

# **WEST VIRGINIA LEGISLATURE**

## **2025 REGULAR SESSION**

**Introduced**

### **Senate Bill 904**

By Senator Deeds

[Introduced March 24, 2025; referred  
to the Committee on Health and Human Resources]

A BILL to amend and reenact §5-14-3, §15-5A-4, §16-1-5, §16-1-6, §16-1-7, §16-1-8, §16-1-9, §16-1-9a, §16-1-9c, §16-1-15, §16-1-17, §16-2-5, §16-2-11, §16-2-12, §16-2-13, §16-3-5, §16-3C-2, §16-3C-8, §16-3D-2, §16-3D-3, §16-3D-4, §16-3D-7, §16-3D-9, §16-4C-2, §16-4C-3, §16-4C-4, §16-4C-5, §16-4C-6a, §16-4C-6b, §16-4C-8, §16-4C-8a, §16-4C-9, §16-4C-12, §16-4C-13, §16-4C-14, §16-4C-15, §16-4C-16, §16-4C-20, §16-4C-21, §16-4C-23, §16-4E-2, §16-5-5, §16-5-11, §16-5-22, §16-5M-3, §16-5U-3, §16-9-2, §16-9-3, §16-9G-1, §16-22-2, §16-22-3, §16-32-11, §16-38-5, §16-40-2, §16-40-4, §16-40-5, §16-40-6, §16-40-7, §16-40-8, §16-41-3, §16-44-2, §16-56-4, §16A-11-1, §16A-11-2, §22B-2-1, §22C-1-4, and §61-12-3 of the Code of West Virginia, 1931, as amended, relating to the clarification of the powers, duties, and responsibilities of the Secretary of the Department of Health, the Commissioner of the Bureau for Public Health, and the State Health Officer.

*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 14. WEST VIRGINIA COMMISSION FOR THE DEAF AND HARD OF  
HEARING.**

**§5-14-3. Continuation of commission; membership.**

(a) The West Virginia Commission for the Deaf and Hard of Hearing is continued within the Department of Health consisting of 17 persons, eight of whom shall serve ex officio. The remaining members are appointed by the Governor by and with the advice and consent of the Senate. The commission shall meet no less than four times annually. All meetings and activities held by the commission shall be attended by at least two qualified interpreters who shall be hired at the

commission's expense or provided free of charge by agencies, organizations or individuals willing to volunteer qualified interpreters.

(b) The members are: The Secretary of the Department of Health, or his or her designee; the Commissioner of the Division of Labor, or his or her designee; the ~~Commissioner of the Bureau for Public Health~~ state health officer, or his or her designee; the State Superintendent of Schools, or his or her designee; the Director of the Division of Rehabilitation Services, or his or her designee; the Chairman of the Advisory Council for the Education of Exceptional Children, or his or her designee; and the Superintendent of the West Virginia School for the Deaf and Blind, or his or her designee, all of whom serve ex officio with full voting privileges.

(c) The Governor shall appoint nine persons, at least five of whom are deaf or hard of hearing, one of whom is the parent of a deaf child, one of whom is a certified teacher of the deaf or hard of hearing, one audiologist and one otolaryngologist. Of the five deaf people, at least three shall be selected from a list of five people recommended by the Board of the West Virginia Association of the Deaf.

## CHAPTER 15. PUBLIC SAFETY.

### ARTICLE 5A. WEST VIRGINIA EMERGENCY RESPONSE AND COMMUNITY RIGHT- TO-KNOW ACT.

#### §15-5A-4. State emergency response commission ~~created~~ continued; composition and organization, qualifications, terms, removal, compensation, meetings.

(a) There is hereby ~~created~~ continued the state emergency response commission.

(b) The state emergency response commission shall consist of 11 members, including the director of the division of environmental protection, the ~~commissioner of the division of public health~~ state health officer, the chief of the office of air quality of the division of environmental protection, the director of the office of emergency services, the superintendent of the division of public safety, the commissioner of the division of highways; one designee of the public service

7 commission and one designee of the state fire marshal, all of whom are members ex officio. A  
8 representative from the chemical industry, a representative of a municipal or volunteer fire  
9 department and a representative of the public who is knowledgeable in the area of emergency  
10 response shall be appointed by the Governor as public members of the state emergency response  
11 commission. The director of the office of emergency services serves as the chair of the  
12 commission and may cast a vote only in the event of a tie vote. Members serve without  
13 compensation, but shall be reimbursed for all reasonable and necessary expenses actually  
14 incurred in the performance of their duties under this article. The initial public members appointed  
15 by the Governor shall serve for a term ending on the first day of July 1991. A successor to a public  
16 member of the commission shall be appointed in the same manner as the original public members  
17 and has a term of office expiring two years from the date of the expiration of the term for which his  
18 or her predecessor was appointed. In cases of any vacancy among the public members, such  
19 vacancy shall be filled by appointment by the Governor. Any member appointed to fill a vacancy on  
20 the commission occurring prior to the expiration of the term for which his or her predecessor was  
21 appointed shall be appointed for the remainder of such term. Members appointed by the Governor  
22 may be removed by the Governor in case of incompetency, neglect of duty, gross immorality or  
23 malfeasance in office.

24 (c) The commission shall elect from its membership a vice chair and appoint a secretary.  
25 The secretary need not be a member of the commission. The vice chair shall preside over the  
26 meetings and hearings of the commission in the absence of the chair. The commission may  
27 appoint and employ such personnel as may be required, whose duties shall be defined by the  
28 commission and whose compensation, to be fixed by the commission, shall be paid out of the state  
29 treasury, upon the requisition of the commission, from moneys appropriated for such purposes.

30 (d) The commission may establish procedural rules in accordance with chapter twenty-  
31 nine-a of the code for the regulation of its affairs and the conduct of all proceedings before it. All  
32 proceedings of the commission shall be entered in a permanently bound record book, properly

33 indexed, and the same shall be carefully preserved and attested by the secretary of the  
34 commission. The commission shall meet at such times and places as may be agreed upon by the  
35 commissioners, or upon the call of the chairman of the commission or any two members of the  
36 commission, all of which meetings shall be general meetings for the consideration of any and all  
37 matters which may properly come before the commission. A majority of the commission  
38 constitutes a quorum for the transaction of business.

## **CHAPTER 16. PUBLIC HEALTH.**

### **ARTICLE 1. STATE PUBLIC HEALTH SYSTEM.**

#### **§16-1-5. State health officer; Commissioner of the Bureau for Public Health; appointment; qualifications; term.**

1 The Commissioner of the Bureau for Public Health may be designated the state health  
2 officer. The commissioner and the state health officer shall be appointed by the secretary. ~~The~~  
3 ~~commissioner shall be a person holding a doctorate degree in public health administration unless~~  
4 ~~designated the state health officer.~~ The state health officer shall be licensed under the laws of this  
5 state to practice medicine. The commissioner and the state health officer serve at the will and  
6 pleasure of the secretary and shall not be actively engaged or employed in any other business,  
7 vocation, or employment, serving full-time in the duties of the office as prescribed by this article.

#### **§16-1-6. Commissioner of the Bureau for Public Health; state health officer; powers and duties.**

1 (a) The commissioner is the chief executive, administrative and fiscal officer of the Bureau  
2 for Public Health and has the following powers and duties:

3 (1) To supervise and direct the fiscal and administrative matters of the bureau, and in that  
4 regard and in accordance with law, employ, fix the compensation of, and discharge all persons  
5 necessary for the proper execution of the public health laws of this state and the efficient and  
6 proper discharge of the duties imposed upon, and execution of powers vested in the commissioner

by law and as directed by the secretary;

(2) To delegate to any appointee, assistant, or employee any and all powers and duties vested in the commissioner, including, but not limited to, the power to execute contracts and agreements in the name of the bureau: *Provided*, That the commissioner is responsible for the acts of his or her appointees, assistants, and employees;

(3) To accept and use for the benefit of the health of the people of this state, any gift or devise of any property or thing which is lawfully given: *Provided*, That if any gift is for a specific purpose shall be used as specified. Any profit which may arise from any gift or devise of any property or thing shall be deposited in a special revenue fund with the State Treasurer and shall be used only as specified by the donor or donors;

(4) To expend, for the purpose of performing the public health duties imposed on the bureau, or authorized by law, any sums appropriated by the Legislature. The commissioner may make advance payments to public and nonprofit health services providers when the commissioner determines it is necessary for the initiation or continuation of public health services. The advance payments, being in derogation of the principle of payment only after receipt of goods or services, shall be authorized only after serious consideration by the commissioner of the necessity of the advance payments and shall be for a period no greater than 90 days in advance of rendition of service or receipt of goods and continuation of health services;

(5) To establish and maintain a state hygienic laboratory as an aid in performing the duties imposed upon the state health officer, and to employ employees that may be necessary to properly operate the laboratory. The commissioner, upon the recommendation of the state health officer, may establish branches of the state laboratory within the state that are necessary in the interest of the public health; and

(6) To exercise all other powers delegated to the commissioner by the secretary or by this chapter or otherwise in this code, and to pursue all other activities necessary and incident to the authority and area of concern entrusted to the bureau or the commissioner.

(b) The state health officer is the chief medical officer of the state and has the following powers and duties:

(1) To supervise and direct the fiscal and administrative matters delegated to the state health officer;

(2) To enforce all laws of this state concerning public health.

(3) To investigate the cause of disease, especially of epidemics and endemic conditions, and the means of prevention, suppression, or control of those conditions; the source of sickness and mortality, the effects of environment, employment, habits, and circumstances of life on the public health.

(4) To inspect and examine food, drink, and drugs offered for sale or public consumption in the manner the ~~commissioner~~ state health officer considers necessary to protect the public health and shall report all violations of laws and rules relating to the law to the prosecuting attorney of the county in which the violations occur;

(5) To make complaint or cause proceedings to be instituted against any person, corporation, or other entity for the violation of any public health law before any court or agency, without being required to give security for costs; the action may be taken without the sanction of the prosecuting attorney of the county in which the proceedings are instituted or to which the proceedings relate;

(6) To promote the provision of essential public health services to citizens of this state;

(7) To monitor the operation and coordination of the local boards of health and local health officers;

(8) To develop and maintain a state plan of operation that sets forth the needs of the state in the areas of public health; goals and objectives for meeting those needs; methods for achieving the stated goals and objectives; and needed personnel, funds, and authority for achieving the goals and objectives;

(9) To collect data as may be required to foster knowledge on the citizenry's health status,

the health system, and costs of health care;

(10) To delegate to any appointee, assistant, or employee any and all powers and duties vested in the ~~commissioner, state health officer~~ including, but not limited to, ~~the power to execute contracts and agreements in the name of the bureau:~~ *Provided, That the commissioner state health officer is responsible for the acts of his or her appointees, assistants, and employees;*

(11) To transfer any patient or resident between hospitals and facilities and, by agreement with the state Commissioner of Corrections and Rehabilitation and otherwise in accord with law, accept a transfer of a resident of a facility under the jurisdiction of the state Commissioner of Corrections and Rehabilitation;

(12) To make periodic reports to the Governor and to the Legislature relative to specific subject areas of public health, or other matters affecting the public health of the people of the state;

~~(13) To accept and use for the benefit of the health of the people of this state, any gift or devise of any property or thing which is lawfully given: Provided, That if any gift is for a specific purpose shall be used as specified. Any profit which may arise from any gift or devise of any property or thing shall be deposited in a special revenue fund with the State Treasurer and shall be used only as specified by the donor or donors;~~

~~(14)~~ (13) To inspect and enforce rules to control the sanitary conditions of and license all institutions and health facilities as set forth in this chapter, including, but not limited to, schools, whether public or private, public conveyances, dairies, slaughterhouses, workshops, factories, labor camps, places of entertainment, hotels, motels, tourist camps, all other places open to the general public and inviting public patronage or public assembly, or tendering to the public any item for human consumption and places where trades or industries are conducted;

~~(15)~~ (14) To make inspections, conduct hearings, and to enforce the legislative rules concerning occupational and industrial health hazards, the sanitary condition of streams, sources of water supply, sewerage facilities, and plumbing systems, and the qualifications of personnel connected with the supplies, facilities or systems without regard to whether they are publicly or

85 privately owned; and to make inspections, conduct hearings and enforce the legislative rules  
86 concerning the design of chlorination and filtration facilities and swimming pools;

87 ~~(16)~~ (15) To provide in accordance with this subdivision for a program for the care,  
88 treatment, and rehabilitation of the parents of sudden infant death syndrome victims; for the  
89 training and employment of personnel to provide the requisite rehabilitation of parents of sudden  
90 infant death syndrome victims; for the education of the public concerning sudden infant death  
91 syndrome; for the education of police, employees, and volunteers of all emergency services  
92 concerning sudden infant death syndrome; and for requesting appropriation of funds in both  
93 federal and state budgets to fund the sudden infant death syndrome program; and

94 ~~(17) To establish and maintain a state hygienic laboratory as an aid in performing the duties~~  
95 ~~imposed upon the commissioner, and to employ employees that may be necessary to properly~~  
96 ~~operate the laboratory. The commissioner may establish branches of the state laboratory within~~  
97 ~~the state that are necessary in the interest of the public health;~~

98 ~~(18) To expend, for the purpose of performing the public health duties imposed on the~~  
99 ~~bureau, or authorized by law, any sums appropriated by the Legislature. The commissioner may~~  
100 ~~make advance payments to public and nonprofit health services providers when the commissioner~~  
101 ~~determines it is necessary for the initiation or continuation of public health services. The advance~~  
102 ~~payments, being in derogation of the principle of payment only after receipt of goods or services,~~  
103 ~~shall be authorized only after serious consideration by the commissioner of the necessity of the~~  
104 ~~advance payments and shall be for a period no greater than 90 days in advance of rendition of~~  
105 ~~service or receipt of goods and continuation of health services; and~~

106 ~~(19)~~ (16) To exercise all other powers delegated to the commissioner state health officer by  
107 the secretary or by this chapter or otherwise in this code, to enforce all health laws, and to pursue  
108 all other activities necessary and incident to the authority and area of concern entrusted to the  
109 bureau or the commissioner state health officer.

110 (b) (c) The commissioner state health officer shall ~~establish~~ maintain within the Bureau for

- 111 Public Health, a Center for Local Public Health. The center shall:
- 112 (1) Enhance the quality and availability of essential public health services throughout the
- 113 state provided by local boards of health;
- 114 (2) Provide technical assistance and consultation to a local board of health agency;
- 115 (3) Allocate and distribute funding based upon performance based standards;
- 116 (4) Provide technical assistance to the local public health workforce;
- 117 (5) Facilitate bi-directional communication;
- 118 (6) Establish a uniform state-wide computer system for the reporting of public health data;
- 119 (7) Inventory the services provided by a local boards of health;
- 120 (8) Support sharing of services between local boards of health;
- 121 (9) Create a performance-based evaluation system based on standards established by
- 122 legislative rule;
- 123 (10) Provide a quarterly training to ensure consistency in the application of state laws,
- 124 legislative rules, and local health department rules; and
- 125 (11) Enforce compliance with performance standards.

**§16-1-7. ~~Commissioner~~ State health officer serving on advisory boards.**

- 1 (a) The ~~commissioner~~ state health officer serves on the following advisory councils,
- 2 boards, and commissions:
- 3 (1) The Advisory Committee on Cancer (Cancer Registry);
- 4 (2) The Air Quality Board;
- 5 (3) The Appalachian States Low-Level Radioactive Waste Commission;
- 6 (4) The Child Fatality Review Team;
- 7 (5) The Childhood Immunization Advisory Committee;
- 8 (6) The Early Intervention Coordinating Council;
- 9 (7) The Interagency Council on Osteoporosis;
- 10 (8) The Sewage Advisory Board;

- 11 (9) The State Emergency Response Commission;  
12 (10) The State Groundwater Coordinating Committee;  
13 (11) The Water Development Authority;  
14 (12) The West Virginia Commission for the Deaf and Hard of Hearing;  
15 (13) The West Virginia Infrastructure and Jobs Development Council; and  
16 (14) Any other advisory council, board, or commission as assigned by the secretary except  
17 for business, professional, or occupational licensing boards.

18 (b) The commissioner or state health officer may designate in writing a representative to  
19 serve in his or her stead at the meetings and in the duties of all boards and commissions on which  
20 the commissioner or state health officer is designated as an ex officio member. The appropriately  
21 designated representative acts with the full authority of the commissioner or state health officer in  
22 voting, and other business that is properly the duty of any board or commission. The  
23 representative serves at the commissioner's or state health officer's will and pleasure.

**§16-1-8. Inclusion of Alzheimer's disease in existing public health programs.**

1 (a) ~~The Commissioner of the Bureau for Public Health~~ state health officer, in partnership  
2 with the Bureau for Medical Services and the Alzheimer's Association, shall, in ~~it's~~ the Bureau for  
3 Public Health's existing public health programs and services, educate health care professionals on  
4 the importance of early detection and timely diagnosis of cognitive impairment and dementia, use  
5 of validated cognitive assessment tools in the delivery of the Medicare Annual Wellness Visit,  
6 provision of effective care planning and care management at all stages of dementia, and delivery  
7 of counseling and referral.

8 (b) The Bureau for Public Health, in partnership with the Bureau of Senior Services, shall,  
9 in its existing, relevant public health outreach programs, incorporate information to increase  
10 understanding and awareness of Alzheimer's disease and other dementias, including information  
11 about the early signs of Alzheimer's disease and other dementias that should be discussed with  
12 health care professionals and the value of early detection and diagnosis, particularly among

persons in diverse communities who are at greater risk of developing dementia.

(c) Any public awareness and/or educational outreach programs shall provide uniform, consistent guidance in nonclinical terms, with an emphasis on cultural relevancy and health literacy.

**§16-1-9. Duties and powers of the commissioner state health officer; supervision over local sanitation; violations; jurisdiction; penalties.**

No person, firm, company, corporation, institution or association, whether public or private, county or municipal, may install or establish any system or method of drainage, water supply, or sewage or excreta disposal without first obtaining a written permit to install or establish the system or method from the ~~commissioner~~ state health officer or his or her authorized representative. All systems or methods shall be installed or established in accordance with plans, specifications and instructions issued by the ~~commissioner~~ state health officer or which have been approved in writing by the ~~commissioner~~ state health officer or his or her authorized representative.

Whenever the ~~commissioner~~ state health officer or his or her authorized representative finds, upon investigation, that any system or method of drainage, water supply, or sewage or excreta disposal, whether publicly or privately owned, has not been installed in accordance with plans, specifications and instructions issued by the ~~commissioner~~ state health officer or approved in writing by the ~~commissioner~~ state health officer or his or her authorized representative, the ~~commissioner~~ state health officer or his or her authorized representative shall issue an order requiring the owner of the system or method to make alterations necessary to correct the improper condition. The alterations shall be made within a reasonable time, which shall not exceed 30 days, unless a time extension is authorized by the ~~commissioner~~ state health officer or his or her authorized representative.

The ~~commissioner~~ state health officer or his or her designee may determine, upon conducting a risk assessment, that any water supply system must be equipped with a backflow prevention assembly to protect the health and sanitation of water, whether publicly or privately

owned: *Provided*, That water supply systems shall not require a backflow prevention assembly unless any of the following are met:

(i) It cross-connects with a sprinkler or fire suppression system;

(ii) It cross-connects with an active auxiliary water source or water well;

(iii) It cross-connects with any fluid storage tank, tub, pool or cistern 85 gallons or larger with a public water inlet that can be below the water level;

(iv) It cross-connects with a boiler system;

(v) It cross-connects with any land irrigation system; or

(vi) The property serviced by the public water supply is a funeral home or mortuary, restaurant, dry cleaner, medical facility, beauty and nail salon, car wash, multi-tenant retail space, commercial building three stories or taller, or commercial space with a dedicated fire service line/sprinkler system, industrial facility, salvage and/or wastewater facility, food processing facility, recycling facility where cross-connected to the public water supply, correctional facility, or any other customer using chemicals harmful to human health that are cross-connected to the public water supply.

Prior to requiring installation of a backflow prevention assembly to a water supply system, a risk assessment is required and may be performed based upon the known type of water activity and usage involving the use of the public water supply, by written responses to a written questionnaire presented by the ~~commissioner~~ state health officer or his or her designee to the owner or occupier of the water use facility, building or dwelling, or by personal inspection made by the ~~commissioner~~ state health officer or his or her designee if the owner or occupier of the premises allows entrance.

*Provided, however*, That any customer deemed required to install a backflow prevention assembly may appeal the determination and seek a waiver by the water utility, and if not satisfied, may appeal further to the Public Service Commission pursuant to § 24-1-1 et seq., § 24-2-1 et seq. and § 29A-1-1 et seq. of this code: And *Provided, however*, That the customer shall have the

freedom to choose the brand of any required backflow prevention assembly that otherwise meets the required specifications of the ~~commissioner~~ state health officer or his or her designee.

The presence of sewage or excreta being disposed of in a manner not approved by the ~~commissioner~~ state health officer or his or her authorized representative constitutes prima facie evidence of the existence of a condition endangering public health.

The personnel of the Bureau for Public Health shall be available to consult and advise with any person, firm, company, corporation, institution or association, whether publicly or privately owned, county or municipal, or public service authority, as to the most appropriate design, method of operation or alteration of any system or method.

Any person, firm, company, corporation, institution or association, whether public or private, county or municipal, violating any provision of this section is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than \$50 nor more than \$500. Any continuing failure or refusal of the convicted person, firm, company, corporation, institution or association, whether public or private, county or municipal, to make the alterations necessary to protect the public health required by the ~~commissioner~~ state health officer or his or her authorized representative is a separate, distinct and additional offense for each 24 hour period of failure or refusal, and, upon conviction thereof, the violator shall be fined not less than \$50 nor more than \$500 for each conviction: *Provided*, That none of the provisions contained in this section apply to those commercial or industrial wastes that are subject to the regulatory control of the West Virginia Department of Environmental Protection.

Magistrates have concurrent jurisdiction with the circuit courts of this state for violations of any provisions of this section.

**§16-1-9a. Regulation of public water systems.**

(a) The ~~commissioner~~ state health officer shall regulate public water systems as prescribed in this section.

(b) The commissioner, in consultation with the state health officer, 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~~ state health officer determines is necessary to be equipped with a backflow prevention assembly, all maintenance activities must be documented and provided to the ~~commissioner~~ state health officer upon request; and

(8) Any other requirement the ~~commissioner~~ state health officer finds necessary to

effectuate the provisions of this article.

(c) The ~~commissioner~~ state health officer, 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~~ state health officer, 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~~ state health officer 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~~ state health officer, 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

56 answering point.

57 (h) By January 1, 2022, a public water system shall make available to interested customers  
58 boiled water advisories promptly through a text or a voice alert mass notification system.

**§16-1-9c. Required update or completion of source water protection plans.**

1 (a) An existing public water utility that draws and treats water from a surface water supply  
2 source or a surface water influenced groundwater supply source shall submit to the ~~commissioner~~  
3 state health officer an updated or completed source water protection plan for each of its public  
4 water system plants with such intakes to protect its public water supplies from contamination.  
5 Every effort shall be made to inform and engage the public, local governments, local emergency  
6 planners, local health departments, and affected residents at all levels of the development of the  
7 protection plan.

8 (b) The completed or updated plan for each affected plant, at a minimum, shall include the  
9 following:

10 (1) A contingency plan that documents each public water utility's planned response to  
11 contamination of its public surface water supply source or its public surface water influenced  
12 groundwater supply source;

13 (2) An examination and analysis of the public water system's ability to isolate or divert  
14 contaminated waters from its surface water intake or groundwater supply and the amount of raw  
15 water storage capacity for the public water system's plant;

16 (3) An examination and analysis of the public water system's existing ability to switch to an  
17 alternative water source or intake in the event of contamination of its primary water source;

18 (4) An analysis and examination of the public water system's existing ability to close its  
19 water intake in the event the system is advised that its primary water source has become  
20 contaminated due to a spill or release into a stream and the duration of time it can keep that water  
21 intake closed without creating a public health emergency;

22 (5) The following operational information for each plant receiving water supplies from a

23 surface water source:

24 (A) The average number of hours the plant operates each day, and the maximum and  
25 minimum number of hours of operation in one day at that plant during the past year; and

26 (B) The average quantities of water treated and produced by the plant per day, and the  
27 maximum and minimum quantities of water treated and produced at that plant in one day during  
28 the past year;

29 (6) An analysis and examination of the public water system's existing available storage  
30 capacity on its system, how its available storage capacity compares to the public water system's  
31 normal daily usage and whether the public water system's existing available storage capacity can  
32 be effectively utilized to minimize the threat of contamination to its system;

33 (7) The calculated level of unaccounted for water experienced by the public water system  
34 for each surface water intake, determined by comparing the measured quantities of water which  
35 are actually received and used by customers served by that water plant to the total quantities of  
36 water treated at the water plant over the past year. If the calculated ratio of those two figures is less  
37 than 85 percent, the public water system is to describe all of the measures it is actively taking to  
38 reduce the level of water loss experienced on its system;

39 (8) A list of the potential sources of significant contamination contained within the zone of  
40 critical concern as provided by the Department of Environmental Protection, the Bureau for Public  
41 Health and the Division of Homeland Security and Emergency Management. The exact location of  
42 the contaminants within the zone of critical concern is not subject to public disclosure in response  
43 to a Freedom of Information Act request under § 29B-1-1 *et seq.* of this code. However, the  
44 location, characteristics and approximate quantities of potential sources of significant  
45 contamination within the zone of critical concern shall be made known to one or more designees of  
46 the public water utility, and shall be maintained in a confidential manner by the public water utility.  
47 Disclosure is permitted on any location, characteristics and approximate quantities of potential  
48 sources of significant contamination within the zone of critical concern to the extent they are in the

public domain through a state or federal agency. In the event of a chemical spill, release or related emergency, information pertaining to any spill or release of contaminant shall be immediately disseminated to any emergency responders responding to the site of a spill or release, and the general public shall be promptly notified in the event of a chemical spill, release or related emergency;

(9) If the public water utility's water supply plant is served by a single-source intake to a surface water source of supply or a surface water influenced source of supply, the submitted plan shall also include an examination and analysis of the technical and economic feasibility of each of the following options to provide continued safe and reliable public water service in the event its primary source of supply is detrimentally affected by contamination, release, spill event or other reason:

(A) Constructing or establishing a secondary or backup intake which would draw water supplies from a substantially different location or water source;

(B) Constructing additional raw water storage capacity or treated water storage capacity or both, to provide at least two days of system storage, based on the plant's maximum level of production experienced within the past year;

(C) Creating or constructing interconnections between the public water system with other plants on the public water utility system or another public water system, to allow the public water utility to receive its water from a different source of supply during a period its primary water supply becomes unavailable or unreliable due to contamination, release, spill event or other circumstance;

(D) Any other alternative which is available to the public water utility to secure safe and reliable alternative supplies during a period its primary source of supply is unavailable or negatively impacted for an extended period; and

(E) If one or more alternatives set forth in paragraphs (A) through (D), inclusive, of this subdivision is determined to be technologically or economically feasible, the public water utility

75 shall submit an analysis of the comparative costs, risks and benefits of implementing each of the  
76 described alternatives;

77 (10) A management plan that identifies specific activities that will be pursued by the public  
78 water utility, in cooperation and in concert with the Bureau for Public Health, local health  
79 departments, local emergency responders, local emergency planning committee, and other state,  
80 county, or local agencies and organizations to protect its source water supply from contamination,  
81 including, but not limited to, notification to and coordination with state and local government  
82 agencies whenever the use of its water supply is inadvisable or impaired, to conduct periodic  
83 surveys of the system, the adoption of best management practices, the purchase of property or  
84 development rights, conducting public education or the adoption of other management techniques  
85 recommended by the ~~commissioner~~ state health officer or included in the source water protection  
86 plan;

87 (11) A communications plan that documents the manner in which the public water utility,  
88 working in concert with state and local emergency response agencies, shall notify the local health  
89 agencies and the public of the initial spill or contamination event and provide updated information  
90 related to any contamination or impairment of the source water supply or the system's drinking  
91 water supply, with an initial notification to the public to occur, in any event, no later than 30 minutes  
92 after the public water system becomes aware of the spill, release or potential contamination of the  
93 public water system;

94 (12) A complete and comprehensive list of the potential sources of significant  
95 contamination contained within the zone of critical concern, based upon information which is  
96 directly provided or can otherwise be requested and obtained from the Department of  
97 Environmental Protection, the Bureau for Public Health, the Division of Homeland Security, and  
98 Emergency Management and other resources; and

99 (13) An examination of the technical and economic feasibility of implementing an early  
100 warning monitoring system.

(c) A public water utility's public water system with a primary surface water source of supply or a surface water influenced groundwater source of supply shall submit, prior to the commencement of its operations, a source water protection plan satisfying the requirements of subsection (b) of this section.

(d) The ~~commissioner~~ state health officer shall review a plan submitted pursuant to this section and provide a copy to the Secretary of the Department of Environmental Protection. Thereafter, within 180 days of receiving a plan for approval, the ~~commissioner~~ state health officer may approve, reject, or modify the plan as may be necessary and reasonable to satisfy the purposes of this article. The ~~commissioner~~ state health officer shall consult with the local public health officer and conduct at least one public hearing when reviewing the plan. Failure by a public water system to comply with a plan approved pursuant to this section is a violation of this article.

(e) The ~~commissioner~~ state health officer may request a public water utility to conduct one or more studies to determine the actual risk and consequences related to any potential source of significant contamination identified by the plan, or as otherwise made known to the state health officer.

(f) Any public water utility required to file a complete or updated plan in accordance with the provisions of this section shall submit an updated source water protection plan at least every three years or when there is a substantial change in the potential sources of significant contamination within the identified zone of critical concern.

(g) The ~~commissioner's~~ state health officer's authority in reviewing and monitoring compliance with a source water protection plan may be transferred by the bureau to a nationally accredited local board of public health.

(h) The secretary is authorized to propose legislative rules for promulgation pursuant to §29A-3-1 *et seq.* of this code to implement the provisions of this section. The rules shall include a staggered schedule by hydrologic regions for the submission of source water protection plans by public water utilities. The first report submitted pursuant to a staggered schedule is exempt from

127 the reporting interval set forth in §16-1-9c(f) of this code. Subsequent reports shall be submitted  
128 pursuant to the provisions of §16-1-9c(f) of this code.

**§16-1-15. Investigations and hearings; power to administer oaths, subpoena witnesses, etc.; use of information and material acquired.**

1 (a) The secretary, the commissioner, the state health officer, any officer or employee of the  
2 department designated by the secretary, or any other individual designated by the secretary may  
3 hold investigations, inquiries and hearings concerning matters covered by the laws of this state  
4 pertaining to public health and within the authority and the rules and orders of the secretary.  
5 Hearings shall be open to the public and shall be held upon any call or notice considered advisable  
6 by the secretary.

7 (b) Each individual designated to hold any inquiry, investigation or hearing may administer  
8 oaths and affirmations, certify to all official acts, issue subpoenas and order the attendance and  
9 testimony of witnesses in the production of papers, books and documents. In case of the failure of  
10 any person to comply with any subpoena or order issued under the authority of this section, the  
11 secretary or his or her authorized representative may invoke the aid of any circuit court of this  
12 state. The court may thereupon order that person to comply with the requirements of the subpoena  
13 order or to give evidence as to the matter in question. Failure to obey the order of the court may be  
14 punished by the court as a contempt of court.

15 (c) Subject to the provisions of subsections (a) and (b) of this section, the secretary may in  
16 his or her discretion make available to appropriate federal, state and municipal agencies  
17 information and material developed in the course of its investigation and hearings: *Provided*, That  
18 information obtained from studies or from any investigation made or hearing held pursuant to the  
19 provisions of this article may not be admissible in evidence in any action at law to recover  
20 damages for personal injury or in any action under the workers' compensation act, but the  
21 information, if available, shall be furnished upon request to the executive director of the workers'  
22 compensation commission for the sole purpose of adjusting claims presented to the commissions.

**§16-1-17. Penalties for interfering with examiners, inspectors or other authorized representatives of the commissioner state health officer in the performance of duty.**

1 The commissioner may employ such administrative employees, inspectors, examiners or  
2 other persons as may be necessary to properly carry out the provisions of the public health laws of  
3 this state. The inspectors, examiners and other employees shall act as the ~~commission's~~  
4 commissioner's and state health officer's representatives and, under ~~his or her~~ their direction, shall  
5 enforce the provisions of the public health laws and all duly promulgated public health rules and in  
6 the discharge of official duties, shall have the right of entry into any institution or school, whether  
7 public or private, public conveyances, dairy, creamery, slaughterhouse, workshop, factory, labor  
8 camp, place of entertainment, hotel, tourist camp, all other places open to the general public and  
9 inviting public patronage or public assembly, or tendering to the public any item for human  
10 consumption, and places where hazardous trades or industries are conducted.

11 Any person interfering with or attempting to interfere with any inspector, examiner, or other  
12 duly authorized employee of the ~~commissioner~~ state health officer in the discharge of his or her  
13 duties under this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not  
14 less than \$50 nor more than \$500.

**ARTICLE 2. LOCAL BOARDS OF HEALTH.**

**§16-2-2. Definitions.**

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

2 "Appointing authority" means the county commission or municipality, or combination  
3 thereof, that authorized the creation or combination of the local board of health, in whatever form it  
4 presently exists;

5 "Basic public health services" means those services that are necessary to protect the  
6 health of the public and that a local board of health must provide;

7 "Bureau" means the Bureau for Public Health;

8 "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~~ may be the state health officer;

"Communicable and reportable disease prevention and control" means disease surveillance, case investigation and follow-up, outbreak investigation, response to epidemics, and prevention and control of communicable and reportable diseases;

"Community health promotion" mean 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 Department of Health;

"Enforcement activity" means the implementation or enforcement of applicable state rules, local rules, and local health department rules;

"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;

"Environmental health protection" means 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;

"Guidance" means providing advice to a person, the public, a business, school board, or governmental entity regarding a public health issue or matter. Guidance is not a health order;

"Health order" means an order issued by the local health officer or local health board to protect the public health of the citizens by directing an individual or a discreet group of individuals to take a specific action to protect the health of the public or stop the spread of a communicable disease;

"Imminent public health emergency" means any immediate acute threat, hazard, or danger to the health of the population of the jurisdiction, whether specific or general, whether or not officially declared;

"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 department rule" means a rule issued by the local board of health that has been approved by the appointing authority or was adopted prior to March 4, 2021, or a rule issued by the local board of health that may immediately go into effect because of an imminent public health emergency under §16-2-1(b)(3)(H) of this code;

"Local health officer" means the individual physician with a current West Virginia license to practice medicine or a licensed advanced practice registered nurse that has the ability to independently practice who supervises and directs the activities of the local health department services, staff and facilities and is appointed by the local board of health;

"Local rule" means an order adopted by a county commission or an ordinance adopted by a city that properly directs the local health department to implement or enforce the order or ordinance;

"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;

"Secretary" means the Secretary of the Department of Health;

"Service area" means the territorial jurisdiction of the local board of health; and

"State Rule" means a state statute, legislative rule promulgated by a state agency, or an order of the secretary relating to public health that is to be enforced by a local health department.

**§16-2-5. Authority to create, establish and maintain combined local boards of health; service area.**

Any two or more counties or any county or counties and one or more municipalities within or partially within the county or counties may combine to create, establish and maintain a combined local board of health organized pursuant to and with the powers and duties prescribed by this article. The plan of combination must be approved by the ~~commissioner~~ state health officer.

The service area of any combined local board of health is the combined territorial limits of the participating municipality or municipalities and county or counties: *Provided*, That if all or a portion of a participating municipality is located in a nonparticipating county, the service area of the combined local board of health is limited to the territorial limits of the municipality and does not extend to or include any area of the nonparticipating county outside of the municipal limits: *Provided, however*, That the service area of a combined local board does not extend to or include

any area within the service area of a municipal board of health maintaining a separate full-time municipal health department under the supervision of a municipal local health officer.

**§16-2-11. Local board of health; powers and duties.**

(a) A 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:

(A) 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;

(B) 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~~ state health officer 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

(C) 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;

(D) Immunizations; and

(E) Threat preparedness.

(2) Provide equipment and facilities for the local health department that are in compliance with federal and state law;

(3) Permit the ~~commissioner~~ state health officer to act by and through it, as needed. The ~~commissioner~~ state health officer 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~~ state health officer may enforce these laws, rules, and orders when, in the opinion of the ~~commissioner~~ state health officer, 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;

(4) 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;

(5) 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;

(6) Participate in audits, be in compliance with tax procedures required by the state, and annually develop a budget for the next fiscal year;

(7) Perform public health duties assigned by order of a county commission or by municipal ordinance consistent with state public health laws;

(8) Enforce the public health laws of this state and any other laws of this state applicable to the local board; and

(9) Create by rule a fee schedule, as approved by the appointing authority, for those

environmental services it provides that are not established by state code.

(b) A local board of health 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 local health department rules consistent with state rules, 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~~ state health officer 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 rules.

(C) When local health department 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 local health department rule or the amendment and the date, time, and place for receipt of public comment.

(D) All local health department rules shall be approved, disapproved, or amended and

76 approved by the county commission or appointing authority within 30 days of approval from the  
77 local board of health, and any local health department rule on which the appointing authority has  
78 taken no action within 30 days shall be void: *Provided*, That a local health department rule issued  
79 in response to an imminent public health emergency under the provisions of paragraph (H) of this  
80 subdivision may have immediate force and effect subject to the limitations set forth therein.

81 (E) All local health department rules of a combined local board of health shall be approved,  
82 disapproved, or amended and approved by each appointing authority within 30 days of approval  
83 from the combined local board of health. If one appointing authority approves and another other  
84 does not approve a local health department rule from a combined local board health department,  
85 the local health department rule is only in effect in the jurisdiction of the appointing authority which  
86 approved the local health department rule: *Provided*, That a local health department rule issued in  
87 response to an imminent public health emergency under the provisions of paragraph (H) of this  
88 subdivision may have immediate force and effect subject to the limitations set forth therein.

89 (F) An approved local health department rule shall be filed with the clerk of the county  
90 commission or the clerk or the recorder of the municipality, or both, and shall be kept by the clerk or  
91 recording officer in a separate book as public records.

92 (G) A local health department rule currently in effect on March 4, 2021, is not subject to  
93 approval, unless amended, from the county commission or appointing authority.

94 (H) If there is an imminent public health emergency, approval of the county commission or  
95 appointing authority is not necessary before a local health department rule goes into effect but  
96 shall be approved or disapproved by the county commission or appointing authority within 30 days  
97 after the local health department rules are effective, and any rule on which the appointing authority  
98 has taken no action within 30 days shall be void;

99 (4) Accept, receive, and receipt for money or property from any federal, state, or local  
100 governmental agency, from any other public source or from any private source, to be used for  
101 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~~ state health officer. 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~~ state health officer shall designate one as the regular inspection agency;

(6) 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.

**§16-2-12. Local health officer; term of appointment; qualifications; reappointment; compensation; and removal.**

A local board of health shall appoint a full-time or part-time local health officer. The local health officer shall be a physician or a licensed advanced practice registered nurse with the ability to practice independently currently licensed in this state and knowledgeable in the science of public health. A local health officer serves at the will and pleasure of the local board for a term of one year and is eligible for reappointment at compensation determined by the local board of health.

A local health officer may be removed from office by the commissioner, upon the recommendation of the state health officer, if the local health officer fails or refuses to carry out the lawful orders or rules of the secretary in the event the ~~commissioner~~ state health officer determines a public health emergency exists or if the local health officer fails or refuses to enforce

public health laws and rules necessary to prevent and control the spread of communicable or reportable diseases dangerous to the public health. Upon removal, a successor local health officer shall immediately be appointed by the board pursuant to the provisions of this article.

**§16-2-13. Local health officer; powers and duties.**

(a) A local health officer serves as the executive officer of the local board and under its supervision, a local health officer shall administer and enforce state rules, local rules, and local health department rules within the local board of health's service area.

(b) A local health officer has the following additional powers which may be delegated with the approval of the board:

(1) To attend local board meetings as a nonvoting member. A local health officer serves as secretary at all board meetings and is responsible for maintaining the board's offices, meeting minutes, and records;

(2) To supervise and direct the activities of the local board's health services, employees and facilities;

(3) To ensure that procedures are established for the receipt of communicable or reportable disease reports and for the transmittal of the reports to the ~~commissioner~~ state health officer;

(4) To perform mandatory HIV tests on persons convicted of sex-related offenses and resident within the service area; and

(5) To determine when sufficient corrections have been made to warrant removal of any restrictions or limitations placed on an individual or entity for public health purposes by an employee of the local board of health.

(c) A local health officer shall perform enforcement activity.

(d) A local health officer may issue guidance.

(e) A local health officer may issue a health order.

**ARTICLE 3. PREVENTION AND CONTROL OF COMMUNICABLE AND OTHER  
INFECTIONS DISEASES.**

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

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

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

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

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

(e) An advisory committee member may not participate in a matter involving specific parties that will have a direct and predicable effect on their financial interest. An effect will not be direct in instances where the chain of causation is attenuated or is contingent upon the occurrence of events that are speculative.

(f) All health insurance policies and prepaid care policies issued in this state which provide coverage for the children of the insured shall provide coverage for child immunization services to include the cost of the vaccine, if incurred by the health care provider, and all costs of administration from birth through age 18 years. These services are exempt from any deductible, per-visit charge and/or copayment provisions which may be in force in these policies or contracts. This section does not exempt other health care services provided at the time of immunization from any deductible or copayment provisions.

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

**ARTICLE 3C. AIDS-RELATED MEDICAL TESTING AND RECORDS  
CONFIDENTIALITY ACT.**

**§16-3C-2. HIV-related testing; methods for obtaining consent; billing patient health care providers.**

(a) HIV-related testing should be recommended by healthcare providers as part of a routine screening for treatable conditions and as part of routine prenatal and perinatal care. A physician, dentist, nurse practitioner, nurse midwife, physician assistant or the ~~commissioner~~ state health officer may also request targeted testing for any of the following:

(1) When there is cause to believe that the test could be positive. Persons who engage in high risk behavior should be encouraged to be screened for HIV at least annually;

(2) When there is cause to believe that the test could provide information important in the care of the patient; or

(3) When there is cause to believe that the results of HIV-testing of samples of blood or body fluids from a source patient could provide information important in the care of medical or emergency responders or other persons identified in rules proposed by the department for approval by the Legislature in accordance with the provisions of article three, chapter twenty-nine-a of this code: *Provided*, That the source patient whose blood or body fluids is being tested pursuant to this section must have come into contact with a medical or emergency responder or other person in such a way that a significant exposure has occurred;

(4) When there is no record of any HIV-related or other sexually transmitted disease testing

17 during pregnancy and the woman presents for labor and delivery.

18 (b) All health care providers, the bureau or a local health department that routinely bill  
19 insurance companies or other third-party providers may bill for HIV-related testing and treatment.

20 (c) A patient consents to HIV-related testing when:

21 (1) The patient is informed either orally or in writing that:

22 (A) HIV-related testing will be performed as part of his or her routine care;

23 (B) HIV-related testing is voluntary; and

24 (C) He or she may decline HIV-related testing (opt-out); or

25 (2) The patient is informed that the patient's general consent for medical care includes  
26 consent for HIV-related testing.

27 (d) A patient who opts-out of HIV-related testing must be informed that HIV-related testing  
28 may be obtained anonymously at a local or county health department.

29 (e) Any person seeking an HIV-related test in a local or county health department or at  
30 other HIV test setting provided by the ~~commissioner~~ state health officer who wishes to remain  
31 anonymous has the right to do so and must be provided written informed consent through the use  
32 of a coded system with no linking of individual identity to the test request or results.

33 (f) County or local health departments that routinely bill insurance companies or other third-  
34 party payers for service may bill for an HIV-related test if the person requesting the test does not  
35 request anonymity. No person may be refused a test at a local health department due to a lack of  
36 insurance or due to a request to remain anonymous.

37 (g) A person may not decline or opt-out of HIV-related testing and the provisions of  
38 subsections (a) and (c) of this section do not apply when:

39 (1) A health care provider or health facility procures, processes, distributes or uses:

40 (A) A human body part, including tissue and blood or blood products, donated for:

41 (i) A purpose specified under the uniform anatomical gift act; or

42 (ii) Transplant recipients;

(B) Semen provided for the purpose of artificial insemination and an HIV-related test is necessary to ensure medical acceptability of a recipient or such gift or semen for the purposes intended;

(2) A person is unable or unwilling to grant or withhold consent as the result of a documented bona fide medical emergency, as determined by a treating physician taking into account the nature and extent of the exposure to another person and the HIV-related test results are necessary for medical diagnostic purposes to provide appropriate emergency care or treatment to a medical or emergency responder, or any other person who has come into contact with a source patient in such a way that a significant exposure necessitates HIV testing or to a source patient who is unable to consent in accordance with rules proposed by the department for approval by the Legislature in accordance with article three, chapter twenty-nine-a of this code: *Provided*, That necessary treatment may not be withheld pending HIV test results: *Provided*, *however*, That all sampling and HIV testing of samples of blood and body fluids, without the opportunity for the source patient or patient's representative to opt-out of the testing, shall be through the use of a pseudonym and in accordance with rules proposed by the department for approval by the Legislature in accordance with article three, chapter twenty-nine-a of this code; or

(3) The performance of an HIV-related test for the purpose of research if the testing is performed in a manner by which the identity of the test subject is not known and may not be retrieved by the researcher.

(h) Mandated testing:

(1) The performance of any HIV-related testing that is or becomes mandatory by court order or other legal process described herein does not require consent of the subject but will include counseling.

(2) The court having jurisdiction of the criminal prosecution shall order that an HIV-related test be performed on any persons charged with any of the following crimes or offenses:

(i) Prostitution; or

(ii) Sexual abuse, sexual assault, incest or sexual molestation.

(3) HIV-related tests performed on persons charged with prostitution, sexual abuse, sexual assault, incest or sexual molestation shall be confidentially administered by a designee of the bureau or the local or county health department having proper jurisdiction. The ~~commissioner~~ state health officer may designate health care providers in regional jail facilities to administer HIV-related tests on such persons if he or she determines it necessary and expedient.

(4) Costs associated with tests performed on persons charged with prostitution, sexual abuse, sexual assault, incest or sexual molestation may be charged to the defendant or juvenile respondent unless a court determines that the person charged with prostitution, sexual abuse, sexual assault, incest or sexual molestation is pecuniary unable to pay.

(A) If a person charged with prostitution, sexual abuse, sexual assault, incest or sexual molestation who is ordered to be tested is unable to pay, the cost of the HIV testing may be borne by the regional jail or other correctional or juvenile facility, the bureau or the local health department.

(B) If persons charged with prostitution, sexual abuse, sexual assault, incest or sexual molestation who is ordered to be tested has health insurance, the local health department or other providers performing the test may bill the health insurance of the person charged with prostitution, sexual abuse, sexual assault, incest or sexual molestation for the cost of the test.

(C) A person charged with prostitution, sexual abuse, sexual assault, incest or sexual molestation ordered to submit to a HIV-related test may not be permitted to remain anonymous and a local health department may administer and bill for the test.

(5) When the ~~Commissioner of the Bureau of Public Health~~ state health officer knows or has reason to believe, because of medical or epidemiological information, that a person, including, but not limited to, a person such as an IV drug abuser, or a person who may have a sexually transmitted disease, or a person who has sexually molested, abused or assaulted another, has HIV infection and is or may be a danger to the public health, he or she may issue an order to:

95 (i) Require a person to be examined and tested to determine whether the person has HIV  
96 infection;

97 (ii) Require a person with HIV infection to report to a qualified physician or health worker for  
98 counseling; and

99 (iii) Direct a person with HIV infection to cease and desist from specified conduct which  
100 endangers the health of others.

101 (6) If any person violates a cease and desist order issued pursuant to this section and, by  
102 virtue of that violation, the person presents a danger to the health of others, the ~~commissioner~~  
103 state health officer shall apply to the circuit court of Kanawha County to enforce the cease and  
104 desist order by imposing any restrictions upon the person that are necessary to prevent the  
105 specific conduct that endangers the health of others.

106 (7) A person convicted of the offenses described in this section shall be required to  
107 undergo HIV-related testing and counseling immediately upon conviction and the court having  
108 jurisdiction of the criminal prosecution may not release the convicted person from custody and  
109 shall revoke any order admitting the defendant to bail until HIV-related testing and counseling  
110 have been performed and the result is known. The HIV-related test result obtained from the  
111 convicted person is to be transmitted to the court and, after the convicted person is sentenced,  
112 made part of the court record. If the convicted person is placed in the custody of the Division of  
113 Corrections, the court shall transmit a copy of the convicted person's HIV-related test results to the  
114 Division of Corrections. The HIV-related test results shall be closed and confidential and disclosed  
115 by the court and the bureau only in accordance with the provisions of section three of this article.

116 (8) The prosecuting attorney shall inform the victim, or parent or guardian of the victim, at  
117 the earliest stage of the proceedings of the availability of voluntary HIV-related testing and  
118 counseling conducted by the bureau and that his or her best health interest would be served by  
119 submitting to HIV-related testing and counseling. HIV-related testing for the victim shall be  
120 administered at his or her request on a confidential basis and shall be administered in accordance

with the Centers for Disease Control and Prevention guidelines of the United States Public Health Service in effect at the time of such request. The victim who obtains an HIV-related test shall be provided with pre and post-test counseling regarding the nature, reliability and significance of the HIV-related test and the confidential nature of the test. HIV-related testing and counseling conducted pursuant to this subsection shall be performed by the designee of the ~~commissioner of the bureau~~ state health officer or by any local or county health department having proper jurisdiction.

(9) If a person receives counseling or is tested under this subsection and is found to be HIV infected and the person is not incarcerated, the person shall be referred by the health care provider performing the counseling or testing for appropriate medical care and support services. The local or county health departments or any other agency under this subsection may not be financially responsible for medical care and support services.

(10) The ~~commissioner of the bureau~~ state health officer or his or her designees may require a person to undergo an HIV or other sexually transmitted disease test if a person was possibly exposed to HIV or other sexually transmitted disease infected blood or other body fluids as a result of receiving or rendering emergency medical aid, providing funeral services or providing law-enforcement services. The ~~commissioner of the bureau~~ state health officer or his or her designees may use the results to determine the appropriate therapy, counseling and psychological support for the exposed person.

(11) If an HIV-related test required on persons convicted of prostitution, sexual abuse, sexual assault, incest or sexual molestation results in a negative reaction, upon motion of the state, the court having jurisdiction over the criminal prosecution may require the subject of the test to submit to further HIV-related tests performed under the direction of the bureau in accordance with the Centers for Disease Control and Prevention guidelines of the United States Public Health Service in effect at the time of the motion of the state.

(12) The costs of mandated testing and counseling provided under this subsection and pre

and postconviction HIV-related testing and counseling provided the victim under the direction of the bureau pursuant to this subsection shall be paid by the by the individual to be tested or counseled or his or her medical insurance provider, if possible.

(13) The court having jurisdiction of the criminal prosecution shall order a person convicted of prostitution, sexual abuse, sexual assault, incest or sexual molestation to pay restitution to the state or the victim for the costs of any HIV-related testing and counseling provided the convicted person and the victim, unless the court has determined the convicted person to be indigent.

(14) Any funds recovered by the state as a result of an award of restitution under this subsection shall be paid into the State Treasury to the credit of a special revenue fund to be known as the HIV-testing Fund which is hereby ~~created~~ continued. The moneys so credited to the fund may be used solely by the bureau for the purposes of facilitating the performance of HIV-related testing and counseling under the provisions of this article.

(i) Nothing in this section is applicable to any insurer regulated under chapter thirty-three of this code: *Provided*, That the commissioner of insurance shall develop standards regarding consent for use by insurers which test for the presence of the HIV antibody.

(j) Whenever consent of the subject to the performance of HIV-related testing is required under this article, any such consent obtained, whether orally or in writing, shall be considered to be a valid and informed consent if it is given after compliance with the provisions of subsection (c) of this section.

#### **§16-3C-8. Administrative implementation.**

(a) The commissioner of the bureau, in consultation with the state health officer, shall immediately implement and enforce the provisions of this article, and shall adopt rules to the extent necessary for further implementation of the article. The rules proposed by the bureau pursuant to this article may include procedures for taking appropriate action with regard to health care facilities or health care providers which violate this article or the rules promulgated hereunder. The provisions of the state administrative procedures act apply to all administrative rules and

7 procedures of the bureau pursuant to this article, except that in case of conflict between the state  
8 administrative procedures act and this article, the provisions of this article shall control.

9 (b) The bureau shall promulgate rules to assure adequate quality control for all laboratories  
10 conducting HIV tests and to provide for a reporting and monitoring system for reporting to the  
11 bureau all positive HIV tests results.

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

### **§16-3D-2. Definitions.**

1 As used in this article:

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

8 (2) "Bureau" means the Bureau for Public Health;

9 (3) "Commissioner" means the Commissioner of the Bureau for Public Health, who is may  
10 be the state health officer;

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

13 (5) "Local health department" means the staff of the local board of health; and

14 (6) "Local health officer" means the individual physician with a current West Virginia  
15 license to practice medicine who supervises and directs the activities of the local health  
16 department services, staff and facilities and is appointed by the local board of health with approval  
17 by the commissioner upon the recommendation of the state health officer.

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

**§16-3D-3. Compulsory testing for tuberculosis of school children and school personnel; ~~commissioner~~ state health officer to approve the test; X rays required for reactors; suspension from school or employment for pupils and personnel found to have tuberculosis.**

(a) Pupils found or suspected to have active tuberculosis shall be temporarily removed from school while their case is reviewed and evaluated by their personal physician and the local health officer. Pupils shall return to school when their personal physician and the local health officer, in consultation with the ~~commissioner~~ state health officer, indicate that it is safe and appropriate for them to return.

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

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

**§16-3D-4. Report of cases, admissions, registration of patients.**

(a) Every physician practicing in this state, every public health officer in the state, and every chief medical officer having charge of any hospital or clinic or other similar public or private institution in the state shall report electronically or in writing to the local health department in the

4 patient's county of residence all information required by the ~~Commissioner~~ state health officer for  
5 every person having tuberculosis who comes under his or her observation or care. Such report  
6 shall be made within 24 hours after diagnosis.

7 (b) Every local health department shall forward all reports of tuberculosis cases filed  
8 pursuant to this section to the bureau tuberculosis program within 24 hours of receipt of such  
9 reports.

10 (c) The chief medical officer of each tuberculosis institution, hospital or other health care  
11 facility shall report the admission of any patient with tuberculosis to the bureau together with any  
12 other information the ~~Commissioner~~ state health officer may require. He or she shall make a  
13 similar report of the discharge or death of any patient. From such reports and other sources, the  
14 bureau shall prepare and keep current a register of persons in this state with tuberculosis. The  
15 name of a person so registered shall not be made public nor shall the register be accessible to  
16 anyone except by order of the bureau, the patient, or by the order of the judge of a court of record.

**§16-3D-7. Procedure when patient is a health menace to others; court ordered treatment;  
requirements for discharge; appeals.**

1 (a) If any practicing physician, public health officer, or chief medical officer having under  
2 observation or care any person with tuberculosis is of the opinion that the environmental  
3 conditions of that person are not suitable for proper isolation or control by any type of local  
4 quarantine as prescribed by the bureau, and that the person is unable or unwilling to conduct  
5 himself or herself and to live in such a manner as not to expose members of his or her family or  
6 household or other persons with whom he or she may be associated to danger of infection, he or  
7 she shall report the facts to the bureau which shall investigate or have investigated the  
8 circumstances alleged.

9 (b) If the ~~Commissioner~~ state health officer or local health officer finds that any person's  
10 physical condition is a health menace to others, the ~~Commissioner~~ state health officer or local  
11 health officer shall petition the circuit court of the county in which the person resides, requesting an

12 individualized course of treatment to deal with the person's current or inadequately treated  
13 tuberculosis. Refusal to adhere to prescribed treatment may result in an order of the court  
14 committing the person to a health care facility equipped for the treatment of tuberculosis: *Provided*,  
15 That if the ~~Commissioner~~ state health officer or local health officer determines that an emergency  
16 situation exists which warrants the immediate detention and commitment of a person with  
17 tuberculosis, an application for immediate involuntary commitment may be filed pursuant to  
18 section nine of this article.

19 (c) Upon receiving the petition, the court shall fix a date for hearing thereof and notice of  
20 the petition and the time and place for hearing shall be served personally, at least seven days  
21 before the hearing, upon the person with tuberculosis alleged to be dangerous to the health of  
22 others.

23 (d) If, upon hearing, it appears that the complaint of the bureau is well founded, that other  
24 less restrictive treatment options have been exhausted, that the person has tuberculosis, and that  
25 the person is a danger to others, the court shall commit the individual to a health care facility  
26 equipped for the care and treatment of persons with tuberculosis. The person shall be deemed to  
27 be committed until discharged in the manner authorized in subsection (e) of this section: *Provided*,  
28 That the hearing and notice provisions of this subsection do not apply to immediate involuntary  
29 commitments as provided in section nine of this article.

30 (e) The chief medical officer of the institution to which any person with tuberculosis has  
31 been committed may discharge that person when, after consultation with the ~~Commissioner~~ state  
32 health officer and the local health officer in the patient's county of residence, it is agreed that the  
33 person may be discharged without danger to the health of others. The chief medical officer shall  
34 report immediately to the ~~Commissioner~~ state health officer and to the local health officer in the  
35 patient's county of residence each discharge of a person with tuberculosis.

36 (f) Every person committed under the provisions of this section shall observe all the rules of  
37 the institution. Any patient so committed may, by direction of the chief medical officer of the

institution, be placed apart from the others and restrained from leaving the institution so long as he or she continues to have tuberculosis and remains a health menace.

(g) Nothing in this section may be construed to prohibit any person committed to any institution under the provisions of this section from applying to the Supreme Court of Appeals for a review of the evidence on which the commitment was made. Nothing in this section may be construed or operate to empower or authorize the ~~Commissioner~~ state health officer or the chief medical officer of the institution to restrict in any manner the individual's right to select any method of tuberculosis treatment offered by the institution.

**§16-3D-9. Procedures for immediate involuntary commitment; rules.**

(a) An application for immediate involuntary commitment of a person with tuberculosis may be filed by the ~~Commissioner~~ state health officer or local health officer, in the circuit court of the county in which the person resides. The application shall be filed under oath, and shall present information and facts which establish that the person with tuberculosis has been uncooperative or irresponsible with regard to treatment, quarantine or safety measures, presents a health menace to others, and is in need of immediate hospitalization.

(b) Upon receipt of the application, the circuit court may enter an order for the individual named in the action to be detained and taken into custody for the purpose of holding a probable cause hearing. The order shall specify that the hearing be held forthwith and shall appoint counsel for the individual: *Provided*, That in the event immediate detention is believed to be necessary for the protection of the individual or others at a time when no circuit court judge is available for immediate presentation of the application, a magistrate may accept the application and, upon a finding that immediate detention is necessary, may order the individual to be temporarily committed until the earliest reasonable time that the application can be presented to the circuit court, which period of time shall not exceed 24 hours except as provided in subsection (c) of this section.

(c) A probable cause hearing shall be held before a magistrate or circuit judge of the county

18 in which the individual is a resident or where he or she was found. If requested by the individual or  
19 his or her counsel, the hearing may be postponed for a period not to exceed forty-eight hours, or as  
20 soon thereafter as possible.

21 (d) The individual shall be present at the probable cause hearing and shall have the right to  
22 present evidence, confront all witnesses and other evidence against him or her, and to examine  
23 testimony offered, including testimony by the Bureau or its designees.

24 (e) At the conclusion of the hearing the magistrate or circuit court judge shall enter an order  
25 stating whether there is probable cause to believe that the individual is likely to cause serious harm  
26 to himself, herself or others as a result of his or her disease and actions. If probable cause is found,  
27 the individual shall be immediately committed to a health care facility equipped for the care and  
28 treatment of persons with tuberculosis. The person shall remain so committed until discharged in  
29 the manner authorized pursuant to subsection (e), section seven of this article: *Provided*, That in  
30 the case of an alcoholic or drug user, the judge or magistrate shall first order the individual  
31 committed to a detoxification center for detoxification prior to commitment to health care facility  
32 equipped for the care and treatment of persons with tuberculosis.

33 (f) The bureau shall propose rules for legislative approval in accordance with the  
34 provisions of article three, chapter twenty-nine-a of this code to implement the provisions of this  
35 article, including, but not limited to, rules relating to the transport and temporary involuntary  
36 commitment of patients.

## **ARTICLE 4C. EMERGENCY MEDICAL SERVICES ACT.**

### **§16-4C-2. Purposes of article.**

1 The Legislature finds and declares: (1) That the safe and efficient operation of life-saving  
2 and life-preserving emergency medical service to meet the needs of citizens of this state is a  
3 matter of general public interest and concern; (2) to ensure the provision of adequate emergency  
4 medical services within this state for the protection of the public health, safety and welfare, it is  
5 imperative that minimum standards for emergency medical service personnel be established and

6 enforced by the state; (3) that emergency medical service personnel should meet minimum  
7 training standards promulgated by the ~~commissioner~~ secretary, in consultation with the state  
8 health officer; (4) that it is the public policy of this state to enact legislation to carry out these  
9 purposes and comply with minimum standards for emergency medical service personnel as  
10 specified herein; (5) that any patient who receives emergency medical service and who is unable  
11 to consent thereto should be liable for the reasonable cost of such service; and (6) that it is the  
12 public policy of this state to encourage emergency medical service providers to do those things  
13 necessary to carry out the powers conferred in this article unless otherwise forbidden by law.

**§16-4C-3.****Definitions.**

1 As used in this article, unless the context clearly requires a different meaning:

2 (a) "Ambulance" means any privately, publicly-owned vehicle, or aircraft which is  
3 designed, constructed, or modified; equipped or maintained; and operated for the transportation of  
4 patients, including, but not limited to, emergency medical services vehicles; rotary and fixed wing  
5 air ambulances; gsa kkk-A-1822 federal standard type I, type II, and type III vehicles; and  
6 specialized multipatient medical transport vehicles operated by an emergency medical services  
7 agency;

8 (b)(1) "Alternative destination" means a lower-acuity facility that provides medical services,  
9 including without limitation:

10 (A) A federally-qualified health center;

11 (B) An urgent care center;

12 (C) A rural health clinic;

13 (D) A physician office or medical clinic as selected by the patient; and

14 (E) A behavioral or mental health care facility including, without limitation, a crisis  
15 stabilization unit.

16 (2) "Alternative destination" does not include a:

17 (A) Critical access hospital;

(B) Dialysis center;

(C) Hospital;

(D) Private residence; or

(E) Skilled nursing facility.

~~(c) "Commissioner" means the Commissioner of the Bureau for Public Health;~~

~~(d)~~ (c) "Council" means the Emergency Medical Services Advisory Council created pursuant to this article;

~~(e)~~ (d) "Director" means the Director of the Office of Emergency Medical Services;

~~(f)~~ (e) "Emergency Medical Services" means all services set forth in Public Law 93-154 The Emergency Medical Services Systems Act of 1973 and those included in and made a part of the emergency medical services plan of the Department of Health inclusive of, but not limited to, responding to the medical needs of an individual to prevent the loss of life or aggravation of illness or injury;

~~(g)~~ (f) "Emergency medical services agency" means any agency licensed under §16-4C-6a of this code to provide emergency medical services;

~~(h)~~ (g) "Emergency medical services personnel" means any person certified by the commissioner to provide emergency medical services as set forth by legislative rule;

~~(i)~~ (h) "Emergency medical services provider" means any authority, person, corporation, partnership, or other entity, public or private, which owns or operates a licensed emergency medical services agency providing emergency medical services in this state;

~~(j)~~ (i) "Governing body" has the meanings ascribed to it as applied to a municipality in §8-1-2(b)(1) of this code;

~~(k)~~ (j) "Line officer" means the emergency medical services personnel, present at the scene of an accident, injury, or illness, who has taken the responsibility for patient care;

~~(l)~~ (k) "Medical command" means the issuing of orders by a physician from a medical facility to emergency medical services personnel for the purpose of providing appropriate patient

care;

~~(m)~~ (l) "Municipality" has the meaning ascribed to it in §8-1-2(a)(1) of this code;

~~(n)~~ (m) "Patient" means any person who is a recipient of the services provided by emergency medical services;

~~(o)~~ (n) "A rural health clinic" means an outpatient care facility that provides rural health services, such as primary care and routine laboratory services, to rural and often underserved communities;

(o) "Secretary" means the Secretary of the Department of Health.

(p) "Service reciprocity" means the provision of emergency medical services to citizens of this state by emergency medical services personnel certified to render those services by a neighboring state;

(q) "Small emergency medical services provider" means any emergency medical services provider which is made up of less than 20 emergency medical services personnel; and

(r) "Specialized multipatient medical transport" means a type of ambulance transport provided for patients with medical needs greater than those of the average population, which may require the presence of a trained emergency medical technician during the transport of the patient: *Provided*, That the requirement of "greater medical need" may not prohibit the transportation of a patient whose need is preventive in nature.

**§16-4C-4. Office of Emergency Medical Services ~~created~~ continued; requiring appointment of a Director of the Office of Emergency Medical Services; staffing.**

(a) There is hereby ~~created~~ continued within state government under the ~~Commissioner of the Bureau of Public Health~~ Secretary of the Department of 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-

7 hospital care. The director shall serve at the will and pleasure of the secretary and shall not be  
8 actively engaged or employed in any other business, vocation, or employment, serving full time as  
9 the Director of the Office of Emergency Medical Services.

10 (b) The ~~commissioner~~ secretary may employ any technical, clerical, stenographic, and  
11 other personnel as may be necessary to carry out the purposes of this article. The personnel may  
12 be paid from funds appropriated therefor or from other funds as may be made available for  
13 carrying out the purposes of this article.

14 (c) The Office of Emergency Medical Services, as created by former § 16-4D-4 of this  
15 code, shall continue in existence as the Office of Emergency Medical Services established by this  
16 section.

**§16-4C-5. Emergency Medical Services Advisory Council; duties; composition;  
appointment; meetings; compensation and expenses.**

1 (a) The Emergency Medical Services Advisory Council, created and established by former  
2 § 16-4C-7 of this code, is continued for the purpose of developing, with the ~~commissioner~~  
3 secretary, standards for emergency medical services personnel and for the purpose of providing  
4 advice to the Office of Emergency Medical Services and the ~~commissioner~~ secretary with respect  
5 to reviewing and making recommendations for, and providing assistance to, the establishment and  
6 maintenance of adequate emergency medical services for all portions of this state.

7 (b) The council shall advise the ~~commissioner~~ secretary in all matters pertaining to his or  
8 her duties and functions in relation to carrying out the purposes of this article.

9 (c) The council shall review any rule proposed by the ~~commissioner~~ secretary for  
10 legislative approval as provided for in § 16-4C-6(a) of this code. After reviewing the legislative rule,  
11 the Emergency Medical Services Advisory Council shall provide a recommendation to the  
12 Legislative Rule-Making Review Committee that the Legislature:

13 (1) Authorize the promulgation of the legislative rule;

14 (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) Nine members shall be appointed from each 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~~ secretary 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.

**§16-4C-6a. Emergency medical services agency licensure.**

(a) Any person who proposes to establish or maintain an emergency medical services agency shall file an application with the ~~commissioner~~ secretary which includes the identity of the applicant, any parent or affiliated entity, the proposed level of service and the number of emergency medical service response vehicles of the agency or proposed agency. The ~~commissioner~~ secretary may require that additional information be included on each application.

(b) Upon receipt and review of the application the ~~commissioner~~ secretary shall issue a license if he or she finds that the applicant meets the requirements and quality standards, to be established by the ~~commissioner~~ secretary, for an emergency medical services agency license, and if the applicant has certified under penalty of perjury that he or she is current with all lawful obligations owed the State of West Virginia, excluding obligations owed in the current quarter, including, but not limited to, payment of taxes and workers' compensation premiums: Provided,

12 That the certification set forth in this paragraph is required for the original application and  
13 subsequent renewals.

**§16-4C-6b. Establishment of emergency medical services licensure fund; authorized expenditures; annual report.**

1 (a) There is established in the State Treasury a special revenue fund designated the  
2 "Emergency Medical Services Agency Licensure Fund", which shall be administered by the  
3 ~~Commissioner of the Bureau of Public Health~~ secretary.

4 (b) All application, personnel certification and recertification and agency licensing fees  
5 collected pursuant to the provisions of sections six, six-a and eight of this article shall be deposited  
6 into the fund and expended in accordance with the agency licensure and personnel certification  
7 and recertification duties imposed in this article.

8 (c) Any remaining balance, including accrued interest, in the fund at the end of the fiscal  
9 year shall not revert to the General Revenue Fund, but shall remain in the account.

10 (d) On or before January 1 of each year, the ~~commissioner~~ secretary shall provide the  
11 Legislature with an annual fiscal year report on the emergency medical services agency licensure  
12 account including, but not limited to, the previous fiscal year's expenditures; projected  
13 expenditures for the current and next fiscal years; the number of agency licenses and personnel  
14 certifications and recertifications issued, denied, suspended or revoked; and, the status of  
15 licensure and certification hearings and court actions.

**§16-4C-8. Standards for emergency medical services personnel.**

1 (a) Every ambulance operated by an emergency medical services agency shall carry at  
2 least two personnel. At least one person shall be certified in cardiopulmonary resuscitation or first  
3 aid and the person in the patient compartment shall be certified as an emergency medical  
4 technician-basic, at a minimum, except that in the case of a specialized multi-patient medical  
5 transport, only one staff person is required and that person shall be certified, at a minimum, at the  
6 level of an emergency medical technician-basic. ~~The requirements of this subsection will remain in~~

7 ~~effect until revised by the legislative rule to be promulgated pursuant to §16-4C-8(b) of this code.~~

8 ~~(b) On or before May 28, 2024, the commissioner shall submit a proposed legislative rule~~  
9 ~~to the Emergency Medical Services Advisory Council for review, and on or before June 30, 2024,~~  
10 ~~shall file the proposed legislative rule with the Office of the Secretary of State, in accordance with~~  
11 ~~the provisions of §29A-3-1 et seq. of this code, to establish certification standards for emergency~~  
12 ~~medical vehicle operators and to revise the requirements for emergency medical services~~  
13 ~~personnel.~~

14 ~~(c) As of the effective date of the legislative rule to be promulgated pursuant to §16-4C-~~  
15 ~~8(b), emergency medical services personnel who operate ambulances shall meet the~~  
16 ~~requirements set forth in the legislative rule.~~

17 ~~(d)~~ (b) Any person desiring emergency medical services personnel certification shall apply  
18 to the ~~commissioner~~ secretary using forms and procedures prescribed by the ~~commissioner~~  
19 secretary. Upon receipt of the application, the ~~commissioner~~ secretary shall determine whether  
20 the applicant meets the certification requirements and may examine the applicant if necessary to  
21 make that determination.

22 ~~(e)~~ (c) The applicant shall submit to a national criminal background check, the requirement  
23 of which is declared to be not against public policy.

24 (1) The applicant shall meet all requirements necessary to accomplish the national criminal  
25 background check, including submitting fingerprints, and authorizing the West Virginia Office of  
26 Emergency Medical Services, the West Virginia State Police, and the Federal Bureau of  
27 Investigation to use all records submitted and produced for the purpose of screening the applicant  
28 for certification.

29 (2) The results of the national criminal background check may not be released to, or by, a  
30 private entity.

31 (3) The applicant shall submit a fee of \$75 for initial certification and a fee of \$25 for  
32 recertification. The fees set forth in this subsection remain in effect until modified by legislative

rule.

(f) (d) An application for an original, renewal, or temporary emergency medical services personnel certificate or emergency medical services agency license, shall be acted upon by the ~~commissioner~~secretary and the certificate or license delivered or mailed, or a copy of any order of the ~~commissioner~~secretary denying any such application delivered or mailed, to the applicant within 15 days after the date upon which the complete application, including test scores and background checks, if applicable, was received by the ~~commissioner~~secretary.

(g) (e) Certification as an Emergency Medical Dispatcher, Emergency Medical Vehicle Operator, Emergency Medical Responder, Emergency Medical Technician, Advanced Emergency Medical Technician, Paramedic, Mobile Critical Care Paramedic, or Mobile Critical Care Nurse is valid for a period of two years with expiration dates determined by the commissioner.

~~(h)~~ (f) Any person may report to the ~~commissioner~~secretary, or the Director of the Office of Emergency Medical Services, information he or she may have that appears to show that a person certified by the ~~commissioner~~secretary may have violated the provisions of this article or legislative rules promulgated pursuant to this article. A person who is certified by the ~~commissioner~~secretary, who knows of or observes another person certified by the ~~commissioner~~secretary violating the provisions of this article or legislative rules promulgated pursuant to this article, has a duty to report the violation to the ~~commissioner~~secretary or director. Any person who reports or provides information in good faith is immune from civil liability.

(i)(g) The ~~commissioner~~secretary may issue a temporary emergency medical services personnel certificate to an applicant, with or without examination of the applicant, when he or she finds that issuance to be in the public interest. Unless suspended or revoked, a temporary certificate shall be valid initially for a period not exceeding 120 days and may not be renewed unless the ~~commissioner~~secretary finds the renewal to be in the public interest.

(j)(h) For purposes of certification or recertification of emergency medical services personnel, the ~~commissioner~~secretary shall recognize and give full credit for all continuing

education credits that have been approved or recognized by any state or nationally recognized accrediting body.

(k)(i) Notwithstanding any other provision of code or rule, the ~~commissioner~~secretary recognizes that military personnel, National Guardsmen, members of the United States Coast Guard, and members of the Reserve Components of the armed services have advanced skills and training necessary to meet the requirements of this section to be certified as an emergency medical technician-paramedic upon application. Any person may seek automatic certification as an emergency medical technician-paramedic in this state if he or she has:

(1) Been honorably discharged from any branch of the United States military;

(2) Received paramedic or similar life-saving medical training in positions including, but not limited to, United States Army Combat Medic, United States Air Force Pararescue, United States Air Force Combat Rescue Officer, United States Navy Hospital Corpsman – Advanced Technical Field, United States Coast Guard Health Services Technician, National Guard Health Care Specialist, the Reserve Components of any of the preceding positions, or can otherwise demonstrate that his or her occupation in the military received substantially similar training to be certified as required by the ~~commissioner~~secretary; and

(3) Received an honorable discharge within two years of the application date.

(l)(j) Notwithstanding any other provision of code or rule, the ~~commissioner~~secretary recognizes that military personnel, National Guardsmen, members of the United States Coast Guard, and members of the Reserve Components of the armed services have advanced skills and training necessary to meet the requirements of this section to be certified as an emergency medical technician-basic upon application. Any person may seek automatic certification as an emergency medical technician-basic in this state if he or she has:

(1) Been honorably discharged from any branch in the United States military;

(2) Received emergency medical technician training or similar life-saving medical training in positions including, but not limited to, United States Army Infantryman, United States Air Force

85 Security Forces, United States Navy Hospital Corpsman, United States Coast Guard Aviation  
86 Survival Technician, United States Marines Infantryman, National Guard Infantryman, and  
87 Reserve Components of any of the preceding positions, or can otherwise demonstrate that his or  
88 her occupation in the military received substantially similar training to be certified as required by  
89 the ~~commissioner~~secretary; and

90 (3) Received an honorable discharge within two years of the application date.

91 ~~(m)(k)~~ Upon reviewing an application for certification pursuant to subsections (i) and  
92 subsection (j) of this section, the ~~commissioner~~secretary shall issue an appropriate certificate to  
93 the individual applying for certification as an emergency medical technician-paramedic or  
94 emergency medical technician-basic without further examination or education. If an individual  
95 certified pursuant to this section permits his or her certification to expire, the ~~commissioner~~  
96 secretary may require examination as a condition of recertification.

**§16-4C-8a. Courtesy certification of emergency medical services personnel in surrounding states.**

1 (a) It is the intention of the Legislature to permit individuals who have been certified as  
2 emergency medical services personnel in a state bordering West Virginia to serve as emergency  
3 medical services personnel in West Virginia.

4 (b) Beginning July 1, 2018, the ~~Commissioner of the Bureau for Public Health~~ secretary  
5 shall establish a process by which a courtesy certification to serve as an emergency medical  
6 responder or emergency medical technician in this state may be issued to any person who  
7 satisfies the following requirements:

8 (1) Is certified as an emergency medical responder or emergency medical technician, or a  
9 similar certification, in good standing in a state bordering West Virginia;

10 (2) Complies with the application process and procedures established by the  
11 ~~Commissioner of the Bureau for Public Health~~ secretary; and

12 (3) Submits any required fee.

(c) Issuance of a courtesy certification shall not be withheld by the ~~Commissioner of the Bureau for Public Health~~ secretary based on an individual's failure to satisfy the minimum eligibility requirements for emergency medical services personnel set forth in legislative rules promulgated pursuant to § 16-4C-6 of this code.

(d) The ~~Commissioner of the Bureau for Public Health~~ secretary, in consultation with the state health officer, 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 section.

(e) Any courtesy certification issued pursuant to this section may be revoked at any time if the individual's certification in the bordering state is restricted, revoked, or otherwise expires.

(f) Any courtesy certification issued pursuant to this section must be renewed biennially.

**§16-4C-9. Complaints; investigations; due process procedure; grounds for disciplinary action.**

(a) The ~~commissioner~~ secretary may at any time upon his or her own motion, and shall, upon the written complaint of any person, cause an investigation to be conducted to determine whether grounds exist for disciplinary action under this article or legislative rules promulgated pursuant to this article.

(b) An investigator or other person who, under the direction of the ~~commissioner~~ secretary or the director, gathers or reports information in good faith to the ~~commissioner~~ secretary or the director, is immune from civil liability.

(c) After reviewing any information obtained through an investigation, the ~~commissioner~~ secretary or director shall determine if probable cause exists that the licensee or certificate holder has violated any provision of this article or rules promulgated pursuant to this article.

(d) Upon a finding that probable cause exists that the licensee or certificate holder has violated any provision of this article or rules promulgated pursuant to this article, the ~~commissioner~~ secretary or director shall provide a copy of the complaint and notice of hearing to the licensee or certificate holder. Upon a finding of probable cause that the conduct or continued service or

15 practice of any individual certificate holder may create a danger to public health or safety, the  
16 ~~commissioner~~ secretary may temporarily suspend the certification prior to a hearing or notice:  
17 *Provided*, That the ~~commissioner~~ secretary may rely on information received from a physician that  
18 serves as a medical director in finding that probable cause exists to temporarily suspend the  
19 certification: *Provided, however*, That the ~~commissioner~~ secretary shall simultaneously institute  
20 proceedings for a hearing in accordance with section ten of this article.

21 (e) The ~~commissioner~~ secretary or the director may enter into a consent decree or hold a  
22 hearing for the suspension or revocation of the license or certification or the imposition of  
23 sanctions against the licensee or certificate holder.

24 (f) The ~~commissioner~~ secretary or the director issue subpoenas and subpoenas duces  
25 tecum to obtain testimony and documents to aid in the investigation of allegations against any  
26 person or agency regulated by the article.

27 (g) The ~~commissioner~~ secretary or the director may sign a consent decree or other legal  
28 document related to the complaint.

29 (h) The ~~commissioner~~ secretary shall suspend or revoke any certificate, temporary  
30 certificate or license when he or she finds the holder has:

31 (1) Obtained a certificate, temporary certificate or license by means of fraud or deceit; or

32 (2) Been grossly incompetent, and/or grossly negligent as defined by the ~~commissioner~~  
33 secretary in accordance with rules or by prevailing standards of emergency medical services care;  
34 or

35 (3) Failed or refused to comply with the provisions of this article or any legislative rule  
36 promulgated by the ~~commissioner~~ secretary or any order or final decision of the ~~commissioner~~  
37 secretary; or

38 (4) Engaged in any act during the course of duty which has endangered or is likely to  
39 endanger the health, welfare or safety of the public.

40 (i) The ~~commissioner~~ secretary or the director may, after notice and opportunity for

41 hearing, deny or refuse to renew, suspend or revoke the license or certification of, impose  
42 probationary conditions upon or take disciplinary action against, any licensee or certificate holder  
43 for any violation of this article or any rule promulgated pursuant to this article, once a violation has  
44 been proven by a preponderance of the evidence.

45 (j) Disciplinary action may include:

46 (1) Reprimand;

47 (2) Probation;

48 (3) Administrative penalties and fines;

49 (4) Mandatory attendance at continuing education seminars or other training;

50 (5) Practicing under supervision or other restriction;

51 (6) Requiring the licensee or holder of a certificate to report to the ~~commissioner~~ secretary  
52 or director for periodic interviews for a specified period of time;

53 (7) Other disciplinary action considered by the ~~commissioner~~ secretary or director to be  
54 necessary to protect the public, including advising other parties whose legitimate interests may be  
55 at risk; or

56 (8) Other sanctions as set forth by legislative rule promulgated pursuant to this article.

57 (k) The ~~commissioner~~ secretary shall suspend or revoke any certificate, temporary  
58 certificate or license if he or she finds the existence of any grounds which would justify the denial of  
59 an application for the certificate, temporary certificate or license if application were then being  
60 made \_\_\_\_\_ for \_\_\_\_\_ it.

**§16-4C-12. Violations; criminal penalties.**

1 (a) When, as a result of an investigation under this article or otherwise, the ~~commissioner~~  
2 secretary or director has reason to believe that a licensee or certificate holder has committed a  
3 criminal offense, the ~~commissioner~~ secretary or director may bring the information to the attention  
4 of an appropriate law-enforcement official.

5 (b) Any person who violates any law or rule or operates an ambulance with an insufficient

number of emergency medical service personnel aboard when not lawfully permitted to do so, or who represents himself or herself as a certified emergency medical service personnel knowing the representation to be untrue, is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than \$100 nor more than \$1,000: Provided, That after July 1, 2010, the fine shall not be more than \$5,000.

**§16-4C-13. Actions to enjoin violations; injunctive relief.**

Whenever it appears to the ~~commissioner~~ secretary that any person has been or is violating or is about to violate any provision of this article or any final order of the ~~commissioner~~ secretary, the ~~commissioner~~ secretary may apply in the name of the state, to the circuit court of the county in which the violation or any part thereof has occurred, is occurring or is about to occur, for an injunction against the person and any other persons who have been, are or are about to be, involved in, or in any way participating in, any practices, acts or omissions, so in violation, enjoining the person or persons from any such violation. The application may be made and prosecuted to conclusion whether or not any such violation has resulted or shall result in prosecution or conviction under the provisions of section twelve of this article.

Upon application by the ~~commissioner~~ secretary, the circuit courts of this state may by mandatory or prohibitory injunction compel compliance with the provisions of this article and all final orders of the ~~commissioner~~ secretary.

The circuit court may issue a temporary injunction in any case pending a decision on the merits of any application filed.

The judgment of the circuit court upon any application permitted by the provisions of this section shall be final unless reversed, vacated or modified on appeal to the supreme court of appeals. Any such appeal shall be sought in the manner and within the time provided by law for appeals from circuit courts in other civil cases.

**§16-4C-14. Services that may be performed by emergency medical services personnel.**

Notwithstanding any other provision of law, emergency medical service personnel may

2 provide the services as determined by the ~~commissioner~~ secretary, in consultation with the state  
3 health officer, by legislative rule pursuant to the provisions of article three, chapter twenty-nine-a of  
4 this code. Legislative rules governing provision of these services in a hospital emergency room  
5 setting shall be developed by the ~~commissioner~~ secretary, in consultation with the state health  
6 officer, and shall include provisions allowing paramedics to function under the direct supervision of  
7 a registered professional nurse in a hospital emergency room setting. ~~Provision of these services~~  
8 ~~in an emergency room hospital setting shall not be initiated until a legislative rule establishing~~  
9 ~~training requirements, standards and requirements for these functions is in effect. The Legislature~~  
10 ~~therefore directs the commissioner to propose this legislative rule on or before the first day of July,~~  
11 ~~two thousand six. Further, the Commissioner may promulgate this rule as an emergency rule~~  
12 ~~pursuant to the provisions of section fifteen, article three, chapter twenty-nine-a of this code. Any~~  
13 ~~rule so promulgated shall provide that paramedics are under the jurisdiction of the commissioner.~~  
14 The West Virginia Board of Registered Professional Nurses may propose legislative rules,  
15 pursuant to article three, chapter twenty-nine-a of the code relating to the scope of practice for  
16 nurses as those practices relates to overseeing these paramedics. The provisions of this section  
17 and any rules promulgated thereunder may not be construed to alter in any manner the duties, role  
18 or responsibilities of attending physicians regarding the providing and oversight of patient care.

**§16-4C-15. Powers of emergency medical service attendants, emergency medical  
technicians-basic and emergency medical technicians-paramedic during  
emergency communications failures and disasters.**

1 (a) In the event of a communications failure between the certified emergency medical  
2 services agency personnel, as defined in section three of this article, and the physician during an  
3 emergency situation, the certified personnel is authorized to deliver the services as authorized in  
4 section fourteen of this article.

5 (b) In the event of a disaster or other occurrence which renders the communication system  
6 ineffective for purposes of adequate individual direction between the physician and the certified

7 emergency medical services agency personnel, the personnel may perform the services as  
8 authorized pursuant to the provisions of section fourteen and may release immediate control of the  
9 patient to any other emergency medical service personnel in order to provide immediate services  
10 to other patients affected by the disaster or other occurrence.

11 (c) In the event that services are provided under subsection (a) or (b) of this section, the  
12 emergency medical services personnel shall, within five days, provide a report to the  
13 ~~commissioner~~ secretary, on the forms prescribed by him or her, of the services performed, the  
14 identity of the patient and the circumstances justifying the provision of the services. The  
15 ~~commissioner~~ secretary may require any other information deemed necessary.

**§16-4C-16. Limitation of liability; mandatory errors and omissions insurance.**

1 (a) Every person, corporation, ambulance service, emergency medical service provider,  
2 emergency ambulance authority, emergency ambulance service or other person which employs  
3 emergency medical service personnel with or without wages for ambulance service or provides  
4 ambulance service in any manner, shall obtain a policy of insurance insuring the person or entity  
5 and every employee, agent or servant, against loss from the liability imposed by law for damages  
6 arising from any error or omission in the provision of emergency medical services as enumerated  
7 by this article, in an amount no less than \$1,000,000 per incident.

8 (b) No emergency medical service personnel or emergency medical service provider is  
9 liable for civil damages or injuries in excess of the amounts for which the person or entity is  
10 actually insured, unless the damages or injuries are intentionally or maliciously inflicted.

11 (c) Every person or entity required by this section to obtain a policy of insurance shall  
12 furnish proof of the existence of the policy to the ~~commissioner~~ secretary on or before January 1 of  
13 each calendar year.

14 (d) Any person or entity who fails to secure a policy of insurance before providing  
15 emergency medical services is not entitled to the limited liability created by subsection (b) of this  
16 section: *Provided*, That any physician, who gives instructions to emergency medical service

17 personnel without being compensated, or who treats any patient transported in an ambulance or  
18 treats any patient prior to the transport, without being compensated, is entitled to the limited  
19 liability provided in subsection (b) of this section.

**§16-4C-20. Service reciprocity agreements for mutual aid.**

1 Any persons or entities providing lawful emergency medical services under the provisions  
2 of this article are hereby authorized in their discretion to enter into and renew service reciprocity  
3 agreements, for any period as they may deem advisable, with the appropriate emergency medical  
4 service providers, county, municipal or other governmental units or in counties contiguous to the  
5 state of West Virginia, in the state of Ohio, the commonwealth of Pennsylvania, the state of  
6 Maryland, the commonwealth of Virginia or the commonwealth of Kentucky, in order to establish  
7 and carry into effect a plan to provide mutual aid across state lines, through the furnishing of  
8 properly certified personnel and equipment for the provision of emergency medical services in this  
9 state and the counties contiguous to this state upon written approval by the ~~commissioner~~  
10 secretary.

11 No person or entity may enter into any such agreement unless the agreement provides that  
12 each of the parties to the agreement shall waive any and all claims against the other parties  
13 thereto, which may arise out of their activities outside of their respective jurisdictions under the  
14 agreement and shall indemnify and save harmless the other parties to the agreement from all  
15 claims by third parties for property damages or personal injuries which may arise out of the  
16 activities of the other parties to the agreement outside their respective jurisdictions under the  
17 agreement.

18 The ~~commissioner~~ secretary is hereby authorized to enter into service reciprocity  
19 agreements with appropriate officials in other states for the purpose of providing emergency  
20 medical services to the citizens of this state by emergency medical service personnel properly  
21 certified in their respective state or states. A formal agreement between the ~~commissioner~~  
22 secretary and an authorized official of another state shall be in effect prior to the service being

provided. Individual certification of other state emergency medical service personnel is not required for purposes of providing services to West Virginia citizens following the creation of the agreement by the responsible officials.

**§16-4C-21. Restriction for provision of emergency medical services by out-of-state emergency medical service personnel or providers of emergency medical services.**

The ~~commissioner~~ secretary may issue an order on his or her own motion upon written request of any emergency medical service provider or county commission in this state, to restrict an out-of-state provider of emergency medical services or an out-of-state emergency medical service personnel to a particular geographic area of the state of West Virginia or prohibit the provider or personnel from providing emergency medical services within the borders of this state when in the opinion of the ~~commissioner~~ secretary the services are not required or do not meet the standards set forth herein or those established by rules as authorized by this article.

**§16-4C-23. Authority of the ~~commissioner~~ secretary to make rules.**

(a) The ~~commissioner~~ secretary, in consultation with the state health officer, 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~~ secretary, in consultation with the state health officer, 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

14 assurance, and liability insurance.

**ARTICLE 4E. UNIFORM MATERNAL SCREENING ACT.**

**§16-4E-2. Establishment of an advisory council on maternal risk assessment.**

1 (a) There is ~~created~~ continued within the Office of Maternal, Child and Family Health an  
2 advisory council on maternal risk assessment to provide assistance in the development of a  
3 uniform maternal risk screening tool.

4 (b) The office shall convene the advisory council at least annually and providing  
5 administrative and technical assistance to the advisory council as needed. The members of the  
6 advisory council shall be appointed by the ~~Commissioner of the Bureau for Public Health~~ state  
7 health officer.

8 (c) The advisory council shall be comprised of:

9 (1) At least one private provider of maternity services;

10 (2) At least one public provider of maternity services;

11 (3) One representative from each of the state's three medical schools;

12 (4) The ~~Commissioner of the Bureau for Public Health~~ state health officer or his or her  
13 designee;

14 (5) The Director of the Office of Maternal, Child and Family Health or his or her designee;

15 (6) At least one representative of a tertiary care center;

16 (7) At least one representative of a facility with a level I or II obstetrical unit;

17 (8) At least one certified nurse midwife;

18 (9) At least one allopathic or osteopathic physician who is a private provider of maternity  
19 services at a facility with a level I or level II obstetrical unit.

**ARTICLE 5. VITAL STATISTICS.**

**§16-5-5. Powers and duties of State Registrar.**

1 (a) The State Registrar shall:

(1) Administer and enforce the provisions of this article and the rules promulgated pursuant to this article, and issue instructions for the efficient administration of the system of vital statistics;

(2) Direct and supervise the system of vital statistics and the operation of the section of vital statistics, and act as custodian of its records;

(3) Direct, supervise, and control all activities pertaining to the operation of the system of vital statistics;

(4) Conduct training programs to promote uniformity of policy and procedures throughout the state in matters pertaining to the system of vital statistics;

(5) Prescribe, furnish, and distribute forms required by this article and the rules promulgated pursuant to this article, and prescribe means for transmission of data to accomplish the purpose of complete and accurate reporting and registration;

(6) Prepare and publish annual reports of vital statistics of this state, and other reports required by the ~~commissioner~~ state health officer;

(7) Provide to local health agencies copies of or data derived from certificates and reports required under this article as the State Registrar may determine are necessary for local health planning and program activities: *Provided*, That the copies and data remain the property of the section of vital statistics, and the uses that may be made of them are governed by the State Registrar; and

(8) Offer voluntary paternity establishment services in accordance with federal regulations set forth in 45 CFR 303.5(g).

(b) The State Registrar may:

(1) Designate individuals in the state as meet the requirements provided by rule to aid in the efficient administration of the system of vital statistics;

(2) Delegate functions and duties to employees of the section of vital statistics and to individuals designated under subdivision (1) of this subsection;

(3) Investigate, personally or by a duly delegated representative, cases of irregularity or

violation of law arising under the provisions of this article;

(4) Report cases of violation of any of the provisions of this article to the prosecuting attorney of the county, with a statement of the facts and circumstances. The prosecuting attorney may prosecute the person or corporation responsible for the alleged violation of law. Upon request of the State Registrar, the Attorney General shall assist in the enforcement of the provisions of this article.

**§16-5-11. Registration of infants and minors born with specified birth defects.**

(a) When a live birth occurs, the physician or midwife in attendance at, or present immediately after, the birth shall examine the infant for any of the following birth defects:

(1) Anencephaly;

(2) Spina bifida;

(3) Hydrocephaly;

(4) Cleft palate;

(5) Total cleft lip;

(6) Esophageal atresia and atenosis;

(7) Rectal and anal atresia;

(8) Hypospadias;

(9) Reduction and deformity--upper limb;

(10) Reduction and deformity--lower limb;

(11) Congenital dislocation of the hip;

(12) Down's syndrome;

(13) Visual impairments;

(14) Sickle cell anemia; and

(15) Others as may be requested by the ~~commissioner~~ state health officer.

(b) If any such impairment is found in an infant, or in any subsequent examination of any minor which has not been previously diagnosed, the examining physician, midwife or other health

care provider licensed under chapter thirty of the code shall within thirty days of the examination make a report of the diagnosis to the State Registrar or other agency within the bureau as designated by the ~~commissioner~~ state health officer on forms provided by the bureau. The report shall include the name of the child, the name or names of the parents or parent or guardian, a description of the impairment and other related information as specified by the ~~commissioner~~ state health officer.

(c) The information received by the State Registrar or other agency within the bureau as designated by the ~~commissioner~~ state health officer pursuant to this section pertaining to the identity of the persons named shall be kept confidential: *Provided*, That if consent of a parent, or of the guardian is obtained, the State Registrar or other agency within the bureau as designated by the ~~commissioner~~ state health officer may provide the information to federal, state, and local government agencies so that the information can be utilized to provide assistance or services for the benefit of the child.

**§16-5-22. Reports of abortions.**

(a) Each abortion, as defined in § 16-2R-2 of this code, which occurs in this state, shall be reported to the section of vital registration no later than the 10th day of the month following the month the procedure was performed by the person in charge of the hospital in which the abortion was performed. The State Registrar shall prepare a form or provide a suitable electronic process for the transmission of the reports from the institution or physician to the section of vital registration. Information to be collected shall include:

- (1) The gestational age of the fetus;
- (2) The state and county of residence of the patient;
- (3) The age of the patient;
- (4) The type of medical or surgical procedure performed;
- (5) The method of payment for the procedure;
- (6) Whether birth defects were known, and if so, what birth defects;

(7) The date the abortion was performed;

(8) The exception contained in § 16-2R-3 of this code under which the abortion was performed; and

(9) Related information as required by the ~~commissioner~~ state health officer, other applicable sections of this code, or by the legislative rule: *Provided, That:*

(A) No personal identifiers, including, but not limited to, name, street address, city, zip code, or social security number, will be collected; and

(B) Individual records may only be released for research purposes as approved by the State Registrar and may be released in a format designed to further protect the confidentiality of the woman as the State Registrar deems necessary.

(b) An analysis of the compiled information relating to induced terminations of pregnancy shall be included in the annual report of vital statistics.

(c) An electronic report of the compiled information under this section shall be provided to the licensing boards of the licensed medical professionals, as defined in § 16-2R-2 of this code, and the Legislative Oversight Commission on Health and Human Resources Accountability on a quarterly basis.

(d) The provisions of this section do not apply to an termination of an ectopic pregnancy.

## **ARTICLE 5M. OSTEOPOROSIS PREVENTION EDUCATION ACT.**

### **§16-5M-3. Interagency council on osteoporosis.**

(a) There is hereby established the interagency council on osteoporosis. The ~~director of public health~~ state health officer shall chair the council. The council shall have representatives from appropriate state departments and agencies including, but not limited to, the entities with responsibility for aging, health care reform implementation, education, public welfare and women's programs.

(b) The council shall:

(1) Coordinate osteoporosis programs conducted by or through the bureau of public

8 health;

9 (2) Establish a mechanism for sharing information on osteoporosis among all officials and  
10 employees involved in carrying out osteoporosis-related programs;

11 (3) Review and coordinate the most promising areas of education, prevention and  
12 treatment concerning osteoporosis;

13 (4) Assist the bureau of public health and other offices in developing and coordinating  
14 plans for education and health promotion on osteoporosis;

15 (5) Establish mechanisms to use the results of research concerning osteoporosis in the  
16 development of relevant policies and programs; and

17 (6) Prepare a report that describes educational initiatives on osteoporosis and transmit the  
18 report to the Legislature and the governor and make the report available to the public.

19 (c) The council shall establish and coordinate the advisory panel on osteoporosis which  
20 will provide nongovernmental input regarding the program. Membership shall include, but is not  
21 limited to, persons with osteoporosis, public health educators, osteoporosis experts, providers of  
22 osteoporosis health care, persons knowledgeable in health promotion and education and  
23 representatives of national osteoporosis organizations or their state and regional affiliates.

## **ARTICLE 5U. ARTHRITIS PREVENTION EDUCATION ACT.**

### **§16-5U-3. Interagency council on arthritis.**

1 (a) There is hereby established the interagency council on arthritis. The ~~Director of Public~~  
2 ~~Health~~ state health officer shall chair the council. The council shall have representatives from  
3 appropriate state departments and agencies including, but not limited to, the entities with  
4 responsibility for aging, health care reform implementation, education and public welfare.

5 (b) The council shall:

6 (1) Coordinate arthritis programs conducted by or through the Bureau for Public Health;

7 (2) Establish a mechanism for sharing information on arthritis among all officials and  
8 employees involved in carrying out arthritis-related programs;

(3) Review and coordinate the most promising areas of education, prevention and treatment concerning arthritis;

(4) Assist the Bureau for Public Health and other offices in developing and coordinating plans for education and health promotion on arthritis;

(5) Establish mechanisms to use the results of research concerning arthritis in the development of relevant policies and programs; and

(6) Prepare a report that describes educational initiatives on arthritis and transmit the report to the Legislature and the Governor and make the report available to the public.

(c) The council shall establish and coordinate the advisory panel on arthritis which will provide nongovernmental input regarding the program. Membership shall include, but is not limited to, persons with arthritis, public health educators, arthritis experts, providers of arthritis health care, persons knowledgeable in health promotion and education and representatives of national arthritis organizations or their state and regional affiliates.

## **ARTICLE 9. OFFENSES GENERALLY.**

### **§16-9-2. Throwing or releasing dead animals or offensive substances into waters used for domestic purposes; penalties; jurisdiction; failure to bury or destroy offensive substances after conviction; successive offenses.**

Any person who knowingly and willfully throws, causes to be thrown or releases any dead animal, carcass, or part thereof, garbage, sink or shower waste, organic substance, human or animal excrement, contents of privy vault, septic tank, cesspool or the effluent from any cesspool or nauseous or offensive or poisonous substances into any well, cistern, spring, brook, pond, stream or other body of water which is used for domestic purposes, is guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than \$25 nor more than \$200. None of the provisions contained in this section shall apply to those commercial or industrial wastes which are subject to the regulatory control of the West Virginia Division of Environmental Protection.

Upon conviction of any such offense, the person convicted shall, within 24 hours after such

10 conviction, remove and bury or cause to be buried at least three feet under the ground or destroy  
11 or cause to be destroyed as otherwise directed by the ~~commissioner of the bureau of public health~~  
12 state health officer or his or her duly authorized representative any of such offensive materials  
13 which the person so convicted has thrown, caused to be thrown, released or knowingly permitted  
14 to remain in water used for domestic purposes, contrary to the provisions of this section, and his or  
15 her failure or refusal to do so is a misdemeanor and a second violation of the provisions of this  
16 section. The continued failure or refusal of such convicted person to so bury or destroy such  
17 offensive materials is a separate, distinct and additional offense for each successive 24- hour  
18 period of such failure or refusal. Any person convicted of any offense described in this paragraph  
19 shall be fined not less than \$25 nor more than \$200, or imprisoned in the county jail not more than  
20 90 days, or both fined and imprisoned.

**§16-9-3. Depositing dead animals or offensive substances in or near waters or on or near  
roads or on public or private grounds; penalties; failure to bury or destroy offensive  
substances after conviction; successive offenses.**

1 Any person (1) who throws, causes to be thrown or releases any dead animal, carcass, or  
2 part thereof, garbage, sink or shower waste, organic substances, contents of a privy vault, septic  
3 tank, cesspool or the effluent from any cesspool, spoiled meat or nauseous or offensive or  
4 poisonous substances into any river, creek or other stream, or upon the surface of any land  
5 adjacent to any river, creek or other stream in such a location that high water or normal drainage  
6 conditions will cause such offensive materials to be washed, drained or cast into the river, creek or  
7 other stream; or (2) who throws, or causes to be thrown or releases any of such offensive materials  
8 upon the surface of any road, right-of-way, street, alley, city or town lot, public ground, market  
9 space, common or private land, or (3) who, being the owner, lessee or occupant of any city or town  
10 lot, public ground, market space, common or private land knowingly permits any such offensive  
11 materials to remain thereon or neglects or refuses to remove or abate the public health menace or  
12 nuisance occasioned thereby, within 24 hours of the service of notice thereof in writing from the

13 ~~commissioner of the bureau of public health~~ state health officer or his or her duly authorized  
14 representative, is guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less  
15 than \$100 nor more than \$1,000. None of the provisions contained in this section apply to those  
16 commercial or industrial wastes which are subject to the regulatory control of the West Virginia  
17 division of environmental protection.

18       Upon a conviction for any such offense, the person shall, within 24 hours after such  
19 conviction, remove and bury or cause to be buried at least three feet under the ground, or destroy  
20 or cause to be destroyed as otherwise directed by the ~~commissioner of the bureau of public health~~  
21 state health officer or his or her duly authorized representative, any of such offensive materials  
22 which the person so convicted has placed or knowingly permitted to remain upon such city or town  
23 lot, public ground, market space, common or private land, contrary to the provisions of this section.  
24 Such person's failure or refusal to do so is a misdemeanor and a second offense against the  
25 provisions of this section. The continued failure or refusal of such convicted person to remove and  
26 bury or destroy such offensive materials is a separate, distinct and additional offense for each  
27 successive 24-hour period of such failure and refusal. Any person convicted of any offense  
28 described in this paragraph shall be fined not less than \$100 nor more than \$1,000 dollars, or  
29 imprisoned in the county jail not more than 90 days, or both fined and imprisoned.

## **ARTICLE           9G.           TOBACCO           CESSATION           INITIATIVE.**

### **§16-9G-1. Tobacco Use Prevention and Cessation Task Force.**

1       (a) The West Virginia Tobacco Use Prevention and Cessation Task Force is ~~created~~  
2 continued for the purpose of recommending and monitoring the establishment and management  
3 of programs that are found to be effective in the reduction of tobacco, tobacco products, alternative  
4 nicotine products, and vapor products use by all state citizens, with a strong focus on the  
5 prevention of children and young adults use of tobacco, tobacco products, alternative nicotine  
6 products, and vapor products.

7       (b) The task force shall have the following members:

(1) The ~~Commissioner of the Bureau for Public Health~~ state health officer or his or her designee, who shall serve as chair;

(2) The Superintendent of the Department of Education or his or her designee;

(3) Ten members to be appointed by the Governor:

(A) A representative of a nationwide nonprofit organization dedicated to the elimination of cancer;

(B) A representative of a nonprofit national organization that funds cardiovascular medical research;

(C) A dentist, licensed pursuant to § 30-4-1 *et seq.*, with an expertise in oral health;

(D) A physician, licensed pursuant to either § 30-3-1 *et seq.* or § 30-14-1 *et seq.* with expertise in health impacts associated with tobacco, tobacco products, alternative nicotine products, or vapor products consumption;

(E) A representative of a national voluntary health organization whose mission is to save lives by improving lung health and preventing lung disease through education, advocacy, and research;

(F) A representative who is certified from one of the programs accredited by the Council for Tobacco Treatment Training Programs or has received a National Certificate in Tobacco Treatment Practice, who has advanced education in evidence-based tobacco treatment competencies, skills, and practices;

(G) A representative from a national youth tobacco, tobacco products, alternative nicotine products, or vapor products prevention organization;

(H) A representative from the West Virginia Prevention First Network within the West Virginia Bureau for Behavioral Health; and

(I) Two citizen members that through professional or medical experience or advocacy are committed to work and advocate for cessation of tobacco, tobacco products, alternative nicotine products, and vapor products consumption in all forms in the state.

(c) The task force shall meet quarterly at the call of the chair to study, monitor, and recommend funding and initiation of programs that reduce tobacco, tobacco products, alternative nicotine products, and vapor products consumption in West Virginia, and to initiate studies and processes to provide the most efficient and effective use of the funds dedicated for this purpose. The task force shall include a variety of persons in the health care field, including individuals certified from one of the programs accredited by the Council for Tobacco Treatment Training Programs or received a National Certificate in Tobacco Treatment Practice, advocates, and citizens, with the intention of the Legislature to create a dynamic and innovative group to focus, monitor, and facilitate state resources towards this goal.

(d) The Director of the Division of Tobacco Prevention shall attend each task force meeting and shall provide staff support services for the task force. The task force shall monitor the Division of Tobacco Prevention's programs and make recommendations to the division on expenditures and programs which are being administered by that office. The task force shall report annually to the Legislative Oversight Committee on Health and Human Resources Accountability by December 1st, which shall include at a minimum, the following:

(1) An assessment of each program administered by the Division of Tobacco Prevention towards reducing tobacco, tobacco products, alternative nicotine products, and vapor products consumption and include an overview of its budget for the prior year and how state moneys and any other funding or grants received by the office are being expended that year;

(2) Review and analysis the types of tobacco, tobacco products, alternative nicotine products, and vapor products consumption practices in the state and identify emerging trends related to tobacco, tobacco products, alternative nicotine products, or vapor products delivery devices and related activities impacting tobacco, tobacco products, alternative nicotine products, and vapor products use, with particular emphasis on youth consumption trends and practices; and,

(3) Recommend for legislation or implementation of legislation, public policies; and funding

60 of programs that can further facilitate a reduction in tobacco, tobacco products, alternative nicotine  
61 products, or vapor products usage in our state.

**ARTICLE 22. DETECTION AND CONTROL OF PHENYLKETONURIA,  
GALACTOSEMIA, HYPOTHYROIDISM, AND CERTAIN OTHER DISEASES IN  
NEWBORN CHILDREN.**

**§16-22-2. Program to combat intellectual disability or other severe health hazards; rules;  
facilities for making tests.**

1 The State Bureau of Public Health is authorized to establish and carry out a program  
2 designed to combat intellectual disability or other severe health hazards in our state's population  
3 due to phenylketonuria, galactosemia, hypothyroidism, and certain other diseases specified by the  
4 ~~State Public Health Commissioner~~ state health officer, and may adopt reasonable rules and  
5 regulations necessary to carry out such a program. The Bureau of Public Health shall establish  
6 and maintain facilities at its state hygienic laboratory for testing specimens for the detection of  
7 phenylketonuria, galactosemia, hypothyroidism, and certain other diseases specified by the ~~State~~  
8 ~~Public Health Commissioner~~ state health officer. Tests shall be made by such laboratory of  
9 specimens upon request by physicians, hospital medical personnel and other individuals  
10 attending newborn infants. The State Bureau of Public Health is authorized to establish additional  
11 laboratories throughout the state to perform tests for the detection of phenylketonuria,  
12 galactosemia, hypothyroidism, and certain other diseases specified by the ~~State Public Health~~  
13 ~~Commissioner~~ state health officer.

**§16-22-3. Tests for diseases specified by the ~~State Public Health Commissioner~~ state health  
officer; reports; assistance to afflicted children; ~~Public Health Commissioner, in~~  
consultation with state health officer, to propose rules.**

1 (a) The hospital or birthing center in which an infant is born, the parents or legal guardians,  
2 the physician attending a newborn child, or any person attending a newborn child not under the

3 care of a physician shall require and ensure that each such child be tested for phenylketonuria,  
4 galactosemia, hypothyroidism, sickle cell anemia and certain other diseases specified by the  
5 Bureau for Public Health. The Bureau for Public Health shall also require testing for congenital  
6 adrenal hyperplasia, cystic fibrosis and biotinidase deficiency. No later than the July 1, 2008, the  
7 Bureau for Public Health shall also require testing for isovaleric acidemia, glutaric acidemia type I,  
8 3-Hydroxy-3-methylglutaric aciduria, multiple carboxylase deficiency, methylmalonic acidemia-  
9 mutase deficiency form, 3-methylcrotonyl-CoA carboxylase deficiency, methylmalonic acidemia,  
10 Cbl A and Cbl B forms, propionic acidemia, beta-ketothiolase deficiency, medium-chain acyl-CoA  
11 dehydrogenase deficiency, very long-chain acyl-CoA dehydrogenase deficiency, long-chain  
12 hydroxyacyl-CoA dehydrogenase deficiency, trifunctional protein deficiency, carnitine uptake  
13 defeat, maple syrup urine disease, homocystinuria, citrullinemia type I, argininosuccinate  
14 acidemia, tyrosinemia type I, hemoglobin S/Beta-thalassemia, sickle C disease and hearing  
15 deficiency.

16 (b) A positive result on any test specified in subsection (a) of this section, or a positive  
17 result for any other diseases specified by the Bureau for Public Health, shall be promptly reported  
18 to the Bureau for Public Health by the director of the laboratory performing such test.

19 (c) Newborn screenings shall be considered a covered benefit reimbursed to the birthing  
20 facilities by Public Employees Insurance Agency, the State Children's Health Insurance Program,  
21 the Medicaid program and all health insurers whose benefit package includes pregnancy  
22 coverage and who are licensed under chapter thirty-three of this code.

23 (d) The Bureau for Public Health shall propose rules for legislative approval in accordance  
24 with article three, chapter twenty-nine of this code. These legislative rules shall include:

25 (1) A means for the Bureau for Public Health, in cooperation with other state agencies, and  
26 with attending physicians, to provide medical, dietary and related assistance to children  
27 determined to be afflicted with any disease specified in subsection (a) of this section and certain  
28 other diseases specified by the Bureau for Public Health; and

(2) A means for payment for the screening provided for in this section; and

(3) Anything further considered necessary by the Bureau for Public Health to implement

the provisions of this section.

## **ARTICLE 32. ASBESTOS ABATEMENT.**

### **§16-32-11. Notification; waivers; exemption.**

(a) Each owner or other person responsible for the operation of a building or facility where an asbestos abatement project is to occur shall notify the ~~commissioner~~ state health officer at least ten working days prior to commencement of each asbestos abatement project and shall comply with other applicable state and federal legal and regulatory notification requirements for asbestos abatement projects.

(b) In an emergency that results from a sudden unexpected event that is not a planned renovation or demolition, the ~~commissioner~~ state health officer may waive the requirement of ten working days prior notification, but in all cases notification shall be made to the bureau after the emergency within the specified time required by the ~~commissioner~~ state health officer.

(c) Asbestos abatement projects involving less than 160 square feet or 260 linear feet of asbestos containing material are exempt from the prior notification requirement, unless the project takes place in a school for any of grades kindergarten through 12. A summary of the projects shall be submitted to the bureau within a specified time as required by the ~~commissioner~~ state health officer.

(d) Removal, repair and maintenance of oil and gas pipeline asphaltic wrap which contains asbestos fibers encapsulated or coated by bituminous or resinous compounds is not subject to the requirements of this article if:

(1) The pipeline asphaltic wrap which contains asbestos fibers encapsulated or coated by bituminous or resinous compounds is not friable prior to disturbance along the length of the pipeline being removed, repaired or maintained;

(2) The area disturbed in preparing the pipeline for cutting does not exceed two hundred

sixty linear feet of removed friable asbestos;

(3) Before work begins and as needed during the job, a competent person conducts an inspection of the worksite and determines that the material is intact and will likely remain intact;

(4) All employees performing work covered by this subsection are trained in accordance with OSHA standards, 29 CFR 1926.1101(g)(11)(ii), and all other workers shall remain at a safe distance from the site;

(5) The material is not sanded, abraded or ground. Manual methods which do not render the material nonintact must be used;

(6) All removal or disturbance of pipeline asphaltic wrap is performed using wet methods; and

(7) All pipeline and asbestos-containing material removed from the pipeline is disposed of in a lawful manner.

(e) Persons who remove resilient floor covering materials in single-family dwellings are exempt from notification requirements.

## **ARTICLE 38. TATTOO STUDIO BUSINESS.**

### **§16-38-5. Disposal of waste.**

The tattoo studio operator shall comply with rules promulgated by the commissioner of the bureau of public health, in consultation with the state health officer, regarding the disposal of medical wastes.

## **ARTICLE 40. STATEWIDE BIRTH DEFECTS INFORMATION SYSTEM.**

### **§16-40-2. Expansion and implementation of statewide birth defects information system.**

(a) The commissioner, in consultation with the state health officer, shall establish and implement a statewide birth defects information system for the collection of information concerning congenital anomalies, stillbirths and abnormal conditions of newborns.

(b) The ~~commissioner~~ state health officer may require each physician, nurse-midwife,

5 hospital and freestanding birthing center to report to the system information concerning all patients  
6 under six years of age with a primary diagnosis of a congenital anomaly or abnormal condition:  
7 *Provided, That the ~~commissioner~~ state health officer may not require the reporting of personal*  
8 *identifying information or enter into the system any personal identifying information regarding*  
9 *congenital anomalies or abnormal conditions of a child whose parent or legal guardian objects on*  
10 *the basis of religious belief. The ~~commissioner~~ state health officer may not require a hospital,*  
11 *freestanding birthing center, nurse-midwife or physician to report to the system any information*  
12 *that is required to be reported to the commissioner, or the bureau for public health, or the state*  
13 *health officer under another provision of this code.*

14 (c) On request, each physician, nurse-midwife, hospital and freestanding birthing center  
15 shall give the ~~commissioner~~ state health officer or authorized employees of the bureau access to  
16 the medical records of any patient described in subsection (b) of this section. The bureau shall pay  
17 the costs of copying any medical records pursuant to this section.

18 (d) A physician, nurse-midwife, hospital or freestanding birthing center that provides  
19 information to the system under subsection (b) of this section is not subject to criminal or civil  
20 liability for providing the information.

**§16-40-4. Confidentiality of information.**

1 (a) Except as provided in this section, records received, and information assembled by the  
2 birth defects information system pursuant to section two of this article are confidential medical  
3 records.

4 (b)(1) The ~~commissioner~~ state health officer may use information assembled by the system  
5 to notify parents, guardians and custodians of children with congenital anomalies or abnormal  
6 conditions of medical care and other services available for the child and family.

7 (2) The ~~commissioner~~ state health officer may disclose information assembled by the  
8 system with the written consent of the parent or legal guardian of the child who is the subject of the  
9 information.

(c)(1) Access to information assembled by the system is limited to the following persons and government entities:

(A) The ~~commissioner~~ state health officer;

(B) Authorized employees of the bureau; and

(C) Qualified persons or government entities that are engaged in demographic, epidemiological or similar studies related to health and health care provision.

(2) The commissioner, in consultation with the state health officer, shall give a person or government entity described in subparagraph (C), subdivision (1) of this subsection access to the system only for informational requests of data and only if the person or a representative of the person or government entity signs an agreement to maintain the system's confidentiality.

(3) The ~~commissioner~~ state health officer shall maintain a record of all persons and government entities given access to the information in the system. The record shall include all of the following information:

(A) The name of the person who authorized access to the system;

(B) The name, title and organizational affiliation of the person or government entity given access to the system;

(C) The dates the person or government entity was given access to the system; and

(D) The specific purpose for which the person or government entity intends to use the information.

(4) The record maintained pursuant to subdivision (3) of this subsection is a public record as defined in chapter twenty-nine-b of this code.

(5) A person who violates an agreement described in subdivision (2) of this subsection shall be denied further access to confidential information maintained by the commissioner or state health officer.

(d) The ~~commissioner~~ state health officer may disclose information assembled by the system in summary, statistical or other form that does not identify particular individuals or

36 individual sources of information.

**§16-40-5. Parent of legal guardian may require removal of information concerning child from system.**

1 (a) As used in this section, "local board of health" means a local board of health  
2 established under the provisions of article two of this chapter.

3 (b) A child's parent or legal guardian who wants information concerning the child removed  
4 from the birth defects information system shall request from the local board of health or the child's  
5 physician a form prepared by the ~~commissioner~~ state health officer. On request, a local board of  
6 health or physician shall provide the form to the child's parent or legal guardian. The individual  
7 providing the form shall discuss with the child's parent or legal guardian the information contained  
8 in the system. If the child's parent or legal guardian signs the form, the local board of health or  
9 physician shall forward it to the ~~commissioner~~ state health officer. On receipt of the signed form,  
10 the ~~commissioner~~ state health officer shall remove from the follow-up system any information that  
11 identifies the child. All personal identifying information may be removed from the record: *Provided*,  
12 That the record itself shall remain in the system for reporting and analysis purposes.

**§16-40-6. Advisory council.**

1 (a) Not later than 30 days after the effective date of this article, the ~~commissioner~~ state  
2 health officer shall appoint a council to advise on the establishment and implementation of the birth  
3 defects information system.

4 (b) The council shall include, at a minimum, persons representing each of the following  
5 interests:

- 6 (1) Obstetrics and gynecology;  
7 (2) Pediatrics;  
8 (3) Genetics;  
9 (4) Epidemiology;  
10 (5) Biostatistics;

- (6) Hospital administration;
- (7) The department of education;
- (8) Parents of children with congenital anomalies or abnormal conditions;
- (9) The march of dimes West Virginia state chapter; and
- (10) The public.

(c)(1) Not later than 30 days after the initial appointments are made under subsection (b) of this section, the ~~commissioner~~ state health officer shall convene the first meeting of the council. In consultation with and with the approval of the council, the ~~commissioner~~ state health officer shall appoint, at the first meeting of the council, the chairperson and vice chairperson of the council from among the members of the council. The chairperson may call additional meetings as the chairperson considers appropriate.

(2) The council may establish rules of procedure as necessary to facilitate the council's orderly conduct of business.

(3) Council members serve without compensation but, to the extent funds are available, shall be reimbursed for their actual and necessary expenses incurred in the performance of their duties.

(d) The council shall recommend to the ~~commissioner~~ state health officer a list of congenital anomalies and abnormal conditions of newborns to be reported to the system.

#### **§16-40-7. Rules.**

Not later than July 1, 2003, the commissioner shall, in consultation with the state health officer and the council created under section six of this article, propose rules for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code to do all of the following:

- (1) Implement the birth defects information system;
- (2) Specify the types of congenital anomalies and abnormal conditions of newborns to be reported to the system under section two of this article;

(3) Establish reporting requirements for information concerning diagnosed congenital anomalies and abnormal conditions of newborns;

(4) Establish standards that are required to be met by persons or government entities that seek access to the system; and

(5) Establish a form for use by parents or legal guardians who seek to have information regarding their children removed from the system and a method of distributing the form to local boards of health and to physicians. The method of distribution must include making the form available on the internet.

**§16-40-8. Reports by ~~commissioner~~ state health officer.**

Prior to the first day of January, three years after the date a birth defects information system is implemented pursuant to this article, and by the first day of January of each year after that, the ~~commissioner~~ state health officer shall prepare a report regarding the birth defects information system. The council created under section six of this article shall, not later than two years after the date a birth defects information system is implemented, specify the information the ~~commissioner~~ state health officer is to include in each report. The ~~commissioner~~ state health officer shall file the report with the governor and the joint committee on government and finance.

**ARTICLE 41. ORAL HEALTH IMPROVEMENT ACT.**

**§16-41-3. Duties and directives of oral health program.**

(a) The director of the oral health program shall implement and maintain the oral health program to include, but not be limited to, the following goals and objectives:

(1) The development of comprehensive dental health plans within the framework of the state plan of operation, provided for in subsection (f), section six, article one of this chapter, to maximize use of all available resources;

(2) Providing the consultation necessary to coordinate federal, state, county and city agency programs concerned with dental health;

(3) Encouraging, supporting and augmenting the efforts of local boards of health and

boards of education in the implementation of a dental health component in their program plans;

(4) Providing consultation and program information to, at a minimum, health professions, health professional educational institutions, school educators, extension specialists and volunteer agencies;

(5) Providing programs aimed at preventing and detecting oral cancer in the state, with a primary focus of meeting the needs of high-risk under-served populations, with the intent to reduce oral cancer mortality;

(6) Providing programs addressing oral health education and promotion, including:

(A) Public health education to promote the prevention of oral disease through self-help methods, including the initiation and expansion of preschool, school age and adult education programs;

(B) Organized continuing health education training programs for, at a minimum, health care providers, school educators and extension specialists; and

(C) Preventive health education information for the public;

(7) Facilitation of access to oral health services, including:

(A) The improvement of the existing oral health services delivery system for the provision of services to all West Virginia residents;

(B) Outreach activities to inform the public of the type and availability of oral health services to increase the accessibility of oral health care for all West Virginia residents; and

(C) Assistance and cooperation in promoting better distribution of dentists and other oral health professionals throughout the state;

(8) Providing programs specifically targeting prevention of tooth loss and the restoration of existing teeth to the extent that funds are available.

(9) Providing oral or dental health services to individuals in need, to the extent funds are available for the services; and

(10) Provide evaluation of these programs in terms of preventive services.

(b) In consultation with dental care providers, the ~~commissioner~~ state health officer shall develop and implement ongoing oral cancer educational programs in the state:

(1) To train health care providers to screen and properly refer patients with oral cancers; and

(2) To promote the cessation of the use of alcohol and tobacco products with a primary focus of meeting the needs of high-risk under-served populations.

(c) The programs developed and implemented under this section shall address:

(1) The risk factors that lead to oral cancer;

(2) The signs and symptoms of oral cancer;

(3) The high-risk behaviors that may lead to oral cancer; and

(4) The accessibility of screening to detect oral cancer.

(d) In addition to the duties and responsibilities required under this section, the director of the oral health program shall administer and supervise all dental health programs within the bureau for public health.

#### **ARTICLE 44. THE PULSE OXIMETRY NEWBORN TESTING ACT.**

##### **§16-44-2. Pulse oximetry screening required; definition; rules.**

(a) The ~~Commissioner of the Bureau for Public Health~~ state health officer shall require each birthing facility licensed by the Department of Health to perform a pulse oximetry screening on every newborn in its care, when the baby is 24 to 48 hours of age, or as late as possible if the baby is to be discharged from the hospital before he or she is 24 hours of age.

(b) As used in this article, "birthing facility" means an inpatient or ambulatory health care facility licensed by the Department of Health that provides birthing and newborn care services.

(c) The commissioner, in consultation with the state health officer, shall adopt procedural rules and propose legislative rules for legislative approval, in accordance with the provisions of article three, chapter twenty-nine-a of this code, that are necessary to carry out the purposes of this article.

**ARTICLE 56. TOBACCO CESSATION THERAPY ACCESS ACT.****§16-56-4. Standing prescription drug orders for tobacco cessation therapy.**

(a) The ~~Commissioner of the Bureau for Public Health or designee~~ state health officer shall prescribe on a statewide basis a tobacco cessation therapy by one or more standing orders permitting pharmacists to initiate the dispensing of noncontrolled prescription medications, over-the-counter medications, or other professional services to eligible individuals:

(b) A standing order must specify, at a minimum:

(1) Use of the Tobacco Cessation Therapy Protocol, that has been approved by the ~~Commissioner of the Bureau for Public Health~~ state health officer in collaboration with the Board of Pharmacy and the Board of Medicine;

(2) The eligible individuals to whom the tobacco cessation therapy may be dispensed;

(3) The timeline for renewing and updating the standing order.

**CHAPTER 16A. MEDICAL CANNABIS ACT.****ARTICLE 11. MEDICAL CANNABIS ADVISORY BOARD.****§16A-11-1. Advisory board.**

(a) The Medical Cannabis Advisory Board is established within the bureau. The advisory board shall consist of the following members:

(1) The ~~commissioner~~ state health officer or a designee.

(2) The Superintendent of the West Virginia State Police or a designee.

(3) Four physicians licensed to practice in the state to be appointed by the State Medical Association with one from each of the following specialized medicine:

(A) Family Practice/Neurologist/General Practitioner.

(B) Pain Management.

(C) Oncologist/Palliative Care.

(D) Psychiatrist.

(4) Two physicians who are licensed pursuant to §30-14-1 *et seq.* of this code appointed by the West Virginia Osteopathic Association.

(5) One pharmacist licensed to practice in the state, to be designated by the Board of Pharmacy.

(6) One pharmacologist who has experience in the science of cannabis and a knowledge of the uses, effects, and modes of actions of drugs, to be appointed by the Governor.

(7) One member who is a horticulturalist, to be designated by the West Virginia Commissioner of Agriculture.

(8) One member designated by the West Virginia Association of Alcoholism and Drug Counselors.

(9) An attorney licensed in the state who is knowledgeable about medical cannabis laws.

(10) One member appointed by the West Virginia Prosecuting Attorneys Institute.

(11) One member appointed by the Governor, who shall be a patient, a family or household member of a patient, or a patient advocate.

(b) Terms. — Except as provided under subsection (g) of this section, the members shall serve a term of four years or until a successor has been appointed and qualified, but no longer than six months beyond the four-year period.

(c) Chair. — The ~~commissioner~~ state health officer, or a designee, shall serve as chair of the advisory board.

(d) Voting; quorum. — A majority of the members shall constitute a quorum for the purpose of organizing the advisory board, conducting its business, and fulfilling its duties. A vote of the majority of the members present shall be sufficient for all actions of the advisory board unless the bylaws require a greater number.

(e) Attendance. — A member of the advisory board who fails to attend three consecutive meetings shall be deemed vacant, unless the ~~commissioner~~ state health officer, upon written request from the member, finds that the member should be excused from a meeting for good

37 cause. A member who cannot be physically present may attend meetings via electronic means,  
38 including video conference.

39 (f) Governance. — The advisory board shall have the power to prescribe, amend, and  
40 repeal bylaws governing the manner in which the business of the advisory board is conducted and  
41 the manner in which the duties granted to it are fulfilled. The advisory board may delegate  
42 supervision of the administration of advisory board activities to an administrative commissioner  
43 and other employees of the bureau as the ~~commissioner~~ state health officer shall appoint.

44 (g) Initial terms. — The initial terms of members appointed under subsection (a) of this  
45 section shall be for terms of one, two, three, or four years, the particular term of each member to be  
46 designated by the ~~commissioner~~ state health officer at the time of appointment. All other members  
47 shall serve for a term of four years.

48 (h) Vacancy. — In the event that any member appointed under subsection (a) of this  
49 section shall die or resign, or otherwise become disqualified during the member's term of office, a  
50 successor shall be appointed in the same way and with the same qualifications as set forth in this  
51 section and shall hold office for the unexpired term. An appointed member of the advisory board  
52 shall be eligible for reappointment.

53 (i) Expenses. — A member shall receive the amount of reasonable travel, hotel, and other  
54 necessary expenses incurred in the performance of the duties of the member in accordance with  
55 state rules but shall receive no other compensation for the member's service on the board.

56 (j) Duties. — The advisory board shall have the following duties:

57 (1) To examine and analyze the statutory and regulatory law relating to medical cannabis  
58 within this state.

59 (2) To examine and analyze the law and events in other states and the nation with respect  
60 to medical cannabis.

61 (3) To accept and review written comments from individuals and organizations about  
62 medical cannabis.

(4) To issue, two years after the effective date of this section, a written report to the Governor, the Senate, and the House of Delegates.

(5) The written report under subdivision (4) of this subsection shall include recommendations and findings as to the following:

(A) Whether to change the types of medical professionals who can issue certifications to patients.

(B) Whether to change, add, or reduce the types of medical conditions which qualify as serious medical conditions under this act.

(C) Whether to change the form of medical cannabis permitted under this act.

(D) Whether to change, add, or reduce the number of growers, processors, or dispensaries.

(E) How to ensure affordable patient access to medical cannabis.

(F) Whether to permit medical cannabis to be dispensed in dry leaf or plant form, for administration by vaporization.

(6) The final written report under this section shall be adopted at a public meeting.

#### **§16A-11-2. Rules based on recommendations of advisory board.**

After receiving the report of the advisory board, at the discretion of the ~~commissioner~~ state health officer, the bureau may propose rules for legislative promulgation pursuant to the provisions of article three, chapter twenty-nine-a of this code to effectuate recommendations made by the advisory board. The ~~commissioner~~ state health officer shall issue notice in the State Register within 12 months of the receipt of the report of the advisory board. The notice shall include the recommendations of the advisory board and shall state the specific reasons for the decision of the ~~commissioner~~ state health officer on whether or not to effectuate each recommendation.

## **CHAPTER 22B. ENVIRONMENTAL BOARDS.**

<b>ARTICLE</b>	<b>2.</b>	<b>AIR</b>	<b>QUALITY</b>	<b>BOARD.</b>
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**§22B-2-1. Air quality board; composition; appointment and terms of members; vacancies.**

(a) On and after the effective date of this article, the "air pollution control commission," heretofore created, shall continue in existence and hereafter shall be known as the "air quality board."

(b) The board shall be composed of seven members, including the ~~commissioner of the bureau of public health~~ state health officer and the commissioner of agriculture, or their designees, both of whom are members ex officio, and five other members, who shall be appointed by the governor with the advice and consent of the Senate. Each appointed member of the board who is serving in such capacity on the effective date of this article shall continue to serve on the board until his or her term ends or he or she resigns or is otherwise unable to serve. As each such member's term ends, or that member is unable to serve, a qualified successor shall be appointed by the governor with the advice and consent of the Senate. Two of the members shall be representative of industries engaged in business in this state, and three of the members shall be representative of the public at large.

(c) The appointed members of the board shall be appointed for overlapping terms of five years, except that the original appointments shall be for terms of one, two, three, four and five years, respectively. Any member whose term expires may be reappointed by the Governor. In the event a board member is unable to complete the term, the Governor shall appoint a person with similar qualification to complete the term. The successor of any board member appointed pursuant to this article must possess the qualification as prescribed herein. Each vacancy occurring in the office of a member of the board shall be filled by appointment within 60 days after such vacancy occurs.

**CHAPTER 22C. ENVIRONMENTAL RESOURCES; BOARDS,  
AUTHORITIES, COMMISSIONS AND COMPACTS.**

**ARTICLE            1.            WATER            DEVELOPMENT            AUTHORITY.**

**§22C-1-4. Water Development Authority; Water Development Board; organization of authority and board; appointment of board members; their term of office, compensation and expenses; Director of Authority; compensation.**

1 (a) The Water Development Authority is continued. The authority is a governmental  
2 instrumentality of the state and a body corporate. The exercise by the authority of the powers  
3 conferred by this article and the carrying out of its purposes and duties are essential governmental  
4 functions and for a public purpose.

5 (b) The authority is controlled, managed and operated by a seven-member board known  
6 as the Water Development Board. The Governor or designee, the secretary of the Department of  
7 Environmental Protection or designee and the ~~Commissioner of the Bureau for Public Health~~ state  
8 health officer or designee are members ex officio of the board. Four members are appointed by the  
9 Governor, by and with the advice and consent of the Senate, for six-year terms, which are  
10 staggered in accordance with the initial appointments under prior enactment of this section. In the  
11 event of a vacancy, appointments are filled in the same manner as the original appointment for the  
12 remainder of the unexpired term. A member continues to serve until the appointment and  
13 qualification of the successor. More than two appointed board members may not at any one time  
14 belong to the same political party. Appointed board members may be reappointed to serve  
15 additional terms.

16 (c) All members of the board shall be citizens of the state. Each appointed member of the  
17 board, before entering upon his or her duties, shall comply with the requirements of article one,  
18 chapter six of this code and give bond in the sum of \$25,000 in the manner provided in article two  
19 of said chapter. The Governor may remove any board member for cause as provided in article six  
20 of said chapter.

21 (d) The Governor or designee serves as chair. The board annually elects one of its  
22 appointed members as vice chair and appoints a secretary-treasurer, who need not be a member  
23 of the board. Four members of the board is a quorum and the affirmative vote of four members is

necessary for any action taken by vote of the board. A vacancy in the membership of the board does not impair the rights of a quorum by such vote to exercise all the rights and perform all the duties of the board and the authority. The person appointed as secretary-treasurer, including a board member if so appointed, shall give bond in the sum of \$50,000 in the manner provided in article two, chapter six of this code.

(e) The Governor or designee, the Secretary of the Department of Environmental Protection and the ~~Commissioner of the Bureau for Public Health~~ state health officer do not receive compensation for serving as board members. Each appointed member receives an annual salary of \$12,000, payable at least twice per month. Each of the seven board members is reimbursed for all reasonable and necessary expenses actually incurred in the performance of duties as a member of the board in a manner consistent with guidelines of the Travel Management Office of the Department of Administration. All expenses incurred by the board are payable solely from funds of the authority or from funds appropriated for that purpose by the Legislature. Liability or obligation is not incurred by the authority beyond the extent to which moneys are available from funds of the authority or from such appropriations.

(f) There is a director of the authority appointed by the Governor, with the advice and consent of the Senate, who serves at the Governor's will and pleasure. The director is responsible for managing and administering the daily functions of the authority and for performing other functions necessary to the effective operation of the authority. The compensation of the director is fixed annually by the board.

## **CHAPTER 61. CRIMES AND THEIR PUNISHMENT.**

### **ARTICLE 12. POSTMORTEM EXAMINATIONS.**

#### **§61-12-3. Office of Chief Medical Examiner established; appointment, duties, etc., of Chief Medical Examiner; assistants and employees; promulgation of rules.**

(a) The Office of Chief Medical Examiner is continued within the department. The office

2 shall be directed by a Chief Medical Examiner, who may employ pathologists, toxicologists, other  
3 forensic specialists, laboratory technicians, and other staff members as needed to fulfill the  
4 responsibilities set forth in this article.

5 (b) All persons employed by the Chief Medical Examiner shall be responsible to him or her  
6 and may be discharged for any reasonable cause. The Chief Medical Examiner shall specify the  
7 qualifications required for each position in the Office of Chief Medical Examiner.

8 (c) The Chief Medical Examiner shall be a physician licensed to practice medicine or  
9 osteopathic medicine in the State of West Virginia, who is a diplomat of the American Board of  
10 Pathology in forensic pathology, or equivalent, and who has experience in forensic medicine. The  
11 Chief Medical Examiner shall be appointed by the ~~Commissioner for the Bureau of Public Health~~  
12 Secretary of the Department of Health to serve a five-year term unless sooner removed, but only  
13 for cause, by the Governor or by the ~~commissioner~~ secretary.

14 (d) The Chief Medical Examiner shall be responsible to the secretary in all matters except  
15 that the Chief Medical Examiner shall operate with independent authority for the purposes of:

- 16 (1) The performance of death investigations conducted pursuant to § 61-12-8 of this article;  
17 (2) The establishment of cause and manner of death; and  
18 (3) The formulation of conclusions, opinions, or testimony in judicial proceedings.

19 (e) The Chief Medical Examiner, or his or her designee, shall be available at all times for  
20 consultation as necessary for carrying out the functions of the Office of the Chief Medical  
21 Examiner.

22 (f) The Chief Medical Examiner shall cooperate with procurement organizations as defined  
23 in § 16-19-3 of this code to maximize the opportunity to recover anatomical gifts for the purpose of  
24 transplantation, therapy, research, or education. To facilitate the efficient and economical recovery  
25 of anatomical gifts, the Chief Medical Examiner, shall authorize the presence of persons approved  
26 or assigned by the procurement organization to perform duties at the office of the Chief Medical  
27 Examiner necessary to the timely recovery of anatomical gifts including access to records or

information necessary to identify a potential donor, evaluate donor eligibility, and obtain authorization for recovery, but not including records or information that directly conflict with investigations conducted pursuant to § 61-12-8 of this code. The procurement organization is liable for all costs related to the placement of persons authorized by this subsection and the Chief Medical Examiner's liability for payment of services is zero.

(g) The secretary shall propose legislative rules in accordance with the provision of § 29A-3-1 *et seq.* of this code concerning:

(1) The proper conduct of medical examinations into the cause of death;

(2) The proper methods and procedures for postmortem inquiries conducted by county medical examiners and coroners;

(3) The examination of substances taken from human remains in order to determine the cause and manner of death;

(4) The training and certification of county medical examiners and coroners; and

(5) The procedures necessary to maximize the recovery of anatomical gifts for the purpose of transplantation, therapy, research, or education.

(h) The Chief Medical Examiner may prescribe specific forms for record books and official papers which are necessary to the functions and responsibilities of the office of the Chief Medical Examiner.

(i) The Chief Medical Examiner, or his or her designee, may order and conduct an autopsy in accordance with the provisions of this code. The Chief Medical Examiner, or his or her designee, shall perform an autopsy upon the lawful request of any person authorized by the provisions of this code to request the performance of the autopsy.

(j) The salary of the Chief Medical Examiner and the salaries of all assistants and employees of the office of the Chief Medical Examiner shall be fixed by the Legislature from funds appropriated for that purpose. The Chief Medical Examiner shall take an oath as required by law. The Chief Medical Examiner and his or her assistants may lecture or instruct in the field of legal

54 medicine and other related subjects to the West Virginia University or Marshall University School  
55 of Medicine, the West Virginia School of Osteopathic Medicine, the West Virginia State Police,  
56 other law-enforcement agencies and other interested groups.

NOTE: The purpose of this bill is to clarify the duties and responsibilities of the Secretary of the Department of Health, the Commissioner of the Bureau for Public Health, and the state health officer.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.