rule and the fact that compliance has not been established and the reasons therefor;

(3) "Department" means the Department of Health and Human Resources;

(4) "Director" means the director of the Office of Health Facility Licensure and Certification;

(5) "Division" means the Office of Health Facility Licensure and Certification;

(6) "Limited and intermittent nursing care" means direct hands-on nursing care of a resident who needs no more than two hours of nursing care per day for a period of time no longer than ninety consecutive days per episode, which care may be provided only when the need for it meets these requirements: The resident requests that he or she remain in the residential care community; the resident is advised of the availability of other specialized health care facilities to treat his or her condition; and the need for care results from a medical pathology or the normal aging process. Limited and intermittent nursing care may be provided only by or under the supervision of a registered professional nurse and in accordance with legislative rules proposed by the secretary;

(7) "Nursing care" means those procedures commonly employed in providing for the physical, emotional and rehabilitation needs of the ill or otherwise incapacitated and which require technical skills and knowledge beyond those that untrained persons possess, including, irrigations, catheterizations, special procedures that contribute to rehabilitation and administration of medication by any method involving a level of complexity and skill not possessed by untrained persons;

(8) "Person" means a natural person and every form of organization, whether incorporated or unincorporated, including partnerships, corporations, trusts, associations and political subdivisions of the state;

(9) "Personal assistance" means services of a personal nature, including help in walking, bathing, dressing, toileting, getting in or out of bed and supervision that is required because of the age or mental impairment of a resident;

(10) "Resident" means an individual who lives in a residential care community for the purpose of receiving personal assistance or limited and intermittent nursing services from the community;

(11) "Residential care community" means any group of seventeen or more residential apartments, however named, which are part of a larger independent living community and which are advertised, offered, maintained or operated by an owner or

manager, regardless of consideration or the absence thereof, for the express or implied purpose of providing residential accommodations, personal assistance and supervision on a monthly basis to seventeen or more persons who are or may be dependent upon the services of others by reason of physical or mental impairment or who may require limited and intermittent nursing care but who are capable of self-preservation and are not bedfast. Individuals may not be disqualified for residency solely because they qualify for or receive services coordinated by a licensed hospice. Each apartment in a residential care community shall be at least three hundred square feet in size, have doors capable of being locked and contain at least: One bedroom; one kitchenette that includes a sink and a refrigerator; and one full bathroom that includes a bathing area, toilet and sink. Services utilizing equipment which requires auxiliary electrical power in the event of a power failure may not be used unless the residential care community has a backup power generator. Nothing contained in this article applies to hospitals, as defined under §16-5B-1, state institutions, as defined under §27-1-6, residential care communities operated as continuing care retirement communities or housing programs operated under rules of the federal department of housing and urban development and/or the office of rural economic development, residential care communities operated by the federal government or the state government, institutions operated for the treatment and care of alcoholic patients, offices of physicians, hotels, boarding homes or other similar places that furnish only room and board, or to homes or asylums operated by fraternal orders pursuant to §35-3-1 of this code;

(12) "Secretary" means the Secretary of the Department of Health and Human Resources or his or her designee; and

(13) "Substantial compliance" means a level of compliance with the rules promulgated hereunder that identified deficiencies pose a risk to resident health or safety no greater than a potential for causing minimal harm.

(b) The secretary may by rule define terms pertinent to this article which are not defined.

§16-5N-3. Powers, duties, and rights of director.

In the administration of this article, the director may:

(1) Enforce rules and standards for residential care communities as adopted, proposed, amended, or modified by the secretary;

(2) Exercise all powers granted herein relating to the issuance, suspension, and revocation of licenses of residential care communities;

(3) Enforce rules governing the qualification of applicants for residential care community licenses, including, but not limited to, educational, financial, personal, and ethical requirements, as adopted, proposed, amended, or modified by the secretary;

(4) Receive and disburse federal funds and to take any lawful action that is necessary or appropriate to comply with the requirements and conditions for the receipt or expenditure of federal funds;

(5) Receive and disburse funds appropriated by the Legislature to the division for any authorized purpose;

(6) Receive and disburse funds obtained by the division by way of gift, grant, donation, bequest, or devise, according to the terms thereof, funds derived from the division's operation, and funds from any other source, no matter how derived, for any authorized purpose;

(7) Negotiate and enter into contracts, and to execute all instruments necessary or convenient in carrying out the functions and duties of the position of director; and all of these contracts, agreements, and instruments shall be executed by the director;

(8) Appoint officers, agents, employees, and other personnel and establish the duties and fix the compensation thereof;

(9) Offer and sponsor education and training programs for residential care communities' administrative, managerial, and operations personnel;

(10) Undertake survey, research, and planning projects and programs relating to the administration and operation of residential care communities and to the health, care, treatment, and service in general of residents of these communities;

(11) Establish by legislative rule in accordance with §16-5N-10 of this code and to assess reasonable civil penalties for violations of residential care community standards;

(12) Inspect any residential care community and any of the records maintained therein, subject to the provisions of §16-5N-10 of this code;

(13) Establish legislative rules in accordance with §29A-3-1 *et seq.* of this code, setting forth procedures for implementing the provisions of this article, including informal conferences, investigations and hearings, and for enforcing compliance with the provisions of this article and the rules promulgated hereunder;

(14) Subpoena witnesses and documents, administer oaths and affirmations, and examine witnesses. Upon the failure of any person without lawful excuse to obey a subpoena to give testimony and upon reasonable notice to all persons affected thereby, the director may apply to the circuit court of the county in which the hearing is to be held or to the circuit court of Kanawha County for an order compelling compliance;

(15) Make a complaint or cause proceedings to be instituted against any person or persons for the violation of the provisions of this article or of the rules promulgated hereunder. An action may be taken by the director in the absence of concurrence or participation by the prosecuting attorney of the county in which the proceedings are instituted. The circuit court of Kanawha County or the circuit court of the county in which the violation has occurred has jurisdiction in any civil enforcement action brought pursuant to this article and may order equitable relief. In these cases, the court

may not require that a bond be posted, nor may the director or any person acting under his or her authority be required to give security for costs;

(16) Delegate authority to his or her employees and agents in the performance of any power or duty granted in this article, except the issuance of final decisions in any adjudicatory matter; and

(17) Make available at all times online access through the Office of Health Facility Licensure and Certification website the following information. The online information shall describe the residential care community licensing and investigatory activities of the division. The online information shall include a list of all residential care communities and the following information: Whether the residential care communities are proprietary or nonproprietary; the name of the administrator or administrators; the total number of beds; license type; license number; license expiration date; health investigations information and reports; life safety investigations information and reports; and whether those residential care communities listed accept Medicare or Medicaid residents.

CHAPTER 222

(Com. Sub. for H. B. 2982 - By Delegates Kessinger, Sypolt, Holstein, Bridges, Barnhart, Longanacre, J. Pack, Kimble, Burkhammer, Mazzocchi and Pinson)

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

AN ACT to amend and reenact §16-2I-1, §16-2I-2, and §16-2I-3 of the Code of West Virginia, 1931, as amended, all relating to the informed consent; requiring that information about the process of chemical abortion be provided to a woman when a chemical abortion process in initiated and second drug is contemplated to be used at a later time; defining terms; specifying that the female be informed of the range of possibilities regarding the effects of a mifepristone chemical abortion; specifying that the female shall certify, as part of informed consent, that she has been informed about the possibilities regarding a chemical abortion; providing for liability protection for a physician acting in conformity with the informed consent provisions of this section; providing liability protection to a physician prescribing a non-Food and Drug Administration approved drug therapy to counteract a chemical abortion; and dictating minimum standards for printed materials.

Be it enacted by the Legislature of West Virginia:

ARTICLE 2I. WOMEN'S RIGHT TO KNOW ACT.

§16-2I-1. Definitions.

For the purposes of this article, the words or phrases defined in this section have these meanings ascribed to them.

"Abortion" means the same as that term is defined in §16-2F-2 of this code.

"Attempt to perform an abortion" means the same as that term is defined in §16-2M-2 of this code.

"Chemical abortion" means the use or prescription of an abortion-inducing drug dispensed with the intent to cause an abortion.

"Licensed medical professional" means the same as that term is defined in §16-2P-1 of this code.

"Medical emergency" means any condition which, in the reasonable medical judgment of the patient's physician, so complicates the medical condition of a pregnant female as to necessitate the immediate termination of her pregnancy to avert her death or for which a delay will create serious risk of substantial and irreversible physical impairment of a major bodily function, not including psychological or emotional conditions. No condition shall be deemed a medical emergency if based on a claim or diagnosis that the female will engage in conduct which she intends to result in her death or in substantial and irreversible physical impairment of a major bodily function.

"Physician" means the same as that term is defined in §16-2M-2 of this code.

"Probable gestational age of the embryo or fetus" means what, in the judgment of the physician, will with reasonable probability be the gestational age of the embryo or fetus at the time the abortion is planned to be performed.

"Reasonable medical judgement" means the same as that term is defined in §16-2M-2 of this code.

"Stable Internet website" means a website that, to the extent reasonably practicable, is safeguarded from having its content altered by another other than the Department of Health and Human Resources.

§16-2I-2. Informed consent.

An abortion may not be performed in this state except with the voluntary and informed consent of the female upon whom the abortion is to be performed. Except in the case of a medical emergency, consent to an abortion is voluntary and informed if, and only if:

(a) The female is told the following, by telephone or in person, by the physician or the licensed medical professional to whom the responsibility has been delegated by the physician who is to perform the abortion at least 24 hours before the abortion:

(1) The particular medical risks associated with the particular abortion procedure to be employed, including, when medically accurate, the risks of infection, hemorrhage, danger to subsequent pregnancies, and infertility;

(2) The probable gestational age of the embryo or fetus at the time the abortion is to be performed;

(3) The medical risks associated with carrying her child to term; and

(4) If a chemical abortion involving the two-drug process of mifepristone is initiated and then a prostaglandin such as misoprostol is planned to be used at a later time, the female shall be informed that:

(A) Some suggest that it may be possible to counteract the intended effects of a mifepristone chemical abortion by taking progesterone if the female changes her mind, before taking the second drug, but this process has not been approved by the Food and Drug Administration.

(B) After the first drug involved in the two-drug process is dispensed in a mifepristone chemical abortion, the physician or agent of the physician shall provide written medical discharge instructions to the pregnant female which shall include the statement:

"If you change your mind and decide to try to counteract the intended effects of a mifepristone chemical abortion, if the second pill has not been taken, please consult with your physician.

(i) You might experience a complete abortion without ever taking misoprostol;

(ii) You might experience a missed abortion, which means the fetus is no longer viable, but the fetus did not leave your body; or

(iii) It is possible that your pregnancy may continue; and

(iv)You should consult with your physician."

(C) The female shall certify, as part of the informed consent process for any medical procedure, that she has been informed about the above possibilities regarding a chemical abortion.

(D) Notwithstanding any law to the contrary, a physician acting in conformity with the informed consent provisions of this section relating to the possibility of counteracting the intended effects of a chemical abortion, or a physician prescribing a non-Food and Drug Administration approved drug therapy to counteract a chemical abortion is not liable for any loss, damage, physical injury, or death arising from any information provided by the physician related to counteracting the intended effects of a chemical abortion or arising from prescribing a non-Food and Drug Administration approved drug therapy to counteract a chemical abortion.

The information required by this subsection may be provided by telephone without conducting a physical examination or tests of the patient, in which case the information required to be provided may be based on facts supplied by the female to the physician or other licensed health care professional to whom the responsibility has been delegated by the physician and whatever other relevant information is reasonably available to the physician or other licensed health care professional to whom the responsibility has been delegated by the physician. It may not be provided by a tape recording, but must be provided during a consultation in which the physician or licensed health care professional to whom the responsibility has been delegated by the physician is able to ask

questions of the female and the female is able to ask questions of the physician or the licensed health care professional to whom the responsibility has been delegated by the physician.

If a physical examination, tests or the availability of other information to the physician or other licensed health care professional to whom the responsibility has been delegated by the physician subsequently indicate, in the medical judgment of the physician or the licensed health care professional to whom the responsibility has been delegated by the physician, a revision of the information previously supplied to the patient, that revised information may be communicated to the patient at any time before the performance of the abortion procedure.

Nothing in this section may be construed to preclude provision of required information in a language understood by the patient through a translator.

(b) The female is informed, by telephone or in person, by the physician who is to perform the abortion, or by an agent of the physician, at least 24 hours before the abortion procedure:

(1) That medical assistance benefits may be available for prenatal care, childbirth, and neonatal care through governmental or private entities;

(2) That the father, if his identity can be determined, is liable to assist in the support of her child based upon his ability to pay even in instances in which the father has offered to pay for the abortion;

(3) That she has the right to review the printed materials described in §16-2I-3 of this code, that these materials are available on a state-sponsored website and the website address; and

(4) That the female will be presented with a form which she will be required to execute prior to the abortion procedure that is available pursuant to §16-2I-3 of this code, and that the form to be presented will inform her of the opportunity to view the ultrasound image and her right to view or decline to view the ultrasound image, if an ultrasound is performed.

The physician or an agent of the physician shall orally inform the female that the materials have been provided by the State of West Virginia and that they describe the embryo or fetus and list agencies and entities which offer alternatives to abortion.

If the female chooses to view the materials other than on the website, then they shall either be provided to her at least 24 hours before the abortion or mailed to her at least 72 hours before the abortion by first class mail in an unmarked envelope.

The information required by this subsection may be provided by a tape recording if provision is made to record or otherwise register specifically whether the female does or does not choose to have the printed materials given or mailed to her.

(c) The form required pursuant to subdivision (b)(4) of this section shall include the following information:

(1) It is a female's decision whether or not to undergo any ultrasound imaging procedure in consultation with her health care provider;

(2) If an ultrasound is performed in conjunction with the performance of an abortion procedure, the female has the right to view or to decline to view the image; and

(3) That the female has been previously informed of her opportunity to view the ultrasound image and her right to view or decline to view the ultrasound image. The female shall certify her choice on this form prior to the abortion procedure being performed.

The female shall certify in writing, before the abortion, that the information described in subsections (a) and (b) of this section has been provided to her and that she has been informed of her opportunity to review the information referred to in subdivision (b)(3) of this section.

Before performing the abortion procedure, the physician who is to perform the abortion or the physician's agent shall obtain a

copy of the executed certification required by the provisions of subsections (b) and (c) of this section.

§16-2I-3. Printed information.

(a) Within 90 days of the effective date of this article, the Secretary of the Department of Health and Human Resources shall cause to be published, in English and in each language which is the primary language of two percent or more of the state's population, as determined by the most recent decennial census performed by the U.S. census bureau, and shall cause to be available on the website provided in §16-2I-4 of this code the following printed materials in such a way as to ensure that the information is easily comprehensible:

(1) Geographically indexed materials designed to inform the reader of public and private agencies and services available to assist a female through pregnancy, upon childbirth and while the child is dependent, including adoption agencies, which shall include a comprehensive list of the agencies available, a description of the services they offer and a description of the manner, including telephone numbers. At the option of the Secretary of Health and Human Resources, a 24-hour-a-day telephone number may be established with the number being published in such a way as to maximize public awareness of its existence which may be called to obtain a list and description of agencies in the locality of the caller and of the services they offer;

(2) Materials designed to inform the female of the probable anatomical and physiological characteristics of the embryo or fetus at two-week gestational increments from the time when a female can be known to be pregnant to full term, including any relevant information on the possibility of the embryo or fetus's survival and pictures or drawings representing the development of an embryo or fetus at two-week gestational increments: *Provided,* That any such pictures or drawings must contain the dimensions of the embryo or fetus and must be realistic and appropriate for the stage of pregnancy depicted. The materials shall be objective, nonjudgmental, and designed to convey only accurate scientific information about the embryo or fetus at the various gestational

ages. The material shall also contain objective information describing the methods of abortion procedures commonly employed, the medical risks commonly associated with each procedure, the possible detrimental psychological effects of abortion, and the medical risks commonly associated with carrying a child to term; and

(3) Materials designed to inform the female of the range of possibilities regarding the effects and risks of a mifepristone chemical abortion or an attempt to counteract it and information on and assistance with the resources that may be available.

(b) The materials referred to in subsection (a) of this section shall be printed in a typeface large enough to be clearly legible. The website provided for in section four of this article shall be maintained at a minimum resolution of seventy dots per inch. All pictures appearing on the website shall be a minimum of 200 x 300 pixels. All letters on the website shall be a minimum of 11-point font. All information and pictures shall be accessible with an industry standard browser requiring no additional plug-ins.

(c) The materials required under this section shall be available at no cost from the Department of Health and Human Resources upon request and in appropriate numbers to any person, facility, or hospital.

CHAPTER 223

(H. B. 3311 - By Delegates Rohrbach, Forsht, Mallow, Longanacre and Bates)

[Passed April 9, 2021; in effect ninety days from passage.]
[Approved by the Governor on April 26, 2021.]

AN ACT to amend and reenact §16-29-2 of the Code of West Virginia, 1931, as amended, relating to the cost of medical records; requiring that the cost of obtaining a medical record may not exceed a fee consistent with HIPAA; and providing clarifying technical changes.

Be it enacted by the Legislature of West Virginia:

ARTICLE 29. HEALTH CARE RECORDS.

§16-29-2. Reasonable expenses to be reimbursed.

(a) A provider may charge a patient or the patient's personal representative no more than a fee consistent with HIPAA, as amended, and any rules promulgated pursuant to HIPAA, plus any applicable taxes.

(b) (1) A person other than a patient or patient's personal representative requesting records from a health care provider shall submit the request and HIPAA compliant authorization in writing and pay a fee at the time of delivery. Notwithstanding any other section of the code or rule, the fees shall not exceed: (A) A search and handling fee of $20; (B) a per page fee of 40 cents for paper copies; and (C) postage, if the person requested that the records be mailed, plus any applicable taxes.

(2) If the requested record is stored by the health care provider in an electronic form, unless the person requesting the record specifically requests a paper copy, the records will be delivered in

electronic or digital form and the per page fee for providing an electronic copy shall not exceed 20 cents per page but shall in no event exceed $150 inclusive of all fees, including a search and handling fee, except for applicable taxes.

(c) Any person requesting a record be certified by affidavit pursuant to section four-e, article five, chapter fifty-seven of this code shall pay a fee of $10 for such certification.

(d) If a person requests or agrees to an explanation or summary of the records, the provider may charge a reasonable cost-based fee for the labor cost if preparing the explanation or the summary; for the supplies for creating the explanation or summary; and for the cost of postage, if the person requested that the records be mailed, plus any applicable taxes. If the records are stored with a third party or a third party responds to the request for records in paper or electronic media, the provider may charge additionally for the actual charges incurred from the third party.

(e) The per page fee for copying under subsection (b) shall be adjusted to reflect the consumer price index for medical care services such that the base amount shall be increased or decreased by the proportional consumer price index as published every October 1 starting October 1, 2017.

(f) Notwithstanding the provisions of subsection (a) of this section, a provider shall not impose a charge on an indigent person or his or her authorized representative if the medical records are necessary for the purpose of supporting a claim or appeal under any provisions of the Social Security Act, 42 U. S. C. §301, *et seq.*

For purposes of this section, a person is considered indigent if he or she:

(1) Is represented by an organization or affiliated pro bono program that provides legal assistance to indigents; or

(2) Verifies on a medical records request and release form that the records are requested for purposes of supporting a Social Security claim or appeal and submits with the release form reasonable proof that the person is financially unable to pay full

copying charges by reason of unemployment, disability, income below the federal poverty level or receipt of state or federal income assistance.

(g) Any person requesting free copies of written medical records pursuant to the provisions of subsection (f) of this section is limited to one set of copies per provider. Any additional requests for the same records from the same provider shall be subject to the fee provisions of subsections (a) and (b).

CHAPTER 224

(Com. Sub. for S. B. 280 - By Senators Takubo, Plymale, Nelson, Woelfel, Jeffries, and Lindsay)

[Passed March 8, 2021; in effect 90 days from passage (June 6, 2021)]
[Approved by the Governor on March 18, 2021.]

AN ACT to amend and reenact §12-3A-6 of the Code of West Virginia, 1931, as amended, relating generally to acceptance of electronic payments by state and local government entities; providing that costs associated with electronic payments collected by spending units may be invoiced in a commercially reasonable manner; defining a term; requiring political subdivisions to accept all payments electronically beginning on a certain date; permitting the Treasurer to exempt spending units from electronic payment requirement based on certain criteria; and authorizing legislative rules.

Be it enacted by the Legislature of West Virginia:

ARTICLE 3A. FINANCIAL ELECTRONIC COMMERCE.

§12-3A-6. Receipting of electronic commerce purchases.

(a)(1) The State Treasurer may establish a system for acceptance of credit card and other payment methods for electronic commerce purchases from spending units. Notwithstanding any other provision of this code to the contrary, each spending unit, utilizing WEB commerce, electronic commerce, or other method that offers products or services for sale shall utilize the State Treasurer's system for acceptance of payments, except as provided in subsection (b) of this section.

(2) Notwithstanding any other provision of code to the contrary, the costs associated with the acceptance of credit card and

other payment methods in the State Treasurer's system for electronic commerce purchases may be invoiced in a commercially reasonable manner, according to the legislative rules promulgated pursuant to subsection (f) of this section.

(3) For the purposes of this section, "spending unit" has the same meaning provided in §12-1-2 of this code.

(b) A state institution of higher education may receive credit card payments from systems of acceptance other than that provided by the State Treasurer if:

(1) The proposed alternate system is compliant with the payment card industry data security standards for acceptance of payments, and the institution is proposing to use the alternate system for the sole purpose of:

(A) Processing the payment of academic transcripts; or

(B) Accepting payment for applications for admission, if necessary, to participate in a national or regional program for applications for admission; or

(2) The institution certifies that the use of the alternate system will not cause a reduction in the volume of credit card revenues by more than 10 percent as compared to previous credit card revenues processed on behalf of the institution during the previous fiscal year and the State Treasurer consents to the use.

(c) To facilitate electronic commerce, the State Treasurer may charge a spending unit for the banking and other expenses incurred by the Treasurer on behalf of the spending unit and for any work performed, including, without limitation, assisting in the development of a website and utilization of the Treasurer's payment gateway. A special revenue account, entitled the Treasurer's Financial Electronic Commerce Fund, is created in the State Treasury to receive the amounts charged by the Treasurer. The Treasurer may expend the funds received in the Treasurer's Financial Electronic Commerce Fund only for the purposes of this article and for other purposes as determined by the Legislature.

(d) The State Treasurer may authorize a spending unit to assess and collect a fee to recover or pay the cost of accepting bank, charge, check, credit, or debit cards from amounts collected.

(e) On or before March 1, 2023, all political subdivisions shall offer a system, with an online presence for acceptance of payments, that will allow persons to submit payments to political subdivisions electronically. Payments that shall be accepted through the required system shall include, but not be limited to, payments or fees for services provided by the political subdivision or any fee, fine, penalty, or other monetary payment collected by the political subdivision. Upon written request from a political subdivision, the State Treasurer may provide services of his or her office to a political subdivision and charge for the services.

(f)(1) The State Treasurer shall propose legislative rules for promulgation in accordance with the provisions of §29A-3-1 *et seq.* of this code to implement the provisions of this section.

(2) The State Treasurer is authorized to promulgate legislative rules to establish a system by which the State Treasurer may exempt a political subdivision from the requirements of subsection (e) of this section. The rules authorized by this subsection shall include monetary threshold criteria for granting exemptions, based on the amount of revenue collections and the operations of the political subdivision applying for an exemption.

CHAPTER 225

(Com. Sub. for H. B. 2014 - By Delegates Kimes, Fast, Pritt, Ferrell, Bridges, Hanna, Mandt, Toney, Reynolds, Statler and Storch)

[Passed March 31, 2021; in effect from passage.]
[Approved by the Governor on April 7, 2021.]

AN ACT to amend and reenact §4-11-1, §4-11-2, §4-11-3, §4-11-4, §4-11-5, §4-11-6, and §4-11-7 of the Code of West Virginia, 1931, as amended; to amend and reenact §5-1A-1 of said code; to amend and reenact §11B-1-1 and §11B-1-4 of said code; to amend and reenact §11B-2-11, §11B-2-21, and §11B-2-23 of said code; to amend and reenact §12-2-2 of said code; to amend and reenact §12-3-12 and §12-3-17 of said code; and to amend and reenact §12-4-2 and §12-4-3 of said code, all relating to disposition of moneys received by the state generally; specifying the role of the Legislature in appropriating federal funds; updating references to types of federal funds; providing for appropriation of federal funds in accordance with the state constitution; updating and clarifying statutory cross-references; limiting gubernatorial authority to spend federal funds without appropriation of the Legislature; continuing and limiting spending of certain emergency funds for certain emergencies without additional enactment; requiring reports to the Legislature on proposed and actual spending of those funds; removing certain emergency federal fund exclusion language from the provisions governing appropriations of federal funds; establishing controlling provisions in case of conflict of law; clarifying statutes applicable to preparation of state budget; clarifying meaning of certain terms; conditioning the Secretary of Revenue's receipt and expenditure of federal funds; providing copy of certain reports to the Legislature; enlarging matters to be reported to the Legislature regarding revenue estimates, collections and appropriations; requiring any budget

reductions be made before end of fiscal year; enlarging matters to be reported in the annual Consolidated Federal Funds report; authorizing funds to be reappropriated from one fiscal year to the next, and providing circumstances under which those funds expire to the general revenue fund instead of being reappropriated; modifying certain terms; and updating references to public officers.

Be it enacted by the Legislature of West Virginia:

CHAPTER 4. THE LEGISLATURE.

ARTICLE 11. LEGISLATIVE APPROPRIATION OF FEDERAL FUNDS.

§4-11-1. Legislative findings and purpose.

The Legislature finds and declares that in order to carry out its responsibility for the enactment of all appropriations needed for the operation of state government, the Legislature needs continuous and accurate accounts of the amounts and purposes of all federal funds being requested, received or expended by the various agencies and departments of the state. The Legislature further finds and declares that the increased availability of and reliance on federal financial assistance has a substantial impact upon the programs, priorities and fiscal affairs of the state. "It is the purpose of this article to clarify and specify the role of the Legislature in appropriating federal funds received by the state in all events, including public emergencies, and in prescribing, by general law, the required form and detail of the itemization and classification of proposed appropriations to assure that state purposes are served and legislative priorities are adhered to by the acceptance and use of such funds.

§4-11-2. Definitions.

As used in this article:

"Federal funds" means any financial assistance made to a spending unit by the United States government, whether a loan,

grant, block grant, subsidy, augmentation, reimbursement or any other form of such assistance, including "federal-matching funds";

"Federal-matching funds" means federal funds of a specified amount or proportion for which a specified outlay of state contributions, including funds, property or services, are required as a condition for receipt or expenditure;

"Spending unit" means the State of West Virginia and all agencies, offices, departments, divisions, boards, commissions, councils, committees or other entities of the state government for which an appropriation is requested or to which an appropriation is made by the Legislature. "Spending unit" does not mean any county, city, township, public service district or other political subdivision of the state; and

"State-matching funds" means state contributions, including funds, property or services that are required by the federal government, by law or regulation, as a condition for receipt or expenditure of federal funds.

§4-11-3. Receipt of federal funds and required deposit in state treasury.

Unless contrary to federal law, all federal funds received by a spending unit shall be deposited in and credited to special fund accounts as provided by §12-2-2 of this code and shall be available for appropriation by the Legislature as part of the state budget in accordance with Article X of the Constitution of this state.

§4-11-4. Inclusion of federal funds in state budget and the budget bill.

Pursuant to article §5-1A-1 *et seq.*, and §11B-2-1 *et seq.* of this code, the Governor shall itemize in the state budget and in the budget bill, on a line-item basis, separately, for each spending unit, the amount and purpose of all federal funds received or anticipated for expenditure, with a reference to the account number, line item and amount of any state funds required for such purpose: *Provided,* That all federal block grant funds shall be so itemized in a separate

section of the state budget and the budget bill devoted exclusively to proposed appropriations from the block grant funds.

§4-11-5. Legislative appropriation authority.

(a) No spending unit may make expenditures of any federal funds, whether such funds are advanced prior to expenditure or as reimbursement, unless such expenditures are made pursuant to specific appropriations by the Legislature, except as may be hereinafter provided.

(b) To the extent not precluded by the terms and conditions under which federal funds are made available to the spending unit by the United States government, the spending unit shall use federal funds in accordance with any purposes, policies or priorities the Legislature may have established for the activity being assisted or for the use of state, federal and other fiscal resources in a particular fiscal year.

(c) If the federal funds received by a spending unit for a specific purpose are greater than the amount of such funds contained in the appropriation by the Legislature for such purpose, the total appropriation of federal funds and any state matching funds for such purpose shall remain at the level appropriated, except as hereinafter provided.

(d) If federal funds become available to the 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 the budget approved by the Legislature for the next fiscal year, the treasurer may accept such funds on behalf of the spending unit and the Governor may authorize, in writing, the expenditure of such funds by the spending unit during that fiscal year as authorized by federal law and pursuant to the provisions of §11B-2-1 *et seq.* of this code and upon the filing of a proper expenditure schedule: *Provided,* That the Governor may not authorize the expenditure of such funds received for the creation of a new program or for a significant alteration of an existing program. For purposes of this article, a mere new source of funding of federal moneys for a program which has been prior approved by

legislative appropriation is not a "new program" or a "significant alteration of an existing program" and the Governor may authorize the expenditure of such funds as herein provided, subject to the limitations under subsection (e) of this section. Should a question arise concerning whether such expenditures would constitute a new program or significant alteration of an existing program, while the Legislature is not in session, the Governor shall seek the recommendation of the council of finance and administration, as created and existing pursuant to the provisions of §5A-1-4 of this code. Upon application to the federal government for such funds and upon receipt of such funds, the Governor shall submit to the Legislative Auditor two copies of a statement:

(1) Describing the proposed expenditure of such funds in the same manner as it would be described in the state budget; and

(2) Explaining why the availability of such federal funds and why the necessity of their expenditure could not have been anticipated in time for such expenditures to have been approved as part of the adopted budget for that particular fiscal year.

(e) Notwithstanding the provisions of subsection (d) of this section, no amount of such unanticipated federal funds for an existing program, for a significant alteration of an existing program, or for the creation of a new program made available to the state for costs and damages resulting from an emergency including, but not limited to, flooding, forest fires, earthquakes, storms or similar natural disasters, civil disobedience, human-caused disasters, infectious disease outbreaks, or similar public health or safety emergencies that occur and are received while the Legislature is not in session and that are declared by the Governor as a state of emergency in excess of $150 million for any part or the whole of the declared emergency may be expended without appropriation by the Legislature enacted following receipt of the funds. No provision of this code or any appropriations act in effect upon the receipt of unanticipated federal funds made available to the state for costs and damages resulting from an emergency including, but not limited to, flooding, forest fires, earthquakes, storms or similar natural disasters, civil disobedience, human-caused disasters, infectious disease outbreaks, or similar public

health or safety emergencies that occur and are received while the Legislature is not in session and that are declared by the Governor as a state of emergency may be construed to authorize the appropriation of those funds, except as provided in this subsection.

(f)(1) If federal funds become available to a spending unit and the funds were not included in the budget approved by the Legislature for the next fiscal year but are authorized to be expended while the Legislature is not in session under subsection (d) of this section, the Governor shall submit reports in writing to the President of the Senate, the Speaker of the House of Delegates, the chairs of the respective committees on finance of the two houses of the Legislature, and the Legislative Auditor as follows:

(A) On or before the first day of each month following the receipt of the funds until the funds are expended in their entirety, the reports shall include the following:

(i) The purposes for which funds were made available, the identification of any federal and state laws governing the expenditure of the funds and a general itemization of the Governor's plan of expenditure for the whole of the funds;

(ii) A detailed schedule setting forth the Governor's proposed expenditures of the funds for the month, including, but not limited to, as to each proposed expenditure, the amount and purpose of the expenditure; the spending unit responsible for making the expenditure; and the anticipated recipient or recipients of the expenditure; and

(iii) An explanation of any changes made from the prior month's general itemization of the Governor's plan of expenditure for the whole of the funds and of any changes the prior month's schedule of proposed expenditures made by the actual expenditures made during that month;

(B) On or before the 15th day of the month following month in which the funds were expended in their entirety, the report shall set forth a complete itemized report of each expenditure of the funds; and

(C) The Governor shall also include in each report such additional information as may be requested the Legislative Auditor.

(2) The Legislative Auditor shall provide a copy of each report to the Joint Committee on Government and Finance.

§4-11-6. Exclusions.

The following are excluded from the provisions of this article:

(1) Federal funds received by state institutions of higher education or by students or faculty members of such institutions for instructional or research purposes and federal funds received for student scholarships or grants-in-aid;

(2) Federal nondiscretionary pass-through funds which are earmarked in specified amounts or proportions for transmittal to local political subdivisions or to designated classes of organizations and individuals which do not require state-matching funds and do not permit discretion in their distribution by the receiving state spending unit; and

(3) All federal funds received by the West Virginia department of highways or the West Virginia commissioner of highways.

§4-11-7. Conflict with other statutory provisions.

If there is any conflict between the provisions of this article and any other provision of law, including this code, relating to receiving or expending federal funds, the provisions of this article shall govern and control.

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 1A. ITEMIZATION OF PROPOSED APPROPRIATIONS IN BUDGET BILL SUBMITTED BY GOVERNOR TO LEGISLATURE.

§5-1A-1. Legislative findings and purposes.

The Legislature finds and declares that section fifty-one, article six of the Constitution, known as the "modern budget amendment," authorizes the Legislature to prescribe by law the form and detail of the itemization and classification of the proposed appropriations of the budget bill submitted to it by the Governor, and that said section further authorizes the Legislature to enact such laws, not inconsistent with said section, as may be necessary and proper to carry out its provisions. The Legislature further finds and declares that said section makes the Legislature solely responsible for enacting all appropriations needed for the operation of state government, and that in carrying out such responsibility, the Legislature requires a continuous and timely flow of accurate information relative to the financial condition of the state, the needs and operations of the various agencies and departments of the state, and the amounts and purposes of all funds, including federal funds, being requested, received or expended by such agencies and departments from sources other than the revenues of the state.

Therefore, it is the purpose of this article to implement the aforementioned provisions of the Constitution, to enable the Legislature to carry out its Constitutional responsibility by prescribing the form and detail of the itemization and classification of the proposed appropriations of the budget bill submitted to the Legislature by the Governor, and in conjunction with certain sections of §5-1A-1 *et seq.* and §11B-2-1 *et seq.* of this code and §12-4-3 of this code, to ensure that the Legislature will be furnished the information needed to discharge such responsibility.

CHAPTER 11B. DEPARTMENT OF REVENUE.

ARTICLE 1. DEPARTMENT OF REVENUE.

§11B-1-1. Department of Revenue; Office of Secretary of Revenue; Director of Budget; federal funds.

(a) The Department of Revenue and the office of secretary of revenue are continued in the executive branch of state government. Wherever in this code the words "office of secretary of tax and revenue" or "secretary of tax and revenue" are used, such words shall mean the office of secretary of revenue or the secretary of revenue. Wherever in this code the words "department of tax and revenue" are used, such words shall mean the Department of Revenue.

(b) The secretary of revenue shall be the chief executive officer of the department and director of the budget. The secretary shall be appointed by the Governor, by and with the advice and consent of the Senate, for a term not exceeding the term of the Governor.

(c) The Department of Revenue is hereby authorized to receive federal funds for deposit in compliance with §12-2-2 of this code and for expenditure only upon appropriation by the Legislature of this state and in accordance with §4-11-1 *et seq.* of this code.

(d) The secretary shall serve at the will and pleasure of the Governor. The annual compensation of the secretary shall be as specified in §6-7-2a of this code.

§11B-1-4. Reports by secretary.

The secretary shall make an annual report to the Governor concerning the conduct of the department and the administration of the budget. The secretary shall also make other reports as the Governor may require. Copies of any such reports shall be submitted to the Legislature in the manner required by §5-1-20 of this code.

ARTICLE 2. STATE BUDGET OFFICE.

§11B-2-11. Estimates of revenue; reports on revenue collections; withholding department funds on noncompliance.

(a) Prior to the beginning of each fiscal year, the secretary shall estimate the revenue to be collected month by month by each classification of tax for that fiscal year as it relates to the official

estimate of revenue for each tax for that fiscal year and the secretary shall certify this estimate to the Governor and the Legislative Auditor and the West Virginia Investment Management Board by July 1, for that fiscal year.

(1) The secretary shall ascertain the collection of the revenue of the state and shall determine for each month of the fiscal year the proportion which the amount actually collected during a month bears to the collection estimated by him or her for that month. The secretary shall certify to the Governor, the Legislative Auditor and the Investment Management Board, as soon as possible after the close of each month, and not later than the 15th day of each month, and at other times as the Governor, the Legislative Auditor or the Investment Management Board may request, the condition of the state revenues and of the several funds of the state and the proportion which the amount actually collected during the preceding month bears to the collection estimated by him or her for that month. The secretary shall include in this certification the same information previously certified for prior months in each fiscal year. The certification for the final month of a fiscal year shall also include the proportion which the amount actually collected during the preceding fiscal year bears to the appropriations made for that year. For the purposes of this section, the secretary shall have the authority to require all necessary estimates and reports from any spending unit of the state government.

(2) If the secretary fails to certify to the Governor, the Legislative Auditor and the Investment Management Board the information required by this subsection within the time specified herein, the Legislative Auditor shall notify the Auditor and Treasurer of the failure and thereafter no funds appropriated to the Department of Revenue may be expended until the secretary has certified the information required by this subsection.

(b) Prior to July 1, of each fiscal year, the secretary shall estimate daily revenue flows for the General Revenue Fund for the next fiscal year as it relates to the official estimate of revenue. Subsequent to the end of each fiscal year, the secretary shall compare the projected daily revenue flows with the actual daily revenue flows from the previous year. The secretary may for any

month or months, at his or her discretion, revise the annual projections of the daily revenue flows. The secretary shall certify to the Governor, the Legislative Auditor and the Investment Management Board, as soon as possible after the close of each month and not later than the 15th day of each month, and at other times as the Governor, the Legislative Auditor or the Investment Management Board may request, the condition of the General Revenue Fund and the comparison of the projected daily revenue flows with the actual daily revenue flows. If the secretary fails to certify to the Governor, the Legislative Auditor and the Investment Management Board the information required by this subsection within the time specified herein, the Legislative Auditor shall notify the Auditor and treasurer of the failure and thereafter no funds appropriated to the Department of Revenue may be expended until the secretary has certified the information required by this subsection.

§11B-2-21. Reduction of appropriations — Reduction of appropriations from general revenue.

If the Governor determines that the amounts, or parts thereof, appropriated from the general revenue cannot be expended without creating an overdraft or deficit in the General Fund, he or she may, before the end of the fiscal year, instruct the secretary to reduce all appropriations out of general revenue in a degree as necessary to prevent an overdraft or a deficit in the General Fund. No reduction of appropriations may be made after June 30 of the fiscal year.

§11B-2-23. Approval of secretary of requests for changes and receipt and expenditure of federal funds by state agencies; copies or sufficient summary information to be furnished to secretary; consolidated report of federal funds; central agency for receipt of federal funds; unlawful acts.

(a) Every agency of the state government when making requests or preparing budgets to be submitted to the federal government for funds, equipment, material or services, the grant or allocation of which is conditioned upon the use of state matching funds, shall have the request or budget approved in writing by the secretary before submitting it to the proper federal authority. When

the federal authority has approved the request or budget, the agency of the state government shall resubmit it to the secretary for recording before any allotment or encumbrance of the federal funds can be made. Whenever any agency of the state government receives from any agency of the federal government a grant or allocation of funds which do not require state matching, the state agency shall report to the secretary the amount of the federal funds granted or allocated.

(b) Unless contrary to federal law, any agency of state government, when making requests or preparing budgets to be submitted to the federal government for funds for personal services, shall include in the request or budget the amount of funds necessary to pay for the costs of any fringe benefits related to the personal service. For the purposes of this section, "fringe benefits" means any employment benefit granted by the state which involves state funds, including, but not limited to, contributions to insurance, retirement and social security and which does not affect the basic rate of pay of an employee.

(c) In addition to the other requirements of this section, the secretary shall, as soon as possible after the end of each fiscal year but no later than December 31, of each year, submit to the Governor a consolidated report which shall contain a detailed itemization of all federal funds received by the state during the preceding and current fiscal years, as well as those scheduled or anticipated to be received during the remainder of the current fiscal year and the next ensuing fiscal year. The itemization shall show:

(1) Each spending unit which has received or is scheduled or expected to receive federal funds in either of the fiscal years;

(2) The amount of each separate grant or distribution received or to be received; and

(3) A brief description of the purpose of every grant or other distribution, with the name of the federal agency, bureau or department making the grant or distribution: *Provided,* That it is not necessary to include in the report an itemization of federal

block grants, or federal funds received for the benefit of the Division of Highways of the Department of Transportation.

(d) The secretary may obtain from the spending units any and all information necessary to prepare a report.

(e) Notwithstanding the other provisions of this section and in supplementation of the provisions of this section, the Legislature hereby determines that the Department of Revenue and its secretary need to be the single and central agency for receipt of information and documents in respect of applications for, and changes, receipt and expenditure of, federal funds by state agencies. Every agency of state government, when making application for federal funds in the nature of a grant, allocation or otherwise; when amending the applications or requests; when in receipt of federal funds; or when undertaking any expenditure of federal funds, in all respective instances, shall provide to the secretary of revenue document copies or sufficient summary information in respect of the federal funds to enable the secretary to provide approval in writing for any activity in respect to the federal funds.

CHAPTER 12. PUBLIC MONEYS AND SECURITIES.

ARTICLE 2. PAYMENT AND DEPOSIT OF TAXES AND OTHER AMOUNTS DUE THE STATE OR ANY POLITICAL SUBDIVISION.

§12-2-2. Itemized record of moneys received for deposit; regulations governing deposits; credit to state fund; exceptions.

(a) All officials and employees of the state authorized by statute to accept moneys on behalf of the State of West Virginia shall keep a daily itemized record of moneys received for deposit in the State Treasury and shall deposit within one business day with the State Treasurer all moneys received or collected by them for or on behalf of the state for any purpose whatsoever. The State Treasurer may grant an exception to the one business day rule when circumstances make compliance difficult or expensive. The State Treasurer may

review the procedures and methods used by officials and employees authorized to accept moneys due the state and change the procedures and methods if he or she determines it is in the best interest of the state: *Provided,* That the State Treasurer may not review or amend the procedures by which the Department of Revenue accepts moneys due the state. The State Treasurer shall propose rules for legislative approval, in accordance with the provisions of §29A-3-1 *et seq.* of this code governing the procedure for deposits. The official or employee making deposits with the State Treasurer shall prepare deposit lists in the manner and upon report forms prescribed by the State Treasurer in the state accounting system. The State Treasurer shall review the deposits in the state accounting system and forward the information to the State Auditor and to the Secretary of Revenue.

(b) All moneys received by the state from appropriations made by the Congress of the United States shall be recorded in special fund accounts, in the State Treasury apart from the general revenues of the state, and shall be expended only upon appropriation of the Legislature in accordance with the provisions of §4-11-1 *et seq.* of this code. All moneys, other than federal funds, defined in §4-11-2 of this code, shall be credited to the state fund and treated by the State Auditor and State Treasurer as part of the general revenue of the state except the following funds which shall be recorded in separate accounts:

(1) All funds excluded by the provisions of §4-11-6 of this code;

(2) All funds derived from the sale of farm and dairy products from farms operated by any spending unit of the state;

(3) All endowment funds, bequests, donations, executive emergency funds and death and disability funds;

(4) All fees and funds collected at state educational institutions for student activities;

(5) All funds derived from collections from dormitories, boardinghouses, cafeterias and road camps;

(6) All moneys received from counties by institutions for the deaf and blind on account of clothing for indigent pupils;

(7) All insurance collected on account of losses by fire and refunds;

(8) All funds derived from bookstores and sales of blank paper and stationery, and collections by the chief inspector of public offices;

(9) All moneys collected and belonging to the capitol building fund, state road fund, state road sinking fund, general school fund, school fund, state fund (moneys belonging to counties, districts and municipalities), state interest and sinking funds, state compensation funds, the fund maintained by the Public Service Commission for the investigation and supervision of applications and all fees, money, interest or funds arising from the sales of all permits and licenses to hunt, trap, fish or otherwise hold or capture fish and wildlife resources and money reimbursed and granted by the federal government for fish and wildlife conservation; and

(10) All moneys collected or received under any act of the Legislature providing that funds collected or received under the act shall be used for specific purposes.

(c) All moneys, except as provided in subdivisions (1) through (9), inclusive, subsection (b) of this section, shall be paid into the State Treasury in the same manner as collections not excepted and recorded in separate accounts for receipt and expenditure for the purposes for which the moneys are authorized to be collected by law: *Provided,* That amounts collected pursuant to subdivisions (1) through (10), subsection (b) of this section, which are found, from time to time, to exceed funds needed for the purposes set forth in general law may be transferred to other accounts or funds and redesignated for other purposes by appropriation of the Legislature. The gross amount collected in all cases shall be paid into the State Treasury. Commissions, costs and expenses, including, without limitation, amounts charged for use of bank, charge, credit or debit cards, incurred in the collection process shall be paid from the gross

amount collected in the same manner as other payments are made from the State Treasury.

(d) The State Treasurer may establish an imprest fund or funds in the office of any state spending unit upon receipt of a proper application. To implement this authority, the State Treasurer shall propose rules for legislative approval in accordance with the provisions of §29A-3-1 *et seq.* of this code. The State Treasurer or his or her designee shall annually audit all imprest funds and prepare a list of the funds showing the location and amount as of fiscal year end, retaining the list as a permanent record of the State Treasurer until the Legislative Auditor has completed an audit of the imprest funds of all agencies and institutions involved.

(e) The State Treasurer may develop and implement a centralized receipts processing center. The State Treasurer may request the transfer of equipment and personnel from appropriate state agencies to the centralized receipts processing center in order to implement the provisions of this section: *Provided,* That the Governor or appropriate constitutional officer has authority to authorize the transfer of equipment or personnel to the centralized receipts processing center from the respective agency.

ARTICLE 3. APPROPRIATIONS, EXPENDITURES AND DEDUCTIONS.

§12-3-12. Expiration of unexpended appropriations; reappropriations.

(a) Except as provided in subsection (b) of this section, every appropriation that is payable out of the general revenue, or so much thereof as may remain undrawn at the end of the year for which made, shall be deemed to have expired at the end of the year for which it is made, and no warrant shall thereafter be issued upon it: *Provided,* That warrants may be drawn through the 31st day of July after the end of the year for which the appropriation is made if the warrants are in payment of bills for such year and have been encumbered by the budget office prior to July first: *Provided, however,* That if such 31st day of July is on Saturday, then warrants may only be drawn through the Friday immediately preceding such

Saturday, but if such 31st day of July is on Sunday, the warrants may be drawn through the Monday immediately following such Sunday.

(b) Notwithstanding any provision of subsection (a) of this section to the contrary:

(1) Appropriations that are payable out of the general revenue, or so much thereof as may remain undrawn at the end of the year for which made, for buildings and land or capital outlay shall remain in effect, and shall not be deemed to have expired until the end of three years after the passage of the act by which such appropriations are made; and

(2) Appropriations that are payable out of the general revenue, or so much thereof as may remain undrawn at the end of the fiscal year for which made, that are reappropriated by the budget act for the ensuing fiscal year shall not be deemed to have expired unless, at the end of the fiscal year just ended, the total general revenue collections for the fiscal year just ended did not equal or exceed total general revenue appropriations for that fiscal year. If the total general revenue collections for the fiscal year just ended did not equal or exceed total general revenue appropriations for that fiscal year, all such reappropriations shall be deemed to have expired at the end of the fiscal year as provided in subsection (a) of this section.

(c) The Legislature may expire or provide for the expiration of any appropriation prior to the end of the fiscal year for which it is made.

§12-3-17. Liabilities incurred by state boards, commissions, officers or employees which cannot be paid out of current appropriations.

Except as provided in this section, it shall be unlawful for any state board, commission, officer or employee: (1) To incur any liability during any fiscal year which cannot be paid out of the then current appropriation for such year or out of funds received from an emergency appropriation; or (2) to authorize or to pay any

account or bill incurred during any fiscal year out of the appropriation for the following year: *Provided,* That nothing contained herein shall prohibit entering into a contract or lease for buildings, land and space, the cost of which exceeds the current year's appropriation, even though the amount is not available during the then current year, if the aggregate cost does not exceed the amount then authorized by the Legislature. Nothing contained herein shall abrogate the provisions of the general law relating to the expiration of appropriations for buildings and land.

Any member of a state board or commission or any officer or employee violating any provision of this section shall be personally liable for any debt unlawfully incurred or for any payment unlawfully made.

ARTICLE 4. ACCOUNTS, REPORTS AND GENERAL PROVISIONS.

§12-4-2. Accounts of Treasurer and Auditor; Auditor to certify condition of revenues and funds of the state.

The Treasurer shall keep in his or her office separate accounts with each depository, and also a summary account for the state, and when money is paid into the treasury, it shall be charged to the proper depository and credited to a summary account. The Auditor shall keep in his or her office separate accounts of the particular heads or sources of revenue, and a summary account with the Treasurer, beside such individual accounts with officers and persons as may be necessary, and shall charge every sum of money received for the state as aforesaid to the Treasurer's account, and credit it under the particular head of revenue to which it properly belongs, distinguishing especially in distinct accounts the receipts on account of the capital of the school fund and those on account of the income of said fund subject to annual distribution. The Auditor shall certify annually to the Secretary of Revenue the condition of the state revenues and the several funds of the state. The certification shall be used by the Secretary in the preparation of a tentative state budget as required of him or her by §5-1A-1 *et seq.,* and §11B-2-1 *et seq.* of this code.

§12-4-3. Accounts of appropriations.

The Auditor and Secretary of Revenue shall each keep an account of every appropriation made by law, and of the several sums drawn thereon, so that the accounts may show at all times the balance undrawn on each appropriation. The account so kept shall be compared every month and errors, if any, corrected.

CHAPTER 226

(Com. Sub. for H. B. 2573 - By Delegates Rowan, Maynard, Hott, Hardy, J. Pack, Criss, Riley, Anderson, Gearheart, Graves and Linville)

[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 article, designated §5B-10-1, §5B-10-2, §5B-10-3, §5B-10-4, §5B-10-5, §5B-10-6, §5B-10-7, §5B-10-8 and §5B-10-9, and to amend and reenact §12-4-14 of said code; all generally relating to providing transparency regarding the spending of public monies; enacting the West Virginia Development Achievements Transparency Act; providing a short title for the West Virginia Development Achievements Transparency Act; providing legislative purpose and findings; providing for definitions; outlining reporting requirements for entities providing a development subsidy; directing the Auditor to create a searchable website to view development subsidy data; detailing the items required to be provided on the Auditor's searchable website; protecting confidentiality of certain subsidy data; providing that a granting body may compile information from a recipient corporation; providing that a granting body shall review information from a recipient corporation to ensure reasonable accuracy; providing that the State Auditor shall publish a list detailing any granting body or recipient corporation that fails to comply with article 9, chapter 5B of this code; providing that the Auditor shall publish a list of any granting body or recipient corporation that intentionally submits false, misleading, or fraudulent information; providing that the Auditor shall notify the Joint Committee on Government and Finance of any granting body or recipient corporation that intentionally submits false, misleading or fraudulent information; permitting the Auditor to hold public

hearings or training sessions to ensure compliance with the article; reenacting §12-4-14 of this code as the West Virginia Grant Transparency and Accountability Act; providing a short title for West Virginia Grant Transparency and Accountability Act; providing legislative intent; defining terms; providing that any grantee of state grant funds that grants said funds to a subgrantee, such funds shall be treated as a state grant; providing that the Auditor shall notify the Treasurer regarding any grantor agency that fails to comply with reporting and recordkeeping provisions of this code and that such agency shall not encumber or expend grant funds until State Auditor determines that reporting and recordkeeping are brought into compliance with this code; requiring each state grantmaking agency designate a Chief Accountability Officer; allowing grantor agencies or the State Auditor to issue stop payment orders; requiring the State Auditor to maintain a searchable and publicly accessible database of state grants; requiring State Auditor, in cooperation with state grant making agencies, to promulgate legislative, procedural and interpretive rules regarding stop payment procedures; providing for informal conference to resolve conflicts between grantor agency and grantee when grantor agency reasonably believes grant funds are subject to recovery; providing formal procedures for grantor agency to follow to determine if grant funds are subject to recovery, including notice and hearing requirements; requiring grantor agencies to take affirmative and timely action to recover misspent and improperly held grant funds, once said funds are determined to be misspent or improperly held; providing grantor agencies methods to recover misspent or improperly held grant funds; allowing the Attorney General to take action to recover any grants funds that have been misapplied or improperly held; creating a special revenue fund known as the Grant Recovery Fund for recovered grant funds for which the use is not restricted by law or otherwise appropriated; providing for rulemaking by the State Auditor; requiring the State Auditor to adopt conflicts of interest policies for state grants and requiring grantors, grantees, and subgrantees to disclose such conflicts; changing the notification requirement from the Legislative Auditor to the

State Auditor for state agencies administering a state grant; requiring the State Auditor to maintain a debarred list in the form of a computerized database accessible by state agencies and the public, with public disclosure to the extent allowed by federal law; defining prohibited political activity; requiring grantors, grantees, subgrantees, and personnel thereof to not use grant funds for prohibited political activities or to be knowingly compensated with grant funds for prohibited political activities; providing exception for 501(c)(3) and 501(c)(4) organizations that receive state grant funds for federally permissible advocacy; providing criminal penalties; and providing for reporting by the State Auditor to the Joint Legislative Committee on Government and Finance that demonstrates efficiencies cost savings, and reductions in fraud, waste and abuse.

Be it enacted by the Legislature of West Virginia:

ARTICLE 10. WEST VIRGINIA DEVELOPMENT ACHIEVEMENTS TRANSPARENCY ACT.

§5B-10-1. Short title.

This article shall be known and cited as the "West Virginia Development Achievements Transparency Act" or the "West Virginia DATA Act".

§5B-10-2. Purpose and findings.

(a) The Legislature finds that public tax dollars are expended annually, whether directly in the form of grants or indirectly in the form of tax credits and incentives, for the purpose of developing and improving economic industries within the State of West Virginia.

(b) The Legislature further finds that the State of West Virginia should inform state taxpayers about these direct or indirect expenditures, the objectives of the expenditures, and whether the state met the intended objectives of the expenditures.

(c) The Legislature further finds that any funds deposited into the Grant Recovery Fund pursuant to §12-4-14(e)(10) of this code should be appropriated by the Legislature to the granting body that originally granted the funds to a grantee or subgrantee.

§5B-10-3. Definitions.

For the purpose of this article:

"Auditor" means the State Auditor of West Virginia, by himself or herself, or by any person appointed, designated, or approved by the State Auditor to perform the service.

"Business type" means the legal form of organization of a corporate parent or recipient corporation, including, but not limited to, a corporation, partnership, sole proprietorship, or limited liability company.

"Corporate parent" means any person, association, corporation, joint venture, partnership, or other entity that owns or controls 50 percent or more of a recipient corporation.

"Confidential information" means any internal, deliberative, preliminary, proprietary, personal, or protected economic development or taxpayer information as defined in §5B-10-6 of this code, §11-10-5d of this code, or Chapter 29B of this code, that is exempt from public disclosure.

"Date of subsidy" means the date that a granting body provides the initial monetary value of a development subsidy to a recipient corporation: *Provided*, That where the subsidy is for the installation of new equipment, such date shall be the date the recipient corporation puts the equipment into service: *Provided, however*, That where the subsidy is for improvements to property, such date shall be the date the improvements are finished, or the date the recipient corporation occupies the property, whichever is earlier.

"Development subsidy" means any financial transaction of public funds with an aggregate value of at least $10,000 for the purpose of stimulating economic development within the state,

including, but not limited to, bonds, grants, loans, loan guarantees, enterprise zones, empowerment zones, tax increment financing, sponsorships, fee waivers, land price subsidies, matching funds, tax abatements, tax exemptions, and tax credits.

"Duration of subsidy" means as many years as a subsidy benefits a recipient corporation, such as the time period of a grant, the number of years a tax credit may be claimed and/or carried forward, the number of years or term length of a loan, or the number of years a property tax reduction applies.

"Full-time job" means a job in which an individual is employed by a recipient corporation for at least 35 hours per week.

"Granting body" means any agency, board, office, public-private partnership, public benefit corporation or authority of the state or local government that provides a development subsidy to a recipient corporation.

"NAICS code" means the assigned code maintained by the North American Industry Classification System which describes a particular industry.

"New Employee" means a full-time employee who represents a net increase in the number of individuals employed by the recipient corporation in the state. "New employee" does not include an employee who performs a job that was previously performed by another employee of the recipient corporation if that job existed for at least six months before hiring the employee.

"Official report" means a formal, written report prepared by a granting body delivered to a third party, including, but not limited to, the Joint Committee on Government and Finance, Governor's Office, or the public.

"Part-time job" means a job in which an individual is employed by a recipient corporation for less than 35 hours per week.

"Project site" means the site of a project for which any development subsidy is provided, as specified by street address, city name, and zip code.

"Recipient corporation" means any person, association, corporation, joint venture, partnership or other entity that receives a development subsidy.

"Subsidy type" means the classification of a development subsidy transaction, including, but not limited to, bonds, grants, loans, loan guarantees, enterprise zones, empowerment zones, tax increment financing, grants, fee waivers, land price subsidies, matching funds, tax abatements, tax exemptions, and tax credits.

"Subsidy value" means the face value of any and all development subsidies provided to a recipient corporation. The face value of a loan means the amount of the loan.

"Temporary job" means a job in which an individual is hired for a season or for a limited period of time.

§5B-10-4. Reporting requirements.

(a) Within 30 days of the end of the fiscal year, each granting body shall provide the Auditor with the information required in §5B-10-6 of this code for each development subsidy provided to a recipient corporation by a granting body: *Provided*, That no development subsidy approved and legally obligated by the State of West Virginia shall be exempt from disclosure under this article.

(b) The Auditor shall provide guidance to each granting body regarding the standard and manner of reporting specified in this section.

(c) The Auditor may accept one or multiple official reports of a granting body to satisfy the requirements of this section provided the information provided in the official reports discloses the information required by §5B-10-6 of this code.

(d) The West Virginia Department of Economic Development may fulfill the requirements of this section on behalf of any granting bodies.

(e) The West Virginia Department of Economic Development may fulfill the requirements of this section by providing any

agreements entered into or signed by the West Virginia Department of Economic Development which obligates public funds as of the date the agreement is entered into, signed or otherwise made public.

§5B-10-5. Auditor's searchable economic development website created.

No later than January 1, 2022, the Auditor shall develop and make publicly available a searchable financial transparency website containing the information specified in §5B-10-6 of this code.

§5B-10-6. Contents of the searchable website.

(a) The Auditor shall include as part of the searchable economic development transparency website the following content for each fiscal year and the previous three fiscal years:

(1) The name of the recipient corporation of a development subsidy: *Provided*, That if a name of a recipient corporation of a development subsidy be considered confidential information, the granting body shall provide the business type of the recipient corporation instead of the name;

(2) The name of the corporate parent of the recipient corporation, if applicable: *Provided*, That should a name of a corporate parent of a recipient corporation of a development subsidy be considered confidential information, the granting body shall provide the business type of the corporate parent instead of the name;

(3) The project site: *Provided*, That should the project site be considered confidential information, the granting body shall provide the city, state, and zip code, but not the street address;

(4) The NAICS code or codes of the recipient corporation;

(5) The date of subsidy;

(6) The subsidy value;

(7) The duration of subsidy;

(8) The subsidy type;

(9) The number of new employees the development subsidy is expected to create within the duration of subsidy, classified by full-time jobs, part-time jobs, and temporary jobs;

(10) The number of new employees the development subsidy has actually created within the duration of subsidy, classified by full-time jobs, part-time jobs, and temporary jobs: *Provided*, That this number may be estimated if an accurate count is not available, but the granting body shall clearly disclose that the reported number is an estimate;

(11) Any other direct or indirect benefits to the state the granting body intends the development subsidy to achieve, including, but not limited to, creation of public infrastructure, vocational training, apprenticeships, workforce development, or state tourism visitor or permanent resident population increases;

(12) Any other direct or indirect benefit to the state actually achieved by the development subsidy, including, but not limited to, creation of public infrastructure, vocational training, apprenticeships, workforce development, or state tourism visitor or permanent resident population increases; and

(13) The name or names of the granting body or bodies providing the development subsidy.

§5B-10-7. Confidentiality.

(a) Nothing in this article may be construed as requiring the West Virginia Department of Economic Development or the West Virginia Tax Department to release confidential information as defined in this article.

(b) If information regarding a development subsidy is confidential information, a granting body shall redact only those confidential items but shall disclose any other information

pertaining to a development subsidy that is not confidential information.

(c) The Auditor may consult with the granting body to determine the confidentiality of development subsidy data required in §5B-10-6 of this code and determine the appropriate disclosures on the searchable economic development website created in §5B-10-5 of this code to preserve confidentiality.

(d) The Auditor shall identify any redacted items not appearing on the searchable economic development transparency website and the justification as to why the items were redacted.

§5B-10-8. Source and accuracy of information; failure to report.

(a) To fulfill the requirements of this article, a granting body may independently compile the information required in §5B-10-6 of this code or request the information from a recipient corporation.

(b) A granting body shall review information received from a recipient corporation to ensure it is reasonably accurate but is not required to audit or certify the accuracy of the information.

(c) The Auditor shall publish a list on the searchable economic development transparency website detailing any granting body or recipient corporation who fails to comply with the requirements of this article.

(d) The Auditor shall publish a list on the searchable economic development transparency website detailing any granting body or recipient corporation who intentionally submits false, misleading, or fraudulent information: *Provided*, That the Auditor shall notify the Joint Committee on Government and Finance of any granting body or recipient corporation who intentionally submits false, misleading, or fraudulent information to the Auditor.

§5B-10-9. Public hearings.

The Auditor may conduct public hearings or training sessions to assist any recipient corporation or granting body in complying with the requirements of this article.

ARTICLE 4. ACCOUNTS, REPORTS AND GENERAL PROVISIONS.

§12-4-14. West Virginia Grant Transparency and Accountability Act; Accountability of grantees receiving state funds or grants; procedures, reporting, auditing, investigations, and recovery; sworn statements by volunteer fire departments; rule making, criminal penalties.

(a) This section may be cited as The West Virginia Grant Transparency and Accountability Act. The West Virginia Grant Transparency and Accountability Act is intended to develop a coordinated, nonredundant process for the effective oversight and monitoring of grant recipients, thereby ensuring quality programs and limiting fraud, waste, and abuse.

(b) For the purposes of this section:

(1) "Grantor" means a state spending unit awarding a state grant.

(2) "Grantee" means any entity receiving a state grant, including a state spending unit, local government, corporation, partnership, association, individual, or other legal entity.

(3) "Subgrantee" means an entity, including a state spending unit, local government, corporation, partnership, association, individual, or other legal entity, who receives grant money from a grantee who was awarded a state grant.

(4) "Report" means an engagement, such as an agreed-upon procedures engagement or other attestation engagement, performed and prepared by a certified public accountant to test whether state grants were spent as intended. The term "report" does not mean a full-scope audit or review of the person receiving state funds.

(5) "State grant" means funding provided by a state spending unit, regardless of the original source of the funds, to a grantee upon application for a specific purpose. The term "state grant" does

not include: (A) Payments for goods and services purchased by a state spending unit; (B) compensation to state employees and public officials; (C) reimbursements to state employees and public officials for travel or incidental expenses; (D) grants of student aid; (E) government transfer payments; (F) direct benefits provided under state insurance and welfare programs; (G) funds reimbursed to a person for expenditures made for qualified purposes when receipts for the expenditures are required prior to receiving the funds; (H) retirement benefits; and (I) federal pass-through funds that are subject to the federal Single Audit Act Amendments of 1996, 31 U.S.C. § 7501 *et seq.* The term "state grant" does not include formula distributions to volunteer and part-volunteer fire departments and fire companies made pursuant to §33-3-14d, §33-3-33, §33-12C-7 of this code and does not include money received from the Fire Service Equipment and Training Fund as provided in §29-3-5f of this code.

(6) "West Virginia debarred list" means the list maintained by the State Auditor that contains the names of individuals and entities that are ineligible, either temporarily or permanently, from receiving an award of grant funds from the state.

(7) "State Auditor" means the State Auditor of West Virginia, by himself or herself, or by any person appointed, designated, or approved by the State Auditor to perform the service.

(8) "Stop payment order" means a communication from the state grant-making agency to the State Auditor and the State Treasurer, following procedures by the State Auditor, causing the cessation of payments to a grantee or subgrantee as a result of the grantee or subgrantee's failure to comply with one or more terms of the grant or subgrant, violations of law, or the initiation of an audit or investigation.

(9) "Stop payment procedure" means the procedure created by the State Auditor which effects a stop payment order or the lifting of a stop payment order.

(c) (1) Any grantee who receives one or more state grants in the amount of $50,000 or more in the aggregate in a state's fiscal

year shall file with the grantor and the State Auditor a report of the disbursement of the state grant funds. When the grantor causes an audit, by an independent certified public accountant, to be conducted of the grant funds, the audit is performed using generally accepted government auditing standards, and a copy of the audit is available for public inspection, no report is required to be filed under this section. An audit performed that complies with Office of Management and Budget circular A-133, and submitted within the period provided in this section may be substituted for the report.

(2) Any grantee who receives a state grant in an amount less than $50,000 or who is not required to file a report because an audit has been conducted or substituted as provided by subdivision (1) of this subsection shall file with the grantor and State Auditor a sworn statement of expenditures made under the grant.

(3) Subgrant of grant funds – If any grantee obtains grant funds and grants any part or all of those funds to a subgrantee for a specific purpose or purposes, the granted funds shall be treated as a state grant.

(4) Reports and sworn statements of expenditures required by this section shall be filed within two years of the end of the grantee's fiscal year in which the disbursement of state grant funds by the grantor was made. The report shall be made by an independent certified public accountant at the cost of the grantee. State grant funds may be used to pay for the report if the applicable grant provisions allow. The scope of the report is limited to showing that the state grant funds were spent for the purposes intended when the grant was made.

(5) In the event the State Auditor determines that applicable reporting or record keeping provisions for state grants are delinquent or not in compliance with this code, the State Auditor shall notify the State Treasurer and no further grant funds appropriated to the grantor agency under the specific grant shall be encumbered or expended until such time as the State Auditor determines that all applicable reporting or record keeping provisions are brought into compliance: *Provided,* That such suspension of funding does not violate federal law or regulations

or unreasonably prevent or detrimentally impact the ability of the agency to receive federal support or funding.

(6) Each State grant-making agency shall designate a Chief Accountability Officer, to the extent possible from within its existing staff, who shall serve as a liaison to the State Auditor and shall be responsible for the state agency's implementation of and compliance with the law, rules, and terms of grants. Such position may be held concurrently with any other designated position.

(d)(1) Grantor agencies or the State Auditor shall issue stop payment orders for failure to file required reports. Any grantee failing to file a required report or sworn statement of expenditures within the two-year period as provided in this section for state grant funds is barred from subsequently receiving state grants until the grantee has filed the report or sworn statement of expenditures and is otherwise in compliance with the provisions of this section.

(2) Any grantor of a state grant shall report any grantee failing to file a required report or sworn statement of expenditures within the required period provided in this section to the State Auditor for purposes of debarment from receiving state grants.

(3) The State Auditor shall maintain a searchable and publicly accessible database listing all awarded state grants. All grantors shall provide a list of grantees and subgrantees to the State Auditor and all other information regarding grant funds and grantees as required by law or rule.

(e)(1) The state agency administering the state grant shall notify the grantee of the reporting requirements set forth in this section.

(2) All grantors awarding state grants shall, prior to awarding a state grant verify that the grantee is not barred from receiving state grants pursuant to this section. The verification process shall, at a minimum, include:

(A) A requirement that the grantee seeking the state grant provide a sworn statement from an authorized representative that the grantee has filed all reports and sworn statements of

expenditures for state grants received as required under this section; and

(B) Confirmation from the State Auditor by the grantor that the grantee has not been identified as one who has failed to file a report or sworn statement of expenditures under this section. Confirmation may be accomplished by accessing the computerized database provided for in this section.

(3) If any report or sworn statement of expenditures submitted pursuant to the requirements of this section provides evidence of a reportable condition or violation, the grantor shall provide a copy of the report or sworn statement of expenditures to the State Auditor within 30 days of receipt by the grantor.

(4) The grantor and State Auditor shall maintain copies of reports and sworn statements of expenditures required by this section and make the reports or sworn statements of expenditures available for public inspection, as well as for use in audits and performance reviews of the grantor.

(5) Stop payment procedures – The State Auditor, in cooperation with state grant-making agencies, shall promulgate legislative, procedural, and interpretive rules in accordance with the provisions of §29A-3-1 *et seq.* of this code in implementing the provisions of this section which shall include, but not be limited to:

(A) Procedures concerning issuing and lifting stop payments and other corrective actions;

(B) Factors to be considered in determining whether to issue a stop payment order including whether or not a stop payment order is in the best interest of the state;

(C) Factors to be considered in determining whether a stop payment order should be lifted; and

(D) Procedures for notification to the grantee or subgrantee of the issuance of a stop payment order, the lifting of a stop payment order, and any other related information.

(6) Informal Conference – Whenever a grantor agency reasonably believes that grant funds are subject to recovery, the grantor agency shall provide the grantee the opportunity for at least one informal conference to determine the facts and issues and to resolve any conflicts before taking any formal recovery actions.

(7) Formal Procedures for Recovery –

(A) If a grantor agency determines that certain grant funds are to be recovered, then, prior to taking any action to recover the grant funds, the grantor agency shall provide the grantee of the funds a written notice of the intended recovery. This notice shall identify the funds and the amount to be recovered and the specific facts which permit recovery.

(B) A grantee shall have 35 days from the receipt of the notice required in paragraph (A) of this subdivision to return the grant funds or request a hearing in writing to show why recovery is not justified or proper.

(C) If a grantee requests a hearing pursuant to paragraph (B) of this subdivision, then:

(i) The hearing shall be conducted under §29A-5-1 *et seq.* of this code, and be presided over by the grantor agency head or their designee;

(ii) The grantor agency shall hold the hearing at which the grantee or designated representative may present evidence and witnesses to show why recovery should not be permitted; and

(iii) After the conclusion of the hearing, the grantor agency shall make a final decision and issue a written final recovery order in compliance with §29A-5-3 of this code and send a copy of the order to the grantee and the State Auditor.

(D)(i) If a grantee requests a hearing pursuant to paragraph (B) of this subdivision then the grantor agency may not take any action of recovery until at least 35 days after the grantor agency has issued a final recovery order pursuant to the requirements of paragraph (C) of this subdivision.

(ii) If a grantee does not return the grant funds or request a hearing as permitted in paragraph (B) of this subdivision, then the grantor agency may proceed with recovery of the grant funds identified in the notice issued pursuant to the requirements of paragraph (A) of this subdivision, at any time after the expiration of the 35 day request period established in paragraph (B) of this subdivision.

(8) Recovery of Grant Funds by Grantor Agency – Any grant funds which have been misspent or are being improperly held are subject to recovery by the grantor agency which made the grant. The grantor agency making the grant shall take affirmative and timely action to recover all misspent or improperly held grant funds. In order to effectuate the recovery of such grant funds, the grantor agency making the grant may use any one or a combination of the following:

(A) Offset the amounts against existing grants or future grants to be made by the grantor agency making the recovery;

(B) Request offsets of the amounts from existing grants or future grants to be made by other grantor agencies;

(C) Initiate any debt collection method authorized by law against any private person, business, or entity;

(D) Remove the grantee from the grantor agency's programs and debar the grantee's participation in future grant programs for a period not to exceed three years or until removed from the debarred list; or

(E) Request further action under subdivision (9) of this subsection to recover grant funds and otherwise enforce all applicable laws.

(9) Recovery of State Grant Funds – The Attorney General, independently or on behalf of the State Auditor, may take any action within his or her authority to recover any grant funds which have been misapplied or are being improperly held and have all the powers of collection established in this act in addition to any other

powers authorized by law, including, without limitation, to file lawsuits to recover grant funds.

(10) All grant funds, whose use is not restricted by law or otherwise appropriated, which are recovered by the grantor, or State Auditor, and expired or unexpended grant funds remaining at grant completion or termination, shall be deposited in a special revenue fund, which is hereby created and established in the State Treasury to be known as the Grant Recovery Fund. The moneys in the fund, with all interest or other earnings thereon, shall be expended only upon appropriation by the Legislature.

(11) The State Auditor has authority to promulgate procedural and interpretive rules and propose legislative rules for promulgation in accordance with the provisions of §29A-3-1 *et seq.* of this code to assist in implementing the provisions of this section. The rules shall set forth uniform administrative requirements and reporting procedures for state grants and subgrants to ensure compliance. State granting agencies shall not impose additional or inconsistent requirements unless specifically required by state or federal law.

(12) Conflicts of interest – The State Auditor shall adopt rules regarding conflict of interest policies for state grants. Grantors, grantees, and subgrantees must disclose in writing any potential conflicts of interest to the grant applicant prior to awarding the grant.

(f)(1) Any state agency administering a state grant shall, in the manner designated by the State Auditor, notify the State Auditor of the maximum amount of funds to be disbursed, the identity of the grantee authorized to receive the funds, the grantee's fiscal year and federal employer identification number, and the purpose and nature of the state grant within 30 days of making the state grant or authorizing the disbursement of the funds, whichever is later.

(2) The State Treasurer shall provide the Legislative Auditor the information concerning formula distributions to volunteer and part-volunteer fire departments, made pursuant to §33-3-14d, §33-

3-33, and §33-12C-7 of this code, the Legislative Auditor requests, and in the manner designated by the Legislative Auditor.

(3) The State Auditor shall maintain a debarred list identifying grantees who have failed to file reports and sworn statements required by this section. The list shall be in the form of a computerized database that shall be accessible by state agencies and the public over the Internet, unless public disclosure would violate federal law or regulations.

(g) An audit of state grant funds may be authorized at any time by the Joint Committee on Government and Finance to be conducted by the State Auditor in cooperation with the Legislative Auditor at no cost to the grantee.

(h) Any report submitted pursuant to the provisions of this section may be filed electronically in accordance with the provisions of §39A-1-1 *et seq.* of this code.

(i) Any grantee who files a fraudulent sworn statement of expenditures under subsection (b) of the section, a fraudulent sworn statement under subsection (d) of this section, or a fraudulent report under this section is guilty of a felony and, upon conviction thereof, shall be fined not less than $1,000 nor more than $5,000 or imprisoned in a state correctional facility for not less than one year nor more than five years, or both fined and imprisoned.

(j) Prohibition on use of grant funds for prohibited political activity –

(1) For the purpose of this section, "prohibited political activity" means activity directed toward the success or failure of a political party, candidate for political office, or ballot issue, and includes, without limitation, express advocacy for the election or defeat of a political party, candidate, or ballot issue.

(2) Grantors, grantees, subgrantees, and personnel thereof shall not knowingly use grant funds, or goods or services purchased with grant funds, to engage, either directly or indirectly, in a prohibited political activity.

(3) Grantors, grantees, subgrantees and personnel thereof shall not be knowingly compensated from grant funds for time spent engaging in a prohibited political activity.

(4) Nothing in this section shall prohibit any organization described in 26 U.S.C. §501(c)(3) or 26 U.S.C. §501(c)(4) receiving a grant from the state from engaging in any federally permissible activity regarding advocacy, indirect and direct lobbying, and political activity, provided that the specific funds acquired by a grant from the state or grantor shall not be used for those activities that are permitted by federal law but prohibited by this section.

(5) A grantor, grantee, subgrantee, or personnel thereof who knowingly uses grant funds for prohibited political activity in violation of this section is guilty of a felony and, upon conviction thereof, shall be fined not less than $1,000 nor more than $5,000 or imprisoned in a state correctional facility for not less than one year nor more than five years, or both fined and imprisoned.

(k) Reporting – Effective on or before December 31, 2022 and every three years thereafter, the State Auditor shall submit to the Joint Legislative Committee on Government and Finance a report that demonstrates the efficiencies, cost savings, and reductions in fraud, waste and abuse. The report shall include, but not be limited to, facts describing:

(1) The number and names of entities placed on the West Virginia Debarred List;

(2) The number of stop payment orders issued to grantees;

(3) Any savings realized as a result of the implementation of this act;

(4) A statement of funds recovered and funds in the recovery process;

(5) Any reductions in the number of duplicative audit report reviews; and

(6) The overall number of state grants awarded that given year and the total amount of dollars awarded by each state agency.

CHAPTER 227

(Com. Sub. for S. B. 478 - By Senators Weld and Romano)

[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 §15-1J-4 of the Code of West Virginia, 1931, as amended, relating to permitting the use of established federal or state contracts.

Be it enacted by the Legislature of West Virginia:

ARTICLE 1J. THE WEST VIRGINIA MILITARY AUTHORITY ACT.

§15-1J-4. Establishment and general powers of the authority.

(a) The West Virginia Military Authority is hereby established to administer national security, homeland security, and other military-related or sponsored programs.

(b) The authority will be administered by the Adjutant General of the West Virginia National Guard.

(c) Funds provided by the federal government and any state funds authorized by appropriation of the Legislature used as a required match to secure federal funding for programs administered by the authority pursuant to this section shall be administered by the Adjutant General subject to the provisions of §4-11-1 *et seq.* of this code.

(d) Except as otherwise prohibited by statute, the authority, as a governmental instrumentality exercising public powers of the state, shall have and may exercise all powers necessary or

appropriate to carry out the purpose of this article, including the authority to:

(1) Execute cooperative agreements between the guard and the federal and/or state governments;

(2) Contract on behalf of the guard with the federal government, its instrumentalities and agencies, any state, territory, or the District of Columbia and its agencies and instrumentalities, municipalities, foreign governments, public bodies, private corporations, partnerships, associations, and individuals;

(3) Use funds administered by the authority pursuant to subsection (c) of this section for the maintenance, construction, or reconstruction of capital repair and replacement items as necessary and approved by the authority;

(4) Accept and use funds from the federal government, its instrumentalities and agencies, any state, territory, or the District of Columbia and its agencies and instrumentalities, municipalities, foreign governments, public bodies, private corporations, partnerships, associations, and individuals for the purposes of national security, homeland security, and other military-related or sponsored programs;

(5) Procure insurance with state funds through BRIM covering property and other assets of the authority in amounts and from insurers that BRIM determines necessary;

(6) Contract on behalf of the guard with the federal government, its instrumentalities, and agencies, any state, territory, or the District of Columbia and its agencies and instrumentalities, municipalities, foreign governments, public bodies, private corporations, partnerships, associations, and individuals for specialized technical services at a rate commensurate with industry standards as determined by the Adjutant General to support specific activities related to national security, homeland security, and other military-related programs;

(7) Hire employees at an appropriate salary equivalent to a competitive wage rate;

(8) Enroll employees in PERS, PEIA, and workers' compensation and unemployment programs, or their equivalents: *Provided*, That the authority, through the receipt of federal and/or state funds, pays the required employer contributions;

(9) Cooperate with economic development agencies in efforts to promote the expansion of industrial, commercial, and manufacturing in the state;

(10) Develop a human resources division that will administer and manage its employees and receive state matching funds as necessary to ensure maximum federal funds are secured;

(11) Due to the at-will employment relationship with the authority, its employees may not avail themselves of the state grievance procedure as set forth in §29-6A-1 *et seq.* of this code;

(12) Have the ability to secure all other bonding, insurance, or other liability protections necessary for its employees to fulfill their duties and responsibilities; and

(13) Purchase or contract under an established United States General Services Administration purchase programs, such as the General Services Administration Global Supply, catalogue, marketplace, or any other state or federal contract, platform, or program for the purchase of uniforms, safety equipment, personal protection equipment, firearms, supplies, materials, or for education textbooks, instructional materials, digital content resources, instructional technology, hardware, software, telecommunications, and technical services without application of the provisions of §5A-3-1 *et seq.* of this code: *Provided,* That nothing in this section would limit or prevent the State Auditor from performing an audit on any purchases made pursuant to this subdivision.

(e) There is hereby created in the State Treasury a special revenue account designated the Military Authority Fund which shall be administered by the Adjutant General. All revenues received from nonfederal government entities shall be deposited into the special revenue account and may be used by the Adjutant General in accordance with the provisions of this article.

CHAPTER 228

(S. B. 577 - By Senators Phillips, Stollings, Roberts, and Jeffries)

[Passed April 6, 2021; in effect from passage]
[Approved by the Governor on April 19, 2021.]

AN ACT to amend and reenact §16-4C-23 of the Code of West Virginia, 1931, as amended, relating to exempting certain fire departments from licensure requirements for the provision of rapid response services.

Be it enacted by the Legislature of West Virginia:

ARTICLE 4C. EMERGENCY MEDICAL SERVICES ACT.

§16-4C-23. Authority of the commissioner to make rules.

(a) The commissioner shall propose for promulgation, legislative rules pursuant to §29A-3-1 *et seq.* of this code to carry out the purposes of this article.

(b) Notwithstanding the provisions of §16-4C-6(a) of this code, the commissioner shall propose for promulgation a legislative rule regulating fire department rapid response services, pursuant to §29A-3-1 *et seq.* of this code which: (1) Establishes licensure and certification requirements for fire department rapid response services who charge for their services or transport patients; (2) incorporates necessary applicable emergency medical services requirements for licensure for "emergency medical services" as the requirements apply to fire departments and as defined in §16-4C-3(e) of this code; and (3) creates an exemption from licensure for certain fire departments who do not charge for their services or patient transport, but who provide rapid response services pursuant to an agreement with a licensed emergency medical services agency that addresses medical direction, training, quality assurance, and liability insurance.

CHAPTER 229

(Com. Sub. for S. B. 634 - By Senators Caputo, Stollings, Lindsay, Beach, Baldwin, Romano, Woodrum, Rucker, and Woelfel)

[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 the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §30-29-5a, relating to criminal justice training for law-enforcement officers and correction officers regarding individuals with autism spectrum disorders; development of course instruction; defining terms; providing for training in appropriate interactions with individuals with autism spectrum disorder; and authorizing the Law-Enforcement Professional Standards Subcommittee to develop guidelines for law-enforcement and correction officer response to individuals on the autism spectrum who are victims or witnesses to a crime, or suspected or convicted of a crime.

Be it enacted by the Legislature of West Virginia:

ARTICLE 29. LAW-ENFORCEMENT TRAINING AND CERTIFICATION.

§30-29-5a. Criminal justice training regarding individuals with autism spectrum disorders.

(a) The Law-Enforcement Special Standards Subcommittee may establish within the basic training curriculum, a course for law-enforcement training programs for the training of law-enforcement officers and correction officers in appropriate interactions with individuals with autism spectrum disorders, and may develop guidelines for law enforcement response to

individuals on the autism spectrum who are victims or witnesses to a crime, or suspected or convicted of a crime.

(b) The course of instruction and the guidelines shall be developed and delivered by the West Virginia Autism Training Center, located at Marshall University. This course of instruction may stress positive responses to such individuals, de-escalate potentially dangerous situations, provide an understanding of the different manner in which such individuals process sensory stimuli and language, social communication and language difficulties likely to affect interaction, and appropriate methods of interrogation. Training instructors shall always include adults with autism spectrum disorders and/or a parent or primary caretaker of an individual diagnosed with autism spectrum disorder.

(c) As used in this section:

(1) "Agency" means the ability to make independent decisions and act in one's own best interests;

(2) "Autism spectrum disorder" means a developmental disability characterized by persistent and significant deficits in social communication, social interaction, communication, and behavior, and may include the diagnosis of pervasive developmental disorder, not otherwise specified, autistic disorder, and Asperger's Syndrome as defined in the Diagnostic and Statistical Manual of Mental Disorders of the American Psychiatric Association;

(3) "Law-enforcement officer" means any officer of any West Virginia law-enforcement agency or any state institution of higher education; and

(4) "Training instructors" means professional experts, autistic adults, and/or the family member or primary caregiver of an autistic individual who deliver instruction and information.

(d) The course of basic training for law-enforcement officers and correction officers may include at least three hours of instruction in the procedures and techniques described in this subsection:

(1) The nature and manifestation of autism spectrum disorders;

(2) Appropriate techniques for interviewing or interrogating an individual on the autism spectrum, including techniques to ensure the legality of statements made, and techniques to protect the rights of the interviewee;

(3) Techniques for locating an individual on the autism spectrum who runs away and is in danger, and returning the individual while causing as little stress as possible to the individual;

(4) Techniques for recognizing an autistic individual's agency while identifying potential abusive or coercive situations;

(5) Techniques for de-escalating a potentially dangerous situation to maximize the safety of both the law-enforcement officer or correction officer and the autistic individual;

(6) Techniques for differentiating between an individual on the autism spectrum from an individual who is belligerent, uncooperative, or otherwise displaying traits similar to the characteristics of an autistic individual;

(7) Procedures to identify and address challenges related to the safety and well-being of autistic individuals in a correctional facility; and

(8) The impact of interaction with law-enforcement officers or correction officers on autistic individuals.

(e) All law-enforcement recruits may receive the course of basic training for law-enforcement officers, established in this section, as part of their required certification process. The course of basic training for law-enforcement officers may be taught as part of the "crisis intervention and conflict resolution" and "people with special needs" components of the training.

(f) All correction officer recruits may receive the course of basic training for correction officers, established in this section, as part of their required certification process.

(g) The Commissioner of the Division of Corrections and Rehabilitation periodically may include within the in-service training curriculum a course of instruction on individuals with autism spectrum disorder consistent with this section.

(h) The Law-Enforcement Professional Standards Subcommittee periodically may include within its in-service training curriculum, a course of instruction on individuals with autism spectrum disorder consistent with this section.

CHAPTER 230

(Com. Sub. for S. B. 660 - By Senators Weld, Woodrum, Rucker, and Romano)

[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 section, designated §15-10-7, relating generally to providing for cooperation between civilian law-enforcement agencies and military authorities to facilitate objective independent investigations of possible offenses.

Be it enacted by the Legislature of West Virginia:

ARTICLE 10. COOPERATION BETWEEN LAW-ENFORCEMENT AGENCIES.

§15-10-7. Cooperation with military authorities.

(a) The head of a law-enforcement agency or head of a campus police department, as those positions are defined in §15-10-3 of this code, may assign law-enforcement personnel under his or her command to provide assistance, cooperation, and information to the National Guard of this state or any service component of the United States Department of Defense located in this state upon the written request of the Adjutant General or commanding officer of the unit or facility.

(b) The assistance authorized by subsection (a) of this section may be provided for, but not be limited to:

(1) Alleged violations of the federal and state Codes of Military Justice;

(2) Alleged violations of the criminal laws of the United States and the State of West Virginia;

(3) Investigations and other actions related to reports of sexual assault or sexual harassment, to include any cases of reprisal or retaliation;

(4) Violations of military directives, regulations, or instruction; and

(5) Other reasonable requests by the National Guard.

(c) The purpose of this section is to support the military by providing it objective, qualified law-enforcement services.

CHAPTER 231

(Com. Sub. for H. B. 2621 - By Delegates Steele, Maynard, Skaff, Lovejoy, Statler, Diserio and D. Kelly)

(By Request of the Department of Homeland Security)

[Passed March 24, 2021; in effect ninety days from passage.]
[Approved by the Governor on April 5, 2021.]

AN ACT to amend and reenact §15A-11-8 and 15A-11-9 of the Code of West Virginia, 1931, as amended, all relating to requirements of fire departments; requiring the Fire Officer 2 training to contain a component on current laws, rules and regulations governing the fire service; requiring the Firefighter 1 training to contain a section on the Fire Commission, Fire Marshal's Office and the operations of both; establishing a mandatory certification program for fire chiefs, or acting chiefs, of every fire department; requiring the Fire Commission propose emergency legislative rules and legislative rules to implement the certification process; setting forth the process of denial, suspension, or revocation of fire departments, chiefs, or acting chiefs, and the conditions under which the certification can be denied, suspended or revoked; allowing persons with specialized training to be members of volunteer fire departments who are not certified as firefighters; limiting the actions of specialized members of fire departments who are not certified fire fighters; requiring the Fire Commission to propose emergency legislative rules and legislative rules to implement the process of allowing specialized members of departments; allowing the Fire Commission to propose emergency rules and legislative rules governing the activities of junior firefighters; requiring the Fire Marshal to issue certificates to departments following a department evaluation, and requiring that the certificate of evaluation be posted at the fire department in a conspicuous place to be visible to members of the department and to members of the public.

Be it enacted by the Legislature of West Virginia:

ARTICLE 11. FIRE COMMISSION.

§15A-11-8. Powers, duties, and authority of State Fire Commission.

(a) All state and area training and education in fire service shall be coordinated by the State Fire Commission. The State Fire Marshal shall ensure that these programs are operated throughout the state at a level consistent with needs identified by the commission. Beginning on the effective date of the amendment to this section, all trainings approved by the State Fire Commission for Fire Officer 2, shall contain a section on the current laws, rules and regulations governing the fire service. All trainings approved by the State Fire Commission for Firefighter 1, shall contain a section on the Fire Commission, and the Fire Marshal's Office, and the operations of both.

(b) The State Fire Commission may make recommendations to the State Insurance Commissioner regarding town classifications for fire insurance rates.

(c) The formation of any new fire department, including volunteer fire departments, requires the concurrence of the State Fire Commission. The State Fire Commission shall develop a method of certification which can be applied to all fire departments and volunteer fire departments.

(d) The State Fire Commission shall certify the chief, or acting chief, of every department. The Fire Commission shall propose emergency legislative rules for promulgation in accordance with §29A-3-1 *et seq.* of this code to implement the program established pursuant to this subsection.

(e) The State Fire Commission shall develop a plan for fire prevention and control which shall include, but not be limited to, the following areas: manpower needs, location of training centers, location of fire prevention and control units, communications, fire-fighting facilities, water sources, vehicular needs, public education

and information, public participation, standardization in recordkeeping, evaluation of personnel, reporting of fire hazards, programs on mutual aid, location of public safety agencies, outline of fire prevention programs, and accessibility of fire prevention information.

(f) The State Fire Commission shall establish fire protection areas and at such times as funds are available shall establish field offices for inspection, planning, and certification.

(g) The State Fire Marshal may accept, on behalf of the State Fire Commission, gifts, grants, court-ordered civil forfeiture proceedings, and bequests of funds or property from individuals, foundations, corporations, the federal government, governmental agencies, and other organizations or institutions. The State Fire Marshal, acting on behalf of the State Fire Commission, may enter into, sign, and execute any agreements, and do and perform any acts that may be necessary, useful, desirable, or convenient to effectuate the purposes of this article. Moneys from gifts, grants, civil forfeiture proceedings, and bequests received by the State Fire Marshal shall be deposited into the special account set forth in §15A-10-7 of this code, and the State Fire Marshal, with the approval of the State Fire Commission, may make expenditures of, or use of any tangible property, in order to effectuate the purposes of this article.

(h) The State Fire Commission shall establish standards and procedures for fire departments to implement the provisions of this section with regard to the following:

(1) Fire prevention and control;

(2) Uniform standards of performance, equipment, and training;

(3) Certification;

(4) Training and education in fire service, subject to the rule-making requirements set forth in section nine of this article; and

(5) The creation, operation, and responsibilities of fire departments throughout the state.

(i) 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 Fire or Building Code or related construction or renovation practices.

(j) The State Fire Commission may deny, suspend, or revoke certification of any fire department, or any chief or acting chief, in the State of West Virginia if a fire department is not in compliance with all applicable laws, rules, and regulations, or the chief or acting chief, does not operate the department in compliance with all applicable laws, rules and regulations, or allows the department, or members of the department to act or operate in a manner that is not in compliance with all applicable laws, rules and regulations.

(k) Appeals from any final decision of the Fire Commission shall be heard by the Office of Administrative Hearings pursuant to this chapter, except as otherwise provided in §15A-10-9(b) of this code.

(l) The State Fire Commission shall develop procedures to authorize persons with specialized training, but who are not certified as firefighters, to be members of a volunteer fire department to only perform specialized functions, none of which shall be or include fire fighting. These specialized functions can include, but are not limited to, swift water rescue, search and rescue, trench rescue, and confined space rescue. The State Fire Commission shall propose legislative rules, and may propose emergency legislative rules, for promulgation in accordance with §29A-3-1 *et seq.* of this code to implement this program, and to set minimum training standards for these types of specialized members.

(m) The State Fire Commission shall, in compliance with §21-6-11 of this code, propose emergency legislative rules for promulgation in accordance with §29A-3-1 *et seq.* of this code to

specify what activities junior firefighters may and may not participate in.

§15A-11-9. Volunteer firefighters' training and equipment.

(a) The State Fire Commission shall maintain oversight and authority over training, equipment requirements, and performance standards for volunteer fire departments and its members, establishing and maintaining said requirements pursuant to legislative rule, in accordance with the provisions of §29A-3-1 *et seq.* of this code, to establish training requirements for firefighters which:

(1) Provide for:

(A) Minimum training levels for rescue and firefighting;

(B) Minimum levels of equipment needed to protect life and property within fire service areas;

(C) Minimum performance standards the departments shall meet in response times, communications, levels of water flow, and pressure; and

(D) Other performance measures as considered necessary to meet the overall goals of improved fire prevention and control;

(2) Allow the training to be offered in segments, blocks, or modules: *Provided*, That no firefighter may engage in fire fighting activities, except in response to wildland fires, until he or she has completed all firefighter one training: *Provided, however,* That support members may provide ancillary assistance to firefighters as defined by the rule;

(3) Provide for online training;

(4) Allow testing to be done in person or online; and

(5) Establish the testing requirements which include:

(A) If the individual is required to test in person, then the tests shall be given regionally at various times throughout the year; or

(B) If the individual is authorized to test online, then the requirements for online testing shall be established.

(b) Notwithstanding any provision of this code to the contrary, the State Fire Commission may establish or continue a pilot project program which implements changes to standards imposed on volunteer fire fighting that address problems facing volunteer fire departments in the state, including issues related to training, recruitment, and retention.

(1) The State Fire Commission may limit the number of participating volunteer fire departments in the pilot project program.

(2) The State Fire Commission shall set the rules and conditions for participating volunteer fire departments by policies adopted and ratified by the commission.

(3) On July 1 of each year, the State Fire Commission shall annually provide a full summary report of the status of the program to the Joint Committee on Government and Finance.

(c) After conducting its evaluations of any fire department, the Office of the State Fire Marshal shall issue a certificate of evaluation to the chief of that department, which shall be made and issued in duplicate. The certificate of evaluation shall show the date of each evaluation and the notations relating thereto by the Office of the State Fire Marshal, and the most recent certificate of evaluation shall be posted at the fire department in such a conspicuous place and manner that the results are visible to the members of the department, and to members of the public.

CHAPTER 232

(Com. Sub. for H. B. 2722 - By Delegates Espinosa, Summers, J. Kelly, Statler, Hansen and Young)

[Passed April 7, 2021; in effect July 1, 2021.]
[Approved by the Governor on April 21, 2021.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §29-3-5g, relating to prohibiting the use of class B fire-fighting foam for testing purposes if the foam contains a certain class of fluorinated organic chemicals; providing definitions; and providing exceptions.

Be it enacted by the Legislature of West Virginia:

ARTICLE 3. FIRE PREVENTION AND CONTROL ACT.

§29-3-5g. Class B fire-fighting foam.

(a) The State Fire Commission shall, on or before July 1, 2021, propose rules for legislative approval in accordance with §29A-3-1 *et seq.* of this code to provide:

(1) Standard safe practices for the discharge or otherwise use class B fire-fighting foam that contains intentionally added polyfluoroalkyl substances (PFAS).

(2) For purposes of this section:

"Class B fire-fighting foam" means any foam designed to extinguish flammable liquid fires.

"PFAS chemicals" means nonpolymeric perfluoroalkyl and polyfluoroalkyl substances that are a group of man-made chemicals

that contain at least two (2) fully fluorinated carbon atoms, excluding gases, and volatile liquids.

"Testing" means calibration testing, conformance testing, or fixed system testing.

"Testing Facility" allows the discharge of foam in a non-emergency situation for the evaluation and calibration of firefighting equipment and foam. This facility may also have the capability to provide some level of needed training for firefighters.

"Fixed Foam System" means a complete installation piped from a central foam station, discharging through fixed discharge devices on the flammable liquid hazard being protected. Foam proportioning components are permanently installed. The system has been engineered for the hazard and often contains multiple (UL or FM) listed components and foam.

"Foam Training Facility" shall mean to allow the discharge of foam in a non-emergency situation for the training of firefighters and readiness of equipment. This facility may also have the capability to provide some level of needed evaluation and calibration of equipment and foam.

(b) On or after July 1, 2021, no person, fire department, state department, agency, board, bureau, office, commission, public corporation, or authority; county, municipal corporation, school district, or other political subdivision of this state may discharge or otherwise use class B fire-fighting foam that contains intentionally added PFAS chemicals unless:

(1) The discharge or other use occurs in fire prevention or in response to an emergency fire-fighting operation; or

(2) The discharge or other use is for training or testing purposes which occurs at a facility that has implemented containment, storage, treatment, and disposal measures to prevent uncontrolled releases of such class B fire-fighting foam into the environment.

(c) Nothing in this code section may be construed to:

(1) Restrict the manufacture, sale, or distribution of class B fire-fighting foam that contains intentionally added PFAS chemicals or restrict the discharge or other use of class B fire-fighting foam in response to an emergency fire-fighting operation; or

(2) Prevent the use of nonfluorinated foams, including other class B fire-fighting foams, for purposes of training for fire-fighting operations.

(d) 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 use of class B fire-fighting foams.

CHAPTER 233

(H. B. 3089 - By Delegates G. Ward, Anderson, Riley, J. Kelly, Paynter, Queen, L. Pack, Haynes, Kimble, Ferrell and Holstein)

[Passed April 10, 2021; in effect ninety days from passage.]
[Approved by the Governor on April 26, 2021.]

AN ACT to amend and reenact §15-5-2 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §15-5-30, all relating to homeland security and emergency management; defining terms; and providing that employees of public utilities, cable television operators, telecommunications carriers, and publicly or privately owned water and sewer systems shall be considered essential workers to ensure that these services can continue to operate or be restored during a state of emergency or state of preparedness.

Be it enacted by the Legislature of West Virginia:

ARTICLE 5. DIVISION OF HOMELAND SECURITY AND EMERGENCY MANAGEMENT.

§15-5-2. Definitions.

As used in this article:

"Board" means the West Virginia Disaster Recovery Board created by this article;

"Code" means the Code of West Virginia, 1931, as amended;

"Community facilities" means a specific work, or improvement within this state or a specific item of equipment or tangible personal property owned or operated by any political

subdivision or nonprofit corporation and used within this state to provide any essential service to the general public;

"Critical infrastructure" includes any systems and assets, whether physical or virtual, so vital to the state that the incapacity or destruction of such systems and assets would have a debilitating impact on security, state economic security, state public health or safety, or any combination of those matters.

"Disaster" means the occurrence or imminent threat of widespread or severe damage, injury, or loss of life or property resulting from any natural or terrorist or man-made cause, including weapons of mass destruction, fire, flood, earthquake, wind, snow, storm, chemical or oil spill or other water or soil contamination, epidemic, air contamination, blight, drought, infestation or other public calamity requiring emergency action;

"Disaster recovery activities" means activities undertaken prior to, during or following a disaster to provide, or to participate in the provision of, critical infrastructure, emergency services, temporary housing, residential housing, essential business activities, and community facilities;

"Emergency services" means the preparation for and the carrying out of all emergency functions, other than functions for which military forces are primarily responsible, to protect, respond, and recover, to prevent, detect, deter, and mitigate, to minimize and repair injury and damage resulting from disasters or other event caused by flooding, terrorism, enemy attack, sabotage, or other natural or other man-made causes. These functions include, without limitation, critical infrastructure services, firefighting services, police services, medical and health services, communications, emergency telecommunications, radiological, chemical, and other special weapons defense, evacuation of persons from stricken areas, emergency welfare services, emergency transportation, existing or properly assigned functions of plant protection, temporary restoration of public utility services and other functions related to the health, safety, and welfare of the citizens of this state, together with all other activities necessary or incidental to the preparation for and carrying out of these functions.

Disaster includes the imminent threat of disaster as well as its occurrence and any power or authority exercisable on account of a disaster that may be exercised during the period when there is an imminent threat;

"Essential business activities" means a specific work or improvement within this state or a specific item of equipment or tangible personal property used within this state by any person to provide any essential goods or critical infrastructure services determined by the authority to be necessary for continued operations during a disaster, state of emergency, or state of preparedness, and for recovery from a disaster;

"Essential workers" means employees or contractors that fall under the definition of essential business activities during a disaster, state of emergency, or state of preparedness.

"Local organization for emergency services" means an organization created in accordance with the provisions of this article by state or local authority to perform local emergency services function;

"Mobile support unit" means an organization for emergency services created in accordance with the provisions of this article by state or local authority to be dispatched by the Governor to supplement local organizations for emergency services in a stricken area;

"Person" means any individual, corporation, voluntary organization or entity, partnership, firm, or other association, organization, or entity organized or existing under the laws of this or any other state or country;

"Political subdivision" means any county or municipal corporation in this state;

"Recovery fund" means the West Virginia Disaster Recovery Trust Fund created by this article;

"Residential housing" means a specific work or improvement within this state undertaken primarily to provide dwelling

accommodations, including the acquisition, construction or rehabilitation of land, buildings and improvements thereto, for residential housing, including, but not limited to, facilities for temporary housing and emergency housing, and any other nonhousing facilities that are incidental or appurtenant thereto;

"Secretary" means the Secretary of the West Virginia Department of Military Affairs and Public Safety; and

"Temporary housing" means a specific work or improvement within this state undertaken primarily to provide dwelling accommodations, including the acquisition, construction or rehabilitation of land, buildings and improvements thereto, for temporary residential shelters or housing for victims of a disaster and such other nonhousing facilities that are incidental or appurtenant thereto.

§15-5-30. State of emergency; state of preparedness; essential workers.

(a) During a state of emergency or state of preparedness, set forth by the Governor, employees of public utilities, cable television operators, telecommunications carriers, and publicly or privately owned water and sewer systems shall be considered essential workers to ensure that these services can continue to operate or be restored.

(b) Contractors, vendors, and suppliers of public utilities, cable television operators, telecommunications carriers, and publicly or privately owned water and sewer systems of the state shall be considered essential workers to aid the utilities and telecommunications services in continuation of services to its customers.

(c) The provisions of subsections (a) and (b) of this section apply only and specifically for the purpose of ensuring that public utilities, cable television operators, telecommunications carriers, and publicly or privately owned water and sewer systems can continue to operate or be restored and may not be construed or interpreted in any way to have any relevance or meaning beyond this specific purpose.

CHAPTER 234

(S. B. 523 - By Senator Maynard)

[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 §24-2H-3, §24-2H-5, and §24-2H-8 of the Code of West Virginia, 1931, as amended, all relating to correcting certain code references.

Be it enacted by the Legislature of West Virginia:

ARTICLE 2H. POWER OF COMMISSION TO ORDER MEASURES UP TO AND INCLUDING THE ACQUISITION OF DISTRESSED AND FAILING WATER AND WASTEWATER UTILITIES.

§24-2H-3. Definitions.

(a) A "distressed utility" is a water or wastewater utility that, for financial, operational, or managerial reasons:

(1) (A) Is in continual violation of statutory or regulatory standards of the Bureau for Public Health, the Department of Environmental Protection, or the commission, which affect the water quality, safety, adequacy, efficiency, or reasonableness of the service provided by the water or wastewater utility;

(B) Fails to comply within a reasonable period of time with any final, nonappealable order of the Department of Environmental Protection, Bureau for Public Health, or the commission concerning the safety, adequacy, efficiency, or reasonableness of service, including, but not limited to, the availability of water, the potability of water, the palatability of water, or the provision of

water at adequate volume and pressure, and the collection and treatment of wastewater;

(2) Is no longer able to provide adequate, efficient, safe, and reasonable utility services; or

(3) Fails to timely pay some or all of its financial obligations, including, but not limited to, its federal and state tax obligations and its bond payments to the West Virginia Water Development Authority, the United States Department of Agriculture, or other bondholders; fails to maintain its debt service reserve; or fails to submit an audit as required by its bond or loan documents or state law.

(b) "Failing water or wastewater utility" means a public utility that:

Meets the definition of a distressed water or wastewater utility, and either:

(A) Has not, after a reasonable time period, been stabilized and improved by corrective measures put in place under §24-2H-7 of this code; or

(B) Has had the requirements of §24-2H-7 of this code suspended for good cause shown by an order of the commission.

(c) "Capable proximate water or wastewater utility" means a public utility which regularly provides adequate, safe, and reasonable service of the same type as the distressed utility and is situated close enough to the facilities of a distressed utility that operational management is reasonable, financially viable, and nonadverse to the interests of the current customers of the nondistressed utility.

§24-2H-5. Determination of whether a utility qualifies as a "distressed utility", "failing utility", or a "capable proximate utility".

(a) In determining whether a utility is distressed or failing, the commission shall consider the following factors:

(1) The financial, managerial, and technical ability of the utility;

(2) The level of expenditures necessary to make improvements to the water or wastewater utility to assure compliance with applicable statutory and regulatory standards concerning the adequacy, efficiency, safety, or reasonableness of utility service and the impact of those expenditures on customer rates;

(3) The opinion and advice, if any, of the Department of Environmental Protection and the Bureau for Public Health as to steps that may be necessary to assure compliance with applicable statutory or regulatory standards concerning the adequacy, efficiency, safety, or reasonableness of utility service;

(4) The status of the utility's bond payments and other financial obligations;

(5) The status and result of any corrective measures previously put into place under §24-2H-7 of this code; and

(6) Any other relevant matter.

(b) In determining whether a utility is a capable proximate utility, the commission shall consider the following factors:

(1) The financial, managerial, and technical ability of all proximate public utilities providing the same type of service;

(2) Expansion of the franchise or operating area of the acquiring utility to include the service area of the distressed utility;

(3) The financial, managerial, operational, and rate demands that may result from the current proceeding and the cumulative impact of other demands where the utility has been identified as a capable proximate utility; and

(4) Any other relevant matter.

§24-2H-8. Commission approval of operating agreement, acquisition price; rates for distressed and failing utilities; improvement plan; debt obligations; cost recovery.

(a) After an order has been entered pursuant to §24-2H-7 of this code, the distressed utility and acquiring utility shall file a petition with the commission under §24-2-12 of this code to approve the necessary operating agreement if such alternative is directed by the commission. After an order has been entered pursuant to §24-2H-7 of this code, the failing utility and acquiring utility shall file a petition with the commission under §24-2-12 of this code, to approve the purchase price of the acquisition. Where the parties are unable to agree on an acquisition price, the filing may request that an evidentiary hearing be held so that the commission may determine the acquisition price and any other issues related to the acquisition. The acquisition price must, at a minimum, satisfy all outstanding loans, tax obligations, required grant repayment, liens, and indebtedness owed by the failing utility or the acquiring utility must agree to assume the indebtednesses if legally permitted. The acquiring utility shall consult with the lenders or lienholders regarding payment in full or the assumption, to the extent legally permissible, of any outstanding obligations of the failing utility.

(b) The parties to an acquisition may propose to the commission other methods of determining the acquisition price.

(c) As part of the proceeding, the acquiring utility may propose to the commission that it be permitted for a reasonable period of time after the date of acquisition, to charge and collect rates from the customers of the failing utility pursuant to a separate tariff which may be higher or lower than the existing tariff of the distressed or failing utility or may allow a surcharge on both the acquired and existing customers. A separate tariff or rate filing must be made by the acquiring utility before the commission will consider any increase in rates or allow a surcharge to be placed on the acquiring utility's acquired or existing ratepayers.

(d) As part of this proceeding, the acquiring utility shall submit to the commission for approval a plan, including a timetable for bringing the failing utility into compliance with applicable

statutory and regulatory standards, including, but not limited to, plans for regionalization. The acquiring utility shall have previously obtained the approval of the plan from the Department of Environmental Protection and the Bureau for Public Health, as applicable, and those agencies are directed to use their full discretion in working towards long-term solutions that will support compliance. The failing utility shall cooperate with the acquiring utility in negotiating agreements with state and federal agencies, including, but not limited to, negotiation of hold harmless agreements, consent orders or enforcement moratoria during any period of remediation. In addition, the failing utility shall cooperate with the acquiring utility in obtaining the consent of the failing utility's and the acquiring utility's bondholder(s) to the acquisition. The acquiring utility must present to the commission as part of its financing plan, documentation on how the failing utility's indebtedness will be paid or assumed.

(e) A nonprofit acquiring public utility may seek grant funding from the Distressed Utilities Account established pursuant to §31-15A-9(i) of this code to repair, maintain, and replace the distressed water and wastewater utilities facilities as needed. The reasonably and prudently incurred costs of the acquiring utility shall be recoverable in rates as provided in §24-2H-9 of this code.

(f) If the distressed or failing utility is a public service district, then the commission shall make a recommendation to the respective county commission(s) with regard to the acquisition of distressed or failing utilities as provided in §16-13A-2(a)(2) of this code. If the distressed or failing utility is a municipal corporation, then the commission shall make a recommendation to the respective municipal council with regard to the acquisition of distressed or failing utilities as provided in §8-12-17 of this code.

(g) The capable proximate utility may propose one or more of the cost recovery methods or incentives set forth in §24-2H-9 of this code as part of its petition for approval from the commission.

CHAPTER 235

(Com. Sub. for H. B. 2370 - By Delegates Howell, B. Ward, Paynter, Martin, Phillips, Mandt, J. Pack, Pinson, Miller, Sypolt and Kimes)

[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 section, designated §16-13A-9b, relating to exempting sewer charges for privately-owned swimming pools; requiring the owner of the swimming pool to provide the dimensions of a pool that is being filled with water; requiring the public service district to calculate the volume of the pool and allow the swimming pool's owner to use that amount of water for filling the pool without being charged for the corresponding sewer charges; and allowing the public service district to inspect the swimming pool in order to verify the dimensions.

Be it enacted by the Legislature of West Virginia:

ARTICLE 13A. PUBLIC SERVICE DISTRICTS.

§16-13A-9b. Exemptions for Swimming Pools.

(a) A public service district shall provide the owner of a privately-owned swimming pool with an exemption from sewer charges for the water required to fill the swimming pool, if the water is not discharged into the sewer system.

(b) In order for the owner of a privately-owned swimming pool to qualify for the exemption, the owner shall provide the dimensions of the swimming pool that is being filled to the public service district within 30 days of filling the swimming pool.

(c) The public service district shall calculate the volume of the swimming pool and allow the owner of the privately-owned swimming pool to use the amount of water necessary to fill the pool without charging the owner for the corresponding sewer charges that would normally be associated for that amount of use.

(d) The public service district may inspect the swimming pool of the owner of a privately-owned swimming pool applying for the exemption to verify the dimensions of the swimming pool submitted by the owner.

CHAPTER 236

(Com. Sub. for S. B. 469 - By Senators Maynard, Stollings, Rucker, and Woodrum)

[Passed March 19, 2021; in effect 90 days from passage (June 17, 2021)]
[Approved by the Governor on March 30, 2021.]

AN ACT to amend and reenact §39-4-6 of the Code of West Virginia, 1931, as amended; and by adding thereto three new sections, designated §39-4-6a, §39-4-37, and §39-4-38, all relating to personal appearance required for notarial acts; requiring the Secretary of State to propose legislative rules establishing requirements for the performance of a notarial act on behalf of an individual appearing before a notary public by means of communication technology; recognizing the validity of notarization performed by means of communication technology pursuant to section 6 of the Governor's Executive Order 11-20 effective March 25, 2020; defining terms; authorizing a notary public to perform notarial acts for remotely located individuals using communication and identity-proofing technology provided certain requirements are fulfilled; and specifying the means by which a notary public must identify a remotely located individual.

Be it enacted by the Legislature of West Virginia:

ARTICLE 4. REVISED UNIFORM LAW ON NOTARIAL ACTS.

§39-4-6. Personal appearance required.

(a) If a notarial act relates to a statement made in or a signature executed on a record, the individual making the statement or executing the signature shall appear personally

before the notarial officer, unless the individual making the statement or executing the signature appears personally by communication technology, as provided in §39-4-37 or §39-4-38 of this code.

(b) The Secretary of State shall propose rules for legislative approval in accordance with the provisions of §29A-3-1 *et seq.* of this code establishing specific requirements for the performance of a notarial act on behalf of an individual appearing before a notary public by means of communication technology.

§39-4-6a. Remote acknowledgements and notarizations under COVID-19 Executive Order deemed valid.

Acknowledgements and notarizations performed by means of remote communication technology, pursuant to section 6 of the Governor's Executive Order 11-20 effective March 25, 2020, by which the Governor suspended the provisions of §39-4-6 of the code applicable to court reporters and other notaries, are deemed to be valid and cured of any defect from failure to comply with §39-4-6 of this code if the acknowledgements and notarizations were performed in accordance with the emergency rules promulgated by the West Virginia Secretary of State, which are found at the Code of State Rules §153-45 *et. seq*.

§39-4-37. Remote online notarial act performed for remotely located individual.

(a) In this section:

(1) "Communication technology" means an electronic device or process that:

(A) Allows a notary public and a remotely located individual to communicate with each other simultaneously by sight and sound; and

(B) When necessary and consistent with other applicable law, facilitates communication with a remotely located individual who has a vision, hearing, or speech impairment.

(2) "Foreign state" means a jurisdiction other than the United States, a state, or a federally recognized Indian tribe.

(3) "Identity proofing" means a process or service by which a third person provides a notary public with a means to verify the identity of a remotely located individual by a review of personal information from public or private data sources.

(4) "Outside the United States" means a location outside the geographic boundaries of the United States, Puerto Rico, the United States Virgin Islands, and any territory, insular possession, or other location subject to the jurisdiction of the United States.

(5) "Remotely located individual" means an individual who is not in the physical presence of the notary public who performs a notarial act under subsection (c) of this section.

(b) A remotely located individual may comply with the provisions of this section by using communication technology to appear before a notary public.

(c) A notary public located in this state may perform a notarial act using communication technology for a remotely located individual if:

(1) The notary public:

(A) Has personal knowledge of the identity of the individual;

(B) Has satisfactory evidence of the identity of the remotely located individual by oath or affirmation from a credible witness appearing before the notary public under §39-4-1 *et seq.* of this code; or

(C) Has obtained satisfactory evidence of the identity of the remotely located individual by using at least two different types of identity proofing;

(2) The notary public is reasonably able to confirm that a record before the notary public is the same record in which the remotely located individual made a statement or on which the individual executed a signature;

(3) The notary public, or a person acting on behalf of the notary public, creates an audio-visual recording of the performance of the notarial act; and

(4) For a remotely located individual located outside the United States:

(A) The notary public is commissioned as an Out-of-State Commissioner pursuant to §39-4A-1 *et seq.* of this code; and

(B) The record:

(i) Is to be filed with or relates to a matter before a public official or court, governmental entity, or other entity subject to the jurisdiction of West Virginia; or

(ii) Involves property located in or a transaction substantially connected with West Virginia.

(d) If a notarial act is performed under this section, the certificate of notarial act required by §39-4-15 of this code and the short-form certificate provided in §39-4-16 of this code must indicate that the notarial act was performed using communication technology.

(e) A short-form certificate provided in §39-4-16 of this code for a notarial act subject to this section is sufficient if it:

(1) Complies with rules adopted under subdivision (1), subsection (h) of this section; or

(2) Is in the form provided in §39-4-16 of this code and contains a statement substantially as follows: "This notarial act involved the use of communication technology".

(f) A notary public, a guardian, conservator, or agent of a notary public, or a personal representative of a deceased notary

public shall retain the audio-visual recording created under subdivision (3), subsection (c) of this section or cause the recording to be retained by a repository designated by or on behalf of the person required to retain the recording. Unless a different period is required by rule adopted under subdivision (4), subsection (h) of this section, the recording must be retained for a period of at least five years after the recording is made.

(g) Before a notary public performs the notary public's initial notarial act under this section, the notary public shall notify the Secretary of State that the notary public will be performing notarial acts with respect to remotely located individuals and identify the technologies the notary public intends to use. If the Secretary of State has established standards under subsection (h) of this section for approval of communication technology or identity proofing, the communication technology and identity proofing must conform to the standards.

(h) The Secretary of State may adopt legislative rules under the provisions of this section regarding performance of a notarial act. The rules may:

(1) Prescribe the means of performing a notarial act involving a remotely located individual using communication technology;

(2) Establish standards for communication technology and identity proofing;

(3) Establish requirements or procedures to approve providers of communication technology and the process of identity proofing; and

(4) Establish standards and a period for the retention of an audio-visual recording created under the provisions of this section.

(i) Before adopting, amending, or repealing a legislative rule governing performance of a notarial act with respect to a remotely located individual, the Secretary of State shall consider:

(1) The most recent standards regarding the performance of a notarial act with respect to a remotely located individual

promulgated by national standard-setting organizations and the recommendations of the National Association of Secretaries of State;

(2) Standards, practices, and customs of other jurisdictions that have laws substantially similar to this section; and

(3) The views of governmental officials and entities and other interested persons.

(j) By allowing its communication technology or identity proofing to facilitate a notarial act for a remotely located individual or by providing storage of the audio-visual recording created under this section, the Secretary of State shall be the provider of the communication technology, identity proofing, or storage as the provider's agent for service of process in any civil action in this state related to the notarial act.

§39-4-38. Remote ink notarial act performed for remotely located individual.

(a) A document may be notarized for an individual who is not in the physical presence of the notary public at the time of the notarization if the following requirements are met:

(1) The individual and the notary can communicate simultaneously, in real time, by sight and sound using communication technology defined in §39-4-37 of this code;

(2) In performing a remote notarization pursuant to the provisions of this section, the notary reasonably identifies the individual at the time of notarization by one or more of the following methods:

(A) Personal knowledge of the individual;

(B) The individual presents a government-issued, unexpired identification document or record which includes the individual's photograph, name, and signature. Common acceptable forms of identification documents include, but are not limited to, a driver's license, government-issued identification card, or passport;

(C) At least two different types of processes or services by which a third person provides a means to verify the identity of the individual through a review of public or private data sources; or

(D) Oath or affirmation by a credible witness who:

(i) Is in the physical presence of either the notary or the individual; or

(ii) Is able to communicate in real time with the notary and the individual by sight and sound through an electronic device or process at the time of the notarization, if the credible witness has personal knowledge of the individual and has been reasonably identified by the notary by a method provided in this section.

(b) The notary, either directly or through an agent, shall satisfy the following requirements for generating and retaining a record of a notarization performed pursuant to this section:

(1) At the time of the performance of the notarization, the notary or notary's agent shall create an audio and visual recording of the signing and notarization; and

(2) The notary or notary's agent shall retain the recording as a notarial record for five years unless otherwise provided by law.

(c) When an individual who is physically located outside of the state of West Virginia seeks a remote notarization pursuant to this section, the following additional requirements shall also be met:

(1) The notary must be commissioned as an Out-of-State Commissioner pursuant to §39-4A-1 *et seq.* of this code; and

(2) The record being notarized must:

(A) Be intended for filing or presentation in a matter before a court, governmental entity, public official, or other entity subject to the jurisdiction of West Virginia;

(B) Involve property located in the territorial jurisdiction of West Virginia or a transaction substantially connected to the state of West Virginia; or

(C) Otherwise not be prohibited, by West Virginia law to be notarized outside the state of West Virginia.

(d) Once signed by the individual according to the procedures set forth in this section, the individual shall mail or otherwise cause to be delivered the signed original copy of the documents to the notary public for certification and execution with the notary's commission signature and official stamp or seal.

(e) The date and time of the notarization shall be the date and time when the notary witnessed the signature being performed via communication technology.

(f) Nothing in this section affects the authority of a notary public to refuse to perform a notarial act or requires a notary to perform a notarization remotely:

(1) With respect to an electronic record;

(2) For an individual not in the physical presence of the notary; or

(3) Using a technology that the notary has not selected.

(g) The Secretary of State may adopt rules under this section regarding performance of a notarial act. The rules may:

(1) Prescribe the means of performing a notarial act involving a remotely located individual using communication technology;

(2) Establish standards for communication technology and identity proofing;

(3) Establish requirements or procedures to approve providers of communication technology and the process of identity proofing; and

(4) Establish standards and a period for the retention of an audio-visual recording created under this section.

(h) Before adopting, amending, or repealing a rule governing performance of a notarial act with respect to a remotely located individual, the Secretary of State shall consider:

(1) The most recent standards regarding the performance of a notarial act with respect to a remotely located individual promulgated by national standard-setting organizations and the recommendations of the National Association of Secretaries of State;

(2) Standards, practices, and customs of other jurisdictions that have laws substantially similar to this section; and

(3) The views of governmental officials and entities and other interested persons.

(i) By allowing its communication technology or identity proofing to facilitate a notarial act for a remotely located individual or by providing storage of the audio-visual recording created under this section, the Secretary of State shall be the provider of the communication technology, identity proofing, or storage as the provider's agent for service of process in any civil action in this state related to the notarial act.

CHAPTER 237

(H. B. 2915 - By Delegates Rowan, Rowe, Steele, Burkhammer, Linville, Hardy, Skaff, Hornbuckle and Fluharty)

[Passed April 10, 2021; in effect July 1, 2021.]
[Approved by the Governor on April 26, 2021.]

AN ACT to amend and reenact §5A-8-15 of the Code of West Virginia, 1931, as amended, relating to public records management and preservation; to increase available funds in the Public Records and Preservation Revenue Account to administer a system of records management and preservation for county governments and for grants to counties for records management, access, and preservation purposes.

Be it enacted by the Legislature of West Virginia:

§5A-8-15. Records management and preservation of county records; alternate storage of county records; Records Management and Preservation Board; qualifications and appointment of members; reimbursement of expenses; staffing; rule-making authority; study of records management needs of state agencies; grants to counties.

The Legislature finds that the use of electronic technology and other procedures to manage and preserve public records by counties should be uniform throughout the state where possible.

(a) The governing body and the chief elected official of a county, hereinafter referred to as a county government entity, whether organized and existing under a charter or under general law, shall promote the principles of efficient records management and preservation of local records. A county governing entity may, as far as practical, follow the program established for the uniform

management and preservation of county records as set out in rules proposed for legislative approval in accordance with the provisions of §29A-3-1 *et seq.* of this code as proposed by the Records Management and Preservation Board.

(b) In the event a county government entity decides to destroy or otherwise dispose of a county record, the county government entity may, prior to destruction or disposal thereof, offer the record to the director of Archives and History within the Department of Arts, Culture, and History for preservation of the record as a document of historical value. Unless authorized by the Supreme Court of Appeals, the records of courts of record and magistrate courts are not affected by the provisions of this section.

(c)(1) A preservation duplicate of a county government entity record may be stored in any format approved by the board in which the image of the original record is preserved in a form, including electronic file, in which the image is incapable of erasure or alteration and from which a reproduction of the stored record may be retrieved that truly and accurately depicts the image of the original county government record.

(2) Except for those formats, processes, and systems used for the storage of records on the effective date of this section, no alternate format for the storage of county government entity records described in this section is authorized for the storage of county government entity records unless the particular format has been approved pursuant to a legislative rule promulgated by the board in accordance with the provisions of chapter 29A of this code. The board may prohibit the use of any format, process, or system used for the storage of records upon its determination that the same is not reasonably adequate to preserve the records from destruction, alteration, or decay.

(3) Upon creation of a preservation duplicate that stores an original county government entity record in an approved format that is incapable of erasure or alteration and that may be retrieved in a format that truly and accurately depicts the image of the original record, the county government entity may destroy or

otherwise dispose of the original in accordance with the provisions of §57-1-7c of this code.

(d) A Records Management and Preservation Board for county government entities is continued, to be composed of 11 members.

(1) Three members shall serve ex officio. One member shall be the curator of the Department of Arts, Culture, and History or designee who shall be the chair of the board. One member shall be the administrator of the Supreme Court of Appeals or designee. One member shall be the Chief Technology Officer or designee.

(2) The Governor shall appoint eight members of the board, with the advice and consent of the Senate. Not more than five appointments to the board may be from the same political party and not more than three members may be appointed from the same congressional district. Of the eight members appointed by the Governor:

(i) Five appointments shall be county elected officials, one of whom shall be a clerk of a county commission, one of whom shall be a circuit court clerk, one of whom shall be a county commissioner, one of whom shall be a county sheriff, and one of whom shall be a county assessor, to be selected from a list of 15 names. The names of three clerks of county commissions and three circuit court clerks shall be submitted to the Governor by the West Virginia Association of Counties. The names of three county commissioners shall be submitted to the Governor jointly by the West Virginia Association of Counties and the West Virginia County Commissioners Association. The names of three county sheriffs shall be submitted to the Governor by the West Virginia Sheriff's Association. The names of three county assessors shall be submitted to the Governor by the Association of West Virginia Assessors;

(ii) One appointment shall be a county prosecuting attorney to be selected from a list of three names submitted by the West Virginia Prosecuting Attorneys Institute;

(iii) One appointment shall be an attorney licensed in West Virginia and in good standing as a member of the West Virginia State Bar with experience in real estate and mineral title examination, to be selected from a list of three names submitted by the State Bar; and

(iv) One appointment shall be a representative of a local historical or genealogical society.

(e) The members of the board shall serve without compensation but shall be reimbursed for all reasonable and necessary expenses actually incurred in the performance of their duties as members of the board in a manner consistent with the guidelines of the Travel Management Office of the Department of Administration. In the event the expenses are paid, or are to be paid, by a third party, the member shall not be reimbursed by the State.

(f) The staff of the board shall consist of the director of Archives and History within the Department of Arts, Culture, and History and any additional staff as needed.

(g) The board shall propose rules for legislative approval in accordance with the provisions of §29A-3-1 *et seq.* of this code to establish a system of records management and preservation for county governments: *Provided,* That, for the retention and disposition of records of courts of record and magistrate courts, the implementation of the rule is subject to action by the Supreme Court of Appeals of West Virginia. The proposed rules shall include provisions for establishing a program of grants to county governments for making records management and preservation uniform throughout the state.

(h) In addition to the fees charged by the clerk of the county commission under the provisions of §59-1-10 of this code, the clerk shall charge and collect an additional $2 fee for every document containing less than 20 pages filed for recording and an additional $1 fee for each additional 10 pages of document filed for recording. At the end of each month, the clerk of the county commission shall deposit into the Public Records and Preservation Revenue Account as established in the State Treasury all fees collected: *Provided,*

That the clerk may retain not more than 10 percent of the fees for costs associated with the collection of the fees. Clerks shall be responsible for accounting for the collection and deposit in the State Treasury of all fees collected by the clerk under the provisions of this section.

(i) There is hereby created in the State Treasury a special account entitled the Public Records and Preservation Revenue Account. The account shall consist of all fees collected under the provisions of this section, legislative appropriations, interest earned from fees, investments, gifts, grants, or contributions received by the board. Expenditures from the account 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 the fulfillment of the provisions set forth in §11B-2-1 *et seq.* of this code.

(j) Subject to the above provision, the board may expend the funds in the account to implement the provisions of this article. In expending funds from the account, the board shall allocate not more than 50 percent of the funds for grants to counties for records management, access, and preservation purposes. The board shall provide for applications, set guidelines, and establish procedures for distributing grants to counties, including a process for appealing an adverse decision on a grant application. Expenditures from the account shall be for the purposes set forth in this section, including the cost of additional staff of the Division of Archives and History.

CHAPTER 238

(H. B. 2969 - By Delegates Conley, Barnhart, Holstein and Steele)

[Passed April 7, 2021; in effect from passage.]
[Approved by the Governor on April 28, 2021.]

AN ACT to amend and reenact §17-16D-6 and §17-16D-10 of the Code of West Virginia, 1931, as amended; to amend and reenact §17-17-10, §17-17-11, §17-17-12, §17-17-21, and §17-17-22; to amend said code by adding thereto a new section, designated §17-17-38; to amend and reenact §17A-2A-7 and §17A-2A-9; and to amend and reenact §24-2-1 of said code, all relating to privately owned toll bridges; providing for the sale of a municipally owned toll bridge to a private toll transportation facility under certain circumstances; defining the term "private toll transportation facility"; authorizing disclosure of certain information in anticipation of litigation; authorizing the retention and collection of tolls on a privately owned toll bridge; clarifying procedures for the electronic collection of tolls by a private toll transportation facility; clarifying the tax treatment of toll bridges sold by a municipality to a private toll transportation facility; providing for the imposition of liability and nonrenewal of vehicle registration for failure to pay tolls on a privately owned toll bridge; clarifying the application of provisions of code to state owned and privately owned toll bridges; clarifying the jurisdiction of the Public Service Commission over toll bridges; and providing that commission does not have jurisdiction over certain telephone companies or municipal power systems.

Be it enacted by the Legislature of West Virginia:

CHAPTER 17. ROADS AND HIGHWAYS.

ARTICLE 16D. ELECTRONIC TOLL COLLECTION ACT.

§17-16D-6. Liability of owner.

(a) All owners and operators of motor vehicles shall pay the posted toll when on any toll road, highway, or bridge authorized by the Legislature, including any toll collected by a private toll transportation facility pursuant to §17-17-38 of this code, either by paying the toll at a toll collection facility on the toll road, highway, or bridge at the time of travel thereon or by paying the toll within the time prescribed for toll payment in a toll billing notice or invoice generated by an electronic toll collection system. These tolls may be collected by electronic toll collection. If an owner or operator of a vehicle fails to pay the prescribed toll when due, the owner of the vehicle is in violation of this article.

(b) If a violation occurs, the registration plate number of the vehicle as recorded by a video collection system establishes a rebuttable presumption for civil enforcement purposes that the owner of the vehicle was operating the vehicle, or had consented to another person operating the vehicle, at that time. This presumption may be overcome only if the owner: (1) proves by a preponderance of the evidence that he or she was not in fact operating the vehicle at the time; and (2) identifies by name and mailing address the person who was operating the vehicle.

(c) If the presumption is not overcome by a preponderance of the evidence, the owner of the vehicle shall be found to have violated this article and be held responsible for payment of the tolls and the administrative fees and money penalties imposed by this article for failure to timely pay the tolls.

(d) Nothing in this section prohibits: (1) A law-enforcement officer from issuing a citation to a person in control of a vehicle for a violation of this article or other provisions of law at the time of the violation; (2) the Parkways Authority from issuing reminder notices or making other communications directly or indirectly in connection with toll collection efforts or efforts to enforce violations of this article. The Parkways Authority is authorized to

use secondary sources of information and services including, but not limited to, services such as the National Change of Address Service or skip tracing services; or (3) a private toll transportation facility from issuing any notices, reminders, or other communications in connection with its toll collection efforts pursuant to §17-17-38(c) and §17-17-38(d) of this code.

§17-16D-10. Evading tolls; damaging, interfering with, or obstructing video toll collection or infrastructure; violations and criminal penalties.

(a) Any person who knowingly or intentionally evades or seeks to evade the payment of tolls, rents, fees, or charges established by the Parkways Authority for the use of any toll facility under the jurisdiction of the Authority, or of any private toll transportation facility pursuant to §17-17-38 of this code, is guilty of a misdemeanor and, upon conviction, shall be fined not more than $50 for each violation of this article.

(b) Any person who deliberately damages, defaces, or obstructs a video collection system infrastructure or power supply with the intent to interfere with, alter, or prevent the functioning of the system or electronic toll collection, or who obstructs a license plate or causes it to be unreadable by the video collection system, or who causes a transponder or other device used in an electronic toll system to be inoperable or unreadable thereby causing no toll to be charged, including a private toll transportation facility pursuant to §17-17-38 of this code, is guilty of a misdemeanor and, in addition to any other penalties provided by the code, and upon conviction, shall be fined not more than $500 for each such action and, if applicable, is additionally liable to the Parkways Authority or the private toll transportation facility for all costs incurred to repair the damaged, defaced, or obstructed property.

ARTICLE 17. TOLL BRIDGES.

§17-17-10. Payment of toll prior to passage; demand of excessive toll; evading payment of toll.

The proprietor of any toll bridge may require lawful toll to be paid previous to a passage thereover. Whoever shall knowingly or intentionally defraud, or attempt to defraud, the proprietor of any

toll bridge by evading, or attempting to evade, the payment of lawful toll for crossing such bridge, or whoever shall aid another to evade, or attempt to evade, the payment of such toll, shall be guilty of a misdemeanor and, for every such offense shall, upon conviction thereof, be fined not in excess of $10.

§17-17-11. Gatekeeper to keep small change.

A gatekeeper on any toll bridge without an electronic toll collection system, as defined in §17-16D-2 of this code, shall keep such money of small denomination on hand, as may reasonably be required in the ordinary course of business, for making change for passengers, and it is the duty of passengers to offer money for passage of a denomination as near as possible to the amount charged for such passage. This section shall not apply to persons now having a lawful right to pass on such bridge without the payment of toll.

§17-17-12. Failure to provide gatekeeper and to allow prompt passage.

If at any toll bridge without an electronic toll collection system there be a failure to give any person or property a passage over the same in a reasonable time, the proprietor thereof shall forfeit to such person not less than $2 nor more than $20. If the keeper of any toll bridge without an electronic toll collection system shall absent himself therefrom without leaving any person in charge of the gates thereon, he shall leave the gates open. Any keeper of a toll bridge without an electronic toll collection who shall fail to comply with the requirements of this section shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined $50 for every such offense; and any person injured by such failure shall be entitled to recover therefor from such keeper all damages sustained thereby.

§17-17-21. General supervision of bridges under jurisdiction of commissioner.

The commissioner of highways shall properly maintain, repair, operate, manage, and control the bridges owned by the state, fix the

rates of tolls and establish bylaws and rules and regulations for the use and operation of the bridges owned by the state, and may make and enter into all contracts or agreements necessary and incidental to the performance of his duties and the execution of his powers under this article, including power to permit use of such bridges owned by the state by street railways and other transportation lines, and telephone, telegraph, pipe, and other lines, and contract with them for such use and fix the terms and conditions thereof and the charges or tolls for such use of the bridges owned by the state.

§17-17-22. Tolls to be charged for bond payment; intrastate and interstate bridges included in one issue; purchasing of existing bridges; disposition of tolls.

Tolls shall be fixed, charged, and collected for transit over such bridges owned by the state and shall be so fixed and adjusted, in respect of the aggregate of tolls from the bridge or bridges owned by the state for which a single issue of bonds is issued, as to provide a fund sufficient to pay the principal and interest of such issue of bonds and to provide an additional fund to pay the cost of maintaining, repairing, and operating such bridge or bridges, subject, however, to any applicable law or regulation of the United States of America now in force or hereafter to be enacted or made. Two or more bridges owned by the state may be included in one issue of bonds, and intrastate and interstate bridges may be grouped in the same issue: *Provided*, That no existing bridge or bridges owned by the state shall be acquired by purchase, eminent domain, or otherwise, unless the commissioner of highways shall have determined that the income therefrom, based upon the toll receipts for the next preceding fiscal or calendar year, will be sufficient to pay all expenses of operating and maintaining such bridge, in addition to the interest and sinking fund requirements of any bonds to be issued to pay the purchase price thereof, or, if such existing bridge or bridges owned by the state are to be combined with any other bridge or bridges, either then existing or thereafter to be constructed or acquired by purchase, eminent domain, or otherwise, as provided in §17-17-23b of this code, unless the commissioner of highways shall have determined that the income from such combined bridges, based upon the toll receipts for the

next preceding fiscal or calendar year in the case of any existing bridge or bridges and upon estimates of future toll receipts in the case of any bridge or bridges to be constructed, will be sufficient to pay all expenses of operating and maintaining such combined bridges, in addition to the interest and sinking fund requirements of any bonds issued to pay the purchase price of such existing bridge or bridges and the interest and sinking fund requirements of any bonds issued to pay the cost of construction, acquiring, modernizing, repairing, reconstructing, or improving any bridge or bridges and approaches thereto, with which such existing bridge or bridges are to be so combined. The tolls from the bridge or bridges for which a single issue of bonds is issued, except such part thereof, as may be necessary to pay such cost of maintaining, repairing, and operating during any period in which such cost is not otherwise provided for (during which period the tolls may be reduced accordingly), shall be transmitted each month to the West Virginia Municipal Bond Commission and by it placed in a special fund which is hereby pledged to and charged with the payment of the principal of such bonds and the interest thereon, and to the redemption or repurchase of such bonds, such special fund to be a fund for all such bonds without distinction or priority of one over another. The moneys in such special fund, less a reserve for payment of interest, if not used by the West Virginia Municipal Bond Commission within a reasonable time for the purchase of bonds for cancellation at a price not exceeding the market price and not exceeding the redemption price, shall be applied to the redemption of bonds by lot at the redemption price then applicable. Notwithstanding the foregoing, payments of principal and interest on any bonds owned by the United States or any governmental agency or department thereof may be made by the governing body directly thereto.

Any bridge or bridges constructed or acquired by purchase, eminent domain, or otherwise, or reconstructed, repaired, or improved, under the provisions of this article and forming a connecting link between two or more state highways, or providing a river crossing for a state highway, are hereby adopted as a part of the state road system, but no such bridge or bridges shall be constructed or acquired by purchase, eminent domain, or

otherwise, or reconstructed, repaired, or improved by the state, under the provisions of this article without the approval in writing of the commissioner of highways and the Governor. If there be in the funds of the West Virginia Municipal Bond Commission an amount insufficient to pay the interest and sinking fund on any bonds issued for the purpose of constructing or acquiring by purchase, eminent domain, or otherwise, or reconstructing, repairing, or improving, such bridge or bridges, the commissioner of highways is authorized and directed to allocate to said commission, from the state road fund, an amount sufficient to pay the interest on said bonds and/or the principal thereof, as either may become due and payable.

§17-17-38. Municipal sale of ownership of toll bridges to private toll transportation facility; maintenance of tolls; imposition of liability for collection and payment; tax treatment and divestment.

(a) *Sale of municipally owned toll bridge.* – Any municipality which owns and operates a toll bridge pursuant to this article may, at the sole discretion of the municipality, and upon adoption of a resolution to such effect by the council of such municipality, sell and convey such toll bridge to a private toll transportation facility subject to such terms and conditions as the council of such municipality may agree.

(b) *Privilege to maintain tolls.* – Any private toll transportation facility purchasing a municipally-owned toll bridge located fewer than five miles from a toll-free bridge which crosses the same body of water or obstacle pursuant to subsection (a) of this section may retain, modify, and collect any such toll charges for the use thereof on persons and things passing over any such bridge as the facility may, by resolution, from time to time prescribe.

(c) *Electronic collection of tolls and imposition of liability for payment.* – The collection and enforcement of tolls for the use of any such bridge may be accomplished by electronic toll collection in the same manner and procedures as provided in §17-16D-1 *et seq.* of this code, and the imposition of liability for payment of such tolls shall apply as set forth specifically in §17-16D-5, §17-16D-6,

§17-16D-7, and §17-16D-10 of this code: *Provided,* That the toll rates provided for in §17-17-9 of this code shall not apply to a private toll transportation facility.

(d) *Nonrenewal of vehicle registration.* – If an owner of a vehicle has received at least one invoice from a private toll transportation facility for any unpaid tolls and has: (1) failed to pay the unpaid tolls and administrative fees, and (2) failed to file a notice to contest liability for a toll violation as provided for in the invoice, then the private toll transportation facility may notify the Commissioner of the Division of Motor Vehicles, who shall, if no form contesting liability has been timely filed with the private toll transportation facility, refuse to register or renew the registration of any vehicle of which the person committing the violation is a registered owner or co-owner until such time as the private toll transportation facility has notified the commissioner that such fees and unpaid tolls have been paid or satisfied.

(e) *Tax treatment of municipally owned toll bridge sold to private toll transportation facility.* – A municipally owned toll bridge sold to a private transportation facility pursuant to this section shall be considered exempt for purposes of ad valorem property taxation under §11-1-1 *et seq.* of this code: *Provided,* That if said exemption is in any way held to be invalid, then the value of a municipally owned toll bridge purchased by a private toll transportation facility, for purposes of ad valorem property taxation under §11-1-1 *et seq.* of this code, shall in no event be valued at more than its salvage value, which for purposes of this article is the lower of fair market salvage value or five percent of the original cost of the property.

(f) *Divestment of private toll bridge.* – Nothing in this section shall be construed to limit or prevent the subsequent sale, lease, assignment, or transfer of a municipally-owned toll bridge purchased by a private toll transportation facility, provided that all other requirements of this section are met.

(g) *Definitions.* – For purposes of this section, the term "private toll transportation facility" means any natural person, corporation, general partnership, limited liability company, limited partnership,

joint venture, business trust, public benefit corporation, nonprofit entity, or other business entity engaged in the collecting or charging of tolls on a previously municipal-owned toll bridge pursuant to this article.

CHAPTER 17A. MOTOR VEHICLE ADMINISTRATION, REGISTRATION, CERTIFICATION OF TITLE, AND ANTITHEFT PROVISIONS.

ARTICLE 2A. UNIFORM MOTOR VEHICLE RECORDS DISCLOSURE ACT.

§17A-2A-7. Permitted disclosures.

The division or its designee shall disclose personal information as defined in section three of this article to any person who requests the information if the person: (a) Has proof of his or her identity; and (b) verifies that the use of the personal information will be strictly limited to one or more of the following:

(1) For use by any governmental agency, including any court or law-enforcement agency, in carrying out its functions, or any private person or entity acting on behalf of a governmental agency in carrying out its functions;

(2) For use in connection with matters of motor vehicle or driver safety and theft, motor vehicle product alterations, recalls or advisories, performance monitoring of motor vehicles, motor vehicle parts and dealers, motor vehicle market research activities including survey research and removal of nonowner records from the original owner records of motor vehicle manufacturers;

(3) For use in the normal course of business by a legitimate business or its agents, employees or contractors:

(A) For the purpose of verifying the accuracy of personal information submitted by the individual to the business or its agents, employees or contractors; and

(B) If the information as submitted is not correct or is no longer correct, to obtain the correct information, but only for the purposes

of preventing fraud by, pursuing legal remedies against or recovering on a debt or security interest against the individual;

(4) For use in conjunction with any civil, criminal, administrative, or arbitral proceeding in any court or governmental agency or before any self-regulatory body, including investigation in anticipation of litigation, the service of process, the execution or enforcement of judgments and orders, or pursuant to an order of any court;

(5) For use in research and producing statistical reports, so long as the personal information is not published, redisclosed or used to contact individuals;

(6) For use by any insurer or insurance support organization or by a self-insured entity, its agents, employees or contractors in connection with claim investigation activities, antifraud activities, rating or underwriting;

(7) For use in providing notice to the owners of towed or impounded vehicles;

(8) For use by any licensed private investigator agency or licensed security service for any purpose permitted under this section;

(9) For use by an employer or its agent or insurer to obtain or verify information relating to a holder of a commercial driver's license that is required under the Commercial Motor Vehicle Safety Act of 1986 (49 U.S.C. App. 2710 et seq.);

(10) For use in connection with the operation of private toll transportation facilities; and

(11) For any other use specifically authorized by law that is related to the operation of a motor vehicle or public safety.

§17A-2A-9. Fees.

Any person making a request for disclosure of personal information required or permitted under sections five through eight

of this article, inclusive, shall pay to the division all reasonable fees related to providing the information: *Provided,* That all fees under this section shall be set by legislative rule pursuant to §29A-3-1 *et seq.* of this code: *Provided, however,* That nothing herein shall prohibit the division from entering into a separate fee agreement with a private toll transportation facility to facilitate permitted disclosures pursuant to §17A-2A-7 of this code.

CHAPTER 24. PUBLIC SERVICE COMMISSION.

ARTICLE 2. POWERS AND DUTIES OF PUBLIC SERVICE COMMISSION.

*§24-2-1. Jurisdiction of commission; waiver of jurisdiction.

(a) The jurisdiction of the commission shall extend to all public utilities in this state and shall include any utility engaged in any of the following public services:

Common carriage of passengers or goods, whether by air, railroad, street railroad, motor, or otherwise, by express or otherwise, by land, water, or air, whether wholly or partly by land, water, or air; transportation of oil, gas, or water by pipeline; transportation of coal and its derivatives and all mixtures and combinations thereof with other substances by pipeline; sleeping car or parlor car services; transmission of messages by telephone, telegraph, or radio; generation and transmission of electrical energy by hydroelectric or other utilities for service to the public, whether directly or through a distributing utility; supplying water, gas, or electricity by municipalities or others; sewer systems servicing 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; any public service district created under the provisions of §16-13A-1 *et seq.*

***NOTE:** This section was also amended by H. B. 3310 (Chapter 111), which passed subsequent to this act.

of this code, except that the Public Service Commission will have no jurisdiction over the provision of stormwater services by a public service district; 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 any other public service: *Provided, however*, 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: *Provided further*, That upon request of any of the customers of the natural gas producers, the commission may, upon good cause being shown, exercise such authority as the commission may deem appropriate over the operation, rates, and charges of the producer and for such length of time as the commission may consider to be proper.

(b) The jurisdiction of the commission over political subdivisions of this state providing separate or combined 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 such 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 said 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 as the commission considers necessary is filed: *Provided, however*, That the disputed rates, fees, and charges so 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 such other order respecting the same as shall be just and reasonable: *Provided further*, That if the matter complained of would affect rates, fees, and charges so 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 such redress as will bring the accounts to current status or otherwise resolve the breached covenant, and the commission shall have jurisdiction to fully resolve the alleged deficiency or breach.

(c) The commission may, upon application, waive its jurisdiction and allow a utility operating in an adjoining state to provide service in West Virginia when:

(1) An area of West Virginia cannot be practicably and economically served by a utility licensed to operate within the State of West Virginia;

(2) 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 is duly authorized to charge in the adjoining jurisdiction. The commission, in the case of any such utility, may revoke its waiver of jurisdiction for good cause.

(d) Any other provisions of this chapter to the contrary notwithstanding:

(1) An owner or operator of an electric generating facility located or to be located in this state that has been designated as an exempt wholesale generator under applicable federal law, or will be so designated prior to commercial operation of the facility, and for which such facility the owner or operator holds a certificate of public convenience and necessity issued by the commission on or before July 1, 2003, 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 so designated prior to commercial operation of the facility, and for which facility the owner or operator does not hold a certificate of public convenience and necessity issued by the commission on or before July 1, 2003, shall, prior to commencement of construction of the facility, obtain a siting certificate from the commission pursuant to the provisions of §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 thereon as of that date.

(7) The limitations on the jurisdiction of the commission over, and on the applicability of the provisions of this chapter to, the owner or operator of an electric generating facility as imposed by and described in this subsection 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 shall 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 shall 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 239

(Com. Sub. for H. B. 3002 - By Delegates Worrell, Dean, Paynter, Howell, Evans, Toney, Reed, Booth, Brown, Bridges and Bates)

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

AN ACT to amend and reenact §17-2A-8 of the Code of West Virginia, 1931, as amended, relating to requiring the Commissioner of the Division of Highways to post online certain records related to the discontinuance, vacating, or closing of any road or highway or part thereof; and requiring the Division of Highways to make virtual participation available to any person interested in participating in or attending any hearing related to such discontinuance, vacating, or closing.

Be it enacted by the Legislature of West Virginia:

ARTICLE 2A. WEST VIRGINIA COMMISSIONER OF HIGHWAYS.

§17-2A-8. Powers, duties, and responsibilities of commissioner.

In addition to all other duties, powers, and responsibilities given and assigned to the commissioner in this chapter, the commissioner may:

(1) Exercise general supervision over the state road program and the construction, reconstruction, repair, and maintenance of state roads and highways: *Provided*, That the commissioner shall implement reasonable design techniques intended to minimize damage that may result from recurring floods within the purpose and need of the state road system;

(2) Determine the various methods of road construction best adapted to the various sections and areas of the state and establish standards for the construction and maintenance of roads and highways in the various sections and areas of the state;

(3) Conduct investigations and experiments, hold hearings and public meetings, and attend and participate in meetings and conferences within and without the state for purposes of acquiring information, making findings, and determining courses of action and procedure relative to advancement and improvement of the state road and highway system;

(4) Enter private lands to make inspections and surveys for road and highway purposes;

(5) Acquire, in the name of the division, by lease, grant, right of eminent domain, or other lawful means all lands and interests and rights in lands necessary and required for roads, rights-of-way, cuts, fills, drains, storage for equipment and materials, and road construction and maintenance in general;

(6) Procure photostatic copies of any or all public records on file at the State Capitol of Virginia which may be considered necessary or proper in ascertaining the location and legal status of public road rights-of-way located or established in what is now the State of West Virginia, which when certified by the commissioner, may be admitted in evidence, in lieu of the original, in any of the courts of this state;

(7) Plan for and hold annually a school of good roads, of not less than three or more than six days' duration, for instruction of his or her employees, which is held in conjunction with West Virginia University and may be held at the university or at any other suitable place in the state;

(8) Negotiate and enter in reciprocal contracts and agreements with proper authorities of other states and of the United States relating to and regulating the use of roads and highways with reference to weights and types of vehicles, registration of vehicles and licensing of operators, military and emergency movements of

personnel and supplies, and all other matters of interstate or national interest;

(9) Classify and reclassify, locate, and relocate, expressway, trunkline, feeder, and state local service roads, and designate by number the routes within the state road system;

(10) Create, extend, or establish, upon petition of any interested party or parties or on the commissioner's own initiative, any new road or highway found necessary and proper;

(11) Exercise jurisdiction, control, supervision, and authority over local roads, outside the state road system, to the extent determined by him or her to be expedient and practicable;

(12) Discontinue, vacate, and close any road or highway, or any part of any road or highway, the continuance and maintenance of which are found unnecessary and improper, upon petition and hearing or upon investigation initiated by the commissioner. Any petition, motion, notice, decision, and order related to the discontinuance, vacating, or closing of any road or highway or part thereof shall be posted by the commissioner on the division's website available for review by the public. The division shall make virtual participation available to any person interested in participating in or attending any hearing related to such discontinuance, vacating, or closing;

(13) Close any state road while under construction or repair and provide a temporary road during the time of the construction or repair;

(14) Adjust damages occasioned by construction, reconstruction, or repair of any state road or the establishment of any temporary road;

(15) Establish and maintain a uniform system of road signs and markers;

(16) Fix standard widths for road rights-of-way, bridges, and approaches to bridges and fix and determine grades and elevations therefor;

(17) Test and standardize materials used in road construction and maintenance, either by governmental testing and standardization activities or through contract by private agencies;

(18) Allocate the cost of retaining walls and drainage projects, for the protection of a state road or its right-of-way, to the cost of construction, reconstruction, improvement, or maintenance;

(19) Acquire, establish, construct, maintain, and operate, in the name of the division, roadside recreational areas along and adjacent to state roads and highways;

(20) Exercise general supervision over the construction and maintenance of airports and landing fields under the jurisdiction of the West Virginia State Aeronautics Commission, of which the commissioner is a member, and make a study and general plan of a statewide system of airports and landing fields;

(21) Provide traffic engineering services to municipalities of the state upon request of the governing body of any municipality and upon terms that are agreeably arranged;

(22) Institute complaints before the Public Service Commission or any other appropriate governmental agency relating to freight rates, car service, and movement of road materials and equipment;

(23) Invoke any appropriate legal or equitable remedies, subject to §17-2A-7 of this code, to enforce his or her orders, to compel compliance with requirements of law, and to protect and preserve the state road and highway system or any part of the system;

(24) Make and promulgate rules for the government and conduct of personnel, for the orderly and efficient administration and supervision of the state road program, and for the effective and expeditious performance and discharge of the duties and responsibilities placed upon him or her by law;

(25) Delegate powers and duties to his or her appointees and employees who shall act by and under his or her direction and be responsible to him or her for their acts;

(26) Designate and define any construction and maintenance districts within the state road system that is found expedient and practicable;

(27) Contract for the construction, improvement, and maintenance of the roads;

(28) 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 proper department, bureau, or agency of the United States government relating to plans, surveys, construction, reconstruction, improvement, and maintenance of state roads and highways;

(29) Prepare budget estimates and requests;

(30) Establish a system of accounting covering and including all fiscal and financial matters of the division;

(31) Establish and advance a right-of-way Acquisition Revolving Fund, a Materials Revolving Fund, and an Equipment Revolving Fund;

(32) Enter into contracts and agreements with and cooperate in programs of counties, municipalities, and other governmental agencies and subdivisions of the state relating to plans, surveys, construction, reconstruction, improvement, maintenance, and supervision of highways, roads, streets, and other travel ways when and to the extent determined by the division to be expedient and practical;

(33) Report, as provided by law, to the Governor and the Legislature;

(34) Purchase materials, supplies, and equipment required for the state road program and system;

(35) Dispose of all obsolete and unusable and surplus supplies and materials which cannot be used advantageously and beneficially by the division in the state road program by transfer of the supplies and materials to other governmental agencies and institutions by exchange, trade, or sale of the supplies and materials;

(36) Investigate road conditions, official conduct of division personnel, and fiscal and financial affairs of the division and hold hearings and make findings thereon or on any other matters within the jurisdiction of the division;

(37) Establish road policies and administrative practices;

(38) Fix and revise from time to time tolls for transit over highway projects constructed by the Division of Highways after May 1, 1999, that have been authorized by the provisions of §17-17A-5b of this code;

(39) Take actions necessary to alleviate any conditions as the Governor may declare to constitute an emergency, whether or not the emergency condition affects areas normally under the jurisdiction of the Division of Highways; and

(40) Provide family restrooms at all rest areas along interstate highways in this state, all to be constructed in accordance with federal law.

CHAPTER 240

(Com. Sub. for S. B. 14 - By Senators Rucker, Roberts, Takubo, Maroney, and Swope)

[Passed February 26, 2021; in effect 90 days from passage (May 27, 2021)]
[Approved by the Governor on March 10, 2021.]

AN ACT to amend and reenact §18A-3-2a of the Code of West Virginia, 1931, as amended, relating to creating a third set of conditions for which a person may be issued a professional teaching certificate for teaching in the public schools; and providing that teaching certificates granted pursuant to the new set of conditions are equivalent to certificates granted to graduates of teacher preparation programs at public higher education institutions.

Be it enacted by the Legislature of West Virginia:

ARTICLE 3. TRAINING, CERTIFICATION, LICENSING, PROFESSIONAL DEVELOPMENT.

*§18A-3-2a. Certificates valid in the public schools that may be issued by the State Superintendent.

In accordance with state board rules for the education of professional educators adopted pursuant to §18A-3-1 if this code and subject to the limitations and conditions of that section, the State Superintendent may issue the following certificates valid in the public schools of the state:

(a) *Professional teaching certificates*. —

*NOTE: This section was also amended by H. B. 2029 (Chapter 242), which passed subsequent to this act.

(1) A professional teaching certificate for teaching in the public schools may be issued to a person who meets the following conditions:

(A) Holds at least a bachelor's degree from a regionally accredited institution of higher education, and:

(i) Has passed appropriate state board approved basic skills and subject matter tests in the area for which licensure is being sought; and

(ii) Has completed a program for the education of teachers which meets the requirements approved by the state board; or

(iii) Has met equivalent standards at institutions in other states; or

(iv) Has completed three years of successful teaching experience within the last seven years under a license issued by another state in the area for which licensure is being sought; or

(v) Has completed an alternative program approved by another state; or

(B) Holds at least a bachelor's degree from an accredited institution of higher education, and:

(i) Has passed appropriate state board approved basic skills and subject matter tests; and

(ii) Has completed an alternative program for teacher education as provided in this article; and

(iii) Is recommended for a certificate in accordance with the provisions of §18A-3-1i of this code relating to the program; and

(iv) Is recommended by the State Superintendent based on documentation submitted; or

(C) Holds a bachelor's degree from an accredited institution of higher education, and:

(i) Submits to a criminal history check pursuant to §18A-3-10 of this code: *Provided,* That information discovered during the criminal history check may form the basis for the denial of a certificate for just cause; and

(ii) Successfully completes pedagogical training or a pedagogical course or courses in substantive alignment with nationally recognized pedagogical standards, or approved or established by the state board; and

(iii) Passes the same subject matter and competency test or tests required by the state board for traditional program applicants for licensure.

(2) The certificate shall be endorsed to indicate the grade level or levels or areas of specialization in which the person is certified to teach or to serve in the public schools.

(3) The initial professional certificate is issued provisionally for a period of three years from the date of issuance:

(A) The certificate may be converted to a professional certificate valid for five years subject to successful completion of a beginning teacher induction program, if applicable; or

(B) The certificate may be renewed subject to rules adopted by the state board.

(4) Teaching certificates granted pursuant to §18A-3-2a(a)(1)(C) of this code shall be equivalent to certificates granted to graduates of teacher preparation programs at public higher education institutions.

(b) *Alternative program teacher certificate*. — An alternative program teacher certificate may be issued to a candidate who is enrolled in an alternative program for teacher education approved by the state board.

(1) The certificate is valid only for the alternative program position in which the candidate is employed and is subject to enrollment in the program.

(2) The certificate is valid while the candidate is enrolled in the alternative program, up to a maximum of three years, and may not be renewed.

(c) *Professional administrative certificate*. —

(1) A professional administrative certificate, endorsed for serving in the public schools, with specific endorsement as a principal, vocational administrator, supervisor of instructions, or superintendent, may be issued to a person who has completed requirements all to be approved by the state board as follows:

(A) Holds at least a master's degree from an institution of higher education accredited to offer a master's degree, and:

(i) Has successfully completed an approved program for administrative certification developed by the state board in cooperation with the chancellor for higher education; and

(ii) Has successfully completed education and training in evaluation skills through the Center for Professional Development, or equivalent education and training in evaluation skills approved by the state board; and

(iii) Possesses three years of management level experience.

(2) Any person serving in the position of dean of students on June 4, 1992, is not required to hold a professional administrative certificate.

(3) The initial professional administrative certificate is issued provisionally for a period of five years. This certificate may be converted to a professional administrative certificate valid for five years or renewed, subject to the regulations of the state board.

(d) *Paraprofessional certificate*. — A paraprofessional certificate may be issued to a person who meets the following conditions:

(1) Has completed 36 semester hours of post-secondary education or its equivalent in subjects directly related to performance of the job, all approved by the state board; and

(2) Demonstrates the proficiencies to perform duties as required of a paraprofessional as defined in §18A-4-8 of this code.

(e) *Other certificates; permits*. —

(1) Other certificates and permits may be issued, subject to the approval of the state board, to persons who do not qualify for the professional or paraprofessional certificate.

(2) A certificate or permit may not be given permanent status and a person holding one of these credentials shall meet renewal requirements provided by law and by regulation, unless the state board declares certain of these certificates to be the equivalent of the professional certificate.

(3) Within the category of other certificates and permits, the State Superintendent may issue certificates for persons to serve in the public schools as athletic coaches or coaches of other extracurricular activities, whose duties may include the supervision of students, subject to the following limitations:

(A) The person is employed under a contract with the county board of education.

(i) The contract specifies the duties to be performed, specifies a rate of pay that is equivalent to the rate of pay for professional educators in the district who accept similar duties as extra duty assignments, and provides for liability insurance associated with the activity; and

(ii) The person holding this certificate is not considered an employee of the board for salary and benefit purposes other than as specified in the contract.

(B) The person completes an orientation program designed and approved in accordance with state board rules.

(f) *Teacher-in-residence permit*. —

(1) A teacher-in-residence permit may be issued to a candidate who is enrolled in a teacher-in-residence program in accordance with an agreement between an institution of higher education and a county board. The agreement is developed pursuant to §18A-3-1(e) of this code and requires approval by the state board.

(2) The permit is valid only for the teacher-in-residence program position in which the candidate is enrolled and is subject to enrollment in the program. The permit is valid for no more than one school year and may not be renewed.

(g) *Temporary teaching certificates for armed forces spouses*. —

(1) A temporary teaching certificate for an armed forces spouse may be issued to an individual who meets the following criteria:

(A) He or she is married to a member of the armed forces of the United States who is on active duty;

(B) He or she holds a current unencumbered teaching certificate or license issued by an equivalent credentialing department, board, or authority, as determined by the State Superintendent, in another state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, another territory or protectorate of the United States or a foreign country; and

(C) He or she provides proof acceptable to the State Superintendent that his or her spouse is assigned to a duty station in this state or at a military installation within 50 air miles of the West Virginia border and that he or she is also assigned to a duty station in this state or at a military installation within 50 air miles of the West Virginia border under his or her spouse's official active duty military orders.

(2) The State Superintendent shall deny a temporary teaching certificate to an individual described in paragraph (1) of this subdivision for fraud, material misrepresentation or concealment

in the person's application for a temporary teaching certificate or for a conviction for which an individual's teaching certificate may be revoked under §18A-3-6 of this code.

(3) A temporary teaching certificate issued under paragraph (1) of this subdivision is valid for one year and may be renewed for additional one-year terms if the State Superintendent determines the individual holding the temporary teaching certificate continues to meet the requirements of paragraph (1) of this subdivision. The State Superintendent may revoke a temporary teaching certificate for a conviction for which an individual's teaching certificate may be revoked under §18A-3-6 of this code.

CHAPTER 241

(S. B. 680 - By Senators Rucker and Roberts)

[Passed April 6, 2021; in effect 90 days from passage (July 5, 2021)]
[Approved by the Governor on April 19, 2021.]

AN ACT to amend and reenact §18A-4-2 of the Code of West Virginia, 1931, as amended, relating to allowing the State Superintendent of Schools to define classroom teachers certified in special education.

Be it enacted by the Legislature of West Virginia:

ARTICLE 4. SALARIES, WAGES, AND OTHER BENEFITS.

§18A-4-2. State minimum salaries for teachers.

(a) It is the goal of the Legislature to increase the state minimum salary for teachers with zero years of experience and an A.B. degree, including the supplement, to at least $43,000 by fiscal year 2019.

(b) For school year 2018–2019, and continuing thereafter, each teacher shall receive the amount prescribed in the State Minimum Salary Schedule I as set forth in this section; specific additional amounts prescribed in this section or article; and any county supplement in effect in a county pursuant to §18A-4-5a of this code during the contract year: *Provided,* That for the school year 2019-2020, and continuing thereafter, each teacher shall receive the amount prescribed in the State Minimum Salary Schedule II as set forth in this section, specific additional amounts prescribed in this section or article, and any county supplement in effect in a county pursuant to §18A-4-5a of this code during the contract year.

STATE MINIMUM SALARY SCHEDULE I

Years Exp	4th Class	3rd Class	2nd Class	A.B.	A.B. + 15	M.A.	M.A. + 15	M.A. + 30	M.A. + 45	Doc-torate
0	29,937	30,626	30,892	32,335	33,096	34,863	35,624	36,385	37,146	38,181
1	30,265	30,954	31,220	32,853	33,614	35,382	36,143	36,903	37,664	38,699
2	30,594	31,282	31,548	33,372	34,133	35,900	36,661	37,422	38,183	39,218
3	30,922	31,610	31,876	33,891	34,651	36,419	37,180	37,940	38,701	39,736
4	31,494	32,182	32,448	34,653	35,414	37,182	37,943	38,703	39,464	40,499
5	31,822	32,510	32,776	35,172	35,933	37,700	38,461	39,222	39,983	41,018
6	32,150	32,838	33,104	35,690	36,451	38,219	38,980	39,740	40,501	41,536
7	32,478	33,167	33,432	36,209	36,970	38,737	39,498	40,259	41,020	42,055
8	32,806	33,495	33,761	36,727	37,488	39,256	40,017	40,777	41,538	42,573
9	33,134	33,823	34,089	37,246	38,007	39,774	40,535	41,296	42,057	43,092
10	33,463	34,151	34,417	37,766	38,526	40,294	41,055	41,816	42,576	43,611
11	33,791	34,479	34,745	38,284	39,045	40,813	41,573	42,334	43,095	44,130
12	34,119	34,807	35,073	38,803	39,563	41,331	42,092	42,853	43,613	44,648
13	34,447	35,135	35,401	39,321	40,082	41,850	42,610	43,371	44,132	45,167
14	34,775	35,463	35,729	39,840	40,600	42,368	43,129	43,890	44,650	45,685
15	35,103	35,791	36,057	40,358	41,119	42,887	43,647	44,408	45,169	46,204
16	35,431	36,119	36,385	40,877	41,637	43,405	44,166	44,927	45,687	46,722
17	35,759	36,448	36,713	41,395	42,156	43,924	44,685	45,445	46,206	47,241
18	36,087	36,776	37,042	41,914	42,675	44,442	45,203	45,964	46,725	47,760
19	36,415	37,104	37,370	42,432	43,193	44,961	45,722	46,482	47,243	48,278
20	36,743	37,432	37,698	42,951	43,712	45,479	46,240	47,001	47,762	48,797
21	37,072	37,760	38,026	43,469	44,230	45,998	46,759	47,519	48,280	49,315
22	37,400	38,088	38,354	43,988	44,749	46,516	47,277	48,038	48,799	49,834
23	37,728	38,416	38,682	44,507	45,267	47,035	47,796	48,556	49,317	50,352
24	38,056	38,744	39,010	45,025	45,786	47,554	48,314	49,075	49,836	50,871
25	38,384	39,072	39,338	45,544	46,304	48,072	48,833	49,594	50,354	51,389
26	38,712	39,400	39,666	46,062	46,823	48,591	49,351	50,112	50,873	51,908
27	39,040	39,728	39,994	46,581	47,341	49,109	49,870	50,631	51,391	52,426

28	39,368	40,057	40,322	47,099	47,860	49,628	50,388	51,149	51,910	52,945
29	39,696	40,385	40,651	47,618	48,378	50,146	50,907	51,668	52,428	53,463
30	40,024	40,713	40,979	48,136	48,897	50,665	51,425	52,186	52,947	53,982
31	40,353	41,041	41,307	48,655	49,416	51,183	51,944	52,705	53,465	54,500
32	40,681	41,369	41,635	49,173	49,934	51,702	52,463	53,223	53,984	55,019
33	41,009	41,697	41,963	49,692	50,453	52,220	52,981	53,742	54,503	55,538
34	41,337	42,025	42,291	50,210	50,971	52,739	53,500	54,260	55,021	56,056
35	41,665	42,353	42,619	50,729	51,490	53,257	54,018	54,779	55,540	56,575

STATE MINIMUM SALARY SCHEDULE II

Years Exp	4th Class	3rd Class	2nd Class	A.B.	A.B. + 15	M.A.	M.A. + 15	M.A. + 30	M.A. + 45	Doc-torate
0	32,057	32,746	33,012	34,455	35,216	36,983	37,744	38,505	39,266	40,301
1	32,385	33,074	33,340	34,973	35,734	37,502	38,263	39,023	39,784	40,819
2	32,714	33,402	33,668	35,492	36,253	38,020	38,781	39,542	40,303	41,338
3	33,042	33,730	33,996	36,011	36,771	38,539	39,300	40,060	40,821	41,856
4	33,614	34,302	34,568	36,773	37,534	39,302	40,063	40,823	41,584	42,619
5	33,942	34,630	34,896	37,292	38,053	39,820	40,581	41,342	42,103	43,138
6	34,270	34,958	35,224	37,810	38,571	40,339	41,100	41,860	42,621	43,656
7	34,598	35,287	35,552	38,329	39,090	40,857	41,618	42,379	43,140	44,175
8	34,926	35,615	35,881	38,847	39,608	41,376	42,137	42,897	43,658	44,693
9	35,254	35,943	36,209	39,366	40,127	41,894	42,655	43,416	44,177	45,212
10	35,583	36,271	36,537	39,886	40,646	42,414	43,175	43,936	44,696	45,731
11	35,911	36,599	36,865	40,404	41,165	42,933	43,693	44,454	45,215	46,250
12	36,239	36,927	37,193	40,923	41,683	43,451	44,212	44,973	45,733	46,768
13	36,567	37,255	37,521	41,441	42,202	43,970	44,730	45,491	46,252	47,287
14	36,895	37,583	37,849	41,960	42,720	44,488	45,249	46,010	46,770	47,805
15	37,223	37,911	38,177	42,478	43,239	45,007	45,767	46,528	47,289	48,324
16	37,551	38,239	38,505	42,997	43,757	45,525	46,286	47,047	47,807	48,842
17	37,879	38,568	38,833	43,515	44,276	46,044	46,805	47,565	48,326	49,361
18	38,207	38,896	39,162	44,034	44,795	46,562	47,323	48,084	48,845	49,880

19	38,535	39,224	39,490	44,552	45,313	47,081	47,842	48,602	49,363	50,398
20	38,863	39,552	39,818	45,071	45,832	47,599	48,360	49,121	49,882	50,917
21	39,192	39,880	40,146	45,589	46,350	48,118	48,879	49,639	50,400	51,435
22	39,520	40,208	40,474	46,108	46,869	48,636	49,397	50,158	50,919	51,954
23	39,848	40,536	40,802	46,627	47,387	49,155	49,916	50,676	51,437	52,472
24	40,176	40,864	41,130	47,145	47,906	49,674	50,434	51,195	51,956	52,991
25	40,504	41,192	41,458	47,664	48,424	50,192	50,953	51,714	52,474	53,509
26	40,832	41,520	41,786	48,182	48,943	50,711	51,471	52,232	52,993	54,028
27	41,160	41,848	42,114	48,701	49,461	51,229	51,990	52,751	53,511	54,546
28	41,488	42,177	42,442	49,219	49,980	51,748	52,508	53,269	54,030	55,065
29	41,816	42,505	42,771	49,738	50,498	52,266	53,027	53,788	54,548	55,583
30	42,144	42,833	43,099	50,256	51,017	52,785	53,545	54,306	55,067	56,102
31	42,473	43,161	43,427	50,775	51,536	53,303	54,064	54,825	55,585	56,620
32	42,801	43,489	43,755	51,293	52,054	53,822	54,583	55,343	56,104	57,139
33	43,129	43,817	44,083	51,812	52,573	54,340	55,101	55,862	56,623	57,658
34	43,457	44,145	44,411	52,330	53,091	54,859	55,620	56,380	57,141	58,176
35	43,785	44,473	44,739	52,849	53,610	55,377	56,138	56,899	57,660	58,695

(c) Six hundred dollars shall be paid annually to each classroom teacher who has at least 20 years of teaching experience. The payments: (i) Shall be in addition to any amounts prescribed in the applicable State Minimum Salary Schedule; (ii) shall be paid in equal monthly installments; and (iii) shall be considered a part of the state minimum salaries for teachers.

(d) Effective July 1, 2019, each classroom teacher providing math instruction in the teacher's certified area of study for at least 60 percent of the time the teacher is providing instruction to students shall be considered to have three additional years of experience only for the purposes of the salary schedule set forth in subsection (b) of this section: *Provided,* That for any classroom teacher who satisfies these requirements and whose years of experience plus the three additional years due to them exceeds the years of experience provided for on the salary schedule shall be paid the additional amount equivalent to three additional years of

experience notwithstanding the maximum experience provided on the salary schedule.

(e) Effective July 1, 2019, each classroom teacher certified in special education and employed as a full-time special education teacher, as defined by the State Superintendent, shall be considered to have three additional years of experience only for the purposes of the salary schedule set forth in subsection (b) of this section: *Provided,* That for any classroom teacher who satisfies these requirements and whose years of experience plus the three additional years due to them exceeds the years of experience provided for on the salary schedule shall be paid the additional amount equivalent to three additional years of experience notwithstanding the maximum experience provided on the salary schedule.

(f) In accordance with §18A-4-5 of this code, each teacher shall be paid the supplement amount as applicable for his or her classification of certification or classification of training and years of experience as follows, subject to the provisions of that section:

(1) For "4th Class" at zero years of experience, $1,781. An additional $38 shall be paid for each year of experience up to and including 35 years of experience;

(2) For "3rd Class" at zero years of experience, $1,796. An additional $67 shall be paid for each year of experience up to and including 35 years of experience;

(3) For "2nd Class" at zero years of experience, $1,877. An additional $69 shall be paid for each year of experience up to and including 35 years of experience;

(4) For "A.B." at zero years of experience, $2,360. An additional $69 shall be paid for each year of experience up to and including 35 years of experience;

(5) For "A.B. + 15" at zero years of experience, $2,452. An additional $69 shall be paid for each year of experience up to and including 35 years of experience;

(6) For "M.A." at zero years of experience, $2,644. An additional $69 shall be paid for each year of experience up to and including 35 years of experience;

(7) For "M.A. + 15" at zero years of experience, $2,740. An additional $69 shall be paid for each year of experience up to and including 35 years of experience;

(8) For "M.A. + 30" at zero years of experience, $2,836. An additional $69 shall be paid for each year of experience up to and including 35 years of experience;

(9) For "M.A. + 45" at zero years of experience, $2,836. An additional $69 shall be paid for each year of experience up to and including 35 years of experience; and

(10) For "Doctorate" at zero years of experience, $2,927. An additional $69 shall be paid for each year of experience up to and including 35 years of experience.

These payments: (i) Shall be in addition to any amounts prescribed in the applicable State Minimum Salary Schedule, any specific additional amounts prescribed in this section and article and any county supplement in effect in a county pursuant to §18A-4-5a of this code; (ii) shall be paid in equal monthly installments; and (iii) shall be considered a part of the state minimum salaries for teachers.

CHAPTER 242

(H. B. 2029 - By Delegates Ellington, Higginbotham, Mazzocchi, Toney and Tully)

[Passed April 10, 2021; in effect ninety days from passage.]
[Approved by the Governor on April 26, 2021.]

AN ACT to amend and reenact §18A-3-1 and §18A-3-2a of the Code of West Virginia, 1931, as amended, related to teacher preparation clinical experience programs; changing name of teacher in residence program to clinical teacher of record program; providing for resident teacher clinical experience programs and leader induction programs under general direction and control of state board; and changing Teacher in Residence Permit to Clinical Teacher of Record Permit.

Be it enacted by the Legislature of West Virginia:

ARTICLE 3. TRAINING, CERTIFICATION, LICENSING, PROFESSIONAL DEVELOPMENT.

§18A-3-1. Teacher preparation programs; program approval and standards; authority to issue teaching certificates.

(a) The education of professional educators in the state is under the general direction and control of the state board.

The education of professional educators in the state includes all programs leading to certification to teach or serve in the public schools. The programs include the following:

(1) Programs in all institutions of higher education, including student teaching, resident teacher clinical experience, and the clinical teacher of record programs, as provided in this section;

(2) Beginning teacher and leader induction programs;

(3) Granting West Virginia certification to persons who received their preparation to teach outside the boundaries of this state, except as provided in subsection (b) of this section;

(4) Alternative preparation programs in this state leading to certification, including programs established pursuant to the provisions of §18A-3-1a, §18A-3-1b, §18A-3-1c, §18A-3-1d, §18A-3-1e, §18A-3-1f, §18A-3-1g, §18A-3-1h, and §18A-3-1i of this code and programs which are in effect on the effective date of this section; and

(5) Continuing professional education, professional development, and in-service training programs for professional educators employed in the public schools in the state.

(b) The state board shall adopt standards for the education of professional educators in the state and for awarding certificates valid in the public schools of this state. The standards include, but are not limited to, the following:

(1) A provision for the study of the history and philosophical foundations of Western Civilization and the writings of the founders of the United States of America;

(2) A provision for the study of multicultural education. As used in this section, multicultural education means the study of the pluralistic nature of American society including its values, institutions, organizations, groups, status positions, and social roles;

(3) A provision for the study of classroom management techniques, including methods of effective management of disruptive behavior including addressing societal factors and their impact on student behavior; and

(4) A teacher from another state shall be awarded a teaching certificate for a comparable grade level and subject area valid in the public schools of this state, subject to §18A-3-10 of this code if he or she has met the following requirements:

(A) Holds a valid teaching certificate or a certificate of eligibility issued by another state;

(B) Has graduated from an educator preparation program at a regionally accredited institution of higher education or from another educator preparation program;

(C) Possesses the minimum of a bachelor's degree; and

(D) Meets all of the requirements of the state for full certification except employment.

(c) The state board may enter into an agreement with county boards for the use of the public schools in order to give prospective teachers the teaching experience needed to demonstrate competence as a prerequisite to certification to teach in the West Virginia public schools.

(d) An agreement established pursuant to subsection (c) of this section shall recognize student teaching or teacher residency as a joint responsibility of the educator preparation institution and the cooperating public schools. The agreement shall include the following items:

(1) The minimum qualifications for the employment of public school teachers selected as supervising teachers, including the requirement that field-based and clinical experiences be supervised by a teacher fully certified in the state in which that teacher is supervising;

(2) The remuneration to be paid to public school teachers by the state board, in addition to their contractual salaries, for supervising student teachers or residents;

(3) Minimum standards to guarantee the adequacy of the facilities and program of the public school selected for student teaching or teacher residency;

(4) Assurance that the student teacher or resident teacher, under the direction and supervision of the supervising teacher, shall exercise the authority of a substitute teacher;

(5) A provision requiring any higher education institution with an educator preparation program to document that the student or resident teacher's field-based and clinical experiences include participation and instruction with multicultural, at-risk, and exceptional children at each programmatic level for which the student teacher seeks certification; and

(6) A provision authorizing a school or school district that has implemented a comprehensive beginning teacher induction program to enter into an agreement that provides for the training and supervision of student teachers or resident teachers consistent with the educational objectives of this subsection by using an alternate structure implemented for the support, supervision, and mentoring of beginning teachers. The agreement is in lieu of any specific provisions of this subsection and is subject to the approval of the state board.

(e) *Clinical teacher of record programs.* —

(1) In lieu of the provisions of subsections (c) and (d) of this section and subject to approval of the state board, an institution of higher education with a program for the education of professional educators approved by the state board may enter into an agreement with county boards for the use of clinical teacher of record programs in the public schools.

(2) A "clinical teacher of record program" means an intensively supervised and mentored program for prospective teachers during their senior year that refines their professional practice skills and helps them gain the teaching experience needed to demonstrate competence as a prerequisite to certification to teach in the West Virginia public schools.

(3) The authorization for the higher education institution and the county board to implement a clinical teacher of record program is subject to state board approval. The provisions of the agreement include, but are not limited to, the following items:

(A) A requirement that the prospective teacher in a clinical teacher of record program has completed all other preparation

courses and has passed the appropriate basic skills and subject matter test or tests required by the state board for teachers to become certified in the area for which licensure is sought;

(B) A requirement that the clinical teacher of record serve only in a teaching position in the county which has been posted and for which no other teacher fully certified for the position has been employed;

(C) Specifics regarding the program of instruction for the clinical teacher of record setting forth the responsibilities for supervision and mentoring by the higher education institution's educator preparation program, the school principal, and peer teachers and mentors, and the responsibilities for the formal instruction or professional development necessary for the clinical teacher of record to perfect his or her professional practice skills. The program also may include other instructional items as considered appropriate;

(D) A requirement that the clinical teacher of record hold a clinical teacher of record permit qualifying the individual to teach in his or her assigned position as the teacher of record;

(E) A requirement that the salary and benefit costs for the position to which the clinical teacher of record is assigned shall be used only for program support and to pay a stipend to the clinical teacher of record as specified in the agreement, subject to the following:

(i) The clinical teacher of record is a student enrolled in the teacher preparation program of the institution of higher education and is not a regularly employed employee of the county board;

(ii) The clinical teacher of record is included on the certified list of employees of the county eligible for state aid funding the same as an employee of the county at the appropriate level based on their permit and level of experience;

(iii) All state aid funding due to the county board for the clinical teacher of record shall be used only in accordance with the agreement with the institution of higher education for support of

the program as provided in the agreement, including costs associated with instruction and supervision as set forth in paragraph (C) of this subdivision;

(iv) The clinical teacher of record is provided the same liability insurance coverage as other employees; and

(v) All state aid funding due to the county for the clinical teacher of record and not required for support of the program shall be paid as a stipend to the clinical teacher of record: *Provided*, That the stipend paid to the clinical teacher of record shall be no less than 65 percent of all state aid funding due the county for the clinical teacher of record;

(F) Other provisions that may be required by the state board.

(f) In lieu of the student teaching experience in a public school setting required by this section, an institution of higher education may provide an alternate student teaching or residency experience in a nonpublic school setting if the institution of higher education meets the following criteria:

(1) Complies with the provisions of this section;

(2) Has a state board-approved educator preparation program; and

(3) Enters into an agreement pursuant to subdivisions (g) and (h) of this section.

(g) At the discretion of the higher education institution, an agreement for an alternate student teaching or residency experience between an institution of higher education and a nonpublic school shall require one of the following:

(1) The prospective teacher shall complete at least one-half of the clinical experience in a public school; or

(2) The educator preparation program shall include a requirement that any student performing student teaching or residency in a nonpublic school shall complete the following:

(A) At least 200 clock hours of field-based training in a public school; and

(B) A course, which is a component of the institution's state board-approved educator preparation program, that provides information to prospective teachers equivalent to the teaching experience needed to demonstrate competence as a prerequisite to certification to teach in the public schools in West Virginia. The course also shall include instruction on at least the following elements:

(i) State board policy and provisions of this code governing public education;

(ii) Requirements for federal and state accountability, including the mandatory reporting of child abuse;

(iii) Federal and state mandated curriculum and assessment requirements, including multicultural education, safe schools, and student code of conduct;

(iv) Federal and state regulations for the instruction of exceptional students as defined by the Individuals with Disabilities Education Act, 20 U.S.C. §1400 *et seq.*; and

(v) Varied approaches for effective instruction for students who are at-risk.

(h) In addition to the requirements set forth in subsection (g) of this section, an agreement for an alternate student teaching or residency experience between an institution of higher education and a nonpublic school shall include the following:

(1) A requirement that the higher education institution with an educator preparation program shall document that the student or resident teacher's field-based and clinical experiences include participation and instruction with multicultural, at-risk, and exceptional children at each programmatic level for which the student teacher seeks certification; and

(2) The minimum qualifications for the employment of school teachers selected as supervising teachers, including the requirement that field-based and clinical experiences be supervised by a teacher fully certified in the state in which that teacher is supervising.

(i) The state superintendent may issue certificates as provided in §18A-3-2a of this code to graduates of educator preparation programs and alternative educator preparation programs approved by the state board. The certificates are issued in accordance with this section and rules adopted by the state board.

(1) A certificate to teach may be granted only to a person who meets the following criteria:

(A) Is a citizen of the United States, except as provided in subdivision (2) or (3) of this subsection;

(B) Is of good moral character;

(C) Is physically, mentally, and emotionally qualified to perform the duties of a teacher; and

(D) Is at least 18 years of age on or before October 1 of the year in which his or her certificate is issued.

(2) A permit to teach in the public schools of this state may be granted to a person who is an exchange teacher from a foreign country or an alien person who meets the requirements to teach.

(3) A certificate to teach may be granted to a noncitizen of the United States who holds a valid Permanent Resident Card, Employment Authorization Document (EAD), or work permit issued by the United States Citizenship and Immigration Services (USCIS).

(j) Institutions of higher education approved for educator preparation may cooperate with each other and with one or more county boards to organize and operate centers to provide selected phases of the educator preparation program. The phases include, but are not limited to, the following:

(1) Student teaching and resident teacher clinical experience programs;

(2) Clinical teacher of record programs;

(3) Beginning teacher and leader induction programs;

(4) Instruction in methodology; and

(5) Seminar programs for college students, teachers with provisional certification, professional support team members, and supervising teachers.

By mutual agreement, the institutions of higher education and county boards may budget and expend funds to operate the centers through payments to the appropriate fiscal office of the participating institutions and the county boards.

(k) The provisions of this section do not require discontinuation of an existing student teacher training center or school which meets the standards of the state board.

(l) All institutions of higher education approved for educator preparation in the 1962-63 school year continue to hold that distinction so long as they meet the minimum standards for educator preparation. Nothing in this section infringes upon the rights granted to any institution by charter given according to law previous to the adoption of this code.

(m) *Definitions*. — For the purposes of this section, the following words have the meanings ascribed to them unless the context clearly indicates a different meaning:

(1) "Nonpublic school" means a private school, parochial school, church school, school operated by a religious order, or other nonpublic school that elects to meet the following conditions:

(A) Comply with the provisions of §18-28-1 *et seq.* of this code;

(B) Participate on a voluntary basis in a state-operated or state-sponsored program provided to this type school pursuant to this section; and

(C) Comply with the provisions of this section;

(2) "At-risk" means a student who has the potential for academic failure including, but not limited to, the risk of dropping out of school, involvement in delinquent activity, or poverty as indicated by free or reduced lunch status; and

(3) "Exceptional child" or "exceptional children" has the meaning ascribed to these terms pursuant to §18-20-1 of this code but, as used in this section, the terms do not include gifted students.

***§18A-3-2a. Certificates valid in the public schools that may be issued by the State Superintendent.**

In accordance with state board rules for the education of professional educators adopted pursuant to §18A-3-1 if this code and subject to the limitations and conditions of that section, the State Superintendent may issue the following certificates valid in the public schools of the state:

(a) *Professional teaching certificates*. —

(1) A professional teaching certificate for teaching in the public schools may be issued to a person who meets the following conditions: (A) Holds at least a bachelor's degree from a regionally accredited institution of higher education, and:

(i) Has passed appropriate state board approved basic skills and subject matter tests in the area for which licensure is being sought; and

(ii) Has completed a program for the education of teachers which meets the requirements approved by the state board; or

(iii) Has met equivalent standards at institutions in other states; or

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***NOTE:** This section was also amended by S. B. 14 (Chapter 240), which passed prior to this act.

(iv) Has completed three years of successful teaching experience within the last seven years under a license issued by another state in the area for which licensure is being sought; or

(v) Has completed an alternative program approved by another state; or

(B) Holds at least a bachelor's degree from an accredited institution of higher education, and:

(i) Has passed appropriate state board approved basic skills and subject matter tests; and

(ii) Has completed an alternative program for teacher education as provided in this article; and

(iii) Is recommended for a certificate in accordance with the provisions of §18A-3-1i of this code relating to the program; and

(iv) Is recommended by the State Superintendent based on documentation submitted; or

(C) Holds a bachelor's degree from an accredited institution of higher education, and:

(i) Submits to a criminal history check pursuant to §18A-3-10 of this code: *Provided,* That information discovered during the criminal history check may form the basis for the denial of a certificate for just cause; and

(ii) Successfully completes pedagogical training or a pedagogical course or courses in substantive alignment with nationally recognized pedagogical standards, or approved or established by the state board; and

(iii) Passes the same subject matter and competency test or tests required by the state board for traditional program applicants for licensure.

(2) The certificate shall be endorsed to indicate the grade level or levels or areas of specialization in which the person is certified to teach or to serve in the public schools.

(3) The initial professional certificate is issued provisionally for a period of three years from the date of issuance:

(A) The certificate may be converted to a professional certificate valid for five years subject to successful completion of a beginning teacher induction program, if applicable; or

(B) The certificate may be renewed subject to rules adopted by the state board.

(4) Teaching certificates granted pursuant to §18A-3-2a(a)(1)(C) of this code shall be equivalent to certificates granted to graduates of teacher preparation programs at public higher education institutions.

(b) *Alternative program teacher certificate*. — An alternative program teacher certificate may be issued to a candidate who is enrolled in an alternative program for teacher education approved by the state board.

(1) The certificate is valid only for the alternative program position in which the candidate is employed and is subject to enrollment in the program.

(2) The certificate is valid while the candidate is enrolled in the alternative program, up to a maximum of three years, and may not be renewed.

(c) *Professional administrative certificate*. —

(1) A professional administrative certificate, endorsed for serving in the public schools, with specific endorsement as a principal, vocational administrator, supervisor of instructions, or superintendent, may be issued to a person who has completed requirements all to be approved by the state board as follows:

(A) Holds at least a master's degree from an institution of higher education accredited to offer a master's degree, and:

(i) Has successfully completed an approved program for administrative certification developed by the state board in cooperation with the chancellor for higher education; and

(ii) Has successfully completed education and training in evaluation skills through the Center for Professional Development, or equivalent education and training in evaluation skills approved by the state board; and

(iii) Possesses three years of management level experience.

(2) Any person serving in the position of dean of students on June 4, 1992, is not required to hold a professional administrative certificate.

(3) The initial professional administrative certificate is issued provisionally for a period of five years. This certificate may be converted to a professional administrative certificate valid for five years or renewed, subject to the regulations of the state board.

(d) *Paraprofessional certificate*. — A paraprofessional certificate may be issued to a person who meets the following conditions:

(1) Has completed 36 semester hours of post-secondary education or its equivalent in subjects directly related to performance of the job, all approved by the state board; and

(2) Demonstrates the proficiencies to perform duties as required of a paraprofessional as defined in §18A-4-8 of this code.

(e) *Other certificates; permits*. —

(1) Other certificates and permits may be issued, subject to the approval of the state board, to persons who do not qualify for the professional or paraprofessional certificate.

(2) A certificate or permit may not be given permanent status and a person holding one of these credentials shall meet renewal requirements provided by law and by regulation, unless the state

board declares certain of these certificates to be the equivalent of the professional certificate.

(3) Within the category of other certificates and permits, the State Superintendent may issue certificates for persons to serve in the public schools as athletic coaches or coaches of other extracurricular activities, whose duties may include the supervision of students, subject to the following limitations:

(A) The person is employed under a contract with the county board of education.

(i) The contract specifies the duties to be performed, specifies a rate of pay that is equivalent to the rate of pay for professional educators in the district who accept similar duties as extra duty assignments, and provides for liability insurance associated with the activity; and

(ii) The person holding this certificate is not considered an employee of the board for salary and benefit purposes other than as specified in the contract.

(B) The person completes an orientation program designed and approved in accordance with state board rules.

(f) *Clinical Teacher of Record Permit.* —

(1) A clinical teacher of record permit may be issued to a candidate who is enrolled in a clinical teacher of record program in accordance with an agreement between an institution of higher education and a county board. The agreement is developed pursuant to §18A-3-1(e) of this code and requires approval by the state board.

(2) The permit is valid only for the clinical teacher of record program position in which the candidate is enrolled and is subject to enrollment in the program. The permit is valid for no more than one school year and may not be renewed.

(g) *Temporary teaching certificates for armed forces spouses.* —

(1) A temporary teaching certificate for an armed forces spouse may be issued to an individual who meets the following criteria:

(A) He or she is married to a member of the armed forces of the United States who is on active duty;

(B) He or she holds a current unencumbered teaching certificate or license issued by an equivalent credentialing department, board, or authority, as determined by the State Superintendent, in another state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, another territory or protectorate of the United States or a foreign country; and

(C) He or she provides proof acceptable to the State Superintendent that his or her spouse is assigned to a duty station in this state or at a military installation within 50 air miles of the West Virginia border and that he or she is also assigned to a duty station in this state or at a military installation within 50 air miles of the West Virginia border under his or her spouse's official active duty military orders.

(2) The State Superintendent shall deny a temporary teaching certificate to an individual described in paragraph (1) of this subdivision for fraud, material misrepresentation or concealment in the person's application for a temporary teaching certificate or for a conviction for which an individual's teaching certificate may be revoked under §18A-3-6 of this code.

(3) A temporary teaching certificate issued under paragraph (1) of this subdivision is valid for one year and may be renewed for additional one-year terms if the State Superintendent determines the individual holding the temporary teaching certificate continues to meet the requirements of paragraph (1) of this subdivision. The State Superintendent may revoke a temporary teaching certificate for a conviction for which an individual's teaching certificate may be revoked under §18A-3-6 of this code.

CHAPTER 243

(Com. Sub. for H. B. 2145 - By Delegates Toney, Hanshaw (Mr. Speaker) and Rohrbach)

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

AN ACT to amend and reenact §18A-4-8 and §18A-4-8a of the Code of West Virginia, 1931, as amended, all relating to class titles for school service personnel; adding class titles for Aide V and Aide VI and their associated qualifications, posting requirements; county discretion; and respective pay grades.

Be it enacted by the Legislature of West Virginia:

ARTICLE 4. SALARIES, WAGES AND OTHER BENEFITS.

§18A-4-8. Employment term and class titles of service personnel; definitions.

(a) The purpose of this section is to establish an employment term and class titles for service personnel. The employment term for service personnel may not be less than 10 months. A month is defined as 20 employment days. The county board may contract with, all or part of, these service personnel for a longer term.

(b) Service personnel employed on a yearly or 12-month basis may be employed by calendar months. Whenever there is a change in job assignment during the school year, the minimum pay scale and any county supplement are applicable.

(c) Service personnel employed in the same classification for more than the 200-day minimum employment term are paid for additional employment at a daily rate of not less than the daily rate paid for the 200-day minimum employment term.

(d) A service person may not be required to report for work more than five days per week without his or her agreement, and no part of any working day may be accumulated by the employer for future work assignments, unless the employee agrees thereto.

(e) If a service person whose regular work week is scheduled from Monday through Friday agrees to perform any work assignments on a Saturday or Sunday, the service person is paid for at least one-half day of work for each day he or she reports for work. If the service person works more than three and one-half hours on any Saturday or Sunday, he or she is paid for at least a full day of work for each day.

(f) A custodian, aide, maintenance, office, and school lunch service person required to work a daily work schedule that is interrupted is paid additional compensation in accordance with this subsection.

(1) A maintenance person means a person who holds a classification title other than in a custodial, aide, school lunch, office or transportation category as provided in §18A-1-1 of this code.

(2) A service person's schedule is considered to be interrupted if he or she does not work a continuous period in one day. Aides are not regarded as working an interrupted schedule when engaged exclusively in the duties of transporting students;

(3) The additional compensation provided in this subsection:

(A) Is equal to at least one eighth of a service person's total salary as provided by the state minimum pay scale and any county pay supplement; and

(B) Is payable entirely from county board funds.

(g) When there is a change in classification or when a service person meets the requirements of an advanced classification, his or her salary shall be made to comply with the requirements of this article and any county salary schedule in excess of the minimum

requirements of this article, based upon the service person's advanced classification and allowable years of employment.

(h) A service person's contract, as provided in §18A-2-5 of this code, shall state the appropriate monthly salary the employee is to be paid, based on the class title as provided in this article and on any county salary schedule in excess of the minimum requirements of this article.

(i) The column heads of the state minimum pay scale and class titles, set forth in §18A-4-8a of this code, are defined as follows:

"Pay grade" means the monthly salary applicable to class titles of service personnel;

"Years of employment" means the number of years which an employee classified as a service person has been employed by a county board in any position prior to or subsequent to the effective date of this section and includes service in the Armed Forces of the United States, if the employee was employed at the time of his or her induction. For the purpose of §18A-4-8a of this code, years of employment is limited to the number of years shown and allowed under the state minimum pay scale as set forth in §18A-4-8a of this code;

"Class title" means the name of the position or job held by a service person;

"Accountant I" means a person employed to maintain payroll records and reports and perform one or more operations relating to a phase of the total payroll;

"Accountant II" means a person employed to maintain accounting records and to be responsible for the accounting process associated with billing, budgets, purchasing and related operations;

"Accountant III" means a person employed in the county board office to manage and supervise accounts payable, payroll procedures, or both;

"Accounts payable supervisor" means a person employed in the county board office who has primary responsibility for the accounts payable function and who either has completed 12 college hours of accounting courses from an accredited institution of higher education or has at least eight years of experience performing progressively difficult accounting tasks. Responsibilities of this class title may include supervision of other personnel;

"Aide I" means a person selected and trained for a teacher-aide classification such as monitor aide, clerical aide, classroom aide or general aide;

"Aide II" means a service person referred to in the "Aide I" classification who has completed a training program approved by the state board, or who holds a high school diploma or has received a general educational development certificate. Only a person classified in an Aide II class title may be employed as an aide in any special education program;

"Aide III" means a service person referred to in the "Aide I" classification who holds a high school diploma or a general educational development certificate; and

(A) Has completed six semester hours of college credit at an institution of higher education; or

(B) Is employed as an aide in a special education program and has one year's experience as an aide in special education;

"Aide IV" means a service person referred to in the "Aide I" classification who holds a high school diploma or a general educational development certificate; and

(A) Has completed 18 hours of State Board-approved college credit at a regionally accredited institution of higher education, or

(B) Has completed 15 hours of State Board-approved college credit at a regionally accredited institution of higher education; and has successfully completed an in-service training program

determined by the state board to be the equivalent of three hours of college credit;

"Aide V (Special Education Assistant Teacher) – Temporary Authorization" means a person who does not possess minimum requirements for the Aide V permanent authorization, but is enrolled in and pursuing requirements as prescribed by the state board of education. No service person shall be entitled to receive the paygrade associated with this classification unless he or she has applied for and been selected to fill a posted position which specifically requires the successful candidate to hold or be enrolled in and pursuing the requirements for the classification. The determination as to whether a position will be posted requiring this classification is solely at the discretion of the county;

"Aide V (Special Education Assistant Teacher)" means a service person referred to in the "Aide I" classification who holds a high school diploma or a general educational development certificate and who has completed the requirements and experience to be prescribed by the state board of education. No service person shall be entitled to receive the paygrade associated with this classification unless he or she has applied for and been selected to fill a posted position which specifically requires the successful candidate to hold or be enrolled in and pursuing the requirements for the classification. The determination as to whether a position will be posted requiring this classification is solely at the discretion of the county;

"Aide VI (Behavioral Support Assistant Teacher – Temporary Authorization)" means a person who does not possess minimum requirements for the Aide VI permanent authorization, but is enrolled in and pursuing the requirements as prescribed by the state board of education. No service person shall be entitled to receive the paygrade associated with this classification unless he or she has applied for and been selected to fill a posted position which specifically requires the successful candidate to hold or be enrolled in and pursuing the requirements for the classification. The determination as to whether a position will be posted requiring this classification is solely at the discretion of the county;

"Aide VI (Behavioral Support Assistant Teacher)" means a person who works with a student or students who have identified behavior difficulties, holds at least an Aide III classification and has completed the requirements and experience to be prescribed by the state board of education. No service person shall be entitled to receive the paygrade associated with this classification unless he or she has applied for and been selected to fill a posted position which specifically requires the successful candidate to hold or be enrolled in and pursuing the requirements for the classification. The determination as to whether a position will be posted requiring this classification is solely at the discretion of the county;

"Audiovisual technician" means a person employed to perform minor maintenance on audiovisual equipment, films, and supplies and who fills requests for equipment;

"Auditor" means a person employed to examine and verify accounts of individual schools and to assist schools and school personnel in maintaining complete and accurate records of their accounts;

"Autism mentor" means a person who works with autistic students and who meets standards and experience to be determined by the state Board. A person who has held or holds an aide title and becomes employed as an autism mentor shall hold a multiclassification status that includes both aide and autism mentor titles, in accordance with §18A-4-8b of this code;

"Braille specialist" means a person employed to provide braille assistance to students. A service person who has held or holds an aide title and becomes employed as a braille specialist shall hold a multiclassification status that includes both aide and braille specialist title, in accordance with §18A-4-8b of this code;

"Bus operator" means a person employed to operate school buses and other school transportation vehicles as provided by the state board;

"Buyer" means a person employed to review and write specifications, negotiate purchase bids and recommend purchase

agreements for materials and services that meet predetermined specifications at the lowest available costs;

"Cabinetmaker" means a person employed to construct cabinets, tables, bookcases and other furniture;

"Cafeteria manager" means a person employed to direct the operation of a food services program in a school, including assigning duties to employees, approving requisitions for supplies and repairs, keeping inventories, inspecting areas to maintain high standards of sanitation, preparing financial reports, and keeping records pertinent to food services of a school;

"Carpenter I" means a person classified as a carpenter's helper;

"Carpenter II" means a person classified as a journeyman carpenter;

"Chief mechanic" means a person employed to be responsible for directing activities which ensure that student transportation or other county board-owned vehicles are properly and safely maintained;

"Clerk I" means a person employed to perform clerical tasks;

"Clerk II" means a person employed to perform general clerical tasks, prepare reports and tabulations, and operate office machines;

"Computer operator" means a qualified person employed to operate computers;

"Cook I" means a person employed as a cook's helper;

"Cook II" means a person employed to interpret menus and to prepare and serve meals in a food service program of a school. This definition includes a service person who has been employed as a "Cook I" for a period of four years;

"Cook III" means a person employed to prepare and serve meals, make reports, prepare requisitions for supplies, order equipment and repairs for a food service program of a school system;

"Crew leader" means a person employed to organize the work for a crew of maintenance employees to carry out assigned projects;

"Custodian I" means a person employed to keep buildings clean and free of refuse;

"Custodian II" means a person employed as a watchman or groundsman;

"Custodian III" means a person employed to keep buildings clean and free of refuse, to operate the heating or cooling systems and to make minor repairs;

"Custodian IV" means a person employed as a head custodian. In addition to providing services as defined in "Custodian III" duties may include supervising other custodian personnel;

"Director or coordinator of services" means an employee of a county board who is assigned to direct a department or division.

(A) Nothing in this subdivision prohibits a professional person or a professional educator from holding this class title;

(B) Professional personnel holding this class title may not be defined or classified as service personnel unless the professional person held a service personnel title under this section prior to holding the class title of "director or coordinator of services;"

(C) The director or coordinator of services is classified either as a professional person or a service person for state aid formula funding purposes;

(D) Funding for the position of director or coordinator of services is based upon the employment status of the director or coordinator either as a professional person or a service person; and

(E) A person employed under the class title "director or coordinator of services" may not be exclusively assigned to perform the duties ascribed to any other class title as defined in this

subsection: *Provided,* That nothing in this paragraph prohibits a person in this position from being multiclassified;

"Draftsman" means a person employed to plan, design, and produce detailed architectural/engineering drawings;

"Early Childhood Classroom Assistant Teacher I" means a person who does not possess minimum requirements for the permanent authorization requirements, but is enrolled in and pursuing requirements;

"Early Childhood Classroom Assistant Teacher II" means a person who has completed the minimum requirements for a state-awarded certificate for early childhood classroom assistant teachers as determined by the state board;

"Early Childhood Classroom Assistant Teacher III" means a person who has completed permanent authorization requirements, as well as additional requirements comparable to current paraprofessional certificate;

"Educational Sign Language Interpreter I" means a person employed to provide communication access across all educational environments to students who are deaf or hard of hearing, and who holds the Initial Paraprofessional Certificate – Educational Interpreter pursuant to state board policy;

"Educational Sign Language Interpreter II" means a person employed to provide communication access across all educational environments to students who are deaf or hard of hearing, and who holds the Permanent Paraprofessional Certificate – Educational Interpreter pursuant to state board policy;

"Electrician I" means a person employed as an apprentice electrician helper or one who holds an electrician helper license issued by the State Fire Marshal;

"Electrician II" means a person employed as an electrician journeyman or one who holds a journeyman electrician license issued by the State Fire Marshal;

"Electronic technician I" means a person employed at the apprentice level to repair and maintain electronic equipment;

"Electronic technician II" means a person employed at the journeyman level to repair and maintain electronic equipment;

"Executive secretary" means a person employed as secretary to the county school superintendent or as a secretary who is assigned to a position characterized by significant administrative duties;

"Food services supervisor" means a qualified person who is not a professional person or professional educator as defined in §18A-1-1 of this code. The food services supervisor is employed to manage and supervise a county school system's food service program. The duties include preparing in-service training programs for cooks and food service employees, instructing personnel in the areas of quantity cooking with economy and efficiency and keeping aggregate records and reports;

"Foreman" means a skilled person employed to supervise personnel who work in the areas of repair and maintenance of school property and equipment;

"General maintenance" means a person employed as a helper to skilled maintenance employees, and to perform minor repairs to equipment and buildings of a county school system;

"Glazier" means a person employed to replace glass or other materials in windows and doors and to do minor carpentry tasks;

"Graphic artist" means a person employed to prepare graphic illustrations;

"Groundsman" means a person employed to perform duties that relate to the appearance, repair, and general care of school grounds in a county school system. Additional assignments may include the operation of a small heating plant and routine cleaning duties in buildings;

"Handyman" means a person employed to perform routine manual tasks in any operation of the county school system;

"Heating and air conditioning mechanic I" means a person employed at the apprentice level to install, repair and maintain heating and air conditioning plants and related electrical equipment;

"Heating and air conditioning mechanic II" means a person employed at the journeyman level to install, repair, and maintain heating and air conditioning plants and related electrical equipment;

"Heavy equipment operator" means a person employed to operate heavy equipment;

"Inventory supervisor" means a person employed to supervise or maintain operations in the receipt, storage, inventory and issuance of materials and supplies;

"Key punch operator" means a qualified person employed to operate key punch machines or verifying machines;

"Licensed practical nurse" means a nurse, licensed by the West Virginia Board of Examiners for Licensed Practical Nurses, employed to work in a public school under the supervision of a school nurse;

"Locksmith" means a person employed to repair and maintain locks and safes;

"Lubrication man" means a person employed to lubricate and service gasoline or diesel-powered equipment of a county school system;

"Machinist" means a person employed to perform machinist tasks which include the ability to operate a lathe, planer, shader, threading machine and wheel press. A person holding this class title also should have the ability to work from blueprints and drawings;

"Mail clerk" means a person employed to receive, sort, dispatch, deliver or otherwise handle letters, parcels, and other mail;

"Maintenance clerk" means a person employed to maintain and control a stocking facility to keep adequate tools and supplies on hand for daily withdrawal for all school maintenance crafts;

"Mason" means a person employed to perform tasks connected with brick and block laying and carpentry tasks related to these activities;

"Mechanic" means a person employed to perform skilled duties independently in the maintenance and repair of automobiles, school buses and other mechanical and mobile equipment to use in a county school system;

"Mechanic assistant" means a person employed as a mechanic apprentice and helper;

"Multiclassification" means a person employed to perform tasks that involve the combination of two or more class titles in this section. In these instances, the minimum salary scale is the higher pay grade of the class titles involved;

"Office equipment repairman I" means a person employed as an office equipment repairman apprentice or helper;

"Office equipment repairman II" means a person responsible for servicing and repairing all office machines and equipment. A person holding this class title is responsible for the purchase of parts necessary for the proper operation of a program of continuous maintenance and repair;

"Painter" means a person employed to perform duties painting, finishing and decorating wood, metal and concrete surfaces of buildings, other structures, equipment, machinery and furnishings of a county school system;

"Paraprofessional" means a person certified pursuant to §18A-3-2a of this code to perform duties in a support capacity including, but not limited to, facilitating in the instruction and direct or indirect supervision of students under the direction of a principal, a teacher or another designated professional educator.

(A) A person employed on the effective date of this section in the position of an aide may not be subject to a reduction in force or transferred to create a vacancy for the employment of a paraprofessional;

(B) A person who has held or holds an aide title and becomes employed as a paraprofessional shall hold a multiclassification status that includes both aide and paraprofessional titles in accordance with §18A-4-8b of this code; and

(C) When a service person who holds an aide title becomes certified as a paraprofessional and is required to perform duties that may not be performed by an aide without paraprofessional certification, he or she shall receive the paraprofessional title pay grade;

"Payroll supervisor" means a person employed in the county board office who has primary responsibility for the payroll function and who either has completed 12 college hours of accounting from an accredited institution of higher education or has at least eight years of experience performing progressively difficult accounting tasks. Responsibilities of this class title may include supervision of other personnel;

"Plumber I" means a person employed as an apprentice plumber and helper;

"Plumber II" means a person employed as a journeyman plumber;

"Printing operator" means a person employed to operate duplication equipment, and to cut, collate, staple, bind and shelve materials as required;

"Printing supervisor" means a person employed to supervise the operation of a print shop;

"Programmer" means a person employed to design and prepare programs for computer operation;

"Roofing/sheet metal mechanic" means a person employed to install, repair, fabricate and maintain roofs, gutters, flashing and duct work for heating and ventilation;

"Sanitation plant operator" means a person employed to operate and maintain a water or sewage treatment plant to ensure the safety of the plant's effluent for human consumption or environmental protection;

"School bus supervisor" means a qualified person:

(A) Employed to assist in selecting school bus operators and routing and scheduling school buses, operate a bus when needed, relay instructions to bus operators, plan emergency routing of buses and promote good relationships with parents, students, bus operators and other employees; and

(B) Certified to operate a bus or previously certified to operate a bus;

"Secretary I" means a person employed to transcribe from notes or mechanical equipment, receive callers, perform clerical tasks, prepare reports, and operate office machines;

"Secretary II" means a person employed in any elementary, secondary, kindergarten, nursery, special education, vocational, or any other school as a secretary. The duties may include performing general clerical tasks; transcribing from notes; stenotype, mechanical equipment, or a sound-producing machine; preparing reports; receiving callers and referring them to proper persons; operating office machines; keeping records and handling routine correspondence. Nothing in this subdivision prevents a service person from holding or being elevated to a higher classification;

"Secretary III" means a person assigned to the county board office administrators in charge of various instructional, maintenance, transportation, food services, operations and health departments, federal programs, or departments with particular responsibilities in purchasing and financial control or any person who has served for eight years in a position which meets the definition of "Secretary II" or "Secretary III";

"Sign Support Specialist" means a person employed to provide sign supported speech assistance to students who can access environments through audition. A person who has held or holds an aide title and becomes employed as a sign support specialist shall hold a multiclassification status that includes both aide and sign support specialist titles, in accordance with §18A-4-8b of this code.

"Supervisor of maintenance" means a skilled person who is not a professional person or professional educator as defined in §18A-1-1 of this code. The responsibilities include directing the upkeep of buildings and shops, and issuing instructions to subordinates relating to cleaning, repairs and maintenance of all structures and mechanical and electrical equipment of a county board;

"Supervisor of transportation" means a qualified person employed to direct school transportation activities properly and safely, and to supervise the maintenance and repair of vehicles, buses and other mechanical and mobile equipment used by the county school system. After July 1, 2010, all persons employed for the first time in a position with this classification title or in a multiclassification position that includes this title shall have five years of experience working in the transportation department of a county board. Experience working in the transportation department consists of serving as a bus operator, bus aide, assistant mechanic, mechanic, chief mechanic or in a clerical position within the transportation department;

"Switchboard operator-receptionist" means a person employed to refer incoming calls, to assume contact with the public, to direct and to give instructions as necessary, to operate switchboard equipment and to provide clerical assistance;

"Truck driver" means a person employed to operate light or heavy duty gasoline and diesel-powered vehicles;

"Warehouse clerk" means a person employed to be responsible for receiving, storing, packing, and shipping goods;

"Watchman" means a person employed to protect school property against damage or theft. Additional assignments may

include operation of a small heating plant and routine cleaning duties;

"Welder" means a person employed to provide acetylene or electric welding services for a school system; and

"WVEIS data entry and administrative clerk" means a person employed to work under the direction of a school principal to assist the school counselor or counselors in the performance of administrative duties, to perform data entry tasks on the West Virginia Education Information System, and to perform other administrative duties assigned by the principal.

(j) Notwithstanding any provision in this code to the contrary, and in addition to the compensation provided for service personnel in §18A-4-8a of this code, each service person is entitled to all service personnel employee rights, privileges and benefits provided under this or any other chapter of this code without regard to the employee's hours of employment or the methods or sources of compensation.

(k) A service person whose years of employment exceeds the number of years shown and provided for under the state minimum pay scale set forth in §18A-4-8a of this code may not be paid less than the amount shown for the maximum years of employment shown and provided for in the classification in which he or she is employed.

(l) Each county board shall review each service person's job classification annually and shall reclassify all service persons as required by the job classifications. The state superintendent may withhold state funds appropriated pursuant to this article for salaries for service personnel who are improperly classified by the county boards. Further, the state superintendent shall order a county board to immediately correct any improper classification matter and, with the assistance of the Attorney General, shall take any legal action necessary against any county board to enforce the order.

(m) Without his or her written consent, a service person may not be:

(1) Reclassified by class title; or

(2) Relegated to any condition of employment which would result in a reduction of his or her salary, rate of pay, compensation or benefits earned during the current fiscal year; or for which he or she would qualify by continuing in the same job position and classification held during that fiscal year and subsequent years.

(n) Any county board failing to comply with the provisions of this article may be compelled to do so by mandamus and is liable to any party prevailing against the board for court costs and the prevailing party's reasonable attorney fee, as determined and established by the court.

(o) Notwithstanding any provision of this code to the contrary, a service person who holds a continuing contract in a specific job classification and who is physically unable to perform the job's duties as confirmed by a physician chosen by the employee, shall be given priority status over any employee not holding a continuing contract in filling other service personnel job vacancies if the service person is qualified as provided in §18A-4-8e of this code.

(p) Any person employed in an aide position on the effective date of this section may not be transferred or subject to a reduction in force for the purpose of creating a vacancy for the employment of a licensed practical nurse.

(q) Without the written consent of the service person, a county board may not establish the beginning work station for a bus operator or transportation aide at any site other than a county board-owned facility with available parking. The workday of the bus operator or transportation aide commences at the bus at the designated beginning work station and ends when the employee is able to leave the bus at the designated beginning work station, unless he or she agrees otherwise in writing. The application or acceptance of a posted position may not be construed as the written consent referred to in this subsection.

(r) Itinerant status means a service person who does not have a fixed work site and may be involuntarily reassigned to another work site. A service person is considered to hold itinerant status if he or she has bid upon a position posted as itinerant or has agreed to accept this status. A county board may establish positions with itinerant status only within the aide and autism mentor classification categories and only when the job duties involve exceptional students. A service person with itinerant status may be assigned to a different work site upon written notice 10 days prior to the reassignment without the consent of the employee and without posting the vacancy. A service person with itinerant status may be involuntarily reassigned no more than twice during the school year. At the conclusion of each school year, the county board shall post and fill, pursuant to §18A-4-8b of this code, all positions that have been filled without posting by a service person with itinerant status. A service person who is assigned to a beginning and ending work site and travels at the expense of the county board to other work sites during the daily schedule, is not considered to hold itinerant status.

(s) Any service person holding a classification title on June 30, 2013, that is removed from the classification schedule pursuant to amendment and reenactment of this section in the year 2013, has his or her employment contract revised as follows:

(1) Any service person holding the Braille or Sign Language Specialist classification title has that classification title renamed on his or her employment contract as either Braille Specialist or Sign Support Specialist. This action does not result in a loss or reduction of salary or supplement by any employee. Any seniority earned in the Braille or Sign Language Specialist classification prior to July 1, 2013, continues to be credited as seniority earned in the Braille Specialist or Sign Support Specialist classification;

(2) Any service person holding the Paraprofessional classification title and holding the Initial Paraprofessional Certificate – Educational Interpreter has the title Educational Sign Language Interpreter I added to his or her employment contract. This action does not result in a loss or reduction of salary or supplement by any employee. Any seniority earned in the

Paraprofessional classification prior to July 1, 2013, continues to be credited as seniority earned in the Educational Sign Language Interpreter I classification; and

(3) Any service person holding the Paraprofessional classification title and holding the Permanent Paraprofessional Certificate – Educational Interpreter has the title Educational Sign Language Interpreter II added to his or her employment contract. This action does not result in a loss or reduction of salary or supplement by any employee. Any seniority earned in the Paraprofessional classification prior to July 1, 2013, continues to be credited as seniority earned in the Educational Sign Language Interpreter II classification;

(t) Any person employed as an aide in a kindergarten program who is eligible for full retirement benefits before the first day of the instructional term in the 2020-2021 school year, may not be subject to a reduction in force or transferred to create a vacancy for the employment of a less senior Early Childhood Classroom Assistant Teacher;

(u) A person who has held or holds an aide title and becomes employed as an Early Childhood Classroom Assistant Teacher shall hold a multiclassification status that includes aide and/or paraprofessional titles in accordance with §18A-4-8b of this code.

§18A-4-8a. Service personnel minimum monthly salaries.

(a) The minimum monthly pay for each service employee shall be as follows:

(1) For school year 2018–2019, the minimum monthly pay for each service employee whose employment is for a period of more than three and one-half hours a day shall be at least the amounts indicated in the State Minimum Pay Scale Pay Grade Schedule I and the minimum monthly pay for each service employee whose employment is for a period of three and one-half hours or less a day shall be at least one-half the amount indicated in the State Minimum Pay Scale Pay Grade Schedule I set forth in this subdivision: *Provided,* That for school year 2019-2020, and

continuing thereafter, the minimum monthly pay for each service employee whose employment is for a period of more than three and one-half hours a day shall be at least the amounts indicated in the State Minimum Pay Scale Pay Grade Schedule II and the minimum monthly pay for each service employee whose employment is for a period of three and one-half hours or less a day shall be at least one-half the amount indicated in the State Minimum Pay Scale Pay Grade Schedule II set forth in this subdivision.

STATE MINIMUM PAY SCALE PAY GRADE SCHEDULE I

Years Exp.	PAY GRADE							
	A	B	C	D	E	F	G	H
0	1,770	1,791	1,833	1,886	1,939	2,002	2,034	2,107
1	1,802	1,824	1,865	1,918	1,972	2,035	2,066	2,140
2	1,835	1,856	1,898	1,951	2,004	2,067	2,099	2,172
3	1,867	1,889	1,931	1,984	2,037	2,100	2,132	2,205
4	1,900	1,922	1,963	2,016	2,069	2,133	2,164	2,239
5	1,933	1,954	1,996	2,049	2,102	2,165	2,197	2,271
6	1,965	1,987	2,030	2,082	2,135	2,198	2,230	2,304
7	1,999	2,019	2,062	2,114	2,167	2,231	2,262	2,337
8	2,032	2,052	2,095	2,147	2,200	2,263	2,295	2,369
9	2,064	2,085	2,128	2,181	2,233	2,296	2,327	2,402
10	2,097	2,118	2,160	2,213	2,265	2,330	2,361	2,435
11	2,130	2,151	2,193	2,246	2,298	2,362	2,394	2,467
12	2,162	2,184	2,225	2,279	2,332	2,395	2,426	2,500
13	2,195	2,216	2,258	2,311	2,364	2,427	2,459	2,533
14	2,228	2,249	2,291	2,344	2,397	2,460	2,492	2,565
15	2,260	2,282	2,323	2,376	2,429	2,493	2,524	2,598
16	2,293	2,314	2,356	2,409	2,462	2,525	2,557	2,631

17	2,325	2,347	2,390	2,442	2,495	2,558	2,590	2,664
18	2,358	2,380	2,422	2,474	2,527	2,591	2,622	2,697
19	2,392	2,412	2,455	2,507	2,560	2,623	2,655	2,729
20	2,424	2,445	2,488	2,541	2,593	2,656	2,688	2,763
21	2,457	2,477	2,520	2,573	2,625	2,689	2,720	2,797
22	2,490	2,511	2,553	2,606	2,658	2,722	2,754	2,829
23	2,522	2,544	2,586	2,639	2,692	2,756	2,788	2,863
24	2,555	2,576	2,618	2,671	2,724	2,790	2,821	2,897
25	2,588	2,609	2,651	2,704	2,758	2,822	2,855	2,929
26	2,620	2,642	2,683	2,738	2,792	2,856	2,887	2,963
27	2,653	2,674	2,716	2,770	2,824	2,888	2,921	2,996
28	2,686	2,707	2,750	2,804	2,858	2,922	2,955	3,030
29	2,718	2,741	2,783	2,836	2,891	2,956	2,987	3,064
30	2,752	2,773	2,817	2,870	2,924	2,988	3,021	3,097
31	2,785	2,807	2,851	2,904	2,958	3,022	3,055	3,130
32	2,819	2,840	2,883	2,937	2,990	3,056	3,087	3,164
33	2,853	2,873	2,917	2,971	3,024	3,088	3,121	3,197
34	2,885	2,907	2,951	3,005	3,058	3,122	3,155	3,230
35	2,919	2,941	2,983	3,037	3,090	3,156	3,188	3,264
36	2,953	2,974	3,017	3,071	3,125	3,189	3,222	3,296
37	2,985	3,008	3,051	3,105	3,159	3,223	3,255	3,330
38	3,019	3,040	3,083	3,137	3,191	3,256	3,288	3,364
39	3,053	3,074	3,117	3,171	3,225	3,289	3,322	3,396
40	3,085	3,108	3,150	3,204	3,259	3,323	3,355	3,430

STATE MINIMUM PAY SCALE PAY GRADE SCHEDULE II

Years Exp.	PAY GRADE							
	A	B	C	D	E	F	G	H
0	1,885	1,906	1,948	2,001	2,054	2,117	2,149	2,222
1	1,917	1,939	1,980	2,033	2,087	2,150	2,181	2,255
2	1,950	1,971	2,013	2,066	2,119	2,182	2,214	2,287
3	1,982	2,004	2,046	2,099	2,152	2,215	2,247	2,320
4	2,015	2,037	2,078	2,131	2,184	2,248	2,279	2,354
5	2,048	2,069	2,111	2,164	2,217	2,280	2,312	2,386
6	2,080	2,102	2,145	2,197	2,250	2,313	2,345	2,419
7	2,114	2,134	2,177	2,229	2,282	2,346	2,377	2,452
8	2,147	2,167	2,210	2,262	2,315	2,378	2,410	2,484
9	2,179	2,200	2,243	2,296	2,348	2,411	2,442	2,517
10	2,212	2,233	2,275	2,328	2,380	2,445	2,476	2,550
11	2,245	2,266	2,308	2,361	2,413	2,477	2,509	2,582
12	2,277	2,299	2,340	2,394	2,447	2,510	2,541	2,615
13	2,310	2,331	2,373	2,426	2,479	2,542	2,574	2,648
14	2,343	2,364	2,406	2,459	2,512	2,575	2,607	2,680
15	2,375	2,397	2,438	2,491	2,544	2,608	2,639	2,713
16	2,408	2,429	2,471	2,524	2,577	2,640	2,672	2,746
17	2,440	2,462	2,505	2,557	2,610	2,673	2,705	2,779
18	2,473	2,495	2,537	2,589	2,642	2,706	2,737	2,812
19	2,507	2,527	2,570	2,622	2,675	2,738	2,770	2,844
20	2,539	2,560	2,603	2,656	2,708	2,771	2,803	2,878
21	2,572	2,592	2,635	2,688	2,740	2,804	2,835	2,912
22	2,605	2,626	2,668	2,721	2,773	2,837	2,869	2,944

23	2,637	2,659	2,701	2,754	2,807	2,871	2,903	2,978
24	2,670	2,691	2,733	2,786	2,839	2,905	2,936	3,012
25	2,703	2,724	2,766	2,819	2,873	2,937	2,970	3,044
26	2,735	2,757	2,798	2,853	2,907	2,971	3,002	3,078
27	2,768	2,789	2,831	2,885	2,939	3,003	3,036	3,111
28	2,801	2,822	2,865	2,919	2,973	3,037	3,070	3,145
29	2,833	2,856	2,898	2,951	3,006	3,071	3,102	3,179
30	2,867	2,888	2,932	2,985	3,039	3,103	3,136	3,212
31	2,900	2,922	2,966	3,019	3,073	3,137	3,170	3,245
32	2,934	2,955	2,998	3,052	3,105	3,171	3,202	3,279
33	2,968	2,988	3,032	3,086	3,139	3,203	3,236	3,312
34	3,000	3,022	3,066	3,120	3,173	3,237	3,270	3,345
35	3,034	3,056	3,098	3,152	3,205	3,271	3,303	3,379
36	3,068	3,089	3,132	3,186	3,240	3,304	3,337	3,411
37	3,100	3,123	3,166	3,220	3,274	3,338	3,370	3,445
38	3,134	3,155	3,198	3,252	3,306	3,371	3,403	3,479
39	3,168	3,189	3,232	3,286	3,340	3,404	3,437	3,511
40	3,200	3,223	3,265	3,319	3,374	3,438	3,470	3,545

(2) Each service employee shall receive the amount prescribed in the State Minimum Pay Scale Pay Grade in accordance with the provisions of this subsection according to their class title and pay grade as set forth in this subdivision:

CLASS TITLE	PAY GRADE
Accountant I	D
Accountant II	E
Accountant III	F
Accounts Payable Supervisor	G

Aide I ..... A

Aide II ..... B

Aide III C

Aide IV ..... D

Aide V – Temporary Authorization ..... E

Aide V ..... F

Aide VI – Temporary Authorization ..... E

Aide VI ..... F

Audiovisual Technician C

Auditor ..... G

Autism Mentor ..... F

Braille Specialist ..... E

Bus Operator ..... D

Buyer ..... F

Cabinetmaker ..... G

Cafeteria Manager ..... D

Carpenter I ..... E

Carpenter II ..... F

Chief Mechanic ..... G

Clerk I ..... B

Clerk II C

Computer Operator ..... E

Cook I .....A

Cook II .....B

Cook III C

Crew Leader ..... F

Custodian I .....A

Custodian II .....B

Custodian III C

Custodian IV .....D

Director or Coordinator of Services .....H

Draftsman .....D

Early Childhood Classroom Assistant Teacher I ..... E

Early Childhood Classroom Assistant Teacher II ..... E

Early Childhood Classroom Assistant Teacher III ..... F

Educational Sign Language Interpreter I ..... F

Educational Sign Language Interpreter II .....G

Electrician I ..... F

Electrician II .....G

Electronic Technician I ..... F

Electronic Technician II .....G

Executive Secretary .....G

Food Services Supervisor .....G

Foreman .....G

General Maintenance C

Glazier ..... D

Graphic Artist ..... D

Groundsman ..... B

Handyman ..... B

Heating and Air Conditioning Mechanic I ..... E

Heating and Air Conditioning Mechanic II ..... G

Heavy Equipment Operator ..... E

Inventory Supervisor ..... D

Key Punch Operator ..... B

Licensed Practical Nurse ..... F

Locksmith ..... G

Lubrication Man C

Machinist ..... F

Mail Clerk ..... D

Maintenance Clerk C

Mason ..... G

Mechanic ..... F

Mechanic Assistant ..... E

Office Equipment Repairman I ..... F

Office Equipment Repairman II ..... G

Painter ..... E

Paraprofessional ..... F

Payroll Supervisor .....G

Plumber I ..... E

Plumber II .....G

Printing Operator .....B

Printing Supervisor .....D

Programmer .....H

Roofing/Sheet Metal Mechanic ..... F

Sanitation Plant Operator .....G

School Bus Supervisor ..... E

Secretary I .....D

Secretary II ..... E

Secretary III ..... F

Sign Support Specialist ..... E

Supervisor of Maintenance .....H

Supervisor of Transportation .....H

Switchboard Operator-Receptionist .....D

Truck Driver .....D

Warehouse Clerk C

Watchman .....B

Welder ..... F

WVEIS Data Entry and Administrative Clerk .....B

(b) An additional $12 per month is added to the minimum monthly pay of each service person who holds a high school diploma or its equivalent.

(c) An additional $11 per month also is added to the minimum monthly pay of each service person for each of the following:

(1) A service person who holds 12 college hours or comparable credit obtained in a trade or vocational school as approved by the state board;

(2) A service person who holds 24 college hours or comparable credit obtained in a trade or vocational school as approved by the state board;

(3) A service person who holds 36 college hours or comparable credit obtained in a trade or vocational school as approved by the state board;

(4) A service person who holds 48 college hours or comparable credit obtained in a trade or vocational school as approved by the state board;

(5) A service employee who holds 60 college hours or comparable credit obtained in a trade or vocational school as approved by the state board;

(6) A service person who holds 72 college hours or comparable credit obtained in a trade or vocational school as approved by the state board;

(7) A service person who holds 84 college hours or comparable credit obtained in a trade or vocational school as approved by the state board;

(8) A service person who holds 96 college hours or comparable credit obtained in a trade or vocational school as approved by the state board;

(9) A service person who holds 108 college hours or comparable credit obtained in a trade or vocational school as approved by the state board;

(10) A service person who holds 120 college hours or comparable credit obtained in a trade or vocational school as approved by the state board.

(d) An additional $40 per month also is added to the minimum monthly pay of each service person for each of the following:

(1) A service person who holds an associate's degree;

(2) A service person who holds a bachelor's degree;

(3) A service person who holds a master's degree;

(4) A service person who holds a doctorate degree.

(e) An additional $11 per month is added to the minimum monthly pay of each service person for each of the following:

(1) A service person who holds a bachelor's degree plus 15 college hours;

(2) A service person who holds a master's degree plus 15 college hours;

(3) A service person who holds a master's degree plus 30 college hours;

(4) A service person who holds a master's degree plus 45 college hours; and

(5) A service person who holds a master's degree plus 60 college hours.

(f) Each service person is paid a supplement, as set forth in §18A-4-5 of this code, of $164 per month, subject to the provisions of that section. These payments: (i) Are in addition to any amounts prescribed in the applicable State Minimum Pay Scale Pay Grade, any specific additional amounts prescribed in this section and

article and any county supplement in effect in a county pursuant to §18A-4-5b of this code; (ii) are paid in equal monthly installments; and (iii) are considered a part of the state minimum salaries for service personnel.

(g) When any part of a school service person's daily shift of work is performed between the hours of 6:00 p. m. and 5:00 a. m. the following day, the employee is paid no less than an additional $10 per month and one half of the pay is paid with local funds.

(h) Any service person required to work on any legal school holiday is paid at a rate one and one-half times the person's usual hourly rate.

(i) Any full-time service personnel required to work in excess of their normal working day during any week which contains a school holiday for which they are paid is paid for the additional hours or fraction of the additional hours at a rate of one and one-half times their usual hourly rate and paid entirely from county board funds.

(j) A service person may not have his or her daily work schedule changed during the school year without the employee's written consent and the person's required daily work hours may not be changed to prevent the payment of time and one-half wages or the employment of another employee.

(k) The minimum hourly rate of pay for extra duty assignments as defined in §18A-4-8b of this code is no less than one seventh of the person's daily total salary for each hour the person is involved in performing the assignment and paid entirely from local funds: *Provided*, That an alternative minimum hourly rate of pay for performing extra duty assignments within a particular category of employment may be used if the alternate hourly rate of pay is approved both by the county board and by the affirmative vote of a two-thirds majority of the regular full-time persons within that classification category of employment within that county: *Provided, however*, That the vote is by secret ballot if requested by a service person within that classification category within that county. The salary for any fraction of an hour the employee is involved in performing the assignment is prorated accordingly.

When performing extra duty assignments, persons who are regularly employed on a one-half day salary basis shall receive the same hourly extra duty assignment pay computed as though the person were employed on a full-day salary basis.

(l) The minimum pay for any service personnel engaged in the removal of asbestos material or related duties required for asbestos removal is their regular total daily rate of pay and no less than an additional $3 per hour or no less than $5 per hour for service personnel supervising asbestos removal responsibilities for each hour these employees are involved in asbestos-related duties. Related duties required for asbestos removal include, but are not limited to, travel, preparation of the work site, removal of asbestos, decontamination of the work site, placing and removal of equipment and removal of structures from the site. If any member of an asbestos crew is engaged in asbestos-related duties outside of the employee's regular employment county, the daily rate of pay is no less than the minimum amount as established in the employee's regular employment county for asbestos removal and an additional $30 per each day the employee is engaged in asbestos removal and related duties. The additional pay for asbestos removal and related duties shall be payable entirely from county funds. Before service personnel may be used in the removal of asbestos material or related duties, they shall have completed a federal Environmental Protection Act-approved training program and be licensed. The employer shall provide all necessary protective equipment and maintain all records required by the Environmental Protection Act.

(m) For the purpose of qualifying for additional pay as provided in §18A-5-8 of this code, an aide is considered to be exercising the authority of a supervisory aide and control over pupils if the aide is required to supervise, control, direct, monitor, escort, or render service to a child or children when not under the direct supervision of a certified professional person within the classroom, library, hallway, lunchroom, gymnasium, school building, school grounds, or wherever supervision is required. For purposes of this section, "under the direct supervision of a certified professional person" means that certified professional person is present, with and accompanying the aide.

CHAPTER 244

(Com. Sub. for H. B. 2267 - By Delegates Toney and Paynter)

[Passed April 8, 2021; in effect ninety days from passage.]
[Approved by the Governor on April 27, 2021.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §18A-2-15, relating to authorizing recruitment and training programs for prospective bus operators; providing required approval, limitations and elements of locally funded recruitment and training programs; establishing no entitlement to employment upon completion of the program; and not permitting seniority to accrue for time spent during completion of the program.

Be it enacted by the Legislature of West Virginia:

ARTICLE 2. SCHOOL PERSONNEL.

§18A-2-15. County option recruitment and training programs for prospective school bus operators.

(a) The legislature finds that recruiting and retaining bus operators, including substitute bus operators, is a substantial challenge for county boards of education. Accordingly, county boards of education are hereby permitted to establish locally funded recruitment and training programs for prospective bus operators in accordance with this section.

(b) County board funded recruitment and training programs for prospective bus operators are subject to the following:

(1) The program is submitted to the West Virginia Department of Education and is approved;

(2) The program may only be utilized if the county board is unable to maintain an adequate number of bus operators or substitute bus operators in its pool or is experiencing a shortage in adequately staffing its school transportation system;

(3) The program includes requirements for program participants to submit to and pass pursuant to §18A-4-8e(j)(4) of this code, a background check, and submit to and pass pursuant to W. Va. §126CSR92, the West Virginia School Bus Transportation Policy and Procedures Manual (Policy 4336), a drug screen;

(4) The program specifies the amount of any stipend to be paid to program participants or any reimbursement of participant costs or other benefit upon successful completion, if any, and any penalties for failure to complete the program, if any;

(5) The program specifies any obligation on participants who successfully complete the program to apply or become employed by the county board as a bus operator or substitute bus operator for a period of time, if any, and any penalty for failure to comply with any post program completion requirements, if any;

(6) The county board posts bus operator training program position openings on the county board web site and may advertise them in other media, including any appropriate qualifications;

(c) A bus operator recruitment and training program approved by the Department of Education must ensure that all of the requirements to become classified as a bus operator are met for successful program completion.

(d) Completion of a county board bus operator recruitment and training program does not entitle a participant to employment as a bus operator or substitute bus operator for the county board providing the program. The person may attain regular employment status only upon successful application in accordance with this article for an open bus operator or substitute bus operator position with the county.

(e) A person completing a bus operator recruitment training program in accordance with this section does not accrue seniority for time spent in the training program.

CHAPTER 245

(Com. Sub. for H. B. 3266 - By Delegate Statler)

[Passed April 9, 2021; in effect July 1, 2021.]
[Approved by the Governor on April 26, 2021.]

AN ACT to amend and reenact §18A-4-16 of the Code of West Virginia, 1931, as amended, relating to the termination of extracurricular contracts upon retirement; providing effective date; not prohibiting post-retirement employment with county board consistent with rules of consolidated public retirement board.

Be it enacted by the Legislature of West Virginia:

ARTICLE 4. SALARIES, WAGES AND OTHER BENEFITS.

§18A-4-16. Extracurricular assignments.

(1) The assignment of teachers and service personnel to extracurricular assignments shall be made only by mutual agreement of the employee and the superintendent, or designated representative, subject to board approval. Extracurricular duties shall mean, but not be limited to, any activities that occur at times other than regularly scheduled working hours, which include the instructing, coaching, chaperoning, escorting, providing support services or caring for the needs of students, and which occur on a regularly scheduled basis: *Provided,* That all school service personnel assignments shall be considered extracurricular assignments, except such assignments as are considered either regular positions, as provided by section eight of this article, or extra-duty assignments, as provided by section eight-b of this article.

(2) The employee and the superintendent, or a designated representative, subject to board approval, shall mutually agree

upon the maximum number of hours of extracurricular assignment in each school year for each extracurricular assignment.

(3) The terms and conditions of the agreement between the employee and the board shall be in writing and signed by both parties.

(4) An employee's contract of employment shall be separate from the extracurricular assignment agreement provided for in this section and shall not be conditioned upon the employee's acceptance or continuance of any extracurricular assignment proposed by the superintendent, a designated representative, or the board.

(5) The board shall fill extracurricular school service personnel assignments and vacancies in accordance with section eight-b of this article: *Provided,* That an alternative procedure for making extracurricular school service personnel assignments within a particular classification category of employment may be utilized if the alternative procedure is approved both by the county board and by an affirmative vote of two thirds of the employees within that classification category of employment.

(6) An employee who was employed in any service personnel extracurricular assignment during the previous school year shall have the option of retaining the assignment if it continues to exist in any succeeding school year. A county board of education may terminate any school service personnel extracurricular assignment for lack of need pursuant to section seven, article two of this chapter. If an extracurricular contract has been terminated and is reestablished in any succeeding school year, it shall be offered to the employee who held the assignment at the time of its termination. If the employee declines the assignment, the extracurricular assignment shall be posted and filled pursuant to section eight-b of this article.

(7) Effective with the retirement of an employee on or after July 1, 2021, any extracurricular contract of the employee shall terminate when an employee retires. Nothing prohibits a retired employee from applying for and, if they are the successful applicant, becoming employed in an extracurricular assignment or other position with the county board consistent with the rules for the employment of retirees established by the consolidated public retirement board.

CHAPTER 246

(Com. Sub. for S. B. 34 - By Senator Tarr)

[Passed April 10, 2021; to take effect July 1, 2021]
[Approved by the Governor on April 28, 2021.]

AN ACT to amend and reenact §11-15-9 of the Code of West Virginia, 1931, as amended, relating to the creation of an exemption to the State Sales and Use Tax for the rental of equipment among certain business entities.

Be it enacted by the Legislature of West Virginia:

ARTICLE 15. CONSUMERS SALES AND SERVICE TAX.

§11-15-9. Exemptions.

(a) *Exemptions for which exemption certificate may be issued.* — A person having a right or claim to any exemption set forth in this subsection may, in lieu of paying the tax imposed by this article and filing a claim for refund, execute a certificate of exemption, in the form required by the Tax Commissioner, and deliver it to the vendor of the property or service in the manner required by the Tax Commissioner. However, the Tax Commissioner may, by rule, specify those exemptions authorized in this subsection for which exemption certificates are not required. The following sales of tangible personal property and services are exempt as provided in this subsection:

(1) Sales of gas, steam, and water delivered to consumers through mains or pipes and sales of electricity;

(2) Sales of textbooks required to be used in any of the schools of this state or in any institution in this state which qualifies as a nonprofit or educational institution subject to the West Virginia

Department of Education and the Arts, the Higher Education Policy Commission, or the Council for Community and Technical College Education for universities and colleges located in this state;

(3) Sales of property or services to this state, its institutions or subdivisions, governmental units, institutions, or subdivisions of other states: *Provided*, That the law of the other state provides the same exemption to governmental units or subdivisions of this state and to the United States, including agencies of federal, state, or local governments for distribution in public welfare or relief work;

(4) Sales of vehicles which are titled by the Division of Motor Vehicles and which are subject to the tax imposed by §11-15-3c of this code or like tax;

(5) Sales of property or services to churches which make no charge whatsoever for the services they render: *Provided*, That the exemption granted in this subdivision applies only to services, equipment, supplies, food for meals, and materials directly used or consumed by these organizations and does not apply to purchases of gasoline or special fuel;

(6) Sales of tangible personal property or services to a corporation or organization which has a current registration certificate issued under §11-12-1 *et seq.* of this code, which is exempt from federal income taxes under Section 501(c)(3) or (c)(4) of the Internal Revenue Code of 1986, as amended, and which is:

(A) A church or a convention or association of churches as defined in Section 170 of the Internal Revenue Code of 1986, as amended;

(B) An elementary or secondary school which maintains a regular faculty and curriculum and has a regularly enrolled body of pupils or students in attendance at the place in this state where its educational activities are regularly carried on;

(C) A corporation or organization which annually receives more than one half of its support from any combination of gifts, grants, direct or indirect charitable contributions, or membership fees;

(D) An organization which has no paid employees and its gross income from fundraisers, less reasonable and necessary expenses incurred to raise the gross income (or the tangible personal property or services purchased with the net income), is donated to an organization which is exempt from income taxes under Section 501(c)(3) or (c)(4) of the Internal Revenue Code of 1986, as amended;

(E) A youth organization, such as the Girl Scouts of the United States of America, the Boy Scouts of America, or the YMCA Indian Guide/Princess Program and the local affiliates thereof, which is organized and operated exclusively for charitable purposes and has as its primary purpose the nonsectarian character development and citizenship training of its members;

(F) For purposes of this subsection:

(i) The term "support" includes, but is not limited to:

(I) Gifts, grants, contributions, or membership fees;

(II) Gross receipts from fundraisers which include receipts from admissions, sales of merchandise, performance of services or furnishing of facilities in any activity which is not an unrelated trade or business within the meaning of Section 513 of the Internal Revenue Code of 1986, as amended;

(III) Net income from unrelated business activities, whether or not the activities are carried on regularly as a trade or business;

(IV) Gross investment income as defined in Section 509(e) of the Internal Revenue Code of 1986, as amended;

(V) Tax revenues levied for the benefit of a corporation or organization either paid to or expended on behalf of the organization; and

(VI) The value of services or facilities (exclusive of services or facilities generally furnished to the public without charge) furnished by a governmental unit referred to in Section 170(c)(1) of the Internal Revenue Code of 1986, as amended, to an

organization without charge. This term does not include any gain from the sale or other disposition of property which would be considered as gain from the sale or exchange of a capital asset or the value of an exemption from any federal, state, or local tax or any similar benefit;

(ii) The term "charitable contribution" means a contribution or gift to, or for the use of, a corporation or organization, described in Section 170(c)(2) of the Internal Revenue Code of 1986, as amended; and

(iii) The term "membership fee" does not include any amounts paid for tangible personal property or specific services rendered to members by the corporation or organization;

(G) The exemption allowed by this subdivision does not apply to sales of gasoline or special fuel or to sales of tangible personal property or services to be used or consumed in the generation of unrelated business income as defined in Section 513 of the Internal Revenue Code of 1986, as amended. The exemption granted in this subdivision applies only to services, equipment, supplies, and materials used or consumed in the activities for which the organizations qualify as tax-exempt organizations under the Internal Revenue Code and does not apply to purchases of gasoline or special fuel which are taxable as provided in §11-14C-1 *et seq.* of this code;

(7) An isolated transaction in which any taxable service or any tangible personal property is sold, transferred, offered for sale or delivered by the owner of the property or by his or her representative for the owner's account, the sale, transfer, offer for sale, or delivery not being made in the ordinary course of repeated and successive transactions of like character by the owner or on his or her account by the representative: *Provided*, That nothing contained in this subdivision may be construed to prevent an owner who sells, transfers, or offers for sale tangible personal property in an isolated transaction through an auctioneer from availing himself or herself of the exemption provided in this subdivision, regardless of where the isolated sale takes place. The Tax Commissioner may propose a legislative rule for promulgation pursuant to §29A-3-1

et seq. of this code which he or she considers necessary for the efficient administration of this exemption;

(8) Sales of tangible personal property or of any taxable services rendered for use or consumption in connection with the commercial production of an agricultural product the ultimate sale of which is subject to the tax imposed by this article or which would have been subject to tax under this article: *Provided*, That sales of tangible personal property and services to be used or consumed in the construction of, or permanent improvement to, real property and sales of gasoline and special fuel are not exempt: *Provided, however*, That nails and fencing may not be considered as improvements to real property;

(9) Sales of tangible personal property to a person for the purpose of resale in the form of tangible personal property: *Provided*, That sales of gasoline and special fuel by distributors and importers is taxable except when the sale is to another distributor for resale: *Provided, however*, That sales of building materials or building supplies or other property to any person engaging in the activity of contracting, as defined in this article, which is to be installed in, affixed to, or incorporated by that person or his or her agent into any real property, building, or structure is not exempt under this subdivision;

(10) Sales of newspapers when delivered to consumers by route carriers;

(11) Sales of drugs, durable medical goods, mobility-enhancing equipment, and prosthetic devices dispensed upon prescription and sales of insulin to consumers for medical purposes;

(12) Sales of radio and television broadcasting time, preprinted advertising circulars, and newspaper and outdoor advertising space for the advertisement of goods or services;

(13) Sales and services performed by day care centers;

(14) Casual and occasional sales of property or services not conducted in a repeated manner or in the ordinary course of

repetitive and successive transactions of like character by a corporation or organization which is exempt from tax under subdivision (6) of this subsection on its purchases of tangible personal property or services. For purposes of this subdivision, the term "casual and occasional sales not conducted in a repeated manner or in the ordinary course of repetitive and successive transactions of like character" means sales of tangible personal property or services at fundraisers sponsored by a corporation or organization which is exempt, under subdivision (6) of this subsection, from payment of the tax imposed by this article on its purchases when the fundraisers are of limited duration and are held no more than six times during any 12-month period and "limited duration" means no more than 84 consecutive hours: *Provided,* That sales for volunteer fire departments and volunteer school support groups, with duration of events being no more than 84 consecutive hours at a time, which are held no more than 18 times in a 12-month period for the purposes of this subdivision are considered "casual and occasional sales not conducted in a repeated manner or in the ordinary course of repetitive and successive transactions of a like character";

(15) Sales of property or services to a school which has approval from the Higher Education Policy Commission or the Council for Community and Technical College Education to award degrees, which has its principal campus in this state and which is exempt from federal and state income taxes under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended: *Provided,* That sales of gasoline and special fuel are taxable as provided in §11-15-18, §11-15-18b, and §11-14C-1 *et seq.* of this code;

(16) Sales of lottery tickets and materials by licensed lottery sales agents and lottery retailers authorized by the State Lottery Commission, under the provisions of §29-22-1 *et seq.* of this code;

(17) Leases of motor vehicles titled pursuant to the provisions of §17A-3-1 *et seq.* of this code to lessees for a period of 30 or more consecutive days;

(18) Notwithstanding the provisions of §11-15-18 or §11-15-18b of this code or any other provision of this article to the contrary, sales of propane to consumers for poultry house heating purposes, with any seller to the consumer who may have prior paid the tax in his or her price, to not pass on the same to the consumer, but to make application and receive refund of the tax from the Tax Commissioner pursuant to rules which are promulgated after being proposed for legislative approval in accordance with chapter 29A of this code by the Tax Commissioner;

(19) Any sales of tangible personal property or services purchased and lawfully paid for with food stamps pursuant to the federal food stamp program codified in 7 U. S. C. §2011, *et seq*., as amended, or with drafts issued through the West Virginia special supplement food program for women, infants, and children codified in 42 U. S. C. §1786;

(20) Sales of tickets for activities sponsored by elementary and secondary schools located within this state;

(21) Sales of electronic data processing services and related software: *Provided,* That, for the purposes of this subdivision, "electronic data processing services" means:

(A) The processing of another's data, including all processes incident to processing of data such as keypunching, keystroke verification, rearranging or sorting of previously documented data for the purpose of data entry or automatic processing, and changing the medium on which data is sorted, whether these processes are done by the same person or several persons; and

(B) Providing access to computer equipment for the purpose of processing data or examining or acquiring data stored in or accessible to the computer equipment;

(22) Tuition charged for attending educational summer camps;

(23) (A) Dispensing of services performed by one corporation, partnership, or limited liability company for another corporation, partnership, or limited liability company when the entities are members of the same controlled group or are related taxpayers as

defined in Section 267 of the Internal Revenue Code of 1986, as amended. For purposes of this subdivision, "control" means ownership, directly or indirectly, of stock, equity interests, or membership interests possessing 50 percent or more of the total combined voting power of all classes of the stock of a corporation, equity interests of a partnership, or membership interests of a limited liability company entitled to vote or ownership, directly or indirectly, of stock, equity interests, or membership interests possessing 50 percent or more of the value of the corporation, partnership, or limited liability company;

(B) Leases of heavy equipment or machinery among corporations, partnerships, or limited liability companies when the entities are members of the same control group or are related taxpayers as defined in Section 267 of the Internal Revenue Code of 1986, as amended;

(24) Food for the following is exempt:

(A) Food purchased or sold by a public or private school, school-sponsored student organizations, or school-sponsored parent-teacher associations to students enrolled in the school or to employees of the school during normal school hours; but not those sales of food made to the general public;

(B) Food purchased or sold by a public or private college or university or by a student organization officially recognized by the college or university to students enrolled at the college or university when the sales are made on a contract basis so that a fixed price is paid for consumption of food products for a specific period of time without respect to the amount of food product actually consumed by the particular individual contracting for the sale and no money is paid at the time the food product is served or consumed;

(C) Food purchased or sold by a charitable or private nonprofit organization, a nonprofit organization, or a governmental agency under a program to provide food to low-income persons at or below cost;

(D) Food sold by a charitable or private nonprofit organization, a nonprofit organization or a governmental agency under a program operating in West Virginia for a minimum of five years to provide food at or below cost to individuals who perform a minimum of two hours of community service for each unit of food purchased from the organization;

(E) Food sold in an occasional sale by a charitable or nonprofit organization, including volunteer fire departments and rescue squads, if the purpose of the sale is to obtain revenue for the functions and activities of the organization and the revenue obtained is actually expended for that purpose;

(F) Food sold by any religious organization at a social or other gathering conducted by it or under its auspices, if the purpose in selling the food is to obtain revenue for the functions and activities of the organization and the revenue obtained from selling the food is actually used in carrying out those functions and activities: *Provided*, That purchases made by the organizations are not exempt as a purchase for resale; or

(G) Food sold by volunteer fire departments and rescue squads that are exempt from federal income taxes under Section 501(c)(3) or (c)(4) of the Internal Revenue Code of 1986, as amended, when the purpose of the sale is to obtain revenue for the functions and activities of the organization and the revenue obtained is exempt from federal income tax and actually expended for that purpose;

(25) Sales of food by little leagues, midget football leagues, youth football or soccer leagues, band boosters, or other school or athletic booster organizations supporting activities for grades kindergarten through 12 and similar types of organizations, including scouting groups and church youth groups, if the purpose in selling the food is to obtain revenue for the functions and activities of the organization and the revenues obtained from selling the food is actually used in supporting or carrying on functions and activities of the groups: *Provided,* That the purchases made by the organizations are not exempt as a purchase for resale;

(26) Charges for room and meals by fraternities and sororities to their members: *Provided,* That the purchases made by a fraternity or sorority are not exempt as a purchase for resale;

(27) Sales of or charges for the transportation of passengers in interstate commerce;

(28) Sales of tangible personal property or services to any person which this state is prohibited from taxing under the laws of the United States or under the Constitution of this state;

(29) Sales of tangible personal property or services to any person who claims exemption from the tax imposed by this article or §11-15A-1 *et seq.* of this code, or pursuant to the provision of any other chapter of this code;

(30) Charges for the services of opening and closing a burial lot;

(31) Sales of livestock, poultry, or other farm products in their original state by the producer of the livestock, poultry, or other farm products or a member of the producer's immediate family who is not otherwise engaged in making retail sales of tangible personal property; and sales of livestock sold at public sales sponsored by breeders or registry associations or livestock auction markets: *Provided,* That the exemptions allowed by this subdivision may be claimed without presenting or obtaining exemption certificates provided the farmer maintains adequate records;

(32) Sales of motion picture films to motion picture exhibitors for exhibition if the sale of tickets or the charge for admission to the exhibition of the film is subject to the tax imposed by this article and sales of coin-operated video arcade machines or video arcade games to a person engaged in the business of providing the machines to the public for a charge upon which the tax imposed by this article is remitted to the Tax Commissioner: *Provided,* That the exemption provided in this subdivision may be claimed by presenting to the seller a properly executed exemption certificate;

(33) Sales of aircraft repair, remodeling, and maintenance services when the services are to an aircraft operated by a certified or licensed carrier of persons or property, or by a governmental entity, or to an engine or other component part of an aircraft operated by a certified or licensed carrier of persons or property, or by a governmental entity and sales of tangible personal property that is permanently affixed or permanently attached as a component part of an aircraft owned or operated by a certified or licensed carrier of persons or property, or by a governmental entity, as part of the repair, remodeling, or maintenance service and sales of machinery, tools, or equipment directly used or consumed exclusively in the repair, remodeling or maintenance of aircraft, aircraft engines, or aircraft component parts for a certified or licensed carrier of persons or property or for a governmental entity;

(34) Charges for memberships or services provided by health and fitness organizations relating to personalized fitness programs;

(35) Sales of services by individuals who babysit for a profit: *Provided*, That the gross receipts of the individual from the performance of baby-sitting services do not exceed $5,000 in a taxable year;

(36) Sales of services by public libraries or by libraries at academic institutions or by libraries at institutions of higher learning;

(37) Commissions received by a manufacturer's representative;

(38) Sales of primary opinion research services when:

(A) The services are provided to an out-of-state client;

(B) The results of the service activities, including, but not limited to, reports, lists of focus group recruits, and compilation of data are transferred to the client across state lines by mail, wire, or other means of interstate commerce, for use by the client outside the state of West Virginia; and

(C) The transfer of the results of the service activities is an indispensable part of the overall service.

For the purpose of this subdivision, the term "primary opinion research" means original research in the form of telephone surveys, mall intercept surveys, focus group research, direct mail surveys, personal interviews, and other data-collection methods commonly used for quantitative and qualitative opinion research studies;

(39) Sales of property or services to persons within the state when those sales are for the purposes of the production of value-added products: *Provided,* That the exemption granted in this subdivision applies only to services, equipment, supplies, and materials directly used or consumed by those persons engaged solely in the production of value-added products: *Provided, however,* That this exemption may not be claimed by any one purchaser for more than five consecutive years, except as otherwise permitted in this section.

For the purpose of this subdivision, the term "value-added product" means the following products derived from processing a raw agricultural product, whether for human consumption or for other use. For purposes of this subdivision, the following enterprises qualify as processing raw agricultural products into value-added products: Those engaged in the conversion of:

(A) Lumber into furniture, toys, collectibles, and home furnishings;

(B) Fruits into wine;

(C) Honey into wine;

(D) Wool into fabric;

(E) Raw hides into semifinished or finished leather products;

(F) Milk into cheese;

(G) Fruits or vegetables into a dried, canned, or frozen product;

(H) Feeder cattle into commonly accepted slaughter weights;

(I) Aquatic animals into a dried, canned, cooked, or frozen product; and

(J) Poultry into a dried, canned, cooked, or frozen product;

(40) Sales of music instructional services by a music teacher and artistic services or artistic performances of an entertainer or performing artist pursuant to a contract with the owner or operator of a retail establishment, restaurant, inn, bar, tavern, sports or other entertainment facility, or any other business location in this state in which the public or a limited portion of the public may assemble to hear or see musical works or other artistic works be performed for the enjoyment of the members of the public there assembled when the amount paid by the owner or operator for the artistic service or artistic performance does not exceed $3,000: *Provided,* That nothing contained herein may be construed to deprive private social gatherings, weddings or other private parties from asserting the exemption set forth in this subdivision. For the purposes of this exemption, artistic performance or artistic service means and is limited to the conscious use of creative power, imagination, and skill in the creation of aesthetic experience for an audience present and in attendance and includes, and is limited to, stage plays, musical performances, poetry recitations and other readings, dance presentation, circuses, and similar presentations and does not include the showing of any film or moving picture, gallery presentations of sculptural or pictorial art, nude or strip show presentations, video games, video arcades, carnival rides, radio or television shows, or any video or audio-taped presentations or the sale or leasing of video or audio tapes, air shows, or any other public meeting, display, or show other than those specified herein: *Provided, however*, That nothing contained herein may be construed to exempt the sales of tickets from the tax imposed in this article. The State Tax Commissioner shall propose a legislative rule pursuant to §29A-3-1 *et seq.* of this code establishing definitions and eligibility criteria for asserting this exemption which is not inconsistent with the provisions set forth herein: *Provided further*, That nude dancers or strippers may not be considered as entertainers for the purposes of this exemption;

(41) Charges to a member by a membership association or organization which is exempt from paying federal income taxes under Section 501(c)(3) or (c)(6) of the Internal Revenue Code of 1986, as amended, for membership in the association or organization, including charges to members for newsletters prepared by the association or organization for distribution primarily to its members, charges to members for continuing education seminars, workshops, conventions, lectures, or courses put on or sponsored by the association or organization, including charges for related course materials prepared by the association or organization or by the speaker or speakers for use during the continuing education seminar, workshop, convention, lecture, or course, but not including any separate charge or separately stated charge for meals, lodging, entertainment, or transportation taxable under this article: *Provided,* That the association or organization pays the tax imposed by this article on its purchases of meals, lodging, entertainment, or transportation taxable under this article for which a separate or separately stated charge is not made. A membership association or organization which is exempt from paying federal income taxes under Section 501(c)(3) or (c)(6) of the Internal Revenue Code of 1986, as amended, may elect to pay the tax imposed under this article on the purchases for which a separate charge or separately stated charge could apply and not charge its members the tax imposed by this article or the association or organization may avail itself of the exemption set forth in subdivision (9) of this subsection relating to purchases of tangible personal property for resale and then collect the tax imposed by this article on those items from its member;

(42) Sales of governmental services or governmental materials by county assessors, county sheriffs, county clerks or circuit clerks in the normal course of local government operations;

(43) Direct or subscription sales by the Division of Natural Resources of the magazine currently entitled Wonderful West Virginia and by the Division of Culture and History of the magazine currently entitled Goldenseal and the journal currently entitled West Virginia History;

(44) Sales of soap to be used at car wash facilities;

(45) Commissions received by a travel agency from an out-of-state vendor;

(46) The service of providing technical evaluations for compliance with federal and state environmental standards provided by environmental and industrial consultants who have formal certification through the West Virginia Department of Environmental Protection or the West Virginia Bureau for Public Health or both. For purposes of this exemption, the service of providing technical evaluations for compliance with federal and state environmental standards includes those costs of tangible personal property directly used in providing such services that are separately billed to the purchaser of such services and on which the tax imposed by this article has previously been paid by the service provider;

(47) Sales of tangible personal property and services by volunteer fire departments and rescue squads that are exempt from federal income taxes under Section 501(c)(3) or (c)(4) of the Internal Revenue Code of 1986, as amended, if the sole purpose of the sale is to obtain revenue for the functions and activities of the organization and the revenue obtained is exempt from federal income tax and actually expended for that purpose;

(48) Lodging franchise fees, including royalties, marketing fees, reservation system fees, or other fees assessed that have been or may be imposed by a lodging franchiser as a condition of the franchise agreement; and

(49) Sales of the regulation size United States flag and the regulation size West Virginia flag for display.

(b) *Refundable exemptions*. — Any person having a right or claim to any exemption set forth in this subsection shall first pay to the vendor the tax imposed by this article and then apply to the Tax Commissioner for a refund or credit, or as provided in §11-15-9d of this code give to the vendor his or her West Virginia direct pay permit number. The following sales of tangible personal property and services are exempt from tax as provided in this subsection:

(1) Sales of property or services to bona fide charitable organizations who make no charge whatsoever for the services they render: *Provided,* That the exemption granted in this subdivision applies only to services, equipment, supplies, food, meals, and materials directly used or consumed by these organizations and does not apply to purchases of gasoline or special fuel;

(2) Sales of services, machinery, supplies, and materials directly used or consumed in the activities of manufacturing, transportation, transmission, communication, production of natural resources, gas storage, generation or production or selling electric power, provision of a public utility service or the operation of a utility service or the operation of a utility business, in the businesses or organizations named in this subdivision and does not apply to purchases of gasoline or special fuel;

(3) Sales of property or services to nationally chartered fraternal or social organizations for the sole purpose of free distribution in public welfare or relief work: *Provided,* That sales of gasoline and special fuel are taxable;

(4) Sales and services, firefighting or station house equipment, including construction and automotive, made to any volunteer fire department organized and incorporated under the laws of the State of West Virginia: *Provided*, That sales of gasoline and special fuel are taxable; and

(5) Sales of building materials or building supplies or other property to an organization qualified under Section 501(c)(3) or (c)(4) of the Internal Revenue Code of 1986, as amended, which are to be installed in, affixed to, or incorporated by the organization or its agent into real property or into a building or structure which is or will be used as permanent low-income housing, transitional housing, an emergency homeless shelter, a domestic violence shelter, or an emergency children and youth shelter if the shelter is owned, managed, developed, or operated by an organization qualified under Section 501(c)(3) or (c)(4) of the Internal Revenue Code of 1986, as amended.

(c) *Effective date*. — The amendments to this section in 2018 shall take effect beginning July 1, 2018, and apply to sales made on and after that date: *Provided*, That the amendments to subdivision (6), subsection (b) of this section take effect upon passage of this act of the Legislature and shall be construed to prohibit on and after January 1, 2018, all transfers to the State Road Fund established in the State Treasury pursuant to section 52, article VI of the Constitution of West Virginia, of the taxes imposed by §11-15-1 *et seq.* and §11-15A-1 *et seq.* of this code.

CHAPTER 247

(Com. Sub. for S. B. 270 - By Senators Maynard and Woodrum)

[Passed March 9, 2021; in effect 90 days from passage (June 7, 2021)]
[Approved by the Governor on March 18, 2021.]

AN ACT to amend and reenact §7-18-3 and §7-18-4 of the Code of West Virginia, 1931, as amended, all relating to taxation of hotel rooms booked through a marketplace facilitator; defining "marketplace facilitator"; providing for collection and remittance of the hotel occupancy tax imposed by any municipality or county by certain marketplace facilitators; making marketplace facilitators satisfying certain economic nexus requirements responsible for collection and remittance of the tax imposed by any county or municipality; requiring the marketplace facilitator to separately state the tax on all bills, invoices, accounts, books of account, and records relating to consideration paid for the occupancy or use of a hotel room; deeming all taxes collected be held in trust by the marketplace facilitator until remitted; and permitting marketplace facilitators and hotels or hotel operators to enter into agreements regarding fulfillment of the requirements of the chapter.

Be it enacted by the Legislature of West Virginia:

ARTICLE 18. HOTEL OCCUPANCY TAX.

§7-18-3. Definitions.

For the purposes of this article:

(a) "Consideration paid" or "consideration" means the amount received in money, credits, property, or other consideration for, or in exchange for, the right to occupy a hotel room as herein defined.

(b) "Consumer" means a person who pays the consideration for the use or occupancy of a hotel room. The term "consumer" does not mean the government of the United States of America, its agencies or instrumentalities, or the government of the State of West Virginia or political subdivisions thereof.

(c) "Hotel" means any facility, building, or buildings, publicly or privately owned (including a facility located in a state, county, or municipal park), in which the public may, for a consideration, obtain sleeping accommodations. The term includes, but is not limited to, boarding houses, hotels, motels, inns, courts, condominiums, lodges, cabins, and tourist homes. The term "hotel" includes state, county, and city parks offering accommodations as herein set forth. The term "hotel" does not mean a hospital, sanitarium, extended care facility, nursing home, or university or college housing unit, or any facility providing fewer than three rooms in private homes, not exceeding a total of 10 days in a calendar year, nor any tent, trailer, or camper campsites: *Provided,* That where a university or college housing unit provides sleeping accommodations for the general nonstudent public for a consideration, the term "hotel" does, if otherwise applicable, apply to those accommodations for the purposes of this tax.

(d) "Hotel operator" means the person who is the proprietor of a hotel, whether in the capacity of owner, lessee, mortgagee in possession, licensee, trustee in possession, trustee in bankruptcy, receiver, executor, or in any other capacity. Where the hotel operator performs his or her functions through a managing agent of any type or character other than an employee, the managing agent is a hotel operator for the purposes of this article and has the same duties and liabilities as his or her principal. Compliance with the provisions of this article by either the principal or the managing agent is, however, considered to be compliance by both.

(e) "Hotel room" means any room or suite of rooms or other facility affording sleeping accommodations to the general public

and situated within a hotel. The term "hotel room" does not include:

(1) A banquet room, meeting room, or any other room not primarily used for, or in conjunction with, sleeping accommodations;

(2) Sleeping accommodations rented on a month-to-month basis or other rental arrangement for 30 days or longer at the inception at a boarding house, condominium, cabin, tourist home, apartment, or home; or

(3) Sleeping accommodations rented by a hotel operator to those persons directly employed by the hotel operator for the purposes of performing duties in support of the operation of the hotel or related operations.

(f) "Marketplace facilitator" shall have the same meaning as stated in §11-15A-1(b)(8) of this code.

(g) "Person" means any individual, firm, partnership, joint venture, association, syndicate, social club, fraternal organization, joint stock company, receiver, corporation, guardian, trust, business trust, trustee, committee, estate, executor, administrator, or any other group or combination acting as a unit.

(h) "State park" means any state-owned facility which is part of this state's park and recreation system established pursuant to this code. For purposes of this article, any recreational facility otherwise qualifying as a "hotel" and situated within a state park is considered to be solely within the county in which the building or buildings comprising the facility are physically situated, notwithstanding the fact that the state park within which the facility is located may lie within the jurisdiction of more than one county.

(i) "Tax", "taxes", or "this tax" means the hotel occupancy tax authorized by this article.

(j) "Taxing authority" means a municipality or county levying or imposing the tax authorized by this article.

(k) "Taxpayer" means any person liable for the tax authorized by this article.

§7-18-4. Consumer to pay tax; collection of tax by marketplace facilitators; hotel, hotel operator, or marketplace facilitator not to represent that it will absorb tax; accounting by hotel and marketplace facilitators.

(a) The consumer shall pay to the hotel operator the amount of tax imposed by any municipality or county hereunder, which tax shall be added to and shall constitute a part of the consideration paid for the use and occupancy of the hotel room, and which tax shall be collectible as such by the hotel operator who shall account for, and remit to the taxing authority, all taxes paid by consumers. The hotel operator shall separately state the tax authorized by this article on all bills, invoices, accounts, books of account, and records relating to consideration paid for occupancy or use of a hotel room. The hotel operator may commingle taxes collected hereunder with the proceeds of the rental of hotel accommodations unless the taxing authority shall, by ordinance, order, regulation, or otherwise require in writing the hotel operator to segregate such taxes collected from such proceeds. The taxing authority's claim shall be enforceable against, and shall be superior to, all other claims against the moneys so commingled excepting only claims of the state for moneys held by the hotel pursuant to the provisions of §11-15-1 *et seq.* of this code. All taxes collected pursuant to the provisions of this article shall be deemed to be held in trust by the hotel until those taxes shall have been remitted to the taxing authority as hereinafter provided.

(b) *Economic nexus and duty of certain marketplace facilitators to collect tax.* — Where a hotel or hotel operator contracts with a marketplace facilitator to offer the use or occupancy of a hotel room, such marketplace facilitator shall be responsible, on behalf of the hotel or hotel operator, for the collection and remittance of the tax imposed by any municipality or county pursuant to this article when:

(1) The marketplace facilitator makes or facilitates West Virginia sales on its own behalf or on behalf of one or more hotel

or hotel operators equal to or exceeding $100,000 in gross revenue for an immediately preceding calendar year, or a current calendar year; or

(2) The marketplace facilitator makes or facilitates West Virginia sales on its own behalf or on behalf of one or more hotel or hotel operators in 200 or more separate transactions for an immediately preceding calendar year or a current calendar year.

For purposes of this section, a marketplace facilitator meeting the requirements of this subsection is deemed to be an agent of any hotel or hotel operator making retail sales through the marketplace facilitator's physical or electronic marketplace.

(c) *Collection and remittance of tax by marketplace facilitators.* — Where a marketplace facilitator is responsible for the collection and remittance of the tax imposed pursuant to subsection (b) of this section, the marketplace facilitator shall separately state the tax authorized by this article on all bills, invoices, accounts, books of account, and records relating to consideration paid for the occupancy or use of a hotel room. All taxes collected pursuant to the provisions of this article shall be deemed to be held in trust by the marketplace facilitator, on behalf of the hotel or hotel operator, until those taxes have been remitted by the marketplace facilitator to the taxing authority in accordance with §7-18-10 of this code: *Provided,* That nothing in this section shall be construed to interfere with the ability of a marketplace facilitator and a hotel or hotel operator to enter into an agreement regarding fulfillment of the requirements of §7-18-1 *et seq.* of this code.

(d) *Effective date*. — The amendments to this section enacted during the regular session of the Legislature, 2021, shall apply to sales by a marketplace facilitator made on and after January 1, 2022.

(e) A hotel, hotel operator, or marketplace facilitator shall not represent to the public in any manner, directly or indirectly, that it will absorb all or any part of the tax or that the tax is not considered an element in the price to be collected from the consumer.

CHAPTER 248

(S. B. 305 - By Senators Tarr, Karnes, Swope, Nelson, Rucker, Plymale, and Woelfel)

[Passed March 23, 2021; in effect 90 days from passage (June 21, 2021)]
[Approved by the Governor on April 2, 2021.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §11-15-9t, relating to providing an exemption from the consumers sales and service tax for purchases of certain services and tangible personal property sold for the repair, remodeling, and maintenance of aircraft; defining terms; specifying a method for claiming exemption; authorizing emergency rules and promulgation of legislative rules; and establishing the effective date of the section.

Be it enacted by the Legislature of West Virginia:

ARTICLE 15. CONSUMERS SALES AND SERVICE TAX.

§11-15-9t. Exemption for purchases of services and tangible personal property sold for the repair, remodeling, and maintenance of aircraft; defining terms.

(a) The following sales are exempt from the consumers sales and service tax: Sales of aircraft repair, remodeling, and maintenance services, or to an engine or other component part of an aircraft; sales of tangible personal property that is permanently affixed or permanently attached as a component part of an aircraft, as part of the repair, remodeling, or maintenance service; and sales of machinery, tools, or equipment directly used or consumed exclusively in the repair, remodeling, or maintenance of aircraft, aircraft engines, or aircraft component parts for an aircraft, or used exclusively in combination with the purposes specified in this

subsection and the purposes specified in §11-15-9(a)(33) of this code.

(b) Any person having a right or claim to any exemption set forth in this section shall: First, pay to the vendor the tax imposed by this article and then apply to the Tax Commissioner for a refund or credit, or, as provided in §11-15-9d and §11-15A-3d of this code, give to the vendor his or her West Virginia direct pay permit number: *Provided*, That a person having a right or claim to the exemption set forth in this section may apply to the Tax Commissioner for permission to use an exemption certificate. Upon the granting of such permission, a person having a right or claim to the exemption set forth in this section may, in lieu of paying the tax imposed by this article and filing a claim for refund, execute a certificate of exemption, in the form required by the Tax Commissioner, and deliver it to the vendor of the property or service in the manner required by the Tax Commissioner.

(c) The Tax Commissioner shall promulgate emergency rules and shall propose rules for legislative approval in accordance with the provisions of §29A-3-1 *et seq.* of this code to establish eligibility requirements for the exemption established by this section.

(d) The provisions of this section shall apply to sales made on and after September 1, 2021.

CHAPTER 249

(Com. Sub. for S. B. 344 - By Senators Weld, Woelfel, Plymale, Lindsay, Nelson, Baldwin, Maroney, and Jeffries)

[Passed April 10, 2021; to take effect July 1, 2021]
[Approved by the Governor on April 21, 2021.]

AN ACT to amend and reenact §11-21-8a of the Code of West Virginia, 1931, as amended; and to amend and reenact §11-24-23a of said code, all relating to eliminating the termination date of the tax credit for qualified rehabilitated buildings investment.

Be it enacted by the Legislature of West Virginia:

ARTICLE 21. PERSONAL INCOME TAX.

§11-21-8a. Credit for qualified rehabilitated buildings investment.

A credit against the tax imposed by the provisions of this article is allowed as follows:

Certified historic structures. – For certified historic structures, the credit is equal to 10 percent of qualified rehabilitation expenditures as defined in §47(c)(2), Title 26 of the United States Code, as amended: *Provided,* That for qualified rehabilitation expenditures made after December 31, 2017, pursuant to an historic preservation certification application, Part 2 – Description of Rehabilitation, received by the state historic preservation office after December 31, 2017, the credit allowed by this section is equal to 25 percent of the qualified rehabilitation expenditure, subject to the limitations and other provisions of §11-24-23a of this code : *Provided, however,* That the credit authorized by this section for qualified rehabilitation expenditures made after December 31,

2017, may not be used to offset tax liabilities of the taxpayer prior to the tax year beginning on or after January 1, 2020: *Provided further,* That the taxpayer is not entitled to this credit if, when the applicant begins to claim the credit and throughout the time period within which the credit is claimed, the taxpayer is in arrears in the payment of any tax administered by the Tax Division or the taxpayer is delinquent in the payment of any local or municipal tax, or the taxpayer is delinquent in the payment of property taxes on the property containing the certified historic tax structure when the applicant begins to claim the credit and throughout the time period within which the credit is claimed. The Tax Commissioner shall promulgate procedural rules in accordance with §29A-3-1 *et seq.* of this code that provide what information must accompany any claim for the tax credit for the determination that the taxpayer is not in arrears in the payment of any tax administered by the Tax Division, is not delinquent in the payment of any local or municipal tax, nor is the taxpayer delinquent in the payment of property taxes on the property containing the certified historic tax structure, and such other administrative requirements as the Tax Commissioner may specify. This credit is available for both residential and nonresidential buildings located in this state, that are reviewed by the West Virginia Division of Culture and History and designated by the National Park Service, United States Department of the Interior as "certified historic structures", and further defined as a "qualified rehabilitated building," as defined under §47(c)(1), Title 26 of the United States Code, as amended.

ARTICLE 24. CORPORATION NET INCOME TAX.

§11-24-23a. Credit for qualified rehabilitated buildings investment.

(a) A credit against the tax imposed by the provisions of this article shall be allowed as follows:

Certified historic structures. – For certified historic structures, the credit is equal to 10 percent of qualified rehabilitation expenditures as defined in §47(c)(2), Title 26 of the United States Code, as amended: *Provided,* That for qualified rehabilitation expenditures made after December 31, 2017, pursuant to an

historic preservation certification application, Part 2 – Description of Rehabilitation, received by the state historic preservation office after December 31, 2017, the credit allowed by this section is equal to 25 percent of the qualified rehabilitation expenditure: *Provided, however,* That the credit authorized by this section for qualified rehabilitation expenditures made after December 31, 2017, may not be used to offset tax liabilities of the taxpayer prior to the tax year beginning on or after January 1, 2020: *Provided further,* That the taxpayer is not entitled to this credit if, when the applicant begins to claim the credit and throughout the time period within which the credit is claimed, the taxpayer is in arrears in the payment of any tax administered by the Tax Division or the taxpayer is delinquent in the payment of any local or municipal tax, or the taxpayer is delinquent in the payment of property taxes on the property containing the certified historic tax structure when the applicant begins to claim the credit and throughout the time period within which the credit is claimed. The Tax Commissioner shall promulgate procedural rules in accordance with §29A-3-1 *et seq.* of this code that provide what information must accompany any claim for the tax credit for the determination that the taxpayer is not in arrears in the payment of any tax administered by the Tax Division, is not delinquent in the payment of any local or municipal tax, nor is the taxpayer delinquent in the payment of property taxes on the property containing the certified historic tax structure, and such other administrative requirements as the Tax Commissioner may specify. This credit is available for both residential and nonresidential buildings located in this state that are reviewed by the West Virginia Division of Culture and History and designated by the National Park Service, United States Department of the Interior as "certified historic building", and further defined as a "qualified rehabilitated building", as defined under §47(c)(1), Title 26, of the United States Code, as amended.

(b) *Allocations and maximum amounts of tax credits per project and per fiscal year -*

(1) No more than $10 million of the tax credits authorized by this section and section eight-a, article twenty-one of this chapter

may be allocated, reserved or issued by the state historic preservation officer to any single certified rehabilitation.

(2) No more than $30 million of the tax credits authorized by this section and section eight-a, article twenty-one of this chapter cumulatively may be issued by the state historic preservation officer for use in any given West Virginia state fiscal year, and any amount remaining up to $30 million may not be carried over to a subsequent West Virginia state fiscal year.

(3) At the beginning of each fiscal year, no less than $5 million of the tax credits authorized by this section and §11-21-8a of this code shall be set aside for reservation and the issuance of tax credits for certified rehabilitation projects with proposed tax credits of $500,000. The balance of any amount set aside for these projects that has not been reserved pursuant to the procedures in subsection (c) of this section by the end of the fiscal year shall be allocated by the state historic preservation officer for the projects in any amount of other pending applicants otherwise eligible for the issuance of tax credits under this section and §11-21-8a of this code in the order that the applications for those projects were received.

(c) *Procedure for issuance of tax credits reservations and certificates by the state historic preservation officer –*

(1) Any claim for the tax credits authorized pursuant to this section and §11-21-8a of this code shall be accompanied by a tax credit certificate issued by the state historic preservation officer.

(2) The tax credits will be awarded on a first come, first served basis. At the time the historic preservation certification application, Part 2 – Description of Rehabilitation, is received by the state historic preservation office, the project will be placed on a reservation list, which will reserve the tax credit amount listed on the application. The historic preservation certification application, Part 2 – Description of Rehabilitation, will be reviewed by the State Historic Preservation Office for completion and submitted to the National Park Service for full review. At the time the historic preservation certification application, Part 2 – Description of Rehabilitation, is submitted to the National Park Service, the state

historic preservation officer shall send a request for the fee prescribed in subsection (e) of this section to the property owner. Upon approval of the historic preservation certification application, Part 2 – Description of Rehabilitation, from the National Park Service, including approval with conditions, that the project will meet the Secretary of the Interior's standards for rehabilitation, the owner of the building will receive guarantee of the tax credits from the State Historic Preservation Office.

(3) The state historic preservation officer shall issue tax credit certificates for certified rehabilitation projects that the National Park Service has determined have met the Secretary of the Interior standards for rehabilitation based on the issuance of an approved historic preservation certification application, Part 3 – Request for Certification of Completed Work.

(4) Once the state historic preservation officer has allocated and reserved the maximum tax credits authorized for any given West Virginia state fiscal year, the state historic preservation officer then shall allocate and reserve tax credits against the maximum tax credits authorized for use in the succeeding West Virginia state fiscal year.

(5) If an applicant for tax credits that receives a reservation for tax credits for any given West Virginia state fiscal year fails to submit an approved historic preservation certification application, Part 3 – Request for Certification of Completed Work in the instance of a certified rehabilitation within 36 months of the date of the approved historic preservation certification application, Part 2 – Description of Rehabilitation, therefor or in the instance of a phased project as determined by the National Park Service within 60 months of the date of the advisory determination by the National Park Service therefor that such phase has been completed in accordance with the Secretary of the Interior standards for rehabilitation then the state historic preservation officer may reallocate part or all of the tax credits reserved therefor to other applicants in the order their applications were received.

(d) The state historic preservation officer shall prescribe and publish a form and instructions for an application for reservation

and issuance of the tax credits authorized by this section and §11-21-8a of this code.

(e) *Application fee* - Each application for tax credits authorized pursuant to this section and §11-21-8a of this code shall require a fee payable to the state historic preservation officer equal to the lesser of: (1) 0.5% of the amount of the tax credits requested for in such application; and (2) $10,000. The state historic preservation officer shall review and act on all such applications within 30 days of receipt.

Fees collected under this subsection shall be deposited into a special revenue account which is hereby created. The fund shall be administered by the state historic preservation officer and expended for the purposes of administering the provisions of this section and section eight-a, article twenty-one of this chapter.

CHAPTER 250

(S. B. 397 - By Senator Maroney)

[Passed April 7, 2021; in effect from passage]
[Approved by the Governor on April 21, 2021.]

AN ACT to amend and reenact §11-27-39 of the Code of West Virginia, 1931, as amended, relating to certain health care provider taxes; modifying definition of "eligible acute care hospital" for purposes of certain tax; modifying effective date; and removing expiration date for the tax.

Be it enacted by the Legislature of West Virginia:

ARTICLE 27. HEALTH CARE PROVIDER TAXES.

§11-27-39. Contingent increase of tax rate on certain eligible acute care hospitals to increase practitioner payment fee schedules.

(a) In addition to the rate of the tax imposed by §11-27-9, §11-27-15, and §11-27-38 of this code on providers of inpatient and outpatient hospital services, there shall be imposed on certain eligible acute care hospitals an additional tax of 0.13 percent on the gross receipts received or receivable by an eligible acute care hospital that provides inpatient or outpatient hospital services in this state.

(b) For purposes of this section, the term "eligible acute care hospital" means any inpatient or outpatient hospital conducting operations in this state that is not:

(1) A state-owned or designated facility;

(2) A critical access hospital designated as a critical access hospital after meeting all federal eligibility criteria;

(3) A licensed free-standing psychiatric or medical rehabilitation hospital;

(4) A licensed long-term acute care hospital; or

(5) A facility designated pursuant to §16-5B-14 of this code.

(c) The provisions of this section are intended to maximize federal funding to increase practitioner payment fee schedules for practitioners employed by eligible acute care hospitals as described in this section. For the purposes of this section, the term "practitioner" means a physician licensed pursuant to the provisions of §30-3-1 *et seq.* and §30-14-1 *et seq.* of this code.

(d) The taxes imposed by this section may not be imposed or collected until the occurrence of each of the following:

(1) The West Virginia Bureau for Medical Services incorporates the payment methodology into the appropriate contracts and agreements; and

(2) The West Virginia Bureau for Medical Services receives the necessary approvals from the Centers for Medicare and Medicaid Services.

(e) There is hereby created a special fund known as the Acute Care Clearing Fund. The amount of taxes collected under this section and under §11-27-38 of this code, including any interest, additions to tax, and penalties collected under §11-10-1 *et seq.* of this code, less the amount of allowable refunds, the amount of any interest payable with respect to such refunds, and costs of administration and collection, shall be deposited into the Acute Care Clearing Fund created by this section. The Tax Commissioner shall establish and maintain the funds collected under this section and then periodically distribute the same by the fifth day of the month following the end of the calendar quarter in which the taxes were collected. Provided, that notwithstanding any provision of the code to the contrary, the portion attributable to the taxes, any

interest, additions to tax, and penalties associated with the tax imposed under §11-27-38 of this code shall be distributed into the Eligible Acute Care Provider Enhancement Account created under that section and the portion attributable to the taxes, any interest, additions to tax, and penalties associated with the tax imposed under this section shall be distributed into a new account to be created under the Medicaid State Share Fund to be designated as the Eligible Acute Care Practitioner Enhancement Account. Disbursements from the Eligible Acute Care Practitioner Enhancement Account within the Medicaid State Share Fund may be used only to support increasing practitioner payment fee schedules for practitioners employed by eligible acute care hospitals.

(f) The imposition and collection of taxes imposed by this section shall be suspended immediately upon the occurrence of any of the following:

(1) The effective date of any action by Congress that would disqualify the taxes imposed by this section from counting towards state Medicaid funds available to be used to determine the federal financial participation;

(2) The effective date of any decision, enactment, or other determination by the Legislature or by any court, officer, department, agency, or office of the state or federal government that disqualifies the tax from counting towards state Medicaid funds available to determine federal financial participation for Medicaid matching funds or creates for any reason a failure of the state to use the assessment of the Medicaid program as described in this section; and

(3) If the tax payments remitted by the eligible acute care hospitals are not used to effectuate the provisions of this section.

(g) Any funds remaining in the Eligible Acute Care Practitioner Enhancement Account, upon the occurrence of any of the events described in subsection (f) of this section, that cannot be used to match eligible federal Medicaid funds for this program, shall be transferred to the West Virginia Medical Services Fund. These

funds shall be used during the state fiscal year in which they were transferred at the discretion of the West Virginia Bureau for Medical Services.

(h) The amendments to this section enacted in the regular session of the Legislature, 2021, are effective beginning July 1, 2021.

CHAPTER 251

(S. B. 437 - By Senators Maroney, Plymale, and Woelfel)

[Passed April 5, 2021; in effect from passage]
[Approved by the Governor on April 15, 2021.]

AN ACT to amend and reenact §11-27-38 of the Code of West Virginia, 1931, as amended, relating to health care provider tax; defining terms; modifying the effective date; and removing the expiration date for the tax.

Be it enacted by the Legislature of West Virginia:

ARTICLE 27. HEALTH CARE PROVIDER TAXES.

§11-27-38. Contingent increase of tax rate on certain eligible acute care hospitals.

(a) In addition to the rate of the tax imposed by §11-27-9 and §11-27-15 of this code on providers of inpatient and outpatient hospital services, there is imposed on certain eligible acute care hospitals an additional tax of 75 one-hundredths of one percent on the gross receipts received or receivable by eligible acute care hospitals that provide inpatient or outpatient hospital services in this state through a directed payment program, or its successor, in accordance with 42 C.F.R. 438.6.

(b) For purposes of this section, the term "eligible acute care hospital" means any inpatient or outpatient hospital conducting business in this state that is not:

(1) A state-owned or -designated facility;

(2) A critical access hospital, designated as a critical access hospital after meeting all federal eligibility criteria;

(3) A licensed free-standing psychiatric or medical rehabilitation hospital;

(4) A licensed long-term acute care hospital; or

(5) A facility designated pursuant to §16-5B-14 of this code.

(c) There is continued a special revenue account in the State Treasury designated the Medicaid State Share Fund. The amount of taxes collected under this section, including any interest, additions to tax and penalties collected under §11-10-1 *et seq.* of this code, less the amount of allowable refunds, the amount of any interest payable with respect to such refunds, and costs of administration and collection, shall be deposited into the special revenue fund and do not revert to General Revenue. The Tax Commissioner shall establish and maintain a separate account and accounting for the funds collected under this section in an account to be designated as the Eligible Acute Care Provider Enhancement Account. The amounts collected shall be deposited, within 15 days after receipt by the Tax Commissioner, into the Eligible Acute Care Provider Enhancement Account. Disbursements from the Eligible Acute Care Provider Enhancement Account within the Medicaid State Share Fund may only be used to support West Virginia Medicaid and the directed payment program, or its successor, in accordance with 42 C.F.R. 438.6 and as otherwise set forth in this section.

(d) The imposition and collection of taxes imposed by this section is suspended immediately upon the occurrence of any of the following:

(1) The effective date of any action by Congress that would disqualify the taxes imposed by this section from counting toward state Medicaid funds available to be used to determine the federal financial participation;

(2) The effective date of any decision, enactment, or other determination by the Legislature or by any court, officer, department, agency, or office of state or federal government that has the effect of disqualifying the tax from counting toward state

Medicaid funds available to be used to determine federal financial participation for Medicaid matching funds or creating for any reason a failure of the state to use the assessment of the Medicaid program as described in this section; and

(3) If the tax payments remitted by the eligible acute care hospitals are not used to effectuate the provisions of this article.

(e) Any funds remaining in the Eligible Acute Care Provider Enhancement Account as of June 30, 2021, and on June 30 of each year thereafter, shall be transferred to the West Virginia Medical Services Fund after that June 30 but no later than the next ensuing September 30. These funds shall be used during the state fiscal year in which they were transferred at the discretion of the Bureau for Medical Services.

(f) The changes to the tax rate in this section enacted in the regular session of the Legislature, 2021, are effective July 1, 2021.

CHAPTER 252

(S. B. 532 - By Senator Tarr)

[Passed April 10, 2021; to take effect July 1, 2021]
[Approved by the Governor on April 21, 2021.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §11-10-5ee, relating to limitations on claiming state tax credits and rebates; and providing rule-making authority.

Be it enacted by the Legislature of West Virginia:

ARTICLE 10. WEST VIRGINIA TAX PROCEDURE AND ADMINISTRATION ACT.

§11-10-5ee. Limitations on claiming credits and rebates; rulemaking.

(a) No capital investment used to qualify for a state tax credit or rebate can be used to qualify for any additional state tax credit or rebate, unless permission to do so has been specifically set forth in the provisions of this code establishing the relevant state tax credits or rebates.

(b) If the provisions of subsection (a) of this section are violated, the State Tax Commissioner shall allow only one of the credits or rebates based upon the following criteria:

(1) The Tax Commissioner shall allow the credit or rebate that has previously been granted based upon the capital investment in question; or

(2) If no credit or rebate based upon the capital investment in question has previously been granted, the Tax Commissioner shall

allow the credit or rebate that is most favorable to the taxpayer and deny the additional credits and rebates for which the capital investment was claimed.

(c) When a liability occurs based upon subsection (b) of this section, the following provisions shall apply:

(1) An assessment shall be issued in accordance with the provisions of §11-10-7 of this code;

(2) Interest shall be charged in accordance with the provisions of §11-10-17 of this code; and

(3) Additions to tax shall be charged in accordance with the provisions of §11-10-18 of this code.

(d) The provisions of this section are effective for capital investments made on or after January 1, 2022.

(e) The State Tax Commissioner has the authority to draft emergency, interpretive, procedural, or legislative rules at his or her discretion to administer and carry out the provisions of this section.

CHAPTER 253

(Com. Sub. for S. B. 641 - By Senators Phillips, Stollings, Lindsay, Smith, Hamilton, Unger, and Woodrum)

[Passed April 9, 2021, to take effect July 1, 2021]
[Approved by the Governor on April 26, 2021.]

AN ACT to amend and reenact §11-13A-6a of the Code of West Virginia, 1931, as amended, relating to coal severance tax; and providing for the use of severance funds for litter programs.

Be it enacted by the Legislature of West Virginia:

ARTICLE 13A. SEVERANCE AND BUSINESS PRIVILEGE TAX ACT.

§11-13A-6a. Reallocation and dedication of percentage of severance tax for benefit of coal-producing counties; phase-in period; permissible uses of distributed revenues; duties of State Treasurer and State Tax Commissioner; audits; rulemaking.

(a) The purpose of this section is to provide for the reallocation and dedication of a portion of the tax attributable to the severance of coal imposed by §11-13A-3 of this code for the use and benefit of the various counties of this state in which the coal upon which that tax is imposed was located at the time it was severed from the ground. Those counties are referred to in this section as the "coal-producing counties" or, in the singular, as a "coal-producing county".

(b)(1) Effective July 1, 2012, one percent of the tax attributable to the severance of coal imposed by §11-13A-3 of this code is dedicated and shall be distributed for the use and benefit of the coal-producing counties as provided in this section. Effective July

1, 2013, two percent of the tax attributable to the severance of coal imposed by §11-13A-3 of this code is dedicated and shall be distributed for the use and benefit of the coal-producing counties as provided in this section. Effective July 1, 2014, three percent of the tax attributable to the severance of coal imposed by §11-13A-3 of this code is dedicated and shall be distributed for the use and benefit of the coal-producing counties as provided in this section. Effective July 1, 2015, four percent of the tax attributable to the severance of coal imposed by §11-13A-3 of this code is dedicated and shall be distributed for the use and benefit of the coal-producing counties as provided in this section. Effective July 1, 2016, and thereafter, five percent of the tax attributable to the severance of coal imposed by §11-13A-3 of this code is dedicated and shall be distributed for the use and benefit of the coal-producing counties as provided in this section. Effective July 1, 2019, and thereafter, the portion of the severance tax on coal imposed by §11-13A-3 of this code dedicated and to be distributed for the use and benefit of the coal-producing counties as provided in this subsection shall not be less than the amount distributed pursuant to this subsection for the fiscal year beginning July 1, 2018.

(2) In no fiscal year may the proceeds dedicated in subdivision (1) of this subsection exceed the sum of $20 million.

(3) For purposes of this subsection, the tax attributable to the severance of coal imposed by §11-13A-3 of this code does not include the thirty-five one hundredths of one percent additional severance tax on coal imposed by the state for the benefit of counties and municipalities as provided in §11-13A-6 of this code.

(c) The amounts of the tax dedicated in subsection (b) of this section shall be deposited, from time to time, into a special fund known as the Coal County Reallocated Severance Tax Fund, which is hereby established in the State Treasury, as the proceeds are received by the State Tax Commissioner.

(d) The net proceeds of the deposits made into the Coal County Reallocated Severance Tax Fund shall be allocated among and distributed quarterly to the coal-producing counties by the State

Treasurer in the manner specified in this section. On or before each distribution date, the State Treasurer shall determine the total amount of moneys that will be available for distribution to the respective counties entitled to the moneys on that distribution date. The amount to which a coal-producing county is entitled from the Coal County Reallocated Severance Tax Fund shall be determined in accordance with subsection (e) of this section. After determining, as set forth in subsection (e) of this section, the amount each coal-producing county is entitled to receive from the fund, a warrant of the State Auditor for the sum due to each coal-producing county shall be issued and a check drawn thereon making payment of that amount shall thereafter be distributed to each such coal-producing county by hand, mail, commercial delivery, or electronic transmission.

(e) The amount to which a coal-producing county is entitled from the Coal County Reallocated Severance Tax Fund shall be determined by:

(1) Dividing the total amount of moneys in the fund then available for distribution by the total number of tons of coal mined in this state during the preceding quarter; and

(2) Multiplying the quotient thus obtained by the number of tons of coal removed from the ground in the county during the preceding quarter.

(f) (1) No distribution made to a county under this section may be deposited into the county's general revenue fund. The county commission of each county receiving a distribution under this section shall establish a special account to be known as the (Name of County) Coal County Reallocated Severance Tax Fund into which all distributions made to that county under this section shall be deposited.

(2) Moneys in the county's coal county reallocated severance tax fund shall be expended by the county commission solely for economic development projects and infrastructure projects.

(3) For purposes of this section:

(A) "Economic development project" means a project in the state which is likely to foster economic growth and development in the area in which the project is developed for commercial, industrial, community improvement or preservation, or other proper purposes.

(B) "Infrastructure project" means a project in the state which is likely to foster infrastructure improvements including, but not limited to, post-mining land use, any water or wastewater facilities or any part thereof, storm water systems, steam, gas, telephone and telecommunications, broadband development, electric lines and installations, roads, bridges, railroad spurs, drainage and flood control facilities, industrial park development or buildings that promote job creation and retention, or litter cleanup programs.

(4) A county commission may not expend any of the funds available in its coal county reallocated severance tax fund for personal services, for the costs of issuing bonds, or for the payment of bond debt service, and shall direct the total funds available in its coal county reallocated severance tax fund to project development, which may include the costs of architectural and engineering plans, site assessments, site remediation, specifications and surveys, and any other expenses necessary or incidental to determining the feasibility or practicability of any economic development project or infrastructure project.

(5) On or before December 31, 2013, and December 1 of each year thereafter, the county commission of each county receiving a distribution of funds under this section shall deliver to the Joint Committee on Government and Finance a written report setting forth the specific projects for which those funds were expended during the next preceding fiscal year, a detailed account of those expenditures, and a showing that the expenditures were made for the purposes required by this section.

(g) An audit of any funds distributed under this section may be authorized at any time by the Joint Committee on Government and Finance to be conducted by the Legislative Auditor at no cost to the county commission or county commissions audited.

(h) The State Tax Commissioner shall propose for promulgation legislative rules pursuant to §29A-3-1 *et seq.* of this code for the administration of the provisions of this section, and is authorized to promulgate emergency rules for those purposes pursuant to that article.

CHAPTER 254

(S. B. 661 - By Senator Maynard)

[Passed April 9, 2021; to take effect July 1, 2021]
[Approved by the Governor on April 26, 2021.]

AN ACT to repeal §11-9-7 of the Code of West Virginia, 1931, as amended; to amend and reenact §11-15-3, §11-15-4, §11-15-4a, §11-15-4b, and §11-15-13 of said code; and to amend and reenact §11-15A-5, §11-15A-6, and §11-15A-8 of said code, all relating to permitting retailers to assume or absorb any sales or use tax assessed on tangible personal property; and eliminating criminal penalties.

Be it enacted by the Legislature of West Virginia:

ARTICLE 9. CRIMES AND PENALTIES.

§11-9-7. False statements to purchasers, lessees, or employees relating to tax.

[Repealed.]

ARTICLE 15. CONSUMERS SALES AND SERVICE TAX.

§11-15-3. Amount of tax; allocation of tax and transfers.

(a) *Vendor to collect*. — Unless otherwise provided in this article or provided in §11-15A-1 *et seq.* of this code, for the privilege of selling tangible personal property or custom software and for the privilege of furnishing certain selected services defined in §11-15-2 and §11-15-8 of this code, the vendor shall collect from the purchaser the tax as provided under this article and §11-15B-1 *et seq.* of this code, and shall pay the amount of tax to the Tax

Commissioner in accordance with the provisions of this article or §11-15B-1 *et seq.* of this code.

(b) *Amount of tax.* — The general consumers sales and service tax imposed by this article shall be at the rate of six cents on the dollar of sales or services, excluding gasoline and special fuel sales, which remain taxable at the rate of five cents on the dollar of sales.

(c) *Calculation tax on fractional parts of a dollar until January 1, 2004.* — There shall be no tax on sales where the monetary consideration is five cents or less. The amount of the tax shall be computed as follows:

(1) On each sale, where the monetary consideration is from six cents to 16 cents, both inclusive, one cent.

(2) On each sale, where the monetary consideration is from 17 cents to 33 cents, both inclusive, two cents.

(3) On each sale, where the monetary consideration is from 34 cents to 50 cents, both inclusive, three cents.

(4) On each sale, where the monetary consideration is from 51 cents to 67 cents, both inclusive, four cents.

(5) On each sale, where the monetary consideration is from 68 cents to 84 cents, both inclusive, five cents.

(6) On each sale, where the monetary consideration is from 85 cents to $1, both inclusive, six cents.

(7) If the sale price is in excess of $1, six cents on each whole dollar of sale price, and upon any fractional part of a dollar in excess of whole dollars as follows: One cent on the fractional part of the dollar if less than 17 cents; two cents on the fractional part of the dollar if in excess of 16 cents but less than 34 cents; three cents on the fractional part of the dollar if in excess of 33 cents but less than 51 cents; four cents on the fractional part of the dollar if in excess of 50 cents but less than 68 cents; five cents on the fractional part of the dollar if in excess of 67 cents but less than 85 cents; and six cents on the fractional part of the dollar if in excess

of 84 cents. For example, the tax on sales from $1.01 to $1.16, both inclusive, seven cents; on sales from $1.17 to $1.33, both inclusive, eight cents; on sales from $1.34 to $1.50, both inclusive, nine cents; on sales from $1.51 to $1.67, both inclusive, 10 cents; on sales from $1.68 to $1.84, both inclusive, 11 cents; and on sales from $1.85 to $2, both inclusive, 12 cents: *Provided,* That beginning January 1, 2004, tax due under this article shall be calculated as provided in this subsection and subsection (d) of this section does not apply to sales made after December 31, 2003.

(d) *Calculation of tax on fractional parts of a dollar after December 31, 2003*. — Beginning January 1, 2004, the tax computation under subsection (b) of this section shall be carried to the third decimal place, and the tax rounded up to the next whole cent whenever the third decimal place is greater than four and rounded down to the lower whole cent whenever the third decimal place is four or less. The vendor may elect to compute the tax due on a transaction on a per item basis or on an invoice basis provided the method used is consistently used during the reporting period.

(e) *No aggregation of separate sales transactions, exception for coin-operated devices.* — Separate sales, such as daily or weekly deliveries, shall not be aggregated for the purpose of computation of the tax even though the sales are aggregated in the billing or payment therefor. Notwithstanding any other provision of this article, coin-operated amusement and vending machine sales shall be aggregated for the purpose of computation of this tax.

(f) *Rate of tax on certain mobile homes*. — Notwithstanding any provision of this article to the contrary, after December 31, 2003, the tax levied on sales of mobile homes to be used by the owner thereof as his or her principal year-round residence and dwelling shall be an amount equal to six percent of 50 percent of the sales price.

(g) *Construction; custom software*. — After December 31, 2003, whenever the words "tangible personal property" or "property" appear in this article, the same shall also include the words "custom software".

(h) *Computation of tax on sales of gasoline and special fuel.* — The method of computation of tax provided in this section does not apply to sales of gasoline and special fuel.

§11-15-4. Purchaser to pay; accounting by vendor.

(a) Unless assumed or absorbed by the vendor in accordance with the provisions of §11-15A-8 of this code, the purchaser shall pay to the vendor the amount of tax levied by this article which is added to and constitutes a part of the sales price, and is collectible by the vendor who shall account to the state for all tax paid by the purchaser.

(b) The vendor shall keep records necessary to account for:

(1) The vendor's gross proceeds from sales of personal property and services;

(2) The vendor's gross proceeds from taxable sales;

(3) The vendor's gross proceeds from exempt sales;

(4) The amount of taxes collected under this article, which taxes shall be held in trust for the State of West Virginia until paid over to the Tax Commissioner or if assumed or absorbed in accordance with the provisions of §11-15A-8 of this code, the extent to which such taxes were so absorbed or assumed; and

(5) Any other information as required by this article or §11-15B-1 *et seq.* of this code, or as required by the Tax Commissioner.

§11-15-4a. Noncollection of tax; liability of vendor.

If any vendor does not collect the tax imposed by §11-15-3 of this code, the vendor shall be personally liable for the amount the vendor did not collect, except as otherwise provided in this article or §11-15B-1 *et seq.* of this code.

§11-15-4b. Liability of purchaser; assessment and collection.

(a) *General.* — Unless the vendor assumed or absorbs the tax imposed by this article in accordance with §11-15A-8 of this code,

if any purchaser refuses or otherwise does not pay to the vendor the tax imposed by §11-15-3 of this code, or a purchaser refuses to present to the vendor a proper certificate indicating the sale is not subject to this tax, or presents to the vendor a false certificate, or after presenting a proper certificate uses the items purchased in a manner that the sale would be subject to the tax, the purchaser shall be personally liable for the amount of tax applicable to the transaction or transactions.

(b) *Collection of tax from purchaser*. — Except as otherwise provided in this chapter, nothing in this section relieves any purchaser who owes the tax and who has not paid the tax imposed by §11-15-3 of this code from liability for payment of the tax. In those cases, the Tax Commissioner has authority to make an assessment against the purchaser, based upon any information within his or her possession or that may come into his or her possession. This assessment and notice thereof shall be made and given in accordance with §11-10-7 and §11-10-8 of this code.

(c) *Liability of vendor*. — This section may not be construed as relieving the vendor from liability for the tax, except as otherwise provided in this article or §11-15B-1 *et seq.* of this code.

§11-15-13. Remittance of tax when sale on credit.

A vendor doing business wholly or partially on a credit basis shall remit to the Tax Commissioner the tax due on the credit sale for the month in which the credit transaction occurred.

ARTICLE 15A. USE TAX.

§11-15A-5. How collected.

Unless otherwise provided in this chapter, the tax imposed in §11-15A-2 of this code shall be collected in the following manner:

(1) The tax upon the use of all tangible personal property, custom software or services, sold by a retailer engaging in business in this state, or by any other retailer as the Tax Commissioner authorizes pursuant to §11-15A-7 or §11-15B-1 *et seq.* of this code, shall be collected by the retailer and remitted to the State Tax

Commissioner, pursuant to the provisions of §11-15A-6 through §11-15A-10, inclusive, of this code, or by the seller registered under §11-15B-1 *et seq.* of this code, in accordance with the provisions of this article and §11-15B-1 *et seq.* of this code.

(2) The tax upon the use of all tangible personal property, custom software, and taxable services not paid pursuant to subdivision (1) of this section, shall be paid to the Tax Commissioner directly by any person using the property or service within this state, pursuant to the provisions of §11-15A-11 of this code.

§11-15A-6. Collection by retailer.

(a) Unless otherwise provided in this chapter, every retailer engaging in business in this state and making sales of tangible personal property, custom software, or taxable services for delivery into this state, or with the knowledge, directly or indirectly, that the property or service is intended for use in this state, that are not exempted under the provisions of §11-15A-3 of this code, shall at the time of making the sales, whether within or without the state, collect the tax imposed by this article from the purchaser, and give to the purchaser a receipt therefor in the manner and form prescribed by the Tax Commissioner, if the Tax Commissioner prescribes by rule.

(b) Each retailer shall list with the Tax Commissioner the name and address of all the retailer's agents operating in this state, and the location of any and all distribution or sales houses or offices or other places of business in this state of the retailer and the retailer's agent or agents.

§11-15A-8. Absorbing tax.

(a) A retailer may advertise or hold out or state to the public or to any purchaser, consumer or user, directly or indirectly, that the tax or any part thereof imposed by this article will be assumed or absorbed by the retailer or that any part required to be added to the purchase price will be refunded, so long as:

(1) The retailer separately states the selling price of the property sold and the full amount of tax imposed by this article on such property; and

(2) For each sale for which the retailer assumes or absorbs all or any part of the tax imposed by this article, the retailer shall remit to the Department of Tax and Revenue the full amount of such tax with the return that covers the period in which the retailer completed the sale or transaction.

(b) The Tax Commissioner has the power to adopt and promulgate rules for adding, assuming, or absorbing the tax, or the equivalent thereof, by providing different methods applying uniformly to retailers within the same general classification for the purpose of enabling retailers to add, assume, absorb, or collect, as far as practicable, the amount of the tax.

(c) The provisions of this section shall apply to §11-15-1 *et seq.* of this code, with the same force and effect as if this section was expressly incorporated therein.

CHAPTER 255

(S. B. 693 - By Senators Blair (Mr. President) and Baldwin)

[By Request of the Executive]

[Passed April 2, 2021; in effect from passage]
[Approved by the Governor on April 13, 2021.]

AN ACT to amend and reenact §11-21-9 of the Code of West Virginia, 1931, as amended, relating to updating meaning of federal adjusted gross income and certain other terms used in West Virginia Personal Income Tax Act; and specifying effective dates.

Be it enacted by the Legislature of West Virginia:

ARTICLE 21. WEST VIRGINIA PERSONAL INCOME TAX.

*§11-21-9. Meaning of terms.

(a) Any term used in this article has the same meaning as when used in a comparable context in the laws of the United States relating to income taxes, unless a different meaning is clearly required. Any reference in this article to the laws of the United States means the provisions of the Internal Revenue Code of 1986, as amended, and any other provisions of the laws of the United States that relate to the determination of income for federal income tax purposes. All amendments made to the laws of the United States after December 31, 2019, but prior to March 12, 2021, shall be given effect in determining the taxes imposed by this article to the same extent those changes are allowed for federal income tax purposes, whether the changes are retroactive or prospective, but

*NOTE: This section was also amended by H. B. 2358 (Chapter 258), which passed prior to this act.

no amendment to the laws of the United States made on or after March 12, 2021, may be given any effect.

(b) *Medical savings accounts*. — The term "taxable trust" does not include a medical savings account established pursuant to §33-15-20 or §33-16-15 of this code. Employer contributions to a medical savings account established pursuant to those sections are not wages for purposes of withholding under §11-21-71 of this code.

(c) *Surtax*. — The term "surtax" means the 20 percent additional tax imposed on taxable withdrawals from a medical savings account under §33-15-20 of this code and the 20 percent additional tax imposed on taxable withdrawals from a medical savings account under §33-16-15 of this code which are collected by the Tax Commissioner as tax collected under this article.

(d) *Effective date*. — The amendments to this section enacted in the year 2021 are retroactive to the extent allowable under federal income tax law. With respect to taxable years that began prior to January 1, 2021, the law in effect for each of those years shall be fully preserved as to that year, except as provided in this section.

(e) For purposes of the refundable credit allowed to a low-income senior citizen for property tax paid on his or her homestead in this state, the term "laws of the United States" as used in subsection (a) of this section means and includes the term "low income" as defined in §11-21-21(b) of this code and as reflected in the poverty guidelines updated periodically in the federal register by the U.S. Department of Health and Human Services under the authority of 42 U.S.C. § 9902(2).

(f) For taxable years beginning on and after January 1, 2018, whenever this article refers to "each exemption for which he or she is entitled to a deduction for the taxable year for federal income tax purposes", this phrase means the exemption the person would have been allowed to claim for the taxable year had the federal income tax law not been amended to eliminate the personal exemption for federal tax years beginning on or after January 1, 2018.-

CHAPTER 256

(S. B. 718 - By Senators Tarr, Sypolt, Swope, Hamilton, Clements, Roberts, Nelson, and Martin)

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

AN ACT to amend and reenact §11-13EE-2, §11-13EE-3, §11-13EE-5, and §11-13EE-16 the Code of West Virginia, 1931, as amended, all relating generally to the Coal Severance Tax Rebate; defining terms; providing for rebate of severance tax when capital investment made in new machinery and equipment directly used in severance of coal, or in coal preparation and processing plants; providing rules and procedures for claiming rebate and transfer to successors; and providing that changes clarifying application of rebate are to be applied retroactive to capital investments placed into service after the original effective date of this article.

Be it enacted by the Legislature of West Virginia:

ARTICLE 13EE. COAL SEVERANCE TAX REBATE.

§11-13EE-2. Definitions.

(a) *General*. — When used in this article, or in the administration of this article, terms defined in subsection (b) shall have the meanings ascribed to them by this section, unless a different meaning is clearly required by either the context in which the term is used, or by specific definition, in this article.

(b) *Terms defined*. —

(1) "Affiliated group" means one or more chains of corporations, limited liability entities, or partnerships, or any

combination thereof, connected through the ownership of stock or ownership interests with a common parent which is a corporation, limited liability entity, or partnership, but only if the common parent owns directly, or indirectly, a controlling interest in each of the members of the group.

(2) "Base period" means the five-year period directly preceding the year the qualifying capital investment in new machinery and equipment was placed into service.

(3) "Base period annual average severance taxes" means the annual average of the State portion of severance taxes paid under §11-13A-3 of this code during the five-year period directly preceding the year the qualifying capital investment in new machinery and equipment was placed into service. The annual average of the state portion of severance taxes is found by taking the cumulative total of the state portion of severance taxes paid from all mines operated within the State by the eligible taxpayer and dividing the aggregate cumulative total of the state portion of severance taxes by five.

(4) "Capital investment in new machinery and equipment" means:

(A) Tangible personal property in the form of machinery and equipment that is purchased on or after the effective date of this article and placed in service for direct use in the production of coal, when the original or first use of the machinery or equipment in this state commences on or after the effective date of this article;

(B) Tangible personal property in the form of machinery and equipment that is leased by the taxpayer and placed in service for direct use in the production of coal by the taxpayer on or after the effective date of this article, if the original or first use of the machinery or equipment commences in this state, with the taxpayer, on or after the effective date of this article and the machinery or equipment is depreciable, or amortizable, for federal income tax purposes and has a useful life of five or more years for federal income tax purposes.

(C) Tangible personal property in the form of materials used for infrastructure improvements to real property on or after the effective date of this article and placed in service for direct use in the production of coal, when the original or first use of the materials used for the infrastructure upgrades commences in this state on or after the effective date of this article. Such infrastructure upgrades include, but are not limited to, materials used for construction of haul roads or access roads, culverts, belt lines, and ventilation fans; and

(D) Repair or refurbishment costs to tangible personal property directly used in the production of coal that are incurred on or after the effective date of this article, which are capitalized for federal income tax purposes.

(5) "Coal mine" or "mine" includes:

(A) A "surface mine" or "surface mining operation" which means:

(i) Activities conducted on the surface of lands for the removal of coal, or, subject to the requirements of §11-13EE-14 of this code, surface operations and surface impacts incident to an underground coal mine, including the drainage and discharge from the mine. The activities include: Excavation for the purpose of obtaining coal, including, but not limited to, common methods as contour, strip, auger, mountaintop removal, box cut, open pit and area mining; the uses of explosives and blasting; reclamation; in situ distillation or retorting, leaching or other chemical or physical processing; the cleaning, concentrating or other processing or preparation and loading of coal for commercial purposes at or near the mine site; and

(ii) The areas upon which the above activities occur or where the activities disturb the natural land surface. The areas also include any adjacent land, the use of which is incidental to the activities; all lands affected by the construction of new roads or the improvement or use of existing roads to gain access to the site of the activities and for haulage; and excavations, workings, impoundments, dams, ventilation shafts, entryways, refuse banks,

dumps, stockpiles, overburden piles, spoil banks, culm banks, tailings, holes or depressions, repair areas, storage areas, processing areas, shipping areas and other areas upon which are sited structures, facilities, or other property or materials on the surface, resulting from or incident to the activities: *Provided*, That the activities do not include the extraction of coal incidental to the extraction of other minerals where coal does not exceed sixteen and two-thirds percent of the tonnage of minerals removed for purposes of commercial use or sale, or coal prospecting. Surface mining does not include any of the following:

(I) Coal extraction authorized pursuant to a government-financed reclamation contract;

(II) Coal extraction authorized as an incidental part of development of land for commercial, residential, industrial or civic use; or

(III) The reclamation of an abandoned or forfeited mine by a no cost reclamation contract; and

(B) An "underground mine" which includes the shafts, slopes, drifts or inclines connected with, or intended in the future to be connected with, excavations penetrating coal seams or strata, which excavations are ventilated by one general air current or divisions thereof, and connected by one general system of mine haulage over which coal may be delivered to one or more points outside the mine, and the surface structures or equipment connected or associated therewith which contribute directly or indirectly to the mining, preparation or handling of coal.

(6) "Coal mining operation" includes the mine and the coal preparation and processing plant.

(7) "Coal preparation and processing plant" means any facility (excluding underground mining operations) which prepares coal by one or more of the following processes: breaking, crushing, screening, wet or dry cleaning, and thermal drying.

(8) "Coal production" means the privilege of severing, extracting, reducing to possession and producing coal for sale,

profit or commercial use and includes the processing of coal at a coal preparation and processing plant.

(9) "Commissioner" or "Tax Commissioner" are used interchangeably herein and mean the Tax Commissioner of the State of West Virginia, or his or her delegate.

(10) "Controlled group" means one or more chains of corporations connected through stock ownership with a common parent corporation if stock possessing at least 50 percent of the voting power of all classes of stock of each of the corporations is owned, directly or indirectly, by one or more of the corporations; and the common parent owns directly stock possessing at least 50 percent of the voting power of all classes of stock of at least one of the other corporations.

(11) "Controlling interest" means:

(A) For a corporation, either more than 50 percent ownership, directly or indirectly, of the total combined voting power of all classes of stock of the corporation, or more than 50 percent ownership, directly or indirectly, of the beneficial ownership interest in the voting stock of all classes of stock of the corporation;

(B) For a partnership, association, trust or other entity other than a limited liability company, more than 50 percent, ownership, directly or indirectly, of the capital, profits, or beneficial interest in the partnership, association, trust, or other entity;

(C) For a limited liability company, either more than 50 percent ownership, directly or indirectly, of the total membership interest of the limited liability company, or more than 50 percent ownership, directly or indirectly, of the beneficial ownership interest in the membership interest of the limited liability company.

(12) "Corporation" means any corporation, joint-stock company or association, and any business conducted by a trustee or trustees wherein interest or ownership is evidenced by a certificate of interest or ownership or similar written instrument.

(13) "Delegate" used in the phrase "or his delegate," when used in reference to the Tax Commissioner, means any officer or employee of the State Tax Department duly authorized by the Tax Commissioner directly, or indirectly by one or more redelegations of authority, to perform the functions mentioned or described in this article.

(14) "Directly used or consumed in the production of coal" means used or consumed in those activities or operations which constitute an integral and essential part of the production of coal, as contrasted with and distinguished from those activities or operations which are simply incidental, convenient or remote to the production of coal.

(A) Uses of tangible personal property which constitute direct use or consumption in the production of coal include only:

(i) New machinery and equipment that is depreciable, or amortizable, for federal income tax purposes, that has a useful life of five or more years for federal income tax purposes, and that are directly used in the production of coal in this state;

(ii) Transportation of coal within the coal mine from the coal face or coal deposit to the exterior of the mine or to a point where the extracted coal is transported away from the mine;

(iii) Directly and physically recording the flow of coal during the production of coal including those coal treatment processes specified in §11-13A-4 of this code;

(iv) Safety equipment and apparatus directly used in the production of coal, or to secure the safety of mine personnel is direct use in the production of coal;

(v) Controlling or otherwise regulating atmospheric conditions required for the production of coal;

(vi) Transformers, pumps, rock dusting equipment and other property used to supply electricity or water, or to supply or apply rock dust directly used in the production of coal;

(vii) Storing, removal or transportation of economic waste, including coal gob, resulting from the production of coal;

(viii) Engaging in pollution control or environmental quality or protection activity directly relating to the production of coal; or

(ix) Otherwise using as an integral and essential part of the production of coal.

(B) Uses of tangible personal property which do not constitute direct use or consumption in the production of coal include, but are not limited to:

(i) Heating and illumination of office buildings;

(ii) Janitorial or general cleaning activities;

(iii) Personal comfort of personnel: *Provided*, That safety equipment and apparatus directly used in the production of coal or to secure the safety of mine personnel is direct use in the production of coal when the tangible personal property is depreciable, or amortizable, for federal income tax purposes and has a useful life of five or more years for federal income tax purposes when it is placed in service or use;

(iv) Production planning, scheduling of work or inventory control;

(v) Marketing, general management, supervision, finance, training, accounting and administration;

(vi) Measuring or determining weight, and ash content, water content and other physical and chemical characteristics of the coal after production;

(vii) An activity or function incidental or convenient to the production of coal, rather than an integral and essential part of these activities.

(15) "Eligible taxpayer" means:

(A) Any person who pays the tax imposed by §11-13A-3 of this code on the privilege of producing coal for sale, profit or commercial use for at least two years before the capital investment in machinery and equipment is placed in service or use in this state; or

(B) A taxpayer that has experienced a change in business composition through merger, acquisition, split-up, spin-off or other ownership changes or changes in the form of the business organization from limited liability company to C corporation, or partnership, or from one form of business organization to a different form of business organization, may constitute an eligible taxpayer if the entity currently operating in this state was operating in a different form of business organization in this state at least two years before the capital investment in new machinery and equipment is placed in service or use in this state. In the case of business composition change through merger, acquisition, split-up, spin-off or other ownership changes the current business may constitute an eligible taxpayer if at least 50 percent of the business assets of such component were actively and directly used in coal production activity in this state for such two-year period. If less than 50 percent of the assets of the current entity were not actively and directly used in coal production activity in this state for such two-year period, then the current entity resulting from a business composition change through merger, acquisition, split-up, spin-off or other ownership, shall not constitute an eligible taxpayer.

(C) When the rebate applicant is part of a controlled or affiliated group, for purposes of determining the increase in the state portion of severance taxes paid, the increase in coal production tonnage, and the increase in full-time and full-time equivalent employment, the term, "eligible taxpayer" includes all members of the rebate applicant's controlled or affiliated group. Thus, the increase in the state portion of severance taxes is determined by subtracting the base period annual average severance taxes paid by the eligible taxpayer's controlled or affiliated group for all coal mined in this state from the state portion of severance taxes paid by the eligible taxpayer's controlled or affiliated group for all coal mined in this state during the tax year

for which the rebate is claimed. Likewise, the "eligible taxpayer's" total aggregate production tonnage and total employment figures referenced in §11-13EE-3(c)(1) and (2) are determined by reference to the controlled group or affiliated group's total aggregate production tonnage and total employment numbers across all mines operated by the controlled or affiliated group with in the state.

(16) "Full-time employee" means an employee who is compensated by an annual salary and who works, on average, at least 35 hours per week.

(17) "Full-time equivalent employee" means the quotient obtained by dividing the total number of hours for which hourly employees were compensated for employment over the 12-month period in question by 1,820.

(18) "Original use" means the first use to which the property is put by anyone in this state.

(19) "Partnership" includes a syndicate, group, pool, joint venture or other unincorporated organization through or by means of which any business, operation or venture is carried on, which is taxed under Subchapter K of the Internal Revenue Code, as defined in §11-24-3 of this code, and which is not a trust or estate, a corporation or a sole proprietorship. The term "partner" includes a member in such a syndicate, group, pool, joint venture or other unincorporated organization taxed under Subchapter K of the Internal Revenue Code.

(20) "Person" includes any natural person, corporation, partnership, limited liability company or other business entity.

(21) "Production of coal" means privilege of severing, extracting, reducing to possession and producing coal for sale, profit or commercial use and includes the processing of coal at the coal preparation and processing plant.

(22) "Property" means tangible personal property and is limited to new machinery and equipment that is depreciable or

amortizable for federal income tax purposes and that has a useful life of five or more years for federal income tax purposes.

(23) "Property purchased or leased for business expansion" means:

(A) *Included property*. — Except as provided in subparagraph (B) of this section, the term "property purchased or leased for business expansion" means tangible personal property, but only if the tangible personal property was purchased, or leased and placed in service or use by the taxpayer, for use in West Virginia. This term includes only:

(i) Tangible personal property placed in service or use by the taxpayer on or after the effective date of this article, with respect to which depreciation, or amortization in lieu of depreciation, is allowable in determining the personal or corporation net income tax liability of the business, or its equity owners, under §11-21-1 *et seq.* or §11-24-1 *et seq.* of this code, and which has a useful economic life at the time the property is placed in service or use in this state, of five or more years.

(ii) Tangible personal property acquired by written lease having a primary term of five years or more, that is depreciable or amortizable by the lessor, or lessee, for federal income tax purposes and that has a useful life of five or more years for federal income purposes when it is placed in service or use, and when the lease commences and was executed by the parties thereto on or after the effective date of this article, if used as a component part of a new or expanded coal mining operation in this state shall be included within this definition.

(iii) Repair or refurbishment costs to tangible personal property directly used in the production of coal that are incurred on or after the effective date of this article, which are capitalized for federal income tax purposes.

(B) *Excluded property*. — The term "property purchased or leased for business expansion" shall not include:

(i) Machinery and equipment owned or leased by the taxpayer and for which credit was taken or is claimed under any other article of this chapter for capital investment in the new machinery and equipment;

(ii) Repair costs, including materials used in the repair, unless for federal income tax purposes, the cost of the repair must be capitalized and not expensed;

(iii) Motor vehicles licensed by the West Virginia Division of Motor Vehicles;

(iv) Airplanes;

(v) Off-premise transportation equipment;

(vi) Machinery and equipment that is primarily used outside this state;

(vii) Machinery and equipment that is acquired incident to the purchase of the stock or assets of the seller; and

(viii) Used machinery and equipment.

(C) *Purchase date*. — New machinery and equipment shall be deemed to have been purchased prior to a specified date only if:

(i) The machinery or equipment was owned by the taxpayer prior to the effective date of this article or was acquired by the taxpayer pursuant to a binding purchase contract which was in effect prior to the effective date of this article; or

(ii) In the case of leased machinery and equipment, there was a binding written lease or contract to lease identifiable machinery or equipment in effect prior to the effective date of this article.

(24) "Purchase" means any acquisition of new machinery or equipment, but only if:

(A) The machinery or equipment is not acquired from a person whose relationship to the person acquiring it would result in the disallowance of deductions under Section 267 or 707 (b) of the

United States Internal Revenue Code, as defined in §11-24-3 of this code;

(B) The machinery or equipment is not acquired by one component member of a controlled group from another component member of the same controlled group; and

(C) The basis of the machinery or equipment for federal income tax purposes, in the hands of the person acquiring it, is not determined:

(i) In whole or in part by reference to the federal adjusted basis of the machinery or equipment in the hands of the person from whom it was acquired; or

(ii) Under Section 1014 (e) of the United States Internal Revenue Code.

(25) "Qualified coal mining activity" means any business or other activity subject to the tax imposed by §11-13A-3 of this code on the privilege of severing, extracting, reducing to possession and producing coal for sale, profit or commercial use including the treatment process described as mining in §11-13A-4(a)(1) of this code.

(26) "Qualified investment" means capital investment in new machinery and equipment directly used in the production of coal in this state that is depreciable, or amortizable, for federal income tax purposes and has a useful life for federal income tax purposes of five or more years when it is placed in service or use in this state.

(27) "Rebate" means the amount of rebate allowable under §11-13EE-4 of this article.

(28) "Related person" means:

(A) A corporation, partnership, association or trust controlled by the taxpayer;

(B) An individual, corporation, partnership, association or trust that is in control of the taxpayer;

(C) A corporation, partnership, association or trust controlled by an individual, corporation, partnership, association or trust that is in control of the taxpayer; or

(D) A member of the same controlled group as the taxpayer.

For purposes of this subdivision, the term "control," with respect to a corporation, means ownership, directly or indirectly, of stock possessing 50 percent or more of the total combined voting power of all classes of the stock of the corporation entitled to vote. "Control," with respect to a trust, means ownership, directly or indirectly, of 50 percent or more of the beneficial interest in the principal or income of the trust. The ownership of stock in a corporation, of a capital or profits interest in a partnership or association or of a beneficial interest in a trust is determined in accordance with the rules for constructive ownership of stock provided in section 267 (c) of the United States Internal Revenue Code, other than paragraph (3) of that section.

(29) "State portion of severance taxes paid" means the portion of severance taxes due under §11-13A-3 of this code when computed at the 4.65 percent rate of tax.

(30) "Tangible personal property" means and is limited to new machinery and equipment that is depreciable, or amortizable, for federal income tax purposes and that has a useful life of five or more years for federal income tax purposes when it is placed in service or use in this state.

(31) "Taxpayer" means any person exercising the privilege of severing, extracting, reducing to possession and producing coal for sale, profit or commercial use coal, which privilege is taxable under §11-13A-3 of this code.

(32) "This code" means the Code of West Virginia, 1931, as amended.

(33) "This state" means the State of West Virginia.

(34) "United States Internal Revenue Code" or "Internal Revenue Code" means the Internal Revenue Code as defined in §11-24-3 of this code

§11-13EE-3. Rebate allowable.

(a) *Rebate allowable.* — Eligible taxpayers shall be allowed a rebate against a portion of severance taxes imposed by §11-13A-3 of this code on the privilege of engaging in the production of coal in an amount not to exceed 35 percent of the eligible taxpayer's qualified investment in tangible personal property purchased or leased for business expansion, subject to the limitations in subsections (b) and (c).

(b) *Maximum rebate limited to 80 percent of increase above base period severance taxes.* —The maximum amount of rebate allowable for any given tax year is limited to an amount not to exceed 80 percent of the increase in the state portion of severance taxes paid for coal mined at the specific mine where the qualified investment is made when compared to the state portion of severance taxes paid for coal mined at the specific mine where the qualified investment is made during the base period.

(c) *Additional Limiting Factors.* —

(1) In order to qualify for any severance tax rebate under this article in a given rebate year, the eligible taxpayer must meet the following requirements:

(A) No credit shall be allowed unless the aggregate total coal production tonnage from all mines operated by the eligible taxpayer in this state during the year for which the rebate or rebate carryover is claimed has increased above the annual average aggregate total coal production tonnage from all mines operated by the eligible taxpayer during the base period; and

(B) No credit shall be allowed unless the aggregate total number of full-time employees, along with full-time equivalent employees, at all mines operated by the eligible taxpayer in this state during the rebate year has increased above the annual average aggregate total number of full-time employees, along with full-

time equivalent employees, at all mines operated by the eligible taxpayer in this state during the base period.

(2) The increase in the state portion of severance taxes paid against which the rebate may be taken is further limited by a factor, the numerator of which is the increase in coal production, measured in tons produced, at all mines operated by the taxpayer, the denominator of which is the increase in coal production, measured in tons produced, at the specific mine where investment is made: *Provided*, That in no instance may the factor exceed one. The increase in coal production is determined by subtracting the base period coal production, measured in tons produced, from the coal production, measured in tons produced, during the tax year for which the rebate is claimed.

(d) When the eligible taxpayer has produced coal in this state for two years before making the capital investment in new machinery and equipment, but was not in business during a full five-year base period, then the eligible taxpayer's base severance tax amount shall be the amount of state severance tax due under §11-13A-3 of this code on coal produced in this state during the most recent tax year prior to making the investment.

(e) No rebate shall be allowed under this article when credit is claimed under any other article of this chapter for capital investment in the new machinery and equipment. No credit shall be allowed under any other article of this chapter when rebate is allowed under this article for the capital investment in new machinery and equipment.

§11-13EE-5. Claim for rebate.

(a) After the severance taxes due for the taxable year are paid, a taxpayer may file a claim under this article for rebate of up to 80 percent of the increase in the state portion of the severance taxes paid under §11-13A-3 of this code.

(b) When the amount of rebate claimed exceeds 80 percent of the additional state severance tax paid as provided in subsection (a) of this section, the unused portion of the rebate amount may be

carried forward and refunded by the Tax Commissioner after severance taxes due in subsequent years are paid*: Provided*, That the carryforward period may not exceed 10 years from the date the capital investment in new machinery and equipment is placed in service or use in this state.

§11-13EE-16. Effective date.

The rebate allowed by this article is allowed for capital investment in new machinery and equipment placed in service or use in this state on or after July 1, 2019. As the changes in sections §11-13EE-2, §11-13EE-3, and §11-13EE-5 are intended to clarify the original intent and meaning of this article, the amendments to this article made during the 2021 legislative session are retroactive and shall be applied to any rebate claims made for all qualified investments placed into service after the original effective date of this article (July 1, 2019) for which no rebate claim has been previously made.

CHAPTER 257

(Com. Sub. for H. B. 2026 - By Delegates Hanshaw (Mr. Speaker) and Skaff)

[By Request of the Executive]

[Passed March 30, 2021; in effect ninety days from passage.]
[Approved by the Governor on April 9, 2021.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §11-21-31; and to amend and reenact §11-24-7, all relating to the collection of income taxes generally; excluding compensation of certain temporary nonresident employees from state source income; changing the allocation of multi-state income from a four factor formula to a single sales factor; removing requirement that certain sales of tangible personal property be excluded when allocating sales of tangible personal property to this state; replacing the income-producing activity methodology for allocating sales of services and intangible property to this state with a market-based sourcing methodology; and providing effective dates.

Be it enacted by the Legislature of West Virginia:

ARTICLE 21. PERSONAL INCOME TAX.

§11-21-31. Mobile employee exclusion from state source income.

(a) As used in this section:

(1) "Professional athlete" means an athlete who performs services in a professional athletic event for compensation.

(2) "Professional entertainer" means a person who performs services in the professional performing arts for compensation on a per-event basis.

(3) "Public figure" means a person of prominence who performs services at discrete events, such as speeches, public appearances, or similar events, for compensation on a per-event basis.

(b) Compensation subject to withholding pursuant to §11-21-1 *et seq.* of this code, without regard to any withholding tax exception set forth in §11-21-71a of this code, paid to a nonresident individual is exempt from the tax levied under §11-21-1 *et seq.* of this code if all of the following conditions apply:

(1) The compensation is paid for employment duties performed by the individual in this state on thirty or fewer days in the calendar year;

(2) The individual performed employment duties in more than one state during the calendar year;

(3) The compensation is not paid for employment duties performed by the individual in the individual's capacity as a professional athlete, professional entertainer, or public figure; and

(4) The nonresident individual's state of residence:

(A) Provides a substantially similar exclusion; or

(B) Does not impose an individual income tax; or

(C) The individual's income is exempt from taxation by this state under the United States Constitution or federal statute.

(c) Except as otherwise provided in this article, an employer is not required to withhold taxes under §11-21-1 *et seq.* from compensation that is paid to an employee described in subsection (b) of this section: *Provided*, That if, during the calendar year, the number of days an employee spends performing employment duties in this state exceeds the thirty-day threshold described in

subsection (b) of this section, an employer shall withhold and remit tax to this state for every day in that calendar year, including the first thirty days, on which the employee performs employment duties in this state.

(d) *Special rule for determining liability* – For purposes of determining compensation paid and subject to withholding under this section:

(1) If an employer maintains a time and attendance system that tracks where employees perform services on a daily basis, then data from the time and attendance system shall be used. For purposes of this section, time and attendance system means a system:

(A) In which the employee is required, on a contemporaneous basis, to record the work location for every day worked outside of the State where the employment duties are primarily performed; and

(B) That is designed to allow the employer to allocate the employee's wages for income tax purposes among all states in which the employee performs services.

(2) In all other cases, the employer shall obtain a written statement from the employee of the number of days reasonably expected to be spent performing services in this State during the taxable year. Absent the employer's actual knowledge of fraud or gross negligence by the employee in making the determination or collusion between the employer and the employee to evade tax, the certification so made by the employee and maintained in the employer's books and records shall be prima facie evidence and constitute a rebuttable presumption of the number of days spent performing services in this State.

(e) For purposes of this section, an employee shall be considered present and performing employment duties within this state for a day if the employee performs more of the employee's employment duties in this state than in any other state during that day. Any portion of the day during which the employee is in transit

shall not be considered in determining the location of an employee's performance of employment duties.

(f) The provisions of this section shall be effective on January 1, 2022.

ARTICLE 24. CORPORATION NET INCOME TAX.

§11-24-7. Allocation and apportionment.

(a) General. — Any taxpayer having income from business activity which is taxable both in this state and in another state shall allocate and apportion its net income as provided in this section. For purposes of this section, the term "net income" means the taxpayer's federal taxable income adjusted as provided in section six of this article.

(b) "Taxable in another state" defined. — For purposes of allocation and apportionment of net income under this section, a taxpayer is taxable in another state if:

(1) In that state the taxpayer is subject to a net income tax, a franchise tax measured by net income, a franchise tax for the privilege of doing business or a corporation stock tax; or

(2) That state has jurisdiction to subject the taxpayer to a net income tax, regardless of whether, in fact, that state does or does not subject the taxpayer to the tax.

(c) Business activities entirely within West Virginia. — If the business activities of a taxpayer take place entirely within this state, the entire net income of the taxpayer is subject to the tax imposed by this article. The business activities of a taxpayer are considered to have taken place in their entirety within this state if the taxpayer is not "taxable in another state": *Provided*, That for tax years beginning before January 1, 2009, the business activities of a financial organization having its commercial domicile in this state are considered to take place entirely in this state, notwithstanding that the organization may be "taxable in another state": *Provided, however*, That for tax years beginning on or after January 1, 2009, the income from the business activities of a financial organization

that are taxable in another state shall be apportioned according to the applicable provisions of this article.

(d) Business activities partially within and partially without West Virginia; allocation of nonbusiness income. — If the business activities of a taxpayer take place partially within and partially without this state and the taxpayer is also taxable in another state, rents and royalties from real or tangible personal property, capital gains, interest, dividends or patent or copyright royalties, to the extent that they constitute nonbusiness income of the taxpayer, shall be allocated as provided in subdivisions (1) through (4), inclusive, of this subsection: *Provided*, That to the extent the items constitute business income of the taxpayer, they may not be so allocated but they shall be apportioned to this state according to the provisions of subsection (e) of this section and to the applicable provisions of section seven-b of this article.

(1) Net rents and royalties. —

(A) Net rents and royalties from real property located in this state are allocable to this state.

(B) Net rents and royalties from tangible personal property are allocable to this state:

(i) If and to the extent that the property is utilized in this state; or

(ii) In their entirety if the taxpayer's commercial domicile is in this state and the taxpayer is not organized under the laws of or taxable in the state in which the property is utilized.

(C) The extent of utilization of tangible personal property in a state is determined by multiplying the rents and royalties by a fraction, the numerator of which is the number of days of physical location of the property in the state during the rental or royalty period in the taxable year and the denominator of which is the number of days of physical location of the property everywhere during all rental or royalty periods in the taxable year. If the physical location of the property during the rental or royalty period is unknown or unascertainable by the taxpayer, tangible personal

property is utilized in the state in which the property was located at the time the rental or royalty payer obtained possession.

(2) Capital gains. —

(A) Capital gains and losses from sales of real property located in this state are allocable to this state.

(B) Capital gains and losses from sales of tangible personal property are allocable to this state if:

(i) The property had a situs in this state at the time of the sale; or

(ii) The taxpayer's commercial domicile is in this state and the taxpayer is not taxable in the state in which the property had a situs.

(C) Capital gains and losses from sales of intangible personal property are allocable to this state if the taxpayer's commercial domicile is in this state.

(D) Gains pursuant to Section 631 (a) and (b) of the Internal Revenue Code of 1986, as amended, from sales of natural resources severed in this state shall be allocated to this state if they are nonbusiness income.

(3) Interest and dividends are allocable to this state if the taxpayer's commercial domicile is in this state. —

(4) Patent and copyright royalties. —

(A) Patent and copyright royalties are allocable to this state:

(i) If and to the extent that the patent or copyright is utilized by the payer in this state; or

(ii) If and to the extent that the patent or copyright is utilized by the payer in a state in which the taxpayer is not taxable and the taxpayer's commercial domicile is in this state.

(B) A patent is utilized in a state to the extent that it is employed in production, fabrication, manufacturing or other processing in the

state or to the extent that a patented product is produced in the state. If the basis of receipts from patent royalties does not permit allocation to states or if the accounting procedures do not reflect states of utilization, the patent is utilized in the state in which the taxpayer's commercial domicile is located.

(C) A copyright is utilized in a state to the extent that printing or other publication originates in the state. If the basis of receipts from copyright royalties does not permit allocation to states or if the accounting procedures do not reflect states of utilization, the copyright is utilized in the state in which the taxpayer's commercial domicile is located.

(5) Corporate partner's distributive share. —

(A) Persons carrying on business as partners in a partnership, as defined in Section 761 of the Internal Revenue Code of 1986, as amended, are liable for income tax only in their separate or individual capacities.

(B) A corporate partner's distributive share of income, gain, loss, deduction or credit of a partnership shall be modified as provided in section six of this article for each partnership. For taxable years beginning on or after December 31, 1998, the distributive share shall then be allocated and apportioned as provided in this section using the partnership's property, payroll and sales factors. The sum of that portion of the distributive share allocated and apportioned to this state shall then be treated as distributive share allocated to this state; and that portion of distributive share allocated or apportioned outside this state shall be treated as distributive share allocated outside this state, unless the taxpayer requests or the Tax Commissioner, under subsection (h) of this section requires that the distributive share be treated differently.

(C) This subdivision shall be null and void and of no force or effect for tax years beginning on or after January 1, 2009.

(e) Business activities partially within and partially without this state; apportionment of business income. — All net income, after

deducting those items specifically allocated under subsection (d) of this section, shall be apportioned to this state by multiplying the net income by a fraction, the numerator of which is the property factor plus the payroll factor plus two times the sales factor and the denominator of which is four, reduced by the number of factors, if any, having no denominator: *Provided*, That for tax years beginning on or after January 1, 2022, all net income, after deducting those items specifically allocated under subsection (d) of this section, shall be apportioned to this state by multiplying the net income by the sales factor described in this subsection.

(1) Property factor. — The property factor is a fraction, the numerator of which is the average value of the taxpayer's real and tangible personal property owned or rented and used by it in this state during the taxable year and the denominator of which is the average value of all the taxpayer's real and tangible personal property owned or rented and used by the taxpayer during the taxable year, which is reported on Schedule L Federal Form 1120, plus the average value of all real and tangible personal property leased and used by the taxpayer during the taxable year.

(2) Value of property. — Property owned by the taxpayer shall be valued at its original cost, adjusted by subsequent capital additions or improvements thereto and partial disposition thereof, by reason of sale, exchange, abandonment, etc.*: Provided*, That where records of original cost are unavailable or cannot be obtained without unreasonable expense, property shall be valued at original cost as determined under rules of the Tax Commissioner. Property rented by the taxpayer from others shall be valued at eight times the annual rental rate. The term "net annual rental rate" is the annual rental paid, directly or indirectly, by the taxpayer, or for its benefit, in money or other consideration for the use of property and includes:

(A) Any amount payable for the use of real or tangible personal property, or any part of the property, whether designated as a fixed sum of money or as a percentage of sales, profits or otherwise.

(B) Any amount payable as additional rent or in lieu of rents, such as interest, taxes, insurance, repairs or any other items which

are required to be paid by the terms of the lease or other arrangement, not including amounts paid as service charges, such as utilities, janitor services, etc. If a payment includes rent and other charges unsegregated, the amount of rent shall be determined by consideration of the relative values of the rent and the other items.

(3) Movable property. — The value of movable tangible personal property used both within and without this state shall be included in the numerator to the extent of its utilization in this state. The extent of the utilization shall be determined by multiplying the original cost of the property by a fraction, the numerator of which is the number of days of physical location of the property in this state during the taxable period and the denominator of which is the number of days of physical location of the property everywhere during the taxable year. The number of days of physical location of the property may be determined on a statistical basis or by other reasonable method acceptable to the Tax Commissioner.

(4) Leasehold improvements. — Leasehold improvements shall, for purposes of the property factor, be treated as property owned by the taxpayer regardless of whether the taxpayer is entitled to remove the improvements or the improvements revert to the lessor upon expiration of the lease. Leasehold improvements shall be included in the property factor at their original cost.

(5) Average value of property. — The average value of property shall be determined by averaging the values at the beginning and ending of the taxable year: *Provided*, That the Tax Commissioner may require the averaging of monthly values during the taxable year if substantial fluctuations in the values of the property exist during the taxable year, or where property is acquired after the beginning of the taxable year, or is disposed of, or whose rental contract ceases, before the end of the taxable year.

(6) Payroll factor. — The payroll factor is a fraction, the numerator of which is the total compensation paid in this state during the taxable year by the taxpayer for compensation and the denominator of which is the total compensation paid by the taxpayer during the taxable year, as shown on the taxpayer's

federal income tax return as filed with the Internal Revenue Service, as reflected in the schedule of wages and salaries and that portion of cost of goods sold which reflects compensation or as shown on a pro forma return.

(7) Compensation. — The term "compensation" means wages, salaries, commissions and any other form of remuneration paid to employees for personal services. Payments made to an independent contractor or to any other person not properly classifiable as an employee shall be excluded. Only amounts paid directly to employees are included in the payroll factor. Amounts considered as paid directly to employees include the value of board, rent, housing, lodging and other benefits or services furnished to employees by the taxpayer in return for personal services, provided the amounts constitute income to the recipient for federal income tax purposes.

(8) Employee. — The term "employee" means:

(A) Any officer of a corporation; or

(B) Any individual who, under the usual common-law rule applicable in determining the employer-employee relationship, has the status of an employee.

(9) Compensation. — Compensation is paid or accrued in this state if:

(A) The employee's service is performed entirely within this state; or

(B) The employee's service is performed both within and without this state, but the service performed without the state is incidental to the individual's service within this state. The word "incidental" means any service which is temporary or transitory in nature or which is rendered in connection with an isolated transaction; or

(C) Some of the service is performed in this state and:

(i) The employee's base of operations or, if there is no base of operations, the place from which the service is directed or controlled is in the state; or

(ii) The base of operations or the place from which the service is directed or controlled is not in any state in which some part of the service is performed, but the employee's residence is in this state.

The term "base of operations" is the place of more or less permanent nature from which the employee starts his or her work and to which he or she customarily returns in order to receive instructions from the taxpayer or communications from his or her customers or other persons or to replenish stock or other materials, repair equipment or perform any other functions necessary to the exercise of his or her trade or profession at some other point or points. The term "place from which the service is directed or controlled" refers to the place from which the power to direct or control is exercised by the taxpayer.

(10) Sales factor. — The sales factor is a fraction, the numerator of which is the gross receipts of the taxpayer derived from transactions and activity in the regular course of its trade or business in this state during the taxable year (business income), less returns and allowances. The denominator of the fraction is the total gross receipts derived by the taxpayer from transactions and activity in the regular course of its trade or business during the taxable year (business income) and reflected in its gross income reported and as appearing on the taxpayer's Federal Form 1120 and consisting of those certain pertinent portions of the (gross income) elements set forth: *Provided*, That if either the numerator or the denominator includes interest or dividends from obligations of the United States government which are exempt from taxation by this state, the amount of such interest and dividends, if any, shall be subtracted from the numerator or denominator in which it is included.

(11) Allocation of sales of tangible personal property. —

(A) Sales of tangible personal property are in this state if:

(i) The property is received in this state by the purchaser, other than the United States government, regardless of the f.o.b. point or other conditions of the sale. In the case of delivery by common carrier or other means of transportation, the place at which the property is ultimately received after all transportation has been completed is the place at which the property is received by the purchaser. Direct delivery in this state, other than for purposes of transportation, to a person or firm designated by the purchaser, is delivery to the purchaser in this state and direct delivery outside this state to a person or firm designated by the purchaser is not delivery to the purchaser in this state, regardless of where title passes or other conditions of sale; or

(ii) The property is shipped from an office, store, warehouse, factory or other place of storage in this state and the purchaser is the United States government.

(B) All other sales of tangible personal property delivered or shipped to a purchaser within a state in which the taxpayer is not taxed, as defined in subsection (b) of this section, shall be excluded from the denominator of the sales factor.

(C) For sales made on or after January 1, 2022, the provisions of paragraph (B) of this subdivision shall no longer apply.

(12) Allocation of other sales. — Sales, other than sales of tangible personal property, made before January 1, 2022, are in this state if:

(A) The income-producing activity is performed in this state; or

(B) The income-producing activity is performed both in and outside this state and a greater proportion of the income-producing activity is performed in this state than in any other state, based on costs of performance; or

(C) The sale constitutes business income to the taxpayer, or the taxpayer is a financial organization not having its commercial domicile in this state, and in either case the sale is a receipt described as attributable to this state in §11-24-7b of this code.

(13) Allocation of other sales beginning 2022 – market-based sourcing. – Sales, other than sales of tangible personal property, made on or after January 1, 2022, are in this state if:

(A) In the case of sale of a service, if and to the extent the service is delivered to a location in this state; and

(B) In the case of intangible property:

(i) That is rented, leased, or licensed, if and to the extent the property is used in this state, provided that intangible property utilized in marketing a good or service to a consumer is "used in this state" if that good or service is purchased by a consumer who is in this state; and

(ii) That is sold, if and to the extent the property is used in this state, provided that:

(I) A contract right, government license, or similar intangible property that authorizes the holder to conduct a business activity in a specific geographic area is "used in this state" if the geographic area includes all or part of this state;

(II) Receipts from intangible property sales that are contingent on the productivity, use, or disposition of the intangible property shall be treated as sales receipts from the rental, lease or licensing of such intangible property under subparagraph (i) of this paragraph; and

(III) All other receipts from a sale of intangible property shall be excluded from the numerator and denominator of the sales factor.

(14) Financial organizations and other taxpayers with business activities partially within and partially without this state. — Notwithstanding anything contained in this section to the contrary, in the case of financial organizations and other taxpayers, not having their commercial domicile in this state, the rules of this subsection apply to the apportionment of income from their business activities except as expressly otherwise provided in §11-24-7b of this code.

(f) Income-producing activity. — The term "income-producing activity" applies to each separate item of income and means the transactions and activity directly engaged in by the taxpayer in the regular course of its trade or business for the ultimate purpose of obtaining gain or profit. The activity does not include transactions and activities performed on behalf of the taxpayer, such as those conducted on its behalf by an independent contractor. "Income-producing activity" includes, but is not limited to, the following:

(1) The rendering of personal services by employees with utilization of tangible and intangible property by the taxpayer in performing a service;

(2) The sale, rental, leasing, licensing or other use of real property;

(3) The sale, rental, leasing, licensing or other use of tangible personal property; or

(4) The sale, licensing or other use of intangible personal property.

The mere holding of intangible personal property is not, in itself, an income-producing activity: *Provided*, That the conduct of the business of a financial organization is an income-producing activity.

(g) Cost of performance. — The term "cost of performance" means direct costs determined in a manner consistent with generally accepted accounting principles and in accordance with accepted conditions or practices in the trade or business of the taxpayer.

(h) Other methods of allocation and apportionment. —

(1) General. — If the allocation and apportionment provisions of subsections (d) and (e) of this section do not fairly represent the extent of the taxpayer's business activities in this state, the taxpayer may petition for or the Tax Commissioner may require, in respect to all or any part of the taxpayer's business activities, if reasonable:

(A) Separate accounting;

(B) The exclusion of one or more of the factors;

(C) The inclusion of one or more additional factors which will fairly represent the taxpayer's business activity in this state; or

(D) The employment of any other method to effectuate an equitable allocation or apportionment of the taxpayer's income. The petition shall be filed no later than the due date of the annual return for the taxable year for which the alternative method is requested, determined without regard to any extension of time for filing the return and the petition shall include a statement of the petitioner's objections and of the alternative method of allocation or apportionment as it believes to be proper under the circumstances with detail and proof as the Tax Commissioner requires.

(2) Alternative method for public utilities. — If the taxpayer is a public utility and if the allocation and apportionment provisions of subsections (d) and (e) of this section do not fairly represent the taxpayer's business activities in this state, the taxpayer may petition for, or the Tax Commissioner may require, as an alternative to the other methods provided in subdivision (1) of this subsection, the allocation and apportionment of the taxpayer's net income in accordance with any system of accounts prescribed by the Public Service Commission of this state pursuant to the provisions of §24-2-8 of this code: *Provided*, That the allocation and apportionment provisions of the system of accounts fairly represent the extent of the taxpayer's business activities in this state for the purposes of the tax imposed by this article.

(3) Burden of proof. — In any proceeding before the Tax Commissioner or in any court in which employment of one of the methods of allocation or apportionment provided in subdivision (1) or (2) of this subsection is sought, on the grounds that the allocation and apportionment provisions of subsections (d) and (e) of this section do not fairly represent the extent of the taxpayer's business activities in this state, the burden of proof is:

(A) If the Tax Commissioner seeks employment of one of the methods, on the Tax Commissioner; or

(B) If the taxpayer seeks employment of one of the other methods, on the taxpayer.

CHAPTER 258

(Com. Sub. for H. B. 2358 - By Delegates Hanshaw (Mr. Speaker) and Skaff)

[By Request of the Executive]

[Passed February 18, 2021; in effect from passage.]
[Approved by the Governor on February 24, 2021.]

AN ACT to amend and reenact §11-21-9 of the Code of West Virginia, 1931, as amended, relating to updating meaning of federal adjusted gross income and certain other terms used in West Virginia Personal Income Tax Act; and specifying effective dates.

Be it enacted by the Legislature of West Virginia:

ARTICLE 21. WEST VIRGINIA PERSONAL INCOME TAX.

*§11-21-9. Meaning of terms.

(a) Any term used in this article has the same meaning as when used in a comparable context in the laws of the United States relating to income taxes, unless a different meaning is clearly required. Any reference in this article to the laws of the United States means the provisions of the Internal Revenue Code of 1986, as amended, and any other provisions of the laws of the United States that relate to the determination of income for federal income tax purposes. All amendments made to the laws of the United States after December 31, 2019, but prior to January 1, 2021, shall be given effect in determining the taxes imposed by this article to the same extent those changes are allowed for federal income tax purposes, whether the changes are retroactive or prospective, but

*NOTE: This section was also amended by S. B. 693 (Chapter 255), which passed subsequent to this act.

no amendment to the laws of the United States made on or after January 1, 2021, may be given any effect.

(b) *Medical savings accounts*. — The term "taxable trust" does not include a medical savings account established pursuant to §33-15-20 or §33-16-15 of this code. Employer contributions to a medical savings account established pursuant to those sections are not wages for purposes of withholding under §11-21-71 of this code.

(c) *Surtax*. — The term "surtax" means the 20 percent additional tax imposed on taxable withdrawals from a medical savings account under §33-15-20 of this code and the 20 percent additional tax imposed on taxable withdrawals from a medical savings account under §33-16-15 of this code which are collected by the Tax Commissioner as tax collected under this article.

(d) *Effective date*. — The amendments to this section enacted in the year 2021 are retroactive to the extent allowable under federal income tax law. With respect to taxable years that began prior to January 1, 2021, the law in effect for each of those years shall be fully preserved as to that year, except as provided in this section.

(e) For purposes of the refundable credit allowed to a low income senior citizen for property tax paid on his or her homestead in this state, the term "laws of the United States" as used in subsection (a) of this section means and includes the term "low income" as defined in subsection (b), section 21 of this article and as reflected in the poverty guidelines updated periodically in the federal register by the U.S. Department of Health and Human Services under the authority of 42 U.S.C. § 9902(2).

(f) For taxable years beginning on and after January 1, 2018, whenever this article refers to "each exemption for which he or she is entitled to a deduction for the taxable year for federal income tax purposes", this phrase means the exemption the person would have been allowed to claim for the taxable year had the federal income tax law not been amended to eliminate the personal exemption for federal tax years beginning on or after January 1, 2018.

CHAPTER 259

(H. B. 2359 - By Delegates Hanshaw (Mr. Speaker) and Skaff)

[By Request of the Executive]

[Passed February 18, 2021; in effect from passage.]
[Approved by the Governor on February 24, 2021.]

AN ACT to amend and reenact §11-24-3 of the Code of West Virginia, 1931, as amended, relating to updating the meaning of federal taxable income and certain other terms used in the West Virginia Corporation Net Income Tax Act; and specifying effective dates.

Be it enacted by the Legislature of West Virginia:

ARTICLE 24. CORPORATION NET INCOME TAX.

§11-24-3. Meaning of terms; general rule.

(a) Any term used in this article has the same meaning as when used in a comparable context in the laws of the United States relating to federal income taxes, unless a different meaning is clearly required by the context or by definition in this article. Any reference in this article to the laws of the United States means the provisions of the Internal Revenue Code of 1986, as amended, and any other provisions of the laws of the United States that relate to the determination of income for federal income tax purposes. All amendments made to the laws of the United States after December 31, 2019, but prior to January 1, 2021, shall be given effect in determining the taxes imposed by this article to the same extent those changes are allowed for federal income tax purposes, whether the changes are retroactive or prospective, but no amendment to the laws of the United States made on or after January 1, 2021, shall be given any effect.

(b) The term "Internal Revenue Code of 1986" means the Internal Revenue Code of the United States enacted by the federal Tax Reform Act of 1986 and includes the provisions of law formerly known as the Internal Revenue Code of 1954, as amended, and in effect when the federal Tax Reform Act of 1986 was enacted that were not amended or repealed by the federal Tax Reform Act of 1986. Except when inappropriate, any reference in any law, executive order, or other document:

(1) To the Internal Revenue Code of 1954 includes a reference to the Internal Revenue Code of 1986; and

(2) To the Internal Revenue Code of 1986 includes a reference to the provisions of law formerly known as the Internal Revenue Code of 1954.

(c) *Effective date*. — The amendments to this section enacted in the year 2021 are retroactive to the extent allowable under federal income tax law. With respect to taxable years that began prior to January 1, 2021, the law in effect for each of those years shall be fully preserved as to that year, except as provided in this section.

CHAPTER 260

(Com. Sub. for H. B. 2499 - By Delegates Howell, Householder, Horst, Hamrick, B. Ward, Steele, Foster, Kessinger, Linville, Ellington and Hanshaw (Mr. Speaker))

[Passed April 1, 2021; in effect ninety days from passage.]
[Approved by the Governor on April 8, 2021.]

AN ACT to amend and reenact §11-6F-2 and §11-13S-4 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new article, designated §11-13KK-1, §11-13KK-2, §11-13KK-3, §11-13KK-4, §11-13KK-5, §11-13KK-6, §11-13KK-7, §11-13KK-8, §11-13KK-9, §11-13KK-10, §11-13KK-11, §11-13KK-12, §11-13KK-13, §11-13KK-14, §11-13KK-15, §11-13KK-16, §11-13KK-17, and adding thereto a new section designated †§11-15-9t, all relating generally to taxation for the manufacturing, sale, and use of certain defined products to encourage economic growth; amending the definition of qualified capital addition to a manufacturing facility for purposes of special method for appraising qualified capital additions for property tax purposes; amending the formula for calculating the manufacturing investment tax credit amount allowed for manufacturing investment to include small arms ammunition manufacturing and small arms, ordinance and ordinance accessories manufacturing; increasing the amount of such allowable credit for said industries; creating the West Virginia Tax Credit For Federal Excise Tax Imposed Upon Small Arms And Ammunition Manufacturers; providing for administration and enforcement of the tax credit; making legislative findings; stating legislative purpose; defining terms; specifying an amount of credit allowable based upon the amount of federal

†**NOTE:** S. B. 305 (Chapter 248), which passed prior to this act, also created a new Section 9t. Therefore, this has been redesignated as Section 9u for the code.

excise tax paid, providing limitations based upon qualified investment amount; providing conditions for qualification and use; defining in service or use; providing for the application of the credit to the corporate net income tax and the personal income tax, as appropriate; providing for methods of calculation of the qualified investment; providing for carry over and forfeiture of unused tax credits; providing limitations for credits being carried over; allowing transfer of qualified investment property without forfeiture under certain circumstances; requiring identification of qualified investment property and record keeping; providing civil and criminal penalties for failure to keep required records; providing for interpretation and construction; requiring timely filing of application for credit; specifying burden of proof; requiring periodic tax credit review and accountability reports; authorizing rulemaking; making credit subject to West Virginia Tax Procedure and Administration Act and West Virginia Tax Crimes and Penalties Act; providing for severability; and exempting sales of certain defined small arms and small arms ammunition from state sales and use taxes and providing effective dates, and removing obsolete code concerning the business franchise tax.

Be it enacted by the Legislature of West Virginia:

ARTICLE 6F. SPECIAL METHOD FOR APPRAISING QUALIFIED CAPITAL ADDITIONS TO MANUFACTURING FACILITIES.

§11-6F-2. Definitions.

As used in this article, the term:

"Certified capital addition property" means all real property and personal property included within or to be included within a qualified capital addition to a manufacturing facility that has been certified by the State Tax Commissioner in accordance with §11-6F-4 of this code: *Provided*, That airplanes and motor vehicles licensed by the Division of Motor Vehicles are not certified capital addition property.

"Manufacturing" means any business activity classified as having a sector identifier, consisting of the first two digits of the six-digit North American Industry Classification System code number of 31, 32, or 33. For purposes of this article, manufacturing also includes the processing of raw natural gas or oil to recover or extract liquid hydrocarbons, which activity is classified under North American Industry Classification System code number 211130. This definition does not mean or include any other processes or activities classified, categorized, grouped, or identified under North American Industry Classification System code number 211130.

"Manufacturing facility" means any factory, mill, chemical plant, refinery, warehouse, building or complex of buildings, including land on which it is located, and all machinery, equipment, improvements, and other real property and personal property located at or within the facility used in connection with the operation of the facility in a manufacturing business.

"Personal property" means all property specified in §2-2-10(q) of this code and includes, but is not limited to, furniture, fixtures, machinery, and equipment, pollution control equipment, computers, and related data processing equipment, spare parts, and supplies.

"Qualified capital addition to a manufacturing facility" means either:

(1) All real property and personal property, the combined original cost of which exceeds $50 million to be constructed, located, or installed at or within two miles of a manufacturing facility owned or operated by the person making the capital addition that has a total original cost before the capital addition of at least $100 million. If the capital addition is made in a steel, chemical, or polymer alliance zone as designated from time-to-time by executive order of the Governor, then the person making the capital addition may, for purposes of satisfying the requirements of this subsection, join in a multiparty project with a person owning or operating a manufacturing facility that has a total original cost before the capital addition of at least $100 million if the capital addition creates additional production capacity of

existing or related products or feedstock or derivative products respecting the manufacturing facility, consists of a facility used to store, handle, process, or produce raw materials for the manufacturing facility, consists of a facility used to store, handle, or process natural gas to produce fuel for the generation of steam or electricity for the manufacturing facility or consists of a facility that generates steam or electricity for the manufacturing facility, including, but not limited to, a facility that converts coal to a gas or liquid for the manufacturing facility's use in heating, manufacturing or generation of electricity. When the new capital addition is a facility that is or will be processing raw natural gas or oil to recover or extract liquid hydrocarbons, or is a manufacturing facility that uses product produced at a facility engaged in processing of raw natural gas or oil to recover or extract liquid hydrocarbons, then wherever the term "100 million" is used in this subsection, the term "20 million" shall be substituted and where the term "50 million" is used, the term "10 million" shall be substituted; and where the term "50 million" is used, the term "10 million" shall be substituted; and that beginning on and after July 1, 2021, when the new capital addition is a facility that is or may be classified under the North American Industry Classification System with a six-digit North American Industry Classification System code for a product produced at a facility with code numbers 332992 or 332994, as defined on January 1, 2021, then wherever the term "100 million" is used in this subsection, the term "2 million" shall be substituted and where the term "50 million" is used, the term "1 million" shall be substituted; or

(2)(A) All real property and personal property, the combined original cost of which exceeds $2 billion to be constructed, located, or installed at a facility, or a combination of facilities by a single entity or combination of entities engaged in a unitary business, that:

(i) Is or will be engaged in processing of raw natural gas or oil to recover or extract liquid hydrocarbons; or

(ii) Is a manufacturing facility that uses one or more products produced at a facility described in subparagraph (i) above; or

(iii) Is a manufacturing facility that uses one or more products produced at a facility described in subparagraph (ii) of this subdivision.

(B) All real property and personal property, the combined original cost of which exceeds $2 million to be constructed, located, or installed at a facility, or a combination of facilities by a single entity or combination of entities engaged in a unitary business, that is or may be classified under North American Industry Classification System with a six-digit code number 332992 or 332994 as defined on January 1, 2021.

(C) No preexisting investment made, or in place before the capital addition is required for property specified in this subdivision. The requirements set forth in subdivision (1) of this subsection do not apply to property specified in this subdivision relating to:

(i) Location or installation of investment at or within two miles of a manufacturing facility owned or operated by the person making the capital addition;

(ii) Total original cost of preexisting investment before the capital addition of at least $100 million or $20 million; or

(iii) Multiparty projects.

"Real property" means all property specified in §2-2-10(p) of this code and includes, but is not limited to, lands, buildings, and improvements on the land such as sewers, fences, roads, paving, and leasehold improvements: *Provided,* That for capital additions certified on or after July 1, 2011, the value of the land before any improvements shall be subtracted from the value of the capital addition and the unimproved land value shall not be given salvage value treatment.

ARTICLE 13S. MANUFACTURING INVESTMENT TAX CREDIT.

§11-13S-4. Amount of credit allowed for manufacturing investment.

(a) *Credit allowed.* — There is allowed to eligible taxpayers and to persons described in subdivision (4), subsection (b) of this section a credit against the taxes imposed by §11-13A-1 *et seq.*, and §11-24-1 *et seq.* of this code: *Provided*, That a tax credit for

any eligible taxpayer operating a business activity classified as having a sector identifier, consisting of the six digit code number 211112 such eligible taxpayer must comply with the provisions of subsection (e) of this section for all construction related thereto in order to be eligible for any credit under this article. The amount of credit shall be determined as hereinafter provided in this section.

(b) *Amount of credit allowable*. — The amount of allowable credit under this article is equal to five percent of the qualified manufacturing investment (as determined in section five of this article): *Provided*, That the amount of allowable credit under this article is equal to 50 percent of the qualified manufacturing investment (as determined in §11-13S-5. of this code) for any eligible taxpayer operating a business that is or may be classified as having a sector identifier, consisting of the six-digit code number 332992 or 332994, as defined on January 1, 2021. This credit shall reduce the severance tax, imposed under §11-13A-1 *et seq.* of this code and the corporation net income tax imposed under §11-24-1 *et seq.* of this code, in that order, subject to the following conditions and limitations:

(1) The amount of credit allowable is applied over a 10-year period, at the rate of one-tenth thereof per taxable year, beginning with the taxable year in which the property purchased for manufacturing investment is first placed in service or use in this state;

(2) *Severance tax*. — The credit is applied to reduce the severance tax imposed under §11-13A-1 *et seq.* of this code (determined before application of the credit allowed by §11-12B-3 of this code and before any other allowable credits against tax and before application of the annual exemption allowed by §11-13A-10 of this code). The amount of annual credit allowed may not reduce the severance tax, imposed under §11-13A-1 *et seq.* of this code, below 50 percent of the amount which would be imposed for such taxable year in the absence of this credit against tax: *Provided,* That for tax years beginning on and after January 1, 2009, the amount of annual credit allowed may not reduce the severance tax, imposed under §11-13A-1 *et seq.* of this code, below 40 percent of the amount which would be imposed for such taxable year in the

absence of this credit against tax. When in any taxable year the taxpayer is entitled to claim credit under this article and §11-13D-1 *et seq.* of this code, the total amount of all credits allowable for the taxable year may not reduce the amount of the severance tax, imposed under §11-13A-1 *et seq.* of this code, below 50 percent of the amount which would be imposed for such taxable year (determined before application of the credit allowed by §11-12B-3 of this code and before any other allowable credits against tax and before application of the annual exemption allowed by §11-13A-10 of this code): *Provided, however,* That when in any taxable year beginning on and after January 1, 2009, the taxpayer is entitled to claim credit under this article and §11-13D-1 *et seq.* of this code, the total amount of all credits allowable for the taxable year may not reduce the amount of the severance tax imposed under §11-13A-1 *et seq.* of this code, below 40 percent of the amount which would be imposed for such taxable year as determined before application of the credit allowed by §11-12B-3 of this code and before any other allowable credits against tax and before application of the annual exemption allowed by §11-13A-10 of this code;

(3) *Corporation net income tax.* —

After application of subdivision (2) of this subsection, any unused credit is next applied to reduce the corporation net income tax imposed under §11-24-1 *et seq.* of this code (determined before application of any other allowable credits against tax). The amount of annual credit allowed will not reduce corporation net income tax, imposed under §11-24-1 *et seq.* of this code, below 50 percent of the amount which would be imposed for such taxable year in the absence of this credit against tax: *Provided,* That for tax years beginning on and after January 1, 2009, the amount of annual credit allowed will not reduce corporation net income tax, imposed under §11-24-1 *et seq.* of this code, below 40 percent of the amount which would be imposed for such taxable year in the absence of this credit against tax. When in any taxable year the taxpayer is entitled to claim credit under this article and §11-13D-1 *et seq.* of this code, the total amount of all credits allowable for the taxable year may not reduce the amount of the corporation net income tax, imposed

under §11-24-1 *et seq.* of this code, below 50 percent of the amount which would be imposed for the taxable year (determined before application of any other allowable credits against tax): *Provided, however,* That when in any taxable year beginning on and after January 1, 2009, the taxpayer is entitled to claim credit under this article and §11-13D-1 *et seq.* of this code, the total amount of all credits allowable for the taxable year may not reduce the amount of the corporation net income tax, imposed under article §11-24-1 *et seq.* of this code, below 40 percent of the amount which would be imposed for the taxable year as determined before application of any other allowable credits against tax;

(4) *Pass-through entities.* —

(A) If the eligible taxpayer is a limited liability company, small business corporation or a partnership, then any unused credit (after application of subdivisions (2) and (3) of this subsection) is allowed as a credit against the taxes imposed by §11-24-1 *et seq.* of this code on owners of the eligible taxpayer on the conduit income directly derived from the eligible taxpayer by its owners. Only those portions of the tax imposed by §11-24-1 *et seq.* of this code that are imposed on income directly derived by the owner from the eligible taxpayer are subject to offset by this credit.

(B) The amount of annual credit allowed will not reduce corporation net income tax, imposed under §11-24-1 *et seq.* of this code, below 50 percent of the amount which would be imposed on the conduit income directly derived from the eligible taxpayer by each owner for such taxable year in the absence of this credit against the taxes (determined before application of any other allowable credits against tax): *Provided,* That for tax years beginning on and after January 1, 2009, the amount of annual credit allowed will not reduce corporation net income tax, imposed under §11-24-1 *et seq.* of this code, below 40 percent of the amount which would be imposed on the conduit income directly derived from the eligible taxpayer by each owner for such taxable year in the absence of this credit against the taxes as determined before application of any other allowable credits against tax.

(C) When in any taxable year the taxpayer is entitled to claim credit under this article and §11-13D-1 *et seq.* of this code, the total amount of all credits allowable for the taxable year will not reduce the corporation net income tax imposed on the conduit income directly derived from the eligible taxpayer by each owner below 50 percent of the amount that would be imposed for such taxable year on the conduit income (determined before application of any other allowable credits against tax): *Provided,* That when in any taxable year beginning on and after January 1, 2009, the taxpayer is entitled to claim credit under this article and §11-13D-1 *et seq.* of this code, the total amount of all credits allowable for the taxable year will not reduce the corporation net income tax imposed on the conduit income directly derived from the eligible taxpayer by each owner below 40 percent of the amount that would be imposed for such taxable year on the conduit income as determined before application of any other allowable credits against tax;

(5) Small business corporations, limited liability companies, partnerships and other unincorporated organizations shall allocate any unused credit after application of subdivisions (2) and (3) of this subsection among their members in the same manner as profits and losses are allocated for the taxable year; and

(6) No credit is allowed under this article against any tax imposed by §11-21-1 *et seq.* of this code.

(c) No carryover to a subsequent taxable year or carryback to a prior taxable year is allowed for the amount of any unused portion of any annual credit allowance. Any unused credit is forfeited.

(d) *Application for credit required.* —

(1) *Application required.* — Notwithstanding any provision of this article to the contrary, no credit is allowed or may be applied under this article for any qualified investment property placed in service or use until the person claiming the credit makes written application to the Tax Commissioner for allowance of credit as provided in this section. This application shall be in the form prescribed by the Tax Commissioner and shall provide the number and type of jobs created, if any, by the manufacturing investment,

the average wage rates and benefits paid to employees filling the new jobs and any other information the Tax Commissioner may require. This application shall be filed with the Tax Commissioner no later than the last day for filing the annual return, determined by including any authorized extension of time for filing the return, required under §11-21-1 *et seq.* or §11-24-1-1 *et seq.* of this code for the taxable year in which the property to which the credit relates is placed in service or use.

(2) *Failure to file.* — The failure to timely apply the application for credit under this section results in forfeiture of 50 percent of the annual credit allowance otherwise allowable under this article. This penalty applies annually until the application is filed.

(e) (1) Any person or entity undertaking any construction related to any business activity included within North American Industrial Code six-digit code number 211112, the value of which is an amount equal to or greater than $500,000, shall hire at least 75 percent of employees for said construction from the local labor market, to be rounded off, with at least two employees from outside the local labor market permissible for each employer per project, "the local labor market" being defined as every county in West Virginia and any county outside of West Virginia if any portion of that county is within 50 miles of the border of West Virginia.

(2) Any person or entity unable to employ the minimum number of employees from the local labor market shall inform the nearest office of the Bureau of Employment Programs' division of employment services of the number of qualified employees needed and provide a job description of the positions to be filled.

(3) If, within three business days following the placing of a job order, the division is unable to refer any qualified job applicants to the person or entity engaged in said construction or refers less qualified job applicants than the number requested, then the division shall issue a waiver to the person or entity engaged in said construction stating the unavailability of applicants and shall permit the person or entity engaged in said construction to fill any positions covered by the waiver from outside the local labor market. The waiver shall be either oral or in writing and shall be

issued within the prescribed three days. A waiver certificate shall be sent to the person or entity engaged in said construction for its permanent project records.

ARTICLE 13KK. WEST VIRGINIA TAX CREDIT FOR FEDERAL EXCISE TAX IMPOSED UPON SMALL ARMS AND AMMUNITION MANUFACTURERS.

§11-13KK-1. Legislative finding and purpose.

The Legislature finds that the encouragement of small arms and ammunition manufacturing in this state is in the public interest and promotes the general welfare of the people of this state. In order to encourage capital investment in the manufacturing of small arms and ammunition in this state and thereby increase economic opportunity for its citizens there is hereby enacted the tax credit for the benefit of small arms and ammunition manufacturing.

§11-13KK-2. Definitions.

(a) *General*. — When used in this article, or in the administration of §11-13KK-1 *et seq.* of this code, terms defined in subsection (b) have the meanings ascribed to them by this section, unless a different meaning is clearly required by either the context in which the term is used, or by specific definition in §11-13KK-1 *et seq.* of this code.

(b) *Terms defined*. —

(1) "Affiliated group" means any affiliated group within the meaning of section 1504(a) of the Internal Revenue Code, or any similar group defined under a similar provision of state, local, or foreign law, except that section 1504 of the Internal Revenue Code shall be applied by substituting "more than 50 percent" for "at least 80 percent" each place it appears in that section.

(2) "Business" means small arms or ammunition manufacturing business activity, which is or may be classified under the North American Industry Classification System with a six-digit code for a product produced at a facility under code numbers 332992 or 332994 as they are defined on January 1, 2021,

which is engaged in by any person in this state which is taxable under §11-21-1 *et seq.* or §11-24-1 *et seq.* of this code.

(3) "Business expansion" means capital investment in a new or expanded small arms or ammunition manufacturing facility in this state, which is or may be classified under the North American Industry Classification System with a six-digit code for a product produced at a facility under code numbers 332992 or 332994 as they are defined on January 1, 2021.

(4) "Commissioner" or "Tax Commissioner" are used interchangeably in this article and mean the Tax Commissioner of the State of West Virginia, or his or her designee.

(5) "Controlled group of corporations" means a controlled group of corporations as defined in section 1563(a) of the Internal Revenue Code.

(6) "Corporation" means any corporation, joint-stock company, association, or other entity treated as a corporation for federal income tax purposes, and any business conducted by a trustee or trustees wherein interest or ownership is evidenced by a certificate of interest or ownership or similar written instrument.

(7) "Designee" in the phrase "or his or her designee," when used in reference to the Tax Commissioner, means any officer or employee of the State Tax Department duly authorized by the commissioner directly, or indirectly by one or more redelegations of authority, to perform the functions mentioned or described in this article.

(8) "Small arms and ammunition manufacturing" refers to a facility which is or may be classified under the North American Industry Classification System with a six-digit North American Industry Classification System code for a product produced at a facility with code numbers 332992 or 332994 as they are defined on January 1, 2021.

(9) "Small arms and ammunition manufacturing business" means a business primarily engaged in this state in small arms or ammunition manufacturing which is or may be classified under the

North American Industry Classification System with a six-digit North American Industry Classification System code for a product produced at a facility with code numbers 332992 or 332994 as they are defined on January 1, 2021.

(10) "Small arms and ammunition manufacturing facility" means any factory, mill, plant, warehouse, building, or complex of buildings located within this state, including the land on which it is located, and all machinery, equipment, and other real and personal property located at or within the facility, used in connection with the operation of the facility, and all site preparation and start-up costs of the taxpayer for the small arms and ammunition manufacturing facility, which is or may be classified under the North American Industry Classification System with a six-digit North American Industry Classification System code for a product produced at a facility with code numbers 332992 or 332994 as they are defined on January 1, 2021, and which it capitalizes for federal income tax purposes in a business that is taxable in this state.

(11) "Eligible taxpayer" means any person who makes a qualified investment in a new or expanded small arms and ammunition manufacturing facility located in this state and who is subject to any of the taxes imposed by §11-21-1 *et seq.* or §11-24-1 *et seq.* of this code.

(12) "Expanded facility" means any small arms and ammunition manufacturing facility, other than a new or replacement business facility, resulting from the acquisition, construction, reconstruction, installation, or erection of improvements or additions to existing property if the improvements or additions are purchased on or after July 1, 2021, but only to the extent of the taxpayer's qualified investment in the improvements or additions.

(13) "Includes" and "including" when used in a definition contained in this article, may not be considered to exclude other things otherwise within the meaning of the term defined.

(14) "Leased property" does not include property which the taxpayer is required to show on its books and records as an asset

under generally accepted principles of financial accounting. If the taxpayer is prohibited from expensing the lease payments for federal income tax purposes, the property shall be treated as purchased property under this section.

(15) "New small arms and ammunition manufacturing facility" means a business facility which satisfies all the requirements of paragraphs (A), (B), (C), and (D) of this subsection:

(A) The facility is employed by the taxpayer in the conduct of a small arms and ammunition manufacturing activity the net income of which is or would be taxable under §11-21-1 *et seq.* or §11-24-1 *et seq.* of this code. The facility is not considered a new, small arms and ammunition manufacturing facility in the hands of the taxpayer if the taxpayer's only activity with respect to the facility is to lease it to another person or persons.

(B) The facility is purchased by, or leased to, the taxpayer on or after July 1, 2021.

(C) The facility was not purchased or leased by the taxpayer from a related person. The commissioner may waive this requirement if the facility was acquired from a related party for its fair market value and the acquisition was not tax motivated.

(D) The facility was not in service or use during the 90 days immediately prior to transfer of the title to the facility, or prior to the commencement of the term of the lease of the facility.

(16) "New property" means:

(A) Property, the construction, reconstruction, or erection of which is completed on or after July 1, 2021, and placed in service or use after that date; and

(B) Property leased or acquired by the taxpayer that is placed in service or use in this state on or after July 1, 2021, if the original use of the property commences with the taxpayer and commences after that date.

(17) "Original use" means the first use to which the property is put, whether or not the use corresponds to the use of the property by the taxpayer.

(18) "Partnership" includes a syndicate, group, pool, joint venture, or other unincorporated organization through or by means of which any business, financial operation, or venture is carried on, which is treated as a partnership for federal income tax purposes, and which is not a trust or estate, a corporation, or a sole proprietorship.

(19) "Partner" includes a member in such a syndicate, group, pool, joint venture, or other organization.

(20) "Person" includes any natural person, corporation, or partnership.

(21) "Property purchased or leased for business expansion" —

(A) *Included property*. — Except as provided in paragraph (B) of this subdivision, the term "property purchased or leased for business expansion" means real property and improvements thereto, and tangible personal property, but only if the real or personal property was constructed, purchased, or leased and placed in service or use by the taxpayer, for use as a component part of a new or expanded small arms and ammunition manufacturing facility as defined in this section, which is located within the State of West Virginia. This term includes only:

(i) Real property and improvements thereto having a useful life of four or more years, placed in service or use on or after July 1, 2021, by the taxpayer.

(ii) Real property and improvements thereto, acquired by written lease having a primary term of 10 or more years and placed in service or use by the taxpayer on or after July 1, 2021.

(iii) Tangible personal property placed in service or use by the taxpayer on or after July 1, 2021, with respect to which depreciation, or amortization in lieu of depreciation, is allowable in determining the personal or corporation net income tax liability

of the business taxpayer under §11-21-1 *et seq.* or §11-24-1 *et seq.* of this code, and which has a useful life, at the time the property is placed in service or use in this state, of four or more years.

(iv) Tangible personal property acquired by written lease having a primary term of four years or longer, that commenced and was executed by the parties thereto on or after July 1, 2021, if used as a component part of a new or expanded small arms and ammunition manufacturing business facility, shall be included within this definition.

(v) Tangible personal property owned or leased, and used by the taxpayer at a business location outside this state which is moved into the State of West Virginia on or after July 1, 2021, for use as a component part of a new or expanded small arms and ammunition manufacturing facility located in this state: *Provided,* That if the property is owned, it must be depreciable or amortizable personal property for income tax purposes, and have a useful life of four or more years remaining at the time it is placed in service or use in this state, and if the property is leased, the primary term of the lease remaining at the time the leased property is placed in service or use in this state, must be four or more years.

(B) *Excluded property*. — The term property purchased or leased for business expansion does not include:

(i) Repair costs, including materials used in the repair, unless for federal income tax purposes the cost of the repair must be capitalized and not expensed.

(ii) Airplanes and helicopters.

(iii) Property, which is primarily used outside this state, with use being determined based upon the amount of time the property is actually used both within and outside this state.

(iv) Property which is acquired incident to the purchase of the stock or assets of the seller, unless for good cause shown, the Tax Commissioner consents to waiving this requirement.

(v) Purchased or leased property, the cost or consideration for which cannot be quantified with any reasonable degree of accuracy at the time the property is placed in service or use: *Provided,* That when the contract of purchase or lease specifies a minimum purchase price or minimum annual rent the amount thereof shall be used to determine the qualified investment in the property under §11-13KK-6 of this code if the property otherwise qualifies as property purchased or leased for expansion of a small arms and ammunition manufacturing facility.

(22) "Purchase" means any acquisition of property, but only if:

(A) The property is not acquired from a person whose relationship to the person acquiring it would result in the disallowance of deductions under section 267 or 707 (b) of the United States Internal Revenue Code.

(B) The property is not acquired by one component member of an affiliated or controlled group from another component member of the same affiliated or controlled group, as applicable. The Tax Commissioner may waive this requirement if the property was acquired from a related party for its then fair market value; and

(C) The basis of the property for federal income tax purposes, in the hands of the person acquiring it, is not determined:

(i) In whole or in part, by reference to the federal adjusted basis of the property in the hands of the person from whom it was acquired; or

(ii) Under Section 1014(e) of the United States Internal Revenue Code.

(23) "Qualified activity" means any small arms and ammunition manufacturing business activity subject to any of the taxes imposed by §11-21-1 *et seq.* or §11-24-1 *et seq.* of this code which is or may be classified under the North American Industry Classification System with a six-digit North American Industry Classification System code for a product produced at a facility with code numbers 332992 or 332994 as they are defined on January 1, 2021.

(24) "Related person" means:

(A) A corporation, partnership, association, or trust controlled by the taxpayer;

(B) An individual, corporation, partnership, association, or trust that is in control of the taxpayer;

(C) A corporation, partnership, association, or trust controlled by an individual, corporation, partnership, association, or trust that is in control of the taxpayer; or

(D) A member of the same affiliated or controlled group as the taxpayer.

For purposes of this subdivision, control, with respect to a corporation, means ownership, directly or indirectly, of stock possessing 50 percent or more of the total combined voting power of all classes of the stock of the corporation entitled to vote.

Control, with respect to a trust, means ownership, directly or indirectly, of 50 percent or more of the beneficial interest in the principal or income of the trust. The ownership of stock in a corporation, of a capital or profits interest in a partnership or association, or of a beneficial interest in a trust is determined in accordance with the rules for constructive ownership of stock provided in section 267(c) of the United States Internal Revenue Code, other than paragraph (3) of that section.

(25) "Replacement small arms and ammunition manufacturing facility" means any property (other than an expanded small arms and ammunition manufacturing facility) that replaces or supersedes any other property located within this state that:

(A) The taxpayer or a related person used in or in connection with any small arms and ammunition manufacturing facility for more than two years during the period of five consecutive years ending on the date the replacement or superseding property is placed in service by the taxpayer; or

(B) Is not used by the taxpayer or a related person in or in connection with any small arms and ammunition manufacturing facility for a continuous period of one year or more commencing with the date the replacement or superseding property is placed in service by the taxpayer.

(26) "Taxpayer" means any person subject to any of the taxes imposed by §11-21-1 *et seq.* or §11-24-1 *et seq.* of this code.

(27) "This code" means the Code of West Virginia, 1931, as amended.

(28) "This state" means the State of West Virginia.

(29) "United States Internal Revenue Code" or "I.R.C." means the Internal Revenue Code as defined in §11-21-1 *et seq.* or §11-24-1 *et seq.* of this code.

(30) "Used property" means property acquired after June 30, 2021, that is not "new property".

(31) "Federal excise tax" means all excise taxes paid to the government of the United States under section 4181 of Title 26 of the Internal Revenue Code imposed upon manufacturers, producers, or importers by the sale of pistols, revolvers, firearms (other than pistols and revolvers), shells and cartridges.

§11-13KK-3. Amount of credit allowed.

(a) *Credit allowed*. — Notwithstanding any other provision of this code, eligible taxpayers are allowed a credit against the portion of taxes imposed by this state that are attributable to and the consequence of the taxpayer's qualified investment in a new or expanded small arms and ammunition manufacturing facility in this state: *Provided,* That such qualified investment is equal to or greater than $2 million. The amount of this credit is determined and applied as provided in this article.

(b) *Amount of credit*. — The amount of credit allowable is 100 percent of amount of federal excise tax paid in a tax year under section 4181, Title 26 of the Internal Revenue Code, which are

attributable to and the consequence of the taxpayer's qualified investment. The product of this calculation establishes the maximum amount of credit allowable under this article due to the qualified investment.

(c) *Application of credit over 10 years*. — The amount of credit allowable shall be taken over a 10-year period, beginning with the taxable year in which the taxpayer places the qualified investment in service or use in this state, unless the taxpayer elected to delay the beginning of the 10-year period until the next succeeding taxable year. This election shall be made in the annual income tax return filed under this chapter for the taxable year in which qualified investment is first placed into service or use by the taxpayer. Once made, the election cannot be revoked. The annual credit allowance is taken in the manner prescribed in §11-13KK-4 of this code.

(d) *Placed in service or use*. — For purposes of the credit allowed by this section, property is considered placed in service or use in the earlier of the following taxable years:

(1) The taxable year in which, under the taxpayer's depreciation practice, the period for depreciation with respect to the property begins; or

(2) The taxable year in which the property is placed in a condition or state of readiness and availability for a specifically assigned function.

§11-13KK-4. Application of annual credit allowance.

(a) The amount determined under §11-13KK-3 is allowed as a credit against 100 percent of that portion of the taxpayer's state tax liability which is attributable to and the direct result of the taxpayer's qualified investment and applied as provided in subsections (b) and (c), both inclusive of this section, and in that order.

(b) *Corporation net income taxes*. —

(1) That portion of the allowable credit attributable to qualified investment in a small arms and ammunition manufacturing facility may be applied to reduce the taxes imposed by §11-24-1 *et seq.* of this code for the taxable year as determined before application of allowable credits against tax.

(2) If the taxes due under §11-24-1 *et seq.* of this code, as determined before application of allowable credits against tax, are not solely attributable to and the direct result of the taxpayer's qualified investment in a small arms and ammunition manufacturing business, the amount of the taxes that is attributable are determined by multiplying the amount of taxes due under §11-24-1 *et seq.* of this code for the taxable year, as determined before application of allowable credits against tax, by a fraction, the numerator of which is all wages, salaries, and other compensation paid during the taxable year to all employees of the taxpayer employed in this state whose positions are directly attributable to the qualified investment. The denominator of the fraction is the wages, salaries, and other compensation paid during the taxable year to all employees of the taxpayer employed in this state.

(c) *Personal income taxes*. —

(1) If the person making the qualified investment in a small arms and ammunition manufacturing facility is an electing small business corporation, as defined in section 1361 of the United States Internal Revenue Code, a partnership, a limited liability company that is treated as a partnership for federal income tax purposes, or a sole proprietorship, then any unused credit is allowed as a credit against the taxes imposed by §11-21-1 *et seq.* of this code on the income from small arms and ammunition manufacturing facility, or on income of a sole proprietor attributable to the small arms and ammunition manufacturing facility.

(2) Electing small business corporations, limited liability companies treated as partnerships for federal income tax purposes, partnerships, and other unincorporated organizations shall allocate the credit allowed by this article among its members in the same manner as profits and losses are allocated for the taxable year.

(3) If the amount of taxes due under §11-21-1 *et seq.* of this code, as determined before application of allowable credits against tax, that is attributable to business, is not solely attributable to and the direct result of the qualified investment of the electing small business corporation, limited liability company treated as a partnership for federal income tax purposes, other unincorporated organization, or sole proprietorship, the amount of the taxes that are so attributable are determined by multiplying the amount of taxes due under §11-21-1 *et seq.* of this code, as determined before application of allowable credits against tax that is attributable to business by a fraction, the numerator of which is all wages, salaries, and other compensation paid during the taxable year to all employees of the electing small business corporation, limited liability company, partnership, other unincorporated organization, or sole proprietorship employed in this state, whose positions are directly attributable to the qualified investment. The denominator of the fraction is the wages, salaries, and other compensation paid during the taxable year to all employees of the taxpayer.

(4) No credit is allowed under this section against any employer withholding taxes imposed by §11-21-1 *et seq.* of this code.

(d) If the wages, salaries, and other compensation fraction formula provisions of subsections (b) and (c) of this section, inclusive, do not fairly represent the taxes solely attributable to and the direct result of qualified investment of the taxpayer the Tax Commissioner may require, in respect to all or any part of the taxpayer's businesses or activities, if reasonable:

(1) Separate accounting or identification;

(2) Adjustment to the wages, salaries, and other compensation fraction formula to reflect all components of the tax liability;

(3) The inclusion of one or more additional factors that will fairly represent the taxes solely attributable to and the direct result of the qualified investment of the taxpayer and all other project participants in the businesses or other activities subject to tax; or

(4) The employment of any other method to effectuate an equitable attribution of the taxes. In order to effectuate the purposes of this subsection, the Tax Commissioner may propose for promulgation rules, including emergency rules, in accordance with §29A-3-1 *et seq.* of this code.

(e) *Unused credit*. — If any credit remains after application of subsection (a) of this section, the amount thereof is carried forward to each ensuing tax year until used or until the expiration of the tenth taxable year subsequent to the end of the initial 10-year credit application period. If any unused credit remains after the 20th year, the amount thereof is forfeited. No carryback to a prior taxable year is allowed for the amount of any unused portion of any annual credit allowance.

§11-13KK-5. Qualified investment.

(a) *General*. — The qualified investment in property purchased or leased for a new, or expansion of an existing, small arms and ammunition manufacturing facility is the applicable percentage of the cost of each property purchased or leased for the purpose of the new, or expansion of an existing, small arms and ammunition manufacturing facility which is placed in service or use in this state by the taxpayer during the taxable year.

(b) *Cost*. — For purposes of subsection (a) of this section, the cost of each property purchased for a new, or expansion of an existing, small arms and ammunition manufacturing facility is determined under the following rules:

(1) *Trade-ins*. — Cost does not include the value of property given in trade or exchange for the property purchased for a new, or for expansion of an existing, small arms and ammunition manufacturing facility.

(2) *Damaged, destroyed, or stolen property*. — If property is damaged or destroyed by fire, flood, storm, or other casualty, or is stolen, then the cost of replacement property does not include any insurance proceeds received in compensation for the loss.

(3) *Rental property*. —

(A) The cost of real property acquired by written lease for a primary term of 10 years or longer is 100 percent of the rent reserved for the primary term of the lease, not to exceed 20 years.

(B) The cost of tangible personal property acquired by written lease for a primary term of:

(i) Four years, or longer, is one third of the rent reserved for the primary term of the lease;

(ii) Six years, or longer, is two thirds of the rent reserved for the primary term of the lease; or

(iii) Eight years, or longer, is 100 percent of the rent reserved for the primary term of the lease, not to exceed 20 years: *Provided,* That in no event may rent reserved include rent for any year subsequent to expiration of the book life of the equipment, determined using the straight-line method of depreciation.

(4) *Self-constructed property*. — In the case of self-constructed property, the cost thereof is the amount properly charged to the capital account for depreciation in accordance with federal income tax law.

(5) *Transferred property*. — The cost of property used by the taxpayer out-of-state and then brought into this state, is determined based on the remaining useful life of the property at the time it is placed in service or use in this state, and the cost is the original cost of the property to the taxpayer less straight line depreciation allowable for the tax years or portions thereof the taxpayer used the property outside this state. In the case of leased tangible personal property, cost is based on the period remaining in the primary term of the lease after the property is brought into this state for use in a new or expanded business facility of the taxpayer, and is the rent reserved for the remaining period of the primary term of the lease, not to exceed 20 years, or the remaining useful life of the property, as determined as aforesaid, whichever is less.

§11-13KK-6. Forfeiture of unused tax credits; redetermination of credit allowed.

(a) *Disposition of property or cessation of use*. — If during any taxable year, property with respect to which a tax credit has been allowed under §11-13KK-1 *et seq.* of this code is disposed of or ceases to be used in a small arms and ammunition manufacturing facility of the taxpayer in this state, then the unused portion of the credit allowed for the property is forfeited for the taxable year and all ensuing years, except when the property is damaged or destroyed by fire, flood, storm, or other casualty, or is stolen.

(b) *Cessation of operation of small arms and ammunition manufacturing facility*. — If during any taxable year the taxpayer ceases operation of a small arms and ammunition manufacturing facility in this state for which credit was allowed under this article, then the unused portion of the allowed credit is forfeited for the taxable year and for all ensuing years, except when the cessation is due to fire, flood, storm, or other casualty.

§11-13KK-7. Transfer of qualified investment to successors.

(a) *Mere change in form of business*. — Property may not be treated as disposed of under §11-13KK-8 of this code, by reason of a mere change in the form of conducting the business as long as the property is retained in the successor's small arms and ammunition manufacturing facility in this state, and the transferor business retains a controlling interest in the successor business. In this event, the successor business is allowed to claim the amount of credit still available with respect to the business facility or facilities transferred.

(b) *Transfer or sale to successor*. — Property is not treated as disposed of under §11-13KK-10 of this code by reason of any transfer or sale to a successor business which continues to operate the small arms and ammunition manufacturing facility in this state. Upon transfer or sale, the successor shall acquire the amount of credit that remains available under this article for each subsequent taxable year.

§11-13KK-8. Identification of investment credit property.

Every taxpayer who claims credit under §11-13KK-1 *et seq.* of this code shall maintain sufficient records to establish the following facts for each item of qualified property:

(1) Its identity;

(2) Its actual or reasonably determined cost;

(3) Its straight-line depreciation life;

(4) The month and taxable year in which it was placed in service;

(5) The amount of credit taken;

(6) The date it was disposed of or otherwise ceased to be used as qualified property in the small arms and ammunition manufacturing facility of the taxpayer; and

(7) Amounts and dates of federal excise tax paid.

§11-13KK-9. Failure to keep records of investment credit property.

A taxpayer who does not keep the records required for identification of investment credit property is subject to the following rules:

(1) A taxpayer is treated as having disposed of, during the taxable year, any investment credit property which the taxpayer cannot establish was still on hand, in this state, at the end of that year.

(2) If a taxpayer cannot establish when investment credit property reported for purposes of claiming this credit returned during the taxable year was placed in service, the taxpayer is treated as having placed it in service in the most recent prior year in which similar property was placed in service, unless the taxpayer can establish that the property placed in service in the most recent year is still on hand. In that event, the taxpayer will be treated as

having placed the returned property in service in the next most recent year.

§11-13KK-10. Interpretation and construction.

(a) No inference, implication, or presumption of legislative construction or intent may be drawn or made by reason of the location or grouping of any particular section, provision, or portion of §11-13KK-1 *et seq.* of this code; and no legal effect may be given to any descriptive matter or heading relating to any section, subsection, or paragraph of this article.

(b) The provisions of §11-13KK-1 *et seq.* of this code shall be reasonably construed in order to effectuate the legislative intent recited in §11-13KK-1 of this code.

§11-13KK-11. Burden of proof; application required; failure to make timely application.

(a) *Burden of proof.* — The burden of proof is on the taxpayer to establish by clear and convincing evidence that the taxpayer is entitled to the benefits allowed by §11-13KK-1 *et seq.* of this code.

(b) *Application for credit required.* —

(1) *Application required.* — Notwithstanding any provision of this article to the contrary, no credit is allowed or may be applied under §11-13KK-1 *et seq.* of this code for any qualified investment property placed in service or use until the person asserting a claim for the allowance of credit under this article makes written application to the commissioner for allowance of credit as provided in this subsection. An application for credit shall be filed, in the form prescribed by the Tax Commissioner, no later than the last day for filing the tax returns, determined by including any authorized extension of time for filing the return, required under §11-21-1 *et seq.* or §11-24-1 *et seq.* of this code for the taxable year in which the property to which the credit relates is placed in service or use and all information required by the form shall be provided.

(2) *Failure to make timely application.* — The failure to timely apply for the credit results in the forfeiture of 50 percent of the

annual credit allowance otherwise allowable under §11-13KK-1 *et seq.* of this code. This penalty applies annually until the application is filed.

§11-13KK-12. Tax credit review and accountability.

(a) Beginning on February 1, 2026, and every fifth year thereafter, the Tax Commissioner shall submit to the Governor, the President of the Senate, and the Speaker of the House of Delegates a tax credit review and accountability report evaluating the cost effectiveness of this credit during the most recent five-year period for which information is available. The criteria to be evaluated shall include, but not be limited to, for each year of the five-year period:

(1) The numbers of taxpayers claiming the credit;

(2) The moneys invested, and net number of new jobs created by all taxpayers claiming the credit;

(3) The cost of the credit;

(4) The cost of the credit per new job created; and

(5) Comparison of employment trends for an industry and for taxpayers within the industry that claim the credit.

(b) Taxpayers claiming the credit shall provide any information the Tax Commissioner may require to prepare the report required by this section: *Provided,* That the information provided is subject to the confidentiality and disclosure provisions of §11-10-5d of this code.

(c) On or before February 1, 2026, the Department of Commerce, in consultation with the Tax Commissioner, the Department of Transportation, and the Department of Environmental Protection shall submit to the Governor, the President of the Senate, and the Speaker of the House of Delegates a report of the impact of all the tax credits and other economic incentives provided in §11-13KK-1 *et seq.* of this code upon; (1) Economic development in this state, including, but not limited to,

the moneys invested and jobs created in this state; (2) the state's infrastructure, including, but not limited to, the need for construction or maintenance of the roads and highways of the state; (3) the natural resources of the state; and (4) upon public and private property interests in the state.

§11-13KK-13. Rules.

The Tax Commissioner may promulgate such interpretive, legislative, and procedural rules as the commissioner deems to be useful or necessary to carry out the purpose of §11-13KK-1 *et seq.* of this code and to implement the intent of the Legislature. The Tax Commissioner may promulgate emergency rules if they are filed in the West Virginia Register before January 1, 2022. All rules shall be promulgated in accordance with §29A-3-1 *et seq.* of this code.

§11-13KK-14. General procedure and administration.

Each provision of the "West Virginia Tax Procedure and Administration Act" set forth in §11-10-1 *et seq.* of this code applies to the tax credit allowed under §11-13KK-1 *et seq.* of this code, except as otherwise expressly provided in this article, with like effect as if that act were applicable only to the tax credit allowed by §11-13KK-1 *et seq.* of this code and were set forth *in extenso* in this article.

§11-13KK-15. Crimes and penalties.

Each provision of the "West Virginia Tax Crimes and Penalties Act" set forth in §11-9-1 *et seq.* of this code applies to the tax credit allowed by §11-13KK-1 *et seq.* of this code with like effect as if that act were applicable only to the tax credit §11-13KK-1 *et seq.* of this code and were set forth *in extenso* in this article.

§11-13KK-16. Severability.

(a) If any provision of §11-13KK-1 *et seq.* of this code, or the application thereof, is for any reason adjudged by any court of competent jurisdiction to be invalid, the judgment may not affect,

impair, or invalidate the remainder of §11-13KK-1 *et seq.* of this code, but shall be confined in its operation to the provision thereof directly involved in the controversy in which the judgment shall have been rendered, and the applicability of the provision to other persons or circumstances may not be affected thereby.

(b) If any provision of §11-13KK-1 *et seq.* of this code, or the application thereof, is made invalid or inapplicable by reason of the repeal or any other invalidation of any statute therein addressed or referred to, such invalidation or inapplicability may not affect, impair, or invalidate the remainder of §11-13KK-1 *et seq.* of this code, but shall be confined in its operation to the provision thereof directly involved with, pertaining to, addressing, or referring to the statute, and the application of the provision with regard to other statutes or in other instances not affected by any such repealed or invalid statute may not be abrogated or diminished in any way.

§11-13KK-17. Effective date.

The credit allowed by this article is allowable for qualified investment property placed in service or use on or after July 1, 2021, subject to the rules contained in §11-13KK-1 *et seq.* of this code and rules promulgated by the Tax Commissioner pursuant to §29A-3-1 *et seq.* of this code.

ARTICLE 15. CONSUMERS SALES AND SERVICE TAX.

†§11-15-9t. Exemption for sales of small arms and ammunitions.

(a) Notwithstanding any provision of this code to the contrary, the sale of small arms and small arms ammunition, as those terms are defined in subsections (b) and (c) of this section, are exempted from the taxes imposed by this article and by §11-15A-1 *et seq.* of this code.

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†**NOTE:** S. B. 305 (Chapter 248), which passed prior to this act, also created a new Section 9t. Therefore, this has been redesignated as Section 9u for the code.

(b) "Small arms" means any portable firearm, designed to be carried and operated by a single person, including, but not limited to, rifles, shotguns, pistols, and revolvers, with no barrel greater than an internal diameter of .50 caliber or a shotgun of 10 gauge or smaller.

(c) "Small arms ammunition" means firearm ammunition designed for use in small arms.

CHAPTER 261

(Com. Sub. for H. B. 2581 - By Delegates Graves, Criss, Barrett, Anderson, Rohrbach, J. Kelly, Maynard, Burkhammer, J. Pack, Bridges and Westfall)

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

AN ACT to repeal §11-3-24b and §11-3-25 of the Code of West Virginia, 1931, as amended; and to amend and reenact §11-1C-10 of said code; and to amend and reenact §11-3-15c, §11-3-15f, §11-3-15h, §11-3-15i, §11-3-23, §11-3-23a, §11-3-24, §11-3-24a, §11-3-25a, and §11-3-32 of said code, and to amend and reenact §11-10A-1, §11-10A-7, §11-10A-8, §11-10A-10, and §11-10A-19 of said code, all generally relating to the valuation, assessment, review, and appellate rights of property owners regarding valuation, classification, and taxability of real estate and personal property taxation; directing the Tax Commissioner to, no later than July 1, 2021, propose emergency rules concerning the valuation of property producing oil, natural gas, natural gas liquids, or any combination thereof; providing methodology to determine fair market value and net proceeds; defining terms; providing taxpayers the option to furnish a formal appraisal to establish the value of their real property; providing that an assessor's review is to be an informal process and defining the standard of proof which a taxpayer must meet to be no greater than a preponderance of the evidence; expanding the jurisdiction of the Office of Tax Appeals to include property tax valuation, classification, and taxability; providing that if an assessor rejects a petition, the petitioner may appeal to the county Board of Equalization and Review or the Office of Tax Appeals; allowing for certain appeals from decisions of the Tax Commissioner and Board of Equalization and Review to the Office of Tax Appeals; repealing and eliminating the Board of

Assessment Appeals; providing for an increase in the number of administrative law judges and staff attorneys within the Office of Tax Appeals; providing for an effective date; and allowing appeal of decision of the Office of Tax Appeals to be made in the county in which the real or personal property is assessed.

Be it enacted by the Legislature of West Virginia:

ARTICLE 1C. FAIR AND EQUITABLE PROPERTY VALUATION.

§11-1C-10. Valuation of industrial property and natural resources property by Tax Commissioner; penalties; methods; values sent to assessors.

(a) As used in this section:

(1) "Industrial property" means real and personal property integrated as a functioning unit intended for the assembling, processing and manufacturing of finished or partially finished products.

(2) "Natural resources property" means coal, oil, natural gas, limestone, fireclay, dolomite, sandstone, shale, sand and gravel, salt, lead, zinc, manganese, iron ore, radioactive minerals, oil shale, managed timberland as defined in section two of this article, and other minerals.

(b) All owners of industrial property and natural resources property each year shall make a return to the State Tax Commissioner and, if requested in writing by the assessor of the county where situated, to such county assessor at a time and in the form specified by the commissioner of all industrial or natural resources property owned by them. The commissioner may require any information to be filed which would be useful in valuing the property covered in the return. Any penalties provided for in this chapter or elsewhere in this code relating to failure to list any property or to file any return or report may be applied to any owner of property required to make a return pursuant to this section.

(c) The State Tax Commissioner shall value all industrial property in the state at its fair market value within three years of the approval date of the plan for industrial property required in subsection (e) of this section. The commissioner shall thereafter maintain accurate values for all such property. The Tax Commissioner shall forward each industrial property appraisal to the county assessor of the county in which that property is located and the assessor shall multiply each such appraisal by sixty percent and include the resulting assessed value in the land book or the personal property book, as appropriate for each tax year. The commissioner shall supply support data that the assessor might need to evaluate the appraisal.

(d) Within three years of the approval date of the plan required for natural resources property required pursuant to subsection (e) of this section, the State Tax Commissioner shall determine the fair market value of all natural resources property in the state and thereafter maintain accurate values for all such property.

(1) In order to qualify for identification as managed timberland for property tax purposes the owner must annually certify, in writing to the Division of Forestry, that the property meets the definition of managed timberland as set forth in this article and contracts to manage property according to a plan that will maintain the property as managed timberland. In addition, each owner's certification must state that forest management practices will be conducted in accordance with approved practices from the publication "Best Management Practices for Forestry". Property certified as managed timberland shall be valued according to its use and productive potential. The Tax Commissioner shall promulgate rules for certification as managed timberland.

(2) In the case of all other natural resources property, the commissioner shall develop an inventory on a county by county basis of all such property and may use any resources, including, but not limited to, geological survey information; exploratory, drilling, mining and other information supplied by natural resources property owners; and maps and other information on file with the state Division of Environmental Protection and office of miners' health, safety and training. Any information supplied by natural

resources owners or any proprietary or otherwise privileged information supplied by the state Division of Environmental Protection and office of miner's health, safety and training shall be kept confidential unless needed to defend an appraisal challenged by a natural resources owner. Formulas for natural resources valuation may contain differing variables based upon known geological or other common factors. The Tax Commissioner shall forward each natural resources property appraisal to the county assessor of the county in which that property is located and the assessor shall multiply each such appraisal by sixty percent and include the resulting assessed value in the land book or the personal property book, as appropriate, for each tax year. The commissioner shall supply support data that the assessor might need to explain or defend the appraisal. The commissioner shall directly defend any challenged appraisal when the assessed value of the property in question exceeds $2 million or an owner challenging an appraisal holds or controls property situated in the same county with an assessed value exceeding $2 million. At least every five years, the commissioner shall review current technology for the recovery of natural resources property to determine if valuation methodologies need to be adjusted to reflect changes in value which result from development of new recovery technologies.

(3) The Tax Commissioner shall, no later than July 1, 2021, propose emergency rules in accordance with §29A-3-15 of this code regarding valuation of property producing oil, natural gas, natural gas liquids, or any combination thereof. For purposes of the emergency rules required by this subdivision regarding valuation of property producing oil, natural gas, natural gas liquids, or any combination thereof, fair market value shall be determined through the process of applying a yield capitalization model to the net proceeds. Net proceeds shall mean actual gross receipts on a sales volume basis determined from the actual price received by the taxpayers as reported on the taxpayer's returns, less royalties, and less actual annual operating costs as reported on the taxpayer's returns. For the purposes of this subdivision:

(A) "Natural gas liquids" means propane, ethane, butanes, and pentanes (also referred to as condensate), or a combination of them

that are subject to recovery from raw gas liquids by processing in field separators, scrubbers, gas processing and reprocessing plants, or cycling plants.

(B) "Actual annual operating costs" shall only include lease operating expenses, lifting costs, gathering, compression, processing, separation, fractionation, and transportation charges.

(e) The Tax Commissioner shall develop a plan for the valuation of industrial property and a plan for the valuation of natural resources property. The plans shall include expected costs and reimbursements, and shall be submitted to the property valuation training and procedures commission on or before January 1, 1991, for its approval on or before July 1, of such year. Such plan shall be revised, resubmitted to the commission and approved every three years thereafter.

(f) To perform the valuation duties under this section, the State Tax Commissioner has the authority to contract with a competent property appraisal firm or firms to assist with or to conduct the valuation process as to any discernible species of property statewide if the contract and the entity performing such contract is specifically included in a plan required by subsection (e) of this section or otherwise approved by the commission. If the Tax Commissioner desires to contract for valuation services only in one county or a group of counties, the contract must be approved by the commission.

(g) The county assessor may accept the appraisal provided, pursuant to this section, by the State Tax Commissioner: *Provided,* That if the county assessor fails to accept the appraisal provided by the State Tax Commissioner, the county assessor shall show just cause to the valuation commission for the failure to accept such appraisal and shall further provide to the valuation commission a plan by which a different appraisal will be conducted.

(h) The costs of appraising the industrial and natural resources property within each county, and any costs of defending same shall be paid by the state: *Provided,* That the office of the state Attorney General shall provide legal representation on behalf of the Tax

Commissioner or assessor, at no cost, in the event the industrial and natural resources appraisal is challenged in court.

(i) For purposes of revaluing managed timberland as defined in section two of this article, any increase or decrease in valuation by the commissioner does not become effective prior to July 1, 1991. The property owner may request a hearing by the director of the Division of Forestry, who may thereafter rescind the disqualification or allow the property owner a reasonable period of time in which to qualify the property. A property owner may appeal a disqualification to the circuit court of the county in which the property is located.

ARTICLE 3. ASSESSMENTS GENERALLY.

§11-3-15c. Petition for assessor review of improper valuation of real property.

(a) A taxpayer who is of the opinion that his or her real property has been valued too high or otherwise improperly valued or listed in the notice given as provided in §11-3-2a of this code may, but is not required to, file a petition for review with the assessor on a written form prescribed by the Tax Commissioner. This section shall not apply to industrial and natural resource property appraised by the Tax Commissioner.

(b) The petition shall state the taxpayer's opinion of the true and actual value of the property and substantial information that justifies that opinion of value for the assessor to consider for purposes of basing a change in classification or correction of the valuation. For purposes of this subsection, the taxpayer shall provide substantial information to justify the opinion of value. The taxpayer may provide an appraisal of the property from a licensed real estate appraiser stating its true and actual value for its current use.

(c) The petition may include more than one parcel of property if they are part of the same economic unit according to the Tax Commissioner's guidelines or if they are owned by the same owner, have the same use, are appealed on the same basis, and are

located in the same tax district or in contiguous tax districts of the county, and are in a form prescribed by the Tax Commissioner.

(d) The petition shall be filed within eight business days after the date the taxpayer receives the notice of increased assessment under §11-3-2a of this code or the notice of increased value was published as a Class II-0 legal advertisement as provided in that section. For purposes of this section, 'business day' means any day other than Saturday, Sunday, or any legal holiday set forth in section one, article two, chapter two of this code.

§11-3-15f. Rejection of petition; amended petition; appeal options.

If the assessor rejects a petition filed pursuant to §11-3-15c, §11-3-15d, or §11-3-15e of this code, the petitioner may appeal to the county Board of Equalization and Review as provided in §11-3-24 of this code or the Office of Tax Appeals.

§11-3-15h. Ruling on petition.

(a) In all cases the assessor shall consider the petition and shall rule on each petition filed pursuant to §11-3-15c, §11-3-15d, or §11-3-15e of this code by February 10 of the assessment year. Written notice shall be served by regular mail on the person who filed the petition.

(b) In considering a petition filed pursuant to §11-3-15c, §11-3-15d, or §11-3-15e of this code, the assessor shall consider the valuation fixed by the assessor on other similar property that is similarly situated.

(c) The consideration of a petition for review with the assessor is to be an informal process. Formal rules of evidence shall not be required; the assessor may consider all evidence presented and may give each item the weight, in his or her opinion, it commands.

(d) The standard of proof which a taxpayer must meet to defend his or her opinion of the true and actual value of the subject property during reviews by the assessor shall be no greater than a simple preponderance of the evidence standard.

§11-3-15i. Petitioner's right to appeal.

(a) If the assessor grants the requested relief, the petitioner may not appeal the ruling of the assessor.

(b) If the petitioner and the assessor reach an agreement within five business days after the conclusion of the meeting held as provided in §11-3-15g of this code, both parties shall sign the agreement and both parties waive the right to further appeal.

(c) If all or part of the petitioner's request under §11-3-15c, §11-3-15d, or §11-3-15e of this code is denied, the assessor shall mail, on the date of the ruling, to the petitioner at the address shown on the petition notice of the grounds of the refusal to make the change or changes requested in the petition. A petitioner whose request is denied, in whole or in part, or a petitioner who does not receive a response from the assessor by February 10, as provided in §11-3-15h of this code, may file a protest with the county commission sitting as a board of equalization and review, as provided in §11-3-24 of this code, or the Office of Tax Appeals.

§11-3-23. Alterations in property books.

After the copies of the landbook or personal property book have been verified and delivered, no alteration shall be made in them, or either of them, affecting the taxes of that year, except on the final order of a successful review or appeal from the assessment.

§11-3-23a. Informal review and resolution of classification, taxability and valuation issues.

(a) *General*. - Anytime after real or tangible personal property is returned for taxation, the taxpayer may apply to the assessor of the county in which the property was situated on the assessment date for information about the classification, taxability, or valuation of the property for property tax purposes for the tax year following the July 1 assessment date. A taxpayer who is not satisfied with the response of the assessor and wants to further pursue the matter shall follow the procedures set forth in this section.

(b) *Classification or taxability*. - A taxpayer who wants to contest the classification or taxability of property must follow the procedures set forth in §11-3-24a of this code.

(c) *Valuation issues - property appraised and assessed by county assessor*. —

(1) A taxpayer who is dissatisfied with the response of the assessor on a question of valuation and who receives a notice of increase in the assessed value of real property as provided in §11-3-2a of this code, or a notice of increase in the assessed value of business personal property as provided in §11-3-15b of this code, who disagrees with the assessed value stated in the notice, may use the informal review process specified in this article if the taxpayer decides to challenge the assessed value.

(2) A taxpayer may apply for relief to the county commission sitting as a Board of Equalization and Review pursuant to §11-3-24 of this code, or to the Office of Tax Appeals not later than February 20 of the tax year by filing a written protest with the clerk of the county commission or the Office of Tax Appeals that identifies the amount of the assessed value the taxpayer believes to be in controversy and states generally the taxpayer's reason or reasons for filing the protest. The board or the Office of Tax Appeals shall then set a date and time to hear the taxpayer's protest.. The taxpayer shall timely pay first and second half installment payments of taxes levied for the current tax year on or before they become due and that any reduction in assessed value that is administratively or judicially determined in a decision that becomes final will result in a credit being established against taxes that become due for a tax year subsequent to the tax year in which the decision becomes final, except as otherwise stated in the decision or as otherwise provided in this article. In the event the Board of Equalization and Review adjourns sine die before February 20 of the tax year, a taxpayer may file its written protest and the acknowledgment described in this subdivision with the Office of Tax Appeals. If a taxpayer fails to provide its written protest on or before February 20, and the Board of Equalization and Review unilaterally increases the assessed value subsequent to that date, the taxpayer may file a written protest and the

acknowledgment described in this subdivision with the Office of Tax Appeals.

(d) *Valuation issues - property appraised by Tax Commissioner and assessed by county assessor.* -

(1) A taxpayer who receives a notice of tentative appraised value of natural resource property or industrial property from the Tax Commissioner pursuant to §11-6K-1 *et seq.* of this code.

(2) A taxpayer may apply for relief to the county commission sitting as a board of equalization and review pursuant to §11-3-24 of this code or to the Office of Tax Appeals no later than February 20 of the tax year by filing a written protest with the clerk of the county commission or to the Office of Tax Appeals that identifies the amount of the assessed value the taxpayer believes to be in controversy and states generally the taxpayer's reason or reasons for filing the protest. The board or the Office of Tax Appeals shall then set a date and time to hear the taxpayer's protest. The taxpayer shall timely pay first and second half installment payments of taxes levied for the current tax year on or before they become due and that any reduction in assessed value that is administratively or judicially determined in a decision that becomes final will result in a credit being established against taxes that become due for a tax year subsequent to the tax year in which the decision becomes final, except as otherwise stated in the decision or as otherwise provided in this article. In the event the Board of Equalization and Review adjourns sine die before February 20 of the tax year, a taxpayer may file its written protest and the acknowledgment described in this subdivision with the Office of Tax Appeals. If a taxpayer fails to provide its written protest on or before February 20, and the Board of Equalization and Review unilaterally increases the assessed value subsequent to that date, the taxpayer may file a written protest and the acknowledgment described in this subdivision with the Office of Tax Appeals.

(e) The standard of proof which a taxpayer must meet at all levels of review and appeal under this section shall be a preponderance of the evidence standard.

§11-3-24. Review and equalization by county commission.

(a) The county commission shall annually, not later than February 1 of the tax year, meet as a board of equalization and review for the purpose of reviewing and equalizing the assessment made by the assessor. The board shall not adjourn for longer than three business days at a time, not including a Saturday, Sunday or legal holiday in this state, until this work is completed. The board may adjourn sine die anytime after February 15 of the tax year and shall adjourn sine die not later than the last day of February of the tax year.

(b) At the first meeting of the board, the assessor shall submit the property books for the current year, which shall be complete, except that the levies shall not be extended. The assessor and the assessor's assistants shall attend and render every assistance possible in connection with the value of property assessed by them.

(c) The board shall proceed to examine and review the property books, and shall add on the books the names of persons, the value of personal property and the description and value of real estate liable to assessment which was omitted by the assessor. The board shall correct all errors in the names of persons, in the description and valuation of property, and shall cause to be done whatever else is necessary to make the assessed valuations comply with the provisions of this chapter. But in no case shall any question of classification or taxability be considered or reviewed by the board.

(d) If the board determines that any property or interest is assessed at more or less than 60 percent of its true and actual value as determined under this chapter, it shall fix it at 60 percent of its true and actual value: *Provided,* That no assessment shall be increased without giving the taxpayer at least five days' notice, in writing, of the intention to make the increase and no assessment shall be greater than 60 percent of the true and actual value of the property.

(e) Service of notice of the increase upon the taxpayer shall be sufficient, or upon his or her agent or attorney, if served in person, or if sent by registered or certified mail to the property owner, his

or her agent, or attorney, at the last known mailing address of the person as shown in the records of the assessor or the tax records of the county sheriff. If such person cannot be found and has no last known mailing address, then notice shall be given by publication thereof as a Class I legal advertisement in compliance with the provisions of §59-3-1, *et seq.* of this code and the publication area shall be the county. The date of the publication shall be at least five days, not including a Saturday, Sunday or legal holiday in this state, prior to the day the board acts on the increase. When the board intends to increase the entire valuation in any one tax district by a general increase, notice shall be given by publication thereof as a Class II-0 legal advertisement in compliance with the provisions of §59-3-1, *et seq.* of this code and the publication area shall be the county. The date of the last publication shall be at least five days, not including a Saturday, Sunday or legal holiday in this state, prior to the meeting at which the increase in valuation is acted on by the board. When an increase is made, the same valuation shall not again be changed unless notice is again given as provided.

The clerk of the county commission shall publish notice of the time, place, and general purpose of the meeting as a Class II legal advertisement in compliance with the provisions of §59-3-1, *et seq.* of this code and the publication area shall be the county. The expense of publication shall be paid out of the county treasury.

(f) Any person who receives notice as provided in subsection (e) of this section may appear before the board at the time and place specified in the notice to object to the proposed increase in the valuation of taxpayer's property. After hearing the board's reason or reasons for the proposed increase, the taxpayer may present his or her objection or objections to the increase and the reason or reasons for the objections.

(g) The board may approve an agreement signed by the taxpayer or taxpayer's representative and the assessor, and by a representative of the Tax Commissioner when the property is industrial property or natural resources property, that resolves a valuation matter while the land and personal property books are before the Board for Equalization and Review.

(h) If any person fails to apply for relief at this meeting, he or she shall have waived the right to ask for correction in the assessment list for the current year, and shall not thereafter be permitted to question the correctness of the list as finally fixed by the board, except on appeal to the Office of Tax Appeals, or as otherwise provided in this article.

(i) After the board completes the review and equalization of the property books, a majority of the board shall sign a statement that it is the completed assessment of the county for the tax year. Then the property books shall be delivered to the assessor and the levies extended as provided by law.

(j) A taxpayer who elects to have a hearing before the Board of Equalization and Review may appeal the board's order to the Office of Tax Appeals.

(k) The standard of proof which a taxpayer must meet at all levels of review and appeal under this section shall be a preponderance of the evidence standard.

§11-3-24a. Protest of classification or taxability to assessor; appeal to Tax Commissioner, appeal to Office of Tax Appeals.

(a) At any time after property is returned for taxation, and up to and including the time the property books are before the county commission sitting as a board of equalization and review, any taxpayer may apply to the assessor for information regarding the classification and taxability of the taxpayer's property. In case the taxpayer is dissatisfied with the classification of property assessed to the taxpayer or believes that the property is exempt or otherwise not subject to taxation, the taxpayer shall file objections in writing with the assessor. The assessor shall decide the question by either sustaining the protest and making proper corrections, or by stating, in writing if requested, the reasons for refusal to grant the protest.

(b) The assessor may, and if the taxpayer requests, the assessor shall, certify the question to the State Tax Commissioner in a statement sworn to by both parties, or if the parties are unable to

agree, in separate sworn statements, giving a full description of the property and any other information which the Tax Commissioner requires. The Tax Commissioner shall prescribe forms on which the question shall be certified and the Tax Commissioner may pursue any inquiry and procure any information necessary for the disposition of the issue.

(c) The Tax Commissioner shall, as soon as possible on receipt of the question, but in no case later than February 28 of the assessment year, instruct the assessor as to how the property shall be treated. The instructions issued and forwarded by mail to the assessor shall be binding upon the assessor, but either the assessor or the taxpayer may apply to the Office of Tax Appeals within 30 days after receiving written notice of the Tax Commissioner's ruling for review of the question of classification or taxability.

(d) The amendments to this section enacted in the year 2010 apply to classification and taxability rulings issued for taxes levied after December 31, 2011.

(e) The standard of proof which a taxpayer must meet at all levels of review and appeal under this section shall be a preponderance of the evidence standard.

§11-3-24b. Board of Assessment Appeals.

[Repealed.]

§11-3-25. Relief in circuit court against erroneous assessment.

[Repealed.]

§11-3-25a. Payment of taxes that become due while appeal is pending.

(a) All taxes levied and assessed against the property for the year on which a protest or an appeal has been filed by the taxpayer as provided in §11-3-24 or §11-3-24a of this code shall be paid before they become delinquent. If the taxes are not paid before becoming delinquent, the governing body having jurisdiction of the appeal, as appropriate, shall dismiss the appeal unless the

delinquent taxes and interest due are paid in full within 30 days after taxes for the second half of the tax year become delinquent.

(b) In the event the order of a court or other governing body becomes final and the order results in an overpayment of taxes levied for the tax year that have been paid to the sheriff, the amount of the overpayment shall be refunded to the taxpayer if the overpayment is $25,000 or less within 30 days after the time for appealing the decision or order expires or, if the decision or order is appealed, within 30 days of the date the appeals court or other governing body turns down the appeal. If the overpayment is more than $25,000, a credit in the amount of the overpayment shall be established by the county sheriff and allowed as a credit against taxes owed up to the following two tax years: *Provided,* That the county commission may elect to refund the amount of overpayment rather than having a credit established as provided in this section: *Provided, however,* if any portion of the overpayment remains unused after the date on which taxes payable for the second half of the second tax year following the tax year of the overpayment become delinquent, that portion shall be refunded to the taxpayer by the county sheriff no later than 30 days after that date, or 30 days from the date that the order becomes final, whichever date occurs later. Whenever an overpayment is refunded or credited under this section, the county shall pay interest at the rate established in §11-10-17 and §11-10-17a of this code for overpayments of taxes collected by the Tax Commissioner, which interest shall be computed from the date the overpayment was received by the sheriff to the date of the refund check or the date the credit is actually taken against taxes that become due after the order of the court becomes final.

§11-3-32. Effective date of amendments.

(a) Unless specified otherwise in this article, all amendments to this article adopted in the year 2010 apply to the assessment years beginning on or after July 1, 2011.

(b) Unless specified otherwise in this article, all amendments to this article adopted in the year 2021 apply to the assessment years beginning on or after July 1, 2022.

ARTICLE 10A. WEST VIRGINIA OFFICE OF TAX APPEALS.

§11-10A-1. Legislative finding; purpose.

The Legislature finds that there is a need for an independent quasi-judicial agency separate and apart from the Tax Division to resolve disputes between the Tax Commissioner, county assessors, county commissions, and taxpayers to maintain public confidence in the state tax system. The Legislature does therefore declare that the purpose of this article is to create the West Virginia office of tax appeals to resolve disputes between the Tax Commissioner, county assessors, county commissions, and taxpayers and to prescribe the powers and duties of the office of tax appeals.

§11-10A-7. Powers and duties of Chief Administrative Law Judge; all employees, except Chief Administrative Law Judge, members of classified service; qualifications of administrative law judges.

(a) The Chief Administrative Law Judge is the chief executive officer of the Office of Tax Appeals and he or she may employ one person to serve as executive director, two staff attorneys, and other clerical personnel as necessary for the proper administration of this article. The Chief Administrative Law Judge may delegate administrative duties to other employees, but the Chief Administrative Law Judge is responsible for all official delegated acts.

(1) Upon the request of the Chief Administrative Law Judge, the Governor may appoint up to three administrative law judges as necessary for the proper administration of this article.

(2) All employees of the Office of Tax Appeals, except the Chief Administrative Law Judge, shall be in the classified service and shall be governed by the provisions of the statutes, rules, and policies of the classified service in accordance with the provisions of §29-6-1 *et seq.* of this code.

(3) Prior to employment by the Office of Tax Appeals, all administrative law judges shall be admitted to the practice of law

in this state and have at least two years of full-time or equivalent part-time experience as an attorney with federal or state tax law expertise.

(4) The Chief Administrative Law Judge and all administrative law judges shall be members of the Public Employees Retirement System and do not qualify as participants in the judicial retirement system during their tenure with the Office of Tax Appeals.

(b) The Chief Administrative Law Judge shall:

(1) Direct and supervise the work of the legal staff;

(2) Make hearing assignments;

(3) Maintain the records of the Office of Tax Appeals;

(4) Review and approve decisions of administrative law judges as to legal accuracy, clarity and other requirements;

(5) Publish decisions in accordance with the provisions of §11-10A-16 of this code;

(6) Submit to the Legislature, on or before February 15, an annual report summarizing the Office of Tax Appeals' activities since the end of the last report period, including a statement of the number and type of matters handled by the Office of Tax Appeals during the preceding fiscal year and the number of matters pending at the end of the year; and

(7) Perform the other duties necessary and proper to carry out the purposes of this article.

§11-10A-8. Jurisdiction of Office of Tax Appeals.

The Office of Tax Appeals has exclusive and original jurisdiction to hear and determine all:

(1) Appeals from tax assessments issued by the Tax Commissioner pursuant to article ten of this chapter;

(2) Appeals from decisions or orders of the Tax Commissioner denying refunds or credits for all taxes administered in accordance with the provisions of §11-10-1 *et seq.* of this code;

(3) Appeals from orders of the Tax Commissioner denying, suspending, revoking, refusing to renew any license, or imposing any civil money penalty for violating the provisions of any licensing law administered by the Tax Commissioner;

(4) Questions presented when a hearing is requested pursuant to the provisions of any article of this chapter which is administered by the provisions of §11-10-1 *et seq.* of this code;

(5) Matters which the Tax Division is required by statute or legislatively approved rules to hear, except employee grievances filed pursuant to §6C-2-1 *et seq.* of this code;

(6) Other matters which may be conferred on the office of tax appeals by statute or legislatively approved rules; and

(7) Appeals by any party aggrieved by the valuation of real property and personal property tax assessments and classifications or taxability as set forth in §11-3-1 *et. seq.* of this code.

§11-10A-10. Hearing procedures.

(a) The office of tax appeals shall assign a date, time, and place for a hearing on a petition and shall notify the parties to the hearing by written notice at least 20 days in advance of the hearing date. The hearing shall be held within 45 days of the due date of the commissioner's answer unless continued by order of the office of tax appeals for good cause.

(b) A hearing before the office of tax appeals shall be heard *de novo* and conducted pursuant to the provisions of the contested case procedure set forth in §29A-5-1 *et seq.* of this code to the extent not inconsistent with the provisions of this article. In case of conflict, the provisions of this article shall govern. The provisions of §29A-5-5 of this code are not applicable to a hearing before the office of tax appeals.

(c) The office of tax appeals is not bound by the rules of evidence as applied in civil cases in the circuit courts of this state. The office of tax appeals may admit and give probative effect to evidence of a type commonly relied upon by a reasonably prudent person in the conduct of his or her affairs.

(d) All testimony shall be given under oath.

(e) Except as otherwise provided by this code or legislative rules, the taxpayer or petitioner has the burden of proof.

(f) The administrative law judge may ask for proposed findings of fact and conclusions of law from the parties prior to the issuance by the office of tax appeals of the decision in the matter.

(g) Hearings shall be exempt from the requirements of §6-9A-1 *et seq.* and §29B-1-1 *et seq.* of this code.

(h) For all appeals regarding property tax assessments, taxability, and classifications pursuant to §11-3-1 *et. seq.*, the standard of proof which a taxpayer must meet at all levels of review and appeal shall be a preponderance of the evidence standard.

§11-10A-19. Judicial review of office of tax appeals decisions.

(a) Either the taxpayer or the commissioner, or both, or in the case of property taxes the county assessor, or county commission, may appeal the final decision or order of the office of tax appeals by taking an appeal to the circuit courts of this state within 60 days after being served with notice of the final decision or order.

(b) The office of tax appeals may not be made a party in any judicial review of a decision or order it issued.

(c)(1) If the taxpayer appeals, the appeal may be taken in the circuit court of Kanawha County or any county:

(A) In which the activity sought to be taxed was engaged in;

(B) In which the taxpayer resides;

(C) In which the will of the decedent was probated or letters of administration granted; or

(D) In which the real or personal property is assessed.

(2) If the Tax Commissioner appeals, the appeal may be taken in Kanawha County: *Provided,* That the taxpayer shall have the right to remove the appeal to the county:

(A) Wherein the activity sought to be taxed was engaged in;

(B) Wherein the taxpayer resides;

(C) Wherein the will of the decedent was probated or letters of administration granted; or

(D) Wherein the real or personal property is assessed.

(3) In the event parties appeal to different circuit courts, the appeals shall be consolidated. In the absence of agreement by the parties, the appeal shall be consolidated in the circuit court of the county in which the taxpayer filed the petition for appeal.

(d) The appeal proceeding shall be instituted by filing a petition for appeal with the circuit court, or the judge thereof in vacation, within the 60 day period prescribed in subsection (a) of this section. A copy of the petition for appeal shall be served on all parties appearing of record, other than the party appealing, by registered or certified mail. The petition for appeal shall state whether the appeal is taken on questions of law or questions of fact, or both, and set forth with particularity the items of the decision objected to, together with the reasons for the objections.

(e) If the appeal is of an assessment, except a jeopardy assessment for which security in the amount thereof was previously filed with the Tax Commissioner, then within 90 days after the petition for appeal is filed, or sooner if ordered by the circuit court, the petitioner shall file with the clerk of the circuit court a cash bond or a corporate surety bond approved by the clerk. The surety must be qualified to do business in this state. These bonds shall be conditioned upon the petitioner performing the orders of the court.

The penalty of this bond shall be not less than the total amount of tax or revenue plus additions to tax, penalties, and interest for which the taxpayer was found liable in the administrative decision of the office of tax appeals. Notwithstanding the foregoing and in lieu of the bond, the Tax Commissioner, upon application of the petitioner, may upon a sufficient showing by the taxpayer, certify to the clerk of the circuit court that the assets of the taxpayer are adequate to secure performance of the orders of the court: *Provided,* That if the Tax Commissioner refuses to certify that the assets of the taxpayer or other indemnification are adequate to secure performance of the orders of the court, then the taxpayer may apply to the circuit court for the certification. No bond may be required of the Tax Commissioner.

(f) The circuit court shall hear the appeal as provided in §29A-5-4 of this code*: Provided,* That when the appeal is to review a decision or order on a petition for refund or credit, the court may determine the legal rights of the parties, but in no event shall it enter a judgment for money.

(g) Unless the Tax Commissioner appeals an adverse court decision, the commissioner, upon receipt of the certified order of the court, shall promptly correct his or her assessment or issue his or her requisition on the treasury or establish a credit for the amount of an overpayment.

(h) Either party may appeal to the Supreme Court of Appeals as provided in §29A-6-1 *et seq.* of this code.

(i) For all appeals regarding property tax assessments, taxability, and classifications pursuant to §11-3-1 *et. seq*., the standard of proof which a taxpayer must meet at all levels of review and appeal shall be a preponderance of the evidence standard.

CHAPTER 262

(Com. Sub. for H. B. 2760 - By Delegates Capito, Queen, Riley, Mandt, L. Pack, Young, Hott and Maynard)

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

AN ACT to amend and reenact §11-13Q-9, §11-13Q-10, §11-13Q-10a and §11-13Q-22 of the Code of West Virginia, 1931, as amended, all relating to economic development incentive tax credits; authorizing credit for the creation of 10 jobs under certain circumstances; terminating small business credit after a certain date; eliminating credit to business franchise tax; authorizing certain manufacturing activities to qualify for high technology manufacturing tax credit; providing definitions; limiting certain multiple tax credits for the same qualified investment; eliminating prevailing wage requirement for certain additional credit; providing effective dates.

Be it enacted by the Legislature of West Virginia:

ARTICLE 13Q. ECONOMIC OPPORTUNITY TAX CREDIT.

§11-13Q-9. New jobs percentage.

(a) *In general*. — The new jobs percentage is based on the number of new jobs created in this state directly attributable to the qualified investment of the taxpayer.

(b) *When a job is attributable*. — An employee's position is directly attributable to the qualified investment if:

(1) The employee's service is performed or his or her base of operations is at the new or expanded business facility;

(2) The position did not exist prior to the construction, renovation, expansion, or acquisition of the business facility and the making of the qualified investment; and

(3) But for the qualified investment, the position would not have existed.

(c) *Applicable percentage*. –

(1) For the purpose of subsection (a) of this section, the applicable new jobs percentage is determined under the following table:

If number of new jobs is at least:	The applicable percentage is:
20	20%
280	25%
520	30%

(2) *Provided*, That for credit applications filed for taxable years beginning on and after January 1, 2022, for the purpose of subsection (a) of this section, the applicable new jobs percentage is determined under the following table:

If number of new jobs is at least:	The applicable percentage is:
10	10%
20	20%
280	25%
520	30%

(d) *Certification of new jobs*. — With the annual return for the applicable taxes filed for the taxable year in which the qualified investment is first placed in service or use in this state, the taxpayer

shall estimate and certify the number of new jobs reasonably projected to be created by it in this state within the period prescribed in subsection (f) of this section that are, or will be, directly attributable to the qualified investment of the taxpayer. For purposes of this section, "applicable taxes" means the taxes imposed by §11-13-1, *et seq.*, §11-21-1, *et seq.*, and §11-24-1, *et seq.* of this code against which this credit is applied.

(e) *Equivalency of permanent employees*. — The hours of part-time employees shall be aggregated to determine the number of equivalent full-time employees for the purpose of this section.

(f) *Redetermination of new jobs percentage*. — With the annual return for the applicable taxes imposed, filed for the third taxable year in which the qualified investment is in service or use, the taxpayer shall certify the actual number of new jobs created by it in this state that are directly attributable to the qualified investment of the taxpayer.

(1) If the actual number of jobs created would result in a higher new jobs percentage, the credit allowed under this article shall be redetermined and amended returns filed for the first and second taxable years that the qualified investment was in service or use in this state.

(2) If the actual number of jobs created would result in a lower new jobs percentage, the credit previously allowed under this article shall be redetermined and amended returns filed for the first and second taxable years. In applying the amount of redetermined credit allowable for the two preceding taxable years, the redetermined credit shall first be applied to the extent it was originally applied in the prior two years to personal income taxes, then to corporation net income taxes, and, lastly, to business and occupation taxes. Any additional taxes due under this chapter shall be remitted with the amended returns filed with the commissioner, along with interest, as provided in §11-10-17 of this code, and a 10-percent penalty determined on the amount of taxes due with the amended return, which may be waived by the commissioner if the taxpayer shows that the overclaimed amount of the new jobs

percentage was due to reasonable cause and not due to willful neglect.

(g) *Additional new jobs percentage*. — When the qualified investment is $20 million or more and, if the number of full-time construction laborers and mechanics working at the job site of the new or expanded business facility is 75 or more, or if the number of hours of all construction laborers and mechanics working at the job site is equal to or greater than the number of hours 75 full-time construction laborers and mechanics would have worked at the job site during a 12 consecutive month period, a taxpayer that is allowed a new jobs percentage determined under subsection (a) of this section shall be allowed a new jobs percentage that is five percentage points higher than the new jobs percentage allowed under subsection (a) of this section. In no event may construction laborers and mechanics be used to attain or retain a subsection (a) new jobs percentage. The number of full-time construction laborers and mechanics working at the job site shall be determined by dividing the total number of hours worked by all construction laborers and mechanics on a new or expanded business facility during a 12 consecutive month period by 2,080 hours per year. A taxpayer may not claim the additional new jobs percentage allowed by this section unless the taxpayer includes with the certification filed under subsection (d) of this section a certification signed by the general contractor or the construction manager certifying that construction laborers employed at the job site during a consecutive 12 month period aggregated the equivalent of at least 75 full-time employees and the taxpayer has received from the general contractor or construction manager records substantiating the certification, which records shall be retained by the taxpayer for 13 years after the day the expansion to an existing business facility, or the new business facility, is first placed in service or use by the taxpayer. For purposes of this subsection:

(1) The term "construction laborers and mechanics" means those workers, utilized by a contractor or subcontractor at any tier, whose duties are manual or physical in nature, including those workers who use tools or are performing the work of a trade, as distinguished from mental or managerial and working foremen

who devote more than 20 percent of their time during a workweek performing the duties of a laborer or mechanic; and

(2) The term "job site" is limited to the physical place or places where the construction called for in the contract will remain when the work on it is completed and nearby property, as described in subdivision (3) of this subsection, used by the contractor or subcontractor during construction that, because of proximity, can reasonably be included in the "site".

(3) Except as provided in subdivision (4) of this subsection, fabrication plants, mobile factories, batch plants, borrow pits, job headquarters and tool yards are part of the "job site" provided they are dedicated exclusively, or nearly so, to performance of the contract or project and are located in proximity to the actual construction location so that it would be reasonable to include them.

(4) The term "job site" does not include permanent home offices, branch offices, branch plant establishments, fabrication yards or tool yards of a contractor or subcontractor whose locations and continuance in operation are determined without regard to the contract or subcontract for construction of a new or expanded business facility.

§11-13Q-10. Credit for small business.

(a) *Small business defined.* — For purposes of this section, the term "small business" means a business which has annual gross receipts of not more than $7 million (including the gross receipts of any affiliates in its controlled group)*: Provided,* That beginning January 1, 2004, and on January 1 of each year thereafter, the commissioner shall prescribe an amount that shall apply in lieu of the $7 million amount during that calendar year. This amount is prescribed by increasing the $7 million amount by the cost-of-living adjustment for that calendar year. The requirements for annual gross receipts, once met by a given taxpayer in that taxable year when qualified investment is first placed in service or use, may not again be applied to that same taxpayer in subsequent years to

defeat the small business credit to which the taxpayer gained entitlement in that year.

(1) *Cost-of-living adjustment*. — For purposes of subsection (a) of this section, the cost-of-living adjustment for any calendar year is the percentage (if any) by which the consumer price index for the preceding calendar year exceeds the consumer price index for the calendar year 2002.

(2) *Consumer price index for any calendar year*. — For purposes of subdivision (1) of this subsection, the consumer price index for any calendar year is the average of the federal consumer price index as of the close of the 12-month period ending on August 31 of that calendar year.

(3) *Consumer price index*. — For purposes of subdivision (2) of this subsection, the term "Federal Consumer Price Index" means the most recent consumer price index for all urban consumers published by the United States department of labor.

(4) *Rounding*. — If any increase under subdivision (1) of this subsection is not a multiple of $50, the increase shall be rounded to the next lowest multiple of $50.

(b) *Amount of credit allowed*. —

(1) *Credit allowed*. — An eligible small business taxpayer is allowed a credit against the portion of taxes imposed by this state that are attributable to and the direct consequence of the eligible small business taxpayer's qualified investment in a new or expanded business in this state which results in the creation of at least 10 new jobs within 12 months after placing qualified investment into service. The amount of this credit is determined as provided in subdivision (2) of this subsection.

(2) *Amount of credit*. — The annual amount of credit allowable under this subsection is determined by dividing the amount of the eligible small business taxpayer's "qualified investment" (determined under §11-13Q-8. of this code) in "property purchased for business expansion" (as defined in §11-13Q-3 of this code) by 10. The amount of qualified investment so apportioned to each year

of the 10-year credit period is the annual measure against which a taxpayer's annual new jobs percentage (determined under subsection (d) of this section) is applied. The product of this calculation establishes the maximum amount of credit allowable each year for 10 consecutive years under this section due to the qualified investment.

(3) *Application of credit*. — The annual credit allowance shall be taken beginning with the taxable year in which the taxpayer places the qualified investment into service or use in this state, unless the taxpayer elects to delay the beginning of the 10-year credit period until the next succeeding taxable year. This election is made in the annual income tax return filed under this chapter by the taxpayer for the taxable year in which the qualified investment is first placed in service or use. Once made, this election cannot be revoked. The annual credit allowance shall be taken and applied in the manner prescribed in §11-13Q-7 of this code.

(c) *New jobs*. — The term "new jobs" has the meaning ascribed to it in §11-13Q-3 of this code.

(1) The term "new employee" has the meaning ascribed to it in §11-13Q-3 of this code: *Provided,* That this term does not include employees filling new jobs who:

(A) Are related individuals, as defined in subsection (i), section 51 of the Internal Revenue Code of 1986, or a person who owns 10 percent or more of the business with such ownership interest to be determined under rules set forth in subsection (b), section 267 of said Internal Revenue Code; or

(B) Worked for the taxpayer during the six-month period ending on the date the taxpayer's qualified investment is placed in service or use and is rehired by the taxpayer during the six-month period beginning on the date taxpayer's qualified investment is placed in service or use.

(2) *When a job is attributable*. — An employee's position is directly attributable to the qualified investment if:

(A) The employee's service is performed or his or her base of operations is at the new or expanded business facility;

(B) The position did not exist prior to the construction, renovation, expansion, or acquisition of the business facility and the making of the qualified investment; and

(C) But for the qualified investment, the position would not have existed.

(d) *New jobs percentage*. — The annual new jobs percentage is based on the number of new jobs created in this state by the taxpayer directly attributable to taxpayer's qualified investment.

(1) If at least 10 new jobs are created and filled during the taxable year in which the qualified investment is placed in service or use, the applicable new jobs percentage is 10 percent.

(2) During each of the remaining nine years of the 10-year credit period, the annual new jobs percentage is based on the average number of new jobs filled during that taxable year: *Provided,* That for purposes of estimating the new jobs percentage that will be applicable for each subsequent credit year, the taxpayer shall use the new jobs percentage allowable for the taxable year immediately prior thereto, and in the annual income tax return filed under this chapter for the then current tax year, the taxpayer shall redetermine his or her allowable new jobs percentage for that year based on the average number of new employees employed in new jobs during that year (determined on a monthly basis) created as the direct result of the taxpayer's qualified investment.

(e) *Certification of new jobs*. — With the annual income tax return filed under this chapter for each taxable year during the 10-year credit period, the taxpayer shall certify:

(1) The new jobs percentage for that taxable year;

(2) The amount of the credit allowance for that year;

(3) If the business is a partnership, limited liability company or electing small business corporation, the amount of credit allocated

to the partners, members, or shareholders, as the case may be for that year;

(4) That qualified investment property continue to be used in the business, or if any of it was disposed of during the year the date of disposition and that the property was not disposed of prior to expiration of its useful life, as determined under §11-13Q-8 of this code; and

(5) That the new jobs created by the qualified investment continue to exist and are filled by persons who meet the definition of new employee (as defined in this section).

(f) *Small business project*. — A small business may apply to the commissioner under §11-13Q-6 of this code for certification as a project if that project will create at least 10 new jobs.

(g) *Rules*. — The commissioner may prescribe such rules as he or she determines necessary in order to determine the amount of credit allowed under this section to a taxpayer; to verify a taxpayer's continued entitlement to claim the credit; and to verify proper application of the credit allowed.

(h) The commissioner may require a taxpayer intending to claim credit under this section to file with the commissioner a notice of intent to claim this credit, before the taxpayer begins reducing his or her monthly or quarterly installment payments of estimated tax for the credit provided in this section.

(i) *Termination of Credit* — No credit is allowable under this section to any taxpayer for investment placed in service or use in any tax year beginning on or after January 1, 2022. Taxpayers that have gained lawful entitlement to the credit allowable under this section pursuant to qualified investment placed in service or use prior to January 1, 2022, shall retain that entitlement and apply the credit in due course pursuant to the requirements and limitations of this article.

§11-13Q-10a. Credit allowed for specified high technology manufacturers.

(a) *High technology manufacturing business defined. –*

For purposes of this section, the term "high technology manufacturing business" means and is limited to only those businesses engaged in a business enumerated in subdivision (1) of this subsection: *Provided,* That for tax years beginning on and after January 1, 2022, the term "high technology manufacturing business" means and is limited to only those businesses engaged in a business enumerated in subdivision (1) or subdivision (2), or both, of this subsection.

(1) "High technology manufacturing business" means a manufacturing activity properly classified as having one or more of the following six-digit North American Industry Classification System code numbers.

North American Industry Classification System Code	Manufacturing Activity
	Computer & Peripheral Equipment
334111	Electronic Computers
334112	Computer Storage Devices
	Electronic Components
334411	Electron Tubes
334414	Electronic Capacitors
	Semiconductors
334413	Semiconductor & Related Devices
333295	Semiconductor Machinery

(2) "High technology manufacturing business" means, in addition to those activities enumerated in subdivision (1) of this subsection:

(A) The activity of manufacturing drones, target drones, unmanned aircraft or unmanned robotic aircraft,

(B) The activity of manufacturing autonomous motor vehicles,

(C) The activity of manufacturing robots, robotic medical machines or equipment or robotic surgical machines or equipment,

(D) The activity of manufacturing machines, equipment and products predominantly operated by and incorporating artificial intelligence.

(E) The activity of manufacturing biotechnology products.

(F) The activity of manufacturing medical devices.

(3) *Definitions* – For purposes of this section.

(A) *Artificial Intelligence* — For purposes of this section "artificial intelligence" means computers and computer systems that, by design and function, perform tasks that would typically require human intelligence, including decision-making, visual perception, speech recognition, or translation of one human language into another human language.

(B) *Autonomous* — For purposes of this section "autonomous" means that set of characteristics of a machine which taken as a whole cause the machine to be capable of performing designated tasks without immediate direct or explicit human control or intervention beyond initial programming and preliminary set up and initiation.

(C) *Autonomous Motor Vehicle* — For purposes of this section, The term "autonomous motor vehicle" means a motor vehicle that conforms to Level 3, level 4 or level 5 of the Society of Automotive Engineers automation level definitions specified in SAE International Standard J3016.

(D) Biotechnology

(i) "Biotechnology" means scientific invention, processes and methods, or industrial invention, processes and methods, based on the science of biology, microbiology, molecular biology, cellular biology, biochemistry, or biophysics, or any combination thereof. Biotechnology includes, but is not limited to, recombinant DNA techniques, genetics and genetic engineering, cell fusion techniques, and bioprocesses, using living organisms, or parts of organisms.

(ii) Biotechnology does not include farming, agriculture, or animal or apiary husbandry, or the production of any crop or agricultural product by traditional growing processes or by hydroponic growing processes, or fish farming, or the raising or growing or production of fish or any aquatic animal or product.

(iii) Biotechnology does not include zymurgy, wine making, brewing, preparation of yeast used in food production or preparation, or any food or drink preparation or production.

(E) "Biotechnology product" means any virus, therapeutic serum, antibody, protein, toxin, antitoxin, vaccine, blood, blood component or derivative, allergenic product, or analogous product produced through the application of biotechnology that is used in the prevention, treatment, or cure of diseases or injuries to humans, animals, or plants.

(F) *Drone* – For purposes of this section "drone" means an unmanned aircraft that may be controlled either remotely or by an autonomous system, which may work with internal systemic sensors or ground positioning satellite systems, or both.

(G) "Medical device" means an instrument, apparatus, implement, machine, contrivance, implant, in vitro reagent, or other similar or related article, including any component, part, or accessory, that is:

(i) Recognized in the national formulary or any supplement thereof, or the United States pharmacopeia, or any supplement thereof;

(ii) Intended for use in the diagnosis of disease, or in the cure, mitigation, treatment, or prevention of disease or other conditions in human beings or animals; or

(iii) Intended to affect the structure or any function of the body of human beings or animals, and which does not achieve any of its primary intended purposes through chemical action within or on the body of human beings or animals and which is not dependent upon being metabolized for the achievement of any of its principal intended purposes.

(H) *Program* – For purposes of this section "program" means a set of instructions that can be executed by a computer, or other machine or device to perform calculations, processes or operations, or a combination thereof, to execute a specific task or series of tasks.

(I) *Robot* – For purposes of this section "robot" means a programmable machine, for which operating instructions are typically derived from computer programming, which machine is: (i) Capable of performing operations and processes involving physical movement; (ii) designed to operate with a degree of autonomy; (iii) capable of processing data and information, including data or information derived from visual perception or other physical perceptions; and (iv) capable of engaging in intelligent behavior derived from artificial intelligence.

(b) *Amount of credit allowed.*

(1) *Credit allowed.* — An eligible high technology manufacturing business taxpayer is allowed a credit against the portion of taxes imposed by this state that are attributable to and the direct consequence of the eligible high technology manufacturing business taxpayer's qualified investment in a new or expanded high technology manufacturing business in this state which results in the creation of at least 20 new jobs within 12 months after placing qualified investment into service. The amount of this credit is determined as provided in this section.

(2) *Amount of credit.* — The annual amount of credit allowable under this subsection is 100 percent of the tax attributable to qualified investment, for each consecutive year of a 20-year credit period.

(3) *Application of credit.* — The annual credit allowance shall be taken beginning with the taxable year in which the taxpayer places the qualified investment into service or use in this state, unless the taxpayer elects to delay the beginning of the 20-year credit period until the next succeeding taxable year. This election is made in the annual income tax return filed under this chapter by the taxpayer for the taxable year in which the qualified investment is first placed in service or use. Once made, this election cannot be revoked. The annual credit allowance shall be taken and applied against the taxes enumerated in §11-13Q-7 of this code. The credit shall offset 100 percent of tax attributable to qualified investment and shall be applied for a period of 20 consecutive years without carryover.

(c) *New jobs.* — The term "new jobs" has the meaning ascribed to it in §11-13Q-3 of this code.

(1) The term "new employee" has the meaning ascribed to it in §11-13Q-3 of this code: *Provided,* That this term does not include employees filling new jobs who:

(A) Are related individuals, as defined in subsection (i), section 51 of the Internal Revenue Code of 1986, or a person who owns 10 percent or more of the business with such ownership interest to be determined under rules set forth in subsection (b), section 267 of the Internal Revenue Code of 1986; or

(B) Worked for the taxpayer during the six-month period ending on the date the taxpayer's qualified investment is placed in service or use and is rehired by the taxpayer during the six-month period beginning on the date taxpayer's qualified investment is placed in service or use.

(2) *When a job is attributable.* — An employee's position is directly attributable to the qualified investment if:

(A) The employee's service is performed or his or her base of operations is at the new or expanded business facility;

(B) The position did not exist prior to the construction, renovation, expansion, or acquisition of the business facility and the making of the qualified investment;

(C) But for the qualified investment, the position would not have existed; and

(D) The median compensation of the new jobs attributable to the qualified investment is greater than $45,000 per year: *Provided,* That this median compensation amount shall be adjusted for inflation each year in accordance with the provisions of this section.

(3) *Median compensation adjusted for inflation.* — The median compensation requirements applicable to high technology manufacturing business taxpayers for purposes of this section, shall be adjusted for inflation by application of a cost-of-living adjustment. The adjusted median compensation amount shall be applicable, as adjusted, each year throughout the 20-year credit period. Failure of a taxpayer entitled to credit under this section to meet the median compensation requirement for any year will result in forfeiture of the credit for that year. However, if in any succeeding year within the original 20 year credit period, the taxpayer pays a median compensation to its employees which exceeds the inflation adjusted median compensation amount for that year, the taxpayer shall regain entitlement to take the credit for that year only. No credit forfeited in a prior year shall be taken, and the tax year or years to which the forfeited credit would have been applied shall be forfeited and deducted from the remainder of the years over which the credit can be taken.

(A) *Cost-of-living adjustment.* — For purposes of this section, the cost-of-living adjustment for any calendar year is the percentage, if any, by which the consumer price index for the preceding calendar year exceeds the consumer price index for the calendar year 2007.

(B) *Consumer price index for any calendar year.* — For purposes of this section, the consumer price index for any calendar year is the average of the federal consumer price index as of the close of the 12-month period ending on August 31 of such calendar year.

(C) *Consumer price index*. — For purposes of this section, the term "Federal Consumer Price Index" means the last consumer price index for all urban consumers published by the United States Department of Labor.

(D) *Rounding.* — If any increase in the median compensation amount under this section is not a multiple of $50, such increase shall be rounded to the next lowest multiple of $50.

(d) *Credit exclusion.* —

(1) Any taxpayer that has taken the credit against tax authorized under this section shall not be eligible for application of the credit allowed under any other section of this article during the twenty year credit period authorized by this section for the same qualified investment on which credit allowed by this article was taken.

(2) Any taxpayer that has taken the credit against tax authorized under this section may not take the credit authorized under any other provision of this code for the same qualified investment on which credit allowed by this article was taken.

(e) *Rules.* — The commissioner may prescribe such rules as he or she determines necessary in order to determine the amount of credit allowed under this section to a taxpayer; to verify a taxpayer's continued entitlement to claim the credit; and to verify proper application of the credit allowed.

(f) *Notices and reports.* — The commissioner may require a taxpayer intending to claim credit under this section to file with the commissioner a notice of intent to claim this credit before the taxpayer begins reducing his or her monthly or quarterly installment payments of estimated tax for the credit provided in this section.

§11-13Q-22. Credit available for taxpayers which do not satisfy the new jobs percentage requirement.

(a) Notwithstanding any provision of this article to the contrary, a taxpayer engaged in one or more of the industries or business activities specified in §11-13Q-19 of this code which does not satisfy the new jobs percentage requirement prescribed in §11-13Q-9(c) of this code but which otherwise fulfills the requirements prescribed in this article, is permitted to claim a credit against the taxes specified in §11-13Q-7 of this code in the order so specified that are attributable to and the consequence of the taxpayer's business operations in this state which result in the creation of net new jobs. Credit under this section is allowed in the amount of $3,000 per year, per new job created and filled by a new employee, as those terms are defined in §11-13Q-3 of this code for a period of five consecutive years beginning in the tax year when the new employee is first hired. In no case may the number of new employees determined for purposes of this section exceed the total net increase in the taxpayer's employment in this state. Credit allowed under this section shall be allowed beginning in the tax year when the new employee is first hired: *Provided,* That each new job:

(1) Pays at least $32,000 annually. Beginning January 1, 2010, and on January 1 of each year thereafter, the commissioner shall prescribe an amount that shall apply in lieu of the $32,000 amount during that calendar year. This amount is prescribed by increasing the $32,000 figure by the cost-of-living adjustment for that calendar year;

(2) Provides health insurance and may offer benefits including child care, retirement or other benefits; and

(3) Is a full-time, permanent position, as those terms are defined in section three of this article.

(b) Jobs that pay less than $32,000 annually, or less than the amount prescribed by the commissioner pursuant to subdivision (1) of subsection (a) of this section, whichever is higher, or that pay that salary but do not also provide benefits in addition to the salary

do not qualify for the credit authorized by this section. Jobs that are less than full-time, permanent positions do not qualify for the credit authorized by this section.

The employer having obtained entitlement to the credit shall not be required to raise wages of employees currently employed in jobs upon which the initial credit was based by reason of the cost-of-living adjustment.

(c) For purposes of this section, the following definitions apply:

(1) *Cost-of-living adjustment*. — For purposes of subsection (a) of this section, the cost-of-living adjustment for any calendar year is the percentage (if any) by which the consumer price index for the preceding calendar year exceeds the consumer price index for the calendar year 2009.

(2) *Consumer price index for any calendar year*. — For purposes of subdivision (1) subsection (a) of this section, the consumer price index for any calendar year is the average of the federal consumer price index as of the close of the twelve-month period ending on August 31 of that calendar year.

(3) *Consumer price index*. — For purposes of subdivision (2) of this subsection, the term "federal consumer price index" means the most recent consumer price index for all urban consumers published by the United States Department of Labor.

(4) *Rounding*. — If any increase under subdivision (1) of this subsection is not a multiple of $50, the increase shall be rounded to the next lowest multiple of $50.

(d) Unused credit remaining in any tax year after application against the taxes specified in section seven of this article is forfeited and does not carry forward to any succeeding tax year and does not carry back to a prior tax year.

(e) The tax credit authorized by this section may be taken in addition to any credits allowable under §11-13C-1 *et seq.,* §11-13D-1 *et seq.,* §11-13E-1 *et seq.,* §11-13F-1 *et seq.*, §11-13G-1 *et*

seq., §11-13J-1 *et seq.,* §11-13R-1 *et seq.,* or §11-13S-1 *et seq.* of this code. However, any taxpayer that is taking, or that has taken, any credit against tax authorized under this article may not take the credit authorized under any other provision of this code for the same qualified investment on which credit allowed by this article was taken.

(f) *Reduction in number of employees credit forfeiture.* — If, during the year when a new job was created for which credit was granted under this section or during any of the next succeeding four tax years thereafter, net jobs that are attributable to and the consequence of the taxpayer's business operations in this state decrease, counting both new jobs for which credit was granted under this section and preexisting jobs, then the total amount of credit to which the taxpayer is entitled under this section shall be decreased and forfeited in the amount of $3,000 for each net job loss.

(g) Amendments to this section enacted during the 2021 regular session of the Legislature shall be effective for tax years beginning on or after January 1, 2022.

CHAPTER 263

(Com. Sub. for H. B. 2794 - By Delegates Storch, Westfall, Gearheart, Criss, Howell, Capito, Householder, Anderson, Ellington, Statler and Rohrbach)

[Passed April 9, 2021; in effect ninety days from passage.]
[Approved by the Governor on April 26, 2021.]

AN ACT to amend and reenact §11-13J-12 of the Code of West Virginia, 1931, as amended, all relating to extending the duration of the Neighborhood Investment Program until July 1, 2026.

Be it enacted by the Legislature of West Virginia:

ARTICLE 13J. NEIGHBORHOOD INVESTMENT PROGRAM.

§11-13J-12. Program evaluation; expiration of credit; preservation of entitlement.

Beginning on December 15, 2005, and every third year thereafter, the director shall secure an independent review of the Neighborhood Investment Program created by this article and present the findings to the Joint Committee on Government and Finance. Unless sooner terminated by law, the Neighborhood Investment Program Act terminates on July 1, 2026. There is no entitlement to the tax credit under this article for a contribution made to a certified project after July 1, 2026, and no credit is available to any taxpayer for any contribution made after that date. Taxpayers which have gained entitlement to the credit pursuant to eligible contributions made to certified projects prior to July 1, 2026, shall retain that entitlement and apply the credit in due course pursuant to the requirements and limitations of this article.

CHAPTER 264

(H. B. 2808 - By Delegates Capito, Rowe, Pushkin, Pritt, Young, L. Pack, Barach, Barnhart, Graves and Skaff)

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

AN ACT to amend and reenact §11-13A-2 of the Code of West Virginia, 1931, as amended, relating to modifying the definition of minerals as to eliminate salt produced for human consumption from being subject to severance taxation.

Be it enacted by the Legislature of West Virginia:

ARTICLE 13A. SEVERANCE AND BUSINESS PRIVILEGE TAX ACT.

§11-13A-2. Definitions.

(a) *General rule*. — When used in this article, or in the administration of this article, the terms defined in subsection (b), (c) or (d) of this section shall have the meanings ascribed to them by this section, unless a different meaning is clearly required by the context in which the term is used or by specific definition.

(b) *General terms defined*. — Definitions in this subsection apply to all persons subject to the taxes imposed by this article.

(1) "Business" includes all activities engaged in, or caused to be engaged in, with the object of gain or economic benefit, direct or indirect, and whether engaged in for profit, or not for profit, or by a governmental entity: *Provided,* That "business" does not include services rendered by an employee within the scope of his or her contract of employment. Employee services, services by a partner on behalf of his or her partnership and services by a member of any other business entity on behalf of that entity are the

business of the employer or partnership, or other business entity as the case may be, and reportable as such for purposes of the taxes imposed by this article.

(2) "Corporation" includes associations, joint-stock companies and insurance companies. It also includes governmental entities when and to the extent such governmental entities engage in activities taxable under this article.

(3) "Delegate" in the phrase "or his or her delegate", when used in reference to the Tax Commissioner, means any officer or employee of the state Tax Division of the Department of Tax and Revenue duly authorized by the Tax Commissioner directly, or indirectly by one or more redelegations of authority, to perform the function mentioned or described in this article or regulations promulgated thereunder.

(4) "Fiduciary" means and includes a guardian, trustee, executor, administrator, receiver, conservator or any person acting in any fiduciary capacity for any person.

(5) "Gross proceeds" means the value, whether in money or other property, actually proceeding from the sale or lease of tangible personal property, or from the rendering of services, without any deduction for the cost of property sold or leased or expenses of any kind.

(6) "Includes" and "including", when used in a definition contained in this article, shall not be deemed to exclude other things otherwise within the meaning of the term being defined.

(7) "Partner" includes a member of a syndicate, group, pool, joint venture or other organization which is a "partnership" as defined in this section.

(8) "Partnership" includes a syndicate, group, pool, joint venture or other unincorporated organization through or by means of which any privilege taxable under this article is exercised and which is not within the meaning of this article a trust or estate or corporation. "Partnership" includes a limited liability company which is treated as a partnership for federal income tax purposes.

(9) "Person" or "company" are herein used interchangeably and include any individual, firm, partnership, mining partnership, joint venture, association, corporation, trust or other entity, or any other group or combination acting as a unit, and the plural as well as the singular number, unless the intention to give a more limited meaning is declared by the context.

(10) "Sale" includes any transfer of the ownership or title to property, whether for money or in exchange for other property or services, or any combination thereof. "Sale" includes a lease of property, whether the transaction be characterized as a rental, lease, hire, bailment or license to use. "Sale" also includes rendering services for a consideration, whether direct or indirect.

(11) "Service" includes all activities engaged in by a person for a consideration which involve the rendering of a service as distinguished from the sale of tangible personal property: *Provided,* That "service" does not include: (A) Services rendered by an employee to his or her employer under a contract of employment; (B) contracting; or (C) severing or processing natural resources.

(12) "Tax" means any tax imposed by this article and, for purposes of administration and collection of such tax, it includes any interest, additions to tax or penalties imposed with respect thereto under article ten of this chapter.

(13) "Tax commissioner" or "commissioner" means the Tax Commissioner of the State of West Virginia or his or her delegate.

(14) "Taxable year" means the calendar year, or the fiscal year ending during such calendar year, upon the basis of which a tax liability is computed under this article. In the case of a return made under this article, or regulations of the Tax Commissioner, for a fractional part of a year, the term "taxable year" means the period for which such return is made.

(15) "Taxpayer" means any person subject to any tax imposed by this article.

(16) "This code" means the Code of West Virginia, 1931, as amended.

(17) "This state" means the State of West Virginia.

(18) "Withholding agent" means any person required by law to deduct and withhold any tax imposed by this article or under regulations promulgated by the Tax Commissioner.

(c) *Specific definitions for producers of natural resources.* —

(1) "Barrel of oil" means forty-two U.S. gallons of two hundred thirty-one cubic inches of liquid at a standard temperature of sixty degrees Fahrenheit.

(2) "Coal" means and includes any material composed predominantly of hydrocarbons in a solid state.

(3) "Cubic foot of gas" means the volume of gas contained in one cubic foot at a standard pressure base of fourteen point seventy-three pounds per square inch (absolute) and a standard temperature of sixty degrees Fahrenheit.

(4) "Economic interest" for the purpose of this article is synonymous with the economic interest ownership required by Section 611 of the Internal Revenue Code in effect on December 31, 1985, entitling the taxpayer to a depletion deduction for income tax purposes: *Provided,* That a person who only receives an arm's length royalty shall not be considered as having an economic interest.

(5) "Extraction of ores or minerals from the ground" includes extraction by mine owners or operators of ores or minerals from the waste or residue of prior mining only when such extraction is sold.

(6) "Gross value" in the case of natural resources means the market value of the natural resource product, in the immediate vicinity where severed, determined after application of post production processing generally applied by the industry to obtain

commercially marketable or usable natural resource products. For all natural resources, "gross value" is to be reported as follows:

(A) For natural resources severed or processed (or both severed and processed) and sold during a reporting period, gross value is the gross proceeds received or receivable by the taxpayer.

(B) In a transaction involving related parties, gross value shall not be less than the fair market value for natural resources of similar grade and quality.

(C) In the absence of a sale, gross value shall be the fair market value for natural resources of similar grade and quality.

(D) If severed natural resources are purchased for the purpose of processing and resale, the gross value is the amount received or receivable during the reporting period reduced by the amount paid or payable to the taxpayer actually severing the natural resource. If natural resources are severed outside the State of West Virginia and brought into the State of West Virginia by the taxpayer for the purpose of processing and sale, the gross value is the amount received or receivable during the reporting period reduced by the fair market value of natural resources of similar grade and quality and in the same condition immediately preceding the processing of the natural resources in this state.

(E) If severed natural resources are purchased for the purpose of processing and consumption, the gross value is the fair market value of processed natural resources of similar grade and quality reduced by the amount paid or payable to the taxpayer actually severing the natural resource. If severed natural resources are severed outside the State of West Virginia and brought into the State of West Virginia by the taxpayer for the purpose of processing and consumption, the gross value is the fair market value of processed natural resources of similar grade and quality reduced by the fair market value of natural resources of similar grade and quality and in the same condition immediately preceding the processing of the natural resources.

(F) In all instances, the gross value shall be reduced by the amount of any federal energy tax imposed upon the taxpayer after June 1, 1993, but shall not be reduced by any state or federal taxes, royalties, sales commissions or any other expense.

(G) For natural gas, gross value is the value of the natural gas at the wellhead immediately preceding transportation and transmission.

(H) For limestone or sandstone quarried or mined, gross value is the value of such stone immediately upon severance from the earth.

(7) "Mining" includes not merely the extraction of ores or minerals from the ground, but also those treatment processes necessary or incidental thereto.

(8) "Natural resources" means all forms of minerals including, but not limited to, rock, stone, limestone, coal, shale, gravel, sand, clay, natural gas, oil and natural gas liquids which are contained in or on the soils or waters of this state and includes standing timber. For the purposes of the severance tax levied in this article, salt produced solely for human consumption as food is not classified as a mineral subject to this tax.

(9) "Processed" or "processing" as applied to:

(A) Oil and natural gas shall not include any conversion or refining process; and

(B) Limestone or sandstone quarried or mined shall not include any treatment process or transportation after the limestone or sandstone is severed from the earth.

(10) "Related parties" means two or more persons, organizations or businesses owned or controlled directly or indirectly by the same interests. Control exists if a contract or lease, either written or oral, is entered into whereby one party mines or processes natural resources owned or held by another party and the owner or lessor participates in the severing, processing or marketing of the natural resources or receives any value other than

an arm's length passive royalty interest. In the case of related parties, the Tax Commissioner may apportion or allocate the receipts between or among such persons, organizations or businesses if he or she determines that such apportionment or allocation is necessary to more clearly reflect gross value.

(11) "Severing" or "severed" means the physical removal of the natural resources from the earth or waters of this state by any means: *Provided,* That "severing" or "severed" shall not include the removal of natural gas from underground storage facilities into which the natural gas has been mechanically injected following its initial removal from earth: *Provided, however,* That "severing" or "severed" oil and natural gas shall not include any separation process of oil or natural gas commonly employed to obtain marketable natural resource products.

(12) "Stock" includes shares in an association, joint-stock company or corporation.

(13) "Taxpayer" means and includes any individual, partnership, joint venture, association, corporation, receiver, trustee, guardian, executor, administrator, fiduciary or representative of any kind engaged in the business of severing or processing (or both severing and processing) natural resources in this state for sale or use. In instances where contracts (either oral or written) are entered into whereby persons, organizations or businesses are engaged in the business of severing or processing (or both severing and processing) a natural resource but do not obtain title to or do not have an economic interest therein, the party who owns the natural resource immediately after its severance or has an economic interest therein is the taxpayer.

(d) *Specific definitions for persons providing health care items or services.* —

"Behavioral health services" means services provided for the care and treatment of persons with mental illness, mental retardation, developmental disabilities or alcohol or drug abuse problems in an inpatient, residential or outpatient setting, including, but not limited to, habilitative or rehabilitative

interventions or services and cooking, cleaning, laundry and personal hygiene services provided for such care: *Provided,* That gross receipts derived from providing behavioral health services that are included in the provider's measure of tax under article twenty-seven of this chapter shall not be include in that provider's measure of tax under this article. The amendment to this definition in the year 2004 is intended to clarify the intent of the Legislature as to the activities that qualify as behavioral health services, and this clarification shall be applied retrospectively to the effective date of the amendment to this section in which the definition of "behavioral health services" was originally provided as enacted during the first extraordinary session of the Legislature in the year 1993.

CHAPTER 265

(H. B. 3010 - By Delegates Householder, Criss and Maynard (By Request of the Tax and Revenue Department))

[Passed March 31, 2021; in effect ninety days from passage.]
[Approved by the Governor on April 26, 2021.]

AN ACT to amend and reenact §11-6L-2 and §11-6L-4 of the Code of West Virginia, 1931, as amended, relating to the valuation of new cell towers at salvage value for ad valorem property tax purposes, authorizing provisions apply to towers built on or after July 1, 2024; and providing that cell towers not subject to valuation by the Board of Public Works will be valued and assessed according to procedures set forth in §11-3-1 *et seq.* of the West Virginia Code.

Be it enacted by the Legislature of West Virginia:

ARTICLE 6L. SPECIAL METHOD FOR VALUATION OF CERTAIN WIRELESS TECHNOLOGY PROPERTY.

§11-6L-2. Definitions.

For the purposes of this article:

(1) "Tower" means a structure which hosts an antenna or other equipment used for the purposes of transmitting cellular or wireless signals for communications purposes, including telephonically, or for computing purposes, including any antenna and all associated equipment, and which is constructed or erected on or after July 1, 2019; and

(2) "Salvage value" means five percent of original cost.

§11-6L-4. Initial determination; protest and appeal.

The valuation and assessment of any tower subject to this article, including the process of protest and appeal from any such

valuation, shall be conducted in the manner set forth and more fully described in §11-6-1 *et seq.* of this code and any applicable rules: *Provided*, That with respect to any tower that is subject to this article but is not property of a business subject to the provisions of §11-6-1 *et seq.* of this code, the valuation and assessment of such a tower, including the process of protest and appeal from any such valuation, shall be conducted in the manner set forth in §11-3-1 *et seq.* of this code.

CHAPTER 266

(Com. Sub. for S. B. 345 - By Senators Weld, Roberts, Ihlenfeld, and Unger)

[Passed March 5, 2021; in effect 90 days from passage (June 3, 2021)]
[Approved by the Governor on March 16, 2021.]

AN ACT to amend and reenact §17C-5A-3a of the Code of West Virginia, 1931, as amended, relating to expansion of the alcohol test and lock program to offenders with a drug-related offense; renaming the alcohol test and lock program to the Motor Vehicle Alcohol and Drug Test and Lock Program; authorizing the commissioner to require drug testing; authorizing deferral of the revocation period for a participant with a drug offense; and authorizing an offender of driving while license suspended or revoked, driving while license revoked for driving under the influence of alcohol, controlled substances, or drugs, or while having alcoholic concentration in the blood of eight hundredths of one percent or more, by weight, or for refusing to take secondary chemical test of blood alcohol contents, to participate in the Motor Vehicle Alcohol and Drug Test And Lock Program.

Be it enacted by the Legislature of West Virginia:

ARTICLE 5A. ADMINISTRATIVE PROCEDURES FOR SUSPENSION AND REVOCATION OF LICENSES FOR DRIVING UNDER THE INFLUENCE OF ALCOHOL, CONTROLLED SUBSTANCES, OR DRUGS.

§17C-5A-3a. Establishment of and participation in the Motor Vehicle Alcohol and Drug Test and Lock Program.

(a) (1) The Division of Motor Vehicles shall control and regulate a Motor Vehicle Alcohol and Drug Test and Lock Program

for persons whose licenses have been revoked pursuant to this article or the provisions of §17C-5-1 *et seq.* of this code or have been convicted under §17C-5-2 of this code, or who are serving a term of a conditional probation pursuant to §17C-5-2b of this code.

(2) The program shall include the establishment of a user's fee for persons participating in the program which shall be paid in advance and deposited into the Motor Vehicle Fees Fund created under the provisions of §17A-2-21 of this code.

(3) (A) Except where specified otherwise, the use of the term "program" in this section refers to the Motor Vehicle Alcohol and Drug Test and Lock Program.

(B) The Commissioner of the Division of Motor Vehicles shall propose legislative rules for promulgation in accordance with the provisions of §29A-3-1 *et seq.* of this code for the purpose of implementing the provisions of this section. The rules shall also prescribe those requirements which, in addition to the requirements specified by this section for eligibility to participate in the program, the commissioner determines must be met to obtain the commissioner's approval to operate a motor vehicle equipped with a motor vehicle alcohol and drug test and lock system.

(C) Nothing in this section may be construed to prohibit day report or community corrections programs authorized pursuant to §62-11C-1 *et seq.* of this code, or a home confinement program authorized pursuant to §62-11B-1 *et seq.* of this code, from being a provider of motor vehicle alcohol and drug test and lock systems for eligible participants as authorized by this section.

(4) For purposes of this section, a "motor vehicle alcohol and drug test and lock system" means a mechanical or computerized system which, in the opinion of the commissioner, prevents the operation of a motor vehicle when, through the system's assessment of the blood alcohol or drug content of the person operating or attempting to operate the vehicle, the person is determined to be under the influence of alcohol or drugs.

(5) The fee for installation and removal of ignition interlock devices shall be waived for persons determined to be indigent by the Division of Motor Vehicles pursuant to §17C-5A-3 of this code. The commissioner shall establish by legislative rule, proposed pursuant to §29A-3-1 *et seq.* of this code, procedures to be followed with regard to persons determined by the Division of Motor Vehicles to be indigent. The rule shall include, but is not limited to, promulgation of application forms, establishment of procedures for the review of applications, and the establishment of a mechanism for the payment of installations for eligible offenders.

(6) On or before January 15 of each year, the Commissioner of the Division of Motor Vehicles shall report to the Legislature on:

(A) The total number of offenders participating in the program during the prior year;

(B) The total number of indigent offenders participating in the program during the prior year;

(C) The terms of any contracts with the providers of ignition interlock devices; and

(D) The total cost of the program to the state during the prior year.

(7) A person participating in the Motor Vehicle Alcohol and Drug Test and Lock Program shall submit to drug testing in a manner and at intervals prescribed by the commissioner. The commissioner shall give due consideration to a lawfully prescribed medication taken in accordance with a valid prescription or order of a licensed medical practitioner who acted in the course of the practitioner's professional practice and does not create an impairment to driving safely when considering a positive drug test result.

(b) (1) Any person whose license is revoked for the first time pursuant to this article or the provisions of §17C-5-1 *et seq.* of this code is eligible to participate in the program when the person's minimum revocation period, as specified by subsection (c) of this section, has expired and the person is enrolled in or has

successfully completed the safety and treatment program or presents proof to the commissioner within 60 days of receiving approval to participate by the commissioner that he or she is enrolled in a safety and treatment program: *Provided*, That anyone whose license is revoked for the first time for driving with a blood alcohol concentration of 0.15 percent or more, by weight, must participate in the program when the person's minimum revocation period, as specified by subsection (c) of this section, has expired and the person is enrolled in or has successfully completed the safety and treatment Program or presents proof to the commissioner within 60 days of receiving approval to participate by the commissioner that he or she is enrolled in a safety and treatment program.

(2) Any person whose license has been suspended for driving a motor vehicle while under the age of 21 years with an alcohol concentration in his or her blood 0.02 percent or more, by weight, but less than 0.08 percent, by weight, is eligible to participate in the program after 30 days have elapsed from the date of the initial suspension, during which time the suspension was actually in effect: *Provided*, That in the case of a person under the age of 18, the person is eligible to participate in the program after 30 days have elapsed from the date of the initial suspension, during which time the suspension was actually in effect or after the person's 18th birthday, whichever is later. Before the commissioner approves a person to operate a motor vehicle equipped with a motor vehicle alcohol and drug test and lock system, the person must agree to comply with the following conditions:

(A) If not already enrolled, the person shall enroll in and complete the educational program provided in §17C-5A-3(d) of this code at the earliest time that placement in the educational program is available, unless good cause is demonstrated to the commissioner as to why placement should be postponed;

(B) The person shall pay all costs of the educational program, any administrative costs, and all costs assessed for any suspension hearing; and

(3) Notwithstanding the provisions of this section to the contrary, a person eligible to participate in the program under this subsection may not operate a motor vehicle unless approved to do so by the commissioner.

(c) A person who participates in the program under subdivision (1), subsection (b) of this section is subject to a minimum revocation period and minimum period for the use of the ignition interlock device as follows:

(1) For a person whose license has been revoked for a first offense for six months for driving under the influence of alcohol, or a combination of alcohol and any controlled substance or other drug, or with a blood alcohol concentration of 0.08 percent, by weight, but less 0.15 percent, by weight, the minimum period of revocation for participation in the test and lock program is 15 days and the minimum period for the use of the ignition interlock device is 125 days;

(2) For a person whose license has been revoked for a first offense for refusing a secondary chemical test, the minimum period of revocation for participation in the test and lock program is 45 days and the minimum period for the use of the ignition interlock device is one year;

(3) For a person whose license has been revoked for a first offense for driving with a blood alcohol concentration of 0.15 percent or more, by weight, the minimum period of revocation for participation in the test and lock program is 45 days and the minimum period for the use of the ignition interlock device is 270 days;

(4) For a person whose license has been revoked for a first offense for driving under the influence of alcohol, or a combination of alcohol and any controlled substance or other drug, or with a blood alcohol concentration of 0.08 percent or more, by weight, or did drive a motor vehicle while under the age of 21 years with an alcohol concentration in his or her blood of 0.02 percent or more, by weight, but less than 0.08 percent, by weight, and while driving does any act forbidden by law or fails to perform any duty imposed

by law, which act or failure proximately causes the death of any person within one year next following the act or failure, and commits the act or failure in reckless disregard of the safety of others and when the influence of alcohol, controlled substances or drugs is shown to be a contributing cause to the death, the minimum period of revocation before the person is eligible for participation in the test and lock program is 12 months and the minimum period for the use of the ignition interlock device is two years;

(5) For a person whose license has been revoked for a first offense for driving under the influence of alcohol, or a combination of alcohol and any controlled substance or other drug, or with a blood alcohol concentration of 0.08 percent or more, by weight, and while driving does any act forbidden by law or fails to perform any duty imposed by law in the driving of the vehicle, which act or failure proximately causes the death of any person within one year next following the act or failure, the minimum period of revocation is six months and the minimum period for the use of the ignition interlock device is two years;

(6) For a person whose license has been revoked for a first offense for driving under the influence of alcohol, or a combination of alcohol and any controlled substance or other drug, or with a blood alcohol concentration of 0.08 percent or more, by weight, and while driving does any act forbidden by law or fails to perform any duty imposed by law in the driving of the vehicle, which act or failure proximately causes bodily injury to any person other than himself or herself, the minimum period of revocation for participation in the program is two months and the minimum period for the use of the ignition interlock device is one year;

(7) For a person whose license has been revoked for a first offense for driving under the influence of alcohol, or a combination of alcohol and any controlled substance or other drug, or with a blood alcohol concentration of 0.08 percent or more, by weight, and while driving has on or within the motor vehicle one or more other persons who are unemancipated minors who have not reached their 16th birthday, the minimum period of revocation for

participation in the program is two months and the minimum period for the use of the ignition interlock device is 10 months.

(d) Notwithstanding any provision of the code to the contrary, a person shall participate in the program if the person is convicted under §17C-5-2 of this code or the person's license is revoked under §17C-5A-2 or §17C-5-7 of this code and the person was previously either convicted or his or her license was revoked under any provision cited in this subsection within the past 10 years. The minimum revocation period for a person required to participate in the program under this subsection is one year and the minimum period for the use of the ignition interlock device is two years, except that the minimum revocation period for a person required to participate because of a violation for driving while under the age of 21 with a blood alcohol concentration of 0.02 percent, or more, by weight, but less than 0.08 percent, or more, by weight, is two months and the minimum period of participation is one year. The division shall add an additional two months to the minimum period for the use of the ignition interlock device if the offense was committed while a minor was in the vehicle. The division shall add an additional six months to the minimum period for the use of the ignition interlock device if a person other than the driver received injuries. The division shall add an additional two years to the minimum period for the use of the ignition interlock device if a person other than the driver is injured and the injuries result in that person's death. The division shall add one year to the minimum period for the use of the ignition interlock device for each additional previous conviction or revocation within the past 10 years. Any person required to participate under this subsection must have an ignition interlock device installed on every vehicle he or she owns or operates.

(e)(1) If a person applies for and is accepted into the Motor Vehicle Alcohol and Drug Test and Lock Program prior to the effective date of the revocation for an offense involving alcohol, the commissioner shall defer the revocation period of such person under the provisions of this section. Such deferral shall continue throughout the applicable minimum period for the use of the ignition interlock device plus an additional period equal to the

applicable minimum revocation period. If a person successfully completes all terms of the Motor Vehicle Alcohol and Drug Test and Lock Program for a period equal to the minimum period for the use of the ignition interlock device pursuant to subsection (c) of this section, plus any applicable minimum revocation period, the commissioner shall waive the revocation period.

(2) If a person applies for and is accepted into the Motor Vehicle Alcohol and Drug Test and Lock Program prior to the effective date of the revocation for an offense solely involving drugs, the commissioner may defer the revocation period of such person under the provisions of this section. Such deferral shall continue throughout the applicable minimum period for the use of the ignition interlock device plus an additional period equal to the applicable minimum revocation period. If a person successfully completes all terms of the Motor Vehicle Alcohol and Drug Test and Lock Program for a period equal to the minimum period for the use of the ignition interlock device pursuant to subsection (c) of this section, plus any applicable minimum revocation period, the commissioner shall waive the revocation period.

(f) The Division of Motor Vehicles may reduce any revocation period required of a person with a second or subsequent offense for driving under the influence of drugs to a minimum of one year and thereafter issue a restricted license on the conditions that the person is in the treatment and job program prescribed in §61-11-26a of this code, has satisfactorily performed in the treatment component of the program and that the person submits to two years of monthly drug testing. If the person is otherwise required to participate in the Alcohol and Drug Test and Lock Program for another offense, he or she may do so while meeting the conditions described in this subsection. If the person fails to submit to a drug test or submits to a test that reveals the presence of controlled substances or drugs, then the full revocation period is reinstated, and the person is only credited with revocation time actually served prior to receiving restricted privileges. The Commissioner of the Division of Motor Vehicles is hereby authorized to promulgate emergency rules to implement the provisions of this article.

(g) An applicant for the test and lock program convicted of any violation of §17B-4-3 of this code for driving while the applicant's driver's license was suspended or revoked within the six-month period preceding the date of application for admission to the test and lock program may still participate in the program by serving the revocation or suspension required by §17B-4-3 of this code as additional participation time in the program.

(h) Upon permitting an eligible person to participate in the program, the commissioner shall issue to the person, and the person is required to exhibit on demand, a driver's license which shall reflect that the person is restricted to the operation of a motor vehicle which is equipped with an approved motor vehicle alcohol and drug test and lock system.

(i) The commissioner may extend the minimum period of revocation and the minimum period of participation in the program for a person who violates the terms and conditions of participation in the program as found in this section, or legislative rule, or any agreement or contract between the participant and the division or program service provider. If the commissioner finds that any person participating in the program pursuant to §17C-5-2b of this code must be removed therefrom for violation(s) of the terms and conditions thereof, he or she shall notify the person, the court that imposed the term of participation in the program, and the prosecuting attorney in the county wherein the order imposing participation in the program was entered.

(j) A person whose license has been suspended for a first offense of driving while under the age of 21 with a blood alcohol concentration of 0.02 percent, or more, by weight, but less than 0.08 percent, or more, by weight, who has completed the educational program and who has not violated the terms required by the commissioner of the person's participation in the program is entitled to the reinstatement of his or her driver's license six months from the date the person is permitted to operate a motor vehicle by the commissioner. When a license has been reinstated pursuant to this subsection, the records ordering the suspension, records of any administrative hearing, records of any blood alcohol test results, and all other records pertaining to the suspension shall

be expunged by operation of law: *Provided*, That a person is entitled to expungement under the provisions of this subsection only once. The expungement shall be accomplished by physically marking the records to show that the records have been expunged and by securely sealing and filing the records. Expungement has the legal effect as if the suspension never occurred. The records may not be disclosed or made available for inspection and in response to a request for record information, the commissioner shall reply that no information is available. Information from the file may be used by the commissioner for research and statistical purposes so long as the use of the information does not divulge the identity of the person.

(k) In addition to any other penalty imposed by this code, any person who operates a motor vehicle not equipped with an approved motor vehicle alcohol and drug test and lock system during that person's participation in the Motor Vehicle Alcohol and Drug Test and Lock Program is guilty of a misdemeanor and, upon conviction thereof, shall be confined in jail for a period not less than one month nor more than six months and fined not less than $100 nor more than $500. Any person who attempts to bypass the alcohol and drug test and lock system is guilty of a misdemeanor and, upon conviction thereof, shall be confined in jail not more than six months and fined not less than $100 nor more than $1,000: *Provided*, That notwithstanding any provision of this code to the contrary, a person enrolled and participating in the test and lock program may operate a motor vehicle solely at his or her job site if the operation is a condition of his or her employment. For the purpose of this section, "job site" does not include any street or highway open to the use of the public for purposes of vehicular traffic.

CHAPTER 267

(S. B. 359 - By Senators Sypolt, Stollings, Woodrum, Nelson, Baldwin, and Roberts)

[Passed April 9, 2021; in effect 90 days from passage (July 8, 2021)]
[Approved by the Governor on April 21, 2021.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §17C-4-17, relating to law enforcement making reasonable attempt to contact a landowner or lessee when an accident occurs that damages a fence that could contain livestock.

Be it enacted by the Legislature of West Virginia:

ARTICLE 4. ACCIDENTS.

§17C-4-17. Notification of landowner when accident damages livestock fence.

Whenever a member of the West Virginia State Police, Natural Resources police officer, a member of a county sheriff's department, or a municipal police officer, in the regular course of their duties, reports on a crash that causes damage to any fence that could contain livestock, that officer must make a reasonable attempt following the accident to contact either the landowner or any known lessee of the land to alert the landowner or lessee of the fence damage.

CHAPTER 268

(S. B. 376 - By Senators Clements, Swope, Plymale, and Jeffries)

[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 §17C-15-37 of the Code of West Virginia, 1931, as amended, relating to removing inoperative provisions requiring Commissioner of the Division of Highways set standards for studded snow tires.

Be it enacted by the Legislature of West Virginia:

ARTICLE 15. EQUIPMENT.

§17C-15-37. Tire equipment restrictions; rules and regulations as to certain tires.

(a) Every solid rubber tire on a vehicle shall have rubber on its entire traction surface at least one inch thick above the edge of the flange of the entire periphery.

(b) No person shall operate or move on any highway any motor vehicle, trailer, or semitrailer having any metal tire in contact with the roadway.

(c) No tire on a vehicle moved on a highway shall have on its periphery any block, stud, flange, cleat, or spike, or any other protuberance of any material other than rubber which projects beyond the tread of the traction surface of the tire, except that: (1) It shall be permissible to use farm machinery with tires having protuberances which will not injure the highway; (2) it shall be permissible to use tire chains of reasonable proportions upon any vehicle when required for safety because of snow, ice, or other

conditions tending to cause a vehicle to skid; and (3) it shall be permissible to use studded tires during the period from November 1 of each year until April 15 of the following year: *Provided*, That in the interest of highway maintenance, no vehicle moved on a highway, other than school buses, shall be equipped with studded tires which are operational with a recommended air pressure greater than 40 pounds per square inch.

(d) The Commissioner of the Division of Highways and local authorities in their respective jurisdictions may in their discretion issue special permits authorizing the operation upon the highway of traction engines or tractors having movable tracks with transverse corrugations upon the periphery of such movable tracks or farm tractors or other farm machinery, the operation of which upon a highway would otherwise be prohibited under this chapter.

CHAPTER 269

(Com. Sub. for H. B. 2195 - By Delegate Sypolt)

[Passed April 10, 2021; in effect ninety days from passage.]
[Approved by the Governor on April 26, 2021.]

AN ACT to amend and reenact §17C-4-7 of the Code of West Virginia, 1931, as amended, relating to motor vehicle crash reports; requiring the investigating law-enforcement officer, within 24 hours of a motor vehicle crash, to provide the owner, operator, and insurance information for all the involved parties with each of the other involved parties and to each party's respective insurance agents; and, information shall be provided without cost.

Be it enacted by the Legislature of West Virginia:

ARTICLE 4. ACCIDENTS.

§17C-4-7. Reports of crashes.

(a) Every law-enforcement officer who, in the regular course of duty, investigates a motor vehicle crash occurring on the public streets or highways of this state resulting in bodily injury to, or death of, any person or total property damage to an apparent extent of $1,000 or more shall, either at the time of and at the scene of the crash or thereafter by interviewing participants or witnesses, within 24 hours after completing such investigation, prepare a report of such crash either electronically or in writing.

(b) Within 24 hours of a motor vehicle crash, the investigating law-enforcement officer shall provide the owner, operator, and insurance information upon request for all the involved parties to each of the other involved parties, and to each party's respective insurance agents. This information shall be made available, at no cost, whether or not the accident report has been completed.

(c) The investigating law-enforcement officer shall submit the report electronically or in writing within 24 hours after completing the investigation to the Division of Highways in the form and manner approved by the Commissioner of the Division of Highways, the Superintendent of the West Virginia State Police, and the Commissioner of the Division of Motor Vehicles. The Division of Highways shall supply electronic or paper copies of the form to police departments, sheriffs, and other appropriate law-enforcement agencies.

(d) In the event that the investigating law-enforcement officer cannot complete the investigation within 10 days of the crash, he or she shall submit a preliminary report of the crash to the Division of Highways on the 10th day after the crash and submit the final report within 24 hours of completion of the investigation pursuant to subsection (c) of this section.

CHAPTER 270

(Com. Sub. for H. B. 2765 - By Delegates Capito and Queen)

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

AN ACT to amend and reenact §17C-1-6 of the Code of West Virginia, 1931, as amended; and to amend and reenact §17C-15-26 of said code, all relating to emergency management and operations vehicles operated by airports; allowing such vehicles to be equipped with and use red flashing warning lights; authorizing airport director and Secretary of the Department of Homeland Security to designate emergency management and operations vehicles operated by airports; and specifying that such designated vehicles are authorized emergency vehicles.

Be it enacted by the Legislature of West Virginia:

ARTICLE 1. WORDS AND PHRASES DEFINED.

§17C-1-6. Authorized emergency vehicle.

"Authorized emergency vehicle" means vehicles of a fire department, duly chartered rescue squad, police department, ambulance service, hospital police department, state, county, or municipal agency, and such privately owned ambulances, tow trucks, wreckers, flag car services, vehicles providing road service to disabled vehicles, service vehicles of a public service corporation, postal service vehicles, snow removal equipment, Class A vehicles of firefighters, Class A vehicles of members of ambulance services, Class A vehicles of members of duly chartered rescue squads, emergency management and operations vehicles operated by airports and designated pursuant to §17C-15-26 of this code, and all other emergency vehicles as are designated by the

agency responsible for the operation and control of these persons or organizations. Class A vehicles are as defined by §17A-10-1 of this code. Agency authorization and emergency equipment are provided in §17C-15-26 of this code. Agencies responsible for issuing authorization for emergency vehicle permits may promulgate such regulations that are necessary for the issuance of permits for emergency vehicles.

ARTICLE 15. EQUIPMENT.

§17C-15-26. Special restrictions on lamps.

(a) Any lighted lamp or illuminating device upon a motor vehicle other than head lamps, spot lamps, auxiliary lamps, or flashing front-direction signals which projects a beam of light of an intensity greater than 300 candlepower shall be so directed that no part of the beam will strike the level of the roadway on which the vehicle stands at a distance of more than 75 feet from the vehicle.

(b) No person may drive or move any vehicle or equipment upon any highway with any lamp or device on the vehicle displaying other than a white or amber light visible from directly in front of the center of the vehicle except as authorized by §17C-15-26(d) of this code.

(c) Except as authorized in §17C-15-26(d) and 17C-15-26(g) of this code and authorized in §17C-15-19 of this code, flashing lights are prohibited on motor vehicles: *Provided,* That any vehicle as a means for indicating right or left turn or any vehicle as a means of indicating the same is disabled or otherwise stopped for an emergency may have blinking or flashing lights.

(d) Notwithstanding any other provisions of this chapter, the following colors of flashing warning lights are restricted for the use of the type of vehicle designated:

(1) Blue flashing warning lights are restricted to police vehicles. Authorization for police vehicles shall be designated by the chief administrative official of each police department.

(2) Except for standard vehicle equipment authorized by §17C-15-19 of this code, red flashing warning lights are restricted to the following:

(A) Ambulances;

(B) Fire-fighting vehicles;

(C) Hazardous material response vehicles;

(D) Industrial fire brigade vehicles;

(E) Rescue squad vehicles not operating out of a fire department;

(F) School buses;

(G) Class A vehicles, as defined by §17A-10-1 *et seq.* of this code, of those firefighters who are authorized by their fire chiefs to have the lights;

(H) Class A vehicles of members of duly chartered rescue squads not operating out of a fire department;

(I) Class A vehicles of members of ambulance services or duly chartered rescue squads who are authorized by their respective chiefs to have the lights;

(J) Class A vehicles of out-of-state residents who are active members of West Virginia fire departments, ambulance services, or duly chartered rescue squads who are authorized by their respective chiefs to have the lights;

(K) West Virginia Department of Agriculture emergency response vehicles;

(L) Vehicles designated by the Secretary of the Department of Homeland Security for emergency response or emergency management by the Division of Corrections, Regional Jail and Correctional Facility Authority, Division of Juvenile Services, and Division of Homeland Security and Emergency Management;

(M) Class A vehicles of emergency response or emergency management personnel as designated by the Secretary of the Department of Homeland Security and the county commission of the county of residence; and

(N) Emergency management and operations vehicles operated by airports.

Red flashing warning lights attached to a Class A vehicle may be operated only when responding to or engaged in handling an emergency requiring the attention of the firefighters, members of the ambulance services, or chartered rescue squads.

(3) The use of red flashing warning lights is authorized as follows:

(A) Authorization for all ambulances shall be designated by the Department of Health and Human Resources and the sheriff of the county of residence.

(B) Authorization for all fire department vehicles shall be designated by the fire chief and the State Fire Marshal's Office.

(C) Authorization for all hazardous material response vehicles and industrial fire brigades shall be designated by the chief of the fire department and the State Fire Marshal's Office.

(D) Authorization for all rescue squad vehicles not operating out of a fire department shall be designated by the squad chief, the sheriff of the county of residence and the Department of Health and Human Resources.

(E) Authorization for school buses shall be designated as set out in §17C-14-12 of this code.

(F) Authorization for firefighters to operate Class A vehicles shall be designated by their fire chiefs and the state Fire Marshal's office.

(G) Authorization for members of ambulance services or any other emergency medical service personnel to operate Class A

vehicles shall be designated by their chief official, the Department of Health and Human Resources, and the sheriff of the county of residence.

(H) Authorization for members of duly chartered rescue squads not operating out of a fire department to operate Class A vehicles shall be designated by their squad chiefs, the sheriff of the county of residence, and the Department of Health and Human Resources.

(I) Authorization for out-of-state residents operating Class A vehicles who are active members of a West Virginia fire department, ambulance services, or duly chartered rescue squads shall be designated by their respective chiefs.

(J) Authorization for West Virginia Department of Agriculture emergency response vehicles shall be designated by the Commissioner of the Department of Agriculture.

(K) Authorization for vehicles for emergency response or emergency management by the Division of Corrections, Regional Jail and Correctional Facility Authority, Division of Juvenile Services, and Division of Homeland Security and Emergency Management shall be designated by the Secretary of the Department of Homeland Security.

(L) Authorization for Class A vehicles of emergency response or emergency management personnel as designated by the Secretary of the Department of Homeland Security and the county commission of the county of residence.

(M) Authorization for emergency management and operations vehicles operated by airports shall be designated by the airport director and the Secretary of the Department of Homeland Security.

(4) Yellow or amber flashing warning lights are restricted to the following:

(A) All other emergency vehicles, including tow trucks and wreckers, authorized by this chapter and by §17C-15-27 of this code;

(B) Postal service vehicles and rural mail carriers, as authorized in §17C-15-19 of this code;

(C) Rural newspaper delivery vehicles;

(D) Flag car services;

(E) Vehicles providing road service to disabled vehicles;

(F) Service vehicles of a public service corporation;

(G) Snow removal equipment;

(H) School buses; and

(I) Automotive fire apparatus owned by a municipality or other political subdivision, by a volunteer or part-volunteer fire company or department, or by an industrial fire brigade.

(5) The use of yellow or amber flashing warning lights shall be authorized as follows:

(A) Authorization for tow trucks, wreckers, rural newspaper delivery vehicles, flag car services, vehicles providing road service to disabled vehicles, service vehicles of a public service corporation, and postal service vehicles shall be designated by the sheriff of the county of residence.

(B) Authorization for snow removal equipment shall be designated by the Commissioner of the Division of Highways.

(C) Authorization for school buses shall be designated as set out in §17C-14-12 of this code.

(D) Authorization for automotive fire apparatus shall be designated by the fire chief in conformity with the NFPA 1901 Standard for Automotive Fire Apparatus as published by the National Fire Protection Association (NFPA) on July 18, 2003, and adopted by the state Fire Commission by legislative rule (87 CSR 1, *et seq.*), except as follows:

(i) With the approval of the State Fire Marshal, used automotive fire apparatus may be conformed to the NFPA standard in effect on the date of its manufacture or conformed to a later NFPA standard; and

(ii) Automotive fire apparatus may be equipped with blinking or flashing headlamps.

(e) Notwithstanding the foregoing provisions of this section, any vehicle belonging to a county board of education, an organization receiving funding from the state or Federal Transit Administration for the purpose of providing general public transportation or hauling solid waste may be equipped with a white flashing strobotron warning light. This strobe light may be installed on the roof of a school bus, a public transportation vehicle, or a vehicle hauling solid waste not to exceed one-third the body length forward from the rear of the roof edge. The light shall have a single clear lens emitting light 360 degrees around its vertical axis and may not extend above the roof more than six and one-half inches. A manual switch and a pilot light must be included to indicate the light is in operation.

(f) Notwithstanding the foregoing provisions of this section, any waste service vehicle as defined in §17C-6-11 of this code may be equipped with yellow or amber flashing warning lights.

(g) It is unlawful for flashing warning lights of an unauthorized color to be installed or used on a vehicle other than as specified in this section, except that a police vehicle may be equipped with either or both blue or red warning lights.

CHAPTER 271

(H. B. 3132 - By Delegates Capito, Keaton and L. Pack)

[Passed April 9, 2021; in effect ninety days from passage.]
[Approved by the Governor on April 26, 2021.]

AN ACT to amend and reenact §17A-11-4 of the Code of West Virginia, 1931, as amended; and to amend and reenact §17C-6-10 of said code; to amend and reenact §17C-17-10 of said Code; to amend and reenact §17E-1-24 of said code; to amend and reenact §24A-7-6 and §27A-7-7 of said Code; and to amend and reenact §30-29-1 and §30-29-5 of said Code; all relating to changing the term "motor carrier inspectors" to "commercial vehicle enforcement officers" throughout the code, and removing linguistic inconsistencies.

Be it enacted by the Legislature of West Virginia:

CHAPTER 17A. MOTOR VEHICLE ADMINISTRATION, REGISTRATION, CERTIFICATE OF TITLE, AND ANTITHEFT PROVISIONS.

ARTICLE 11. PENALTIES.

§17A-11-4. Authority of members of official highway department weighing crews and Public Service Commission, motor carrier employees.

Employees of the department of highways designated by the commissioner of highways as weight enforcement officers and employees of the Public Service Commission designated by the chairman as commercial vehicle enforcement officers, shall, during the course of their normal duties, have concurrent jurisdiction with police officers in the enforcement of article nine of this chapter.

CHAPTER 17C. TRAFFIC REGULATIONS AND LAWS OF THE ROAD.

ARTICLE 6. SPEED RESTRICTIONS.

§17C-6-10. Enforcement of article with respect to operations of commercial motor vehicles.

In addition to enforcement by officers and other persons authorized by law, commercial vehicle enforcement officers of the Public Service Commission of West Virginia may enforce the provisions of this article as they relate to the operation of commercial motor vehicles.

ARTICLE 17. SIZE, WEIGHT AND LOAD.

§17C-17-10. Officers may weigh, measure or examine vehicles and require removal or rearrangement of excess loads.

(a) Any police officer or employee of the Division of Highways or the Public Service Commission designated as a commercial vehicle enforcement officer or member of an official weighing crew by his or her representative agency may require the driver of any vehicle or combination of vehicles located on or within one hundred feet of any public highway or right-of-way, and whether moving or stopped, to submit the vehicle or combination of vehicles to a weighing with portable or stationary weighing devices or submit the vehicle or combination of vehicles to a measuring or to any other examination necessary to determine if the vehicle or combination of vehicles is in violation of any of the provisions of this article or article seventeen-a of this chapter, and may require that the vehicle or combination of vehicles be driven to the nearest weighing device.

No vehicle or combination of vehicles may be detained for weighing unless a portable or stationary weighing device is actually present at the location where, and at the time, the vehicle or combination of vehicles is stopped or unless the vehicle or combination of vehicles is escorted immediately after being stopped to the nearest portable or stationary weighing device. In no case may a vehicle or combination of vehicles be detained more

than one hour from the time it is stopped for weighing unless the vehicle or combination of vehicles is impounded for another violation or placed out of service for a safety violation.

(b) Whenever a police officer or a member of an official weighing crew or a commercial vehicle enforcement officer determines that a vehicle or combination of vehicles is in violation of any of the provisions of this article or article seventeen-a of this chapter, he or she may require the driver to remain in place or be moved to a suitable location until the vehicle or combination of vehicles is brought into conformity with the provisions violated.

In the case of a weight violation all material unloaded shall be cared for by the owner, lessee or borrower of the vehicle or combination of vehicles at the risk of the owner, lessee or borrower: *Provided,* That no criminal charge shall be preferred against any driver, operator or owner of a vehicle when a rearrangement of the load upon the vehicle, without removal of the load from the vehicle, reduces the axle loads of the vehicle to the limit permitted under this chapter.

(c) Any driver of a vehicle or combination of vehicles who fails or refuses to comply with any requirement or provision of this section shall be guilty of a misdemeanor, or in the case of any driver of a vehicle engaged in the transportation of coal, any other additional penalties that may be applicable under the provisions of article seventeen-a of this chapter.

CHAPTER 17E. UNIFORM COMMERCIAL DRIVER'S LICENSE ACT.

ARTICLE 1. COMMERCIAL DRIVER'S LICENSE.

§17E-1-24. Enforcement.

In addition to the officers of the West Virginia State Police, any police officer, or any commercial vehicle enforcement officer or weight enforcement officer of the Public Service Commission, Motor Carrier Division, and any special agent of the Federal Motor Carrier Safety Administration may enforce the provisions of this article.

CHAPTER 24A. COMMERCIAL MOTOR CARRIERS.

ARTICLE 7. COMPLAINTS, DAMAGES AND VIOLATIONS.

§24A-7-6. Duty of prosecuting attorneys and law-enforcement officers to enforce chapter; regulatory authority of commission; qualifications of commission employees designated as commercial vehicle enforcement officers.

It shall be the duty of the West Virginia State Police and the sheriffs of the counties in West Virginia to make arrests and the duty of the prosecuting attorneys of the several counties to prosecute all violations of this chapter and of other chapters governing the regulatory authority of the commission. The commission employees designated as commercial vehicle enforcement officers shall have the same authority as law-enforcement officers to enforce the provisions of this chapter and the provisions of other chapters of this code governing the regulatory authority of the commission as such provisions apply to entities and persons regulated by the commission in any county or city of this state. Notwithstanding any provision of this code to the contrary, such commercial vehicle enforcement officers may carry handguns in the course of their official duties after meeting specialized qualifications established by the Governor's committee on crime, delinquency and correction, which qualifications shall include the successful completion of handgun training, including a minimum of four hours training in handgun safety, paid for by the commission and comparable to the handgun training provided to law-enforcement officers by the West Virginia State Police: *Provided,* That nothing in this section shall be construed to include the commission within the meaning of law-enforcement officers within the meaning of law-enforcement agency, as defined in section one, article twenty-nine, chapter thirty of this code.

§24A-7-7. Authority of motor carrier inspectors to enforce all traffic rules as to commercial vehicles; use of radar as evidence.

(a) The employees of the commission designated as commercial vehicle enforcement officers have the same authority as law-enforcement officers generally to enforce the provisions of chapter seventeen-c of this code with respect to commercial motor vehicles owned or operated by motor carriers, exempt carriers or private commercial carriers where vehicles have a gross vehicle weight rating of ten thousand pounds or more.

The commission is authorized to delegate commercial vehicle enforcement officer duties to weight enforcement officers as it considers appropriate, following successful training and certification of individual officers, who shall then have the same authority as commercial vehicle enforcement officers under this section. The commission is also authorized to delegate weight enforcement duties to commercial vehicle enforcement officers.

(b) The speed of a commercial motor vehicle owned or operated by a motor carrier, exempt carrier or private commercial carrier may be proved by evidence obtained by use of any device designed to measure and indicate or record the speed of a moving object by means of microwaves, when the evidence is obtained by employees of the commission designated as commercial vehicle enforcement officers. The evidence so obtained is prima facie evidence of the speed of the vehicle.

(c) Commercial vehicle enforcement officers shall also perform a North American standard safety inspection of each commercial motor vehicle stopped for enforcement purposes pursuant to this section.

(d) Before exercising the provisions of this section, the commercial vehicle enforcement officers shall receive adequate training.

(e) Nothing in this section affects the existing authority of law-enforcement officers not employed by the commission to enforce the provisions of chapter seventeen-c of this code.

CHAPTER 30. PROFESSIONS AND OCCUPATIONS.

ARTICLE 29. LAW-ENFORCEMENT TRAINING AND CERTIFICATION.

*§30-29-1. Definitions.

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

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

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

(3) "County" means the 55 major political subdivisions of the state;

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

(5) "Governor's Committee on Crime, Delinquency, and Correction" or "Governor's committee" means the Governor's Committee on Crime, Delinquency, and Correction established as a state planning agency pursuant to §15-9-1 of this code;

(6) "Law-enforcement officer" means any duly authorized member of a law-enforcement agency who is authorized to maintain public peace and order, prevent and detect crime, make arrests, and enforce the laws of the state or any county or

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***NOTE:** This section was also amended by H. B. 2891 (Chapter 205), which passed subsequent to this act.

municipality thereof, other than parking ordinances, and includes any home incarceration supervisor employed by the county commission authorized pursuant to §62-11B-7a of this code, those persons employed as campus police officers at state institutions of higher education in accordance with the provisions of §18B-4-5 of this code, persons employed as hospital police officers in accordance with the provisions of §16-5B-19 of this code, and persons employed by the Public Service Commission as commercial vehicle enforcement officers and weight-enforcement officers charged with enforcing commercial motor vehicle safety and weight restriction laws, although those institutions and agencies may not be considered law-enforcement agencies. The term also includes those persons employed as county litter control officers charged with enforcing litter laws: *Provided*, That those persons have been trained and certified as law-enforcement officers and that certification is currently active. The term also includes those persons employed as rangers by resort area districts in accordance with the provisions of §7-25-23 of this code, although no resort area district may be considered a law-enforcement agency: *Provided, however*, That the subject rangers shall pay the tuition and costs of training. As used in this article, the term "law-enforcement officer" does not apply to the chief executive of any West Virginia law-enforcement agency or any watchman or special Natural Resources police officer;

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

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

(9) "Subcommittee" or "law-enforcement professional standards subcommittee" means the subcommittee of the Governor's Committee on Crime, Delinquency, and Correction created by §30-29-2 of this code; and

(10) "West Virginia law-enforcement agency" means any duly authorized state, county, or municipal organization employing one or more persons whose responsibility is the enforcement of laws of

the state or any county or municipality thereof: *Provided*, That neither the Public Service Commission nor any state institution of higher education nor any hospital nor any resort area district is a law-enforcement agency.

§30-29-5. Certification requirements and power to decertify or reinstate.

(a) Except as provided in subsections (b) and (e) of this section, a person may not be employed as a law-enforcement officer by any West Virginia law-enforcement agency or by any state institution of higher education or by a hospital or by the Public Service Commission of West Virginia on or after the effective date of this article unless the person is certified, or is certifiable in the manner specified in subsection (c) of this section, by the subcommittee as having met the minimum entry level law-enforcement qualification and training program requirements promulgated pursuant to this article: *Provided*, That the provisions of this section do not apply to persons hired by the Public Service Commission as commercial vehicle enforcement officers and weight enforcement officers before July 1, 2007.

(b) Except as provided in subsection (e) of this section, a person who is not certified, or certifiable in the manner specified in subsection (c) of this section, may be conditionally employed as a law-enforcement officer until certified: *Provided*, That within 90 calendar days of the commencement of employment or the effective date of this article, if the person is already employed on the effective date, he or she makes a written application to attend an approved law-enforcement training academy and that the person satisfactorily completes the approved law-enforcement training academy within 18 consecutive months of the commencement of his or her employment: *Provided, however*, That the subcommittee may grant an extension, one-time only, not to exceed six months, based upon a written request from the person justifying the need for such an extension: *Provided further,* That the subcommittee, in its sole discretion, may grant an additional extension upon demonstration of a hardship warranting it. The person's employer shall provide notice, in writing, of the 90-day deadline to file a written application to the academy within 30 calendar days of that

person's commencement of employment. The employer shall provide full disclosure as to the consequences of failing to file a timely written application. The academy shall notify the applicant in writing of the receipt of the application and of the tentative date of the applicant's enrollment. Any applicant who, as the result of extenuating circumstances acceptable to his or her employing law-enforcement official, is unable to attend the scheduled training program to which he or she was admitted may reapply and shall be admitted to the next regularly scheduled training program. One year after the effective date of this section, certification as a law-enforcement officer within this state of persons who are not certifiable as provided in subsection (c) of this section shall, in addition to graduation from an established academy in the state, be based on: Current employment as a sworn law-enforcement officer by any West Virginia law-enforcement agency or any state institution of higher education or the Public Service Commission; and the person's successful completion of an approved entry level law-enforcement examination established by legislative rule of the subcommittee, which shall include, at a minimum, written testing requirements, medical standards, physical standards, and good moral character standards conducted in accordance with such rule. The production of a record of successful passage of the approved entry level law-enforcement examination shall indicate the applicant as qualified under the law-enforcement training and certification standards within this state. An applicant who satisfactorily completes the program and successfully passes the approved entry level law-enforcement examination shall, within 30 days of completion, make written application to the subcommittee requesting certification as having met the minimum entry level law-enforcement qualification and training program requirements. Upon determining that an applicant has met the requirements for certification as set forth in this section, the subcommittee shall forward to the applicant documentation of certification. An applicant who fails to complete the training program to which he or she is first admitted, or was admitted upon reapplication, or who fails to pass the approved entry level law-enforcement examination, may not be certified by the subcommittee: *And provided further*, That an applicant who has completed the minimum training and examination required by the subcommittee

may be certified as a law-enforcement officer, notwithstanding the applicant's failure to complete additional training hours required in the training program to which he or she originally applied. If more than 24 months but less than 60 months have passed since the applicant for certification has successfully completed the approved entry level law-enforcement examination, the person may be certified but must complete the additional training set forth in legislative rules promulgated by the subcommittee addressing the recertification requirements of certified officers. If more than 60 months have passed since the applicant for certification has successfully completed the approved entry level law-enforcement examination, the person must then attend a subcommittee-approved training program and successfully complete a separate subcommittee entry level law-enforcement examination.

(c) Any person who begins employment on or after the effective date of this article as a law-enforcement officer is certifiable as having met the minimum entry level law-enforcement training program requirements and is exempt from attending a law-enforcement training academy if the person has satisfactorily completed a course of instruction in law enforcement equivalent to or exceeding the minimum applicable law-enforcement training curricula promulgated by the subcommittee. To receive certification, the person shall make written application within 90 calendar days following the commencement of employment to the subcommittee requesting certification. The application shall include a notarized statement of the applicant's satisfactory completion of the course of instruction in law enforcement, a notarized transcript of the applicant's relevant scholastic records, and a notarized copy of the curriculum of the completed course of instruction. The subcommittee shall review the application and, if it finds the applicant has met the requirements for certification, shall forward to the applicant documentation of certification. The subcommittee may set the standards for required records to be provided by or on behalf of the applicant officer to verify his or her training, status, or certification as a law-enforcement officer. The subcommittee may allow an applicant officer to participate in the approved equivalent certification program to gain certification as a law-enforcement officer in this state.

(d) Except as provided in subdivisions (1) through (3), inclusive, of this subsection, any person who is employed as a law-enforcement officer on or after the effective date of this article and fails to be certified shall be automatically terminated and no further emoluments shall be paid to such officer by his or her employer. Any person terminated shall be entitled to reapply, as a private citizen, to the subcommittee for training and certification, and upon being certified may again be employed as a law-enforcement officer in this state: *Provided,* That if a person is terminated under this subsection because an application was not timely filed to the academy, and the person's employer failed to provide notice or disclosure to that person as set forth in subsection (b) of this section, the employer shall pay the full cost of attending the academy if the person's application to the subcommittee as a private citizen is subsequently approved.

(1) Any person who is employed as a law-enforcement officer on or after the effective date of this article and fails to be certified as a result of hardship and/or circumstance beyond his or her control may apply to the director of a training academy for reentry to the next available academy.

(2) Any person who is employed as a law-enforcement officer on or after the effective date of this article and fails to be certified as a result of voluntary separation from an academy program shall be automatically terminated and no further emoluments may be paid to such officer by his or her employer. Any person terminated as a result of voluntary separation from an academy program may not be conditionally employed as a law-enforcement officer for a period of two years from the date of voluntary separation.

(3) Any person who is employed as a law-enforcement officer on or after the effective date of this article and fails to be certified as a result of dismissal from an academy program shall be automatically terminated and no further emoluments may be paid to such officer by his or her employer. Any person terminated as a result of dismissal from an academy program may not be conditionally employed as a law-enforcement officer for a period of five years from the date of dismissal and receiving approval from the subcommittee.

(e) Nothing in this article may be construed as prohibiting any governing body, Civil Service Commission, or chief executive of any West Virginia law-enforcement agency from requiring their law-enforcement officers to meet qualifications and satisfactorily complete a course of law-enforcement instruction which exceeds the minimum entry level law-enforcement qualification and training curricula promulgated by the subcommittee.

(f) The subcommittee, or its designee, may decertify or reactivate a law-enforcement officer pursuant to the procedure contained in this article and legislative rules promulgated by the subcommittee.

(g) Any person aggrieved by a decision of the subcommittee made pursuant to this article may contest the decision in accordance with the provisions of §29A-5-1 *et seq.* of this code.

(h) The subcommittee may issue subpoenas for the attendance of witnesses and the production of necessary evidence or documents in any proceeding, review, or investigation relating to certification or hearing before the subcommittee.

CHAPTER 272

(H. B. 2997 - By Delegates Haynes, Graves, J. Pack, Kessinger, Phillips, Steele, Bates, Hanna, Toney and G. Ward)

[Passed April 10, 2021; in effect from passage.]
[Approved by the Governor on April 27, 2021.]

AN ACT to amend and reenact §11-14C-34 of the Code of West Virginia, as amended, relating to transportation of motor fuel; removing requirement that bulk plants issue shipping documents; requiring shipping documents for motor fuel loaded at a terminal rack; requiring notices to and from the commissioner's designated agency related to the diversion of motor fuel; and adding a defense to the civil penalty imposed for delivery of motor fuel to a state other than the destination state that is printed on the shipping document for the motor fuel.

Be it enacted by the Legislature of West Virginia:

§11-14C-34. Shipping documents; transportation of motor fuel; civil penalty.

(a) A person shall not transport motor fuel loaded at a terminal rack unless the person has a shipping document, that complies with this section. A terminal operator shall give a shipping document to the person who operates the means of conveyance into which motor fuel is loaded at the terminal rack.

(b) The shipping document issued by the terminal operator shall contain the following information and any other information required by the commissioner:

(1) Identification, including address, of the terminal or bulk plant from which the motor fuel was received;

(2) Date the motor fuel was loaded;

(3) Invoiced gallons loaded;

(4) Destination state of the motor fuel as represented by the purchaser of the motor fuel or the purchaser's agent;

(5) In the case of aviation jet fuel, the shipping document shall be marked with the phrase "Aviation Jet Fuel, Not for On-road Use" or a similar phrase;

(6) In the case of dyed diesel fuel, the shipping document shall be marked with the phrase "Dyed Diesel Fuel, Nontaxable Use Only, Penalty for Taxable Use" or a similar phrase; and

(7) If the document is issued by a terminal operator, the invoiced gallons loaded and a statement indicating the name of the supplier that is responsible for the tax due on the motor fuel.

(c) A terminal operator or bulk plant operator may rely on the representation made by the purchaser of motor fuel or the purchaser's agent concerning the destination state of the motor fuel. In the event that either the terminal operator, purchaser or transporter determines prior to the shipment of motor fuel leaving the terminal that the destination state indicated on the shipping document is incorrect, the diversion procedure provided in subdivision (3), subsection (d) of this section shall be used to obtain authorization to deliver the motor fuel to a different state. A purchaser is liable for any tax due as a result of the purchaser's diversion of motor fuel from the represented destination state.

(d) A person to whom a shipping document was issued shall:

(1) Carry the shipping document in the means of conveyance for which it was issued when transporting the motor fuel described;

(2) Show the shipping document upon request to any law-enforcement officer, representative of the commissioner and any other authorized individual when transporting the motor fuel described;

(3) Deliver motor fuel to the destination state printed on the shipping document unless the person:

(A) Notifies the commissioner's designated entity by the next business day that the person has received instructions after the shipping document was issued to deliver the motor fuel to a different destination state;

(B) Receives from the commissioner's designated entity, a confirmation number authorizing the diversion;

(C) Records with the shipping document the change in destination state and the confirmation number for the diversion; and

(4) Provides the confirmation number for the diversion to the person to whom the motor fuel is delivered.

(e) The person to whom motor fuel is delivered by any means of conveyance shall not accept delivery of the motor fuel if the destination state shown on the shipping document for the motor fuel is a state other than West Virginia*: Provided,* That delivery may be accepted if the destination state is other than West Virginia if the document contains a diversion number authorized by the commissioner's designated entity. The person to whom the motor fuel is delivered shall examine the shipping document to determine that West Virginia is the destination state and shall retain a copy of the shipping document: (1) At the place of business where the motor fuel was delivered for ninety days following the date of delivery; and (2) at the place or another place for at least three years following the date of delivery. The person who accepts delivery of motor fuel in violation of this subsection and any person liable for the tax on the motor fuel pursuant to section five of this article is jointly and severally liable for any tax due on the motor fuel.

(f) Any person who transports motor fuel by any means of conveyance without a shipping document or with a false or an incomplete shipping document or delivers motor fuel to a destination state other than the destination state shown on the shipping document, is subject to the following civil penalty.

(1) If the motor fuel is transported in a barge, watercraft, or transport vehicle, the civil penalty shall be payable by the person in whose name the means of conveyance is registered.

(2) If the motor fuel is transported in a railroad tank car, the civil penalty shall be payable by the person responsible for shipping the motor fuel in the railroad tank car.

(3) The amount of the civil penalty for a first violation is $5,000.

(4) The amount of the civil penalty for each subsequent violation, after notice to correct the shipping document, is $10,000.

(5) Civil penalties prescribed under this section are assessed, collected, and paid in the same manner as the motor fuel excise tax imposed by this article.

(g) Penalty Defense. - Compliance with the conditions set out in this subsection is a defense to a civil penalty imposed under subsection (f) of this section, resulting from the delivery of motor fuel to a state other than the destination state printed on the shipping document for the motor fuel. The commissioner shall waive a penalty imposed against the person who transported the motor fuel under that subsection, if that person establishes a defense under this subsection. The conditions for the defense are:

(1) The person who transported the motor fuel notified the commissioner's designated entity of the diversion and received a confirmation number for the diversion before the imposition of the penalty; and

(2) Unless the person is a motor fuel transporter, the tax was timely paid on the diverted motor fuel.

CHAPTER 273

(H. B. 3294 - By Delegates Capito, Fast, Young, L. Pack, Lovejoy, Zukoff and Pushkin)

[Passed April 7, 2021; in effect July 1, 2022.]
[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 article, designated §21A-2D-1, §21A-2D-2, §21A-2D-3, §21A-2D-4, §21A-2D-5, §21A-2D-6, §21A-2D-7, §21A-2D-8, and §21A-2D-9; amending said code by adding thereto a new article designated §21A-6B-1, §21A-6B-2, §21A-6B-3, §21A-6B-4, §21A-6B-5, §21A-6B-6, and §21A-6B-7; all generally relating to unemployment insurance; creating the Unemployment Insurance Program Integrity Act; providing short title; providing definitions; requiring the commissioner, on a weekly basis, to check unemployment insurance rolls against Division of Corrections and Rehabilitation's list of imprisoned individuals, check new hire records against the National Directory of New Hires, and check unemployment insurance rolls against a commercially available database that provides cross-matching functions to verify eligibility for unemployment benefits; providing for data sharing between Workforce West Virginia and other departments, agencies, or divisions; providing for action by bureau to make new eligibility determinations; requiring commissioner to implement internal administrative policies regarding the recovery of fraudulent unemployment overpayments, cooperative agreements with the U.S. Department of Labor to investigate unemployment fraud, and recover overpayments of unemployment benefits; providing a mechanism for an employer to contact Workforce when an employee is offered their job back but refuses to be rehired; reporting of relevant data, to the extent permitted by federal law, by commissioner to the Legislature; providing for

rulemaking; providing an effective date; establishing the Short Time Compensation Program within Workforce West Virginia; defining terms; requiring the commissioner to establish and implement a short-time compensation program by July 1, 2023; requiring program to meet applicable federal and state law; providing that an employer that wishes to participate submit an application; requiring the commissioner to develop an employer application form to request approval of a plan and an approval process to participate in the program; establishing requirements for an application; providing procedure for commissioner approval or disapproval of a plan; providing for the effective date of a plan, expiration of a plan, revocation of a plan, and modification of a plan; establishing employee eligibility requirements to receive short-time compensation under a plan; prescribing employee benefits and limitations on benefits; and providing for rulemaking.

Be it enacted by the Legislature of West Virginia:

ARTICLE 2C. UNEMPLOYMENT INSURANCE PROGRAM INTEGRITY ACT.

§21A-2D-1. Definitions.

This article may be cited as the Unemployment Insurance Program Integrity Act. For the purposes of this article the following terms shall have the following meanings, unless the context in which they are used clearly indicates otherwise:

(1) "Division of Corrections and Rehabilitation" means the Division of Corrections and Rehabilitation, as defined in §15A-3-2 of this code.

(2) "Department of Commerce" means the Department of Commerce, as defined in §5B-1-1 of this code.

(3) "New hire records" means any available directory of newly hired and re-hired employees reported under state and federal law and managed by the state Department of Commerce.

(4) "Unemployment insurance enrollment" means the list of all jobless workers receiving unemployment insurance at a given moment in time.

(5) "Commissioner" means the Workforce West Virginia Commissioner, formerly known as the Bureau of Employment Programs' Commissioner, as defined in §21A-1A-12 of this code.

(6) "Bureau" means Workforce West Virginia, formerly known as the Bureau of Employment Programs, as defined in §21A-1-4 of this code.

§21A-2D-2. Unemployment insurance program integrity.

The commissioner shall, on a weekly basis, be required to:

(a) Check the unemployment insurance rolls against the Division of Corrections and Rehabilitation's list of imprisoned individuals to verify eligibility for unemployment benefits and ensure program integrity;

(b) Check new hire records against the National Directory of New Hires to verify eligibility for unemployment benefits; and

(c) Check the unemployment insurance rolls against a commercially available database that provides cross-matching functions to verify eligibility for unemployment benefits.

§21A-2D-3. Data sharing.

The commissioner shall have the authority to execute a memorandum of understanding with any department, agency, or division for information required to be shared between agencies outlined in this article.

§21A-2D-4. Action on eligibility determinations.

If the bureau receives information concerning an individual receiving unemployment insurance benefits that indicates a change in circumstances that may affect eligibility, the bureau shall review the individual's case and make a new eligibility determination within one week of receiving the information.

§21A-2D-5. Recovering overpayments and preventing fraud.

The commissioner shall adopt and implement internal administrative policy to:

(a) Prioritize and always pursue the recovery of fraudulent unemployment overpayments to the fullest extent allowable under state and federal law;

(b) Enter into a cooperative agreement with the U.S. Department of Labor Office of Inspector General to proactively detect and investigate cases of unemployment fraud; and

(c) Recover improper overpayments of unemployment benefits, without exception, to the fullest extent possible by state and federal law.

§21A-2D-6. Employer reporting procedure to Workforce West Virginia when employees refuse re-hire opportunities.

An employer may contact Workforce West Virginia by e-mail, telephone, or other method of communication in situations when an employee who was previously laid off by that employer is given the opportunity to be rehired but declines to do so. The bureau shall investigate such contacts from employers to determine whether the employee should continue to receive unemployment benefits.

§21A-2D-7. Reporting to the Legislature.

The commissioner shall maintain detailed records on the ability of the bureau to carry out and implement the actions required in this article. The commissioner shall issue a written report to the legislature annually, no later than December 31. This report shall include relevant data, to the extent permitted by federal law, including, but not limited to:

(a) Whether cross-checks referenced in §21A-2D-2 of this code occurred and with what consistency they occurred;

(b) Improper unemployment benefit payment rates;

(c) Recovery of overpayments;

(d) The reasoning for and extent to which any improper unemployment benefit payments are not corrected or recovered;

(e) The number of contacts from employers under §21A-2D-6 of this code;

(f) The results of any state-federal cooperative fraud investigations; and

(g) Any savings produced or monies from activities of the bureau.

§21A-2D-8. Rulemaking.

Workforce West Virginia shall promulgate and propose rules under §29A-3-1, *et seq.* of this code for implementing this article.

§21A-2D-9. Effective date.

This article shall take effect July 1, 2022.

ARTICLE 6B. SHORT TIME COMPENSATION PROGRAM.

§21A-6B-1. Definitions:

As used in this article, unless the context requires a different meaning:

"Affected unit" means a specific plant, department, shift, or other definable unit of an employing unit that has at least two employees to which an approved short-time compensation plan applies.

"Commissioner" means the Workforce West Virginia Commissioner, formerly known as the Bureau of Employment Programs' Commissioner, as defined in §21A-1A-12 of this code.

"Exhaustee" has the same meaning as defined in §21A-6A-1 of this code.

"Health and retirement benefits" means employer-provided health benefits and retirement benefits under a defined benefit

pension plan as defined in 26 U.S.C. §414(j) or contributions under a defined contribution plan as defined in 26 U.S.C. §414(i) that are incidents of employment in addition to the cash remuneration earned.

"Program" means the short-time compensation program established pursuant to this article.

"Short-time compensation" means the unemployment benefits payable to employees in an affected unit under an approved short-time compensation plan, as distinguished from the unemployment benefits otherwise payable under the unemployment benefits provisions of this chapter.

"Work sharing plan" or "plan" means a plan submitted by an employer to the commissioner for approval to participate in the program.

§21A-6B-2. Application to participate in short-time compensation program.

(a) The commissioner shall establish and implement a short-time compensation program by July 1, 2023. The program shall meet the requirements of 26 U.S.C. §3306(v) and all other applicable federal and state laws.

(b) An employer that wishes to participate in the program shall submit to the commissioner a signed, written work sharing plan for approval. The commissioner shall develop an application form to request approval of a plan and an approval process. The application shall include:

(1) The affected unit covered by the plan, including the number of employees in the unit; the percentage of employees in the affected unit covered by the plan; identification of each individual employee in the affected unit by name, Social Security number, and the employer's unemployment tax account number; and any other information required by the commissioner to identify plan participants.

(2) A description of how employees in the affected unit will be notified of the employer's participation in the plan if such application is approved, including how the employer will notify those employees in a collective bargaining unit as well as any employees in the affected unit who are not in a collective bargaining unit. If the employer does not intend to provide advance notice to employees in the affected unit, the employer shall explain in a statement in the application why it is not feasible to provide such notice.

(3) A requirement that the employer identify, in the application, the usual weekly hours of work for employees in the affected unit and the specific percentage by which their hours will be reduced during all weeks covered by the plan. The percentage of reduction for which a work sharing plan application may be approved shall be not less than 10 percent and not more than 60 percent. If the plan includes any week for which the employer regularly does not provide work, including incidences due to a holiday or other work closure, then such week shall be identified in the application.

(4) Certification by the employer that, if the employer provides health benefits and retirement benefits to any employee whose usual weekly hours of work are reduced under the program, such benefits will continue to be provided to employees participating in the program under the same terms and conditions as though the usual weekly hours of work of such employee had not been reduced or to the same extent as other employees not participating in the program. For defined benefit retirement plans, the hours that are reduced under the plan shall be credited for purposes of participation, vesting, and accrual of benefits as though the usual weekly hours of work had not been reduced. The dollar amount of employer contributions to a defined contribution plan that are based on a percentage of compensation may be less due to the reduction in the employee's compensation.

(5) Certification by the employer that the aggregate reduction in work hours is in lieu of layoffs, whether temporary or permanent layoffs or both. The application shall include an estimate of the number of employees who would have been laid off in the absence of the plan. The employer shall also certify that new employees

will not be hired in or transferred to an affected unit for the duration of the plan.

(6) Certification by the employer that, to the best of the employer's available knowledge, participation in the plan and its implementation is consistent with the employer's obligations under applicable federal and state laws.

(7) Agreement by the employer to: (i) Furnish reports to the commissioner relating to the proper conduct of the plan; (ii) allow the commissioner access to all records necessary to approve or disapprove the plan application and, after approval of a plan, monitor and evaluate the plan; and (iii) follow any other directives the commissioner deems necessary to implement the plan and that are consistent with the requirements for plan applications.

(8) Any other provision added to the application by the commissioner that the U.S. Secretary of Labor determines to be appropriate for purposes of a work sharing plan.

§21A-6B-3. Approval and disapproval of plan.

The commissioner shall approve or disapprove a work sharing plan in writing within 10 business days of its receipt and promptly communicate the decision to the employer. A decision disapproving the plan shall clearly identify the reasons for the disapproval. If a plan is disapproved, the employer may submit a different work sharing plan for approval.

§21A-6B-4. Effective date of plan, revocation of plan, and modification of plan.

(a) A work sharing plan shall be effective on the date that is mutually agreed upon by the employer and the commissioner, which shall be specified in the notice of approval to the employer. The plan shall expire on the date specified in the notice of approval, which shall be either the date at the end of the 12th full calendar month after its effective date or an earlier date mutually agreed upon by the employer and the commissioner. However, if a work sharing plan is revoked by the commissioner under subsection (b) of this section, the plan shall terminate on the date specified in

commissioner's written order of revocation. An employer may terminate a plan at any time upon written notice to the commissioner. Upon receipt of such notice from the employer, the commissioner shall promptly notify each member of the affected unit of the termination date. An employer may submit a new application to participate in another plan at any time after the expiration or termination date.

(b) The commissioner may revoke approval of a work sharing plan for good cause at any time, including upon the request of any of the affected unit's employees. The revocation order shall be in writing and shall specify the reasons for the revocation and the date the revocation is effective. The commissioner may periodically review the operation of each employer's plan to assure that no good cause exists for revocation of the approval of the plan. Good cause shall include failure to comply with the assurances given in the plan, unreasonable revision of productivity standards for the affected unit, conduct or occurrences tending to defeat the intent and effective operation of the plan, and violation of any criteria on which approval of the plan was based.

(c) An employer may request a modification of an approved plan by filing a written request to the commissioner. The request shall identify the specific provisions proposed to be modified and provide an explanation of why the proposed modification is appropriate for the plan. The commissioner shall approve or disapprove the proposed modification in writing within 10 working days and promptly communicate the decision to the employer. An employer is not required to request approval of a plan modification from the commissioner if the change is not substantial, but the employer shall report every change to the plan to the commissioner promptly and in writing.

§21A-6B-5. Eligibility for short-time compensation.

(a) An employee is eligible to receive short-time compensation under a work sharing plan with respect to any week only if the employee is monetarily eligible for unemployment benefits, not otherwise disqualified for unemployment benefits, and:

(1) During the week, the employee is employed as a member of an affected unit under an approved work sharing plan that was approved prior to that week, and the plan is in effect with respect to the week for which short-time compensation is claimed; and

(2) Notwithstanding any other provisions of this title relating to availability for work and actively seeking work, the employee is available for the employee's usual hours of work with the short-time compensation employer, which may include, for purposes of this section, participating in training, including employer-sponsored training or training funded under the federal Workforce Innovation and Opportunity Act, Pub. L. No. 113-128, 128 Stat. 1425 (2014) to enhance job skills that is approved by the commissioner.

(b) Notwithstanding any other provision of law, an employee covered by a work sharing plan is deemed unemployed in any week during the duration of that plan if the employee's remuneration as an employee in an affected unit is reduced based on a reduction of the employee's usual weekly hours of work under an approved work sharing plan.

(c) The short-term compensation program shall not serve as a subsidy of seasonal employment during the off-season, nor as a subsidy of temporary part-time or intermittent employment.

§21A-6B-6. Benefits.

(a) The short-time compensation weekly benefit amount shall be the product of the regular weekly unemployment compensation amount for a week of total unemployment multiplied by the percentage of reduction in the individual's usual weekly hours of work.

(b) An individual may be eligible for short-time compensation or unemployment benefits, as appropriate: *Provided,* That no individual shall be eligible for combined benefits in any benefit year in an amount more than the maximum entitlement established for regular unemployment benefits: *Provided, however,* That no

individual shall be paid short-time compensation benefits for more than 26 weeks under a plan.

(c) Provisions applicable to unemployment benefits claimants shall apply to short-time compensation claimants to the extent that they are not inconsistent with the program's provisions. An individual who files an initial claim for short-time compensation benefits shall receive a monetary determination.

(d) An employee who is not provided any work during a week by the short-time compensation employer, or any other employer, and who is otherwise eligible for unemployment benefits shall be eligible for the amount of regular unemployment compensation to which he or she would otherwise be eligible.

(e) An employee who is not provided any work by the short-time compensation employer during a week, but who works for another employer and is otherwise eligible, may be paid unemployment benefits for that week subject to the disqualifying income and other provisions applicable to claims for regular unemployment benefits.

(f) An employee who has received all of the short-time compensation or combined unemployment benefits and short-time compensation available in a benefit year shall be considered an exhaustee for purposes of extended benefits and, if otherwise eligible under those provisions, shall be eligible to receive extended benefits.

§21A-6B-7. Rulemaking.

Workforce West Virginia shall promulgate and propose rules under §29A-3-1, *et seq.* of this code for implementing this article.

CHAPTER 274

(Com. Sub. for S. B. 479 - By Senators Weld, Lindsay, Stollings, and Romano)

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

AN ACT to repeal §15-1G-10 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §9A-1-16, relating to the West Virginia veterans service decoration and West Virginia Service Cross.

Be it enacted by the Legislature of West Virginia:

ARTICLE 1. DEPARTMENT OF VETERANS' ASSISTANCE.

§9A-1-16. West Virginia veterans service decoration; West Virginia Service Cross.

(a) A West Virginia veterans service decoration may be awarded to any resident of West Virginia who served in any of the federally recognized military services for a period at a time during which there was armed conflict.

(b) A West Virginia Service Cross and ribbon bar, along with a certificate signed by the Governor, may be awarded to any veteran who meets the criteria set forth in subsection (a) of this section, and who also was awarded a federal achievement medal, commendation medal, meritorious service medal, or a medal for valor by one of the federally recognized military services.

(c) West Virginia National Guard members may also be authorized to receive and wear the medals and ribbons authorized under the provisions of this section in an order of precedence determined by the Adjutant General.

(d) The secretary may propose rules pursuant to §29A-3-1 *et seq.* of this code to implement the provisions of this section.

ARTICLE 1G. SERVICE MEDALS.

§15-1G-10. West Virginia veterans service decoration; West Virginia Service Cross.

[Repealed.]

CHAPTER 275

(Com. Sub. for S. B. 419 - By Senators Sypolt, Woodrum, Maynard, Phillips, and Rucker)

[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 §61-7-2 of the Code of West Virginia, 1931, as amended, relating to definitions of dangerous weapons; defining "antique firearm"; and redefining "firearm" so as not to be more restrictive than the federal definition.

Be it enacted by the Legislature of West Virginia:

ARTICLE 7. DANGEROUS WEAPONS.

§61-7-2. Definitions.

As used in this article, unless the context otherwise requires:

(1) "Antique firearm" means:

(A) Any firearm, including, but not limited to, a firearm with a match lock, flintlock, percussion cap, or similar type of ignition system which was manufactured on or before 1898;

(B) Any replica of any firearm described in paragraph (A) of this subdivision if such replica is not designed or redesigned to use rimfire or conventional centerfire fixed ammunition which is no longer manufactured in the United States and which is not readily available in the ordinary channels of commercial trade; and

(C) Any muzzle-loading rifle, muzzle-loading shotgun, or muzzle-loading pistol, which is designed to use black powder, or black powder substitute, and which cannot use fixed ammunition. For purposes of this subdivision, the term "antique firearm" shall not include any weapon which includes a firearm frame or receiver, any firearm which is converted into a muzzle-loading weapon, or any muzzle-loading weapon which can be readily converted to fire fixed ammunition by replacing the barrel, bolt, breechblock, or any combination thereof.

(2) "Blackjack" means a short bludgeon consisting, at the striking end, of an encased piece of lead or some other heavy substance and, at the handle end, a strap or springy shaft which increases the force of impact when a person or object is struck. The term "blackjack" includes, but is not limited to, a billy, billy club, sand club, sandbag, or slapjack.

(3) "Concealed" means hidden from ordinary observation so as to prevent disclosure or recognition. A deadly weapon is concealed when it is carried on or about the person in such a manner that another person in the ordinary course of events would not be placed on notice that the deadly weapon was being carried. For purposes of concealed handgun licensees, a licensee is considered to be carrying on or about his or her person while in or on a motor vehicle if the firearm is located in a storage area in or on the motor vehicle.

(4) "Controlled substance" has the same meaning as is ascribed to that term in §60A-1-101(e) of this code.

(5) "Deadly weapon" means an instrument which is designed to be used to produce serious bodily injury or death or is readily adaptable to such use. The term "deadly weapon" includes, but is not limited to, the instruments defined in subdivisions (1) through (8), inclusive, of this section or other deadly weapons of like kind or character which may be easily concealed on or about the person. For the purposes of §18A-5-1a of this code and §61-7-11a of this code, in addition to the definition of "knife" set forth in subdivision (9) of this subsection, the term "deadly weapon" also includes any instrument included within the definition of "knife" with a blade of three and one-half inches or less in length. Additionally, for the

purposes of §18A-5-1a of this code and §61-7-11a of this code, the term "deadly weapon" includes explosive, chemical, biological, and radiological materials. Notwithstanding any other provision of this section, the term "deadly weapon" does not include any item or material owned by the school or county board, intended for curricular use, and used by the student at the time of the alleged offense solely for curricular purposes. The term "deadly weapon" does not include pepper spray as defined in subdivision (12) of this subsection when used by any person over the age of 16 solely for self-defense purposes.

(6) "Drug" has the same meaning as is ascribed to that term in §60A-1-101(m) of this code.

(7) "Firearm" means any weapon which will expel a projectile by action of an explosion: *Provided*, That it does not mean an antique firearm as defined in subdivision (1) of this subsection; except for the purposes of §48-27-502 of this code.

(8) "Gravity knife" means any knife that has a blade released from the handle by the force of gravity or the application of centrifugal force and when released is locked in place by means of a button, spring, lever, or other locking or catching device.

(9) "Knife" means an instrument, intended to be used or readily adaptable to be used as a weapon, consisting of a sharp-edged or sharp-pointed blade, usually made of steel, attached to a handle which is capable of inflicting cutting, stabbing, or tearing wounds. The term "knife" includes, but is not limited to, any dagger, dirk, poniard, or stiletto, with a blade over three and one-half inches in length, any switchblade knife or gravity knife, and any other instrument capable of inflicting cutting, stabbing, or tearing wounds. A pocket knife with a blade three and one-half inches or less in length, a hunting or fishing knife carried for hunting, fishing, sports, or other recreational uses, or a knife designed for use as a tool or household implement is not included within the term "knife" as defined in this subdivision unless the knife is knowingly used or intended to be used to produce serious bodily injury or death.

(10) "Metallic or false knuckles" means a set of finger rings attached to a transverse piece to be worn over the front of the hand for use as a weapon and constructed in such a manner that, when striking another person with the fist or closed hand, considerable physical damage may be inflicted upon the person who was struck. The terms "metallic or false knuckles" includes any such instrument without reference to the metal or other substance or substances from which the metallic or false knuckles are made.

(11) "Nunchaku" means a flailing instrument consisting of two or more rigid parts, connected by a chain, cable, rope, or other nonrigid, flexible, or springy material, constructed in a manner that allows the rigid parts to swing freely so that one rigid part may be used as a handle and the other rigid part may be used as the striking end.

(12) "Pepper spray" means a temporarily disabling aerosol that is composed partly of capsicum oleoresin and causes irritation, blinding of the eyes, and inflammation of the nose, throat, and skin that is intended for self-defense use.

(13) "Pistol" means a short firearm having a chamber which is integral with the barrel, designed to be aimed and fired by the use of a single hand.

(14) "Revolver" means a short firearm having a cylinder of several chambers that are brought successively into line with the barrel to be discharged, designed to be aimed and fired by the use of a single hand.

(15) "Switchblade knife" means any knife having a spring-operated blade which opens automatically upon pressure being applied to a button, catch, or other releasing device in its handle.

CHAPTER 276

(Com. Sub. for S. B. 458 - By Senators Phillips, Smith, Karnes, Rucker, Grady, Roberts, Azinger, Woodrum, and Maynard)

[Passed April 9, 2021; in effect 90 days from passage (July 8, 2021)]
[Approved by the Governor on April 21, 2021.]

AN ACT to amend and reenact §15-5-19a of the Code of West Virginia, 1931, as amended, relating to modifying and limiting the power of government entities regarding the possession of firearms and related products by individuals during a declared state of emergency; and allowing prevailing plaintiff to recover actual damages, court costs and fees, and attorney's fees.

Be it enacted by the Legislature of West Virginia:

ARTICLE 5. DIVISION OF HOMELAND SECURITY AND EMERGENCY MANAGEMENT.

§15-5-19a. Possession of firearms during a declared state of emergency.

(a) During a federal or state declared state of emergency, no state agency, county, or municipality, or any elected or appointed official or employee thereof, may:

(1) Prohibit or restrict the otherwise lawful possession, use, carrying, transfer, transportation, storage, sale, display, or other lawful use of a firearm or ammunition, any firearm or ammunition component or accessory, ammunition reloading equipment and supplies, or personal weapons other than firearms;

(2) Seize, confiscate, or authorize the seizure or confiscation of any otherwise lawfully possessed firearm or ammunition, any

firearm or ammunition component or accessory, ammunition reloading equipment and supplies, or otherwise lawful personal weapons other than firearms unless:

(A) The person acting on behalf of or under the authority of the state, a county, or municipality is:

(i) Defending himself or herself or another from an assault; or

(ii) Arresting a person in actual possession of a firearm or ammunition for a violation of law; or

(B) The firearm or ammunition is being seized or confiscated as evidence of a crime;

(3) Require registration of any firearm or ammunition, any firearm or ammunition component or accessory, ammunition reloading equipment and supplies, or otherwise lawful personal weapons other than firearms;

(4) Suspend or revoke a license to carry a concealed deadly weapon or provisional license to carry a concealed deadly weapon issued pursuant to §61-7-1 *et seq.* of this code except as expressly authorized in that article;

(5) Willfully refuse to accept an application for a license to carry a concealed deadly weapon or provisional license to carry a concealed deadly weapon, provided the application has been properly completed in accordance with §61-7-1 *et seq.* of this code;

(6) Close or limit the operating hours of any entity engaged in the lawful selling or servicing of any firearm, including any component or accessory, ammunition, ammunition reloading equipment and supplies, or personal weapons other than firearms, unless the closing or limitation of hours applies generally within the jurisdiction of commerce;

(7) Close or limit the operating hours of any indoor or outdoor shooting range; or

(8) Place restrictions or quantity limitations on any entity regarding the lawful sale or servicing of any firearm or ammunition, any firearm or ammunition component or accessory, ammunition reloading equipment and supplies, or personal weapons other than firearms.

(b) The prohibitions of subdivision (1), subsection (a) of this section do not prohibit the state or an authorized state or local authority from ordering and enforcing an evacuation or general closure of businesses in the affected area during a declared state of emergency.

(c) Any individual adversely affected by a violation of this section may seek relief in an action at law or in equity for redress against any state agency, county, municipality, or any elected or appointed official or employee of this state, a county, or municipality that subjects the individual, or causes the individual to be subjected, to an action prohibited by this section.

(d) In addition to any other remedy at law or in equity, an individual adversely affected by the seizure or confiscation of any firearm or ammunition component or accessory, ammunition reloading equipment and supplies, or otherwise lawful personal weapons other than firearms in violation of this section may bring an action for the return of the seized or confiscated property in the circuit court of the county in which that individual resides or in which the seized or confiscated property is located.

(e) A prevailing plaintiff in an action under this section is entitled to recover the following:

(1) Actual damages, including consequential damages;

(2) Court costs and fees; and

(3) Reasonable attorney's fees.

CHAPTER 277

(Com. Sub. for H. B. 2694 - By Delegates Steele, Foster, Summers, J. Pack, Phillips, D. Jeffries, Clark, Sypolt, Maynard, Graves and Howell)

[Passed April 10, 2021; in effect ninety days from passage.]
[Approved by the Governor on April 27, 2021.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §61-7B-1, §61-7B-2, §61-7B-3, §61-7B-4, §61-7B-5, §61-7B-6, §61-7B-7, §61-7B-8, §61-7B-9, and §61-7B-10 all relating to creating the "West Virginia Second Amendment Preservation Act and Anti-Federal Commandeering Act"; providing a short title; stating legislative findings and intent; defining terms; prohibiting Federal commandeering of any agency of the state or political subdivisions of the state, including West Virginia law-enforcement for purposes of enforcement of federal firearms laws or presidential executive orders; establishing prohibitions on police activities; establishing prohibitions on court action; identifying permitted law-enforcement activities; authorizing the Attorney General to challenge unconstitutional federal actions relating to firearms; requiring the Attorney General to publish model policies; and establishing immunity for law-enforcement.

Be it enacted by the Legislature of West Virginia:

ARTICLE 7B. THE WEST VIRGINIA SECOND AMENDMENT PRESERVATION AND ANTI-FEDERAL COMMANDEERING ACT.

§61-7B-1. Short title.

This article shall be known and may be cited as the West Virginia Second Amendment Preservation and Anti-Federal Commandeering Act.

§61-7B-2. Legislative findings and intent.

The Legislature of the State of West Virginia finds:

(1) The right to keep and bear arms is a fundamental right and freedom enshrined in the federal and state constitutions. The Second Amendment to the Constitution of the United States provides "A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms shall not be infringed". Article III, section 22 of the Constitution of the State of West Virginia provides "A person has the right to keep and bear arms for the defense of self, family, home and state, and for lawful hunting and recreational use.";

(2) Article VI, Clause two of the Constitution of the United States provides "This Constitution, and the laws of the United States which shall be made in pursuance thereof; and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every state shall be bound thereby, anything in the Constitution or laws of any State to the contrary notwithstanding.";

(3) The Constitution of the State of West Virginia provides "[t]he state of West Virginia is, and shall remain, one of the United States of America. The Constitution of the United States of America, and the laws and treaties made in pursuance thereof, shall be the supreme law of the land.";

(4) The Constitution of the State of West Virginia reserves to the state the exclusive regulation of its own internal government and police;

(5) The Supreme Court of the United States held "Congress cannot compel the States to enact or enforce a federal regulatory program. Today we hold that Congress cannot circumvent that prohibition by conscripting the States' officers directly. The Federal Government may neither issue directives requiring the States to address particular problems, nor command the States' officers, or those of their political subdivisions, to administer or enforce a federal regulatory program. It matters not whether

policymaking is involved, and no case-by-case weighing of the burdens or benefits is necessary; such commands are fundamentally incompatible with our constitutional system of dual sovereignty". Printz v. United States, 521 U.S. 898 (1997);

(6) There is a genuine concern among a significant number of West Virginians that the executive branch of the federal government is poised to improperly infringe on the right to keep and bear arms using executive orders issued by the President of the United States or under acts of the Congress of the United States that violate the liberties guarded by the Second Amendment to the Constitution of United States;

(7) The legislature finds that the increased use of executive orders to effectuate policy goals in lieu of legislation considered by both houses of congress is clearly not what the founders intended and subverts the process of governance;

(8) There is also genuine concern that the reliance on executive orders to effectuate policy goals rather than legislation could cause the commandeering of state and local law-enforcement personnel and resources to attempt to enforce policies regarding firearms which would violate both the United States and West Virginia Constitutions;

(9) On April 8, 2021, in remarks delivered at the White House Rose Garden in Washington, D.C., the President of the United States announced his support of new federal initiatives, some of which, like the proposal for model "red flag" laws, are an anathema to law-abiding West Virginians, who cherish their natural rights and liberties which are guarded by both the Constitution of the United States and the West Virginia Constitution.

(10) It is the express intent of this article to defend the state from any attempt at federal commandeering of already stressed state and local law-enforcement resources for purposes that violate the constitutional rights of our citizens, while supporting the cooperation between local, state, and federal law enforcement which has proven to be a benefit to all parties; and

(11) It is the further express intent of this bill to protect the rights of the citizens of West Virginia to keep and bear arms which rights are guarded and protected by the Second Amendment to the Constitution of the United States and Article III, Section 22 of the West Virginia Constitution.

(12) It is the further intent of this article to provide for and create a means of challenging, by and through the office of the Attorney General of this state, the constitutionality of enactments by the Congress of the United States which transgress the limits of federal authority established by the Second Amendment to the Constitution of the United States.

§61-7B-3. Definitions.

For purposes of this article, the following words and phrases have the following meaning:

"Commandeering" means taking control of or seizing the assets, personnel, or operations of an agency of this state, or of a political subdivision of this state, or the employees of an agency or political subdivision of this state without the express authority for the control having been formally given by the state or political subdivision of the state.

"Federal commandeering" means commandeering by the government of the United States, or any department, bureau, agency, or commission of the assets, personnel, operations, or employees of an agency of this state, or of a political subdivision.

"Inconsistent federal firearms law, regulation, or rule" means a federal statute, regulation, or rule relating to firearms, firearms accessories, or ammunition that is inconsistent with the laws of the State of West Virginia. Inconsistent federal firearms law also means and includes any federal firearms law which the enactment, enforcement, or execution of which violates the Second Amendment of the Constitution of the United States.

"Inconsistent presidential firearms executive order or action" means an executive order or action issued by the President of the

United States relating to the enforcement or execution of an inconsistent federal firearms law.

"Inconsistent with the law of West Virginia" in the context of an inconsistent federal firearms law means a federal firearms law which criminalizes the possession of a firearm, firearm accessory, or ammunition for federal purposes when the possession of that firearm, firearm accessory or ammunition would not be, and is not, a violation of the law of the State of West Virginia.

"New inconsistent federal firearms law" means an inconsistent federal firearms law that was not in effect prior to January 1, 2021.

"New inconsistent presidential firearms executive order or action" means an inconsistent presidential firearms executive order or action which was not in effect prior to January 1, 2021.

"Red flag law" means a law under which a person may petition for a court to temporarily take away another person's right to possess a firearm which it is otherwise lawful under the law of West Virginia for the respondent to possess.

§61-7B-4. Federal commandeering prohibited.

No agency of this state, political subdivision of this state, or employee of an agency, or political subdivision of this state, acting in his or her official capacity, may be commandeered by the United States government under an executive order or action of the President of the United States or under an act of the Congress of the United States. Federal commandeering of West Virginia law-enforcement for purposes of enforcement of federal firearms laws is prohibited.

§61-7B-5. Prohibitions on police activity.

(a) No police agency, department, or officer of this state may participate in the execution of a federal search warrant when the only property sought to be taken and seized under the warrant is firearms, firearms accessories, or ammunition which is lawful for

the person, whose premises are to be searched, to possess under the laws of this state.

(b) No police department, agency or officer of this state may participate in the execution of a federal arrest warrant of a citizen of this state or a person subject to the protections of the state constitution and the laws of West Virginia when the federal arrest warrant charges no crime other than the crime of the possession of firearms, firearm accessories, or ammunition which is lawful for the person who is to be arrested under the warrant to possess under the laws of this state.

(c) No police department, agency, or officer of the state may enforce an order under a red flag law against a citizen of this state or a person subject ot the protections of the laws of this state when the person against whom the order is directed has the lawful right under the laws of this state to possess firearms.

(d) No police department, agency, or officer of this state engaged in a traffic stop or in response to a noise complaint may arrest or detain a person who is subject to the protection of the Constitution and laws of this state for the violation of a new inconsistent federal firearms law or inconsistent presidential executive order or action.

§61-7B-6. Prohibition on court action.

No court of this state has authority or jurisdiction to issue an order depriving a citizen of this state of his or her right to possess firearms, firearms accessories, or ammunition under any red flag law.

§61-7B-7. Permitted activities.

Notwithstanding the limitations in sections four and five of this article, this article does not prevent any West Virginia law-enforcement agency from doing any of the following that does not violate any policy of the law-enforcement agency or any local law or policy of the jurisdiction in which the agency is:

(1) Investigating, enforcing, or detaining upon reasonable suspicion of, or arresting for, a violation of law that is detected during law-enforcement activity authorized by law;

(2) Responding to a request from federal law-enforcement authorities for information about a specific person's criminal history, including previous criminal arrests, convictions, address, or similar criminal history information, or where otherwise permitted by state law; or

(3) Conducting enforcement or investigative activities or duties associated with a joint law-enforcement task force, including the sharing of confidential information with other law-enforcement agencies for purposes of task force investigations, as long as the following conditions are met:

(A) The primary purpose of the joint law-enforcement task force is something other than the enforcement of inconsistent federal firearms laws; or

(B) The enforcement or investigative duties are primarily related to a violation of state or federal law unrelated to enforcement of inconsistent federal firearms laws.

§61-7B-8. Attorney General authorized and directed to challenge unconstitutional federal actions related to firearms.

Whenever any federal statute, presidential executive order, agency order, federal law, rule, or regulation is determined by the Attorney General of this state to infringe upon the right to keep and bear arms affirmed under the Second Amendment to the Constitution of the United States, the Attorney General shall commence and prosecute legal challenges to the federal action. In exercising and discharging the duties required by this section, the Attorney General shall pursue all available appeals in the courts of the United States, and he or she may expend the public moneys necessary for these purposes. The Attorney General may solicit the participation in these efforts of attorneys general of the other states

of the United States and join actions brought by attorneys general of other states or other persons seeking to protect such rights.

§61-7B-9. Attorney General to publish model policies.

On or before January 1, 2022, and as often thereafter as he or she shall consider necessary, the Attorney General shall publish policies for police departments and agencies of this state, and for the police departments and agencies of the political subdivisions of this state, providing guidance on resistance to federal commandeering and lawful measures which can be taken by the law-enforcement agencies and departments of this state and its political subdivisions to protect the citizens of this state from the consequences of any attempts or efforts at federal commandeering.

§61-7B-10. Law-enforcement immunity.

(a) No head of a law-enforcement agency or law-enforcement officer under his or her command may be required, at the direction of an agency of the federal government, to act in a law-enforcement capacity to enforce a federal statute, executive order, agency order, rule or regulation determined by the Attorney General to infringe upon rights granted by the Second Amendment of the Constitution of the United States.

(b) No head of a law-enforcement agency or law-enforcement officer may be held liable civilly or criminally, nor shall his or her employment be terminated, nor shall he or she be decertified as a law-enforcement officer, for refusing to enforce a federal statute, executive order, agency order, rule, or regulation determined by the Attorney General of West Virginia to infringe upon the right to keep and bear arms under the Second Amendment to the Constitution of the United States while the constitutionality of the statute, executive order, agency order, rule, or regulation is being challenged judicially pursuant to §61-7B-8 of this code, nor thereafter if the challenge is successful.

(c) Any head of a law-enforcement agency or law-enforcement officer under his or her command who is charged criminally or civilly, or who has had his or her employment terminated, or who

has had his or her certification as a law enforcement officer suspended or revoked, for failing or refusing to enforce a federal statute executive order, agency order, rule, or regulation referenced in subsection (a) of this section is entitled to reimbursement of reasonable attorney's fees related to his or her defense.

CHAPTER 278

(Com. Sub. for H. B. 2793 - By Delegates Howell, Horst, Hott, Martin, Fast, Kimble, Hamrick, Reed, Maynard, Statler and Storch)

[Passed April 7, 2021; in effect ninety days from passage.]
[Approved by the Governor on April 9, 2021.]

AN ACT to amend and reenact §61-7-4 of the Code of West Virginia, 1931, as amended, relating to permitting nonresidents to obtain state licenses to carry a concealed deadly weapon; requiring application to a county sheriff; establishing a $100 fee and providing how that fee is to be used; providing that concealed weapons licenses may only be issued for pistols and revolvers; requiring non-residents to meet the same standards as West Virginia residents for licensure; and providing for the issuance of a new license if the resident or nonresident relocates.

Be it enacted by the Legislature of West Virginia:

ARTICLE 7. DANGEROUS WEAPONS.

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

(a) (1) Except as provided in §61-7-4(q) of this code, a legal resident or citizen of West Virginia desiring to obtain a state resident license to carry a concealed deadly weapon shall apply to the sheriff of his or her county for the license, and pay to the sheriff, at the time of application, a fee of $25. A concealed weapons license may only be issued for pistols and revolvers.

(2) A legal resident or citizen of another state of the United States desiring to obtain a nonresident state license to carry a concealed deadly weapon shall apply to a sheriff of any county in this state for the license, and pay to the sheriff, at the time of

application, a fee of $100. A concealed weapons licenses may only be issued for pistols and revolvers.

(b) Each applicant for a state resident license or nonresident license to carry a concealed deadly weapon shall file with the sheriff a complete application, as prepared by the Superintendent of the West Virginia State Police, in writing, duly verified, which sets forth only the following licensing requirements:

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

(2) That, on the date the application is made, the applicant is a bona fide United States citizen or legal resident thereof and either a resident of this state and of the county in which the application is made or a resident of another state in the United States and has a valid driver's license or other state-issued or federally issued photo identification showing the residence;

(3) That the applicant is 21 years of age or older;

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

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

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

(5) That the applicant has not been convicted of a felony unless the conviction has been expunged or set aside, or the applicant's

civil rights have been restored or the applicant has been unconditionally pardoned for the offense;

(6) That the applicant has not been convicted of a misdemeanor crime of violence other than an offense set forth in subdivision (7) of this subsection in the five years immediately preceding the application;

(7) That the applicant has not been convicted of a misdemeanor crime of domestic violence as defined in 18 U.S.C. §921(a)(33), or a misdemeanor offense of assault or battery either under §61-2-28 of this code or §61-2-9(b) or §61-2-9(c) of this code, in which the victim was a current or former spouse, current or former sexual or intimate partner, person with whom the defendant cohabits or has cohabited, a parent or guardian, the defendant's child or ward or a member of the defendant's household at the time of the offense, or a misdemeanor offense with similar essential elements in a jurisdiction other than this state;

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

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

(10) That the applicant is not prohibited under the provisions of §61-7-7 of this code or federal law, including 18 U.S.C. §922(g) or (n), from receiving, possessing, or transporting a firearm;

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

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

(c) For both initial and renewal applications, the sheriff shall conduct an investigation including a nationwide criminal background check consisting of inquiries of the National Instant Criminal Background Check System, the West Virginia criminal history record responses, and the National Interstate Identification Index, and shall review the information received in order to verify that the information required in subsection (b) of this section is true and correct. A license may not be issued unless the issuing sheriff has verified through the National Instant Criminal Background Check System that the information available to him or her does not indicate that receipt or possession of a firearm by the applicant would be in violation of the provisions of §61-7-7 of this code or federal law, including 18 U.S.C. §922(g) or (n).

(d) (1)Twenty-five dollars of the resident license application fee and any fees for replacement of lost or stolen licenses received by the sheriff shall be deposited by the sheriff into a concealed weapons license administration fund. The fund shall be administered by the sheriff and shall take the form of an interest-bearing account with any interest earned to be compounded to the fund. Any funds deposited in this concealed weapon license administration fund are to be expended by the sheriff to pay the costs associated with issuing concealed weapons licenses. Any surplus in the fund on hand at the end of each fiscal year may be expended for other law-enforcement purposes or operating needs of the sheriff's office, as the sheriff considers appropriate.

(2) Fifteen dollars of the nonresident license application fee shall be deposited in the Courthouse Facilities Improvement Fund created by §29-26-6 of this code; $25 of the application fee shall

be deposited into the State Treasury and credited to the account of the State Police for the purchase of vehicles, equipment for vehicles, and maintenance of vehicles; and $60 of the application fee shall be deposited in the concealed weapons license administration fund to be administered as provided in subsection (d) of this section.

(e) All persons applying for a license shall complete a training course in handling and firing a handgun, which includes the actual live firing of ammunition by the applicant. The successful completion of any of the following courses fulfills this training requirement: *Provided*, That the completed course includes the actual live firing of ammunition by the applicant:

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

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

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

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

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

this section and shall include the instructor's name, signature, and NRA or state instructor identification number, if applicable.

(f) All concealed weapons license applications must be notarized by a notary public duly licensed under §39-4-1 *et seq.* of this code. Falsification of any portion of the application constitutes false swearing and is punishable under §61-5-2 of this code.

(g) The sheriff shall issue a license unless he or she determines that the application is incomplete, that it contains statements that are materially false or incorrect, or that applicant otherwise does not meet the requirements set forth in this section. The sheriff shall issue, reissue, or deny the license within 45 days after the application is filed if all required background checks authorized by this section are completed.

(h) Before any approved license is issued or is effective, the applicant shall pay to the sheriff a fee in the amount of $25 which the sheriff shall forward to the Superintendent of the West Virginia State Police within 30 days of receipt. A license in effect as of the effective date of the amendments to this section enacted during the 2019 regular session of the Legislature shall, subject to revocation for cause, is valid until the licensee's birthday during the fifth year from the date of issuance or five years from the date of issuance, whichever is later in time. Renewals of such licenses and licenses newly issued after the effective date of the amendments to this section enacted during the 2019 regular session of the Legislature, subject to revocation for cause, are valid for a period of five years from the licensees' most recent birthday.

(i) Each license shall contain the full name and address of the licensee and a space upon which the signature of the licensee shall be signed with pen and ink. The issuing sheriff shall sign and attach his or her seal to all license cards. The sheriff shall provide to each new licensee a duplicate license card, in size similar to other state identification cards and licenses, suitable for carrying in a wallet, and the license card is considered a license for the purposes of this section. All duplicate license cards issued on or after July 1, 2017, shall be uniform across all 55 counties in size, appearance, and information and shall feature a photograph of the licensee.

(j) The Superintendent of the West Virginia State Police, in cooperation with the West Virginia Sheriffs' Bureau of Professional Standards, shall prepare uniform applications for both resident and nonresident licenses and license cards showing that the license has been granted and shall do any other act required to be done to protect the state and see to the enforcement of this section.

(k) If an application is denied, the specific reasons for the denial shall be stated by the sheriff denying the application. Any person denied a license may file, in the circuit court of the county in which the application was made, a petition seeking review of the denial. The petition shall be filed within 30 days of the denial. The court shall then determine whether the applicant is entitled to the issuance of a license under the criteria set forth in this section. The applicant may be represented by counsel, but in no case is the court required to appoint counsel for an applicant. The final order of the court shall include the court's findings of fact and conclusions of law. If the final order upholds the denial, the applicant may file an appeal in accordance with the Rules of Appellate Procedure of the Supreme Court of Appeals. If the findings of fact and conclusions of law of the court fail to uphold the denial, the applicant may be entitled to reasonable costs and attorney's fees, payable by the sheriff's office which issued the denial.

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

(m) Whenever an applicant or licensee relocates from the address provided in his or her application to another address, he or she shall comply with the following notification requirements:

(1) Within 20 days of a resident licensee relocating from the address provided in his or her application to another county in the state, he or she shall provide written notification of the relocation to the sheriff of the county to which he or she moved and provide his or her new address. The sheriff shall then issue a new resident license bearing the licensee's new address and the original

expiration date, for a fee not to exceed $5. The license remains valid for the remainder of the original five year term, unless the sheriff has determined that the person is no longer eligible for a concealed weapon license under the provisions of this article.

(2) Within 20 days of a resident licensee relocating from the address provided in his or her application to an address outside the state, he or she shall provide written notification to the sheriff of the issuing county of the relocation and provide his or her new address. The sheriff shall then issue a new nonresident license bearing the licensee's new address and the original expiration date, for a fee not to exceed $5. The license remains valid for the remainder of the original five-year term unless the sheriff has determined that the person is no longer eligible for a concealed weapon license under the provisions of this article: *Provided*, That any renewal of the license in the new jurisdiction after expiration requires the payment of a nonresident license fee.

(3) Within 20 days of a nonresident licensee relocating from the address provided in his or her application to another address outside of the state, he or she shall provide written notification of the relocation to the sheriff of the issuing county and provide his or her new address. The sheriff shall then issue a new nonresident license bearing the licensee's new address and original expiration date, for a fee not to exceed $5. This license remains valid for the remainder of the original five-year term, unless the sheriff has determined that the person is no longer eligible for a concealed weapon license under the provisions of this article.

(4) Within 20 days of a nonresident licensee relocating to West Virginia from the address provided in his or her application, he or she shall provide written notification of the relocation to the sheriff of the county to which he or she has moved and provide his or her new address. The sheriff shall then issue a new resident license bearing the licensee's new address and the original expiration date, for a fee not to exceed $5. This license remains valid for the remainder of the original five-year term, unless the sheriff has determined that the person is no longer eligible for a concealed weapon license under the provisions of this article.

(n) The sheriff shall, immediately after the license is granted under this section furnish the Superintendent of the West Virginia State Police a certified copy of the approved application. The sheriff shall furnish to the Superintendent of the West Virginia State Police at any time so requested a certified list of all licenses issued in the county. The Superintendent of the West Virginia State Police shall maintain a registry of all persons who have been issued concealed weapons licenses.

(o) The sheriff shall deny any application or revoke any existing license upon determination that any of the licensing application requirements established in this section have been violated by the licensee.

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

(q) Notwithstanding subsection (a) of this section, with respect to application for a resident license by an honorably discharged veteran of the armed forces of the United States, or a former law-enforcement officer honorably retired from agencies governed by §7-14-1 *et seq.* of this code, §8-14-1 *et seq.* of this code, §15-2-1 *et seq.* of this code, and §20-7-1 *et seq.* of this code, an honorably retired officer or an honorably discharged veteran of the armed forces of the United States is exempt from payment of fees and costs as otherwise required by this section. All other application and background check requirements set forth in this section are applicable to these applicants.

(r) Information collected under this section, including applications, supporting documents, permits, renewals, or any other information that would identify an applicant for, or holder of, a concealed weapon license, is confidential: *Provided*, That this information may be disclosed to a law-enforcement agency or officer: (i) To determine the validity of a license; (ii) to assist in a criminal investigation or prosecution; or (iii) for other lawful law-enforcement purposes. A person who violates this subsection is

guilty of a misdemeanor and, upon conviction, shall be fined not less than $50 or more than $200 for each offense.

(s) A person who pays fees for training or application pursuant to this article after the effective date of this section is entitled to a tax credit equal to the amount actually paid for training not to exceed $50: *Provided*, That if such training was provided for free or for less than $50, then such tax credit may be applied to the fees associated with the initial application.

(t) Except as restricted or prohibited by the provisions of this article or as otherwise prohibited by law, the issuance of a concealed weapon license issued in accordance with the provisions of this section authorizes the holder of the license to carry a concealed pistol or revolver on the lands or waters of this state.

CHAPTER 279

(H. B. 3045 - By Delegates Statler, Jennings, J. Jeffries, Queen, Holstein, Storch, Westfall, Lovejoy, Maynard, Pethtel and Paynter)

[Passed April 5, 2021; in effect ninety days from passage.]
[Approved by the Governor on April 26, 2021.]

AN ACT to amend and reenact §23-4-1 of the Code of West Virginia, 1931, as amended, relating to deleting the July 1, 2023 sunset provision that would end a rebuttable presumption for a workers' compensation benefits claim that a professional firefighter developed leukemia, lymphoma, or multiple myeloma arising out of and in the course of employment as a firefighter as a rebuttable presumption.

Be it enacted by the Legislature of West Virginia:

ARTICLE 4. DISABILITY AND DEATH BENEFITS.

§23-4-1. To whom compensation fund disbursed; occupational pneumoconiosis and other occupational diseases included in "injury" and "personal injury"; definition of occupational pneumoconiosis and other occupational diseases; rebuttable presumption for cardiovascular injury and disease or pulmonary disease for firefighters.

(a) Subject to the provisions and limitations elsewhere in this chapter, workers' compensation benefits shall be paid the Workers' Compensation Fund, to the employees of employers subject to this chapter who have received personal injuries in the course of and resulting from their covered employment or to the dependents, if any, of the employees in case death has ensued, according to the provisions hereinafter made: *Provided,* That in the case of any employees of the state and its political subdivisions, including:

Counties; municipalities; cities; towns; any separate corporation or instrumentality established by one or more counties, cities or towns as permitted by law; any corporation or instrumentality supported in most part by counties, cities or towns; any public corporation charged by law with the performance of a governmental function and whose jurisdiction is coextensive with one or more counties, cities or towns; any agency or organization established by the Department of Mental Health, or its successor agencies, for the provision of community health or intellectual and developmental disability services and which is supported, in whole or in part, by state, county, or municipal funds; board, agency, commission, department, or spending unit, including any agency created by rule of the Supreme Court of Appeals, who have received personal injuries in the course of and resulting from their covered employment, the employees are ineligible to receive compensation while the employees are at the same time and for the same reason drawing sick leave benefits. The state employees may only use sick leave for nonjob-related absences consistent with sick leave use and may draw workers' compensation benefits only where there is a job-related injury. This proviso does not apply to permanent benefits: *Provided, however,* That the employees may collect sick leave benefits until receiving temporary total disability benefits. The Division of Personnel shall propose rules for legislative approval pursuant to §29A-3-1 *et seq.* of this code relating to use of sick leave benefits by employees receiving personal injuries in the course of and resulting from covered employment: *Provided further,* That if an employee is injured in the course of and resulting from covered employment and the injury results in lost time from work and the employee for whatever reason uses or obtains sick leave benefits and subsequently receives temporary total disability benefits for the same time period, the employee may be restored sick leave time taken by him or her as a result of the compensable injury by paying to his or her employer the temporary total disability benefits received or an amount equal to the temporary total disability benefits received. The employee shall be restored sick leave time on a day-for-day basis which corresponds to temporary total disability benefits paid to the employer: *And provided further,* That since the intent of this subsection is to prevent an employee of the state or any of its political subdivisions

from collecting both temporary total disability benefits and sick leave benefits for the same time period, nothing in this subsection prevents an employee of the state or any of its political subdivisions from electing to receive either sick leave benefits or temporary total disability benefits, but not both.

(b) For the purposes of this chapter, the terms "injury" and "personal injury" include occupational pneumoconiosis and any other occupational disease, as hereinafter defined, and workers' compensation benefits shall be paid to the employees of the employers in whose employment the employees have been exposed to the hazards of occupational pneumoconiosis or other occupational disease and have contracted occupational pneumoconiosis or other occupational disease, or have suffered a perceptible aggravation of an existing pneumoconiosis or other occupational disease, or to the dependents, if any, of the employees, in case death has ensued, according to the provisions hereinafter made: *Provided,* That compensation is not payable for the disease of occupational pneumoconiosis, or death resulting from the disease, unless the employee has been exposed to the hazards of occupational pneumoconiosis in the State of West Virginia over a continuous period of not less than two years during the 10 years immediately preceding the date of his or her last exposure to such hazards, or for any five of the 15 years immediately preceding the date of his or her last exposure. An application for benefits on account of occupational pneumoconiosis shall set forth the name of the employer or employers and the time worked for each. The commission may allocate to and divide any charges resulting from such claim among the employers by whom the claimant was employed for as much as 60 days during the period of three years immediately preceding the date of last exposure to the hazards of occupational pneumoconiosis. The allocation shall be based upon the time and degree of exposure with each employer.

(c) For the purposes of this chapter, disability or death resulting from occupational pneumoconiosis, as defined in §23-4-1(d) of this code, shall be treated and compensated as an injury by accident.

(d) Occupational pneumoconiosis is a disease of the lungs caused by the inhalation of minute particles of dust over a period of time due to causes and conditions arising out of and in the course of the employment. The term "occupational pneumoconiosis" includes, but is not limited to, such diseases as silicosis, anthracosilicosis, coal worker's pneumoconiosis, commonly known as black lung or miner's asthma, silicotuberculosis (silicosis accompanied by active tuberculosis of the lungs), coal worker's pneumoconiosis accompanied by active tuberculosis of the lungs, asbestosis, siderosis, anthrax, and any and all other dust diseases of the lungs and conditions and diseases caused by occupational pneumoconiosis which are not specifically designated in this section meeting the definition of occupational pneumoconiosis set forth in this subsection.

(e) In determining the presence of occupational pneumoconiosis, x-ray evidence may be considered, but may not be accorded greater weight than any other type of evidence demonstrating occupational pneumoconiosis.

(f) For the purposes of this chapter, occupational disease means a disease incurred in the course of and resulting from employment. No ordinary disease of life to which the general public is exposed outside of the employment is compensable except when it follows as an incident of occupational disease as defined in this chapter. Except in the case of occupational pneumoconiosis, a disease is considered to have been incurred in the course of or to have resulted from the employment only if it is apparent to the rational mind, upon consideration of all the circumstances: (1) That there is a direct causal connection between the conditions under which work is performed and the occupational disease; (2) that it can be seen to have followed as a natural incident of the work as a result of the exposure occasioned by the nature of the employment; (3) that it can be fairly traced to the employment as the proximate cause; (4) that it does not come from a hazard to which workmen would have been equally exposed outside of the employment; (5) that it is incidental to the character of the business and not independent of the relation of employer and employee; and (6) that it appears to have had its origin in a risk connected with the

employment and to have flowed from that source as a natural consequence, though it need not have been foreseen or expected before its contraction: *Provided,* That compensation is not payable for an occupational disease or death resulting from the disease unless the employee has been exposed to the hazards of the disease in the State of West Virginia over a continuous period that is determined to be sufficient, by rule of the board of managers, for the disease to have occurred in the course of and resulting from the employee's employment. An application for benefits on account of an occupational disease shall set forth the name of the employer or employers and the time worked for each. The commission may allocate to and divide any charges resulting from the claim among the employers by whom the claimant was employed. The allocation shall be based upon the time and degree of exposure with each employer.

(g) No award may be made under the provisions of this chapter for any occupational disease contracted prior to July 1, 1949. An employee has contracted an occupational disease within the meaning of this subsection if the disease or condition has developed to such an extent that it can be diagnosed as an occupational disease.

(h) For purposes of this chapter, a rebuttable presumption that a professional firefighter who has developed a cardiovascular or pulmonary disease or sustained a cardiovascular injury or who has developed leukemia, lymphoma, or multiple myeloma arising out of and in the course of employment as a firefighter has received an injury or contracted a disease arising out of and in the course of his or her employment exists if: (A) The person has been actively employed by a fire department as a professional firefighter for a minimum of two years prior to the cardiovascular injury or onset of a cardiovascular or pulmonary disease or death; (B) the injury or onset of the disease or death occurred within six months of having participated in firefighting or a training or drill exercise which actually involved firefighting; and (C) in the case of the development of leukemia, lymphoma, or multiple myeloma the person has been actively employed by a fire department as a professional firefighter for a minimum of five years in the state

prior to the development of leukemia, lymphoma, or multiple myeloma, has not used tobacco products for at least 10 years, and is not over the age of 65 years. When the above conditions are met, it shall be presumed that sufficient notice of the injury, disease, or death has been given and that the injury, disease, or death was not self inflicted.

(i) Claims for occupational disease as defined in §23-4-1(f) of this code, except occupational pneumoconiosis for all workers and pulmonary disease and cardiovascular injury and disease for professional firefighters, shall be processed in like manner as claims for all other personal injuries.

CHAPTER 280

(H. B. 3107 - By Delegates Criss, Lovejoy, J. Jeffries and L. Pack)

[Passed April 10, 2021; in effect from passage.]
[Approved by the Governor on April 21, 2021.]

AN ACT to amend and reenact §23-4-1f of the Code of West Virginia, 1931, as amended, relating to workers' compensation benefits; defining terms; recognizing post-traumatic disorder as an occupational disease when specified circumstances are satisfied; noting that treatment can be conducted by other licensed mental health professionals once the initial diagnosis has been made by a psychiatrist; providing a diagnosis of post-traumatic stress disorder shall not include consideration of any layoff, termination, disciplinary action, or any similar personnel-related action taken in good faith; providing receipt of benefits is contingent on a claim being made within three years from and after a licensed psychiatrist has made the claimant aware of a post-traumatic stress disorder diagnosis; requiring reporting; and providing for a sunset date for the amendments made to this section.

Be it enacted by the Legislature of West Virginia:

ARTICLE 4. DISABILITY AND DEATH BENEFITS.

§23-4-1f. Certain psychiatric injuries and diseases not compensable; definitions; legislative findings; terms; report required.

(a) Except as provided by this section, for the purposes of this chapter, no alleged injury or disease may be recognized as a compensable injury or disease which was solely caused by nonphysical means and which did not result in any physical injury

or disease to the person claiming benefits. Except as otherwise provided in this section, it is the purpose of this section to clarify that so-called mental-mental claims are not compensable under this chapter.

(b) For the purposes of this section:

(1) "First responder" means a law enforcement officer, firefighter, emergency medical technician, paramedic, and emergency dispatcher;

(2) "Post-traumatic stress disorder" means a disorder that meets the diagnostic criteria for post-traumatic stress disorder specified by the American Psychiatric Association in the Diagnostic and Statistical Manual of Mental Disorders, fifth edition, or a later edition as adopted by rule of the insurance commissioner; and

(3) "Licensed mental health provider" means a psychiatrist, psychologist, licensed professional counselor, licensed marriage and family therapist, or licensed social worker who is qualified to treat post-traumatic stress disorder.

(4) "Employer" means any entity that controls, consistent with the provisions of West Virginia law relating to an employment relationship, the paid or volunteer employment of a first responder eligible for benefits under this section.

(c) The Legislature finds that post-traumatic stress disorder is a unique medical condition. Although it may manifest itself as a psychiatric condition that would be otherwise precluded from workers' compensation coverage, post-traumatic stress disorder is an occupational hazard for first responders, similar to members of the military serving in combat. The Legislature further finds that because first responders are required to expose themselves to traumatic events during the course of their employment and thus are at a recognized higher risk of developing post-traumatic stress disorder, and because of the severe nature and debilitative effects of post-traumatic stress disorder, it is the moral obligation of the

state to permit coverage to this class of individuals for their work-related disease.

(d)(1) Post-traumatic stress disorder suffered by a first responder may be recognized as a compensable occupational disease under §23-4-1(f) of this code when:

(A) The Employer has elected to provide coverage for post-traumatic stress disorder as an occupational disease; and

(B) A diagnosis has been made by a licensed psychiatrist that the first responder suffered from post-traumatic stress disorder due to exposure to an event or events that occurred in the course of and resulting from the first responder's paid or volunteer covered employment: *Provided*, That the provisions of this section shall apply only to a post-traumatic stress disorder diagnosis made on or after July 1, 2021, or the first day of the employer's next workers' compensation insurance policy or self-insurance program term for which post-traumatic stress disorder coverage has been purchased or elected, whichever is later.

(2) While the diagnosis must be made by a licensed psychiatrist, mental health treatment consistent for a post-traumatic stress disorder diagnosis may be offered by a licensed mental health provider other than the diagnosing psychiatrist.

(3) A diagnosis of post-traumatic stress disorder under this section shall not include consideration of any layoff, termination, disciplinary action, or any similar personnel-related action taken in good faith by an employer.

(4) Benefits for a post-traumatic stress disorder diagnosis made under this section are contingent upon the employer electing to provide coverage for post-traumatic stress disorder from its workers' compensation insurance carrier or to provide for it through its self-insurance program, whichever is applicable.

(5) The receipt of benefits is contingent on a claim being made within three years from and after a licensed psychiatrist has made the claimant aware of a post-traumatic stress disorder diagnosis in accordance with this section.

(e) Any employer that elects to offer coverage to first responders for post-traumatic stress disorder under this section shall report post-traumatic stress disorder claims data to the Offices of the Insurance Commissioner directly or via the employer's private workers' compensation insurance carrier, whichever is applicable, beginning July 1, 2021, or from the first day of the employer's next workers' compensation insurance policy or self-insurance program term, which provides such elective coverage, whichever is later.

(f) The Offices of the Insurance Commissioner shall report annually on claims data related to post-traumatic stress disorder claims for first responders to the Joint Committee on Volunteer Fire Department and Emergency Medical Services beginning January 1, 2022.

(g) The amendments made to this section during the 2021 regular session of the Legislature to recognize post-traumatic stress disorder as a compensable injury subject to the provisions of this section shall expire on July 1, 2026, unless extended by the Legislature.

CHAPTER 281

(Com. Sub. for H. B. 2001 - By Delegates Hanshaw (Mr. Speaker), Queen, Barrett, G. Ward, Hott, Maynard, J. Pack, Riley, L. Pack, Rowan and Westfall)

[Passed March 11, 2021; in effect ninety days 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 two new sections, designated §11-21-12m and §11-21-25; to amend said code by adding thereto a new section, designated §11-24-10a; to amend said code by adding thereto a new article, designated §18-30A-1, §18-30A-2, §18-30A-3, §18-30A-4, §18-30A-5, §18-30A-6, §18-30A-7, §18-30A-8, §18-30A-9, §18-30A-10, §18-30A-11, §18-30A-12, §18-30A-13, §18-30A-14, §18-30A-15, and §18-30A-16, all relating generally to creating the West Virginia Jumpstart Savings Program; providing a short title; providing legislative findings; defining terms; requiring the program to be operable by a certain date; creating the West Virginia Jumpstart Savings Board; establishing requirements for board membership, appointment, and procedures; allowing board members to be reimbursed for reasonable expenses; establishing the powers of the board; authorizing the board to promulgate legislative rules; establishing the duties and powers of the Treasurer related to the program; establishing the Jumpstart Savings Trust and Trust Fund and requirements for said fund; establishing the Jumpstart Savings Expense Fund and establishing requirements for said fund; authorizing the board to use financial organizations as program depositories and managers and providing requirements therefor; establishing requirements for opening a Jumpstart Savings account and making deposits to an account; authorizing the Treasurer to make a deposit into a newly opened Jumpstart Savings account when certain conditions are met; providing

requirements for distributions from an account; specifying when a distributee is entitled to tax benefits; providing that a change in account beneficiary is not a distribution if the new beneficiary is a family member of the previous beneficiary; providing when expenditures of account distributions are qualified expenses; allowing a personal income tax decreasing modification for certain contributions to an account and allowing said modification to be carried forward over five years; allowing a personal income tax decreasing modification for distributions from an account used for qualified expenses; allowing a personal income tax decreasing modification for a rollover of distributions from a college savings account to a Jumpstart Savings account; allowing a personal income tax decreasing modification for a rollover of distributions from a Jumpstart Savings account to a West Virginia ABLE account; allowing a tax credit against personal income tax or corporate net income tax for certain matching contributions to accounts of employees; providing reporting and auditing requirements for the Jumpstart Savings Program; authorizing certain training and educational entities and employers to share information with the board and the Treasurer related to program participation; exempting certain personal information regarding program participants from disclosure under the state's Freedom of Information Act; limiting liability of the Treasurer, the board, and the state related to the program; and requiring the board to promulgate certain legislative rules.

Be it enacted by the Legislature of West Virginia:

CHAPTER 11. TAXATION.

ARTICLE 21. PERSONAL INCOME TAX.

§11-21-12m. Additional modifications related to a Jumpstart Savings Account.

(a) *Modification for contributions.* –

(1) For taxable years beginning on or after January 1, 2022, in addition to amounts authorized to be subtracted from federal

adjusted gross income pursuant to §11-21-12 of this code, a modification reducing federal adjusted gross income is hereby authorized in an amount equal to a West Virginia taxpayer's contribution to a Jumpstart Savings Account for the taxable year in which the payment is made, in accordance with §18-30A-1 *et seq.* of this code, but only to the extent the amount is not allowable as a deduction when arriving at the taxpayer's federal adjusted gross income for the taxable year.

(2) The decreasing modification allowed pursuant to this subsection may not exceed $25,000 in a single taxable year: *Provided,* That the taxpayer may also elect to carry forward the modification over a period not to exceed five taxable years, beginning in the taxable year in which the contribution was made.

(b) *Modification for distributions.* –

(1) For taxable years beginning on or after January 1, 2022, in addition to amounts authorized to be subtracted from federal adjusted gross income pursuant to §11-21-12 of this code, a modification reducing federal adjusted gross income is hereby authorized in an amount equal to the portion of a distribution from a Jumpstart Savings Account received by a distributee that is used to pay for qualified expenses, as defined in §18-30A-11 of this code. Such decreasing modification is authorized for the taxable year the distribution is made to the distributee, but only to the extent the distribution amount is not allowable as a deduction when arriving at the distributee's federal adjusted gross income for the taxable year when the distribution was made. Any decreasing modification applied by a distributee shall be subject to disallowance to the extent that the distributed moneys are not used to pay for qualified expenses, as defined in §18-30A-11 of this code in the taxable year of receipt of the distribution or the next succeeding taxable year.

(2) The decreasing modification allowed pursuant to this subsection may not exceed $25,000 for the taxable year.

(3) For the purposes of this section, the term "distributee" means the beneficiary or the owner of a Jumpstart Savings Account

who is authorized to receive distributions from the account, according to §18-30A-1 *et seq.* of this code and the legislative rules and procedures adopted by the Jumpstart Savings Board.

(c) *Modification for rollover of certain distributions.* – In addition to amounts authorized to be subtracted from federal adjusted gross income pursuant to §11-21-12 of this code, a modification reducing federal adjusted gross income is hereby authorized for the account owner, to the extent that the amount is not allowable as a deduction when arriving at the account owner's federal adjusted gross income, in the amount as follows:

(1) An amount equal to a distribution from a Jumpstart Savings Account received in the taxable year, if the account owner deposits such amount into a West Virginia ABLE Account within 30 days of receiving the distribution, according to the requirements of §18-30A-1 *et seq.* of this code; and

(2) An amount equal to the portion of a distribution received in the taxable year from a college savings account, established pursuant to §18-30-1 *et seq.* of this code, if the taxpayer deposits the amount into a Jumpstart Savings Account within 30 days of receiving the distribution according to the requirements of §18-30A-1 *et seq.* of this code.

(d) Nothing in this section shall be construed to decrease or otherwise impact any person's federal tax obligations or to authorize any act which violates federal law.

§11-21-25. Nonrefundable credit for matching contribution to employee's Jumpstart Savings Account.

(a) A nonrefundable credit against the tax imposed by the provisions of this article is allowed against the tax liability imposed under this article of a qualified employer, for a matching contribution made to a Jumpstart Savings Account in the taxable year, if the beneficiary of the account is an employee of the taxpayer and a West Virginia resident, subject to the requirements of §18-30A-1 *et seq.* and the following:

(1) The employer must directly contribute an amount to a Jumpstart Savings Account that is equal to a contribution made by the employee to such account in the same taxable year.

(2) The credit allowed by this section may not exceed $5,000 per employee per taxable year.

(3) The amount of the credit may not exceed the portion of the contribution that is attributable to the employer and that would otherwise be derived by the employer as income from his or her business for the taxable year.

(4) The employer may not claim the credit if the employer himself or herself is the account beneficiary of the account to which the matching contribution was made.

(5) An employer may not claim a credit against more than one type of tax for a single contribution to a Jumpstart Savings Account.

(b) The credit provided by this section is only allowed to the extent the amount is not allowable as a deduction when arriving at the taxpayer's federal adjusted gross income for the taxable year in which the contribution is made.

(c) In order to qualify for the credit provided by this section, an employer must submit any forms or other information, as required by the West Virginia Jumpstart Savings Board or the State Treasurer, and the Tax Commissioner, upon making the contribution.

(d) *Conduit Entities and Proprietorships Personal Income Taxes*. —

(1) If the employer directly contributing an amount to a Jumpstart Savings Account is an electing small business corporation (as defined in Section 1361 of the United States Internal Revenue Code of 1986, as amended), a partnership, a limited liability company that is treated as a partnership for federal income tax purposes, or a sole proprietorship, then credit authorized pursuant to this section is allowed as a credit against the

taxes imposed by this article on the flow through income of S corporation shareholders, partners, owners, and limited liability company members derived from such electing small business corporation, partnership, or limited liability company attributable to business or other activity.

(2) If the employer directly contributing an amount to a Jumpstart Savings Account is a sole proprietor, then credit authorized pursuant to this section is allowed as a credit against the taxes imposed by this article on the income of the sole proprietor attributable to the business.

(3) Electing small business corporations, limited liability companies, partnerships, and other unincorporated organizations shall allocate the credit allowed by this article among its partners, owners, shareholders, or members in the same manner as profits and losses are allocated for the taxable year.

(4) No credit is allowed under this section against any employer withholding taxes imposed by this article.

(5) Credit allowed under this section must be used in the tax year in which the contribution is made. Credit may not be carried back to a prior tax year nor carried forward to a subsequent tax year. Any amount of unused credit is forfeited.

ARTICLE 24. CORPORATION NET INCOME TAX.

§11-24-10a. Nonrefundable credit for matching contribution to employee's Jumpstart Savings Account.

(a) A nonrefundable credit against the tax imposed by the provisions of this article is allowed for a matching contribution to a Jumpstart Savings Account made in the taxable year if the beneficiary of the account is an employee of the taxpayer and a West Virginia resident, subject to the requirements of §18-30A-1 *et seq.* and the following:

(1) The employer must directly contribute an amount to a Jumpstart Savings Account that is equal to a contribution made by the employee to such account in the same taxable year.

(2) The credit allowed by this section may not exceed $5,000 per employee per taxable year.

(3) An employer may not claim the credit against more than one type of tax for a single contribution to a Jumpstart Savings Account.

(b) The credit provided by this section is only allowed to the extent the amount is not allowable as a deduction when arriving at the taxpayer's federal adjusted gross income for the taxable year in which the contribution is made.

(c) In order to qualify for the credit provided by this section, an employer must submit any forms or other information, as required by the West Virginia Jumpstart Savings Board or the State Treasurer, or the Tax Commissioner, upon making the contribution.

(d) *Conduit Entities Corporation Net Income Tax*. —

(1) If the employer directly contributing an amount to a Jumpstart Savings Account is an electing small business corporation (as defined in Section 1361 of the United States Internal Revenue Code of 1986, as amended), a partnership, or a limited liability company that is treated as a partnership for federal income tax purposes, then credit authorized pursuant to this section is allowed as a credit against the taxes imposed by this article on the flow through income of S corporation shareholders, partners, owners, and limited liability company members derived from such electing small business corporation, partnership, or limited liability company attributable to business or other activity.

(2) Electing small business corporations, limited liability companies, partnerships, and other unincorporated organizations shall allocate the credit allowed by this article among its corporate partners, owners, shareholders, or members in the same manner as profits and losses are allocated for the taxable year.

(3) No credit is allowed under this section against any employer withholding taxes imposed by this article.

(4) The credit allowed under this section must be used in the tax year in which the contribution is made. Credit may not be carried back to a prior tax year nor carried forward to a subsequent tax year. Any amount of unused credit is forfeited.

CHAPTER 18. EDUCATION.

ARTICLE 30A. WEST VIRGINIA JUMPSTART SAVINGS ACT.

§18-30A-1. Short Title.

This article shall be known, and may be cited as, the "West Virginia Jumpstart Savings Act".

§18-30A-2. Findings.

The Legislature recognizes the importance of cultivating an environment in West Virginia where our tradespersons and entrepreneurs can be successful in their careers and remain in their home state. The Legislature finds that a savings and investment program to assist our citizens who wish to embark on a new trade or establish a new business within this state, is an investment in the future of West Virginia and its hardworking citizens.

§18-30A-3. Definitions.

For the purposes of this article, the following terms shall have the following meanings:

(1) "Account owner" means the person who opens and invests money into a Jumpstart Savings Account, as provided in this article.

(2) "Beneficiary" means the person designated as a beneficiary at the time an account is established, or the individual designated as the beneficiary when the beneficiary is changed.

(3) The "board" means the West Virginia Jumpstart Savings Board created in §18-30A-5 of this code.

(4) "Contribution" means any amount of money deposited into a Jumpstart Savings Account according to the procedures established and required by the board or the Treasurer.

(5) "Deduction" as used in this article has the same meaning as when used in a comparable context in the laws of the United States relating to income taxes, unless a different meaning is clearly required. Deduction means and refers to a deduction allowable under the federal income tax code for the purpose of determining federal taxable income or federal adjusted gross income, unless text clearly indicates otherwise.

(6) "Distributee" has the same meaning provided in §11-21-12m of this code.

(7) "Distribution" means any disbursement from an account.

(8) The term "family member", as used to describe a person's relationship to a designated beneficiary, includes any of the following:

(A) The spouse of the beneficiary;

(B) A child of the beneficiary or a descendant of the beneficiary's child;

(C) A brother, sister, stepbrother, or stepsister of the beneficiary;

(D) The father or mother of the beneficiary, or an ancestor of either;

(E) A first cousin of the beneficiary;

(F) A stepfather or stepmother of the beneficiary;

(G) A son or daughter of a brother or sister of the beneficiary;

(H) A brother or sister of the father or mother of the beneficiary;

(I) A son-in-law, daughter-in-law, father-in-law, mother-in-law, brother-in-law, or sister-in-law of the beneficiary; or

(J) The spouse of any person described in paragraphs (A) through (I) of this subdivision.

(K) Any term set forth in this subdivision means and includes such term as established through a lawful adoption, including, but not limited to, adoptions of a child or children, or other natural person, by a natural person or natural persons who are not the father, mother, or stepparent of the child or person.

(9) "Labor organization" means any organization, agency, association, union, or employee representation committee of any kind that exists, in whole or in part, to assist employees in negotiating with employers concerning grievances, labor disputes, wages, rates of pay, or other terms or conditions of employment.

(10) The "program" refers to the Jumpstart Savings Program established by this article.

(11) The "Treasurer" refers to the West Virginia State Treasurer or his or her designee.

§18-30A-4. West Virginia Jumpstart Savings Program established.

The West Virginia Jumpstart Savings Program is hereby established, to be operable on or before July 1, 2022. The board shall implement and administer the program under the terms and conditions required by this article.

§18-30A-5. West Virginia Jumpstart Savings Board; members; terms; compensation; proceedings generally.

(a) The West Virginia Jumpstart Savings Program shall be administered by the West Virginia Jumpstart Savings Board.

(b) The board consists of seven members and includes the following:

(1) The State Treasurer;

(2) The State Superintendent of Schools, or his or her designee;

(3) The Chancellor of the West Virginia Community and Technical College System, or his or her designee;

(4) Four members, appointed by the Governor, with knowledge, skill, and experience in trade occupations or businesses, to be appointed as follows:

(A) A member representing a labor organization that represents tradespersons in this state;

(B) A member representing a business or entity offering apprenticeships in this state; and

(C) Two private citizens not employed by, or an officer of, the state or any political subdivision of the state.

(c) The members designated in this section to be appointed by the Governor are so appointed with the advice and consent of the Senate.

(d) Only state residents are eligible for appointment to the board.

(e) Members appointed by the Governor serve a term of five years and are eligible for reappointment at the expiration of their terms. If there is a vacancy among appointed members, the Governor shall appoint a person meeting the requirements of this section to fill the unexpired term. Members of the board serve until the later of the expiration of the term for which the member was appointed or the appointment of a successor.

(f) Members of the board serve without compensation. The Treasurer may pay all reasonable expenses, including travel expenses, actually incurred by board members in the conduct of their official duties. Expense payments are made from the Jumpstart Savings Expense Account and are made at the same rates

and in the same manner as travel reimbursements are paid to state employees.

(g) The Treasurer is the chairman and presiding officer of the board and shall appoint the employees the board considers advisable or necessary.

(h) The board shall adopt bylaws and rules of procedure at its first official meeting. A majority of the members of the board constitutes a quorum for the transaction of the business of the board.

§18-30A-6. Powers of the board.

The board is authorized to take any lawful action necessary to effectuate the provisions of this article and successfully administer the 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, auditors, counsel, managers, trustees, and any other contractor or professional needed for rendering professional and technical assistance and advice: *Provided*, That selection of these services is not subject to the provisions of §5A-3-1 *et seq.* of this code: *Provided, however,* That all expenditures and monetary and financial transactions shall be subject to periodic audits by the Office of Chief Inspector, or the Legislative Auditor, or both;

(3) Implement the program through use of financial organizations as account depositories and managers, as provided in §18-30A-9 of this code;

(4) Develop and impose requirements, policies, procedures, and guidelines to implement and manage the program;

(5) Establish the method by which funds shall be allocated to pay for administrative costs and assess, collect, and expend administrative fees, charges, and penalties;

(6) Authorize the assessment, collection, and retention of fees and charges against the amounts paid into and the earnings on the trust funds by a financial institution, investment manager, fund manager, West Virginia Investment Management Board, the Board of Treasury Investments, or other professional managing or investing the trust funds and accounts;

(7) 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, the Board of Treasury Investments, or other professional 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;

(8) Solicit and accept gifts, including bequests or 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 90 days of receipt; and

(9) Propose legislative rules for promulgation in accordance with §29A-3-1 *et seq.* of this code.

§18-30A-7. Powers and duties of the Treasurer.

(a) In order to implement and administer the program, the Treasurer shall:

(1) Provide support staff and office space for the board;

(2) Establish and monitor, at the direction of the board, the methods and processes by which the funds held in accounts are deposited and distributed;

(3) Charge and collect any necessary administrative fees, penalties, and service charges in connection with any agreement, contract, or transaction relating to the program;

(4) Develop marketing plans and promotional material to ensure that potential program beneficiaries will be aware of the program and the advantages the program offers; and

(5) Present the annual evaluations and reports required by §18-30A-13 of this code at any meeting or proceeding of the Legislature or the Office of the Governor upon request.

(b) In order to implement and administer the program, the Treasurer may:

(1) Collect all necessary information from program account holders and beneficiaries;

(2) Create forms necessary for implementation of the program;

(3) Propose legislative rules for legislative approval, in accordance with the provisions of §29A-3-1 *et seq.* of this code, that are necessary to effectuate the provisions and purposes of this article; and

(4) Perform all other lawful actions necessary to effectuate the provisions of this article, subject to applicable state and federal law.

§18-30A-8. West Virginia Jumpstart Savings Trust; Trust Fund; and Expense Fund created.

(a) The board shall establish the Jumpstart Savings Program Trust, and a Jumpstart Savings Program Trust Fund Account, titled the Jumpstart Savings Trust Fund, within the accounts held by the Treasurer or with a financial institution, an investment manager, a fund manager, the West Virginia Investment Management Board, the Board of Treasury Investments, or any other person for the purpose of managing and investing the trust fund. Assets of the Jumpstart Savings Program Trust are held in trust for account owners and beneficiaries.

(b) The Jumpstart Savings Trust Fund shall receive all moneys from account owners on behalf of beneficiaries or from any other source, public or private. Earnings derived from the investment of the moneys in the Jumpstart Savings Trust Fund shall remain in the fund, held in trust in the same manner as contributions, except as refunded, applied for purposes of the beneficiaries, and applied for purposes of maintaining and administering the program.

(c) The corpus, assets, and earnings of the Jumpstart Savings Trust Fund do not constitute public funds of the state and are available solely for carrying out the purposes of this article. Any contract entered into by, or any obligation of the board on behalf of and for the benefit of the program, does not constitute a debt or obligation of the state but is solely an obligation of the Jumpstart Savings Trust Fund.

(d) All interest derived from the deposit and investment of moneys in the Jumpstart Savings Trust Fund shall be credited to the fund. At the end of any fiscal year, all unexpended and unencumbered moneys in the trust fund may not be credited or transferred to the State General Fund or to any other fund.

(e) In order to fulfill the charitable and public purposes of this article, neither the earnings nor the corpus of the Jumpstart Savings Trust Fund is subject to taxation by the state or any of its political subdivisions.

(f) Notwithstanding any provision of this code to the contrary, money in the Jumpstart Savings Trust Fund is exempt from creditor process and not subject to attachment, garnishment, or other process; is not available as security or collateral for any loan, or otherwise subject to alienation, sale, transfer, assignment, pledge, encumbrance, or charge; and is not subject to seizure, taking, appropriation, or application by any legal or equitable process or operation of law to pay any debt or liability of any account owner, beneficiary, or successor in interest.

(g) (1) The Jumpstart Savings Program Expense Fund is hereby established in the State Treasury.

(2) The Jumpstart Savings Expense Fund shall receive all fees, charges, and penalties collected by the board. Expenditures from the fund are authorized from collections subject to appropriations made by the Legislature.

(3) All expenses incurred by the board or the Treasurer in developing and administering the program shall be payable from the Jumpstart Savings Expense Fund.

§18-30A-9. Use of financial organizations as program depositories and managers.

(a) The board may implement the program through use of financial organizations as account depositories and managers. The board may solicit proposals from financial organizations to act as depositories and managers of the program. Financial organizations submitting proposals shall describe the investment instruments which will be held in accounts. The board may select more than one financial organization and investment instrument for the program. The board shall select financial organizations to act as program depositories and managers from among the bidding financial organizations that demonstrate the most advantageous combination, both to potential program participants and this state, based on the following criteria:

(1) The financial stability and integrity of the financial organization;

(2) The safety of the investment instrument being offered;

(3) The ability of the financial organization to satisfy recordkeeping and reporting requirements;

(4) The financial organization's plan for promoting the program and the investment the organization is willing to make to promote the program;

(5) The fees, if any, proposed to be charged to the account owners;

(6) The minimum initial deposit and minimum contributions that the financial organization will require;

(7) The ability of the financial organization to accept electronic deposits and withdrawals, including payroll deduction plans; and

(8) Other benefits to the state or its residents included in the proposal, including fees payable to the state to cover expenses of operation of the program.

(b) The board may enter into any contracts with a financial organization necessary to effectuate the provisions of this article. Any management contract shall include, at a minimum, terms requiring the financial organization to:

(1) Take any action required to keep the program in compliance with requirements of this article and any other applicable state or federal law;

(2) Keep adequate records of each account, keep each account segregated from each other account, and provide the board with the information necessary to prepare the statements required by this article and other applicable state and federal laws;

(3) Compile, summarize, and total information contained in statements required to be prepared under this article and applicable state and federal laws and provide such compilations to the board;

(4) Provide the board with access to the books and records of the program manager and with any other information needed to determine compliance with the contract, this article, and any other applicable state or federal law;

(5) Hold all accounts for the benefit of the account owner or owners;

(6) Be audited at least annually by a firm of certified public accountants selected by the program manager and provide the results of such audit to the board;

(7) Provide the board with copies of all regulatory filings and reports made by the financial organization during the term of the management contract or while the financial organization is holding any accounts, other than confidential filings or reports that will not become part of the program. The program manager shall make available for review by the board and the Treasurer the results of any periodic examination of such manager by any state or federal banking, insurance, or securities commission, except to the extent that such report or reports may not be disclosed under law; and

(8) Ensure that any description of the program, whether in writing or through the use of any medium, is consistent with the marketing plan developed pursuant to the provisions of this article.

(c) The board may:

(1) Enter into contracts it deems necessary for the implementation of the program;

(2) Require that an audit be conducted of the operations and financial position of the program depository and manager at any time if the board has any reason to be concerned about the financial position, the record keeping practices, or the status of accounts of such program depository and manager; and

(3) Terminate or decline to renew a management agreement. If the board terminates or does not renew a management agreement, the board shall take custody of accounts held by such program manager and shall seek to promptly transfer such accounts to another financial organization that is selected as a program manager or depository and into investment instruments as similar to the original instruments as possible.

§18-30A-10. Opening a Jumpstart Savings Account; deposits.

(a) Beginning on July 1, 2022, a person may open a Jumpstart Savings Account.

(b) To open a Jumpstart Savings Account, the account owner must:

(1) Provide all information required by the Treasurer;

(2) Make a minimum opening deposit of $25; and

(3) Name a single person as the designated beneficiary: *Provided*, That the designated beneficiary may be the account owner himself or herself, or another person: *Provided, however,* That the beneficiary may not be a business, corporation, or enterprise.

(c) The Treasurer will deposit $100 from the Jumpstart Savings Expense Fund into a newly opened Jumpstart Savings Account if the following criteria are met:

(1) The designated beneficiary is a resident of West Virginia; and

(2) The account is opened when the designated beneficiary is under 18 years of age; or

(3) The account is opened within the 180 days following the date of the designated beneficiary's enrollment in an apprenticeship or educational program described in §18-30A-11(c)(1)(A) of this code.

(d) Any person may make a contribution to a Jumpstart Savings Account after the account is opened, subject to applicable state and federal laws.

(e) The Treasurer shall prescribe all forms required to open and make deposits to a Jumpstart Savings Account and make the forms available in a prominent location on the Treasurer's website.

§18-30A-11. Distributions; qualified expenses.

(a) A distribution from a Jumpstart Savings Account that was used to pay for qualified expenses, as defined in subsection (c) of this section, shall establish entitlement of the distributee to the personal income tax decreasing modification authorized by §11-21-12m(b) of this code, and such decreasing modification may be applied to determine West Virginia adjusted gross income of the

distributee in the taxable year in which such qualified expenses were paid.

(b) A change in the designated beneficiary of a Jumpstart Savings Account is not a distribution for the purposes of this article or §11-21-1 *et seq.* of this code if the new beneficiary is a family member of the prior beneficiary.

(c) *Qualified expenses.* —

(1) For the purposes of this article and §11-21-12m of this code, expenditures of distributions for the following purposes are qualified expenses:

(A) The purchase of tools, equipment, or supplies by the beneficiary to be used exclusively in an occupation or profession for which the beneficiary is required to:

(i) Complete an apprenticeship program registered and certified with the United States Department of Labor, as provided in 29 U.S.C. §50;

(ii) Complete an apprenticeship program required by any provision of this code or a legislative rule promulgated pursuant to this code;

(iii) Earn a license or certification from an Advanced Career Education (ACE) career center; or

(iv) Earn an associate degree or certification from a community and technical college.

(B) Fees for required certification or licensure for the beneficiary to practice a trade or occupation described in paragraph (A) of this subdivision in this state; and

(C) Costs incurred by the beneficiary that are necessary to establish a business in this state in which the beneficiary will practice an occupation or profession described in paragraph (A) of this subdivision, when the costs are exclusively incurred and paid for the purpose of establishing and operating such business.

(2) In no event shall any dues, fees, subscriptions, or any other payments to a labor organization constitute qualified expenses for the purposes of this article.

§18-30A-12. State tax benefits related to a Jumpstart Savings Account.

(a) As provided in §11-21-12m, §11-21-25, and §11-24-10a of this code, contributions, distributions, and employer matching contributions are eligible for specified decreasing modifications in determining taxable income, or specified tax credits against tax imposed by §11-21-1 *et seq.* and §11-24-1 *et seq.* of this code.

(b) Nothing in this article nor in §11-21-12m, §11-21-25, or §11-24-10a of this code shall be construed to decrease or otherwise impact any person's federal tax obligations or to authorize any act which violates federal law.

§18-30A-13. Reports and account; annual audit.

(a) In addition to any other requirements of this article, the board shall:

(1) Prepare and provide an annual summary of information on the financial condition of the Jumpstart Savings Trust Fund and Expense Fund and statements on the savings program accounts to the respective account owners; and

(2) Prepare, or have prepared, a quarterly report on the status of the program, including the Jumpstart Savings Trust Fund and Expense Fund, and provide a copy of the report to the Joint Committee on Government and Finance.

(b) All accounts administered under the program, including the Jumpstart Savings Trust Fund and Expense Fund, are subject to an annual external audit by an accounting firm, selected by the board, of which all members or partners assigned to head the audit are members of the American Institute of Certified Public Accountants. The audit shall comply with the requirements and standards in §5A-2-33 of this code.

§18-30A-14. Records; confidentiality.

(a) Notwithstanding any other provision of this code, the board and an apprenticeship provider, training or educational institution, or employer, are authorized to exchange information regarding participants in the program to carry out the purposes of this article: *Provided*, That the tax information confidentiality provisions of §11-10-5d of this code shall apply to tax returns and tax return information.

(b) Records containing personally identifying information regarding Jumpstart Savings Account holders and beneficiaries is exempt from disclosure under §29B-1-1 *et seq.* of this code.

§18-30A-15. Limitation on liability.

Nothing in this article creates any obligation of the board, the Treasurer, the state, or any agency or instrumentality of the state to guarantee for the benefit of any account holder or designated beneficiary with respect to the:

(1) Return of principal;

(2) Rate of interest or other return on any account; or

(3) Payment of interest or other return on any account.

§18-30A-16. Legislative rules required.

Prior to the commencement of the program, the board shall promulgate legislative, procedural, or emergency rules, or any combination thereof, in accordance with the provisions of §29A-3-1 *et seq.* of this code, that include at a minimum, the following:

(1) Requirements for any contract to be entered between the board and an account holder upon opening a Jumpstart Savings Account to ensure compliance with the requirements of this article and applicable state and federal laws;

(2) Examples of qualified expenses, as described in §18-30A-11 of this code; and

(3) Procedures for opening Jumpstart Savings Accounts, making contributions thereto, requesting distributions therefrom, and instructions for accessing any necessary forms.

CHAPTER 282

(Com. Sub. for H. B. 2290 - By Delegates Graves, Ferrell, Conley, D. Jeffries, G. Ward, Kimble, Horst, Jennings, B. Ward, Tully and Mazzocchi)

[Passed March 30, 2021; in effect ninety days from passage.]
[Approved by the Governor on April 7, 2021.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §18-10Q-1, §18-10Q-2, §18-10Q-3, §18-10Q-4, and §18-10Q-5; all relating to initiating a State Employment First Policy to facilitate integrated employment of disabled persons; providing legislative findings; establishing a taskforce to develop a State Employment First Policy; providing for implementation of the State Employment First Policy; providing definitions for "competitive employment", "customized employment", and "integrated employment"; and incorporating a sunset provision.

Be it enacted by the Legislature of West Virginia:

ARTICLE 10Q. EMPLOYMENT FIRST POLICY.

§18-10Q-1. Legislative findings.

The Legislature finds a need to create a state initiative to promote competitive, integrated, and customized employment opportunities for disabled citizens using publicly funded services regardless of the individual's level of disability. The state Employment First Policy initiative is intended to promote the expectation that individuals with intellectual, developmental, and other disabilities are valued members of the workforce, and can often meet the same employment standards, responsibilities, and

expectations as other working-age adults when provided the proper education, reasonable accommodations, and supports.

§18-10Q-2. Definitions.

"Competitive Employment" means work that is performed on a full-time or part-time basis (including self-employment) for which an individual is compensated at a rate that is not less than the rates specified in §21-5C-2 of this code, and for which the employee is eligible for the level of benefits provided to other employees and which presents opportunities for advancement that are similar to those for other employees who are not individuals with disabilities who have similar positions.

"Customized Employment" means those employment supports and services for an individual that are designed in a way to personalize the employment relationship between the person with a disability and employer in a way that meets the needs of both.

"Integrated employment" means employment at a location where the percentage of employees with disabilities relative to the employees without disabilities is consistent with the norms of the general workforce, and where the employees with disabilities interact with other persons, to the same extent as employees in comparable positions without disabilities.

§18-10Q-3. Creation of Employment First Taskforce; membership; meeting requirements.

(a) The Commissioner of the West Virginia Bureau for Behavioral Health shall establish a taskforce for the purpose of developing and implementing a state Employment First Policy.

(b) The commissioner shall appoint the membership of the taskforce, which shall include, at a minimum, the following members:

(1) The Commissioner of the West Virginia Bureau for Behavioral Health, or his or her representative, who shall chair the taskforce;

(2) An individual with a developmental disability;

(3) An individual with an intellectual disability;

(4) A family member of a person with a disability;

(5) A representative of the Department of Education;

(6) A representative of Workforce West Virginia;

(7) A representative of the Division of Rehabilitation Services;

(8) A representative of the Bureau for Medical Services (State Medicaid Agency);

(9) A representative of the West Virginia Developmental Disabilities Council;

(10) A representative of a provider of integrated and competitive employment services who does not also provide sheltered or otherwise segregated services for individuals with disabilities;

(11) A representative of West Virginia Center of Excellence in Disabilities;

(12) A representative of Disability Rights of West Virginia (the Governor-designated state protection and advocacy agency);

(13) A representative of the West Virginia Statewide Independent Living Council;

(14) A representative of the West Virginia Community and Technical College Systems;

(15) A representative of the West Virginia Behavioral Healthcare Providers Association;

(16) A representative of the West Virginia Association of Rehabilitation Facilities; and

(17) The State of West Virginia Americans with Disabilities Act Coordinator.

(c) The taskforce shall hold meetings at the call of the chairperson or upon written request of a majority of the members. The taskforce shall meet at least four times a year.

(d) The chairman of the taskforce shall appointment a member to act as secretary for the purposes of the taking of minutes. The minutes shall be approved by the taskforce at each meeting. The minutes and all other documentation shall be maintained by the chair.

§18-10Q-4. Powers and duties of the taskforce; state Employment First Policy; required plan; reporting requirements.

(a) The state Employment First Taskforce shall develop and implement a plan that includes the following:

(1) Describes time frames and proposals for aligning state policies, including eligibility and funding priorities, allocations for responsibility, and authority for ensuring implementation;

(2) Details cost projections for additional state funding needed over a five-year period to:

(A) Provide rate increases and incentives to providers that implement Employment First services; and

(B) Train or retrain the workforce;

(3) Describes strategies, timelines, and plans to increase investment in integrated employment services and may carefully consider plans to reduce sheltered work settings;

(4) Incorporates Employment First practices and methods in policy improvement plans providing customized, person-centered, and individually tailored employment supports to people with intellectual, developmental, and other disabilities, including people with complex support needs;

(5) Complies with federal policy and practice mandates regarding employment services design, settings, and coordination among stakeholders, including:

(A) The Centers for Medicare and Medicaid Services Home and Community-Based Services;

(B) Workforce Innovation and Opportunity Act; and

(C) The United States Department of Justice rulings that found that segregated work settings violate the "most integrated setting" rule of the Americans with Disabilities Act relative to the findings of the Supreme Court of the United States in the Olmstead court case;

(6) Describes minimal workforce competency-based training standards applicable for job coaches, case managers, and other relevant personnel;

(7) Establishes interagency agreements, as appropriate, to improve coordination of services, and collect and share data to inform long-term systems planning;

(8) Proposes initiatives to address the culture of low expectations, to which parents of young children with intellectual, developmental, and other disabilities are exposed;

(9) Provides the Governor and Legislature the State Employment First Policy within 12 months of the enactment of this bill;

(10) Ensures:

(A) That individuals, particularly secondary and post-secondary students with disabilities, understand the importance of, and are given the opportunity to explore, options for further training as a pathway to integrated employment;

(B) The availability and accessibility of individualized training and support in an individual's preferred employment options;

(C) The availability and accessibility of resources necessary to enable an individual to understand possible effects of earned income and accumulation of assets on the individual's eligibility

for public benefits and opportunities to properly manage and save income and assets without jeopardizing such benefits;

(D) That competitive integrated employment, while being the first and preferred outcome, is not required of an individual with a disability to secure and maintain necessary public benefits, health care, training, and support for individuals with disabilities and this statute may not be construed to limit or disallow any disability benefits to which a person with a disability who is unable to be employed as contemplated by this statute would otherwise be entitled; and

(E) That the staff of public schools, vocational service programs, and community providers are trained and supported to assist in achieving the goal of competitive integrated employment for all individuals with disabilities; and

(11) Promotes partnerships with employers to overcome barriers to meet workforce needs, including the creative use of technology and innovation

(b) The taskforce shall provide a written report annually to the Governor and the Joint Committee on Government and Finance on the findings and results of the efforts of the taskforce to accomplish the goals of the plan. These reports shall present data which reflects the number of people with disabilities who attained employment as a result of the implementation of the plan, as well as any barriers to implementation and strategies developed to address them.

(c) The plan as required by this section shall be updated biennially or more frequently as needed.

(d) The Bureau for Behavioral Health, Division of Rehabilitation Services, the Department of Education, Workforce West Virginia, and the Bureau for Medical Services shall, as recommended by the Employment First Taskforce as established in §18-10Q-3 of this code, adopt and implement a joint State Employment First Policy, which recognizes that earning a wage through competitive employment in the general workforce is the

first and preferred outcome of all publicly funded services provided to working-age individuals with disabilities.

§18-10Q-5. Sunset date.

The taskforce established in §18-10Q-3 of this code shall terminate and cease to exist on December 31, 2025, unless continued by act of the Legislature.

LEGISLATURE OF WEST VIRGINIA

CONSTITUTIONAL AMENDMENT

REGULAR SESSION, 2021

HOUSE JOINT RESOLUTION 2

(HJR 2 - By Delegates Anderson, L. Pack, Westfall, Howell, Kimble, Fast, D. Kelly, J. Jeffries, Pritt, Horst and Phillips)

[Adopted by the Legislature April 9, 2021.]

Proposing an amendment to the Constitution of the State of West Virginia, amending section nine, article IV thereof, relating to the impeachment of officials; 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; specifying that a judgment rendered by the Senate following an impeachment trial is not reviewable by any court of this state; numbering and designating such proposed amendment; and providing a summarized statement of the purpose of such proposed amendment.

Resolved by the Legislature of West Virginia, two thirds of the members elected to each house agreeing thereto:

That the question of ratification or rejection of an amendment to the Constitution of the State of West Virginia be submitted to the voters of the state at the next general election to be held in the year 2022, which proposed amendment is that section nine, article IV thereof, be amended to read as follows:

ARTICLE IV.

§9. Impeachment of officials.

Any officer of the state may be impeached for maladministration, corruption, incompetency, gross immorality, neglect of duty, or any high crime or misdemeanor. The House of Delegates has the sole power of impeachment. The Senate has the sole power to try impeachments and no person shall be convicted without the concurrence of two thirds of the members elected thereto. When sitting as a court of impeachment, the Chief Justice of the Supreme Court of Appeals, or, if from any cause it be improper for him or her to act, then any other judge of that court, to be designated by it, shall preside; and the senators shall be on oath or affirmation, to do justice according to law and evidence. Judgment in cases of impeachment does not extend further than removal from office, and disqualification to hold any office of honor, trust or profit, under the state; but the party convicted remains liable to indictment, trial, judgment, and punishment according to law. The Senate may sit during the recess of the Legislature for the trial of impeachments. No court of this state has any authority or jurisdiction, by writ or otherwise, to intercede or intervene in, or interfere with, any impeachment proceedings of the House of Delegates or the Senate conducted hereunder; nor is any judgment rendered by the Senate following a trial of impeachment reviewable by any court of this state.

Resolved further, That in accordance with the provisions of article eleven, chapter three of the Code of West Virginia, 1931, as amended, such amendment is hereby numbered "Amendment No. 1" and designated as the "Clarification of the Judiciary's Role in Impeachment Proceedings Amendment" and the purpose of the proposed amendment is summarized as follows: "Clarifying that courts have no authority or jurisdiction to intercede or intervene in or interfere with impeachment proceedings of the House of Delegates or the Senate; and specifying that a judgment rendered by the Senate following an impeachment trial is not reviewable by any court of this state."

LEGISLATURE OF WEST VIRGINIA

CONSTITUTIONAL AMENDMENT

REGULAR SESSION, 2021

COMMITTEE SUBSTITUTE FOR HOUSE JOINT RESOLUTION 3

(Com. Sub. for HJR 3 - By Delegates Mallow, Forsht, Wamsley, Clark, Barnhart, Kimes, Horst, Holstein and Reed)

[Adopted by the Legislature April 10, 2021.]

Proposing an amendment to the Constitution of the State of West Virginia amending section one, article X thereof, relating to authorizing the Legislature to exempt tangible machinery and equipment personal property directly used in business activity and personal property tax on motor vehicles and tangible inventory personal property directly used in business activity from ad valorem property taxation by general law; providing that the question of ratification or rejection of the amendment be submitted to the voters of the state at the next general election to be held in the year 2022; numbering and designating such proposed amendment; and providing a summarized statement of the purpose of such proposed amendment.

Resolved by the Legislature of West Virginia, two thirds of the members elected to each house agreeing thereto:

That the question of ratification or rejection of an amendment to the Constitution of the State of West Virginia be submitted to the voters of the state at the next general election to be held in 2022,

which proposed amendment is that Section 1 article X thereof be amended to read as follows:

ARTICLE X.

§1. Taxation and finance.

Subject to the exceptions in this section contained, taxation shall be equal and uniform throughout the state, and all property, both real and personal, shall be taxed in proportion to its value to be ascertained as directed by law. No one species of property from which a tax may be collected shall be taxed higher than any other species of property of equal value; except that the aggregate of taxes assessed in any one year upon personal property employed exclusively in agriculture, including horticulture and grazing, products of agriculture as above defined, including livestock, while owned by the producer, and money, notes, bonds, bills and accounts receivable, stocks and other similar intangible personal property shall not exceed fifty cents on each one hundred dollars of value thereon and upon all property owned, used and occupied by the owner thereof exclusively for residential purposes and upon farms occupied and cultivated by their owners or bona fide tenants, one dollar; and upon all other property situated outside of municipalities, one dollar and fifty cents; and upon all other property situated within municipalities, two dollars; and the Legislature shall further provide by general law for increasing the maximum rates, authorized to be fixed, by the different levying bodies upon all classes of property, by submitting the question to the voters of the taxing units affected, but no increase shall be effective unless at least sixty percent of the qualified voters shall favor such increase, and such increase shall not continue for a longer period than three years at any one time, and shall never exceed by more than fifty percent the maximum rate herein provided and prescribed by law; and the revenue derived from this source shall be apportioned by the Legislature among the levying units of the state in proportion to the levy laid in said units upon real and other personal property; but property used for educational, literary, scientific, religious or charitable purposes, all cemeteries, public property, tangible machinery and equipment personal property directly used in business activity, tangible inventory

personal property directly used in business activity, personal property tax on motor vehicles, the personal property, including livestock, employed exclusively in agriculture as above defined and the products of agriculture as so defined while owned by the producers may by law be exempted from taxation; household goods to the value of two hundred dollars shall be exempted from taxation. The Legislature shall have authority to tax privileges, franchises, and incomes of persons and corporations and to classify and graduate the tax on all incomes according to the amount thereof and to exempt from taxation incomes below a minimum to be fixed from time to time, and such revenues as may be derived from such tax may be appropriated as the Legislature may provide. After the year nineteen hundred thirty-three, the rate of the state tax upon property shall not exceed one cent upon the hundred dollars valuation, except to pay the principal and interest of bonded indebtedness of the state now existing.

Resolved further, That in accordance with the provisions of article eleven, chapter three of the Code of West Virginia, 1931, as amended, such amendment is hereby numbered "Amendment No. 1" and designated as the "Property Tax Modernization Amendment" and the purpose of the proposed amendment is summarized as follows: "To amend the State Constitution by providing the Legislature with authority to exempt tangible machinery and equipment personal property directly used in business activity and tangible inventory personal property directly used in business activity and personal property tax on motor vehicles from ad valorem property taxation by general law."

LEGISLATURE OF WEST VIRGINIA

CONSTITUTIONAL AMENDMENT

REGULAR SESSION, 2021

SENATE JOINT RESOLUTION 4

(SJR 4 - By Senators Trump and Roberts)

[Adopted by the Legislature April 10, 2021]

Proposing an amendment to the Constitution of the State of West Virginia, amending section 47, article VI thereof, relating to authorizing the incorporation of religious denominations; numbering and designating such proposed amendment; and providing a summarized statement of the purpose of such proposed amendment.

Resolved by the Legislature of West Virginia, two thirds of the members elected to each house agreeing thereto:

That the question of ratification or rejection of an amendment to the Constitution of the State of West Virginia be submitted to the voters of the state at the next general election to be held in the year 2022, which proposed amendment is that section 47, article VI thereof, be amended to read as follows:

Article VI. The Legislature.

§47. Incorporation of religious denominations permitted.

Provisions may be made by general laws for securing the title to church property, and for the sale and transfer thereof, so that it

shall be held, used, or transferred for the purposes of such church or religious denomination. Provisions may also be made by general laws for the incorporation of churches or religious denominations.

Resolved further, That in accordance with the provisions of article eleven, chapter three of the Code of West Virginia, 1931, as amended, such amendment is hereby numbered "Amendment No. 1" and designated as the "Incorporation of Churches or Religious Denominations Amendment" and the purpose of the proposed amendment is summarized as follows: "To authorize the incorporation of churches or religious denominations."

LEGISLATURE OF WEST VIRGINIA

ACTS

FIRST EXTRAORDINARY SESSION, 2021

CHAPTER 1

(H. B. 101 - By Delegates Hanshaw (Mr. Speaker) and Skaff)

[By Request of the Executive]

[Passed June 7, 2021; in effect from passage.]
[Approved by the Governor on June 11, 2021.]

AN ACT making a supplementary appropriation by adding a new item of appropriation and increasing the expenditure of public moneys out of the Treasury from the balance of moneys remaining as an unappropriated balance in the State Fund, General Revenue, to the Department of Transportation, Division of Highways, fund 0620, fiscal year 2021, organization 0803, by supplementing and amending Chapter 11, Acts of the Legislature, Regular Session, 2020, known as the budget bill 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 an estimate of revenues for the fiscal year 2021, less net appropriation balances forwarded and regular appropriations for the fiscal year 2021; and

WHEREAS, The Governor submitted to the Legislature an Executive Message dated June 7, 2021, which included a revised estimate of revenues for the State Fund, General Revenue, for the fiscal year 2021; and

WHEREAS, It appears from the Executive Budget document, Statement of the State Fund, General Revenue and the Executive message, 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 Chapter 11, Acts of the Legislature, Regular Session, 2020, known as the budget bill, be supplemented and amended by adding a new item of appropriation to Title II, Section 1 thereof, the following:

TITLE II – APPROPRIATIONS.

Section 1. Appropriations from general revenue.

DEPARTMENT OF TRANSPORTATION

77a – Division of Highways

(WV Code Chapters 17 and 17C)

Fund 0620 FY 2021 Org 0803

		Appro-priation	General Revenue Fund
1	Directed Transfer	70000	$150,000,000

The above appropriation shall be transferred to the cash balance of the State Road Fund, to be utilized by the Division of Highways.

CHAPTER 2

(H. B. 102 - By Delegates Hanshaw (Mr. Speaker) and Skaff)

[By Request of the Executive]

[Passed June 7, 2021; in effect from passage.]
[Approved by the Governor on June 11, 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 2022, organization 0803, for the fiscal year ending June 30, 2022.

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 balance as of July 1, 2020, and further included an estimate of revenues for the fiscal year 2021, less net appropriation balances forwarded and regular appropriations for the fiscal year 2021; and that also set forth therein, the estimated cash balance and investments as of July 1, 2021, and further included the estimate of revenues for the fiscal year 2022, less regular appropriations for the fiscal year 2022; and

WHEREAS, The Governor submitted to the Legislature an Executive Message dated June 7, 2021, which included a revised estimate of revenues for the State Road Fund and a Statement of the State Fund, State Road Fund for the fiscal year 2021; and

WHEREAS, It appears from the Executive Budget document, Statement of the State Road Fund and the Executive message, there remains an unappropriated balance in the State Treasury which is available for appropriation during the fiscal year ending June 30, 2022; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending June 30, 2022, to fund 9017, fiscal year 2022, organization 0803, be supplemented and amended by increasing an existing item of appropriation as follows:

TITLE II – APPROPRIATIONS.

Section 2. Appropriations from state road fund.

DEPARTMENT OF TRANSPORTATION

111 – Division of Highways

(WV Code Chapters 17 and 17C)

Fund 9017 FY 2022 Org 0803

		Appro-priation	State Road Fund
4	Maintenance	23700	$ 150,000,000

CHAPTER 3

(S. B. 1001 - By Senators Blair (Mr. President) and Baldwin)

[By Request of the Executive]

[Passed June 7, 2021; in effect from passage]
[Approved by the Governor on June 11, 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, 2022, to the Department of Health and Human Resources, Division of Health – Substance Abuse Prevention and Treatment, fund 8793, fiscal year 2022, organization 0506; to the Department of Health and Human Resources, Division of Health – Community Mental Health Services, fund 8794, fiscal year 2022, organization 0506; to Department of Health and Human Resources, Division of Human Services - Energy Assistance, fund 8755, fiscal year 2022, organization 0511; to the Department of Health and Human Resources, Division of Human Services – Temporary Assistance for Needy Families, fund 8816, fiscal year 2022, organization 0511; and to the Department of Health and Human Resources, Division of Human Services – Child Care and Development, fund 8817, fiscal year 2022, organization 0511, by supplementing and amending the appropriations for the fiscal year ending June 30, 2022.

Whereas, The Governor has established the availability of federal funds for expenditure in the fiscal year ending June 30, 2022, 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, 2022, to fund 8793, fiscal year 2022, organization 0506, be supplemented and amended by adding a new item of appropriation as follows:

TITLE II – APPROPRIATIONS.

Sec. 7. Appropriations from federal block grants.

DEPARTMENT OF HEALTH AND HUMAN RESOURCES

381 – Division of Health –

Substance Abuse Prevention and Treatment

Fund 8793 FY 2022 Org 0506

		Appro-priation	Federal Funds
3a	Federal Coronavirus Pandemic.....	89101	$ 14,959,019

And, That the total appropriation for the fiscal year ending June 30, 2022, to fund 8794, fiscal year 2022, organization 0506, be supplemented and amended by adding a new item of appropriation as follows:

TITLE II – APPROPRIATIONS.

Sec. 7. Appropriations from federal block grants.

DEPARTMENT OF HEALTH AND HUMAN RESOURCES

382 – Division of Health –

Community Mental Health Service

Fund 8794 FY 2022 Org 0506

		Appro-priation	Federal Funds
3a	Federal Coronavirus Pandemic.....	89101	$ 12,477,493

And, That the total appropriation for the fiscal year ending June 30, 2022, to fund 8755, fiscal year 2022, organization 0511, be supplemented and amended by adding a new item of appropriation as follows:

TITLE II – APPROPRIATIONS.

Sec. 7. Appropriations from federal block grants.

DEPARTMENT OF HEALTH AND HUMAN RESOURCES

383 – Division of Human Services –

Energy Assistance

Fund 8755 FY 2022 Org 0511

		Appro-priation	Federal Funds
3a	Federal Coronavirus Pandemic.....	89101	$ 40,464,237

And, That the total appropriation for the fiscal year ending June 30, 2022, to fund 8816, fiscal year 2022, organization 0511, be supplemented and amended by adding a new item of appropriation as follows:

TITLE II – APPROPRIATIONS.

Sec. 7. Appropriations from federal block grants.

DEPARTMENT OF HEALTH AND HUMAN RESOURCES

385 – Division of Human Services –

Temporary Assistance for Needy Families

Fund 8816 FY 2022 Org 0511

		Appro-priation	Federal Funds
3a	Federal Coronavirus Pandemic.....	89101	$ 4,617,546

And, That the total appropriation for the fiscal year ending June 30, 2022, to fund 8817, fiscal year 2022, organization 0511, be supplemented and amended by adding a new item of appropriation as follows:

TITLE II – APPROPRIATIONS.

Sec. 7. Appropriations from federal block grants.

DEPARTMENT OF HEALTH AND HUMAN RESOURCES

386 – Division of Human Services–

Child Care and Development

Fund 8817 FY 2022 Org 0511

		Appro-priation	Federal Funds
3a	Federal Coronavirus Pandemic.....	89101	$330,722,313

CHAPTER 4

(S. B. 1002 - By Senators Blair (Mr. President) and Baldwin)

[By Request of the Executive]

[Passed June 7, 2021; in effect from passage]
[Approved by the Governor on June 11, 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, 2022, to the Department of Health and Human Resources, Consolidated Medical Service Fund, fund 8723, fiscal year 2022, organization 0506; to the Department of Health and Human Resources, Division of Health – Central Office, fund 8802, fiscal year 2022, organization 0506; and to the Department of Health and Human Resources, Division of Human Services, fund 8722, fiscal year 2022, organization 0511 by supplementing and amending the appropriations for the fiscal year ending June 30, 2022.

Whereas, The Governor has established the availability of federal funds for expenditure in the fiscal year ending June 30, 2022, 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, 2022, to fund 8723, fiscal year 2022, organization 0506, be supplemented and amended by adding a new item of appropriation as follows:

TITLE II – APPROPRIATIONS.

Sec. 6. Appropriations of federal funds.

DEPARTMENT OF HEALTH AND HUMAN RESOURCES

353 – Consolidated Medical Service Fund

(WV Code Chapter 16)

Fund 8723 FY 2022 Org 0506

		Appro-priation	Federal Funds
3a	Federal Coronavirus Pandemic.....	89101	$ 4,886,344

And, That the total appropriation for the fiscal year ending June 30, 2022, to fund 8802, fiscal year 2022, organization 0506, be supplemented and amended by adding a new item of appropriation as follows:

TITLE II – APPROPRIATIONS.

Sec. 6. Appropriations of federal funds.

DEPARTMENT OF HEALTH AND HUMAN RESOURCES

354 – Division of Health –

Central Office

(WV Code Chapter 16)

Fund 8802 FY 2022 Org 0506

		Appro-priation	Federal Funds
6a	Federal Coronavirus Pandemic.....	89101	$248,917,788

And, That the total appropriation for the fiscal year ending June 30, 2022, to fund 8722, fiscal year 2022, organization 0511, be

supplemented and amended by adding a new item of appropriation as follows:

TITLE II – APPROPRIATIONS.

Sec. 6. Appropriations of federal funds.

DEPARTMENT OF HEALTH AND HUMAN RESOURCES

357 – Division of Human Services

(WV Code Chapters 9, 48, and 49)

Fund 8722 FY 2022 Org 0511

		Appro-priation	Federal Funds
8a	Federal Coronavirus Pandemic.....	89101	$151,642,105

CHAPTER 5

(S. B. 1003 - By Senators Blair (Mr. President) and Baldwin)

[By Request of the Executive]

[Passed June 7, 2021; in effect from passage]
[Approved by the Governor on June 11, 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; and to the Department of Education, State Board of Education – School Lunch Program, fund 8713, 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 adding a new 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
7a	Federal Coronavirus Pandemic.....	89101	$ 1,246,924

And, That the total appropriation for the fiscal year ending June 30, 2021, to fund 8713, 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

343 – State Board of Education –

School Lunch Program

(WV Code Chapters 18 and 18A)

Fund 8713 FY 2021 Org 0402

		Appro-priation	Federal Funds
4	Current Expenses.....	13000	$ 40,000,000

CHAPTER 6

(S. B. 1004 - By Senators Blair (Mr. President) and Baldwin)

[By Request of the Executive]

[Passed June 7, 2021; in effect from passage]
[Approved by the Governor on June 11, 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, 2022, to the Department of Education, State Board of Education – State Department of Education, fund 8712, fiscal year 2022, organization 0402; and to the Department of Education, State Board of Education – School Lunch Program, fund 8713, fiscal year 2022, organization 0402, by supplementing and amending the appropriations for the fiscal year ending June 30, 2022.

Whereas, The Governor has established the availability of federal funds for expenditure in the fiscal year ending June 30, 2022, 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, 2022, to fund 8712, fiscal year 2022, organization 0402, be supplemented and amended by adding a new item of appropriation as follows:

TITLE II – APPROPRIATIONS.

Sec. 6. Appropriations of federal funds.

DEPARTMENT OF EDUCATION

344 – State Board of Education –

State Department of Education

(WV Code Chapters 18 and 18A)

Fund 8712 FY 2022 Org 0402

		Appro-priation	Federal Funds
6a	Federal Coronavirus Pandemic.....	89101	$ 1,246,924

And, That the total appropriation for the fiscal year ending June 30, 2022, to fund 8713, fiscal year 2022, 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

345 – State Board of Education –

School Lunch Program

(WV Code Chapters 18 and 18A)

Fund 8713 FY 2022 Org 0402

		Appro-priation	Federal Funds
3	Current Expenses.....	13000	$ 52,000,000

CHAPTER 7

(S. B. 1007 - By Senators Blair (Mr. President) and Baldwin)

[By Request of the Executive]

[Passed June 7, 2021; in effect from passage]
[Approved by the Governor on June 11, 2021.]

AN ACT to amend and reenact Chapter 46, Acts of the Legislature, Regular Session, 2021, as last amended and reenacted by Chapter 147, Acts of the Legislature, Regular Session, 2003, relating to exemptions of property in federal bankruptcy proceedings; allowing a debtor in bankruptcy to use the federal law exemptions under 11 U.S.C. §522(d); and updating the effective date.

Be it enacted by the Legislature of West Virginia:

ARTICLE 10. FEDERAL 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 subdivision 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 subdivision 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 subdivision (a) of this subsection 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, including a simplified employee pension 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 §18-30-1 *et seq.* of this code on behalf of any beneficiary.

(l) Solely for the purpose of applying the provisions of 11 U.S.C. §522(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 of the debtor's bankruptcy estate the property specified under 11 U.S.C. §522(d).

(m) The amendments made to this section during the 2021 regular session of the Legislature, as amended during the first extraordinary session of the Legislature, 2021, shall apply to bankruptcies filed on or after the effective date of those amendments.

LEGISLATURE OF WEST VIRGINIA

ACTS

SECOND EXTRAORDINARY SESSION, 2021

CHAPTER 1

(S. B. 2020 - By Senators Blair (Mr. President) and Baldwin)

(By Request of the Executive)

[Passed June 24, 2021; in effect 90 days from passage]
[Approved by the Governor on June 28, 2021.]

AN ACT to amend and reenact §60-3A-18 of the Code of West Virginia, 1931, as amended, relating to altering the time frame which retail liquor licensees may sell liquors.

Be it enacted by the Legislature of West Virginia:

ARTICLE 3A. SALES BY RETAIL LIQUOR LICENSEES.

§60-3A-18. Days and hours retail licensees may sell liquor.

Retail licensees may not sell liquor on Easter Sunday, Christmas Day or between the hours of 12:00 a.m. and 6:00 a.m., except that wine and fortified wines may be sold on those days and at such times as authorized in §60-8-34 of this code.

CHAPTER 2

(S. B. 2002 - By Senators Blair (Mr. President) and Baldwin)

[By Request of the Executive]

[Passed June 24, 2021; in effect from passage]
[Approved by the Governor on June 28, 2021.]

AN ACT supplementing and amending the appropriations of public moneys out of the Treasury from the balance of moneys remaining as an unappropriated balance in the State Fund, General Revenue, to the Department of Commerce, Division of Natural Resources, fund 0265, fiscal year 2021, organization 0310, 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 an estimate of revenues for the fiscal year 2021, less net appropriation balances forwarded and regular appropriations for the fiscal year 2021; and

Whereas, The Governor submitted to the Legislature an Executive Message dated June 7, 2021, which included a revised estimate of revenues for the State Fund, General Revenue and a statement of the State Fund, General Revenue for the fiscal year 2021; and

Whereas, The Governor submitted to the Legislature an Executive Message dated June 24, 2021, which included a revised estimate of revenues for the State Fund, General Revenue, and a Statement of the State Fund, General Revenue, for the fiscal year 2021; and

Whereas, It appears from the Statement of the State Fund, General Revenue, and Executive messages, 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 0265, fiscal year 2021, organization 0310, be supplemented and amended by increasing an existing item of appropriation as follows:

TITLE II – APPROPRIATIONS.

Section 1. Appropriations from general revenue.

DEPARTMENT OF COMMERCE

37 – Division of Natural Resources

(WV Code Chapter 20)

Fund 0265 FY 2021 Org 0310

		Appro-priation	General Revenue Fund
7	Capital Outlay - Parks (R)	28800	$ 42,000,000

From the above appropriation for Capital Outlay – Parks (fund 0265, appropriation 28800), $30,000,000 is to be used for state park improvements, $9,500,000 is to be used for state park tram replacement and repair, and $2,500,000 is to be used for the Elk River Trail.

CHAPTER 3

(S. B. 2003 - By Senators Blair (Mr. President) and Baldwin)

[By Request of the Executive]

[Passed June 24, 2021; in effect from passage]
[Approved by the Governor on June 28, 2021.]

AN ACT supplementing and amending the appropriations of public moneys out of the Treasury from the balance of moneys remaining as an unappropriated balance in the State Fund, General Revenue, to the Department of Homeland Security – Office of the Secretary, fund 0430, fiscal year 2021, organization 0601; to the Department of Homeland Security, Division of Emergency Management, fund 0443, fiscal year 2021, organization 0606; and to the Department of Homeland Security, Division of Corrections and Rehabilitation – Correctional Units, fund 0450, fiscal year 2021, organization 0608, 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 an estimate of revenues for the fiscal year 2021, less net appropriation balances forwarded and regular appropriations for the fiscal year 2021; and

Whereas, The Governor submitted to the Legislature an Executive Message dated June 7, 2021, which included a revised estimate of revenues for the State Fund, General Revenue, and a Statement of the State Fund, General Revenue, for the fiscal year 2021; and

Whereas, The Governor submitted to the Legislature an Executive Message dated June 24, 2021, which included a revised estimate of revenues for the State Fund, General Revenue, and a Statement of the State Fund, General Revenue, for the fiscal year 2021; and

Whereas, It appears from the Statement of the State Fund, General Revenue, and Executive messages, 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 0430, fiscal year 2021, organization 0601, 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

62 – Department of Homeland Security –

Office of the Secretary

(WV Code Chapter 5F)

Fund 0430 FY 2021 Org 0601

		Appro-priation	**General Revenue Fund**
10	WV Fire and EMS Survivor Benefit (R)	93900	$ 1,200,000

And, 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 and adding a new 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
6	SIRN	55401	$ 5,000,000
11a	Emergency Response Coordination Grants (R)	95101	795,000

Any unexpended balance remaining in the appropriation for Emergency Response Coordination Grants (fund 0443, appropriation 95101), at the close of the fiscal year 2021 is hereby reappropriated for expenditure during the fiscal year 2022.

From the above appropriation for SIRN (fund 0443, appropriation 55401) an amount not less than $5,000,000 shall be transferred to the Department of Homeland Security – Division of Emergency Management – West Virginia Interoperable Radio Project (fund 6295).

And, That the total appropriation for the fiscal year ending June 30, 2021, to fund 0450, fiscal year 2021, organization 0608, be supplemented and amended by increasing existing items of appropriation as follows:

TITLE II – APPROPRIATIONS.

Section 1. Appropriations from general revenue.

DEPARTMENT OF HOMELAND SECURITY

66 – Division of Corrections and Rehabilitation – Correctional Units

(WV Code Chapter 15A)

Fund 0450 FY 2021 Org 0608

		Appro-priation	General Revenue Fund
4	Current Expenses (R)	13000	$ 9,400,000
19	Capital Outlay and Maintenance (R)	75500	$ 22,500,000

From the above appropriation for Capital Outlay and Maintenance (fund 0450, appropriation 75500), $15,000,000 shall be used for Anthony Correctional Center.

CHAPTER 4

(S. B. 2005 - By Senators Blair (Mr. President) and Baldwin)

[By Request of the Executive]

[Passed June 24, 2021; in effect from passage]
[Approved by the Governor on June 28, 2021.]

AN ACT making a supplementary appropriation by adding a new item of appropriation and increasing the expenditure of public moneys out of the Treasury from the balance of moneys remaining as an unappropriated balance in the State Fund, General Revenue, to the Department of Commerce, West Virginia Development Office, fund 0256, fiscal year 2021, organization 0307, 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 an estimate of revenues for the fiscal year 2021, less net appropriation balances forwarded and regular appropriations for the fiscal year 2021; and

Whereas, The Governor submitted to the Legislature an Executive Message dated June 7, 2021, which included a revised estimate of revenues for the State Fund, General Revenue, and a Statement of the State Fund, General Revenue, for the fiscal year 2021; and

Whereas, The Governor submitted to the Legislature an Executive Message dated June 24, 2021, which included a revised estimate of revenues for the State Fund, General Revenue, and a

Statement of the State Fund, General Revenue, for the fiscal year 2021; and

Whereas, It appears from the Statement of the State Fund, General Revenue, and Executive messages, 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 0256, fiscal year 2021, organization 0307, be supplemented and amended by adding a new 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

		Appro-priation	General Revenue Fund
7a	Directed Transfer	70000	$ 30,000,000

The above appropriation for Directed Transfer (fund, 0256, appropriation 70000) shall be transferred to the Department of Commerce, West Virginia Development Office, Development Office Promotion Fund (fund 3171).

CHAPTER 5

(S. B. 2006 - By Senators Blair (Mr. President) and Baldwin)

[By Request of the Executive]

[Passed June 24, 2021; in effect from passage]
[Approved by the Governor on June 28, 2021.]

AN ACT making a supplementary appropriation by adding new items of appropriation and increasing the expenditure of public moneys out of the Treasury from the balance of moneys remaining as an unappropriated balance in the State Fund, General Revenue, to the 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.

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 an estimate of revenues for the fiscal year 2021, less net appropriation balances forwarded and regular appropriations for the fiscal year 2021; and

Whereas, The Governor submitted to the Legislature an Executive Message dated June 7, 2021, which included a revised estimate of revenues for the State Fund, General Revenue, and a Statement of the State Fund, General Revenue, for the fiscal year 2021; and

Whereas, The Governor submitted to the Legislature an Executive Message dated June 24, 2021, which included a revised estimate of revenues for the State Fund, General Revenue, and a

Statement of the State Fund, General Revenue, for the fiscal year 2021; and

Whereas, It appears from the Statement of the State Fund, General Revenue, and Executive messages, 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 0105, fiscal year 2021, organization 0100, be supplemented and amended by adding a new item of appropriation and increasing an existing 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

		Appro-priation	General Revenue Fund
2a	Civil Contingent Fund (R)	61400	$ 17,250,000
2b	Local Economic Development Assistance (R)	81900	7,100,000

CHAPTER 6

(S. B. 2007 - By Senators Blair (Mr. President) and Baldwin)

[By Request of the Executive]

[Passed June 24, 2021; in effect from passage]
[Approved by the Governor on June 28, 2021.]

AN ACT supplementing and amending the appropriations of public moneys out of the Treasury from the balance of moneys remaining as an unappropriated balance in the State Fund, General Revenue, to the Department of Arts, Culture, and History, Division of Culture and History, fund 0293, fiscal year 2021, organization 0432, 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 an estimate of revenues for the fiscal year 2021, less net appropriation balances forwarded and regular appropriations for the fiscal year 2021; and

Whereas, The Governor submitted to the Legislature an Executive Message dated June 7, 2021, which included a revised estimate of revenues for the State Fund, General Revenue, and a Statement of the State Fund, General Revenue, for the fiscal year 2021; and

Whereas, The Governor submitted to the Legislature an Executive Message dated June 24, 2021, which included a revised estimate of revenues for the State Fund, General Revenue, and a Statement of the State Fund, General Revenue, for the fiscal year 2021; and

Whereas, It appears from the Statement of the State Fund, General Revenue, and Executive messages, 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 0293, fiscal year 2021, organization 0432, be supplemented and amended by increasing an existing item of appropriation as follows:

TITLE II – APPROPRIATIONS.

Section 1. Appropriations from general revenue.

DEPARTMENT OF ARTS, CULTURE, AND HISTORY

50 – Division of Culture and History

(WV Code Chapter 29)

Fund 0293 FY 2021 Org 0432

		Appro-priation		General Revenue Fund
12	Capital Outlay and Maintenance (R).....	75500	$	2,100,000

CHAPTER 7

(S. B. 2008 - By Senators Blair (Mr. President) and Baldwin)

[By Request of the Executive]

[Passed June 24, 2021; in effect from passage]
[Approved by the Governor on June 28, 2021.]

AN ACT supplementing and amending the appropriations of public moneys out of the Treasury from the balance of moneys remaining as an unappropriated balance in the State Fund, General Revenue, to the Department of Transportation, State Rail Authority, fund 0506, fiscal year 2021, organization 0804, by supplementing and amending Chapter 11, Acts of the Legislature, Regular Session, 2020, known as the Budget Bill 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 an estimate of revenues for the fiscal year 2021, less net appropriation balances forwarded and regular appropriations for the fiscal year 2021; and

Whereas, The Governor submitted to the Legislature an Executive Message dated June 7, 2021, which included a revised estimate of revenues for the State Fund, General Revenue, and a Statement of the State Fund, General Revenue, for the fiscal year 2021; and

Whereas, The Governor submitted to the Legislature an Executive Message dated June 24, 2021, which included a revised estimate of revenues for the State Fund, General Revenue, and a

Statement of the State Fund, General Revenue for the fiscal year 2021; and

Whereas, It appears from the Statement of the State Fund, General Revenue, and Executive messages, 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 Chapter 11, Acts of the Legislature, Regular Session, 2020, known as the Budget Bill, fund 0506, fiscal year 2021, organization 0804, be supplemented and amended to read as follows:

TITLE II – APPROPRIATIONS.

Section 1. Appropriations from general revenue.

DEPARTMENT OF TRANSPORTATION

78 – State Rail Authority

(WV Code Chapter 29)

Fund 0506 FY 2021 Org 0804

		Appro-priation	**General Revenue Fund**
1	Personal Services and Employee Benefits	00100	$ 361,627
2	Current Expenses	13000	3,837,707
3	Other Assets (R)	69000	1,270,019
4	BRIM Premium	91300	201,541
	Total		$ 5,670,894

From the above appropriation for Current Expenses (fund 0506, appropriation 13000), $3,550,000 shall be transferred to the State Rail Authority – Commuter Rail Access Fund (fund 8402).

Any unexpended balance remaining in the appropriation Other Assets (fund 0506, appropriation 69000) at the close of the fiscal year 2020 is hereby reappropriated for expenditure during the fiscal year 2021.

CHAPTER 8

(S. B. 2009 - By Senators Blair (Mr. President) and Baldwin)

[By Request of the Executive]

[Passed June 24, 2021; in effect from passage]
[Approved by the Governor on June 28, 2021.]

AN ACT supplementing and amending Chapter 11, Acts of the Legislature, Regular Session, 2021, 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 Education, State Board of Education – State Aid to Schools, fund 0317, fiscal year 2022, organization 0402 by supplementing and amending the appropriations for the fiscal year ending June 30, 2022.

Be it enacted by the Legislature of West Virginia:

That Chapter 11, Acts of the Legislature, Regular Session, 2021, known as the Budget Bill, to fund 0317, fiscal year 2022, organization 0402, be supplemented and amended to read as follows:

TITLE II – APPROPRIATIONS.

Section 1. Appropriations from general revenue.

DEPARTMENT OF EDUCATION

47 - State Board of Education –

State Aid to Schools

(WV Code Chapters 18 and 18A)

Fund 0317 FY 2022 Org 0402

1	Other Current Expenses	02200	$ 161,739,678
2	Advanced Placement	05300	670,151
3	Professional Educators	15100	869,082,617
4	Service Personnel	15200	291,835,429
5	Fixed Charges	15300	101,669,823
6	Transportation	15400	69,037,827
7	Improved Instructional Programs	15600	51,974,496
8	Professional Student Support Services	65500	59,608,039
9	21st Century Strategic Technology Learning Growth	93600	26,443,757
10	Teacher and Leader Induction	93601	5,478,876
11	Basic Foundation Allowances		1,637,540,693
12	Less Local Share		(476,260,743)
13	Adjustments		(3,254,844)
14	Total Basic State Aid		1,158,025,106
15	Public Employees' Insurance Matching	01200	206,938,256
16	Teachers' Retirement System	01900	60,784,000
17	School Building Authority	45300	24,000,000
18	Retirement Systems – Unfunded Liability	77500	302,844,000
	Total		$1,752,591,362

The above appropriation for School Building Authority (fund 0317, appropriation 45300) shall be transferred to the State Board of Education – School Construction Fund (fund 3952) in accordance with the expenditure schedule approved by the State Budget Office.

CHAPTER 9

(S. B. 2010 - By Senators Blair (Mr. President) and Baldwin)

[By Request of the Executive]

[Passed June 24, 2021; in effect from passage]
[Approved by the Governor on June 28, 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, 2022, to the Department of Education, State Board of Education – School Construction Fund, fund 3952, fiscal year 2022, organization 0404, by supplementing and amending the appropriations for the fiscal year ending June 30, 2022.

Whereas, The Governor has established that there now remains an unappropriated balance in the Department of Education, State Board of Education – School Construction Fund, fund 3952, fiscal year 2022, organization 0404, that is available for expenditure during the fiscal year ending June 30, 2022, 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, 2022, to fund 3952, fiscal year 2022, organization 0404, be supplemented and amended by increasing an existing item of appropriation as follows:

TITLE II – APPROPRIATIONS.

Sec. 3. Appropriations from other funds.

DEPARTMENT OF EDUCATION

182 – State Board of Education –

School Construction Fund

(WV Code Chapters 18 and 18A)

Fund 3952 FY 2022 Org 0404

		Appro-priation	Other Funds
1	SBA Construction Grants	24000	$ 24,000,000

CHAPTER 10

(S. B. 2011 - By Senators Blair (Mr. President) and Baldwin)

[By Request of the Executive]

[Passed June 24, 2021; in effect from passage]
[Approved by the Governor on June 28, 2021.]

AN ACT supplementing and amending by decreasing and increasing existing items of appropriations of public moneys out of the Treasury in the State Fund, General Revenue, from the Department of Health and Human Resources, Division of Human Services, fund 0403, fiscal year 2022, organization 0511, by supplementing and amending the appropriations for the fiscal year ending June 30, 2022.

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending June 30, 2022, to fund 0403, fiscal year 2022, 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 2022 Org 0511

	Appro-priation	General Revenue Fund
Salary and Benefits of Cabinet Secretary and Agency Heads	00201	$ 41,500

And, That the total appropriation for the fiscal year ending June 30, 2022, to fund 0403, fiscal year 2022, 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 2022 Org 0511

	Appro-priation	General Revenue Fund
James "Tiger" Morton Catastrophic Illness Fund	45500	$ 41,500

CHAPTER 11

(S. B. 2012 - By Senators Blair (Mr. President) and Baldwin)

[By Request of the Executive]

[Passed June 24, 2021; in effect from passage]
[Approved by the Governor on June 28, 2021.]

AN ACT supplementing and amending by decreasing and increasing existing items of appropriations of public moneys out of the Treasury in the State Fund, General Revenue, from the Department of Homeland Security, Division of Corrections and Rehabilitation – Central Office, fund 0446, fiscal year 2022, organization 0608; from the Department of Homeland Security, Division of Corrections and Rehabilitation – Correctional Units, fund 0450, fiscal year 2022, organization 0608; and to the Department of Homeland Security, Division of Administrative Services, fund 0619, fiscal year 2022, organization 0623, by supplementing and amending appropriations for the fiscal year ending June 30, 2022.

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 an estimate of revenues for the fiscal year 2021, less net appropriation balances forwarded and regular appropriations for the fiscal year 2021; and that also set forth therein, the estimated cash balance and investments as of July 1, 2021, and further included the estimate of revenues for the fiscal year 2022, less regular appropriations for the fiscal year 2022; and

Whereas, It appears from the Executive Budget Document, Statement of the State Fund, General Revenue, and this supplementary appropriation bill, there remains an unappropriated

balance in the State Treasury which is available for appropriation during the fiscal year ending June 30, 2022; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending June 30, 2022, to fund 0446, fiscal year 2022, organization 0608, be supplemented and amended by decreasing an existing item of appropriation as follows:

TITLE II – APPROPRIATIONS.

Section 1. Appropriations from general revenue.

DEPARTMENT OF HOMELAND SECURITY

65 – Division of Corrections and Rehabilitation –

Central Office

(WV Code Chapter 15A)

Fund 0446 FY 2022 Org 0608

		Appro-priation		**General Revenue Fund**
1	Personal Services and Employee Benefits.....	00100	$	200,000

And, That the total appropriation for the fiscal year ending June 30, 2022, to fund 0450, fiscal year 2022, organization 0608, be supplemented and amended by decreasing an existing item of appropriation as follows:

TITLE II – APPROPRIATIONS.

Section 1. Appropriations from general revenue.

DEPARTMENT OF HOMELAND SECURITY

66 – Division of Corrections and Rehabilitation

Correctional Units

(WV Code Chapter 15A)

Fund 0450 FY 2022 Org 0608

		Appro-priation		General Revenue Fund
9	Huttonsville Correctional Center	51400	$	75,000
20	Salem Correctional Center	77400	$	75,000

And, That the total appropriation for the fiscal year ending June 30, 2022, to fund 0619, fiscal year 2022, organization 0623, 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

72 – Division of Administrative Services

(WV Code Chapter 15A)

Fund 0619 FY 2022 Org 0623

		Appro-priation		General Revenue Fund
1	Personal Services and Employee Benefits	00100	$	350,000

CHAPTER 12

(S. B. 2014 - By Senators Blair (Mr. President) and Baldwin)

[By Request of the Executive]

[Passed June 24, 2021; in effect from passage]
[Approved by the Governor on June 28, 2021.]

AN ACT making a supplementary appropriation by adding a new item of appropriation and increasing the expenditure of public moneys out of the Treasury from the balance of moneys remaining as an unappropriated balance in the State Fund, General Revenue, to the Department of Commerce, West Virginia Tourism Office, fund 0246, fiscal year 2021, organization 0304, 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 an estimate of revenues for the fiscal year 2021, less net appropriation balances forwarded and regular appropriations for the fiscal year 2021; and

Whereas, The Governor submitted to the Legislature an Executive Message dated June 7, 2021, which included a revised estimate of revenues for the State Fund, General Revenue, and a Statement of the State Fund, General Revenue, for the fiscal year 2021; and

Whereas, The Governor submitted to the Legislature an Executive Message dated June 24, 2021, which included a revised estimate of revenues for the State Fund, General Revenue, and a

Statement of the State Fund, General Revenue, for the fiscal year 2021; and

Whereas, It appears from the Statement of the State Fund, General Revenue, and Executive messages, 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 0246, fiscal year 2021, organization 0304, be supplemented and amended by adding a new item of appropriation as follows:

TITLE II – APPROPRIATIONS.

Section 1. Appropriations from general revenue.

DEPARTMENT OF COMMERCE

32 – West Virginia Tourism Office

(WV Code Chapter 5B)

Fund 0246 FY 2021 Org 0304

		Appro-priation	**General Revenue Fund**
4a	Tourism – Development Opportunity Fund (R)...	11601	$ 5,000,000

Any unexpended balance remaining in the appropriation for Tourism – Development Opportunity Fund (fund 0246, appropriation 11601) at the close of the fiscal year 2021 is hereby reappropriated for expenditure during the fiscal year 2022.

CHAPTER 13

(S. B. 2015 - By Senators Blair (Mr. President) and Baldwin)

[By Request of the Executive]

[Passed June 24, 2021; in effect from passage]
[Approved by the Governor on June 28, 2021.]

AN ACT supplementing and amending the appropriations of public moneys out of the Treasury from the balance of moneys remaining as an unappropriated balance in the State Fund, General Revenue, to the Department of Revenue, Tax Division, fund 0470, fiscal year 2021, organization 0702, 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 an estimate of revenues for the fiscal year 2021, less net appropriation balances forwarded and regular appropriations for the fiscal year 2021; and

Whereas, The Governor submitted to the Legislature an Executive Message dated June 7, 2021, which included a revised estimate of revenues for the State Fund, General Revenue, and a Statement of the State Fund, General Revenue, for the fiscal year 2021; and

Whereas, The Governor submitted to the Legislature an Executive Message dated June 24, 2021, which included a revised estimate of revenues for the State Fund, General Revenue, and a Statement of the State Fund, General Revenue, for the fiscal year 2021; and

Whereas, It appears from the Statement of the State Fund, General Revenue, and Executive messages, 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 0470, fiscal year 2021, organization 0702, be supplemented and amended by adding a new item of appropriation as follows:

TITLE II – APPROPRIATIONS.

Section 1. Appropriations from general revenue.

DEPARTMENT OF REVENUE

74 – Tax Division

(WV Code Chapter 11)

Fund 0470 FY 2021 Org 0702

		Appro-priation	**General Revenue Fund**
9a	Capital Outlay and Maintenance (R).....	75500	$ 2,000,000

Any unexpended balance remaining in the appropriation for Capital Outlay and Maintenance (fund 0470, appropriation 75500) at the close of fiscal year 2021 is hereby reappropriated for expenditure during the fiscal year 2022.

CHAPTER 14

(S. B. 2016 - By Senators Blair (Mr. President) and Baldwin)

[By Request of the Executive]

[Passed June 24, 2021; in effect from passage]
[Approved by the Governor on June 28, 2021.]

AN ACT making a supplementary appropriation by adding a new item of appropriation and increasing the expenditure of public moneys out of the Treasury from the balance of moneys remaining as an unappropriated balance in the State Fund, General Revenue, to the Department of Revenue, Office of the Secretary, fund 0465, fiscal year 2021, organization 0701, 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 an estimate of revenues for the fiscal year 2021, less net appropriation balances forwarded and regular appropriations for the fiscal year 2021; and

Whereas, The Governor submitted to the Legislature an Executive Message dated June 7, 2021, which included a revised estimate of revenues for the State Fund, General Revenue, and a Statement of the State Fund, General Revenue, for the fiscal year 2021; and

Whereas, The Governor submitted to the Legislature an Executive Message dated June 24, 2021, which included a revised estimate of revenues for the State Fund, General Revenue, and a

Statement of the State Fund, General Revenue, for the fiscal year 2021; and

Whereas, It appears from the Statement of the State Fund, General Revenue, and Executive messages, 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 0465, fiscal year 2021, organization 0701, be supplemented and amended by adding a new item of appropriation as follows:

TITLE II – APPROPRIATIONS.

Section 1. Appropriations from general revenue.

DEPARTMENT OF REVENUE

73 – Office of the Secretary

(WV Code Chapter 11B)

Fund 0465 FY 2021 Org 0701

		Appro-priation	**General Revenue Fund**
5a	Revenue Shortfall Reserve Fund – Transfer	59000	$ 50,000,000

The above appropriation for Revenue Shortfall Reserve Fund - Transfer (fund 0465, appropriation 59000) shall be transferred to the Department of Revenue, Office of the Secretary, Revenue Shortfall Reserve Fund (fund 7005).

CHAPTER 15

(S. B. 2017 - By Senators Blair (Mr. President) and Baldwin)

[By Request of the Executive]

[Passed June 24, 2021; in effect from passage]
[Approved by the Governor on June 28, 2021.]

AN ACT making a supplementary appropriation by adding new items and increasing existing items for expenditure of public moneys out of the Treasury from the balance of moneys remaining as an unappropriated balance in the State Fund, General Revenue, to Executive, Governor's Office - Civil Contingent Fund, fund 0105, fiscal year 2021, organization 0100; to the Department of Commerce, West Virginia Tourism Office, fund 0246, fiscal year 2021, organization 0304; to the Department of Commerce, West Virginia Development Office, fund 0256, fiscal year 2021, organization 0307; to the 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; to the West Virginia Council for Community and Technical College Education, Mountwest Community and Technical College, fund 0599, fiscal year 2021, organization 0444; to the West Virginia Council for Community and Technical College Education, New River Community and Technical College, fund 0600, fiscal year 2021, organization 0445; to the West Virginia Council for Community and Technical College Education, Blue Ridge Community and Technical College, fund 0601, fiscal year 2021, organization 0447; to the West Virginia Council for Community and Technical College Education, West Virginia University at Parkersburg, fund 0351, fiscal year 2021, organization 0464; to the West Virginia Council for

Community and Technical College Education, Southern West Virginia Community and Technical College, fund 0380, fiscal year 2021, organization 0487; to the West Virginia Council for Community and Technical College Education, West Virginia Northern Community and Technical College, fund 0383, fiscal year 2021, organization 0489; to the West Virginia Council for Community and Technical College Education, Eastern West Virginia Community and Technical College, fund 0587, fiscal year 2021, organization 0492; to the West Virginia Council for Community and Technical College Education, BridgeValley Community and Technical College, fund 0618, fiscal year 2021, organization 0493; to the Higher Education Policy Commission, Higher Education Policy Commission – Administration – Control Account, fund 0589, fiscal year 2021, organization 0441; to the Higher Education Policy Commission, West Virginia University – School of Medicine, Medical School Fund, fund 0343, fiscal year 2021, organization 0463; to the Higher Education Policy Commission, West Virginia University – General Administrative Fund, fund 0344, fiscal year 2021, organization 0463; to the Higher Education Policy Commission, Marshall University – School of Medicine, fund 0347, fiscal year 2021, organization 0471; to the Higher Education Policy Commission, Marshall University – General Administration Fund, fund 0348, fiscal year 2021, organization 0471; to the Higher Education Policy Commission, West Virginia School of Osteopathic Medicine, fund 0336, fiscal year 2021, organization 0476; to the Higher Education Policy Commission, Bluefield State College, fund 0354, fiscal year 2021, organization 0482; to the Higher Education Policy Commission, Concord University, fund 0357, fiscal year 2021, organization 0483; to the Higher Education Policy Commission, Glenville State College, fund 0363, fiscal year 2021, organization 0485; to the Higher Education Policy Commission, Shepherd University, fund 0366, fiscal year 2021, organization 0486; to the Higher Education Policy Commission, West Liberty University, fund 0370, fiscal year 2021, organization 0488; and to the Higher Education Policy Commission, West Virginia State University, fund 0373, fiscal

year 2021, organization 0490, 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 an estimate of revenues for the fiscal year 2021, less net appropriation balances forwarded and regular appropriations for the fiscal year 2021; and

Whereas, The Governor submitted to the Legislature an Executive Message dated June 7, 2021, which included a revised estimate of revenues for the State Fund, General Revenue, and a Statement of the State Fund, General Revenue, for the fiscal year 2021; and

Whereas, The Governor submitted to the Legislature an Executive Message dated June 24, 2021, which included a revised estimate of revenues for the State Fund, General Revenue, and a Statement of the State Fund, General Revenue for the fiscal year 2021; and

Whereas, It appears from the Statement of the State Fund, General Revenue, and the Executive messages, 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 0105, fiscal year 2021, organization 0100, be supplemented and amended by increasing an existing 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

1 Milton Flood Wall (R).....75701 $ 17,500,000

And, That the total appropriation for the fiscal year ending June 30, 2021, to fund 0246, fiscal year 2021, organization 0304, be supplemented and amended by increasing an existing item of appropriation as follows:

TITLE II – APPROPRIATIONS.

Section 1. Appropriations from general revenue.

DEPARTMENT OF COMMERCE

32 - West Virginia Tourism Office

(WV Code Chapter 5B)

Fund 0246 FY 2021 Org 0304

1 Tourism – Brand Promotion (R).....61803 $ 7,000,000

And, 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 adding a new 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

7a Directed Transfer.....70000 $ 1,000,000

The above appropriation for Directed Transfer (fund 0256, appropriation 70000) shall be transferred to the Development Office Promotion Fund (fund 3171).

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

1 West Virginia Council for Community
2 and Technical Education (R).....39200 $ 3,000,000

And, that the total appropriation for the fiscal year ending June 30, 2021, to fund 0599, fiscal year 2021, organization 0444, be supplemented and amended by adding a new item of appropriation as follows:

TITLE II – APPROPRIATIONS.

Section 1. Appropriations from general revenue.

WEST VIRGINIA COUNCIL FOR COMMUNITY AND TECHNICAL COLLEGE EDUCATION

85 – *Mountwest Community and Technical College*

(WV Code Chapter 18B)

Fund 0599 FY 2021 Org 0444

2 Fiscal Year Funding Re-direct (R) .....99900 $ 97,340

Any unexpended balance remaining in the appropriation for Fiscal Year Funding Redirect (fund 0599, appropriation 99900) at the close of fiscal year 2021 is hereby reappropriated for expenditure during the fiscal year 2022.

And, that the total appropriation for the fiscal year ending June 30, 2021, to fund 0600, fiscal year 2021, organization 0445, be supplemented and amended by adding a new item of appropriation as follows:

TITLE II – APPROPRIATIONS.

Section 1. Appropriations from general revenue.

WEST VIRIGINIA COUNCIL FOR COMMUNITY AND TECHNICAL COLLEGE EDUCATION

86 – New River Community and Technical College

(WV Code Chapter 18B)
Fund 0600 FY 2021 Org 0445

2 Fiscal Year Funding Re-direct (R) .....99900 $ 87,973

Any unexpended balance remaining in the appropriation for Fiscal Year Funding Redirect (fund 0600, appropriation 99900) at the close of fiscal year 2021 is hereby reappropriated for expenditure during the fiscal year 2022.

And, that the total appropriation for the fiscal year ending June 30, 2021, to fund 0601, fiscal year 2021, organization 0447, be supplemented and amended by adding a new item of appropriation as follows:

TITLE II – APPROPRIATIONS.

Section 1. Appropriations from general revenue.

WEST VIRGINIA COUNCIL FOR COMMUNITY AND TECHNICAL COLLEGE EDUCATION

88 - *Blue Ridge Community and Technical College*

(WV Code Chapter 18B)

Fund 0601 FY 2021 Org 0447

2	Fiscal Year Funding Re-direct (R) 99900	$	117,463

Any unexpended balance remaining in the appropriation for Fiscal Year Funding Redirect (fund 0601, appropriation 99900) at the close of fiscal year 2021 is hereby reappropriated for expenditure during the fiscal year 2022.

And, that the total appropriation for the fiscal year ending June 30, 2021, to fund 0351, fiscal year 2021, organization 0464, be supplemented and amended by adding a new item of appropriation as follows:

TITLE II – APPROPRIATIONS.

Section 1. Appropriations from general revenue.

WEST VIRGINIA COUNCIL FOR COMMUNITY
AND TECHNICAL COLLEGE EDUCATION

89 - *West Virginia University at Parkersburg*

(WV Code Chapter 18B)

Fund 0351 FY 2021 Org 0464

2 Fiscal Year Funding Re-direct (R) .....99900 $ 154,789

Any unexpended balance remaining in the appropriation for Fiscal Year Funding Redirect (fund 0351, appropriation 99900) at the close of fiscal year 2021 is hereby reappropriated for expenditure during the fiscal year 2022.

And, that the total appropriation for the fiscal year ending June 30, 2021, to fund 0380, fiscal year 2021, organization 0487, be supplemented and amended by adding a new item of appropriation as follows:

TITLE II – APPROPRIATIONS.

Section 1. Appropriations from general revenue.

WEST VIRGINIA COUNCIL FOR COMMUNITY
AND TECHNICAL COLLEGE EDUCATION

90 – *Southern West Virginia Community and Technical College*

(WV Code Chapter 18B)

Fund 0380 FY 2021 Org 0487

3 Fiscal Year Funding Re-direct (R) .....99900 $ 123,627

Any unexpended balance remaining in the appropriation for Fiscal Year Funding Redirect (fund 0380, appropriation 99900) at

the close of fiscal year 2021 is hereby reappropriated for expenditure during the fiscal year 2022.

And, that the total appropriation for the fiscal year ending June 30, 2021, to fund 0383, fiscal year 2021, organization 0489, be supplemented and amended by adding a new item of appropriation as follows:

TITLE II – APPROPRIATIONS.

Section 1. Appropriations from general revenue.

WEST VIRGINIA COUNCIL FOR COMMUNITY
AND TECHNICAL COLLEGE EDUCATION

91 – *West Virginia Northern Community and Technical College*

(WV Code Chapter 18B)

Fund 0383 FY 2021 Org 0489

2 Fiscal Year Funding Re-direct (R) .....99900 $ 109,287

Any unexpended balance remaining in the appropriation for Fiscal Year Funding Redirect (fund 0383, appropriation 99900) at the close of fiscal year 2021 is hereby reappropriated for expenditure during the fiscal year 2022.

And, that the total appropriation for the fiscal year ending June 30, 2021, to fund 0587, fiscal year 2021, organization 0492, be supplemented and amended by adding a new item of appropriation as follows:

TITLE II – APPROPRIATIONS.

Section 1. Appropriations from general revenue.

WEST VIRGINIA COUNCIL FOR COMMUNITY
AND TECHNICAL COLLEGE EDUCATION

92 – *Eastern West Virginia Community and Technical College*

(WV Code Chapter 18B)

Fund 0587 FY 2021 Org 0492

2 Fiscal Year Funding Re-direct (R) .....99900 $ 32,699

Any unexpended balance remaining in the appropriation for Fiscal Year Funding Redirect (fund 0587, appropriation 99900) at the close of fiscal year 2021 is hereby reappropriated for expenditure during the fiscal year 2022.

And, that the total appropriation for the fiscal year ending June 30, 2021, to fund 0618, fiscal year 2021, organization 0493, be supplemented and amended by adding a new item of appropriation as follows:

WEST VIRGINIA COUNCIL FOR COMMUNITY AND TECHNICAL COLLEGE EDUCATION

93 – *BridgeValley Community and Technical College*

(WV Code Chapter 18B)

Fund 0618 FY 2021 Org 0493

2 Fiscal Year Funding Re-direct (R) .....99900 $ 121,482

Any unexpended balance remaining in the appropriation for Fiscal Year Funding Redirect (fund 0618, appropriation 99900) at the close of fiscal year 2021 is hereby reappropriated for expenditure during the fiscal year 2022.

And, that the total appropriation for the fiscal year ending June 30, 2021, to fund 0589, fiscal year 2021, organization 0441, be supplemented and amended by increasing an existing item of appropriation as follows:

TITLE II – APPROPRIATIONS.

Section 1. Appropriations from general revenue.

HIGHER EDUCATION POLICY COMMISSION

94 – Higher Education Policy Commission –

Administration –

Control Account

(WV Code Chapter 18B)

Fund 0589 FY 2021 Org 0441

10a Workforce Development
Initiative (R) ..... XXXXX $ 1,600,000

Any unexpended balance remaining in the appropriation for Workforce Development Initiatives (fund 0589, appropriation XXXXX) at the close of fiscal year 2021 is hereby reappropriated for expenditure during the fiscal year 2022.

And, that the total appropriation for the fiscal year ending June 30, 2021, to fund 0343, fiscal year 2021, organization 0463, be supplemented and amended by adding a new item of appropriation as follows:

TITLE II – APPROPRIATIONS.

Section 1. Appropriations from general revenue.

HIGHER EDUCATION POLICY COMMISSION

96 – *West Virginia University –*

School of Medicine

Medical School Fund

(WV Code Chapter 18B)

Fund 0343 FY 2021 Org 0463

6 Fiscal Year Funding Re-direct (R) .....99900 $ 293,677

Any unexpended balance remaining in the appropriation for Fiscal Year Funding Redirect (fund 0483, appropriation 99900) at the close of fiscal year 2021 is hereby reappropriated for expenditure during the fiscal year 2022.

Included in the above appropriation for Fiscal Year Funding Re-direct (fund 0343, appropriation 99900) is $33,530 to be used for WVU School of Health Science – Eastern Division; $225,846 to be used for the WVU – School of Health Sciences and $34,301 to be used for the WVU School of Health Sciences – Charleston Division.

And, that the total appropriation for the fiscal year ending June 30, 2021, to fund 0344, fiscal year 2021, organization 0463, be supplemented and amended by adding a new item of appropriation as follows:

TITLE II – APPROPRIATIONS.

Section 1. Appropriations from general revenue.

HIGHER EDUCATION POLICY COMMISSION

97 – *West Virginia University –*

General Administrative Fund

(WV Code Chapter 18B)

Fund 0344 FY 2021 Org 0463

6a Fiscal Year Funding Re-direct (R) .....99900 $ 16,600,000

Any unexpended balance remaining in the appropriation for Fiscal Year Funding Redirect (fund 0344, appropriation 99900) at the close of fiscal year 2021 is hereby reappropriated for expenditure during the fiscal year 2022.

And, that the total appropriation for the fiscal year ending June 30, 2021, to fund 0347, fiscal year 2021, organization 0471, be supplemented and amended by adding a new item of appropriation as follows:

TITLE II – APPROPRIATIONS.

Section 1. Appropriations from general revenue.

HIGHER EDUCATION POLICY COMMISSION

98 – *Marshall University –*

School of Medicine

(WV Code Chapter 18B)

Fund 0347 FY 2021 Org 0471

5a Fiscal Year Funding Re-direct (R) .....99900 $ 183,526

Any unexpended balance remaining in the appropriation for Fiscal Year Funding Redirect (fund 0347, appropriation 99900) at the close of fiscal year 2021 is hereby reappropriated for expenditure during the fiscal year 2022.

And, that the total appropriation for the fiscal year ending June 30, 2021, to fund 0348, fiscal year 2021, organization 0471, be supplemented and amended by adding a new item of appropriation as follows:

TITLE II – APPROPRIATIONS.

Section 1. Appropriations from general revenue.

HIGHER EDUCATION POLICY COMMISSION

99 – *Marshall University –*

General Administration Fund

(WV Code Chapter 18B)

Fund 0348 FY 2021 Org 0471

6a Fiscal Year Funding Re-direct (R) .....99900 $ 9,700,000

Any unexpended balance remaining in the appropriation for Fiscal Year Funding Redirect (fund 0348, appropriation 99900) at the close of fiscal year 2021 is hereby reappropriated for expenditure during the fiscal year 2022.

And, that the total appropriation for the fiscal year ending June 30, 2021, to fund 0336, fiscal year 2021, organization 0476, be supplemented and amended by adding a new item of appropriation as follows:

TITLE II – APPROPRIATIONS.

Section 1. Appropriations from general revenue.

HIGHER EDUCATION POLICY COMMISSION

100 – *West Virginia School of Osteopathic Medicine*

(WV Code Chapter 18B)

Fund 0336 FY 2021 Org 0476

5a Fiscal Year Funding Re-direct (R) .....99900 $ 133,189

Any unexpended balance remaining in the appropriation for Fiscal Year Funding Redirect (fund 0336, appropriation 99900) at the close of fiscal year 2021 is hereby reappropriated for expenditure during the fiscal year 2022.

And, that the total appropriation for the fiscal year ending June 30, 2021, to fund 0354, fiscal year 2021, organization 0482, be supplemented and amended by adding a new item of appropriation as follows:

TITLE II – APPROPRIATIONS.

Section 1. Appropriations from general revenue.

HIGHER EDUCATION POLICY COMMISSION

101 – *Bluefield State College*

(WV Code Chapter 18B)

Fund 0354 FY 2021 Org 0482

2 Fiscal Year Funding Re-direct (R) .....99900 $ 95,748

Any unexpended balance remaining in the appropriation for Fiscal Year Funding Redirect (fund 0354, appropriation 99900) at the close of fiscal year 2021 is hereby reappropriated for expenditure during the fiscal year 2022.

And, that the total appropriation for the fiscal year ending June 30, 2021, to fund 0357, fiscal year 2021, organization 0483, be supplemented and amended by adding a new item of appropriation as follows:

TITLE II – APPROPRIATIONS.

Section 1. Appropriations from general revenue.

HIGHER EDUCATION POLICY COMMISSION

102 – *Concord University*

(WV Code Chapter 18B)

Fund 0357 FY 2021 Org 0483

2 Fiscal Year Funding Re-direct (R) .....99900 $ 157,146

Any unexpended balance remaining in the appropriation for Fiscal Year Funding Redirect (fund 0357, appropriation 99900) at the close of fiscal year 2021 is hereby reappropriated for expenditure during the fiscal year 2022.

And, that the total appropriation for the fiscal year ending June 30, 2021, to fund 0363, fiscal year 2021, organization 0485, be supplemented and amended by adding a new item of appropriation as follows:

TITLE II – APPROPRIATIONS.

Section 1. Appropriations from general revenue.

HIGHER EDUCATION POLICY COMMISSION

104 – *Glenville State College*

(WV Code Chapter 18B)

Fund 0363 FY 2021 Org 0485

2 Fiscal Year Funding Re-direct (R) .....99900 $ 96,704

Any unexpended balance remaining in the appropriation for Fiscal Year Funding Redirect (fund 0363, appropriation 99900) at the close of fiscal year 2021 is hereby reappropriated for expenditure during the fiscal year 2022.

And, that the total appropriation for the fiscal year ending June 30, 2021, to fund 0366, fiscal year 2021, organization 0486, be supplemented and amended by adding a new item of appropriation as follows:

TITLE II – APPROPRIATIONS.

Section 1. Appropriations from general revenue.

HIGHER EDUCATION POLICY COMMISSION

105 – *Shepherd University*

(WV Code Chapter 18B)

Fund 0366 FY 2021 Org 0486

2 Fiscal Year Funding Re-direct (R) .....99900 $ 190,257

Any unexpended balance remaining in the appropriation for Fiscal Year Funding Redirect (fund 0366, appropriation 99900) at the close of fiscal year 2021 is hereby reappropriated for expenditure during the fiscal year 2022.

And, that the total appropriation for the fiscal year ending June 30, 2021, to fund 0370, fiscal year 2021, organization 0488, be supplemented and amended by adding a new item of appropriation as follows:

TITLE II – APPROPRIATIONS.

Section 1. Appropriations from general revenue.

HIGHER EDUCATION POLICY COMMISSION

106 – *West Liberty University*

(WV Code Chapter 18B)

Fund 0370 FY 2021 Org 0488

2 Fiscal Year Funding Re-direct (R) .....99900 $ 136,540

Any unexpended balance remaining in the appropriation for Fiscal Year Funding Redirect (fund 0370, appropriation 99900) at the close of fiscal year 2021 is hereby reappropriated for expenditure during the fiscal year 2022.

And, that the total appropriation for the fiscal year ending June 30, 2021, to fund 0373, fiscal year 2021, organization 0490, be

supplemented and amended by adding a new item of appropriation as follows:

TITLE II – APPROPRIATIONS.

Section 1. Appropriations from general revenue.

HIGHER EDUCATION POLICY COMMISSION

107 – *West Virginia State University*

(WV Code Chapter 18B)

Fund 0373 FY 2021 Org 0490

2a Fiscal Year Funding Re-direct (R) .....99900 $ 170,138

Any unexpended balance remaining in the appropriation for Fiscal Year Funding Redirect (fund 0373, appropriation 99900) at the close of fiscal year 2021 is hereby reappropriated for expenditure during the fiscal year 2022.

CHAPTER 16

(S. B. 2018 - By Senators Blair (Mr. President) and Baldwin)

[By Request of the Executive]

[Passed June 24, 2021; in effect from passage]
[Approved by the Governor on June 28, 2021.]

AN ACT supplementing and amending Chapter 11, Acts of the Legislature, Regular Session, 2021, known as the Budget Bill, supplementing and amending appropriations in Title II, Section 9 for the fiscal year ending June 30, 2022.

Be it enacted by the Legislature of West Virginia:

That Chapter 11, Acts of the Legislature, Regular Session, 2021, known as the Budget Bill, in Title II, Section 9, for the fiscal year ending June 30, 2022, be supplemented and amended to read as follows:

Sec. 9. Appropriations from general revenue fund surplus accrued. — The following items are hereby appropriated from the state fund, general revenue, and are to be available for expenditure during the fiscal year 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 appropriations 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 appropriations made pursuant to this section, then the appropriations shall be made to the extent that

surplus funds are available as of the date mandated to meet the appropriations 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

1	Mountwest Community and		
2	Technical College - Surplus 48799	$	0

388 - New River Community and Technical College

(WV Code Chapter 18B)

Fund 0600 FY 2022 Org 0445

1	New River Community and		
2	Technical College - Surplus .....#####	$	0

389 - Blue Ridge Community and Technical College

(WV Code Chapter 18B)

Fund 0601 FY 2022 Org 0447

1	Blue Ridge Community and		
2	Technical College - Surplus 88599	$	0

390 - West Virginia University at Parkersburg

(WV Code Chapter 18B)

Fund 0351 FY 2022 Org 0464

1	West Virginia University –		
2	Parkersburg - Surplus .....#####	$	0

391 - Southern West Virginia Community and Technical College

(WV Code Chapter 18B)

Fund 0380 FY 2022 Org 0487

1	Southern West Virginia Community and		
2	Technical College - Surplus .....#####	$	0

392 - West Virginia Northern Community and Technical College

(WV Code Chapter 18B)

Fund 0383 FY 2022 Org 0489

1	West Virginia Northern Community and		
2	Technical College - Surplus 67100	$	0

393 - Eastern West Virginia Community and Technical College

(WV Code Chapter 18B)

Fund 0587 FY 2022 Org 0492

1	Eastern West Virginia Community and		
2	Technical College - Surplus 41299	$	0

394 - BridgeValley Community and Technical College

(WV Code Chapter 18B)

Fund 0618 FY 2022 Org 0493

1	BridgeValley Community and		
2	Technical College - Surplus .....#####	$	0

395 - West Virginia University –

School of Medicine

Medical School Fund

(WV Code Chapter 18B)

Fund 0343 FY 2022 Org 0463

1	WVU School of Health Science –		
2	Eastern Division - Surplus.....#####	$	0
3	WVU – School of Health Sciences –		
4	Surplus.....#####		0
5	WVU – School of Health Sciences –		
6	Charleston Division - Surplus .....#####		0
7	Total.....	$	0

396 - Marshall University –

School of Medicine

(WV Code Chapter 18B)

Fund 0347 FY 2022 Org 0471

1	Marshall Medical School - Surplus.....45200	$	0

397 - West Virginia School of Osteopathic Medicine

(WV Code Chapter 18B)

Fund 0336 FY 2022 Org 0476

1	West Virginia School of		
2	Osteopathic Medicine - Surplus 17299	$	0

398 - Bluefield State College

(WV Code Chapter 18B)

Fund 0354 FY 2022 Org 0482

1	Bluefield State College - Surplus .....#####	$	0

399 - Concord University

(WV Code Chapter 18B)

Fund 0357 FY 2022 Org 0483

1 Concord University - Surplus.....##### $ 0

400 - Glenville State College

(WV Code Chapter 18B)

Fund 0363 FY 2022 Org 0485

1 Glenville State College - Surplus .....42899 $ 0

401 - Shepherd University

(WV Code Chapter 18B)

Fund 0366 FY 2022 Org 0486

1 Shepherd University - Surplus.....43299 $ 0

402 - West Liberty University

(WV Code Chapter 18B)

Fund 0370 FY 2022 Org 0488

1 West Liberty University – Surplus .....##### $ 0

403 - West Virginia State University

(WV Code Chapter 18B)

Fund 0373 FY 2022 Org 0490

1 West Virginia State University – Surplus ...44199 $ 0

404 - Governor's Office –

Civil Contingent Fund

(WV Code Chapter 5)

Fund 0105 FY 2022 Org 0100

1 Milton Flood Wall - Surplus.....75799 $ 0

405 - Department of Tourism-

Office of the Secretary

(WV Code Chapter 5B)

Fund 0246 FY 2022 Org 0304

1 Tourism – Brand Promotion – Surplus ....61893 $ 0

406 - Marshall University –

General Administrative Fund

(WV Code Chapter 18B)

Fund 0348 FY 2022 Org 0471

1 Marshall University - Surplus .....##### $ 0

407 - West Virginia Council for

Community and Technical College Education –

Control Account

(WV Code Chapter 18B)

Fund 0596 FY 2022 Org 0420

1 West Virginia Council for Community
2 and Technical Education - Surplus...##### $ 0

408 - Higher Education Policy Commission –

Administration –

Control Account

(WV Code Chapter 18B)

Fund 0589 FY 2022 Org 0441

1 Current Expenses - Surplus .....13099 $ 0

The above appropriation for Current Expense - Surplus (fund 0589, appropriation 13099) shall be used for workforce development initiatives.

409 - West Virginia University –

General Administration Fund

(WV Code Chapter 18B)

Fund 0344 FY 2022 Org 0463

1 West Virginia University - Surplus .....##### $ 0

410 - Department of Economic Development –

Office of the Secretary

(WV Code Chapter 5B)

Fund 0256 FY 2022 Org 0307

1 Directed Transfer - Surplus .....70099 $ 0

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..... $ 0

CHAPTER 17

(S. B. 2019 - By Senators Blair (Mr. President) and Baldwin)

[By Request of the Executive]

[Passed June 24, 2021; in effect from passage]
[Approved by the Governor on June 28, 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, 2022, to the Department of Administration, Office of Technology – Chief Technology Officer Administration Fund, fund 2531, fiscal year 2022, organization 0231; and to the Department of Transportation, State Rail Authority – West Virginia Commuter Rail Access Fund, fund 8402, fiscal year 2022, organization 0804, by supplementing and amending the appropriations for the fiscal year ending June 30, 2022.

Whereas, The Governor has established that there now remains an unappropriated balance in the Department of Administration, Office of Technology – Chief Technology Officer Administration Fund, fund 2531, fiscal year 2022, organization 0231, and the Department of Transportation, State Rail Authority – West Virginia Commuter Rail Access Fund, fund 8402, fiscal year 2022, organization 0804, that is available for expenditure during the fiscal year ending June 30, 2022, 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, 2022, to fund 2531, fiscal year 2022, organization 0231, be supplemented and amended by increasing an existing item of appropriation as follows:

TITLE II – APPROPRIATIONS.

Sec. 3. Appropriations from other funds.

DEPARTMENT OF ADMINISTRATION

151 – Office of Technology –

Chief Technology Officer Administration Fund

(WV Code Chapter 5A)

Fund 2531 FY 2022 Org 0231

		Appro-priation	Other Funds
3	Current Expenses	13000	$ 2,000,000

And, That the total appropriation for the fiscal year ending June 30, 2022, to fund 8402, fiscal year 2022, organization 0804, be supplemented and amended by increasing an existing item of appropriation as follows:

TITLE II – APPROPRIATIONS.

Sec. 3. Appropriations from other funds.

DEPARTMENT OF TRANSPORTATION

269 – State Rail Authority –

West Virginia Commuter Rail Access Fund

(WV Code Chapter 29)

Fund 8402 FY 2022 Org 0804

		Appro-priation	Other Funds
1	Current Expenses	13000	$ 750,000

CHAPTER 18

(S. B. 2021 - By Senators Blair (Mr. President) and Baldwin)

[By Request of the Executive]

[Passed June 24, 2021; in effect from passage]
[Approved by the Governor on June 28, 2021.]

AN ACT expiring funds to the unappropriated surplus balance of the Treasury in the State Fund, General Revenue, by decreasing existing items of appropriation in the amount of $397,450 from the Department of Economic Development, fund 0256, fiscal year 2007, organization 0307, appropriation 48000; in the amount of $305,500 from the Department of Economic Development, fund 0256, fiscal year 2008, organization 0307, appropriation 48000; in the amount of $136.61 from the Department of Economic Development, fund 0256, fiscal year 2001, organization 0307, appropriation 81900; in the amount of $3,725.24 from the Department of Economic Development, fund 0256, fiscal year 2002, organization 0307, appropriation 81900; in the amount of $2,420.04 from the Department of Economic Development, fund 0256, fiscal year 2003, organization 0307, appropriation 81900; in the amount of $6,488.43 from the Department of Economic Development, fund 0256, fiscal year 2005, organization 0307, appropriation 81900; in the amount of $6,518.25 from the Department of Economic Development, fund 0256, fiscal year 2006, organization 0307, appropriation 81900; in the amount of $2,068.61 from the Department of Economic Development, fund 0256, fiscal year 2008, organization 0307, appropriation 81900; in the amount of $243,027.46 from the Department of Economic Development, fund 0256, fiscal year 2010, organization 0307, appropriation 81900; in the amount of $93,244.87 from the Department of Economic Development,

fund 0256, fiscal year 2011, organization 0307, appropriation 81900; in the amount of $33,002.10 from the Department of Economic Development, fund 0256, fiscal year 2012, organization 0307, appropriation 81900; in the amount of $86,438.58 from the Department of Economic Development, fund 0256, fiscal year 2013, organization 0307, appropriation 81900; in the amount of $23,878.68 from the Department of Economic Development, fund 0256, fiscal year 2014, organization 0307, appropriation 81900; and in the amount of $199,262.69 from the Department of Economic Development, fund 0256, fiscal year 2015, organization 0307, appropriation 81900.

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, The Governor finds that account balances in funds from the Department of Economic Development, fund 0256, fiscal years 2007 and 2008, organization 0307, appropriation 48000, and Department of Economic Development, fund 0256, fiscal years 2001, 2002, 2003, 2005, 2006, 2008, 2010, 2011, 2012, 2013, 2014, and 2015, organization 0307, appropriation 81900, exceeds that which is necessary for the purposes for which accounts were established.

Whereas, It appears from the Statement of the State Fund, General Revenue, and this legislation, there 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, in the Department of Economic

Development, fund 0256, fiscal year 2007, organization 0307, appropriation 48000, be decreased by expiring the amount of $397,450; in the Department of Economic Development, fund 0256, fiscal year 2008, organization 0307, appropriation 48000, be decreased by expiring the amount of $305,500; in the Department of Economic Development, fund 0256, fiscal year 2001, organization 0307, appropriation 81900, be decreased by expiring the amount of $136.61; in the Department of Economic Development, fund 0256, fiscal year 2002, organization 0307, appropriation 81900, be decreased by expiring the amount of $3,725.24; in the Department of Economic Development, fund 0256, fiscal year 2003, organization 0307, appropriation 81900, be decreased by expiring the amount of $2,420.04; in the Department of Economic Development, fund 0256, fiscal year 2005, organization 0307, appropriation 81900, be decreased by expiring the amount of $6,488.43; in the Department of Economic Development, fund 0256, fiscal year 2006, organization 0307, appropriation 81900, be decreased by expiring the amount of $6,518.25; in the Department of Economic Development, fund 0256, fiscal year 2008, organization 0307, appropriation 81900, be decreased by expiring the amount of $2,068.61; in the Department of Economic Development, fund 0256, fiscal year 2010, organization 0307, appropriation 81900, be decreased by expiring the amount of $243,027.46; in the Department of Economic Development, fund 0256, fiscal year 2011, organization 0307, appropriation 81900, be decreased by expiring the amount of $93,244.87; in the Department of Economic Development, fund 0256, fiscal year 2012, organization 0307, appropriation 81900, be decreased by expiring the amount of $33,002.10; in the Department of Economic Development, fund 0256, fiscal year 2013, organization 0307, appropriation 81900, be decreased by expiring the amount of $86,438.58; in the Department of Economic Development, fund 0256, fiscal year 2014, organization 0307, appropriation 81900, be decreased by expiring the amount of $23,878.68; and in the Department of Economic Development, fund 0256, fiscal year 2015, organization 0307, appropriation 81900, be decreased by expiring the amount of $199,262.69 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 0105, fiscal year 2021, organization 0100, be supplemented and amended by increasing an existing item of appropriation as follows:

TITLE II – APPROPRIATIONS.

Section 1. Appropriations from general revenue.

GOVERNOR'S OFFICE

7 – Governor's Office –

Civil Contingent Fund

(WV Code Chapter 5)

Fund 0105 FY 2021 Org 0100

		Appro-priation	**General Revenue Fund**
2b	Local Economic Development Assistance - Surplus (R)	26600	$1,403,161.56

Any unexpended balance remaining in the appropriation for Local Economic Development Assistance - Surplus (fund 0105, appropriation 26600) at the close of the fiscal year 2021 is hereby reappropriated for expenditure during the fiscal year 2022.

CHAPTER 19

(S. B. 2022 - By Senators Blair (Mr. President) and Baldwin)

[By Request of the Executive]

[Passed June 24, 2021; in effect from passage]
[Approved by the Governor on June 28, 2021.]

AN ACT expiring funds to the unappropriated surplus balance of the Treasury in the State Fund, General Revenue, for the fiscal year ending June 30, 2021, in the amount of $4,514.05 from the Bureau of Senior Services, fund 5405, fiscal year 2010, organization 0508, appropriation 46200; in the amount of $7,668.74 from the Bureau of Senior Services, fund 5405, fiscal year 2011, organization 0508, appropriation 46200; in the amount of $13,712.89 from the Bureau of Senior Services, fund 5405, fiscal year 2012, organization 0508, appropriation 46200; in the amount of $4,544.37 from the Bureau of Senior Services, fund 5405, fiscal year 2013, organization 0508, appropriation 46200; in the amount of $50,667.70 from the Bureau of Senior Services, fund 5405, fiscal year 2014, organization 0508, appropriation 46200; in the amount of $512,256 from the Bureau of Senior Services, fund 5405, fiscal year 2015, organization 0508, appropriation 46200; in the amount of $18,982 from the Library Commission - Lottery Education Fund, fund 3559, fiscal year 2011, organization 0433, appropriation 62500; in the amount of $17,999.00 from the Library Commission - Lottery Education Fund, fund 3559, fiscal year 2012, organization 0433, appropriation 62500; in the amount of $337,252 from the Library Commission - Lottery Education Fund, fund 3559, fiscal year 2013, organization 0433, appropriation 62500; in the amount of $83,183.47 from the State Board of Education, fund 3951, fiscal year 2007, organization 0402, appropriation 09900; in

the amount of $158,044 from the State Board of Education, fund 3951, fiscal year 2008, organization 0402, appropriation 09900; in the amount of $63,654 from the State Board of Education, fund 3951, fiscal year 2009, organization 0402, appropriation 09900; in the amount of $15,975 from the State Board of Education, fund 3951, fiscal year 2011, organization 0402, appropriation 09900; in the amount of $387,842.08 from the State Board of Education, fund 3951, fiscal year 2012, organization 0402, appropriation 09900; in the amount of $303,375 from the State Board of Education, fund 3951, fiscal year 2014, organization 0402, appropriation 13000 ; and in the amount of $1,268,175 from the State Board of Education, fund 3951, fiscal year 2015, organization 0402, appropriation 13000.

Whereas, The Governor submitted to the Legislature the Executive Budget Document, dated February 10, 2021, which included a Statement of the Lottery Fund and State Fund, General Revenue, setting forth therein the cash balances 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, The Governor finds that account balances in funds from the Bureau of Senior Services – Senior Citizens Centers and Programs, fund 5405, fiscal years 2010, 2011, 2012, 2013, 2014, and 2015, organization 0508, appropriation 46200; the Library Commission - Lottery Education Fund, fund 3559, fiscal years 2011, 2012, and 2013, organization 0433, appropriation 26500, Department of Education, fund 3951, fiscal years 2007 and 2008, organization 0402, appropriation 09900; and Department of Education, fund 3951, fiscal year 2015, organization 0402, appropriation 13000, exceeds that which is necessary for the purposes for which accounts were established.

Whereas, It appears from the Statement of the State Fund, General Revenue, and this legislation, there 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, in the Bureau of Senior Services, fund 5405, fiscal year 2010, organization 0508, appropriation 46200, be decreased by expiring the amount of $4,514.05; in the Bureau of Senior Services, fund 5405, fiscal year 2011, organization 0508, appropriation 46200, be decreased by expiring the amount of $7,668.74; in the Bureau of Senior Services, fund 5405, fiscal year 2012, organization 0508, appropriation 46200, be decreased by expiring the amount of $13,712.89; in the Bureau of Senior Services, fund 5405, fiscal year 2013, organization 0508, appropriation 46200, be decreased by expiring the amount of $4,544.37; in the Bureau of Senior Services, fund 5405, fiscal year 2014, organization 0508, appropriation 46200, be decreased by expiring the amount of $50,667.70; in the Bureau of Senior Services, fund 5405, fiscal year 2015, organization 0508, appropriation 46200, be decreased by expiring the amount of $512,256; in the Library Commission - Lottery Education Fund, fund 3559, organization 0433, fiscal year 2011, appropriation 26500, be decreased by expiring the amount of $18,982.00; in the Library Commission - Lottery Education Fund, fund 3559, fiscal year 2012, organization 0433, appropriation 26500, be decreased by expiring the amount of $17,999; in the Library Commission - Lottery Education Fund, fund 3559, fiscal year 2013, organization 0433, appropriation 26500, be decreased by expiring the amount of $337,252; in State Board of Education, fund 3951, fiscal year 2007, organization 0402, appropriation 09900, be decreased by expiring the amount of $83,183.47; in the State Board of Education, fund 3951, fiscal year 2008, organization 0402, appropriation 09900, be decreased by expiring the amount of $158,044; in the State Board of Education, fund 3951, fiscal year 2009, organization 0402, appropriation 09900, be decreased by expiring the amount of $63,654; in the State Board of Education, fund 3951, fiscal year 2011, organization 0402, appropriation 09900, be decreased by expiring the amount of $15,975; in the State Board of Education, fund 3951, fiscal year 2012, organization 0402, appropriation 09900, be decreased by expiring the amount of $387,842.08; in the State Board of Education, fund 3951, fiscal year 2014, organization

0402, appropriation 13000, be decreased by expiring the amount of $303,375; and in the State Board of Education, fund 3951, fiscal year 2015, organization 0402, appropriation 13000, be decreased by expiring the amount of $1,268,175 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 0105, fiscal year 2021, organization 0100, be supplemented and amended by increasing an existing item of appropriation as follows:

TITLE II – APPROPRIATIONS.

Section 1. Appropriations from general revenue.

GOVERNOR'S OFFICE

7 – Governor's Office –

Civil Contingent Fund

(WV Code Chapter 5)

Fund 0105 FY 2021 Org 0100

		Appro-priation	**General Revenue Fund**
2b	Local Economic Development Assistance - Surplus (R)	26600	$3,247,845.30

Any unexpended balance remaining in the appropriation for Local Economic Development Assistance - Surplus (fund 0105, appropriation 26600) at the close of the fiscal year 2021 is hereby reappropriated for expenditure during the fiscal year 2022.

CHAPTER 20

(S. B. 2024 - By Senators Blair (Mr. President) and Baldwin)

[By Request of the Executive]

[Passed June 24, 2021; in effect from passage]
[Approved by the Governor on June 28, 2021.]

AN ACT supplementing and amending by increasing an existing item of appropriation of federal funds out of the Treasury to the Miscellaneous Boards and Commissions, National Coal Heritage Authority, fund 8869, fiscal year 2022, organization 0941, by supplementing and amending an appropriation for the fiscal year ending June 30, 2022.

Whereas, The Governor has established the availability of federal funds for expenditure in the fiscal year ending June 30, 2022, 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, 2022, to fund 8869, fiscal year 2022, organization 0941, be supplemented and amended by increasing an existing item of appropriation as follows:

TITLE II – APPROPRIATIONS.

Sec. 6. Appropriations of federal funds.

MISCELLANEOUS BOARDS AND COMMISSIONS

375 – National Coal Heritage Area Authority

(WV Code Chapter 29)

Fund 8869 FY 2022 Org 0941

		Appro-priation		Federal Funds
1	Personal Services			
2	and Employee Benefits.....	00100	$	25,000

CHAPTER 21

(S. B. 2023 - By Senators Blair (Mr. President) and Baldwin)

[By Request of the Executive]

[Passed June 24, 2021; in effect from passage]
[Approved by the Governor on June 28, 2021.]

AN ACT to amend and reenact §15A-3-16 of the Code of West Virginia, 1931, as amended, relating to extending the expiration date of the freeze of the per diem rate to July 1, 2022; and clarifying that the per diem cost for incarcerated inmates in a regional jail is calculated annually and from the previous three fiscal years of actual costs.

Be it enacted by the Legislature of West Virginia:

ARTICLE 3. DIVISION OF CORRECTIONS AND REHABILITATION.

§15A-3-16. Funds for operations of jails under the jurisdiction of the commissioner.

(a) Any special revenue funds previously administered by the Regional Jail and Correctional Facility Authority or its executive director are continued, and shall be administered by the commissioner.

(b) Funds that have been transferred by §15A-3-16(a) of this code shall be limited in use to operations of jail functions, and for payment to the Regional Jail and Correctional Facility Authority Board, for payment of indebtedness. In no case shall a fund be utilized to offset or pay operations of nonjail parts of the facility: *Provided,* That funds may be utilized on a pro rata basis

for shared staff and for operational expenses of facilities being used as both prisons and jails.

(c) Whenever the commissioner determines that the balance in these funds is more than the immediate requirements of this article, he or she may request that the excess be invested until needed. Any excess funds so requested shall be invested in a manner consistent with the investment of temporary state funds. Interest earned on any moneys invested pursuant to this section shall be credited to these funds.

(d) These funds consist of the following:

(1) Moneys collected and deposited in the State Treasury which are specifically designated by Acts of the Legislature for inclusion in these funds;

(2) Contributions, grants, and gifts from any source, both public and private, specifically directed to the operations of jails under the control of the commissioner;

(3) All sums paid pursuant to §15A-3-16(g) of this code; and

(4) All interest earned on investments made by the state from moneys deposited in these funds.

(e) The amounts deposited in these funds shall be accounted for and expended in the following manner:

(1) Amounts deposited shall be pledged first to the debt service on any bonded indebtedness;

(2) After any requirements of debt service have been satisfied, the commissioner shall requisition from these funds the amounts that are necessary to provide for payment of the administrative expenses of this article, as limited by this section;

(3) The commissioner shall requisition from these funds, after any requirements of debt service have been satisfied, the amounts that are necessary for the maintenance and operation of jails under his or her control. These funds shall make an accounting of all

amounts received from each county by virtue of any filing fees, court costs, or fines required by law to be deposited in these funds and amounts from the jail improvement funds of the various counties;

(4) Notwithstanding any other provisions of this article, sums paid into these funds by each county pursuant to §15A-3-16(g) of this code for each inmate shall be placed in a separate account and shall be requisitioned from these funds to pay for costs incurred; and

(5) Any amounts deposited in these funds from other sources permitted by this article shall be expended based on particular needs to be determined by the commissioner.

(f)(1) After a jail facility becomes available pursuant to this article for the incarceration of inmates, each county within the region shall incarcerate all persons whom the county would have incarcerated in any jail prior to the availability of the jail facility in the jail facility, except those whose incarceration in a local jail facility used as a local holding facility is specified as appropriate under the previously promulgated, and hereby transferred standards and procedures developed by the Jail Facilities Standards Commission, and whom the sheriff or the circuit court elects to incarcerate therein.

(2) Notwithstanding the provisions of §15A-3-16(f)(1) of this code, circuit and magistrate courts are authorized to:

(A) Detain persons who have been arrested or charged with a crime in a county or municipal jail specified as appropriate under the standards and procedures referenced in §15A-3-16(f)(1) of this code, for a period not to exceed 96 hours; or

(B) Commit persons convicted of a crime in a county or municipal jail, specified as appropriate under the standards and procedures referenced in §15A-3-16(f)(1) of this code, for a period not to exceed 14 days.

(g) When inmates are placed in a jail facility under the jurisdiction of the commissioner pursuant to §15A-3-16(f) of this

code, the county, and municipality if the incarceration is a municipal violation, shall pay into this fund a cost per day for each incarcerated inmate, to be determined by the state Budget Office annually by examining the most recent three fiscal years of costs submitted by the commissioner for the cost of operating the jail facilities and units under his or her jurisdiction, and taking an average per day, per inmate cost of maintaining the operations of the jail facilities or units: *Provided,* That beginning July 1, 2018, and continuing through July 1, 2022, in no case shall any county or municipality be required to pay a rate that exceeds $48.25 per day, per inmate. Nothing in this section shall be construed to mean that the per diem cannot be decreased or be less than $48.25 per day per inmate.

(h) The per diem costs for incarcerating inmates may not include the cost of construction, acquisition, or renovation of the regional jail facilities: *Provided,* That each jail facility or unit operating in this state shall keep a record of the date and time that an inmate is incarcerated, and a county may not be charged for a second day of incarceration for an individual inmate until that inmate has remained incarcerated for more than 24 hours. After that, in cases of continuous incarceration, subsequent per diem charges shall be made upon a county only as subsequent intervals of 24 hours pass from the original time of incarceration.

(i) The county is responsible for costs incurred by the division for housing and maintaining inmates in its facilities who are pretrial inmates and convicted misdemeanants. The costs of housing shall be borne by the division on a felony conviction on which an inmate is incarcerated beginning the calendar day following the day of sentencing: *Provided,* That beginning July 1, 2019, the costs of housing shall be borne by the division on a felony conviction when an inmate is incarcerated beginning the calendar day following the day of conviction. In no case shall the county be responsible for any costs of housing and maintaining felony convicted inmate populations.

(j) The county is responsible for the costs incurred by the authority for housing and maintaining an inmate who, prior to a felony conviction on which the inmate is incarcerated and is

awaiting transportation to a state correctional facility for a 60-day evaluation period as provided in §62-12-7a of this code.

(k) On or before July 1, 2020, the commissioner shall prepare a report on the feasibility of phasing out the county and municipal per diem charges required by §15A-3-16(g) of this code. This report shall include information regarding savings realized because of the consolidation of the former Division of Corrections, Division of Juvenile Services, and the operations of the Regional Jail and Correctional Facility Authority, as well as any other recommendations that might ease the burden of paying the per diem inmate costs by the counties or municipalities. On or before January 1, 2019, January 1, 2020, and January 1, 2021, the commissioner shall report to the Joint Committee on Government and Finance and the co-chairmen of the Joint Standing Committee on Finance the actual per diem rate as calculated pursuant to §15A-3-16(g) of this code and any amount not assessed to counties if the actual per diem cost is larger than the amount charged to the counties or municipalities pursuant to §15A-3-16(g) between July 1, 2018, and July 1, 2021.

DISPOSITION OF BILLS ENACTED

The first column gives the number of the bill and the second column gives the chapter assigned to it.

Regular Session, 2021

HOUSE BILLS

Bill No.	Chapter	Bill No.	Chapter	Bill No.	Chapter
2001	281	2368	220	2769	13
2002	48	2370	235	2773	193
2005	162	2372	106	2776	166
2006	202	2382	177	2785	100
2008	169	2400	178	2788	14
2009	170	2427	179	2789	15
2011	210	2495	4	2790	16
2012	98	2499	260	2791	101
2013	99	2500	73	2793	278
2014	225	2507	126	2794	263
2019	144	2529	157	2797	56
2022	11	2573	226	2802	17
2024	218	2581	261	2803	18
2025	9	2616	221	2804	19
2026	257	2621	231	2808	264
2028	63	2633	7	2823	8
2029	242	2667	146	2829	74
2093	219	2671	5	2830	55
2094	53	2682	165	2834	150
2145	243	2688	107	2842	75
2195	269	2694	277	2852	102
2221	163	2701	187	2854	76
2253	87	2709	44	2855	211
2260	54	2720	147	2874	120
2262	64	2722	232	2877	204
2263	164	2730	46	2884	121
2266	160	2747	148	2888	89
2267	244	2758	203	2890	188
2290	282	2760	262	2891	205
2358	258	2763	149	2895	20
2359	259	2764	45	2896	21
2363	93	2765	270	2897	22
2366	145	2768	12	2898	23

DISPOSITION OF BILLS ENACTED

The first column gives the number of the bill and the second column gives the chapter assigned to it.

Regular Session, 2021

HOUSE BILLS
-Continued-

Bill No.	Chapter	Bill No.	Chapter	Bill No.	Chapter
2899	24	2997	272	3288	33
2900	25	3002	239	3289	34
2901	26	3010	265	3291	35
2903	27	3045	279	3292	36
2905	57	3078	90	3293	105
2906	103	3081	65	3294	273
2914	151	3089	233	3295	37
2915	237	3106	91	3297	38
2916	152	3107	280	3298	39
2918	82	3129	189	3299	158
2920	28	3130	190	3301	79
2927	108	3132	271	3304	67
2933	153	3133	191	3308	127
2940	29	3175	60	3310	111
2941	30	3177	104	3311	223
2953	77	3191	212	3313	40
2957	58	3215	109	3314	41
2958	59	3254	78	3315	42
2962	206	3266	245	3316	43
2969	238	3286	31		
2982	222	3287	32		

DISPOSITION OF BILLS ENACTED

The first column gives the number of the bill and the second column gives the chapter assigned to it.

Regular Session, 2021

SENATE BILLS

Bill No.	Chapter	Bill No.	Chapter	Bill No.	Chapter
5	61	338	130	460	70
9	122	343	181	463	161
10	123	344	249	464	114
11	207	345	266	466	196
12	213	346	182	469	236
14	240	356	183	470	208
34	246	358	125	472	197
42	68	359	267	478	227
67	214	361	50	479	274
78	92	368	112	483	119
80	116	372	194	486	137
81	117	374	131	488	71
89	49	375	95	492	115
126	171	376	268	494	138
156	172	377	216	496	84
160	173	387	159	502	192
182	174	389	132	514	139
216	175	390	133	517	140
263	124	392	83	518	6
270	247	397	250	521	198
272	167	398	134	523	234
275	80	401	62	529	185
277	1	404	113	532	252
280	224	419	275	534	94
294	128	421	135	537	85
295	47	429	136	542	110
296	176	431	184	562	51
297	129	434	195	577	228
305	248	435	168	587	141
307	154	437	251	613	209
318	118	439	2	626	86
334	215	458	276	634	229
335	155	459	69	636	96

DISPOSITION OF BILLS ENACTED

The first column gives the number of the bill and the second column gives the chapter assigned to it.

Regular Session, 2021

SENATE BILLS
-Continued-

Bill No.	Chapter	Bill No.	Chapter	Bill No.	Chapter
641	253	661	254	693	255
642	142	668	200	695	72
644	199	671	217	702	88
651	97	673	3	713	66
655	186	674	81	714	201
657	156	677	180	717	10
658	52	680	241	718	256
660	230	684	143		

DISPOSITION OF BILLS ENACTED

The first column gives the chapter assigned and the second column gives the bill number.

Regular Session, 2021

House Bills = 4 Digits Senate Bills = 1-3 Digits

Chapter	Bill No.	Chapter	Bill No.	Chapter	Bill No.
1	277	32	3287	63	2028
2	439	33	3288	64	2262
3	673	34	3289	65	3081
4	2495	35	3291	66	713
5	2671	36	3292	67	3304
6	518	37	3295	68	42
7	2633	38	3297	69	459
8	2823	39	3298	70	460
9	2025	40	3313	71	488
10	717	41	3314	72	695
11	2022	42	3315	73	2500
12	2768	43	3316	74	2829
13	2769	44	2709	75	2842
14	2788	45	2764	76	2854
15	2789	46	2730	77	2953
16	2790	47	295	78	3254
17	2802	48	2002	79	3301
18	2803	49	89	80	275
19	2804	50	361	81	674
20	2895	51	562	82	2918
21	2896	52	658	83	392
22	2897	53	2094	84	496
23	2898	54	2260	85	537
24	2899	55	2830	86	626
25	2900	56	2797	87	2253
26	2901	57	2905	88	702
27	2903	58	2957	89	2888
28	2920	59	2958	90	3078
29	2940	60	3175	91	3106
30	2941	61	5	92	78
31	3286	62	401	93	2363

DISPOSITION OF BILLS ENACTED

The first column gives the chapter assigned and the second column gives the bill number.

Regular Session, 2021
-Continued-

House Bills = 4 Digits Senate Bills = 1-3 Digits

Chapter	Bill No.	Chapter	Bill No.	Chapter	Bill No.
94	534	125	358	156	657
95	375	126	2507	157	2529
96	636	127	3308	158	3299
97	651	128	294	159	387
98	2012	129	297	160	2266
99	2013	130	338	161	463
100	2785	131	374	162	2005
101	2791	132	389	163	2221
102	2852	133	390	164	2263
103	2906	134	398	165	2682
104	3177	135	421	166	2776
105	3293	136	429	167	272
106	2372	137	486	168	435
107	2688	138	494	169	2008
108	2927	139	514	170	2009
109	3215	140	517	171	126
110	542	141	587	172	156
111	3310	142	642	173	160
112	368	143	684	174	182
113	404	144	2019	175	216
114	464	145	2366	176	296
115	492	146	2667	177	2382
116	80	147	2720	178	2400
117	81	148	2747	179	2427
118	318	149	2763	180	677
119	483	150	2834	181	343
120	2874	151	2914	182	346
121	2884	152	2916	183	356
122	9	153	2933	184	431
123	10	154	307	185	529
124	263	155	335	186	655

DISPOSITION OF BILLS ENACTED

The first column gives the chapter assigned and the second column gives the bill number.

Regular Session, 2021
-Continued-

House Bills = 4 Digits Senate Bills = 1-3 Digits

Chapter	Bill No.	Chapter	Bill No.	Chapter	Bill No.
187	2701	219	2093	251	437
188	2890	220	2368	252	532
189	3129	221	2616	253	641
190	3130	222	2982	254	661
191	3133	223	3311	255	693
192	502	224	280	256	718
193	2773	225	2014	257	2026
194	372	226	2573	258	2358
195	434	227	478	259	2359
196	466	228	577	260	2499
197	472	229	634	261	2581
198	521	230	660	262	2760
199	644	231	2621	263	2794
200	668	232	2722	264	2808
201	714	233	3089	265	3010
202	2006	234	523	266	345
203	2758	235	2370	267	359
204	2877	236	469	268	376
205	2891	237	2915	269	2195
206	2962	238	2969	270	2765
207	11	239	3002	271	3132
208	470	240	14	272	2997
209	613	241	680	273	3294
210	2011	242	2029	274	479
211	2855	243	2145	275	419
212	3191	244	2267	276	458
213	12	245	3266	277	2694
214	67	246	34	278	2793
215	334	247	270	279	3045
216	377	248	305	280	3107
217	671	249	344	281	2001
218	2024	250	397	282	2290

DISPOSITION OF BILLS ENACTED

The first column gives the number of the bill and the second column gives the chapter assigned to it.

First Extraordinary Session, 2021

HOUSE BILLS

Bill No.	Chapter
101	1
102	2

DISPOSITION OF BILLS ENACTED

The first column gives the number of the bill and the second column gives the chapter assigned to it.

First Extraordinary Session, 2021

SENATE BILLS

Bill No.	Chapter
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1002	4
1003	5
1004	6
1007	7

DISPOSITION OF BILLS ENACTED

The first column gives the chapter assigned and the second column gives the bill number.

First Extraordinary Session, 2021

House Bills = 3 Digits Senate Bills = 4 Digits

Chapter	Bill No.
1	101
2	102
3	1001
4	1002
5	1003
6	1004
7	1007

DISPOSITION OF BILLS ENACTED

The first column gives the number of the bill and the second column gives the chapter assigned to it.

Second Extraordinary Session, 2021

SENATE BILLS

Bill No.	Chapter	Bill No.	Chapter	Bill No.	Chapter
2002	2	2010	9	2018	16
2003	3	2011	10	2019	17
2005	4	2012	11	2020	1
2006	5	2014	12	2021	18
2007	6	2015	13	2022	19
2008	7	2016	14	2023	21
2009	8	2017	15	2024	20

DISPOSITION OF BILLS ENACTED

The first column gives the chapter assigned and the second column gives the bill number.

Second Extraordinary Session, 2021

Senate Bills = 4 Digits

Chapter	Bill No.	Chapter	Bill No.	Chapter	Bill No.
1	2020	8	2009	15	2017
2	2002	9	2010	16	2018
3	2003	10	2011	17	2019
4	2005	11	2012	18	2021
5	2006	12	2014	19	2022
6	2007	13	2015	20	2024
7	2008	14	2016	21	2023

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